



## Criminal conviction for distributing leaflets offensive to homosexuals was not contrary to freedom of expression

In today's Chamber judgment in the case [Vejdeland and Others v. Sweden](#) (application no. 1813/07), which is not final<sup>1</sup>, the European Court of Human Rights held, unanimously, that there had been:

**No violation of Article 10 (freedom of expression)** of the European Convention on Human Rights

The case concerned the applicants' conviction in 2005 for distributing in an upper secondary school approximately 100 leaflets considered by the courts to be offensive to homosexuals.

### Principal facts

The applicants, Tor Fredrik Vejdeland, Mattias Harlin, Björn Täng and Niklas Lundström, are Swedish nationals who were born in 1978, 1981, 1987 and 1986 respectively. Mr Vejdeland lives in Gothenburg and the other applicants live in Sundsvall (Sweden).

In December 2004 the applicants, together with three other persons, went to an upper secondary school and distributed approximately a hundred leaflets by an organisation called National Youth, by leaving them in or on the pupils' lockers. The school's principal intervened and made them leave the premises. The statements in the leaflets were, in particular, allegations that homosexuality was a "deviant sexual proclivity", had "a morally destructive effect on the substance of society" and was responsible for the development of HIV and AIDS.

The applicants claimed that they had not intended to express contempt for homosexuals as a group and stated that the purpose of their activity had been to start a debate about the lack of objectivity in the education in Swedish schools. The District Court found that the applicants' intention had been to express contempt for homosexuals and convicted them of agitation against a national or ethnic group. The charges against the applicants were rejected on appeal, on the ground that a conviction would amount to a violation of their right to freedom of expression as guaranteed by the European Convention on Human Rights.

On 6 July 2006 the Supreme Court convicted the applicants of agitation against a national or ethnic group. The majority of judges found in particular that the pupils had not had the possibility to refuse the leaflets and that the purpose of supplying the pupils with arguments for a debate could have been achieved without offensive statements to homosexuals as a group. The first three applicants were given suspended sentences combined with fines ranging from approximately 200 to 2,000 euros and the fourth applicant was sentenced to probation.

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<sup>1</sup> Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution)

## Complaints, procedure and composition of the Court

The applicants alleged that the Supreme Court convicting them of agitation against a national or ethnic group had constituted a violation of their freedom of expression under Article 10 of the Convention. They further submitted that they had been punished without law in violation of Article 7.

The application was lodged with the European Court of Human Rights on 4 January 2007.

Judgment was given by a Chamber of seven, composed as follows:

Dean **Spielmann** (Luxembourg), *President*,  
Elisabet **Fura** (Sweden),  
Karel **Jungwiert** (the Czech Republic),  
Boštjan M. **Zupančič** (Slovenia),  
Mark **Villiger** (Liechtenstein),  
Ganna **Yudkivska** (Ukraine),  
Angelika **Nußberger** (Germany), *Judges*,

and also Claudia **Westerdiek**, *Section Registrar*.

INTERIGHTS (the International Centre for the Legal Protection of Human Rights) and the International Commission of Jurists submitted observations in their capacity as third-party interveners in the proceedings (Article 36 § 2 of the Convention). The observations are set out in the judgment (§§ 41-46).

## Decision of the Court

### Article 10

The applicants were convicted of agitation against a national or ethnic group in accordance with the Swedish Penal Code. The Court therefore considered that the interference with their freedom of expression had been sufficiently clear and foreseeable and thus "prescribed by law" within the meaning of the Convention. The interference had served a legitimate aim, namely "the protection of the reputation and rights of others" (Article 10 § 2).

The Court agreed with the Supreme Court that, even if the applicants' objective to start a debate about the lack of objectivity of education in Swedish schools had been an acceptable aim, regard had to be paid to the wording of the leaflets. According to the leaflets, homosexuality was a "deviant sexual proclivity", had "a morally destructive effect" on society and was responsible for the development of HIV and AIDS. The leaflets further alleged that the "homosexual lobby" tried to play down paedophilia. These statements had constituted serious and prejudicial allegations, even if they had not been a direct call to hateful acts. The Court stressed that discrimination based on sexual orientation was as serious as discrimination based on "race, origin or colour".

While acknowledging the applicants' right to express their ideas, the Supreme Court had found that the leaflets' statements had been unnecessarily offensive. It had further emphasised that the applicants had imposed the leaflets on the pupils by leaving them on or in their lockers. The Court noted that the pupils had been at an impressionable and sensitive age and that the distribution of the leaflets had taken place at a school which none of the applicants attended and to which they did not have free access.

Three of the applicants were given suspended sentences combined with fines ranging from approximately EUR 200 to EUR 2,000, and the fourth applicant was sentenced to probation. The Court did not find these penalties excessive in the circumstances as the crime of which they had been convicted had carried a penalty of up to two years' imprisonment.

The Court therefore considered that the interference with the applicants' exercise of their right to freedom of expression had reasonably been regarded by the Swedish authorities as necessary in a democratic society for the protection of the reputation and rights of others. The Court concluded that there had been no violation of Article 10.

## Article 7

Having regard to the finding under Article 10 that the measure complained of was "prescribed by law" within the meaning of the Convention, the Court declared the applicants' complaint under Article 7 inadmissible as being manifestly ill-founded.

## Separate Opinions

Concurring opinions were expressed by: Judge Spielmann joined by Judge Nußberger; Judge Zupančič; and Judge Yudkivska joined by Judge Villiger. These opinions are annexed to the judgment.

*The judgment is available only in English.*

*On the occasion of the judgment's delivery in the case of *Vejdeland and Others v. Sweden*, a Factsheet on "Hate Speech" was released on the [Court's website](#).*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.