
**Study on Homophobia, Transphobia and Discrimination on
Grounds of Sexual Orientation and Gender Identity**

Legal Report: Croatia

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A. Executive summary

1. The last six years have marked a great milestone for the LGBT community in Croatia at the legal level. However, significant changes to legislation are still needed, especially in regards to protection of the rights of transgender persons and persons living in same-sex unions.
2. Although some of the rights of LGBT persons are protected by Croatian law, implementation of these newly-passed laws is made difficult by discriminatory actions by state institutions in specific cases. Most of the time, victims do not even report discrimination or violence, since they have no confidence in the Croatian legal system, especially the police.
3. The greatest improvement in the protection of LGBT rights in Croatian legislation occurred in 2003 upon initiative of LGBT associations Lesbian Group Kontra and Iskorak. For the first time in Croatian legislation sexual orientation was explicitly identified in articles prohibiting discrimination based on certain differential criteria. Prohibitions of discrimination based on sexual orientation were introduced into the Gender Equality Act (Official Gazette, 82/08), Act on Amendments to Criminal Code (Official Gazette 111/03), Act on Amendments to Labour Act (Official Gazette 114/03), Scientific Work and Higher Education Act (Official Gazette 123/03), and into Schoolbook Standards (Official Gazette 63/03). Also the Same-Sex Unions Act (Official Gazette 116/03) was passed.
4. Protection of sexual minorities in the Criminal Code was explicitly stated in 2003 in the context of the criminal offence of glorifying fascist, Nazi and other totalitarian states and ideologies or promoting racism and xenophobia (Art 151a of the Criminal Code; OG 111/03). However, by a decision of the Constitutional Court of 27 November 2003, Nr. U-I/2566/2003, this act was entirely annulled. In 2004 the Lesbian Group Kontra and the Iskorak continued with public advocacy of the rights of LGBT people, and the Act on Amendments to the Criminal Code (Official Gazette 29/04) was passed, which explicitly implemented sexual orientation into Art 174 para 3 of the Criminal Code (criminal offence of racial or other discrimination). The Act on Amendments to the Criminal Code, including the above amendment, was passed by the Croatian Parliament on 13 July 2004. Also, the Parliamentary Committee on Human Rights accepted an amendment to the Media Act that referred to inclusion of sexual orientation in the anti-discriminatory provisions of that Act. The Committee did not accept the amendment from associations the Lesbian Group Kontra and the Iskorak that referred to gender identity. The Media Act (Official Gazette 59/04), including the amendment referring to sexual orientation, was passed by Parliament on 10 May 2004.
5. In 2006 the Act on Amendments to Criminal Code (Official Gazette 71/06) was adopted, introducing definition of a "hate crime" into Article 89 of the Criminal Code, as an aggravating circumstance. Also, an amendment to Article 91 of the Criminal Code which relates to aggravated murder was introduced. It defined murder motivated by hatred as aggravated murder (qualified offence) and prescribed greater penalties for offenders in comparison to regular murder.
6. In 2006 the proposed Registered Partnership Bill (proposal was created by associations Kontra and Iskorak and placed into parliamentary procedure by individual MPs) was refused, the purpose of which was to secure for same-sex couples the same rights and obligations enjoyed by married couples, with the exception of adopting children. In the last six years the Government of the Republic of Croatia has regularly failed to implement its own anti-discrimination laws (adopted in order to harmonise with the European Union), as

well as international documents to which it is a signatory, in regards to the protection of the rights of same-sex couples. Namely, the state institutions adopted a series of laws that are discriminative towards same-sex couples (last example was the Labour Act adopted in the year 2009).

7. The Anti-Discrimination Act (Official Gazette 85/08) was passed by the Croatian Parliament on 9 July 2008, after a long public debate. The Act widens the institutional framework for protection from discrimination. It introduces the institution of interveners and the institution of joint legal action, and gives greater powers to the Office of the People's Ombudsman who, according to the Act, carries out the tasks of the central body responsible for the elimination of discrimination. For the first time in Croatian legislation, this Act introduces the banning of discrimination on the basis of gender identity.
8. Legislation regulating the procedures for change of name and gender in personal documents does not contain protection mechanisms for the protection of the right to privacy of transgender persons and that results in violations of human rights of that extremely vulnerable social group.
9. Weakly defined measures of the National Policy for the Promotion of Gender Equality (Official Gazette 114/06), as well as the National Programme for the Protection and Promotion of Human Rights (Official Gazette 119/07), regarding rights of sexual and gender minorities, have never been implemented.

B. Findings

B.1. Overall legal framework

10. The Croatian legal system embodies the fundamental principles of human rights through the Constitution of the Republic of Croatia (Official Gazette 41/01, amended text), chapters two and three, and special legislation.
11. Article 3 of the Constitution of the Republic of Croatia, among other things, defines equality, human rights and the rule of law as the highest values of the constitutional order of the Republic of Croatia and the ground for interpretation of the Constitution. Therefore, the Constitution, right after its basic provisions, determines the protection of human rights and fundamental freedoms.
12. In connection with this, Article 14 of the Constitution of the Republic of Croatia states that everyone in the Republic shall enjoy rights and freedoms regardless of numerous differing characteristics, whether those differing characteristics are explicitly defined in the Article (race, colour, gender, language, religion, political or other belief, national or social origin, property, birth, education and social status) or they fall under "other characteristics" (as sexual orientation, gender identity, age, etc). The second paragraph of the same Article states that everyone is equal before the law. That equality should also apply to persons of different sexual orientation and gender identity.
13. The right to equality is subject to restrictions under Article 16 of the Constitution of the Republic of Croatia. However, every restriction must be proportional to the nature of the necessity for restriction, and set out in every individual case with the aim to protect freedoms and rights of others, public order, public morality and health.

14. Different legal acts explicitly ban discrimination based on sexual orientation – Anti-discrimination Act (Official Gazette, Nr. 85/08), Act on Amendments to Criminal Code (Official Gazette, Nr. 105/04), Act on Amendments to Labour Act (Official Gazette, Nr. 137/04 - cleansed text), Gender Equality Act (Official Gazette, Nr. 82/08), Media Act (Official Gazette 59/04), Scientific Activity and High Education Act (Official Gazette, Nr.123/03), Asylum Act (Official Gazette, Nr. 79/07), Volunteers Act (Official Gazette, Nr. 58/07).
15. Discrimination on the grounds of gender identity and gender expression is explicitly prohibited in the Anti-discrimination Act¹. The Volunteers Act also contains prohibition of discrimination based on gender expression.
16. The Gender Equality Act² regulates general bases for the protection and promotion of gender equality as one of the fundamental values of the constitutional order of the Republic of Croatia, and it defines and regulates the protection against discrimination based on gender and creation of equal opportunities for women and men. The Act also contains prohibitions of discrimination on the basis of one's marital status and sexual orientation.
17. The Gender Equality Act establishes institutions of the Office for Gender Equality of the Government of the Republic of Croatia and the Ombudswoman for Gender Equality.
18. It is proscribed by the Act that The Government of the Republic of Croatia shall pass a decree whereby it shall establish the Office for Gender Equality as a professional body to carry out tasks relating to the realisation of gender equality.
19. The Anti-discrimination Act³ provides for the protection and promotion of equality as the highest value of the constitutional order of the Republic of Croatia, creates prerequisites for the realisation of equal opportunities and regulates protection against discrimination on the grounds of race or ethnic affiliation or colour, gender, language, religion, political or other beliefs, national or social origins, property, trade union membership, education, social status, marital or family status, age, health condition, disability, genetic heritage, gender identity, expression or sexual orientation.
20. The Anti-Discrimination Act was passed by the Croatian Parliament on 9 July 2008, after a long public debate. The Act widens the institutional framework for protection from discrimination. It introduces the institution of interveners and the institution of joint legal action, and gives greater powers to the Office of the People's Ombudsman who according to the Act carries out the tasks of the central body responsible for the suppression of discrimination. For the first time in Croatian legislation, this Act introduces the banning of discrimination on the basis of gender identity.
21. The Central body responsible for the suppression of discrimination was established by the Anti-discrimination Act in framework of authority of the People's Ombudsman and special ombudspersons. Special ombudspersons in the Republic of Croatia are Ombudswoman for Gender Equality, Ombudswoman for Children and Ombudsman for Persons with Disability. Cases of discrimination based on sexual orientation and gender identity fall under jurisdiction of the Ombudswoman for Gender Equality.
22. Although in the text of the Anti-discrimination Act special Ombudsmen are mentioned in all other segments, it seems that only People's Ombudsman is responsible for the social dialogue and cooperation with organisations of the civil society (Art 15). Within the meaning

1 Official Gazette, Nr. 85/08.

2 Official Gazette, Nr. 82/08.

3 Official Gazette, Nr. 85/08.

of the Anti-discrimination Act, social partners are representative associations of trade unions and employers of a higher level. Therefore, the People's Ombudsman shall also take part in consultations with social partners and civil society organisations, regardless of the fact that cases of discrimination based on sexual orientation are under jurisdiction of the Ombudswoman for Gender Equality.

23. The Programme of the Government of Republic of Croatia for the mandate of 2008-2011 does not contain fighting against discrimination among its goals and also does not contain special sets of activities in that field. The exception is special measures in regards to elimination of discriminatory conditions in the employment of young people (under the chapter "Youth"). Also in the chapter "Commerce" it is stated: "In the field that affects work in sector of commerce, and which falls under the sphere of the Labour Act, it is necessary to take into consideration and urgently adopt changes and amendments to the Labour Act in following the segments: protection of workers from discrimination based on any grounds..."
24. National Policy for the Promotion of Gender Equality 2006-2010
25. The Gender Equality Act (OG 116/03, OG 82/08) states that the Office for Gender Equality is responsible for drafting the National Policy for Promotion of Gender Equality and monitoring its implementation. The Act also states that the Office shall cooperate with civil society organisations that are active in the field of gender equality.
26. Parts concerning LGBT rights:
 - In Chapter 3 "Commitments in the process of joining the European Union", the following legal ground in the field of equal opportunities is included: fighting discrimination on the basis of sex and sexual orientation.
 - The strategic framework for implementation of the Policy on Gender Equality and the action plan contained a chapter on "Improvement of ways to combat and eliminate discrimination based on sexual orientation". This chapter contained the following provisions:
27. 1.5.1. The Ministry of Justice and the Ministry of Internal Affairs will conduct research with the aim of analysing judicial practice and police conduct while dealing with criminal offences motivated by the sexual orientation of the injured party. Deadline for the implementation of this activity: 2007.
28. 1.5.2. Representatives of organisations for the equality of sexual and gender minorities will be included in working bodies for adoption of laws, programmes and strategies, which are relevant to the rights of sexual minorities. Implementing body: competent bodies of state administration, Government of the Republic of Croatia. Deadline for implementation: 2007-2010.
29. Above activities related to LGBT rights were adopted as the result of advocating of Women's Network of Croatia, Iskorak and Kontra. However, civil society organisations proposed a series of activities that were not adopted. Activities that were proposed to the Office for Gender Equality were related to rights of same-sex couples, education and combating hate crimes (reference:2006 Annual Report on Status of Human Rights of Sexual and Gender Minorities
http://www.kontra.hr/cms/index.php?option=com_content&view=article&id=190%3Asexual-and-gender-minorities-report-2006&catid=22%3Aizvjetaji--reports&Itemid=50&lang=en).
30. The Same-Sex Unions Act provides same-sex couples with only two rights: the right to joint property and to support by a partner. It does not provide same-sex partners with other

rights and responsibilities available to opposite-sex partners through the institutions of marriage and common-law marriage. That is discrimination based on sexual orientation and same-sex union, so the Act is contrary to both itself (Article 21 of the Same-Sex Unions Act prohibits discrimination based on same-sex union and sexual orientation) and to the Gender Equality Act. The Office for Gender Equality refused to point to the discriminatory status of same-sex couples and refused to take the initiative to change that condition.

31. Misconduct of police officers while dealing with cases of discrimination and violence against sexual and gender minorities was one of the most important points of all previous reports on the status of human rights of sexual minorities in Croatia. Problems with implementation of anti-discrimination legislation, including marginal support to victims have been noted in European Commission's Progress Reports on Croatia for 2007, 2008 and 2009. The Progress Report for 2009 states that lesbians, gays and bisexual persons are subject to threats and attacks and that many cases have not been adequately investigated by the police and judicial authorities and that a large number of cases remain unreported. In spite of all that, the Government and the Office for Gender Equality deliberately failed to deal with the problem of discriminatory conduct towards sexual and gender minorities by police officers in the National Policy.
32. In the Croatian educational system, sexual education does not exist in Croatian schools as a mandatory subject and there is no education on human rights. It is of great concern that the Office for Gender Equality does not recognise this problem as well.
33. The Policy itself in the majority of cases is not explicit about time limits or commitments for relevant institutions regarding certain activities that should improve the position of women and sexual minorities in Croatian society. The ambiguous definitions and postponed activities contained in this Policy point to the fact that there was no real political will on the part of the Government to combat discrimination based on gender and sexual orientation.
34. Each year since the adoption of the National Policy, associations have sent the Office for Gender Equality a request to provide information about the implementation of the National Policy of Gender Equality, but the Office has never delivered this information. Until February 2010 not even one annual report on the work of the Office or implementation of the National Policy for Promotion of Gender Equality 2006-2010 was published on the web pages of the Office for Gender Equality (the last published report was for 2004). On 12 February 2010 the Office published the Report on the Implementation of the National Policy for Promotion of Gender Equality 2006 – 2010 for the period from October 2006 until December 2008.
35. Regarding implementation of Activity 1.5.1 the following is stated in the Report:
 - 1.5.1. An investigation will be carried out in order to analyse court practice and police behaviour concerning criminal offences motivated by the sexual orientation of the injured party.
 - Implementing bodies: Ministry of Justice, Ministry of Internal Affairs
 - Timetable of implementation: 2007
 - Reporting bodies: Ministry of Justice, Ministry of Internal Affairs
36. The Ministry of Justice reported that in the context of existing statistics that are maintained by the Ministry and judicial bodies it was not possible to extract data on criminal offences motivated by sexual orientation, considering that besides the criminal offence of racial or

other discrimination under Art 174 of the Criminal Code, other criminal offences can also be motivated by sexual orientation. The possibility of collecting such extensive data in the context of the upgrade of the Integrated Information System for Management of Court Cases (ICMS) is being considered in order to identify such criminal offences and create analyses.

37. The Ministry of Internal Affairs reported that by the changes to Criminal Code in 2006 a new provision was added to Article 89 that defines hate crime as a new criminal offence. During 2006 one criminal offence motivated by sexual orientation was evidenced, and in 2007 the Municipal Criminal Court in Zagreb made two convictions for this criminal offence. The number of reports to the State Attorney's Office and the status of cases have not yet been collected. At the end of 2006 a Memorandum was signed between the Ministry of Internal Affairs and the Office for Democratic Institutions and Human Rights of the Organisation for Security and Co-operation in Europe (OSCE) on combating hate crime, and the Ministry of Internal Affairs also committed to implement training on hate crimes into existing educational programmes for education of police officers.
38. The Act on Amendments to the Criminal Code which contains the quoted provision about hate crimes came into force on 1 October 2006. The purpose of introducing the definition of hate crime was, basically, to state greater social condemnation of such type of criminality and in accordance with this it is necessary to keep separate statistics and indicators of the changing rates of this criminality, as well as to specially emphasise their occurrences in society, which could also be seen in the annual report on the work of state attorneys' offices. Four years after introducing the definition of hate crimes into the Criminal Code and three years after expiry of the deadline for implementation of the activity of analysis of court practice and police behaviour concerning criminal offences motivated by the sexual orientation of the injured party, it is stated in the report on implementation of this activity that consideration of the possibility of collecting such extensive data is in progress.
39. In its report, the Ministry of Internal Affairs states incorrectly that Art 89 defines hate crime as a new criminal offence. Therefore, the persons who reported on implementation of this activity on behalf of the Ministry did not even know what hate crime is (it is not defined as a separate criminal offence, but as an aggravating circumstance for existing criminal offences). Furthermore, since this report was for the period from October 2006 until December 2008 (published in February 2010), it remains unclear how the Ministry of Interior did not manage to collect the number of reports made to the State Attorney's Office and the status of cases regarding hate crimes. Namely, the State Attorney's Office delivered information on the number of reports to associations Kontra and Iskorak in December 2008. All this leads to conclusion that there was no real attempt to implement this activity on the part of the relevant institutions.
40. Regarding the implementation of Activity 1.5.2, the following is stated in the Report:
 - 1.5.2. Representatives of organisations for the equality of sexual and gender minorities will be included in the working bodies for the adoption of laws, programmes and strategies connected with the rights of sexual minorities.
 - Implementing bodies: Competent bodies of state administration, Government of the Republic of Croatia
 - Timetable of implementation: 2007 – 2010
 - Reporting bodies: Ministry of Science, Education and Sport, Committee for Gender Equality of the Croatian Parliament, Office for Gender Equality

41. The Ministry of Science, Education and Sport includes representatives of organisations for equality of sexual and gender minorities in the work of certain working bodies, for example the Committee for Evaluation of Programmes for Health Education.
42. In 2006 HRK 160,000 (€22,069) was spent on the work of working bodies.
43. The Committee for Gender Equality of the Croatian Parliament held a session in July 2007 on the theme "Analysis of the Rights of Same-Sex Unions in the Republic of Croatia".
44. The Office for Gender Equality in cooperation with the association Second Step – Centre for Social Integration of Sexual and Gender Minorities, organised a round-table discussion on International Day Against Homophobia, that is commemorated on 17 May, on the day when the World Health Organisation removed homosexuality from the International Classification of Illnesses in 1990. At the round table discussion held in the Journalists Home in Zagreb, with the presence of MPs and the Office for Gender Equality, Second Step presented the Programme for Combating Homophobia in Five Steps.
45. The Office for Gender Equality lists only itself, the Ministry of Science, Education and Sport and the Committee for Gender Equality of the Croatian Parliament as reporting bodies for the mentioned activity, although all relevant bodies of state administration and the Government of the Republic of Croatia are defined as implementing bodies for this activity.
46. Of the three activities that the Office describes as implementation of the activity that prescribes including representatives of sexual and gender minorities' organisations in the working bodies for the adoption of laws, programmes and strategies, two activities are in fact initiatives of civil society organisations.
47. Namely, it is unclear why the Office describes in the report for this activity the round-table discussion of the association Second Step from 2007, since this was not a working body of the Government created in order to draft a specific law, programme or strategy.
48. Furthermore, the session on the theme of "Analysis of the Rights of Same-Sex Unions in the Republic of Croatia" also from 2007 was also organised at the initiative of civil society organisations, this time associations Kontra and Iskorak. This also was not a meeting of a working body created to draft a specific law, programme or strategy. Analysis of the status of rights of persons living in same-sex unions was presented by civil society associations to representatives of Parliament and Government. Representatives of the Government did not show interest to initiate changes that would eliminate discrimination of persons living in same-sex unions from Croatian legislation.
49. The information that the Ministry of Science, Education and Sport includes representatives of organisations for equality of sexual and gender minorities in the work of certain working bodies is entirely false. The only example mentioned is the Committee for Evaluation of Programs for Health Education. This Committee did not include representatives of LGBT organisations. The only representatives of non-governmental organisations on the Committee were Ms Renata Jelušić, president of the association Parents in Action and Mr Amir Hodžić, representative of the Centre for Education, Counselling and Research, while according to media reports the Committee consisted mostly of persons "from an extremely conservative milieu", like Zlatko Miliša, from the Zadar Faculty of Philosophy, or Goran Dodig, a psychiatrist from Split and former member of the Croatian Social-Liberal Party, who for example, three years ago wrote in *Fokus*: "Try to imagine where the fake call for the equality of woman has brought us... Women have never had more reason to protest than today; their families have been taken away from them, their children have been taken away, and again they pay the price." As the result of the above process the Ministry of Science, Education and Sport introduced an experimental programme that was evaluated by the Ombudswoman for Gender Equality as discriminatory in regards to sexual

orientation into primary and secondary schools in Croatia, and then finally after four years of work on finding an adequate solution for the introduction of sex and afterwards health education, gave up on introducing a separate subject of sexual or health education and stopped working on this issue entirely.

50. In the period from October 2006 until the day of publication of this report, a number of working bodies for drafting laws, programmes and strategies concerning rights of sexual and gender minorities were formed. In the above period not a single working group included representatives of associations for the protection of the rights of sexual and gender minorities - for example working group for creation of drafts of the National Programme of Protection and Promotion of Human Rights (2007), and then also working group for creation of the draft of the Anti-Discrimination Bill and the Medical Insemination Bill (2009).
51. Organisations for the rights of sexual minorities occasionally participated at their own request in sessions of parliamentary committees at which the already proposed Bills were discussed. However, in 2009 a request for a representative of Lesbian Group Kontra to participate in the session of the Committee for Human Rights and Rights of National Minorities at which the Labour Bill⁴ was discussed, was rejected with the explanation that "there are not enough chairs".
52. National Programme for the Protection and Promotion of Human Rights from 2008 to 2011, par 98. Aim: To increase tolerance towards sexual and gender minorities

98.1. Measure: Organisation of public debates and seminars

Implementing bodies: Office for Gender Equality of the Government of the Republic of Croatia, Office for Human Rights of the Government of the Republic of Croatia

Timeframe: 2008-2011

53. 98.2. Measure: Encouraging activities for the purpose of raising public awareness of the unacceptability of discrimination on the basis of sexual orientation
54. Implementing body: Office for Gender Equality of the Government of the Republic of Croatia
55. Timeframe: 2008-2011
56. 99. Aim: To improve legislation in the area of protection of members of sexual and gender minorities
57. 99.1. Measure: Preparation of an analysis of legislation for the purpose of achieving the rights of members of same-sex orientation
58. Implementing body: Office for Gender Equality of the Government of the Republic of Croatia
59. Timeframe: 2009
60. None of the above measures were implemented. The Office for Gender Equality did not respond to the request for information of the associations on implementation of the activities.

⁴ Official Gazette, Nr. 149/09.

61. Upon the request of the Women's Network of Croatia for information on the implementation of the activities the Office replied that it financed projects related to protection and prevention of HIV/AIDS.
62. In years of implementation of the activity 98.2. funds were not allocated to a single project or programme aimed at combating discrimination against sexual and gender minorities.
63. For example in the decision of the Office for Human Rights on the allocation of funds for the projects and programmes of organisations of civil society in the areas of protection and promotion of human rights in 2009 made on 22 April 2009, funds were not allocated to a single project or programme aimed at combating discrimination of sexual and gender minorities. Since the competition included financing of projects against organisations dealing with problems of HIV/AIDS and hepatitis, association Iskorak was granted HRK 30,000 (€4,100) for a project of prevention of HIV/AIDS.
64. In this project the association Iskorak took over and translated the brochure of the leading British organisation for prevention of HIV and AIDS, the Terrence Higgins Trust, intended for homosexual men. The brochure was published with the financial support of the Office for Human Rights.
65. Several media published articles in regards to this brochure, calling it vulgar, scandalous and pornographic due to the explicit style of writing on gay sex and illustrations with dolls, and condemned institutions for financing this kind of brochure⁵.
66. When asked by a journalist of daily newspapers Jutarnji list about the brochure *The Bottom Line*, published as part of the above project, Mr Luka Mađerić, head of the Office for Human Rights, stated the following:
67. "One of the priorities of this year's competition of the Office for Human Rights for projects of associations of civil society dealing with the promotion and protection of human rights was prevention of HIV/AIDS. Association Iskorak applied, their project was evaluated as of sufficient quality by the independent group responsible for evaluation of projects, and the project was then financed. However, it was not stated anywhere in this project that a brochure with this name and that kind of content would be published. If we had been aware of the plan to publish this brochure with inappropriate content, the project would certainly not have been financed"⁶.
68. The head of the Office also emphasised that the Office's logotype was published on the brochure without their permission and stated that in the contract they signed with the Iskorak on financing the project it is clearly specified that the Office is not responsible for any damage caused by the beneficiary during the implementation of the project.

B.2. Freedom of assembly and association

69. Article 11 of the European Convention on Human Rights and Fundamental Freedoms guarantees the freedom of assembly. It is possible to limit this right only by law and only if such limitation is necessary in democratic society for protection of the national security or

⁵ Link to article on web page of daily newspapers Slobodna Dalmacija from 7 November 7 2009, www.slobodnadalmacija.hr/Hrvatska/tabid/66/articleType/ArticleView/articleId/77938/Default.aspx, accessed 1 October 2010, also link to article published in "Jutarnji list", www.jutarnji.hr/umjesto-savjeta-za-suzbijanje-hiv-a--izdali-prirucnik-za-gay-ljubovanje/342382/, accessed 1 October 2010.

⁶ Jutarnji, www.jutarnji.hr/umjesto-savjeta-za-suzbijanje-hiv-a--izdali-prirucnik-za-gay-ljubovanje/342382/, accessed 1 October 2010.

public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

Public Assembly Act

70. Article 42 of the Constitution of the Republic of Croatia proscribes: "Everyone has a right to public assembly and peaceful protest, as proscribed by the law".
71. The right to freedom of assembly is subject to restrictions under Article 16 of the Constitution of the Republic of Croatia. However, every restriction must be proportional to the nature of the necessity for restriction, and set out in every individual case with the aim to protect freedoms and rights of others, public order, public morality and health.
72. On 9 December 2005, the Croatian Parliament adopted the Changes to the Public Assembly Act (Official Gazette, Nr. 150/05). The amended Act proscribed prohibition of public assembly in the area of 100 meters from the headquarters of the State Institutions at St. Mark's Square. Anyone that approaches the area of 100 meters from the buildings of the Croatian Parliament, President of the Republic of Croatia and the Government, regardless of the purpose and the method of the public assembly or number of participants, or anyone that wishes to forward some request, shall be punished with a fine of 5.000,00 HRK – 20.000,00 HRK (675 - 2700 EUR).
73. St. Mark's Square, where all above mentioned institutions are situated, was the traditional place for public gatherings of citizens in order for them to communicate with state officials and express their opinions.
74. NGO *Lesbian Group Kontra* was denied by the Ministry of Internal Affairs to hold public gatherings at St. Mark's Square for 17 May 2008- International Day against Homophobia. Lesbian Group Kontra filed a complaint at the Constitutional Court relating to inconsistent action, referring to the fact that the Government of the Republic of Croatia had organised a public gathering on the same location (on 5 April 2008 visit of the President of the United States of America to Croatia).
75. Permanent prohibition of public gathering, regardless even of the number of participants, does not satisfy conditions for restriction of the right to freedom of assembly. Even if the real danger in regards to such meetings existed, it would be possible to avoid the danger using other security measures, rather than placing restrictions on the right to peaceful assembly. According to the European Convention for Human Rights the right to public assembly should be ensured even if it could represent some danger, because it is possible to prevent such danger by other measures.

Pride Marches

76. Pride marches have been organised in Croatia since 2002. State institutions do not prohibit LGBT Pride marches.
77. It is usual practice that police officers have a negative and insulting attitude toward those who take part to the Pride march. For instance, in 2006 one victim of such behaviour was even the Ombudswoman for Gender Equality (police officer said to her during the march: "Go to your mother's cunt"⁷- The police did not take appropriate security measures to stop

⁷ Kontra and Iskorak, 2006 Annual Report on Status of Rights of Sexual and Gender Minorities, www.kontra.hr/cms/index.php?option=com_content&view=article&id=190%3Asexual-and-gender-minorities-report-2006&catid=22%3Aizvjetaji--reports&Itemid=50&lang=en, accessed 1 October 2010.

people spitting, throwing bottles, ashtrays and other things on participants during manifestations (2002-2009). Every year during the Zagreb Pride event, the Zagreb Police Department conducts extensive intervention measures in order to protect the participants of the event but this protection only lasts for the duration of the event in a narrow area around the place where the event is held.

78. In 2002, around 30 people were attacked physically after the manifestation. In the years 2003-2006 there were no violent attacks. In years 2007-2009 there were violent attacks after the manifestation (references: 2002-2008 Annual Reports on Status of Human Rights of Sexual and Gender minorities published by Kontra and Iskorak and 2009 Annual Report on Status of Rights of Sexual and Gender Minorities published by Kontra, links: http://www.kontra.hr/cms/index.php?option=com_content&view=category&id=22&Itemid=50&lang=en).
79. On 13 June 2009 (at the same time as the Gay Pride), Croatian Pure Party of Rights (registered political party) and the Croatian Nationalists organised a public gathering under the title "Anti-Gay Protest against Gay Parade - It Is Unacceptable That They Impose On Us Their Distorted Life Style". During the protest the participants held their hands in a fascist salute while shouting 'Kill the faggots!' and tried to attack the participants of the Zagreb Pride. One participant of the Gay Pride was followed and severely beaten up after the Pride.⁸
80. Lesbian Group Kontra requested the competent authorities to prohibit the gathering, or protest named "Anti-Gay Protest" of the Croatian Pure Party of Rights and the Croatian Nationalists because the protest contained all elements of the criminal offence of racial or other discrimination. Considering that the protest was announced by hate speech and invitation to a public lynching, Kontra also filed a criminal complaint with the State Attorney's Office in Zagreb⁹.
81. The competent authorities (Ministry of Internal Affairs, Police Department of Zagreb) did not ban the afore-mentioned Anti-Gay Protest despite its explicit use of fascist iconography, calls for 'eradication of homosexuality'¹⁰ and instruction on how to make Molotov cocktails. Hate slogans inciting violence against LGBT people were displayed on the website of the organisers 10 days before the Pride.
82. Lesbian Group Kontra never received an answer from the authorities on the requests for prohibition of the gathering. Kontra strongly condemned Croatian authorities for allowing the Anti-Gay Protest to take place and filed a criminal complaint against the organisers of the Protest the proceedings of which are in progress.
83. On 10 February 2009 the European Parliament adopted the resolution on 2009 progress report on Croatia (B7-0067/2010)¹¹ The Report conveyed the European Parliament's concern about the events in regards to Zagreb Pride 2009, and called on the Government to effectively implement and enforce protection against discrimination.

8 Article from daily newspapers "24 hours", www.24sata.info/vijesti/regija/9115-Zagreb-Parada-ponosa-prosla-Trgombana-Jelacica-povike-Ubij-pedera.html, accessed 1 October 2010, segment from news at Nova TV, www.youtube.com/watch?v=nSv9VHMTS-k&feature=related, accessed 1 October 2010.

9 Kontra, 2009 Annual Report on Status of Rights of Sexual and Gender Minorities, www.kontra.hr/cms/index.php?option=com_content&view=article&id=337%3Asexual-and-gender-minorities-report-2009&catid=22%3Aizvjetaji--reports&Itemid=50&lang=en, accessed 1 October 2010.

10 Article from web portal t-portal, www.tportal.hr/vijesti/hrvatska/25130/Protivnici-Gay-Pridea-vikali-Ubij-pedera.html, accessed 1 October 2010.

11 European Parliament, www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0023+0+DOC+XML+V0//EN&language=EN, accessed 1 October 2010.

B.3. Freedom of expression

84. Constitution of the Republic of Croatia in Art 38 proscribes: "Freedom of thought and expression shall be guaranteed. Freedom of expression shall specifically include freedom of the press and other media of communication, freedom of speech and public expression, and free establishment of all institutions of public communication."
85. The right to freedom of expression is subject to restrictions under Article 16 of the Constitution of the Republic of Croatia. However, every restriction must be proportional to the nature of the necessity for restriction, and set out in every individual case with the aim to protect freedoms and rights of others, public order, public morality and health.
86. Furthermore, Art 39 of the Constitution proscribes that any call for or incitement to war, or resort to violence, national, racial or religious hatred, or any form of intolerance shall be prohibited and punishable by law.
87. Art 39 of the Constitution in regards to hate speech is partially embodied in the Art 174 Para 3 and 4 of the Criminal Code.
88. Art 174 Para 3 proscribes: "Whoever with the aim of spreading racial, religious, sexual, national, and ethnic hatred or hatred based on colour with the aim of scorning, publicly states or disseminates ideas on the superiority or subordination of one race, ethnic or religious community, gender, ethnicity or ideas on superiority or subordination on the basis of colour, will be punished by prison sentence from three months up to three years."
89. Art 174 Para 4 proscribes: "Whoever with the aim from Para 3 of this article by the computer system disseminates or in any other way makes publicly accessible materials that deny, significantly underrates, approves or justifies criminal offence of genocide or crime against humanity, will be punished by prison sentence from three months up to three years."
90. Formulation of the Art 174 is not in line with the Council of Europe Committee of Ministers recommendation (No. R (97) 20) due to the fact that "hate speech" is not entirely encompassed by the mentioned article. Furthermore, formulation is not in line with the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, since Art 174 Para 4 is related to hate speech only regarding genocide or crime against humanity. It doesn't include hate speech by distribution of racist and xenophobic materials by computer systems, therefore any written materials, images or other representations of ideas or theories that advocate, promote or incite hatred, discrimination or violence against persons or individuals based on race, skin colour, national or ethnic origin, religion, etc. Formulation provides for the possibility of penalising those perpetrators that publicly state or disseminate ideas on the superiority or subordination, but it doesn't sanction race or other hatred or discrimination inviting to war or violence or spreading intolerance. Therefore, numerous manifestations of "hate speech", and not only stating of ideas on intolerance or subordination should be regulated by the CC.
91. While dealing with criminal offences under Article 174 paragraph 3 of the Criminal Code, associations for rights of sexual minorities have the official status of injured party as a plaintiff. In reality the associations are not directly damaged by this criminal offence - the persecution is initiated with the aim of maintaining public order.
92. The Lesbian Group Kontra and Iskorak have submitted to the State Attorney's Office several initiations of criminal proceedings related to Art 174 Para 3. The majority of cases

were rejected as unjustified. Namely, the State Attorney's offices considered that the existence of direct intent is crucial for the realisation of this criminal offence, and that this interpretation is truly consistent with the formulation from Article 174 paragraph 3. From the point of view of the State Attorney's offices the existence of this criminal offence cannot be proven unless the suspect literally admits that he had the intention of spreading hatred. In all cases perpetrators claimed that they did not intend to spread hatred, and because of that the criminal proceedings were stopped.

93. For other criminal offences under the Criminal Code intent can be proven, even if the suspect does not admit to it. The courts so far did not try to develop methods of proving culpability for criminal offences under Article 174 paragraph 3. On the other hand, practice could also demonstrate that it is not possible to establish alternative methods of proving this criminal offence, and in that case changes to Article 174 paragraph 3 will be needed.
94. Only one case of hate speech against sexual minorities ended in a positive judgment. This represents an exception, given that the accused admitted that he supports Nazi ideology and that he stated he was aware that his actions were illegal.
95. Namely, 26 September 2008, the Velika Gorica Municipal Court found the accused Martin Stojaković guilty of the criminal offence against the values protected by international law – racial or other discrimination – as defined and punishable under Art 174 para 2 and defined and punishable under Art 174 para 3 of the Criminal Code in connection with Art 89 para 36 of the Criminal Code. The accused was sentenced to a single prison sentence of a period of one year and two months, and on the basis of Art 70 of the Criminal Code a suspended sentence was applied to the accused with protected supervision by which the prison sentence of one year and two months will not be carried out if the accused does not commit a new criminal offence within a period of three years, and under the further condition that he must readily fulfil the special obligation to regularly report to a parole officer. On the basis of the provision of Art 71 point H of the Criminal Code, the special condition of regularly reporting to the probation service was placed on the accused for the purposes of information about the circumstances which could encourage him to commit a new criminal offence.
96. Violations of the right to freedom of expression except in regards to Pride manifestations are not common occurrences, and mostly LGBT activities are implemented without major problems (queer festivals, press conferences of LGBT organisations, public campaigns, etc).
97. However, the case of Lesbian Organisation Rijeka represents serious violation of the right to freedom of expression both by a national library and state authorities.
98. Namely, Lesbian Organisation Rijeka – LORI in January 2007 prepared a theatre performance called "Will it Be Different When I Tell Them that I'm Gay?" This performance was staged on 25 July 2007 in Rijeka, and on 9 November 2007 in Pula. It was also planned to stage a performance in Zadar.
99. Members of Lesbian Organisation Rijeka asked the director of the Zadar City Library, Mr Ivan Pehar, for permission to stage this performance on the library's premises, but received a negative answer from him. On 18 November 2007, the Lesbian Group Kontra and the Iskorak filed a criminal complaint against Ivan Pehar with the Zadar Municipal State Attorney's Office for the criminal offences of violating expression of thought under Art 107 Para 1 of the Criminal Code in concordance with the criminal offences of racial or other discrimination under Art 174 Para 1 of the Criminal Code, all in connection with Art 89 Para 36 of the Criminal Code because he committed both criminal offences on the basis of the sexual orientation of the victims.

100. On 25 March 2008, the Zadar Municipal State Attorney's Office adopted a decision in which it rejected the criminal complaint of the Iskorak and Kontra. In the explanation amongst other things the following is stated: "...large number of citizens had telephoned and requested them not to allow such performances to be held otherwise they would forbid their children from going to the Library. Despite the fact that he had refused, Lesbian Organisation Rijeka had posted leaflets around the city of Zadar with information about the staging of the performance in the Library but overwritten with the word "Cancelled", although a date had not been agreed with them. They intended to hold a round table soon in the Library on the topic of sexual orientation in the presence of experts from various fields and he would not allow the minority to terrorise majority in such a way. He bore all responsibility for his decisions and had nothing against anyone in regard of their sexual orientation or any other difference, but it was his right, obligation and duty to protect the interests and dignity of the Zadar City Library whose founder was the City of Zadar which also to the greater part finances it."
101. Further in the explanation it is stated that the "complainee as director is required to maintain the primary business of the Library and its work programmes, he is authorised to decide independently whether any of the programmes were not in accordance with the interests of the Library as a public institution which has 12,000 users who are minors who would be exposed in the area of the Children's Department to content of a type to which their parents, as their lawful guardians, had expressed their opposition, and at the same time the development team had given priority during 2007 to the battle against illiteracy."
102. On 14 April 2008 Lesbian Organisation Rijeka filed complaint with the Zadar Municipal Court against Ivan Pehar for the criminal offence of racial or other discrimination under Art 174 Para 1 of the Criminal Code and violation of the freedom of expression of thought defined and punishable under Art 107 Para 1 of the Criminal Code. Lesbian Organisation Rijeka was not contacted by the Zadar Municipal Court since then.

B.4. Hate crime - Criminal Code

103. Until year 2006 the Croatian Criminal Code (OG 110/97, 27/98, 50/00,129/00, 51/01, 111/03, 190/03,105/04, 84/05) did not include definition of hate crimes.
104. Violation of the equality of citizens and racial or other discrimination included deprivation of fundamental rights and freedoms of a person, recognised by national or international legislation, motivated by a certain characteristic¹² of a victim.
105. The offence of violation of the equality of citizens under Article 106 Para 1 of the Criminal Code had the same substance as the offence of racial or other discrimination under Article 174 Para 1, the difference being in the use of different legislation – Article 106 Para 1 is implemented in connection with national legislation and Article 174 paragraph 1 is implemented in connection with international legislation.
106. One of the reasons why Article 174 paragraph 1 has almost never been implemented is because it was necessary for the courts to analyse international documents in order to implement the Article, and courts in Croatia are very unwilling to set precedents.
107. In most cases when a person was attacked because of her or his national origin (especially members of the Serbian and Roma minorities) or sexual orientation, the police did not recognise these attacks as crimes at all as reported by civil society organisations- Serbian Democratic Forum, Kontra, Iskorak. (in the Croatian Criminal Code there exists a criminal

¹² Gender, race, skin colour, religion, nationality, sexual orientation and other characteristics.

offence of violent behaviour, defined by Article 331 of the Criminal Code), but as misdemeanours of violation of public peace and order.

108. The Lesbian Group Kontra and the Iskorak, during their campaign to introduce a definition of hate crimes into Croatian legislation, demanded from the state authorities a list of criminal offences motivated by hatred towards a certain social group or characteristic of a victim for the year 2005. The Ministry of the Interior produced a document in which it was stated that there were three such crimes in the year 2005 defined as criminal offences of racial or other discrimination. In fact, these were cases of discrimination in the workplace and not other criminal offences that were recognised as hate crimes. According to the information of the Serbian Democratic Forum, 48 hate crimes (violent attacks and murders) against the Serbian minority were reported that year¹³
109. Proposal of Lesbian Group Kontra and the Iskorak (supported by the Serbian Democratic Forum, Women's Network of Croatia and Centre for Peace Studies) to introduce a definition of hate crimes into Article 89 of the Criminal Code was adopted in 2006 by the Croatian Parliament because of perceived international pressure (while advocating associations always put emphasis on EU, OSCE) and support from representatives of national minorities in the Parliament.
110. Article 89 of the Criminal Code:
111. *"Hate crime is any criminal offence, described in this Act that is motivated by hate against the victim due to his/her race, skin colour, sex, sexual orientation, language, religion, political or other belief, national or social origin, property, birth, education, social status, age, medical status, or other characteristics."*
112. There is no specific recognition of gender identity. Gender identity, can be however interpreted inside the term "other characteristics". Also, amendment to Article 91 of the Criminal Code which relates to aggravated murder was adopted. It defined murder motivated by hatred as aggravated murder and prescribes greater penalties for offenders in comparison to regular murder.
113. Violence and discrimination against LGBT persons are a frequent occurrence in Croatian society. According to the research of the Lesbian Group Kontra (2006) in the sample of 100 respondents (sexual minorities' members), 50% of them replied that they experienced some form of violence due to their sexual orientation.¹⁴ The forms of violence are various, from psychological, verbal to physical violence. A serious problem continues to be the fear of victims who do not report the violence they experience because of possible stigmatisation by the community. Members of sexual and gender minorities in a great number of cases are not aware of their rights nor with the mechanisms of protection of those rights. They do not trust state institutions,¹⁵ especially the police, whose officials continuously behave in a discriminatory manner while processing cases of discrimination and violence against LGBT people. Precisely because of this, the real number of violent events is almost impossible to estimate, and until recently the cases which have come to be processed have exclusively been cases of violence against activists.
114. However, precisely in this area certain advances have been noted by LGBT associations over the years. Victims of violence ever more frequently turn to non-governmental organisations for help, and there have also had cases in which the victims have openly

13 www.sdf.hr/index.php?option=com_content&task=view&id=60&Itemid=47

14 Kontra, www.kontra.hr/cms/index.php?option=com_content&view=article&id=41&Itemid=55&lang=en, accessed 1 October 2010.

15 Ibid.

spoken out in public about the violence they have suffered. All this points to the fact that LGBT persons are more and more interested in their rights and decide to use them.

115. Also, it is necessary to mention that in the last two years there have been two cases in which an investigation has been carried out and the perpetrators found, but these were exceptions, cases which from the very beginning were given extensive media coverage, with support and legal help of non-governmental organisations and the engagement of the Ombudswoman for Gender Equality.¹⁶

Attack on Neven Rauk

116. On 12 January 2009 four attackers, of whom two were minors, attacked the gay young man Neven Rauk because of their hatred towards persons of homosexual orientation. Attackers contacted the victim through the web portal "Iskrica" and presented themselves as young man of bisexual orientation. They arranged the meeting with the victim at the bus stop near Maksimirska Street and then followed him, attacked him physically and photographed him. The victim gained physical injuries- a broken nose, a tear to the upper eyelid of his left eye, haematoma, erosion of the cornea of the left eye and slight scratches to the skin of his nose.
117. In the report of the Zagreb Police Department of 13 January 2009 the following was stated: "On Monday, 12 January around 21.30 hours in the area of Medveščak, Remetska Street, three unknown perpetrators used physical force to carry out an attack on a 23-year-old man and stole his bag with his documents. The material damage was not confirmed." The Zagreb Police Department did not make a connection between the attack and the sexual orientation of the victim and no investigation was made in that direction until the associations filed their criminal complaint.
118. The victim himself informed the media about the attack and turned to us for legal help. The associations Kontra and Iskorak filed a criminal complaint for the crime of aggressive behaviour and racial or other discrimination in conjunction with Art 89 para 36 of the Criminal Code (hate crime). The media was immediately informed about this.
119. On 15 February 2009 at the invitation of a police official, the victim went to the 5th Police Station in Bauerova Street in Zagreb and was taken to the police's criminal investigation department in Heinzelova Street. An identity parade of the perpetrators was carried out at the criminal investigation department. The user recognised one of the perpetrators (attackers) with 80% confidence and asked to see him face-to-face in order to be completely certain. The following day the user recognised the perpetrators face-to-face at an identity parade.
120. In the proceedings following the attack the victim Neven Rauk, two court cases were conducted, one against the two attackers who were minors and one against the two attackers who were adults.
121. An investigation into the two adult attackers was carried out during which several sessions were held and N.R. was questioned at a session held at the County Court in Zagreb on 10 February 2009.

¹⁶ The case of an attack on citizens of Kosovo after Pride in 2008, the case of the attack on Neven Rauk in 2009- XXIX KO-421/09.

122. After the investigation had been completed the Municipal State Attorney in Zagreb filed charges and a criminal court case was conducted during which six sessions were held.
123. The Municipal Court in Zagreb in its judgement¹⁷ pronounced the defendants guilty because: the first defendant in order to find an outlet for violence, abuse and especially insolent behaviour put somebody else in a humiliating position, and the act was committed from hatred, and the second defendant helped the others in their intent in order to find an outlet for violence, abuse and especially insolent behaviour to bring somebody else into a humiliating position in a public place and the act was committed out of hatred, and thus they committed a crime against public order – violent behaviour – described and punishable under Art 331 para 1 of the Criminal Code conjoined with Art 89 para 36 of the Criminal Code and conjoined with Art 38 of the Criminal Code in relation to the second accused.
124. On the basis of Art 331 para 1 conjoined with Art 89 para 36 of the Criminal Code the court sentenced the first defendant Alen Baričević to a prison sentence of ten months suspended, on the basis of Article 67 of the Criminal Code, for three years from the confirmation of judgement.
125. The court sentenced the second defendant Petra Mihetec on the basis of Art 331 para 1 conjoined with Art 89 para 36 of the Criminal Code conjoined with Art 38 of the Criminal Code to a prison sentence of eight months suspended, on the basis of Article 67 of the Criminal Code, for three years from the confirmation of judgement.
126. As mitigating circumstances in favour of the first defendant the court judged the fact that he was employed, the father of two young children, and a young person as well as the fact that the first defendant had not previously been convicted of a crime. In relation to the second defendant, the previous lack of convictions were also taken as mitigating circumstances as well as the fact that she was a young person. The court also took their proper and correct behaviour before the court into consideration as mitigating circumstances for the first and second defendants.
127. In the reasoning to the judgement, amongst other things, the following was stated: “Taking mainly into consideration the danger of the acts of which the first and second defendants stand accused, the ever greater frequency of violent behaviour precisely in the younger population of society to which the first and second defendants belong, the fact that the act was motivated by intolerance and extreme aversion towards persons of homosexual orientation and the consequences which the attack had on the victim, the court, taking account of all mitigating circumstances on the side of the first and second defendants, pronounces a sentence of imprisonment on the first defendant for the duration of ten months, and a sentence of imprisonment for the second defendant for a duration of eight months.¹⁸”
128. In this case, after a criminal complaint had been filed by the associations, a proper investigation was carried out, and the perpetrators were found and convicted. However, it must be emphasised that this case is an exception resulting from the fact that it was covered very widely in the media and a case in which the associations were involved through the offering of legal help and the Ombudswoman for Gender Equality also publicly reacted. There are frequent examples of quite the opposite behaviour by police officials who insult victims when they come to report violence and refuse to record complaints or even commence misdemeanour charges both against the victim and against the attacker.

17 Nr. XXIX KO-421/09.

18 Nr. XXIX KO-421/09.

Attack on a transgender woman

129. On 3 January 2010 a group of young men carried out an attack on a transgender girl in a small town in Croatia.
130. During the week before the attack (from Wednesday 30 December 2009) the victim noticed that she was being followed by different people, whom she estimated to be aged from 18 to 21.
131. On the day of the attack, a group of young men awaited her in front of the building in which she lived. She recognised some of them as neighbours, or people who lived in the same neighbourhood, but she did not know their names. They surrounded her saying: "Are you are a man or a woman? If I see you once more around here we will smash your head in! We will kill you!" Then one of the attackers grabbed the victim by the neck, threw her against the wall of the building and then punched her in the face. After this she managed to escape into her flat and called the police. The police officials told her that they would cruise around the area and search for the attackers but that they "cannot make a report because it was Sunday", and that she would have to go to the police station and report the attack the following morning.
132. The following morning the victim went to the police station. She described the attack to the police official, who made a note of her personal details and told her: "See what you look like – I would beat you up too." The police official then went into the next-door room where there were several other policemen and spoke with them. After this another police official approached the victim and told her that she did not need to make a report because a report had been made when she called the police. The victim asked to see the record, or confirmation of the report at which the police official asked: "against which perpetrator?" The victim replied "against unknown attackers" and said that she needed the confirmation for further complaints. After this the police official was visibly upset and said: "Well, who would you report? Get out of here!"¹⁹ The victim turned to the association Kontra for help and a lawyer was engaged to work on the case. A report of the intervention and measures carried out was sought from the police station and a request made to check the legality of the actions of the police officials when the victim came to the police station.

B.5. Family issues

133. Article 35 of the Constitution of the Republic of Croatia proscribes that everyone shall be guaranteed respect for and legal protection of personal and family life, dignity, reputation and honour.
134. Article 61 of the Constitution is related the right to respect and protection of family life. It is stated in the Art 61 that marriage and common-law marriage are regulated by the law.
135. According to the Gender Equality Act discrimination on the basis of marital or family status is explicitly forbidden (Art 6).

¹⁹ Kontra, 2009 Annual Report on Status of Rights of Sexual and Gender Minorities, www.kontra.hr/cms/index.php?option=com_content&view=article&id=337%3Asexual-and-gender-minorities-report-2009&catid=22%3Aizvjetaji--reports&Itemid=50&lang=en, accessed 1 October 2010.

136. The Family Act²⁰ proscribes that "Marriage is a life union of a woman and a man regulated by the law." It also proscribes that "Common-law marriage is a life union of an unmarried woman and an unmarried man."
137. The Same-sex Civil Unions Act became part of positive legislation of the Republic of Croatia in year 2003 by publication in the Official Gazette Nr. 116/03 and with the expiry of vacation legis. The adoption of the Act was a result of intensive advocacy of LGBT associations, international pressure and harmonisation of the Croatian legislation with EU legislation.
138. The Act does not provide the same rights to same-sex partners as to heterosexual common-law partners and married partners, and that constitutes discrimination based on sexual orientation.
139. Only the right to joint property and support by a partner are regulated.
140. Other rights obligations available of different-sex married or common-law partners (such as right to inheritance, social and health insurance) are regulated either by the Family Act or specific laws.
141. For example the Inheritance Act (OG Nr. 48/03) in Art 8 defines as legal successor a marital spouse. According to the same article the common-law partners are equal to married partners in relation to the right to inheritance. Common-law marriage in relation to Inheritance Act is a life union of an unmarried woman and an unmarried man that lasted a longer period of time and ceased to exist by the testator's death, under the condition that preconditions for validity of marriage existed. Same-sex partners are not mentioned under the Act, and therefore they do not have equal treatment regarding the right to inheritance in comparison with different-sex common-law partners.
142. According to the Family Act, Art 133²¹, a child can be adopted by married spouses jointly, by one married spouse if the other is the parent of a child or adoptive parent of a child, or one married spouse with the consent of the other married spouse. A child can also be adopted by a single person if this is of a special benefit to a child. There is no possibility for joint adoption of a child by a same-sex couple under the law.
143. The Same-Sex Civil Unions Act contains an anti-discrimination provision that prohibits discrimination based on sexual orientation or same-sex civil union. However, the Act this is not used by the legislator in order to amend specific Acts and eliminate discriminative practices towards same-sex couples.
144. Over the past years the lack of implementation of the Same-Sex Civil Unions Act (which prohibits discrimination against same-sex partners) and Gender Equality Act in particular cases in the procedure of voting on laws by the Government was noted also in regards to adoption of new laws. This problem appears when a certain law which regulates relations between members of the family in that aspect includes married partners and sometimes common law partners, but never same-sex partners. This was the case for example with Protection of Patients Act (OG Nr. 169/04) and Public Servants Act (OG Nr. 92/05). Same-sex couples are denied most of the rights derived from the institution of marriage, as well as common law marriage, and are therefore still seriously discriminated against within the Croatian legal system.
145. On 15 June 2005 Kontra and Iskorak presented a registered partnership bill to the public at a round table discussion held at the European House in Zagreb. The bill was supposed to

²⁰ Official Gazette Nr. 116/03.

²¹ Official Gazette Nr. 116/03.

serve the purpose of expanding the rights of same-sex partners to include all rights enjoyed by married partners, except the right to adopt a child. The bill had support from the start from MPs from the Liberal Party, Social Democratic Party and Croatian Social Liberal Party. In September 2005, two MPs put forward into parliamentary procedure the Registered Partnership Bill. On 15 February 2006 the Parliamentary Committee on Gender Equality discussed the Registered Partnership Bill. The Committee adopted the Bill and recommended the Croatian Parliament to adopt it as well. The next day the Parliamentary Committee for Human Rights discussed the Bill. This Committee consisted of a majority of MPs from the Croatian Democratic Union (HDZ). Some of the MPs from the Croatian Democratic Union - HDZ (leading party) used homophobic hate speech as an argument against the bill. One member said: "The main message from the Bible on the subject of homosexuality is that it is Sodom and Gomorra."²² Further on the person said: "AIDS is one of the signs of what happens in same-sex partnerships." The media reported on this event.

146. The government did not support the Partnership Bill in Parliament. There was a great amount of hate speech during the debates in Parliament, mostly from representatives of the leading HDZ party. One party member said: "The whole Universe is heterosexual, from the fly to the elephant, from atoms to planets. If it was not so, the Sun would not rotate around the earth, it would fall down and we would all burn!"²³
147. The Medical Insemination Act (OG Nr. 88/09) adopted in 2009 proscribes that a woman who is in a relationship with a man has a right to insemination, under the condition that marriage exists at the time of introducing sex cells or embryos into the women's body (Art 6). Also, it is proscribed by the Act on Changes to Medical Insemination Bill (OG Nr. 137/09) that "Provisions of the Act that apply to marital spouses shall apply in the same manner to common-law marriage which is in under this law considered to be a life union of an unmarried woman and an unmarried man..."
148. When the Medical Insemination Bill was presented to the public in 2009 it denied the right to insemination to common-law couples. The Ombudswoman for Gender Equality in her evaluation of the Act stated the following: "...In its report on the observed phenomenon of unconstitutionality in the system of pension insurance, the Constitutional Court of the Republic of Croatia stated the following: "In relation to family the Constitution does not create differences between marital and non-marital union. Both types of unions are recognised by the Constitution and regulated by the law. ... The Constitutional Court reports to the Croatian Parliament on the need of amendments to the Pension Insurance Act regarding modification of the legal presumptions for recognition of rights to a family pension of a non-marital widow, or widower of the insured party, as a member of his family." (U-X-1457/2007 of 18 April 2007, OG 43/07) According to the Gender Equality Act discrimination on the basis of marital or family status is explicitly forbidden (Art 6). Due to all the above, and having in mind that the Gender Equality Act is an organic act, and the Ombudswoman for Gender Equality is authorised to evaluate harmonisation of the regulations with the mentioned Act and to warn and give recommendations, I believe that all provisions of the proposed Medical Insemination Act that do not ensure the same rights to non-marital couples or persons that are not in either of these unions, are discriminatory towards these persons and couples."

22 Kontra, 2006 Annual Report on Status of Human Rights of Sexual and Gender Minorities in Croatia, see also article, www.index.hr/vijesti/clanak/video-otkrivamo-krivca-za-ajde-budalo-sidi/371118.aspx, accessed 1 October 2010.

23 Index.hr., www.index.hr/vijesti/clanak/sabornici-protiv-pedera-za-spas-civilizacije-i-svemira/311144.aspx, accessed 1 October 2010.

149. The Medical Insemination Act²⁴ denies the right to medical insemination to single women and same-sex couples. That represents discrimination on the basis of marital status and sexual orientation.
150. Transgender persons after legal recognition of the acquired gender can marry persons of the opposite sex. However, there are significant problems with the legal recognition of gender and name for transgender persons (described under chapter 14).

B.6. Asylum and refugee issues

151. Article 33 of the Constitution proscribes: "Foreign citizens and stateless persons may obtain asylum in the Republic of Croatia, unless they are prosecuted for non-political crimes and activities contrary to the basic principles of international law. No alien lawfully within the territory of the Republic of Croatia shall be expelled or extradited to another state, except in pursuance of a decision made in accordance with a treaty and law."
152. According to the Asylum Act (OG 79/07) asylum could be granted to a person persecuted in his/her country of origin because of, as the Act states, "*belonging to a social group sharing the same characteristics of sexual orientation*".
153. This formulation guarantees asylum only based on belonging to a certain social group with special identity in the country of origin, thus linking the right of the individual to the factual existence of those social groups. Further on, this formulation states that a social group can also be a group based on shared sexual orientation. This definition should be omitted, since sexual orientation is not part of the identity of a group of people, but part of the identity of the individual, independent of the factual existence of a group or the organisation of individuals into civil groups of shared identity. Namely, in countries which persecute gays and lesbians, in the sense of criminal persecution, and even condemning to death, or inhumane treatment, there are no social groups to which these individuals belong, because they are systematically persecuted by the state government or by other individuals, or groups, and in such circumstances they cannot form a social group to which they might belong.
154. Furthermore, the Act discriminates against same-sex couples and is contrary to national legislation and international documents. Provisions that regulate the right of uniting families and the right to freedom of movement exclude same-sex couples.
155. There is no political will to implement the Asylum Act and provide asylum to foreign citizens and stateless persons in the Republic of Croatia at all. Only 18 persons have been granted asylum in the Republic of Croatia ever.
156. Right to asylum in the Republic of Croatia because of persecution on the basis of sexual orientation or gender identity (case of S.N.)
157. In October 2009 the Kontra was contacted in regards to the case of S.N., a foreign citizen who has the status of an asylum seeker in the Republic of Croatia.
158. The person was situated in a reception centre. He gave as the reason for leaving his country of origin that he was discriminated in his country of because of his sexual orientation. On 20 September 2006 he was walking around the town in which he used to live in women's clothing and the police arrested him and held him for 24 hours. After that

24 OG 88/09, 137/09.

on 25 September 2006 the police entered his flat, beat him up and threw him through the window on the fourth floor. This caused serious injuries, broken bones, collarbones and ribs and as a result his spleen was removed. He bled heavily (he lost 2½ litres of blood) and damaged his liver. Because he was afraid of the police, he stated in the hospital that he had jumped out of the window. After treatment in the general hospital he was released on 27 November 2006. In December 2006 the police entered his flat once more and took him away to a psychiatric establishment. He escaped in 2007 and tried to go to France but the police stopped him at the airport, removed his international passport and returned him to the psychiatric establishment where he stayed until 2009. He was then mistreated by the nurses, tied to the bed and beaten and a pillow was put over his head in order not to leave bruises. He managed to escape from the hospital to his holiday home and researched on the Internet the possibilities for leaving the country illegally. He complained three times about what had happened to the state prosecutor's office in the place where he lived but they never replied to him.

159. He decided to seek asylum in Croatia because that was the cheapest way for him to leave his country of origin. He believes that if he returned to his country of origin he would once more have problems because of his homosexuality (and perhaps even been killed) and he cannot hide any more within his country of origin. He also states that the police are seeking him in his country of origin because they believe that he should be in a psychiatric establishment. He complained to the city authorities that he had been imprisoned in this establishment but they had never replied to him. These are quotes from the decision of the Ministry of Internal Affairs on this case.
160. On 26 January 2010 S.N. received the decision of the Foreigners and Asylum Department of the Ministry of Internal Affairs in which it was stated that his request for asylum has been denied as groundless.
161. The Ministry in the decision quoted selectively various human rights reports on the status of rights of sexual minorities, using only information that were in favour of rejecting complaint. For example, the Ministry quotes that homosexuality is not criminal offence in S.N.'s country of origin, but fails to quote information on police brutality. Also it is stated that there is no continuity in the S.N.'s story, giving as an example the fact that he stated first that he was thrown from the fourth floor and then later that he stated that he was thrown from the third floor.

B.7. Social security, social care and insurance

162. Croatian Constitution in Article 56 (OG 41/01, 55/01) proscribes that "The right of employees and of members of their families to social security and social insurance shall be regulated by law and collective agreements."
163. Due to the fact that the Family Act defines marriage and common law marriage as unions between a man and a woman, and the Same-Sex Civil Unions Act regulates only the right to joint property and support by a partner, the Croatian legal system does not have necessary legislative, administrative and other measures that would ensure equal access, without discrimination on the basis of sexual orientation to social security and other social protection measures, parental leave, unemployment benefits, health insurance or care or benefits, family benefits, funeral benefits. Specific acts regulating these areas such as Medical Insurance Act (OG Nr. 94/01), Labour Act (OG Nr. 149/09), Pension Insurance Act (OG Nr. 102/98) exclude same-sex couples. For example it is proscribed in The Medical Insurance Act that "According to this Act members of family of insured person are: 1. spouse (marital and common-law, in accordance with the regulations on family relations."

B.8. Education

164. Constitution of the Republic of Croatia in Art 65 proscribes that “Primary education shall be compulsory and free. Secondary and higher education shall be equally accessible to everyone according to abilities.”
165. The Science Activity and High Education Act (OG Nr. 123/03) contains prohibition of discrimination based on sexual orientation related to the procedure of selection of students for universities, faculties and higher schools.
166. However, the educational system in the Republic of Croatia does not satisfy the basic standards for education about human rights. The programme of Catholic religious education in most lessons addresses the theme of human sexuality in primary schools, and the religious education textbook approved by the Ministry contains much content which encourages children to discriminate against LGBT people.
167. In the National Policy for Promoting Gender Equality from 2006 to 2010 (OG 114/06), in the chapter about gender sensitive education for 2006 it is stated that a textbook standard would be issued which follows the requirements of the Gender Equality Act. This textbook standard was adopted on 17 January 2007. Under point 2.4 Ethical Demands, it is stated that the textbook should reflect the richness of diversity of Croatian society, enable the acquisition of knowledge about the equality of individuals and social groups and promote the right to difference. Demands related to national, ethnic and religious minorities and gender equality were emphasised whereas sexual and gender minorities are not explicitly mentioned nor are any demands related to them specified.
168. Although the question of gender sensitive education is addressed in some segments of the National Policy for Promoting of Gender Equality, this does not also apply to sexual and gender minorities. Furthermore, the above National Policy states the need for widening health education in primary and secondary schools with topics about sexuality but with the emphasis on sexually transmitted diseases. Education about sexuality is most certainly broader than just the context of sexually transmitted diseases, but the National Policy does not achieve this breadth.

Health Education

169. On 14 January 2008, the Ministry of Science, Education and Sport announced the results of the competition for the choice of primary and secondary schools for carrying out experimental programmes of health education of the GROZD Association and the Forum for Freedom of Education. For the implementation of the GROZD Association programme nine primary schools were selected²⁵, and 5 three- and four-year secondary schools for the implementation of the programmes of the GROZD Association and the Forum for Freedom of Education.²⁶ By a decision of the Ministry for monitoring the implementation of experimental programmes and the external evaluation of the results, the National Centre for External Evaluation of Education was nominated in cooperation with the Ivo Pilar Institute of Social Science, Andrija Štampar School of National Health and the Croatian Institute for Public Health. For professional training of the implementers of the programmes, the Agency for Education was nominated in cooperation with the organisations which had prepared the programmes. According to the same decision, health

25 OŠ Vladimira Nazora, Daruvar; OŠ Eugena Kumičića, Velika Gorica; OŠ Ljudevita Gaja, Nova Gradiška; OŠ Šime Budinića, Zadar; OŠ Eugena Kumičića, Slatina; OŠ Novi Marof, Novi Marof; OŠ Retkovec, Zagreb; OŠ Žuti Brijeg, Zagreb; OŠ K. Š. Gjalski, Zabok.

26 Gimnazija Bernardina Frankopana, Ogulin; Upravna i Birotehnička Škola, Zagreb; Gimnazija Vladimira Nazora, Zadar; Gimnazija Antuna Braničića, Šibenik, and Prva Sušačka Hrvatska Gimnazija, Rijeka.

education programmes should be carried out experimentally during the second half of the 2007/2008 school year in the fifth year of the selected primary schools and the first year of the selected three-and four-year secondary schools. The experimental programme was carried out with the obligatory agreement of the parents of those pupils who participated in the implementation of the programmes.

170. On 18 December 2008, the Ministry of Science, Education and Sport held a press conference at which the results of only the evaluations of the programmes were presented and announced that it considered that in accordance with this there was no need for the programmes to be implemented in primary and secondary schools because pupils already obtained sufficient knowledge about health education through existing subjects. Such a standpoint is contradictory to the Ministry's efforts to introduce a single national curriculum which will widen the existing educational programme in schools by introducing new subjects. Also, the evaluation of the experimental programmes did not have as its purpose the investigation of the needs of health education, because the need for this had already been confirmed earlier through the work of nominated commissions of the responsible ministry, but rather the purpose was to evaluate the quality of individual programmes, which was omitted.
171. It should be emphasised that health programmes which were proposed for implementation are not adequate in our opinion, even more so because just two lessons were anticipated for content about human sexuality during a school year.
172. In 2009 there were no advances connected to this theme. Therefore civil society continues to promote the introduction of separate and obligatory sexual education in Croatian primary and secondary schools.
173. On 30 March 2009 the European Committee of Social Rights²⁷ which monitors the harmonisation of national policies and programmes with the European Social Charter, made a decision connected with the suit of the organisation INTERIGHTS (International Centre for the Legal Protection of Human Rights) against the Republic of Croatia because of the lack of a comprehensive educational curriculum of sexual education as required by Art 11 of the European Social Charter.
174. The Committee found a breach of Art 12 Para 2 of the European Social Charter relating to the anti-discrimination provisions of the Charter for the following reasons:
175. "Taking into consideration the anti-discrimination provision in the preamble of the Charter, education about sexual and reproductive health must be provided to children without direct or indirect discrimination on any basis, understanding that the ban on discrimination covers the full educational process, including the way in which education is conducted and the content of educational material on which education is based.
176. "The obligation that health education should be provided without discrimination includes two aspects: children must not be discriminated against in access to such education and education may not be used as a tool for strengthening degrading stereotypes and perpetuating forms of prejudice which contribute to the social exclusion of historically marginalised groups and other groups which are confronted with discrimination the effect of which is the denial of their human dignity."
177. The Committee concluded that "certain educational materials which are used in the regular teaching programme are biased, discriminatory and degrading, especially concerning the way in which people whose sexual orientation is different from heterosexual are described."

²⁷ Council of Europe, www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC45Merits_en.pdf, accessed 1 October 2010.

This conclusion of the Committee is based on an examination of the content of a textbook for biology for the third year of high school entitled *Biology 3: Life Processes* which was approved by the Ministry of Education.

178. The following was written in the textbook: "Many people have a tendency to sexual relationships of the same sex (homosexuals – men, and lesbians – women). It is believed that the greatest responsibility for this is borne by parents who prevent the correct development of sexuality in their children because of irregularities in family relationships. Today it has been demonstrated that homosexual relationships are the main cause for the increased spread of sexually transmitted infections (e.g. AIDS). Disease is spread within promiscuous groups of people who frequently change sexual partners. Examples of this are homosexuals because of sexual contact with numerous partners, drug addicts because of sharing contaminated needles and prostitutes."²⁸
179. In the Committee's decision it is further stated that such statements stigmatise homosexual persons and are based on negative and degrading stereotypes about the sexual behaviour of all homosexual persons. Such statements serve only to attack the human dignity and have no place in sexual and reproductive health education. By officially approving or allowing the use of textbooks which contain such anti-homosexual allegations, the Croatian authorities did not fulfil their obligation to ensure effective education which does not promote social exclusion and does not insult human dignity. The Croatian authorities, stated the Committee, failed to fulfil their positive obligation concerning the ensuring of the right to health care through non-discriminatory sexual and health education.
180. The textbook was withdrawn not long after the complaint was made to the Committee.
181. The complaint by INTERIGHTS also related to the Teen Star program, based on the teachings of the Catholic Church, which advised total abstinence, called homosexual relations deviations, opposed contraception, stated that condoms do not prevent HIV, etc.. Unfortunately, in this case the Committee did not look into the meritum of the case, asserting that Teen Star, although approved and financed by the authorities, is not a compulsory programme nor is it a substitute for regular health education, but is being conducted on an experimental basis and only if the parents choose it.
182. However, the Committee warned the authorities in several articles that "they have the obligation to ensure in the legislative framework that programmes which are approved by the state are objective and non-discriminatory."

Catholic religious education

183. In accordance with the Treaty between the Holy See and the Republic of Croatia concerning cooperation in the area of upbringing and culture, signed in Zagreb on 18 December 1996,²⁹ Catholic religious education lessons are held in all public primary and secondary schools and in preschool establishments and are treated as a compulsory subject for those who choose it, under the same conditions under which the teaching of other compulsory subjects is carried out.
184. Schools as a rule place religious education in the middle of the daily timetable of classes so that pupils whose parents do not give their assent for them to attend religious education lessons are also forced to sit in on the lessons. Thus in fact all children who attend public

²⁸ Dr Sljepčević, M. & dr. Regula, I., *Biology 3, Processes of Life, School Book*, first in 1996.
²⁹ OG- International Contracts 2/97

schools in the Republic of Croatia, attend religious education classes with the difference that some of them do not receive a grade for the subject.

185. The programme of Catholic religious education for primary schools still allocates most lessons to addressing the topic of human sexuality.
186. Within the framework of the Programme of Catholic Religious Education in Primary Schools, approved by the Ministry of Education, which has been adopted from the beginning of the 2003/2004 school year, in the teacher's instructions of the teaching unit which addresses the topic of human sexuality is mentioned, amongst other things, "discussion about the whole meaning and relationship of the ideas of 'love' and 'sex' and the assessment of wrong forms of sexuality (sexuality, prostitution, incest, transvestites...)".
187. The associations Kontra and Iskorak publicly reacted to the discriminatory content of the religious education programme and filed a complaint with the Ombudswoman for Children and the Ombudswoman for Gender Equality in connection with the above content. After the reaction of the Ombudswomen to the alleged discriminatory content, in 2005 the Ministry of Science, Education and Sport published a Correction of the Programme of Catholic Religious Education³⁰ and replaced the word "wrong" with the word "sinful".
188. Finally, on 15 September 2006 the Ministry of Science, Education and Sport adopted its Decision on the Educational Plan and Programme for Primary Schools, which regulated the content of the optional subject of Catholic Religious Education (OG 102/06). There is no direct discrimination of sexual minorities in this programme as there was in the Programme of Catholic Religious Education for Primary Schools of 2003 and the Correction of 2005. However, in the Programme which is currently in force, put the emphasis on human heterosexuality, which is developed further in an extremely discriminatory manner through the textbook also approved by the Ministry of Science, Education and Sport and in practice.
189. Namely, the list of school textbooks for the academic year 2009/2010 includes the textbook *With Christ to Life* (published by Kršćanska Sadašnjost, Zagreb, 2008). The following is stated in this textbook: "It is God's intention for two beings of different in sexes to be attracted to each other and be fulfilled in responsible love. This means that heterosexuality is the basic point of reference for men. Attraction and orientation of opposite sexes towards each other is the consequence of the urge to create unity and birth, that is create a family. A man and woman therefore fulfil each other not only in a physical and emotional but also in a social and spiritual sense. We are, however, conscious of the fact that some people feel attraction towards persons of the same sex. Medicine and psychology have discovered various causes, not fully researched, of such a human state. Church tradition has always stated that 'homosexual acts are intrinsically disordered'. They are contrary to the natural law. They close the sexual act to the gift of life. They do not proceed from a genuine affective and sexual complementarity. Under no circumstances can they be approved." (Catholic Catechism 2357). "They do not choose their homosexual state; for most of them this represents a trial."
190. The content of this textbook is scientifically baseless and is extremely discriminatory towards sexual minorities. Homosexuality is not an unresearched "human state", but an equally valuable variation of human sexuality, as is heterosexuality, which is the opinion of the competent world (World Health Organisation) and Croatian (Croatian Psychiatric Association and Croatian Medical Chamber) institutions. The assertion that it is a case of a particular "human state", with emphasis on the search for medical and psychological causes, suggests precisely the opposite: that it is an anomaly, or disease, and this is contrary to a series of international and national regulations which regulate the banning of discrimination and the right to complete and accurate information.

30 OG 14/05

191. Croatian children learn from discriminatory textbooks about an “unresearched human state”. 17 May is marked throughout the world as the International Day Against Homophobia and Transphobia to commemorate the erasure of homosexuality from the International Classification of Diseases of the World Health Organisation on 17 May 1992.
192. Furthermore the quote that homosexuality is “unnatural” (i.e. an anomaly), although taken from church documents, is not dealt with in a critical way but is presented simply as it is to children in the context described above.
193. Finally it concludes that the “homosexual state” presents a trial for homosexual persons. Sexual orientation is a part of the personality of every individual person. By asserting that “the homosexual state presents a trial”, a direct attack is made on the personality of homosexual persons and their rights to health, which includes the natural development of sexuality, is denied.
194. *The Bartol Kašić case*
195. In October 2009 parents of children who attend the eighth year of Bartol Kašić Primary School in Zagreb informed the media that religious education teacher Jelena Čorić-Mudrovčić was teaching eighth-year pupils in religious education classes that homosexuality is a disease.³¹
196. One of the mothers stated: “My daughter is not enrolled in religious education classes, but she was forced to stay there during the lesson because she had nowhere to go. The teacher allowed the children who do not take that class to remain and do their homework or draw.”
197. After the case was covered by the foreign media, the Ministry of Science, Education and Sport invited parents to make their complaints to the Ministry’s inspectorate.
198. Lesbian Group Kontra filed a criminal complaint on the suspicion that the religious education teacher and Bartol Kašić Primary School had committed the crime of racial or other discrimination because they had breached on the basis of sexual orientation basic human rights and freedoms recognised by the international community, and had publicly stated and taught the idea of the inferiority of homosexual groups of people on the basis of sexual orientation and thus committed a crime under Art 174 para 1 and 3 of the Criminal Code.
199. Also, Kontra made a joint complaint under the provisions of Art 24 of the Anti-Discrimination Act in order to determine discrimination with the demand for all further similar discriminatory behaviour to be banned and for the judgement to be published in the media.
200. Lesbian group Kontra reported that the judge Vesna Kovačević-Ostoić was partial and that during the third hearing at the Municipal Court in Zagreb, she yelled for half an hour at the witness that reported discrimination to association Kontra, intimidated her, insulted her, interrupted her constantly and called her a “bad mother”. Kontra requested exemption of the judge..
201. At a time when sexual education does not exist in primary schools Kontra believed that it is completely unacceptable for this topic to be addressed within a programme of religious education, especially for the reason that by such actions homosexual persons are explicitly

31 Article from daily newspapers Slobodna Dalmacija, www.slobodnadalmacija.hr/Hrvatska/tabid/66/articleType/ArticleView/articleId/74539/Default.aspx, accessed 1 October 2010.

discriminated against, or pupils are encouraged to discriminate. The long-term consequence of such a programme is to increase rather than reduce discrimination against the LGBT population because of passing on information which is scientifically baseless and belongs to religious dogma.

202. Kontra also believed that religious education should be conducted in religious institutions, and not in public schools. If religious education already exists in schools, it should be timetabled as the first or last lesson so as not to put pressure on attending religious education.
203. National educational programme and all textbooks are not in line with positive anti-discrimination legislation. Judges should be educated to deal with cases of discrimination based on sexual orientation under the Anti-discrimination Act.

B.9. Employment

204. The Constitution of the Republic of Croatia proscribes that "Everyone shall have the right to work and enjoy the freedom of work."
205. The Labour Act (OG Nr. 149/09) prohibits direct and indirect discrimination in the field of work and working conditions, including criteria for selection and conditions in employment, promotion, professional orientation, professional qualification and development, in accordance with special laws. The Anti-discrimination Act proscribes special measures for protection from discrimination that supplement provisions of the Labour Act and Litigation Procedure Act.
206. In relation to cases of discrimination in the workplace, Art 106 of the Criminal Code can be applied (criminal offence of violation of equality of citizen).
207. Cases of discrimination in the workplace are seriously underreported due to lack of confidence in the legal system and fear of discrimination and violence. There are no court cases of discrimination based on sexual orientation or gender identity in employment.³² A couple of cases have been positively resolved after official letters have been sent to employers by an attorney at law hired by an LGBT organisation.

Discrimination in the workplace reported by K.L.

208. Mr K.L. from Rijeka contacted the Kontra and Iskorak on 4 January 2006. He claimed he was discriminated against in the workplace and fired from his job. He was employed in administration at the Ministry of European Integration. He claimed that his employment contract was not renewed because of his sexual orientation. His colleagues and his superiors harassed and insulted him during the period he was employed at the Ministry. For example, he was given an office in the basement and this resulted in bad working conditions for him (there was very poor light, a lot of dust, etc.) and his colleagues commented that "the faggot should die in the basement with the rats."
209. Mr K.L. sent an official memo the Ministry of the European Integration. He never received an answer and he did not want to bring charges against the Ministry.

³² After the deadline for this report it was reported that the first complaint under Anti-discrimination Act regarding discrimination at workplace was filed in 2010.

Case of M.K

210. On 9 November 2009 Kontra was approached by M.K., a professor at a university in a small town. He told Kontra that his colleagues at his workplace were mocking him and insulting him on the basis of his sexual orientation.
211. On 27 November a lawyer sent a letter on behalf of professor to the Faculty with a request for the protection of rights pertaining to working relations, as the protection of human rights guaranteed by the Constitution of the Republic of Croatia and the European Convention for the Protection of Human Rights.
212. After this the Dean of the Faculty conducted an investigation to establish the responsibility of employees who had committed discrimination. M.K received a written apology from his colleagues because of their previous behaviour.³³

B.10. Housing

213. Due to the fact that the Family Act defines marriage and common law marriage as unions between a man and a woman, and the Same-Sex Civil Unions Act regulates only the right to joint property and support by a partner, the Croatian legal system does not have necessary legislative, administrative and other measures that would ensure equal access, without discrimination on the basis of sexual orientation to housing.

B.11. Health care

214. The Constitution of the Republic of Croatia guarantees the right to health care, in conformity with law.
215. Appropriate system of offering health care to transgender persons for gender reassignment surgery and the treatment of possible complications that occur as a result of such surgeries does not exist in the Republic of Croatia. Croatian doctors are not sufficiently trained to offer such types of health care.

Case of K.M.

216. On 20 March 2009 Kontra was approached by K.M. who had severe health problems. K.M had undergone a series of gender reassignment surgeries abroad ten years earlier. However, complications had arisen which required new surgeries.
217. K.M stated that there was no doctor in Croatia who was qualified to carry out the necessary operations. She also described how the general practitioner in the place where she lives had told other people about her state of health as a result of which K.M experienced some level of harassment.
218. On 27 March 2008 a request was delivered to the Croatian Institute for Health Insurance (HZZO) in order to secure the rights to health care abroad at the HZZO's expense. It was

³³ Kontra, 2009 Annual Report on Status of Rights of Sexual and Gender Minorities, www.kontra.hr/cms/index.php?option=com_content&view=article&id=337%3Asexual-and-gender-minorities-report-2009&catid=22%3Aizvjetaji--reports&Itemid=50&lang=en, accessed 1 October 2010.

stated in the request that K.M. because of her extremely complicated health situation was unable to find adequate health care in the Republic of Croatia and a priority resolution of her case was proposed considering her state of health, and the protection of the secrecy of all her data by application of the law was sought.

219. For the purposes of resolving the request sent to the HZZO, extensive medical documentation was required which was given to a court interpreter for translation. On 9 April 2009 a declaration of secrecy for the court interpreter was drawn up.
220. On 15 April 2009 a report was sent to HZZO with the translated medical documentation and a request for HZZO to help K.M. organise an examination in order to obtain the recommendations of a specialist doctor of an approved health institution, which is a condition for obtaining approval.
221. On 15 July 2009 a decision was received from HZZO in which the request of K.M. was refused because she had not satisfied the requirements nor submitted a completed form proposing for her to be sent for medical treatment abroad which should have been completed by a specialist doctor.
222. According to K.M., the reason for the lack of necessary documentation was the refusal of the specialists who had been contacted to give an opinion.
223. Medical Insemination Act (OG Nr. 88/09) denies the right to medical insemination to unmarried women and same-sex couples. *This is relevant both in regards to women's reproductive rights and discriminative practices towards same-sex couples and their children.*
224. During the public debate before the adoption of the Act, the Ombudswoman for Gender Equality sent an opinion on the proposal of the Act to the proposer, the Ministry of Health and Social Welfare. In her opinion the Ombudswoman among other things stated the following:
225. The Act includes, among other things, issues of gender equality, since it deals with questions of reproductive health and reproductive rights of women and prohibition of discrimination based on marital and family status.
226. International documents that Republic of Croatia has ratified and that are legally and politically binding (UN Convention on the Elimination of All Forms of Discrimination against Women, Beijing Platform and Action Plan – as documents adopted at the World Conference on Women held in Beijing in 1995) and national documents that refer to gender equality are more than clear concerning the health of women. According to those documents the state has the responsibility to “promote and ensure the highest attainable standard of physical and mental health of women”, and the “importance of sexual and reproductive health of women” is emphasised.
227. Recommendation CM/Rec (2007)17 of the Committee of Ministers to member states on gender equality standards and mechanisms and Explanatory Memorandum to Recommendation among elements that indicate the existence of political will and determination of states for gender equality in the field of protection of health, sexual and reproductive rights, states in Art 44:
228. “44. This further implies that women's and men's health must be considered of equal value and that both women and men must have a non-negotiable right to decide over their own body, including sexual and reproductive matters. Such acknowledgement must be reflected

in the development, implementation, access to, monitoring and evaluation of health-care services and in research priorities.”

229. According to the Gender Equality Act discrimination on the basis of marital or family status is explicitly forbidden (Art 6).

The case of A. D.

230. On 4 January 2009, the newspaper *Jutarnji List* published information about the case of A. D. from Rijeka, who had been accommodated since the age of 16 in the Lopača psychiatric hospital and from the age of 18 to 21 had been forcibly accommodated in the same hospital without a decision by the responsible county court, exclusively because of her homosexual orientation. In the newspaper report it was stated that the hospitalisation in this case had been carried out by the then director of the hospital in question, Dr Marija Vulin, at the request of the parents. The victim, A. D., herself described how she was treated in such a way that progress in her medication was seen only when she lied and said that she had heterosexual tendencies. During the treatment, it was described, various psycho pharmaceuticals were administered to her and she was accommodated in a hospital ward with serious psychiatric patients. It is further stated that after five years in this hospital she was released from it only after Dr Marija Vulin was replaced, which was done after the Inspectorate of the Ministry of Health and Welfare confirmed irregularities in the work of that psychiatric institution.
231. It was also reported in the media that the Rijeka Municipal State Attorney's Office commenced an investigation of this case. However, it was not stated for which criminal offences the investigation was being conducted. Also, the injured party told the media that she had a lawyer who had himself offered her legal help, and would represent her in a civil suit.
232. Given that state institutions are not sufficiently educated for such cases, and in principle do not correctly classify criminal offences motivated by hatred of sexual minorities, after learning about this case, the Iskorak and Kontra filed a criminal complaint.
233. The complaint was filed against Marija Vulin, director of the Lopača psychiatric hospital and possible co-perpetrators, or helpers on suspicion that, to the damage of the injured party A. D., they committed the criminal offence of illegal curtailment of freedom under Art 124 Para 3 in connection with Para 1 of the Criminal Code, of illegal medication under Art 241 para 1 of the Criminal Code, both in conjunction with the criminal offence of racial or other discrimination under Art 174 Para 1 of the Criminal Code, all in conjunction with Art 89 Para 36 of the Criminal Code because it was suspected that the criminal offences were motivated by the sexual orientation of the injured party.

Case of Vladimir Gruden

234. On 2 April 2009 the Lesbian Group Kontra, Iskorak and the Women's Network of Croatia submitted a proposal for withdrawal of the scientific title to university professor and doctor of medicine Mr. Vladimir Gruden to the Medical School of the University of Zagreb. Associations never received an answer to the proposal.
235. Namely, on 23 March the weekly magazine "Arena" published an interview with Professor Dr. Vladimir Gruden, who commented differently on social goings. Professor Dr. Gruden in the above mentioned interview made discriminative and inaccurate statements in regards to homosexuality, equalised persons that are ill with schizophrenia with perpetrators of

serious criminal offences against life and body, and diagnosed participant of the reality TV show "Farm" Mr. Stjepan Barišić Gego, and gave opinion how Mr. Barišić's condition should be treated and what the implications of his illness are. In regards to homosexuality he stated: "...This is the way for society to enter decadency. Because depth is in nature and normality. If homosexuality is normal, let's all be homosexuals and we will pick children off the trees".³⁴

236. In 2003 the Croatian Medical Chamber reprimanded Professor Dr. Gruden for publicly stating that homosexuality is a disease that can be treated. The Croatian Medical Chamber stated that Professor Gruden only expressed his personal opinion, but that he was due to emphasise that such an opinion is not in line with scientific truth. However, no disciplinary sanction was declared against Professor Gruden. Since then he has continuously made homophobic statements in media.
237. Professor Dr. Gruden is giving scientifically inaccurate information to media (while being presented as an expert) and acts highly unprofessionally, not only in regards to homosexuality, but other issues from his professional competence as well. For example in medical magazine "Health" he published an article, using his title Dr. Med. Spec. psychotherapy of the Clinic for Psychological Medicine of the Medical School of the University of Zagreb, in which he describes women in a highly discriminative manner.
238. Apart from being employed at the University of Zagreb, Professor Gruden was appointed by the Government into numerous committees for creating Bills and other documents. He was the president of one of the committees for evaluation of sexual education programmes, nominated by the Ministry of Science, Education and Sport.

B.12. Access to goods and services

239. The Anti-Discrimination Act (OG Nr. 85/08) regulates protection from discrimination among other fields, in the field of access to goods and services and providing of the mentioned.
240. This type of discrimination is seriously underreported. There were no cases in court of this type of discrimination.

B.13. Media

241. The Constitution of the Republic of Croatia proscribes:
242. Article 38
243. Freedom of thought and expression shall be guaranteed.
244. Freedom of expression shall specifically include freedom of the press and other media of communication, freedom of speech and public expression, and free establishment of all institutions of public communication.
245. Censorship shall be forbidden.

³⁴ Arena, issue of 23 March 2009.

246. Journalists shall have the right to freedom of reporting and access to information. The right to correction shall be guaranteed to anyone whose constitutional and legal rights have been violated by public information.
247. The Gender Equality Act³⁵ proscribes that “Public display and presentation of any person in an insulting, belittling or humiliating manner, as regards his/her gender and sexual orientation, shall be forbidden.”
248. The Media Act³⁶ proscribes that “The media is prohibited to encourage or exalt national, racial, religious, gender or any other discrimination as well as discrimination on the grounds of sexual orientation. Ideologies and national entities based upon such foundations are also prohibited. Prohibition also includes provoking national, racial, religious, sexual or any other hostility or intolerance, as well as hostility or intolerance on the grounds of sexual orientation, incitement of violence and war.”
249. There are mainly professional and informative reporting in the media on the subject of the rights of LGBT people, most frequently in a neutral tone. However, unfortunately, also homophobic articles which promote the discrimination of sexual minorities still appear occasionally.
250. One example is the texts published in *Slobodna Dalmacija*, *Jutarnji List* and *Nacional* concerning the publication by the association Iskorak of a brochure about safe sex in 2009.
251. Namely, the association Iskorak adopted and translated a brochure intended for men who have sex with men (MSM) by the leading British organisation for the prevention of spreading HIV and AIDS, the Terrence Higgins Trust. The brochure was printed with the financial help of the Office for Human Rights of the Government of the Republic of Croatia, the City of Zagreb and the Ministry of Health and Social Welfare.
252. Several media published extremely homophobic articles connected with the above brochure, calling it vulgar, scandalous and pornographic exclusively because of its explicit style of writing about gay sex and illustrations with dolls, and condemning the state institutions for financing such brochures.
253. On several occasions the Croatian Journalists’ Council of Honour reprimanded journalists due to homophobic writing.
254. Case of Josip Jović
255. Kontra and Iskorak brought a petition before the Council of Honour of the Croatian Journalists Association against journalist Josip Jović. He wrote a text under the headline “Gay missionaries” that was published on 7 July 2006 in *Slobodna Dalmacija* in which he violated the Croatian Journalists’ Code of Honour. He commented on the Zagreb Pride event held in Zagreb in 2006 and stated: “It is a question of a militant, organised satanic sect, gay warriors or gay missionaries, who aggressively impose a novel view on the world.” At the meeting held on 16 October 2006 the Council of Honour accepted the petition of associations and punished journalist Josip Jović by a public reprimand.
256. Case of Mladen Pleše
257. Kontra and Iskorak brought a petition before the Council of Honour of the Croatian Journalist Association against the main editor of *Slobodna Dalmacija* Mr Mladen Pleše. He published a text by reader Mr Branimir Lukšić under the title “Homosexuality erodes the

35 In Art 16 Para 2.

36 OG Nr. 59/04.

family” on 12 July 2006. At their meeting held on 16 October 2006 the Council of Honour rejected Kontra’s petition with the explanation that the main editor did not violate the Code since he only published the attitude of one reader in the section which is provided for that purpose.

B.14. Transgender issues

258. In 2008 the Anti-Discrimination Act was passed for the first time in Croatian legislation regulated protection against discrimination on the basis of gender identity.
259. Regardless of that, transgender persons are subjected to discrimination and violence in their everyday lives because of their gender identity. Serious problems exist in regards to the right to privacy of transgender persons that are the result of discriminatory legislation.
260. Namely, the Personal Names Act³⁷ prescribes that after receiving a request for change of name, the municipal administrative body is obliged to publish an announcement on a notice board on the submitted request for the change of personal name and from practice it is known that the whole request is often published on the notice board.
261. The State Registries Act (OG Nr. 96/93) prescribes that a change of personal name and gender marker are entered as additional entries and notes. This means if a person changes her name from Marko to Ana, she will have a birth certificate in which “Marko” will be entered in the basic entry, and below (in small letters at the bottom of the document) in additional notes: “By the decision of the municipal administrative body, no... the name was changed to Ana on the date...”. Seeing that no protective mechanisms are prescribed in the above laws for cases of gender change, all citizens are able to find out about an individual person’s change of gender through the change of name procedure when the data is published on a notice board, and later on that information is also visible in documents (birth certificates). Considering that the directions on the implementation of the National Registers Act are unclear because they contain two mutually contradictory provisions, in practice cases occur where the change of gender itself is also entered on the birth certificate in the supplementary notes.
262. Furthermore, it is impossible to make a gender change in personal documents unless a person has gone through the whole procedure of gender reassignment treatments, and possesses adequate medical documentation.
263. In November 2009 the Kontra made a proposal for the evaluation of the constitutionality of the Personal Names Act and State Registries Act. On 20 November, Transgender Remembrance Day, activists of Kontra, Women’s Network of Croatia and Iskorak – Centre for Sexual and Gender Minorities’ Rights organised an action of submitting the proposal for evaluation of constitutionality of the above acts and handing out flyers on the rights of transgender persons.
264. Considering that gender identity represents the most intimate aspect of private life, positive provisions of the law are not harmonised with Art 35 of the Constitution and Art 3 of the Convention on Human Rights, since implementation of the above acts leads to inhuman treatment of vulnerable individuals and does not guarantee respect and legal protection of private and family life, dignity, reputation and honour.

37 OG, Nr. 69/92.

265. The discriminatory nature of certain provisions derives from the fact that the Republic of Croatia as a member of the Council of Europe and signatory to the European Convention on Human Rights has not undertaken all necessary actions to promote equality of all persons. This is a matter of venerable individuals for whom protective mechanisms have not been introduced and there is no objective or reasonable justification of valid cause for that.
266. In order to make the change of name in state registries, a transgender person has to file a request according to the provisions of the Personal Names Act to the competent government administration body that decides upon the request by resolution.
267. Considering Art 7 para 1 of this Act, that prescribes the obligation of publishing an announcement concerning the submitted request on a notice board, specific situations of change of names of transgender persons are noticed. The question is whether the publishing of such procedures is justified and in proportion, or unjustified and out of proportion to intervention into the right to respect of private life.
268. The reasons for publishing an announcement set out in Art 7 para 2, are not applicable in a case of transgender person who is changing their first name to better reflect their gender identity. Possible opposition of citizens to the procedure of the change of name and stating the reasons for such opposition would represent further violation of the right to privacy. The Personal Names Act should have a protection mechanism in regards to transgender persons, in order to protect them from publishing information on their personal name, since this would represent intervention in a protected right that is not justified or proportional.
269. A transgender person, who in numerous social transactions needs to submit her/his birth certificate which contains visible facts of change of gender and personal name, is not able to realise the right to "equal rights" in comparison to all other persons who submit their birth certificates with the aim of completing such social transactions.
270. Apart from the above, the availability of data on change of gender and personal name to relevant institutions, for example the Ministry of the Interior without limitations to the circle of authorised personnel, creates constant problems to transgender persons when crossing the Croatian border, since they are exposed to statements and questions concerning their sex, gender, name, etc. and these questions are not related to the travel of the transgender person.
271. Also, there is a need for regulation of the "legal phase" of the gender reassignment procedure not only for persons who change gender with surgical procedures, but also for persons who do not go through all medical treatment in gender reassignment procedures.
272. For example, certain transgender persons live in a different gender identity for long period of time and have external physical characteristics of the opposite gender because they take prescribed hormonal therapy and/or have undergone one or more procedures, etc. These external characteristics are different from the personal name and gender that is published in their personal documents (for example, a person with entered name Marko and male sex has external physical characteristics of a woman). For such citizens there is no legal possibility of changing the gender entered in personal documents. Considering the obvious incongruity between documents and gender identity, these persons are additionally and specially checked on each crossing of the border and they are ordered by border police officers to report without delay for medical examination in one of the clinical medical centres for verification and identification of gender in order to get a certificate of gender.
273. A number of transgender persons, due to often severe complications that are the result of the surgical procedures of gender reassignment and hormonal therapy, do not go through

the whole operative procedure that consists of multiple operations, and they go only through certain procedures or do not undergo medical treatment at all.

274. Exactly due to these circumstances and possible post-operative complications, citizens address the Croatian Institute for Health Insurance for approval and financing of operative procedures in other countries or regardless of that undergo procedures in other countries.
275. There are also specific situations that need to be considered – when transgender persons are children. Then a specialist doctor very early on prescribes hormonal and other therapy and they are in constant psychiatric treatment, but surgical procedures are not performed until a certain age. In this way children live in a different gender identity for up to eight years or even more until they come of age.
276. This is needed for the children's wellbeing to change the entry of gender in the birth certificate because a child's birth certificate is often used, and children are generally a vulnerable group of individuals, who are exposed to enormous pressure in these situations from their peers and the rest of their surroundings. Considering this issue leads to considering the Art 62 and 64 of the Constitution of the Republic of Croatia that prescribes that the State protects children and creates social, cultural and other conditions under which realisation of the right to dignified life and obligation of all to protect children is promoted.
277. All the described examples, regardless of whether they concern children or adults, are contrary to Art 35 of the Constitution and lead to exclusion, marginalisation and dehumanisation of approach to already vulnerable individuals.
278. These examples point to the need for harmonisation of laws with the Constitution of the Republic of Croatia in order to enable and legally regulate the procedures of change of gender in the personal documents of transgender persons, not only after operations, but also after a long period of living in a different gender identity and to introduce protective mechanisms into existing legislation for the protection of basic human rights.
279. Considering all the above, the association Kontra, after submitting the proposal for evaluation of constitutionality of the above acts, started drafting proposals of changes and amendments to the Personal Names Act and State Registries Act with the aim of presenting them to state institutions and initiating legal changes even before the Constitutional Court adopts its decision. The proposals were placed into parliamentary procedure by Social-Democrat Party were rejected on 10 December 2010.

B.15. Intersex Issues

280. There are no provisions protecting rights of intersex people in Croatian legal system. Also, there are no intersex associations or official data on position of intersex persons.
281. *Good practice.*
282. Good practice is mostly related to adoption of anti-discrimination legislation (except legislation related to rights of same-sex couples and transgender persons).
283. Also good practice was prosecution of perpetrators in two cases that have had great media attention in last two years- case of Neven Rauk and case of attacks after Zagreb Pride 2008 and case of hate speech on a blog in 2007. However, all these cases are exemptions.