

# Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity

Croatia

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**Contents**

**Executive Summary ..... 1**

**A. Implementation of Employment Directive 2000/78/EC ..... 6**

**B. Freedom of movement ..... 11**

**C. Asylum and subsidiary protection..... 13**

**D. Family reunification ..... 14**

**E. Freedom of assembly ..... 15**

**F. Hate speech and Criminal law ..... 17**

**G. Transgender issues..... 19**

**H. Miscellaneous ..... 22**

**I. Good practice ..... 23**

**J. Intersex ..... 24**

**Annex 1 – Case law..... 25**

**Annex 2 – Statistics ..... 30**

# Executive Summary

## Implementation of Employment Directive 2000/78/EC

Directive 2000/78 has been implemented through Sex Equality Act (SEA) and Antidiscrimination Act (ADA). Both acts guarantee protection against all forms of discrimination on grounds of sex in all areas of social life, not merely employment. Hence, antidiscrimination protection in Croatia goes beyond what is required by EU law. However, one aspect of the ADA could prove problematic in practice. The ADA provides rather wide exceptions to the norm prohibiting discrimination. Two exceptions to the prohibition of discrimination on grounds of sexual orientation are of particular concern.

First, the ADA (Art 9/2/5) allows unfavourable treatment on grounds of sexual orientation if the ethics and values of a particular public or private organisation are founded on religious beliefs that require such unfavourable treatment to an extent that satisfies the principle of proportionality. The textual formulation of this provision does not command but allows an interpretation under which some establishment operating in the market would be allowed not to provide services to LGBT citizens if their “lifestyle” opposes the religious beliefs of the owners. Second, the ADA (Art 9/2/10) allows unfavourable treatment on grounds of sexual orientation related to the regulation of family law rights and obligations, especially if such is necessary for the protection of children, public morality and marriage. Such a broad formulation not only implies that equal treatment of LGBT citizens is somehow problematic from the aspect of “public morality”, but it also provides strong support to unfavourable treatment of the type that the Court of Justice of the EU dealt with in cases such as Maruko,<sup>1</sup> Römer<sup>2</sup> and Hay.<sup>3</sup>

The SEA (Art 19) established the Office of the Ombudsperson for Gender Equality as an independent equality body responsible for monitoring and facilitating enforcement of the anti-discrimination guarantees in the area of gender equality and LGBT equality. The Ombudsperson was established primarily as a gender equality body. However, since the SEA (Art 5) defines discrimination on grounds of sexual orientation as a category of sex discrimination, the body has also exercised its rather wide scope of powers in this area. The powers of the Ombudsperson are rather wide and diverse. The Ombudsperson is responsible for monitoring enforcement of the ADA. She reports her findings and observations to parliament on a yearly basis. In addition, the Ombudsperson has the power to investigate individual complaints and render decisions on discrimination. The Ombudsperson can also offer legal advice to citizens if she believes that they have been victims of discriminatory treatment. The ADA extended the scope of power of the Ombudsperson and provided her with the competence to intervene in anti-discrimination judicial proceedings in order to support the position of the victim of discrimination. Moreover, the ADA provides the Ombudsperson with the power to institute judicial proceedings representing the interest of victims of discrimination even though the victims have decided not to participate actively or are unidentified (Article 24 of ADA).

Article 9/2 of the Employment Directive 2000/78/EC was implemented through the ADA, allowing all public or private organisations with a mission to promote the principle of equality to: 1) intervene in judicial proceedings on the side of a plaintiff (Art 21); or 2) institute judicial proceedings representing the interest of victims of discrimination even though the victims decided not to participate actively or are not know (Art 24). In principle, LGBT NGOs have been very keen

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<sup>1</sup> Court of Justice of the European Union (CJEU), Case C-267/06 Maruko [2008] ECR I-1757. Here and hereinafter references to the CJEU include cases dealt with by the former European Court of Justice (ECJ).

<sup>2</sup> CJEU, Case C-147/08 Römer [2011] ECR I-3591.

<sup>3</sup> CJEU, Case C-267/12 Hay, nyr.

to use both of the described possibilities provided by the ADA. However, their ability is tightly related to scarce financial resources.

Litigation related to employment discrimination has been crucial for the development of antidiscrimination case-law in Croatia so far. It is highly likely that the trend will further intensify in the future for two reasons. First, LGBT NGOs have showed strong commitment to strategic litigation and have invested significant resources in development of their litigating capacities. Second, it is likely that the focus will slightly move from employment sexual orientation discrimination to access to goods and services discrimination in a near future. This could further spur litigation. However, the strategies and doctrines developed in the context of employment discrimination will likely be transferred to this context.

Croatian courts have not shown great enthusiasm for sexual orientation discrimination litigation. This trend is likely to continue. Lack of enthusiasm has been reflected through several aspects of discrimination litigation in this area. First, there have been reports from NGOs that some courts have tried to exclude them from litigation through strict interpretation of their intervener's rights.<sup>4</sup> Second, courts have showed a rather flexible understanding of the redistribution of the burden of proof provisions allowing respondents to submit wide scope of evidence that was of questionable relation to the heart of the matter.<sup>5</sup>

## Freedom of Movement

Free movement of EU LGBT citizens is an area of law where Croatia has clearly failed to properly implement the EU *acquis*. The Aliens Act (Art 153) provides that family members of an EEA national legally residing in Croatia have the same rights as Croatian citizens within the legal framework established by the TFEU regardless of their nationality. The Aliens Act (Art 56) defines the term "close family member" for the purposes of the Act by referring to married partners, civil union partners and parents or adopted parents of minors. The provision also allows - in exceptional cases - for the term "close family member" to include other relatives if family reunification is required due to special personal or important humanitarian reasons. At the same time, the Act (Art 162) excludes same-sex couples from the definition of family by referring to the definition of civil union provided in the Family Act.<sup>6</sup> True, the Aliens Act does not provide the same reference for the notion of marriage, leaving it possible for same-sex marriages legally entered into in other EU Member States to be recognised as family units for the purposes of free movement. However, due to highly formalistic legal culture characteristic for Croatian administrative bodies, it is highly unlikely that the responsible administrative bodies would accept such an interpretation of the Aliens Act. The legal situation of third-country national LGBT partners of EU citizens is similar to the situation of EU national LGBT partners of EU citizens moving as workers or entrepreneurs. The Aliens Act (Art 56) excludes same-sex couple from the definition of family for the purposes of granting residence permits for the purposes of family reunification. Consequently, just like EU citizens, same-sex partners who are not EU nationals cannot hope to reside legally as a family in

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<sup>4</sup> Kontra, Iskorak 'Izveštaj o stanju ljudskih prava LGBT osoba u 2011. godini u Hrvatskoj' pp. 85, 99. Available at: [www.iskorak.hr/wp-content/uploads/files/pt-prava2011.pdf](http://www.iskorak.hr/wp-content/uploads/files/pt-prava2011.pdf); Centar za mirovne studije 'Zaključci Konferencije o suzbijanju diskriminacije održane u Kući ljudskih prava Zagreb, 14. i 15. siječnja 2011. godine', 20 January 2011 available at [www.cms.hr/suzbijanje-diskriminacije/zakljucci-konferencije-o-suzbijanju-diskriminacije](http://www.cms.hr/suzbijanje-diskriminacije/zakljucci-konferencije-o-suzbijanju-diskriminacije). Last example of such practice occurred in *Tomašević v Bogdan* case before Zagreb Municipality Court where the Court rejected interference request from the "Zagreb Pride" NGO. All hyperlinks in the Report were last accessed on 14 July 2014.

<sup>5</sup> Pravobraniteljica za ravnopravnost spolova (2011) 'Izvešće o radu za 2010. godinu', March 2011, available in Croatian at <http://prs.hr/attachments/article/96/Izvesce%20o%20radu%20za%202010.pdf>; Kontra, Iskorak 'Izveštaj o stanju ljudskih prava LGBT osoba u 2011. godini u Hrvatskoj' p. 85. Available at: [www.iskorak.hr/wp-content/uploads/files/pt-prava2011.pdf](http://www.iskorak.hr/wp-content/uploads/files/pt-prava2011.pdf).

<sup>6</sup> Croatia, Family Act (*Obiteljski zakon*) (2003) Official Gazette (*Narodne novine*) 116/2003. Available at [http://narodne-novine.nn.hr/clanci/sluzbeni/2003\\_07\\_116\\_1583.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2003_07_116_1583.html). Art. 3 of the Family Act provides that "provisions of this Act regulating the effects of civil union shall be applied to a relationship between an unmarried woman and an unmarried man which lasts at least three years, and to a shorter relationship if a child has been born into the relationship."

Croatia. They need to acquire a residence permit on some ground other than family reunification, or be separated.

So far there has been a noticeable trend of refusing any attempt to expend family reunification opportunities for same-sex couples through “friendly” interpretation of unfavourable black-letter law.<sup>7</sup> The trend will be stopped and changed after the Parliament enacts new Law on Lifelong Partnership for Persons of Same Sex (Same Sex Partnership Act) in July that will explicitly define stable same sex unions as families.

## Asylum and subsidiary protection

The Asylum Act (*Zakon o azilu*)<sup>8</sup> includes the persecution of LGBT as one of the grounds for asylum or refugee or subsidiary protection. The Act (Art 2) explicitly provides that personal characteristics related to one’s sex or gender identity should be taken into consideration when interpreting the general term “persecution of a particular group based on a common characteristic”. The Asylum Act provides that couples in a stable relationship will be considered family members if capable of proving the constancy of their union by means, for example, of a common address where they have resided for a period of three years. Although the Asylum Act failed to provide for this explicitly, the definition allows same-sex partners to be treated as family members for the purposes of granting asylum or refugee and subsidiary protection. However, the Act regulates the issue on family reunification by referring to the Aliens Act. As noted above, the Aliens Act (Art 56) explicitly excludes same-sex couples from the definition of family for the purposes of granting a residence permit facilitating family reunification. The conflict between the two acts opens up an interpretative possibility for the Ministry of the Interior to refuse to grant a residence permit to the same-sex partner of a person enjoying asylum or refugee or subsidiary protection by invoking the Aliens Act.

It seems that recently police has started showing more favourable approach to asylum seekers who claimed to be persecuted due to their sexual orientation. Due to EU developments in this area this trend is likely to continue. This change of attitude is again primarily result of significant efforts showed by the LGBT NGOs.

## Family reunification

The Aliens Act (Art 55) allows family members of Croatian nationals, foreign citizens with permanent residence, and foreign citizens with temporary residence or foreigners under asylum, refugee or subsidiary protection to ask for a residence permit for the purpose of family reunification. The provision applies to EU citizens only to the extent that they are residing in Croatia outside the TFEU free movement framework. If residing in Croatia within the TFEU framework, their family members can move and reside freely along them. At the same time, however, the Act explicitly excludes same-sex couples from using both of these options, regardless of their nationality. The explicit exclusion of same-sex couples constitutes a clear discriminatory barrier to free movement of same-sex partners.

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<sup>7</sup> Zagreb Pride (2014) ‘Rozi Megafon: Od Zakona o suzbijanju diskriminacije do ustavne zabrane istospolnog braka - Izvještaj Zagreb Pridea o stanju ljudskih prava LGBTIQ osoba u Republici Hrvatskoj 2010. – 2013.’, 2014, p. 18, ISBN 978-953-56664-7-9.

<sup>8</sup> Croatia, The Asylum Act (*Zakon o azilu*) (2007) Official Gazette (*Narodne novine*) 79/07, 88/10, 143/13 available at: [http://narodne-novine.nn.hr/clanci/sluzbeni/2007\\_07\\_79\\_2474.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2007_07_79_2474.html), [http://narodne-novine.nn.hr/clanci/sluzbeni/2010\\_07\\_88\\_2462.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2010_07_88_2462.html) and [http://narodne-novine.nn.hr/clanci/sluzbeni/2013\\_12\\_143\\_3067.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2013_12_143_3067.html). An unofficial English translation is available at: [www.vsrh.hr/CustomPages/Static/HRV/Files/Legislation\\_\\_Law-Asylum.pdf](http://www.vsrh.hr/CustomPages/Static/HRV/Files/Legislation__Law-Asylum.pdf).

## Freedom of Assembly

Currently, two Pride events are organised on an annual basis in Croatia. The Zagreb Pride has been regularly organised for over a decade. The Split Pride is a younger event. It has been organised three times so far. It is also likely that Rijeka will organise its first Pride in 2014.

Both the Zagreb and Split Prides saw violent beginnings. Homophobic groups that were more or less organised presented a real threat to the life and safety of Pride participants during the first couple of Prides. However, in the years that followed the police demonstrated significantly better organisation and preparedness. Accordingly, the Zagreb Pride has developed into an event comparable to other Pride festivals across the EU. After a violent first event, the second and third years of the Split Pride were noticeably safer and more civilised events.

Emergence of Split Pride has had far-reaching implication for the freedom of assembly since it showed that these type of events are not “fenced” to capital context and treated as exception from the norm. The trend of Pride events taking places outside the capital is likely to continue and spread to other cities in Croatia such as Osijek and Rijeka.

## Criminal law

The Criminal Code (*Kazneni zakon*)<sup>9</sup> (Art 87/12) defines hate crime as a criminal act motivated by one of the grounds specifically listed in the Criminal Code, including sexual orientation or gender identity. Such prejudicial motivation is defined as an aggravating circumstance for any criminal act. In addition, the Criminal Code explicitly prescribes explicitly heightened punishment for some specific criminal acts if motivated to incite hate. However, there have been significant problems in enforcing the provisions on hate crime in practice, including the prohibition of hate speech. Relevant statistics suggest that although the police may be determined to take legal steps against individuals who engage in hate speech activities, the Office of the State Attorney General frequently fails to use its competence to institute criminal judicial proceedings, even though the police may have apprehended the perpetrator and passed prosecution on to the State Attorney General.

The Sex Equality Act and the Anti-Discrimination Act do not include any specific provision regulating speech insulting LGBT citizens that cannot be qualified as hate speech. However, in practice there have been frequent attempts to use the harassment provisions implemented from EU Directives as a mean of opposing public speech considered offensive to the dignity of LGBT citizens (especially, but not exclusively, speech in the media). This strategy has been favoured by LGBT NGOs in particular. Although it is far from clear that such an expansion of harassment protection is desirable due to the fundamental status of freedom of speech protection, the open-ended character of the harassment provisions does not prevent (or require) such a legal interpretation.

## Transgender Issues

Neither the Sex Equality Act nor the Anti-Discrimination Act includes an explicit provision prohibiting discrimination against transgender citizens. However, relying on the case law of the Court of Justice of the EU and the European Court for Human Rights, the Ombudsperson for Gender Equality has developed a doctrine under which transgender discrimination constitutes a type of sex discrimination prohibited by the Sex Equality Act. So far, this doctrine has not been either explicitly confirmed or rejected by the courts.

Croatian legal order does not include a specific law regulation of transgender issues and relations involving transgender citizens. However, all provision prohibiting discrimination on grounds of

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<sup>9</sup> Croatia, The Criminal Code (*Kazneni zakon*) (2011) Official Gazette (*Narodne novine*) 125/11, 144/12 available at: [http://narodne-novine.nn.hr/clanci/sluzbeni/2011\\_11\\_125\\_2498.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2011_11_125_2498.html) and [http://narodne-novine.nn.hr/clanci/sluzbeni/2012\\_12\\_144\\_3076.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2012_12_144_3076.html).

sexual orientation allow an interpretation including unfavourable treatment due to gender or sex transition or change. This is particularly so in relation to labour market participation and social benefits related to employment due to the case-law of the CJEU. However, it remains unclear what would be the position of families in which one partner was transgendered.

It is not clear whether unfavourable trends related to transgendered citizens will change anytime soon. During the writing of the Report there have been some indications that positive change is possible since the Constitutional Court clearly found that change of sex marker in birth certificates is possible without sex operation.<sup>10</sup> Consequently, the Ministry of Health promised to develop clear provision regulating the issue of sex change in accordance with the ruling.

## Miscellaneous

One important development is currently in the legislative pipeline. At the time of writing the report, the government had adopted and sent for legislative procedure a Proposal of the Lifelong Partnership Act (LPA) (*Nacrt prijedloga zakona o životnom partnerstvu*).<sup>11</sup> The LPA will profoundly change the position of LGBT citizens and same-sex families in the Croatian legal order. In short, if the proposal remains unchanged, the act will equalise same-sex unions whose partners have entered into lifelong partnership with marriages in respect of all rights except for adoption. There would be two types of lifelong partnership. Registered lifelong partnership would be parallel to heterosexual marriage and it would be formed by an act of official registration in an administrative procedure parallel to that of concluding a marriage. Unregistered lifelong partnership would be parallel to that of heterosexual civil unions, meaning that it would be established through actual cohabitation of partners that would not be shorter than three years.

## Good practices

A good feature of the Croatian antidiscrimination system concerns the procedural institutes of intervention in judicial proceedings on behalf of a victim and the associated complaints judicial procedure. These instruments have allowed LGBT NGOs to take a more active role in anti-discrimination proceedings and engage in what can be called strategic litigation. Moreover, these instruments have also allowed the institution of the Ombudsperson for Gender Equality to use its equality body authority and specialised expertise to provide courts with specific doctrinal insights facilitating effective decision-making. This alliance between various legal actors supported by the two procedural instruments is the key driver of the development of anti-discrimination case law in Croatia.

## Intersex

The legal position of intersex citizens in the Croatian legal order is not clear at the moment. Not a single legal act includes intersexuality as an explicit term. However, there is nothing preventing the development of legal doctrine similar to that developed by the Ombudsperson for Gender Equality in the context of transsexuality. Accordingly, it is likely that intersex discrimination would be treated as a type of sex discrimination. So far, no example of an individual complaint due to intersex discrimination is known.

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<sup>10</sup> Croatia, Constitutional Court (*Ustavni sud*) (2014) Decision of the Constitutional Court of the Republic of Croatia U-III B-3173/2012 (*Odluka Ustavnog suda Republike Hrvatske U-III B-3173/2012*), Official Gazette (*Narodne novine*) No. 46/14, available at: [http://narodne-novine.nn.hr/clanci/sluzbeni/2014\\_04\\_46\\_872.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2014_04_46_872.html).

<sup>11</sup> Government of the Republic of Croatia (*Vlada Republike Hrvatske*) (2013) Proposal of the Lifelong Partnership Act (*Nacrt prijedloga zakona o životnom partnerstvu*), available at <https://vlada.gov.hr/UserDocsImages/Sjednice/Arhiva/131.%20-%203.pdf>.

## A. Implementation of Employment Directive 2000/78/EC

Directive 2000/78 is implemented in the Croatian legal order through two legislative acts: the Sex Equality Act (SEA) (*Zakon o ravnopravnosti spolova*)<sup>12</sup> and the Anti-Discrimination Act (ADA) (*Zakon o suzbijanju diskriminacije*).<sup>13</sup>

The Sex Equality Act (Art 6/3) explicitly prohibited discrimination on grounds of sexual orientation in 2003.<sup>14</sup> The law was amended in 2008 but the prohibition remained unchanged.

The 2008 Anti-Discrimination Act reaffirmed the prohibition of discrimination on grounds of sexual orientation and provided stronger institutional safeguards. Just like the SEA, the ADA (Art 1) explicitly prohibits discrimination on grounds of sexual orientation. The Act was amended in 2012 but the prohibition remained unchanged.

Both legislative acts prohibit all forms of sexual orientation discrimination: direct discrimination, indirect discrimination and harassment. In addition, both acts prohibit victimisation and incitement of discrimination on grounds of sexual orientation. The ADA also prohibits any segregation on ground of sexual orientation. Both acts provide for the shifting back of the burden of proof guarantee as well. According to the SEA (Art 30) once the plaintiff presented facts allowing an assumption that discrimination might have occurred it is up to the respondent to present convincing facts capable of disproving the prima facie assumption. The ADA provides that the plaintiff has an obligation to demonstrate that it is likely that discrimination occurred. At that point it is up to the respondent to prove that there had been no discrimination.

Due to the explicit anti-discrimination guarantees provided in the SEA and the ADA, there are no explicit gaps in the implementation of Directive 2000/78. Further, as explained later in greater detail, Croatian legislation goes beyond the requirements of the Directive.

However, one aspect of the ADA could prove problematic in practice. The ADA provides rather wide exceptions to the norm prohibiting discrimination. Such exceptions are not surprising in light of the fact that the ADA prohibits discrimination on 18 different grounds. However, when applied to the ground of sexual orientation, these exceptions could become problematic in practice. Two exceptions to the prohibition of discrimination on grounds of sexual orientation are of particular concern.

First, the ADA (Art 9/2/5) allows unfavourable treatment on grounds of sexual orientation if the ethics and values of a particular public or private organisation are founded on religious beliefs that require such unfavourable treatment to an extent that satisfies the principle of proportionality. The textual formulation of this provision does not command but allows an interpretation under which some establishment operating on the market would be allowed not to provide services to LGBT citizens if their “lifestyle” opposes the religious beliefs of the owners. For example, a bakery store could refuse to sell wedding cakes to same-sex couples who are getting married or who are entering

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<sup>12</sup> Croatia, Sex Equality Act (*Zakon o ravnopravnosti spolova*) (2008) Official Gazette (*Narodne novine*) No. 82/08 available at [http://narodne-novine.nn.hr/clanci/sluzbeni/2008\\_07\\_82\\_2663.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2008_07_82_2663.html). The unofficial English translation is available at [www.ilo.org/dyn/natlex/docs/ELECTRONIC/83909/92965/F1671454996/HRV83909.pdf](http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/83909/92965/F1671454996/HRV83909.pdf).

<sup>13</sup> Croatia, Anti-Discrimination Act (*Zakon o suzbijanju diskriminacije*) (2008) Official Gazette (*Narodne novine*) 85/08, 112/12 available at <http://narodne-novine.nn.hr/clanci/sluzbeni/340327.html>, [http://narodne-novine.nn.hr/clanci/sluzbeni/2012\\_10\\_112\\_2430.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2012_10_112_2430.html).

The unofficial English translation is available at <http://ombudsman.hr/index.php/en/documents-3/legislation/finish/16-legislation/40-the-anti-discrimination-act>.

<sup>14</sup> Croatia, Sex Equality Act (*Zakon o ravnopravnosti spolova*) (2003) Official Gazette (*Narodne novine*) 116/03 available at [http://narodne-novine.nn.hr/clanci/sluzbeni/2008\\_07\\_82\\_2663.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2008_07_82_2663.html).



a registered civil union comparable to marriage. Although there is no specific case-law yet, it is clear that such interpretation of the provision would be contrary to the decision of the European Court of Human Rights (ECtHR) in the Case of Eweida and Others v. the United Kingdom (particularly para. 105) at least in cases concerning an access to services provided by public authorities.<sup>15</sup>

Second, the ADA (Art 9/2/10) allows unfavourable treatment on grounds of sexual orientation related to the regulation of family law rights and obligations, especially if such is necessary for the protection of children, public morality and marriage. Such a broad formulation not only implies that equal treatment of LGBT citizens is somehow problematic from the aspect of “public morality”, but it also provides strong support to unfavourable treatment of the type that the Court of Justice of the EU dealt with in cases such as Maruko,<sup>16</sup> Römer<sup>17</sup> and Hay.<sup>18</sup>

The Croatian legal order offers several legal procedures to victims of discrimination. First, victims who have faced discriminated in relation to some administrative right or benefit can use an administrative appeal procedure followed by administrative adjudication.<sup>19</sup> <sup>20</sup> If refused a certain right or access to a particular benefit, victims can appeal to the second instance authority which is, in most cases, the minister responsible for a particular regulatory area.<sup>21</sup> The minister has the obligation to establish whether the individual complaint of discrimination was justified. If the second instance decision fails to provide redress, victims have two judicial routes available. They can either take legal action for discrimination using the administrative adjudication process<sup>22</sup> or they may use civil anti-discrimination adjudication.<sup>23</sup> The choice is at the victims’ discretion.

Second, discrimination victims can always file individual complaints to the Ombudsperson for Gender Equality.<sup>24</sup> This will initiate anti-discrimination proceedings in which the Ombudsperson investigates and evaluates all the relevant facts. At the end of the procedure, the Ombudsperson will decide, relying also on the principle of shifting back the burden of proof, whether the complaint is justified and whether discrimination occurred.<sup>25</sup> These decisions have legal authority to the extent that the Ombudsperson has the competence of determining discrimination in particular cases. At the same time the Ombudsperson will also make a recommendation concerning the appropriate

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<sup>15</sup> European Court of Human Rights (ECtHR), Case of Eweida and others v. The United Kingdom (Applications nos. 48420/10, 59842/10, 51671/10 and 36516/10).

<sup>16</sup> Court of Justice of the European Union (CJEU), Case C-267/06 Maruko [2008] ECR I-1757. Here and hereinafter references to the CJEU include cases dealt with by the former European Court of Justice (ECJ).

<sup>17</sup> CJEU, Case C-147/08 Römer [2011] ECR I-3591.

<sup>18</sup> CJEU, Case C-267/12 Hay, nyr.

<sup>19</sup> Croatia, General Administrative Procedure Act (*Zakon o općem upravnom postupku*) (2009) Official Gazette (*Narodne novine*) 47/09. Available at: [http://narodne-novine.nn.hr/clanci/sluzbeni/2009\\_04\\_47\\_1065.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2009_04_47_1065.html).

<sup>20</sup> Croatia, Administrative Adjudication Act (*Zakon o upravnim sporovima*) (2010) Official Gazette (*Narodne novine*) 20/10, 143/12. Available at: [http://narodne-novine.nn.hr/clanci/sluzbeni/2010\\_02\\_20\\_483.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2010_02_20_483.html), [http://narodne-novine.nn.hr/clanci/sluzbeni/2012\\_12\\_143\\_3036.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2012_12_143_3036.html).

<sup>21</sup> Croatia, General Administrative Procedure Act (*Zakon o općem upravnom postupku*) (2009) Official Gazette (*Narodne novine*) 47/09., Art 105, 107. Available at: [http://narodne-novine.nn.hr/clanci/sluzbeni/2009\\_04\\_47\\_1065.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2009_04_47_1065.html).

<sup>22</sup> Croatia, Administrative Adjudication Act (*Zakon o upravnim sporovima*) (2010) Official Gazette (*Narodne novine*) 20/10, 143/12, Art 3. Available at: [http://narodne-novine.nn.hr/clanci/sluzbeni/2010\\_02\\_20\\_483.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2010_02_20_483.html), [http://narodne-novine.nn.hr/clanci/sluzbeni/2012\\_12\\_143\\_3036.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2012_12_143_3036.html).

<sup>23</sup> Croatia, Anti-Discrimination Act (*Zakon o suzbijanju diskriminacije*) (2008) Official Gazette (*Narodne novine*) 85/08, 112/12 available at <http://narodne-novine.nn.hr/clanci/sluzbeni/340327.html>, [http://narodne-novine.nn.hr/clanci/sluzbeni/2012\\_10\\_112\\_2430.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2012_10_112_2430.html), Art 16, 17.

<sup>24</sup> Croatia, Sex Equality Act (*Zakon o ravnopravnosti spolova*) (2008) Official Gazette (*Narodne novine*) 82/08, available at [http://narodne-novine.nn.hr/clanci/sluzbeni/2008\\_07\\_82\\_2663.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2008_07_82_2663.html), Art 19.

<sup>25</sup> Croatia, Anti-Discrimination Act (*Zakon o suzbijanju diskriminacije*) (2008) Official Gazette (*Narodne novine*) 85/08, 112/12 available at <http://narodne-novine.nn.hr/clanci/sluzbeni/340327.html>, [http://narodne-novine.nn.hr/clanci/sluzbeni/2012\\_10\\_112\\_2430.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2012_10_112_2430.html), Art 20.

manner for the consequences of the discrimination to be remedied.<sup>26</sup> The Ombudsperson does not have available any hard-law sanctions to force the implementation of her recommendations. The Ombudsperson can use “shame and blame” methods to ensure the enforcement of her decisions. She can also require competent inspectorate authorities to use their authority in order to scrutinize actions of the perpetrator who failed to comply with the Ombudsperson’s recommendations.<sup>27</sup> However, the Ombudsperson is provided with the competence of initiating antidiscrimination judicial proceedings on the behalf of a victim of discrimination, allowing her to ask the court to confirm her findings and determine appropriate sanction.<sup>28</sup>

Third, the Croatian legal order offers victims of discrimination a particular choice between different types of judicial protection. Victims have two types of procedure at their disposal. On the one hand, they can avail themselves of the special anti-discrimination procedure provided by Article 17 of the ADA. Article 17 allows victims to take legal action specifically for discrimination and to acquire remedies especially prescribed in this procedure. These remedies include the declaration of discrimination, a prohibiting order and an order for the removal of discrimination, publication of the judgment in the media and compensation of damages. Each remedy can be requested individually or in combination with others.

On the other hand, victims can also raise the question of discrimination in proceedings based on a legal action that does not include the statement of a discriminatory claim. In these “regular” civil action proceedings, the issue of discrimination can be raised as an ancillary pleading. Consequently, the court must deal with the raised issue of discrimination. It must take a position that will affect its final ruling. However, the ruling of the Court (the dispositive part of the judgment) will not necessarily include the Court’s decision on discrimination.

There have been only few antidiscrimination proceedings falling within the scope of the Employment Directive 2000/78/EC. In *Krešić v FOI* (see Annex I) the plaintiff successfully sued the Faculty of Organisation and Information for discrimination and harassment on the grounds of sexual orientation. So far this has been the most famous case related to sexual orientation discrimination in employment. In line of “football” cases – *Zagreb Pride and others v Marković; Kontra and Iskorak v Mamić* - the plaintiffs sued prominent officials of the Croatian Football Association (CFA) for homophobic statements expressed during their interviews with various media. The plaintiffs argued that the statements constituted harassment on the ground of sexual orientation and facilitated hostile environment for homosexuals who were interested in football career in Croatia. In *Zagreb Pride and others v Marković* the Supreme Court found that the respondent was responsible for facilitating homophobic hostile environment in Croatian football, especially since he was the President of the CFA at the time. In *Kontra and Iskorak v Mamić* the Zagreb County Court (first instance court) held that the respondent was not responsible for sexual harassment since he was expressing his personal opinion and was not acting as an official of the CFA. The plaintiffs filed the complaint with the Supreme Court who has not issued the final decision yet.

All cases referred above were brought to Courts primarily due to the efforts and support of the LGBT NGOs. Without them it is highly doubtful whether there would be any sexual orientation discrimination case-law in Croatia. The court proceedings and consequent decisions share few common characteristics. First, all courts tended to insist on a very extensive list of witnesses and

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<sup>26</sup> Croatia, Sex Equality Act (*Zakon o ravnopravnosti spolova*) (2008) Official Gazette (*Narodne novine*) 82/08, available at [http://narodne-novine.nn.hr/clanci/sluzbeni/2008\\_07\\_82\\_2663.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2008_07_82_2663.html), Art 23.

<sup>27</sup> Croatia, Sex Equality Act (*Zakon o ravnopravnosti spolova*) (2008) Official Gazette (*Narodne novine*) 82/08, available at [http://narodne-novine.nn.hr/clanci/sluzbeni/2008\\_07\\_82\\_2663.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2008_07_82_2663.html), Art 23.

<sup>28</sup> Croatia, Anti-Discrimination Act (*Zakon o suzbijanju diskriminacije*) (2008) Official Gazette (*Narodne novine*) 85/08, 112/12 available at <http://narodne-novine.nn.hr/clanci/sluzbeni/340327.html>, [http://narodne-novine.nn.hr/clanci/sluzbeni/2012\\_10\\_112\\_2430.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2012_10_112_2430.html), Art 24.

favoured a very elaborate description of facts and circumstances even though their relevance for the merit of the claim was not particularly clear. Such extensive approach not only contributes to the length of the proceedings, it also suggests that the courts may have difficulties understanding the notion of discrimination. Second, the courts addressed the burden of proof merely in formal terms. Their decisions cite the burden of proof provisions. However, the manner in which this guarantee was employed in the court's reasoning was not elaborated.

In addition to these examples of litigation there have been no other known instances of sexual orientation discrimination in employment.

Both the SEA and the ADA prohibit all forms of discrimination on grounds of sexual orientation in all areas of social life. The only area excluded from the scope of the prohibition relates exclusively to private relations among citizens. This is one of the exemplary features of the Croatian anti-discrimination system.

The SEA (Art 19) established the Office of the Ombudsperson for Gender Equality as an independent equality body responsible for monitoring and facilitating enforcement of the anti-discrimination guarantees in the area of gender equality and LGBT equality. The Ombudsperson was established primarily as a gender equality body. However, since the SEA (Art 5) defines discrimination on grounds of sexual orientation as a category of sex discrimination, the body has also exercised its rather wide scope of powers in this area.

The Ombudsperson is elected by the parliament with a mandate of eight years. The independence of the body is provided by the SEA by allowing parliament to dismiss the Ombudsperson for a very limited list of reasons. The parliament also appoints the Deputy Ombudsperson for Gender Equality. A particularity of the deputy position is that the person elected for this position must belong to a different sex than the Ombudsperson.

The powers of the Ombudsperson are rather wide and diverse. The Ombudsperson is responsible for monitoring enforcement of the ADA. She reports her findings and observations to parliament on a yearly basis. In addition, the Ombudsperson has the power to investigate individual complaints and render decisions on discrimination. The Ombudsperson can also offer legal advice to citizens if she believes that they have been victims of discriminatory treatment. Decisions of the Ombudsperson have authority of binding decision although the Ombudsperson does not have access to classic sanctions to enforce the compliance. To ensure enforcement the Ombudsperson can require relevant state inspectorate to probe practices of the perpetrator or initiate judicial proceedings aiming to confirm her findings.

The ADA extended the scope of power of the Ombudsperson in a particular manner. It provided the Ombudsperson with the competence to intervene in anti-discrimination judicial proceedings in order to support the position of the victim of discrimination. Moreover, the ADA provides the Ombudsperson with the power to institute judicial proceedings representing the interest of victims of discrimination even though the victims have decided not to participate actively or are unidentified (Article 24 of ADA). The proceedings have become known as joint legal action.<sup>29</sup> Although designed with the concept of class action in mind, there are significant differences between the two types of proceedings.

Although the prohibition of discrimination on grounds of sexual orientation has been part of the Croatian legal order since 2003, the increase in the discrimination case law in civil-law areas such as employment or education is a relatively recent development. However, the number of cases

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<sup>29</sup> Croatia, Anti-Discrimination Act (*Zakon o suzbijanju diskriminacije*) (2008) Official Gazette (*Narodne novine*) 85/08, 112/12 available at <http://narodne-novine.nn.hr/clanci/sluzbeni/340327.html>, [http://narodne-novine.nn.hr/clanci/sluzbeni/2012\\_10\\_112\\_2430.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2012_10_112_2430.html). The unofficial English translation is available at <http://ombudsman.hr/index.php/en/documents-3/legislation/finish/16-legislation/40-the-anti-discrimination-act>.

related to discrimination on grounds of sexual orientation is not high. Nevertheless, these cases are highly visible and relevant for the real-life enforcement of Croatian anti-discrimination law in general. It can reasonably be argued that sexual orientation discrimination cases have been the main driving force for the development of anti-discrimination law so far.

Article 9/2 of the Employment Directive 2000/78/EC was implemented through the ADA, allowing all public or private organisations with a mission to promote the principle of equality to: 1) intervene in judicial proceedings on the side of a plaintiff (Art 21); or 2) institute judicial proceedings representing the interest of victims of discrimination even though the victims decided not to participate actively or are not know (Art 24). The ADA requires explicit approval of intervention from the plaintiff, suggesting in this way that courts should be favourable to granting such intervention requests once approval is acquired. Yet, the reality has been rather challenging for the LGBT NGOs which filed such intervention requests. A significant number of courts refused to grant NGOs' intervention without a statement of reasons. In case *Kontra and Iskorak v. Primary School Bartol Kašić* the court refused an intervention to two NGOs simply because their Statutes of incorporation did not include a provision explicitly stating that combating discrimination is one of their goals. The court never tried to establish whether these NGOs actually provide support to victims of discrimination in their actual everyday practice. Similar difficulties have been encountered in the *Kontra and Iskorak v. Zdravko Mamić* proceedings and most recently in *Tomašić v. Bogdan* proceedings.

In principle, LGBT NGOs have been very keen to use both of the described possibilities provided by the ADA. So far, all judicial proceedings related to sexual orientation discrimination have been initiated either by LGBT NGOs or with their legal support to the plaintiff. Without their efforts there it is doubtful that there would be sexual discrimination case-law in Croatia. In theory, any NGO providing support to victims of discrimination or promoting equality in some other way has a legal ability to intervene in antidiscrimination proceedings (Art 21 ADA). Consequently, it is not possible to determine the precise number of NGOs which could act in that capacity. However, their ability is tightly related to scarce financial resources. Both the position of intervener in judicial proceedings and the initiation of participation in associated complaints proceedings require them to assume the role of active participant in judicial proceedings. Moreover, they are provided with all the rights and obligations of a party in the proceedings. Consequently, to use these options effectively they need to have professional legal services. The inability to use EU funds for legal services, coupled with the fact that the majority of other outside funders do not offer such support, has been a significant constraint on the ability of LGBT NGOs to use these two legal instruments.

At the same time, it has to be particularly stressed that the majority of significant cases concerning discrimination on the grounds of sexual orientation have been initiated by LGBT NGOs. Their contribution to the development of Croatian case law has been invaluable. In this respect, the instruments of intervention or initiation of associated claims proceedings have appeared to be a very important development.

## B. Freedom of movement

Free movement of EU LGBT citizens is an area of law where Croatia has clearly failed to properly implement the EU *acquis*.

Free movement of EU LGBT citizens as individuals is provided for by the Croatian legal order and there have been no reports suggesting that EU citizens have been discriminated against due to their sexual orientation when moving as workers or entrepreneurs. The Aliens Act (*Zakon o strancima*)<sup>30</sup> (Art 153) explicitly provides that citizens of the European Economic Area (EEA) have the same free movement rights as Croatian citizens for the purposes of the Treaty on Functioning of the European Union (TFEU). Accordingly, a national of an EEA Member State may enter Croatia without a visa or without an approval of stay. A national of an EEA Member State intending to stay in the Republic of Croatia for a period over three months must register the temporary stay with the competent police administration or police station based on the place of stay at the latest within eight days of the expiration of the three months of stay.

However, a problem arises if EU LGBT citizens decide to move with their families. The Aliens Act (Art 153) provides that family members of an EEA national legally residing in Croatia have the same rights as Croatian citizens within the legal framework established by the TFEU regardless of their nationality. The Aliens Act (Art 56) defines the term “close family member“ for the purposes of the Act by referring to married partners, civil union partners and parents or adopted parents of minors. The provision also allows - in exceptional cases - for the term “close family member” to include other relatives if family reunification is required due to special personal or important humanitarian reasons. At the same time, the Act (Art 162) excludes same-sex couples from the definition of family by referring to the definition of civil union provided in the Family Act.<sup>31</sup> True, the Aliens Act does not provide the same reference for the notion of marriage, leaving it possible for same-sex marriages legally entered into in other EU Member States to be recognised as family units for the purposes of free movement. However, due to highly formalistic legal culture characteristic for Croatian administrative bodies, it is highly unlikely that the responsible administrative bodies would accept such an interpretation of the Aliens Act. It is more likely that they would insist on the definition of marriage provided in the Family Act and, more recently, also in the Croatian Constitution following a referendum on the definition of marriage held in December 2013. As far as civil unions are concerned, although the Croatian legal order recognizes same-sex partnerships, the Aliens Act (Art 56) explicitly excludes homosexual couples from the scope of the term “civil union”.

Consequently, EU same-sex couples are forced to rely directly on the 2004/38 Directive in an administrative procedure before the Ministry of the Interior. On account of well-known problems related to the Directive’s provisions related to their application to same-sex families, this is a rather daunting task. So far, no actual cases involving EU same-sex families have been reported. At the same time, however, Croatia has been a Member State only since 1 July 2013. Although the provision has not been challenged before courts it should be revoked through the planned Same Sex Partnership Act that is in legislative procedure at the moment.

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<sup>30</sup> Croatia, the Aliens Act (*Zakon o strancima*) (2011) Official Gazette (*Narodne novine*) Nos. 130/11 and 74/13, available at [http://narodne-novine.nn.hr/clanci/sluzbeni/2011\\_11\\_130\\_2600.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2011_11_130_2600.html) and [http://narodne-novine.nn.hr/clanci/sluzbeni/2013\\_06\\_74\\_1475.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2013_06_74_1475.html).

An unofficial English translation without the 2013 amendments is available at: [www.mup.hr/UserDocsImages/Dokumenti/stranci/2013/Zakon\\_o\\_strancima\\_2011.\\_engl.pdf](http://www.mup.hr/UserDocsImages/Dokumenti/stranci/2013/Zakon_o_strancima_2011._engl.pdf).

<sup>31</sup> Croatia, Family Act (*Obiteljski zakon*) (2003) Official Gazette (*Narodne novine*) 116/2003. Available at [http://narodne-novine.nn.hr/clanci/sluzbeni/2003\\_07\\_116\\_1583.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2003_07_116_1583.html). Art 3 of the Family Act provides that “provisions of this Act regulating the effects of civil union shall be applied to a relationship between an unmarried woman and an unmarried man which lasts at least three years, and to a shorter relationship if a child has been born into the relationship.”

The described situation is potentially exacerbated if children are involved. Due to Art 56 of the Aliens Act children of EU LGBT citizens, both biological and adopted, face no legal obstacles to free movement if one of their parents moves as an individual.

However, those same-sex families with children in which one partner does not have formally recognised parental authority over the child of a partner are likely to face significant barriers to free movement. In such cases, although so far there have been no actual cases to confirm the assumption, it is highly likely that children in families with this structure will face significant barriers to their free movement right due to the already cited implementation failure.

The legal situation of third-country national LGBT partners of EU citizens is similar to the situation of EU national LGBT partners of EU citizens moving as workers or entrepreneurs.

The Aliens Act (Art 56) excludes same-sex couple from the definition of family for the purposes of granting residence permits for the purposes of family reunification. Consequently, just like EU citizens, same-sex partners who are not EU nationals cannot hope to reside legally as a family in Croatia. They need to acquire a residence permit on some ground other than family reunification, or be separated. Obviously, EU LGBT partners have more room for manoeuvre due to the principle of supremacy and the indirect effect of EU Directives and Treaty provisions. However, as noted, the limitations of this approach in the context of same-sex families are well-known.

Due to Art 56 of the Aliens Act children of non-EU LGBT nationals, both biological and adopted, face no legal obstacles to free movement if one of their parents is moving as an individual. The Aliens Act gives children of non-EU nationals residing legally in Croatia a clear path to acquire a residence permit for the purposes of family reunification. However, just as in the case of EU citizens, if there is no formal proof of parental authority over a child, this path will not be available.

The Croatian legal order recognises same-sex partnerships. However, they are clearly not equalised with marriage. Moreover, at the moment they are provided with a much narrower scope of rights compared to heterosexual civil unions as defined by the Family Act. Consequently, it is not clear to what extent same-sex partnerships are in a position to rely on Article 2/2/b of the Directive. At the same time, as it follows from the Directive, access to free movement rights of both heterosexual and same-sex civil unions depends primarily on the host Member State. In that respect, it is difficult to provide a full answer to this question, even from a purely formal legal perspective. Further, the lack of empirical data concerning same-sex couples involving Croatian citizens – with or without children – moving to other Member States makes it difficult to provide a more comprehensive social insight into the issue.

## C. Asylum and subsidiary protection

The Asylum Act (*Zakon o azilu*)<sup>32</sup> includes the persecution of LGBT as one of the grounds for asylum or refugee or subsidiary protection. In addition to listing sexual orientation as specific ground, the Act (Art 2) explicitly provides that personal characteristics related to one's sex or gender identity should be taken into consideration when interpreting the general term "persecution of a particular group based on a common characteristic". At the same time, the Act also provides that personal characteristics related to one's sex or gender identity are not *per se* a ground for asylum or refugee or subsidiary protection. Accordingly, sexual orientation and transgender identity are grounds for granting asylum or refugee or subsidiary protection if they constitute a ground for persecution of the person in their home state.

The Asylum Act provides that couples in a stable relationship will be considered family members if capable of proving the constancy of their union by means, for example, of a common address where they have resided for a period of three years. Although the Asylum Act failed to provide for this explicitly, the definition allows same-sex partners to be treated as family members for the purposes of granting asylum or refugee and subsidiary protection. However, the Act regulates the issue on family reunification by referring to the Aliens Act. As noted above, the Aliens Act (Art 56) explicitly excludes same-sex couples from the definition of family for the purposes of granting a residence permit facilitating family reunification. The conflict between the two acts opens up an interpretative possibility for the Ministry of the Interior to refuse to grant a residence permit to the same-sex partner of a person enjoying asylum or refugee or subsidiary protection by invoking the Aliens Act.

Due to Art 56 of the Aliens Act, the fact that the Croatian legal order recognizes same-sex partnerships is irrelevant for the purposes of free movement. Moreover, the Same-sex Partnership Act failed to define same-sex partnerships as a form of family unit.

As explained in greater detail below, the proposal of the Lifelong Partnership Act (*Zakon o životnom partnerstvu*)<sup>33</sup> that is before parliament at the moment will eliminate the described gap and secure the possibility for the reunification of same-sex families. The proposal explicitly provides that registered same-sex partnerships and same-sex civil unions constitute a family for the purposes of free movement and granting residence permit for the purpose of family reunification.

There is no information about the use of phallometry in Croatia (a degrading treatment reportedly used in some countries during the asylum procedure to test the physical reaction of asylum seekers who claim to be homosexual to heterosexual erotic material).

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<sup>32</sup> The Asylum Act (*Zakon o azilu*) (2007) Official Gazette (*Narodne novine*) 79/07, 88/10, 143/13 available at: [http://narodne-novine.nn.hr/clanci/sluzbeni/2007\\_07\\_79\\_2474.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2007_07_79_2474.html), [http://narodne-novine.nn.hr/clanci/sluzbeni/2010\\_07\\_88\\_2462.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2010_07_88_2462.html) and [http://narodne-novine.nn.hr/clanci/sluzbeni/2013\\_12\\_143\\_3067.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2013_12_143_3067.html). An unofficial English translation is available at: [www.vsrh.hr/CustomPages/Static/HRV/Files/Legislation\\_\\_Law-Asylum.pdf](http://www.vsrh.hr/CustomPages/Static/HRV/Files/Legislation__Law-Asylum.pdf).

<sup>33</sup> Croatia, Proposal of the Lifelong Partnership Act (*Prijedlog Zakona o životnom partnerstvu*) (2013) available at: [www.sabor.hr/fgs.axd?id=26304](http://www.sabor.hr/fgs.axd?id=26304).

## **D. Family reunification**

The Aliens Act (Art 55) allows family members of Croatian nationals, foreign citizens with permanent residence, and foreign citizens with temporary residence or foreigners under asylum, refugee or subsidiary protection to ask for a residence permit for the purpose of family reunification. The provision applies to EU citizens only to the extent that they are residing in Croatia outside the TFEU free movement framework. If residing in Croatia within the TFEU framework, their family members can move and reside freely along them.

At the same time, however, the Act explicitly excludes same-sex couples from using both of these options, regardless of their nationality.

The explicit exclusion of same-sex couples constitutes a clear discriminatory barrier to free movement of same-sex partners. Consequently, same sex couples, where one of the partners is an EU citizen, are forced to rely directly on the 2004/38 Directive. Nevertheless, due to well-known problems related to the Directive's provisions relating to its application to same-sex families, this is a rather daunting task. So far, no actual cases involving such a situation have been reported. At the same time, it should be taken into account that Croatia has been a Member State only since 1 July 2013.

The situation of non-EU same sex couples is even more daunting since they cannot rely on the principles of supremacy and direct effect of EU law.



## E. Freedom of assembly

Freedom of assembly is guaranteed by the Constitution of the Republic of Croatia (*Ustav Republike Hrvatske*)<sup>34</sup> (Art 42) as one of the fundamental civil rights. Consequently, freedom of assembly can be restricted only under legislatively prescribed conditions that are proportionate to the need to do so. These conditions are regulated in the Public Assembly Act (PAA) (*Zakon o javnom okupljanju*).<sup>35</sup> The PAA requires organisers of public gathering to register the event with the Ministry of the Interior at least five days prior to the event (Art 8, 9) and ensure a sufficient number of security staff to ensure the safety of the participants (Art 16). The ministry can prevent a properly registered event only under explicitly prescribed conditions related to the insufficient safety of the participants (Art 14). On the other hand, the ministry must provide enough police officers to prevent any hostile assaults on the event participants and to effectively protect the life, safety and property of citizens (Art 16).

Currently, two Pride events are organised on an annual basis in Croatia. The Zagreb Pride has been regularly organised for over a decade. The Split Pride is a younger event. It has been organised three times so far. It is also likely that Rijeka will organise its first Pride in 2014.

Both the Zagreb and Split Prides saw violent beginnings. Homophobic groups that were more or less organised presented a real threat to the life and safety of Pride participants during the first couple of Prides. None of the “demonstrations” against any of the Pride events was registered with the police. Violence was particularly visible during the first Split Pride organised in 2011. That year, homophobic violence erupted to such an extent that the participants had to be evacuated. At the first Zagreb Pride, several years earlier, homophobic groups even tried to attack the parade with combustible liquid mixtures.

Police failed to ensure safety during these first events. However, in the years that followed the police demonstrated significantly better organisation and preparedness. Accordingly, the Zagreb Pride has developed into an event comparable to other Pride festivals across the EU. After a violent first event, the second and third years of the Split Pride were noticeably safer and more civilised events.

Political authorities responded to Pride events ambiguously. The Zagreb Pride has enjoyed formal support from both national and local governmental authorities since the beginning. At the same time, the first couple of events saw significant problems with safety conditions, suggesting that there had been only token support. Once the Zagreb Pride proved its sustainability, support from national and local authorities became sturdier.

The Split Pride struggled with a lack of support from local authorities in 2011 and 2012. Local government was the main obstacle to the smooth organisation of the event, since it tried to move it from the most prominent part of the city. In fact, local authorities attempted to change the route of the parade that had been approved by the Ministry of the Interior, and so acted outside their local competences. Moreover, the authorities refused to provide access to electricity at the event’s central place, trying to limit the ability of the organisers to address the participants and implement their public programme. Consequently, the Ombudsperson for Gender Equality issued several public

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<sup>34</sup> Croatia, Constitution of the Republic of Croatia (*Ustav Republike Hrvatske*) (1990) Official Gazette (*Narodne novine*) 56/90, 135/97, 8/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, available at: [http://narodne-novine.nn.hr/clanci/sluzbeni/2010\\_07\\_85\\_2422.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2010_07_85_2422.html).

<sup>35</sup>Croatia, Public Assembly Act (*Zakon o javnom okupljanju*) (1999) *Narodne novine* 128/99, 90/05, 139/05, 150/05, 82/11, 78/12, available at: [http://narodne-novine.nn.hr/clanci/sluzbeni/1999\\_11\\_128\\_2020.html](http://narodne-novine.nn.hr/clanci/sluzbeni/1999_11_128_2020.html), [http://narodne-novine.nn.hr/clanci/sluzbeni/2005\\_07\\_90\\_1773.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2005_07_90_1773.html), [http://narodne-novine.nn.hr/clanci/sluzbeni/2005\\_12\\_150\\_2904.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2005_12_150_2904.html) and [http://narodne-novine.nn.hr/clanci/sluzbeni/2012\\_07\\_78\\_1835.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2012_07_78_1835.html).

warnings to the Split authorities and asked the ministry to ensure the safety of the participants on the original parade route.<sup>36</sup>

The publically stated homophobic attitudes of the city major contributed to inciting hostile conditions for the Pride. Due to the eruption of violence during the 2011 Pride, the national government decided to show clear support for the 2012 Split Pride. Accordingly, a significant number of ministers participated in the parade. The local government in Split changed in 2013 and the new mayor showed a much more welcoming attitude to the event.

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<sup>36</sup> Croatia, Ombudswoman for Gender Equality (*Pravobraniteljica za ravnopravnost spolova*) (2012) Public statement regarding change of route of the Split Pride (*Javno priopćenje povodom promjene rute Split Pride-a*). Available at: [www.prs.hr/index.php/priopcenja-prs/223-javno-priopcenje](http://www.prs.hr/index.php/priopcenja-prs/223-javno-priopcenje).

## F. Hate speech and Criminal law

The Criminal Code (*Kazneni zakon*)<sup>37</sup> (Art 87/12) defines hate crime as a criminal act motivated by one of the grounds specifically listed in the Criminal Code, including sexual orientation or gender identity. Such prejudicial motivation is defined as an aggravating circumstance for any criminal act. In addition, the Criminal Code explicitly prescribes explicitly heightened punishment for some specific criminal acts if motivated to incite hate.

Furthermore, the Criminal Code (Art 325) provides that any public incitement invoking violence or hate against some individual or group of citizens due to their sexual orientation or gender identity is punishable by up to three years of imprisonment.

However, there have been significant problems in enforcing the provisions on hate crime in practice, including the prohibition of hate speech. Relevant statistics suggest that although the police may be determined to take legal steps against individuals who engage in hate speech activities, the Office of the State Attorney General frequently fails to use its competence to institute criminal judicial proceedings, even though the police may have apprehended the perpetrator and passed prosecution on to the State Attorney General. Faced with such a practice of the State Attorney General, the police are inclined to use their independent prosecuting powers to prosecute hate speech before misdemeanour courts, (re)classifying it as a misdemeanour against public order instead of hate speech.

These enforcement problems not only concern hate speech crimes but hate crimes in general, especially acts of violence that result in grave injuries.

Although the pragmatism of the police can be understood to some extent, the described practice of reclassifying criminal acts motivated by hate against LGBT citizens into misdemeanours against public order is still highly undesirable. It diminishes the perception of the seriousness of such acts in the public eye and even allows individual officers to hide their prejudices behind structural failures caused by the lack of an appropriate response from the Office of the State Attorney General.

The Sex Equality Act and the Anti-Discrimination Act do not include any specific provision regulating speech insulting LGBT citizens that cannot be qualified as hate speech. However, in practice there have been frequent attempts to use the harassment provisions implemented from EU Directives as a mean of opposing public speech considered offensive to the dignity of LGBT citizens (especially, but not exclusively, speech in the media). This strategy has been favoured by LGBT NGOs in particular. Although it is far from clear that such an expansion of harassment protection is desirable due to the fundamental status of freedom of speech protection, the open-ended character of the harassment provisions does not prevent (or require) such a legal interpretation.

If the strategy of using harassment provisions to outlaw speech considered offensive to LGBT citizens proves effective in practice, this would have criminal and civil implications. The SEA and the ADA define harassment not only as a civil law violation but also as a misdemeanour punishable by a fine. Consequently, if accepted as a form of harassment, offensive speech could be prosecuted in misdemeanour proceedings and adjudicated as a civil law violation requiring the compensation of damages.

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<sup>37</sup> Croatia, the Criminal Code (*Kazneni zakon*) (2011) Official Gazette (*Narodne novine*) 125/11, 144/12 available at: [http://narodne-novine.nn.hr/clanci/sluzbeni/2011\\_11\\_125\\_2498.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2011_11_125_2498.html) and [http://narodne-novine.nn.hr/clanci/sluzbeni/2012\\_12\\_144\\_3076.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2012_12_144_3076.html).

At this point, the final outcome of these attempts to use harassment provisions in practice in order to circumvent speech offensive to LGBT citizens is far from clear. It would not be surprising if the Constitutional Court had to step in and resolve profound dilemmas raised by this legal strategy.

## G. Transgender issues

Neither the Sex Equality Act nor the Anti-Discrimination Act includes an explicit provision prohibiting discrimination against transgender citizens. However, relying on the case law of the Court of Justice of the EU and the European Court for Human Rights, the Ombudsperson for Gender Equality has developed a doctrine under which transgender discrimination constitutes a type of sex discrimination prohibited by the Sex Equality Act. So far, this doctrine has not been either explicitly confirmed or rejected by the courts. However, having in mind the authority of the Ombudsperson as an independent equality body, the relevant case law of the CJEU and the ECtHR as well as the provisions of the Criminal Code discussed below, it is unlikely that civil courts will reject the doctrine.

This is particularly the case since, as noted above, the Criminal Code explicitly lists gender identity as one of the grounds for the prohibition of hate crime. Moreover, the Criminal Code explicitly lists gender identity as a ground of the criminal act of discrimination punishable by up to three years of imprisonment (Art 125).<sup>38</sup>

The Croatian legal order does not include a specific law regulation of transgender issues and relations involving transgender citizens. However, all provision prohibiting discrimination on grounds of sexual orientation allow textual interpretation including unfavourable treatment due to gender or sex transition or change. This is particularly so in relation to labour market participation and social benefits related to employment due to the case-law of the CJEU. There have been no judicial decisions confirming this interpretation so far.

Consequently, it remains unclear what would be the position of families in which one partner was transgendered. Due to highly formalistic culture characteristic for Croatian administrative bodies it is likely that official documents would be of key importance. Accordingly, if official documents provide that partners are of different sex, even if that was not the case due to transition, they would be treated as heterosexual couples. Similarly, if the official documents provided that partners were of different sex, they would be treated as heterosexual family regardless of gender or sex transition.

The Act on Personal Names (*Zakon o osobnom imenu*)<sup>39</sup> adopted in 2013 allows citizens to autonomously choose their first and/or last name. No approval is required by any administrative body (Art 6), which was the case in the past. Moreover, the name-change procedure is protected by the privacy of information provisions, which was not the case in the past. Consequently, public notary offices under the Ministry of Administration have the duty to change the name of a particular person upon his or her request on the birth certificate (Art 9), which will automatically allow changes on all other personal documents. One of the key motives for such a legislative reform was the protection of transgender citizens.

Change of sex/gender is regulated by the 2013 State Registry Act (*Zakon o državnim maticama*).<sup>40</sup> The act provides that public notary offices will change information related to a person's sex stated on the birth certificate if the competent authority provides an opinion that the person has changed his or her sex or is living in a different gender identity (Art 9a). Although the provision is not an example of the clearest norm, it is still a significant improvement of the legal position of transgender citizens.

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<sup>38</sup> Croatia, the Criminal Code (*Kazneni zakon*) (2011) Official Gazette (*Narodne novine*) 125/11, 144/12 available at: [http://narodne-novine.nn.hr/clanci/sluzbeni/2011\\_11\\_125\\_2498.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2011_11_125_2498.html) and [http://narodne-novine.nn.hr/clanci/sluzbeni/2012\\_12\\_144\\_3076.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2012_12_144_3076.html).

<sup>39</sup> Croatia, The Act on Personal Names (*Zakon o osobnom imenu*) (2012) Official Gazette (*Narodne novine*) 118/12, available at: [http://narodne-novine.nn.hr/clanci/sluzbeni/2012\\_10\\_118\\_2550.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2012_10_118_2550.html)

<sup>40</sup> Croatia, State registry Act (*Zakon o državnim maticama*) (1993) Official Gazette (*Narodne novine*) 96/93, 76/13. Official text is available at <http://hidra.srce.hr/arhiva/263/18315/www.nn.hr/clanci/sluzbeno/1993/1878.htm> and [http://hidra.srce.hr/arhiva/263/104255/narodne-novine.nn.hr/clanci/sluzbeni/2013\\_06\\_76\\_1525.html](http://hidra.srce.hr/arhiva/263/104255/narodne-novine.nn.hr/clanci/sluzbeni/2013_06_76_1525.html).

The provision evidently provides that the change of the sex marker on a birth certificate, being of crucial importance for the change of other personal documents, is possible even if a person did not undergo any invasive medical treatment, especially a surgical procedure. It is sufficient that a person lives in a gender identity different from the one associated with his or her sex marked on the birth certificate.

At the same time, however, in order to change their sex marker on a birth certificate, trans citizens must acquire the expert opinion of a competent body. The 2013 amendment of the Health Care Act (*Zakon o zdravstvenoj zaštiti*) provides that competence for such expert opinions lies with the National Health Council (Art 115).<sup>41</sup>

Before the 2013 amendments, the Health Care Act did not provide the Council with explicit competence to provide such expert opinions. However, the Ordinance of the Ministry of Health on Assembling Medical Documentation for the Purposes of Sex Change<sup>42</sup> identified the National Health Council as a fit authority for issuing expert opinions despite the fact that not a single member of the Council was a medical expert on the issue. Consequently, the Council refused to provide any opinions required by trans citizens, effectively eliminating any possibility for a change of sex markers on birth certificates. This legal gap allowed some members of the Council to shelter their transphobic attitudes behind formalistic arguments.

The 2013 amendment of the Health Care Act eliminated the gap and provided the Council with an explicit mandate. Moreover, the State Registry Act explicitly provided the Ministry of Health with the obligation to enact a new Ordinance regulating the issuing of expert opinions on sex change. The Ministry of Health established a working group for that purpose consisting of members of the medical profession, representatives of LGBT NGOs, members of the legal profession, representatives of the various Ombud offices and ministry representatives. Progress has been extremely slow so far. Apparently, the main problem is the lack of willingness among medical experts in the working group to accept that a change of sex is possible without surgical procedure.

At the same time, individual requests for a change of sex marker on a birth certificate are on hold due to the fear of public notaries that they lack competence to decide whether the change of sex occurred in a particular case without a clear medical diagnosis. This position of public notaries has frequently been misrepresented as their unwillingness to recognise the change without surgical treatment. This is not correct.

Public notaries would find no legal reason to refuse to convert the sex statement on a birth certificate if provided with an official medical document providing a clear diagnosis of a sex change. However, most of the medical documentation provided by individuals requiring a change of their birth certificate provides merely a medical declaration and description of completed psychological treatment, hormonal therapy or minor surgical interventions lacking a clear diagnosis. Apparently, it is difficult to acquire medical documentation from Croatian medical experts with a clear medical diagnosis of a sex change without full surgical treatment. At the same time, without clear medical diagnosis, public notaries feel incompetent to render administrative decisions related to sex change.

Administrative courts apparently feel the same incompetence. There have been attempts to force public notaries to act without a clear medical diagnosis through appeals to administrative courts. However, administrative courts have so far avoided using the option of ordering independent

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<sup>41</sup> Croatia, Regulation on the Amendments of Health Care Act (*Uredba o izmjenama i dopunama Zakona o zdravstvenoj zaštiti*) (2013) Official Gazette (*Narodne novine*) 159/13, Art 115. Available at: [http://narodne-novine.nn.hr/clanci/sluzbeni/2013\\_12\\_159\\_3332.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2013_12_159_3332.html).

<sup>42</sup> Croatia, Ordinance of the Ministry of Health on Assembling Medical Documentation for the Purposes of Sex Change (*Pravilnik o načinu prikupljanja medicinske dokumentacije o promjeni spola*) (2011) Official Gazette (*Narodne novine*) 121/11. Available at [http://narodne-novine.nn.hr/clanci/sluzbeni/2011\\_10\\_121\\_2418.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2011_10_121_2418.html).

medical experts to devise an expert report as a means of resolving the issue. Rather, they have pronounced public notary decisions refusing the change of a sex marker on birth certificates due to the absence of a clear medical diagnosis as illegal for formalist procedural reasons and have ordered the administrative public notary procedure to commence from the start.

As a result of these structural barriers and the lack of capacity of key actors in the legal process to assume responsibility for decisions concerning the fundamental rights of trans citizens, the latter find themselves in limbo with no way out.

In addition to legal challenges, trans citizens also face other important barriers. Most importantly, they find very little support for their specific needs from the Croatian health system. First, the Croatian system of medical services does not include an institution or organised unit specialised in the needs of trans citizens. Second, it is not clear whether there are enough or any medical experts capable of performing complex surgical treatments related to sex change. Particularly, it is unclear if there were any surgical and medical interventions performed on trans or intersex people in Croatia. There is conflicting information in that respect. On the one side, there is information that medical surgeries reconstructing sexual organs of victims injured in war conflict were conducted in Croatia. On the other side, there is no information available that any medical clinic performed similar surgery for trans patients. Similarly, there is no information that there were any surgical and medical interventions performed on intersex individuals. Moreover, Croatian law does not explicitly regulate the question of consent for trans minors raising a question of the parent's capacity to engage in decisions related to the medical interventions related to the sex of a child.

Third, the Croatian system of health insurance does not include coverage for the specific medical services needed by trans citizens. For example, surgical treatments such as breast construction are considered a cosmetic procedure which is not covered by health insurance. There are indications that, faced with such structural discrimination of trans citizens by the Croatian health insurance system, a significant number of medical experts are reclassifying the medical services provided to trans individuals under other medical codes covered by insurance.

## H. Miscellaneous

One important development is currently in the legislative pipeline. At the time of writing the report, the government had adopted and sent for legislative procedure the Proposal of the Lifelong Partnership Act (LPA) (*Nacrt prijedloga zakona o životnom partnerstvu*).<sup>43</sup> Should the LPA retain the present content of the Proposal, the LPA would profoundly change the position of LGBT citizens and same-sex families in the Croatian legal order. In short, the act would equalise same-sex unions whose partners have entered into lifelong partnership with marriages in respect of all rights except for adoption. There would be two types of lifelong partnership. Registered lifelong partnership would be parallel to heterosexual marriage and it would be formed by an act of official registration in an administrative procedure parallel to that of concluding a marriage. Unregistered lifelong partnership would be parallel to that of heterosexual civil unions, meaning that it would be established through actual cohabitation of partners that would not be shorter than three years.

If adopted by parliament, the LPA will also fully implement the EU requirements related to same-sex families. Due to the LPA, a same-sex couple legally married in an EU Member State would be provided with the status of a married couple while residing in Croatia. Moreover, same-sex couples who have been granted legal recognition in the form of civil union, registered partnership, lifelong partnerships, etc., in an EU Member State which is considered equal to marriage in that state will enjoy the status equal to that of married couples while residing in Croatia.

Forms of legally recognised same-sex families that are not considered equal to marriages in the Member State granting legal recognition will be treated as equal to lifelong partners in Croatia. However, since the purpose of the LPA is to provide lifelong partners with the same level of rights as granted to married couples, except for adoption, their actual real-life status will be very similar if not the same.

Since the LPA would implement the mutual recognition approach to Directive 2004/38 and the free movement provisions of the Treaty, the same logic would apply to family relations between partners and their children.

There is no law in Croatia similar or comparable to the Lithuanian law on the protection of minors against the detrimental effects of public information.

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<sup>43</sup> Government of the Republic of Croatia (*Vlada Republike Hrvatske*), Proposal of the Lifelong Partnership Act (*Nacrt prijedloga zakona o životnom partnerstvu*), (2013), available at: <https://vlada.gov.hr/UserDocsImages//Sjednice/Arhiva//131.%20-%203.pdf>.



## I. Good practice

Two features of the Croatian system of anti-discrimination protection of LGBT citizens can be pointed out as possible noteworthy examples.

The first is its comprehensiveness. The Croatian legal order goes well beyond the scope of protection offered by EU law. Discrimination on grounds of sexual orientation is prohibited in all regulatory areas of social life, except for those involving personal relations among citizens.<sup>44,45</sup> Accordingly, LGBT citizens enjoy anti-discrimination legal protection in relation to health services and social benefits, education, market services such as living accommodation, sport and recreation, and in many more areas.

The second feature concerns the procedural institutes of intervention in judicial proceedings on behalf of a victim and the associated complaints judicial procedure.<sup>46</sup> These instruments have allowed LGBT NGOs to take a more active role in anti-discrimination proceedings and engage in what can be called strategic litigation. Moreover, these instruments have also allowed the institution of the Ombudsperson for Gender Equality to use its equality body authority and specialised expertise to provide courts with specific doctrinal insights facilitating effective decision-making. This alliance between various legal actors supported by the two procedural instruments is the key driver of the development of anti-discrimination case law in Croatia. Krešić case described in Annex I is a prominent example of such alliance for the purposes of strategic litigation. Accordingly, it would be highly desirable if both the EU institutions and the Croatian government recognised this benefit and offered more financial support to this aspect of activities of LGBT NGOs.

Croatian experience suggests that procedural instruments such as intervention and associated claims proceedings are essential for the development of case law in societies struggling with resilient homophobic and transphobic social attitudes and structural barriers. In such societies, it is highly unlikely that discriminated individuals would be willing to engage in costly and lengthy battles in the judicial system, which itself is possibly struggling with prejudice and stereotypical attitudes against LGBT citizens, without some institutional support. In that respect, the Croatian experience can be a good case study not only for the legal systems of the so called “western Balkan region” but also for many other legal systems in Central and Eastern Europe.

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<sup>44</sup> Croatia, Anti-Discrimination Act (*Zakon o suzbijanju diskriminacije*) (2008) Official Gazette (*Narodne novine*) 85/08, 112/12 available at <http://narodne-novine.nn.hr/clanci/sluzbeni/340327.html>, [http://narodne-novine.nn.hr/clanci/sluzbeni/2012\\_10\\_112\\_2430.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2012_10_112_2430.html).

The unofficial English translation is available at <http://ombudsman.hr/index.php/en/documents-3/legislation/finish/16-legislation/40-the-anti-discrimination-act>.

<sup>45</sup> Croatia, Sex Equality Act (*Zakon o ravnopravnosti spolova*) (2008) Official Gazette (*Narodne novine*) No. 82/08 available at [http://narodne-novine.nn.hr/clanci/sluzbeni/2008\\_07\\_82\\_2663.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2008_07_82_2663.html). The unofficial English translation is available at [www.ilo.org/dyn/natlex/docs/ELECTRONIC/83909/92965/F1671454996/HRV83909.pdf](http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/83909/92965/F1671454996/HRV83909.pdf).

<sup>46</sup> Croatia, Anti-Discrimination Act (*Zakon o suzbijanju diskriminacije*) (2008) Official Gazette (*Narodne novine*) 85/08, 112/12 available at <http://narodne-novine.nn.hr/clanci/sluzbeni/340327.html>, [http://narodne-novine.nn.hr/clanci/sluzbeni/2012\\_10\\_112\\_2430.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2012_10_112_2430.html).

The unofficial English translation is available at <http://ombudsman.hr/index.php/en/documents-3/legislation/finish/16-legislation/40-the-anti-discrimination-act>.

## J. Intersex

The legal position of intersex citizens in the Croatian legal order is not clear at the moment. Not a single legal act includes intersexuality as an explicit term. However, there is nothing preventing the development of legal doctrine similar to that developed by the Ombudsperson for Gender Equality in the context of transsexuality. Accordingly, it is likely that intersex discrimination would be treated as a type of sex discrimination. So far, no example of an individual complaint due to intersex discrimination is known. However, it is likely that unfavourable treatment on grounds of intersex would be treated as form of sex discrimination if a case of discrimination against transgender individual arises. Croatian courts would in such cases follow the “logic” of the P v S doctrine developed by the CJEU.

The issue of intersexuality is rather unfamiliar to the Croatian legal order in general. Consequently, intersex discrimination is not covered under national non-discrimination policies.

In light of the preceding remarks, it is not surprising that Croatian law does not allow children to remain without a gender marker/identification on their birth certificates. Article 9 of the State Registries Act (*Zakon o državnim maticama*)<sup>47</sup> stipulates that information on sex constitutes a part of the initial entry. Art 9 provides that person’s sex must be included in the mandatory notification of birth to the State Registry Office. Art 11 provides that the notification must be filled by the medical facility where a child was born. However, there is no provision regulating a situation involving intersex newborns. Consequently, “the decision” related to a child’s sex occurs in the medical facility. There is no information related to the role of parents in that decision. The State Registry Act (Art 36) provides for a possibility that some of the mandatory information that need to be reported stay “undetermined” due to vis maior or other important reasons. This would allow a situation where sex of intersex newborns would stay undetermined for some period of time. The law does not specify the duration of that period. However, since the law insist that registration of sex is mandatory the decision related to a child’s sex would be necessary at some point. The law does not allow that the sex marker in the registry remains undetermined.

Information on the surgical operation of intersex citizens is not available since there is no systemised collection of data related to medical support offered to intersex people. There is no information available that any medical clinic performed surgeries for intersex patients and there are no legal provisions regulating such interventions.

The Act on the Protection of Patients’ Rights (*Zakon o zaštiti prava pacijenata*)<sup>48</sup> explicitly provides that any medical treatment requires the informed consent of the patient. Medical professionals are under the strict duty to inform a patient of all implications of a particular treatment. If the person is a minor, informed consent must be provided by her or his legal representative, most likely parents. Consequently, fully informed consent is required for any medical intervention, especially surgeries. There are no any explicit reference made to a certain age of consent.

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<sup>47</sup> Croatia, State Registries Act (*Zakon o državnim maticama*) (1993) Official Gazette (*Narodne novine*) 96/93, 76/13, available at: [http://narodne-novine.nn.hr/clanci/sluzbeni/1993\\_10\\_96\\_1878.html](http://narodne-novine.nn.hr/clanci/sluzbeni/1993_10_96_1878.html), [http://narodne-novine.nn.hr/clanci/sluzbeni/2013\\_06\\_76\\_1525.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2013_06_76_1525.html).

<sup>48</sup> Croatia, Act on the Protection of Patients’ Rights (*Zakon o zaštiti prava pacijenata*) (2004) Official Gazette (*Narodne novine*) 169/04, 37/08. Available at <http://narodne-novine.nn.hr/clanci/sluzbeni/313593.html>, [http://narodne-novine.nn.hr/clanci/sluzbeni/2008\\_03\\_37\\_1267.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2008_03_37_1267.html).

# Annex 1 – Case law

## 1. Implementation of Employment Directive 2000/78/EC

Case title	P-3153/10 Kresic v. FOI
Decision date	12. 07. 2012.; 29. 08. 2013.
Reference details (type and title of court/body; in original language and English [official translation, if available])	Općinski sud u Varaždinu, prvi stupanj. Županijski sud u Varaždinu, drugi stupanj. [Varaždin Municipality Court, first instance; Varaždin County Court, second instance]
Key facts of the case (max. 500 chars)	The applicant was a lecturer at the Zagreb University Faculty of Informatics and claimed to have been a victim of demeaning comments made by two of his senior faculty colleagues related to his sexual orientation and occurred on several occasions. The applicant's lawyer filed a complaint with the Faculty administration. The Dean intervened and claimed that he warned the perpetrators about inappropriateness of their action in. Shortly after his lawyer approached the administration their efforts to further his case for a promotion with the University administration stopped.
Main reasoning/argumentation (max. 500 chars)	Both instance courts found the defendant responsible for discrimination on grounds of sexual orientation and victimization. The court found that FOI discriminated against the applicant by stopping ongoing efforts to secure new professorship position from the University. They found that such treatment was related to the fact that the applicant complained about harassment on grounds of sexual orientation, especially that he failed to keep these complaints "in the house". The court also found that FOI victimized the applicant by "blaming and shaming" him within the Faculty environment.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Direct discrimination on grounds of sexual orientation, sexual harassment, victimization.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The applicant asked for declaratory judgment and is deciding to start new proceedings for damages, especially since he claims that the victimization increased after the courts final judgement. In fact, the applicant left the Faculty of Organization and Informatics since his position became intolerable and the administration of the University of Zagreb, including the Chancellor, failed to provide any protection to the applicant against the behaviour of FOI administration.

Case title	Kresic – slander
Decision date	
Reference details (type and title of court/body; in original language and English [official translation, if available])	Općinski sud u Varaždinu – ispostava Ivanec [Varaždin Municipality Court – Ivanec Branchoffice]
Key facts of the case (max. 500 chars)	The plaintiff is one of two professors employed by the FOI who were found responsible for harassment of the defendant in the parallel proceeding Kresic v. FOI (see above). In this proceeding the plaintiff filed an action for compensation of damages due to pain and suffering caused by vilification. The plaintiff claimed that the defendant harmed his honour and public image by mentioning his name when talking to media about his case. The plaintiff believed that the defendant acted in bad faith because he did not harass him as claimed and in any case apologised to him once requested by the employer.
Main reasoning/argumentation (max. 500 chars)	The court found for the plaintiff. It held that the defendant did not have a right to talk publicly about the plaintiff and his actions towards him after the plaintiff apologised to him and the defendant accepted the apology. The court ignored the fact that a different judge of the same court found that the plaintiff engaged in the

	harassment of the defendant. It also held that the provision of the Sex Equality Act allowing victims of discrimination to use media in order to inform public about discrimination.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Victimisation, effective antidiscrimination protection, right of discrimination victims to address media, informing public about discrimination as liable.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The defendant was found responsible and ordered to compensate the plaintiff for pain and suffering. The court's reasoning restrains ability of discrimination victims to protect themselves by informing public about their experience. It also shields perpetrators by allowing them to avoid public condemnation if they offer even merely a formal apology. The decision has been appealed and it is before the second instance court.

Case title	PNZ 7/10-2 Zagreb Pride & others v. Marković
Decision date	02. 05. 2011.
Reference details (type and title of court/body; in original language and English [official translation, if available])	Županijski sud u Zagrebu; prvi stupanj [Zagreb County Court; first instance]
Key facts of the case (max. 500 chars)	The defendant was the President of the Croatian National Football Association. As such well-known figure in Croatian public. In November 2010 the defendant gave an interview for prominent daily newspaper where he explicitly stated that "as long as he is the President no homosexual person will play in the national team" and that "luckily, football is played by healthy people". Several LGBT NGOs decided to use the option of initiating associated claims action provided by the Suppression of Discrimination Act and sue the plaintiff for harassment on grounds of sexual orientation.
Main reasoning/argumentation (max. 500 chars)	The Court rejected the plaintiff's action and found for the defendant. It held that it was not disputed that the plaintiff gave the statements. The court also found that the statements reflected the actual practice and criteria used by the CFA. However, according to the court, the competence of criteria formation within the CFA did not belong to plaintiff but other bodies. In that respect the plaintiffs missed a passive legitimization. Moreover, the Court found that the plaintiff failed to demonstrate that the statements caused hostile environment as a necessary element of harassment.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The court implicitly accepted that homophobic speech in public media can constitute harassment on grounds of sexual orientation, which is likely to lead to the constitutional dispute about the freedom of expression. The court also made it very difficult for victims of discrimination to acquire judicial protection against organisations with decentralized distribution of decision-making competences.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The plaintiff was held not responsible for harassment.

Case title	Zagreb Pride & others v. Marković
Decision date	28. 02. 2012.
Reference details (type and title of court/body; in original language and English [official translation, if available])	Vrhovni sud Republike Hrvatske; drugi stupanj [Supreme Court of the Republic of Croatia]
Key facts of the case (max. 500 chars)	See the first instance decision PNZ 7/10-2 Zagreb Pride & others v. Marković of the Zagreb County Court.

Main reasoning/argumentation (max. 500 chars)	The Supreme Court overruled the first instance. It held that the defendant is a person of significant influence in Croatian sport and his statements ought to be evaluated in that context. It found that the homophobic statements produce particular real-life effects due to the defendant's particular influence in sport. They place people of homosexual orientation in unfavourable position as regards the access to opportunities in sport. This was sufficient to shift the burden of proof on the defendant who failed to show that his statements did not create hostile environment for homosexuals.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Homophobic public statements can create unequal access to valuable benefits and opportunities. Homophobic public statements violate dignity of homosexual citizens, which shifts the burden of proof on the defendant. Harassment includes homophobic speech in media.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The defendant was held responsible for discrimination and harassment on grounds of sexual orientation. The Court order the defendant to pay for the print of the judgment in the daily newspapers where he made the homophobic statements. The defendant was also banned from giving homophobic statements in media in the future.

## 2. Freedom of movement

No relevant case-law.

## 3. Asylum and subsidiary protection

Case title	Uganda applicant – Zagreb Administrative Court decision
Decision date	November 2012.
Reference details (type and title of court/body; in original language and English [official translation, if available])	Upravni sud u Zagrebu [Zagreb Administrative Court]
Key facts of the case (max. 500 chars)	The applicant requested the asylum protection due to fear of persecution because of sexual orientation. The Ministry of Interior refused the request arguing that the applicant's statement was not credible. The NGO who provided legal support to the applicant suspected that the translation service provided by the Ministry was insufficient. Consequently the applicant started administrative judicial proceedings. The administrative court found that the Ministry followed the regular procedure and reaffirmed the refusal
Main reasoning/argumentation (max. 500 chars)	The Court found no reason to believe that the translation service was insufficient. It did not order new independent translation. Once it established that the Ministry followed proscribed procedure it reaffirmed its decision.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The decision is example of the formalistic approach favoured by administrative courts. Administrative courts do not tend to question substance of decisions delivered by administrative bodies. Rather, they limit their scrutiny to procedural formalities.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The applicant's request for asylum was denied. He submitted a new request in 2013.

The description of the case was provided by Zagreb Pride in Marko Jurčić (ed.) *“RoziMegafon: od Zakona o suzbijanju diskriminacije do ustavne zabrane istospolnog braka - izvještaj Zagreb Pridea o stanju ljudskih prava LGBTIQ osoba u Republici Hrvatskoj 2010. – 2013”*.

## 4. Family reunification

Case title	D.P. lesbian family reunification request Decision 511-10-06/02-01-UP/1-1/10-2012
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Decision date	24. 02. 2012.
Reference details (type and title of court/body; in original language and English [official translation, if available])	Ministarstvo unutrašnjih poslova, Policijska uprava Sisačko-moslovačka [Ministry of Internal Affairs, Police administration Sisačko-moslovačka county]
Key facts of the case (max. 500 chars)	The applicant is a citizen of Bosnia and Herzegovina. She was in a relation with Croatian female citizen. The applicant admitted that they were not living together but frequently visited each other and stayed together for significant periods of time. The applicant stated that she was asking for a residence permit because she and her partner decided to establish a common household in Croatia.
Main reasoning/argumentation (max. 500 chars)	The Ministry refused to grant the residence permit. It held that the applicant was not a family member according to the Aliens Act.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The decision is interesting because the Ministry did not explicitly hold that same-sex couples cannot be granted residence permit for the purposes of family reunification. Rather the Ministry pointed out that the applicant and her partner did not constitute marriage according to Croatian law. More importantly, the Ministry also pointed out that the Same Sex Unions Act defined same sex unions as stabile relationships in which partners lived together for 3 years. The applicant and her partner failed to satisfy that requirement.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The fact that the Ministry was willing to take into account the Same Sex Unions Act suggests that family reunification is an option for same sex couples even to the Aliens Act excludes homosexual relationships from the scope of the term family.

## 5. Freedom of assembly

No relevant case-law.

## 6. Hate speech and Criminal law

Case title	Republic of Croatia v. M. Stojaković
Decision date	26. 09. 2008.
Reference details (type and title of court/body; in original language and English [official translation, if available])	Općinski sud u Velikoj Gorici [Velika Gorica Municipality Court]
Key facts of the case (max. 500 chars)	Defendant started a web blog where he frequently wrote about homosexuals in derogatory terms advocating their extermination and persecution. He even made public a name and a phone number of one member of one prominent LGBT NGO and invited readers to make his life “miserable”.
Main reasoning/argumentation (max. 500 chars)	The court found the defendant guilty of hate motivated discrimination and violation of values protected by international law.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Although the facts of the case clearly showed hate speech the court opted for another approach and held that the perpetrator was guilty of violation of criminal prohibition of discrimination.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The perpetrator was sentenced to 1 year in prison. However, his sentence was conditional and he was put on probation for 3 years.

## 7. Transgender issues

Case title	A.S. v. Ministry of Administration
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	PRS                      POV                      03-03/11-01                      available                      at <a href="http://www.prs.hr/attachments/article/97/Izvjesce_o_radu_za_2011_Pravobraniteljice_za_ravnopravnost_spolova.pdf">http://www.prs.hr/attachments/article/97/Izvjesce_o_radu_za_2011_Pravobraniteljice_za_ravnopravnost_spolova.pdf</a> (2011 Annual Report)
Decision date	
Reference details (type and title of court/body; in original language and English [official translation, if available])	Pravobraniteljica za ravnopravnost spolova [The Ombudsperson for Sex Equality]
Key facts of the case (max. 500 chars)	The applicant was a minor listed as girl in birth certificate. Since he was a young child he felt like a boy. With support of his parents he assumed male gender and started hormonal therapy. His medical documentation provided that he transformed to male sex. Approaching legal age the applicant wanted to change his sex marker in the birth certificate. The notary office denied his request because doubting that the medical documentation was incomplete without documentation showing sex operation. The applicant appealed to the Ministry of Administration, which confirmed the decision.
Main reasoning/argumentation (max. 500 chars)	The Ombudsperson found that the notary office and the Ministry of Administration discriminated the applicant by refusing to change his sex marker in the birth certificate. The Ombudsperson held that the medical documentation was sufficiently complete for the notary to conclude that the applicant successfully finished sex transition. She stressed that sex-operation cannot be a precondition for change of birth certificate since such so would be a violation of fundamental right of personal integrity.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Discrimination on grounds of gender identity falls within the scope of the Sex Equality Act and the prohibition of sex discrimination. Sex operation as a precondition of change of sex marker in a birth certificate constitutes discrimination on grounds of sex and it violates fundamental rights of an individual.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Ombudsperson required the Ministry to change the sex marker, which the Ministry refused arguing that it has no competence for such so without appropriate medical documentation. The Ombudsperson reported the Ministry to Parliament. The conflict initiated reforms of the Personal Name Act and the National Notary Act.

## 10. Intersex

No case-law exists.

## Annex 2 – Statistics

### 1. Implementation of Employment Directive 2000/78/EC

Formal systematically accounted statistics related to the work of the Ombudsperson are listed in Table 1. The statistics are available in the Ombudsperson's annual reports to the Parliament and published on the official web site [www.prs.hr](http://www.prs.hr).

In addition to the statistics recorded in the Table 1 it is worth pointing out some additional information related to work of the Ombudsperson.

The annual reports often report that individual complaints were filed equally by individual citizens and LGBT NGOs. The reports show that in most instances concerned individuals did not want the Ombudsperson to start formal antidiscrimination proceedings due to concern for their privacy and fear of retaliatory reaction. Accordingly, they either simply conveyed their complaint to the Ombudsperson or sought legal advice. Complaints most frequently concern violation of peaceful enjoyment of private property, access to market services such as hotel accommodation, disrespect of private data of victims of discrimination by police, employment discrimination, harassment and assault.

The Ombudsperson also used its competence to intervene in antidiscrimination judicial proceedings on behalf of a plaintiff. So far it has intervened in 5 most prominent antidiscrimination cases (4 in 2011 and 1 in 2012). The reports show that the Ombudsperson's capacity to intervene in antidiscrimination judicial proceedings or initiate associated complaints proceedings is tightly related to limited material and human resources available to Ombudsperson. Consequently, the Ombudsperson tends to intervene in those cases where it can develop a collaboration with NGOs who initiated the proceedings or intervened themselves on behalf of the victim. The collaboration allows distribution of tasks and costs.

As noted in the Report LGBT NGOs are keen of using the procedural instruments of intervention or initiation of associated complaints. However, due to limited resources and inadequate opportunities for funding legal services that are indispensable for effective use of those instruments their capacity is rather limited.

So far, the LGBT NGOs have initiated 5 associated complaints proceedings. All of the proceedings were initiated in year 2011.

Two of them have ended with final decisions before the Supreme Court. The outcome in those cases was positive. Since both proceedings involved the same defendant they both ended with the same outcome. The defendant was found responsible for discrimination and had to publish the judgment in daily newspaper.

In two of them the first instance court delivered the decision and the appeal before the Supreme Court is pending. Again, both proceedings were initiated by different NGO against the same defendant. The first instance courts found for the defendant. Both decisions were appealed and are pending before the Supreme Court.

The fifth proceeding also ended for the defendant. The appeal is pending before the Supreme Court. In addition to initiating associated complaints proceedings the NGOs also used the instrument of intervention. They successfully intervened in one employment discrimination proceeding in 2011. The proceedings ended with a positive judgment for the plaintiff before both first (2012) and second instance courts (2013). They asked for the court's permission to intervene in one antidiscrimination proceeding concerning access to market services on 2013 (apartment rent) but were denied the permission. The court's denial has been appealed and is pending before the second instance court. The statistics related to judicial antidiscrimination proceedings for Croatia need to be taken with reservation.

As noted in the Report, systematic gathering of statistics concerning antidiscrimination cases before courts in Croatia started only in 2011. Hence, first systematic statistics produced by the Ministry of Justice have been available only since 2012. These statistics show that the Ministry registered 9 antidiscrimination proceedings before civil courts in 2012. 7 proceedings were initiated before 2012 and 2 during 2012. There is no information concerning the year in which those 7 proceedings



predating year 2012 were initiated. Similarly, no information regarding the concrete discrimination complaints in those 7 proceedings is available. Although they started before 2012 the statistics show that only 1 proceeding finished during 2012. They also show that the particular proceeding finished with a final decision but not a court's ruling. This means that it finished either with a settlement or withdrawal. Since there the statistics for 2013 were not available at the moment of writing the Report it is not known whether remaining 6 proceedings finished in 2013 and with what result.

The 2 remaining proceedings accounted by the statistics were initiated during 2012. The statistics show that the plaintiffs in both proceedings sued relying on Art 17 SDA. In both proceedings they asked for determination of discrimination and damages. In one of the two the plaintiff also asked for the prohibition of further discriminatory treatment.

The provided statistics of the Ministry of Justice need to be taken with reservation for several reasons. First, they reflect Art 17 SDA proceedings before municipality and county courts. This is problematic because they don't reflect Art 24 SDA associated complains proceedings. Second, the Ministry statistics do not correspond with the information gather from other resources. For example, the most prominent employment discrimination case ended with the first instance positive judgment in 2012. Yet the available statistics provided by the Ministry do not show that.

In light of these reservations it should be pointed out that date provided in Table 1 reflect only those judicial proceedings for the author had confirmed and certain information. They include both the Art 17 SDA and the Art 24 SDA proceedings.

At the end, it should be stressed that neither information listed in Table 1 or information related to statistics provided by the Ministry of Justice account Art 16 SDA judicial proceedings in which plaintiffs raised the issue of sexual orientation discrimination during the proceedings but only as an auxiliary question. Without that information it is very difficult to make any determine inferences about the effectiveness of antidiscrimination protection in the Croatian legal order.

The last reservation brings us to the key problem related to Croatian system of judicial protection. In principle, Croatian courts do not publish their decisions. Only the Supreme Court publishes its complete case-law. Consequently, it is extremely difficult to evaluate the effectiveness of judicial protection of equal treatment rights in Croatia.

Since Croatian courts do not publish their decision it is not possible to provide this information. ,

<i>Table 1: Discrimination on the ground of sexual orientation</i>	2000	2001	2002	2003	2004	2005	2006
Total complaints of discrimination on the ground of sexual orientation (equality body, tribunals, courts etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)	Ombuds: 0  -  Courts: 0	Ombuds: 0  -  Courts: 0	Ombuds: 0  -  Courts: 0	Ombuds: 0  -  Courts: 0	Ombuds: 2  Both employment  -  Courts: 0	Ombuds: 7  Areas not reported. (see Annex 2)  -  Courts: 0	Ombuds: 2  Areas not reported. (see Annex 2)  -  Courts: 0

Total finding of discrimination confirmed (by equality body, tribunals, courts etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)					Not reported	Not reported	Not reported
National Number of sanctions/compensation payments issued (by courts, tribunals, equality bodies etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)					Not reported	Not reported	Not reported
National range of sanctions/compensation payments (by courts, tribunals, equality bodies etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)	--	--	--	--	--	--	--
	2007	2008	2009	2010	2011	2012	2013

<p>Total complaints of discrimination on the ground of sexual orientation (equality body, tribunals, courts etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)</p>	<p>Ombuds: 8 Areas not reported.  -- Courts: N.R.</p>	<p>Ombuds: Precise number not statistically reported. Less than 2007 Areas not reported -- Courts: N.R. See Annex 2 for important note</p>	<p>Ombuds: 5 Education: 1 Civil Status: 1 Hate Crime: 3  -- Courts: N.R. See Annex 2 for important note</p>	<p>Ombuds: 12 Areas not reported  -- Courts: 6 Education (Art 24 SDA): 1 Employment/ Sports (Art 24 SDA): 4 Speech as Harassment (Art 24 SDA): 1 See Annex 2 for important note</p>	<p>Ombuds: 16 Employment: 2 Other areas not reported.  -- Courts: 1 new Art 17 SDA proceeding related to employment 5 appeals on outcomes of 2010 proceedings See Annex 2 for important note</p>	<p>Ombuds: 25 Areas not reported  -- Courts: 1 1 appeals on outcome in Art 17 employment proceeding from 2011 See Annex 2 for important note</p>	<p>-- Courts: 1 new Art 17 SDA proceeding Market services (apartment rent)</p>
<p>Total finding of discrimination confirmed (by equality body, tribunals, courts etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)</p>	<p>Not Reported</p>	<p>Not Reported</p>	<p>Not Reported</p>	<p>Not Reported</p>	<p>Not Reported</p>	<p>Not Reported</p>	<p>Not Reported</p>
<p>National Number of sanctions/compensation payments issued (by courts, tribunals, equality bodies etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)</p>	<p>Not Reported</p>	<p>Not Reported</p>	<p>Not Reported</p>	<p>Not Reported</p>	<p>Not Reported</p>	<p>Not Reported</p>	<p>Not Reported</p>

National range of sanctions/compensation payments (by courts, tribunals, equality bodies etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)	Not Reported	Not Reported	Not Reported	Not Reported	Not Reported	Not Reported	Not Reported
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## 2. Freedom of movement

The Ministry of Interior does not collect LGBT sensitive data related to free movement. Consequently, it is difficult to provide any reliable statistics.

At the same time, Croatia has been the EU Member State only from July 1, 2013. This is a too short period for any statistics of significant relevance.

Table 2: LGBT partners exercising the free movement

	2000	2001	2002	2003	2004	2005	2006
Number of LGBT partners of EU citizens residing in your country falling under Directive 2004/38/EC (i.e., LGBT partners having exercised their freedom of movement as granted to family members of EU citizens, whether under Directive 2004/38/EC or under previous instruments)	Not applicable (N.A.) since Croatia joined the EU July 1, 2013	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
Number of LGBT partners who claimed their right to residence but were denied this right	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
	2007	2008	2009	2010	2011	2012	2013
Number of LGBT partners of EU citizens residing in your country falling under Directive 2004/38/EC (i.e., LGBT partners having exercised their freedom of movement as granted to family members of EU citizens, whether under Directive 2004/38/EC or under previous instruments)	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	0
Number of LGBT partners who claimed their right to residence but were denied this right	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	0

### 3. Asylum and subsidiary protection

The Ministry of Interior does not collect LGBT sensitive data related to asylum protection. Consequently, it is difficult to provide any reliable statistics. Phone interviews conducted with the Ministry officials responsible for the system asylum protections provided information that so far there was less than 5 asylum request due to fear of persecution because of sexual orientation of which they are aware. This information needs to be taken with great reservation due to the manner in which the system of asylum protection operates.

According to the annual reports of the Ministry of Interior, before 2004 there were 326 asylum requests in Croatia. Since 2004 until 2009 there were 939 asylum requests. In 2010 there was 259 request and 686 requests in 2011. Overall, there were 4095 asylum request since 2004. The requests are collected on a local level and submitted to the Office for Foreigners and Asylum. The Office is a first instance body deciding in administrative procedure concerning individual asylum request. However, due to a high number of individual request the Office does not have a precise data related to requests concerning LGBT persons since there is no systematic evaluation and classification of requests according to that criterion. Consequently, any data related to asylum requests due to fear of persecution because of sexual orientation is merely indicative at best.

Data provided by the NGO that provides legal support to LGBT asylum seekers (Zagreb Pride) shows that so far there were two approved asylum request due to fear of persecution because of their sexual orientation. This should be placed into a larger context of small number of granted requests. Since 2004 there were only 52 approved asylum requests and 48 grants of subsidiary protection.

<i>Table 3: LGBT persons in asylum/ subsidiary protection</i>	2000	2001	2002	2003	2004	2005	2006
Number of LGBT individuals benefiting from asylum/ subsidiary protection due to persecution on the ground of sexual orientation and gender identity	0	0	0	0	0	0	0
Number of LGBT individuals who were denied the right to asylum or to subsidiary protection despite having invoked the fear of persecution on grounds of sexual orientation and gender identity	N.R.	N.R.	N.R.	N.R.	N.R.	N.R.	N.R.
	2007	2008	2009	2010	2011	2012	2013
Number of LGBT individuals benefiting from asylum/ subsidiary protection due to persecution on the ground of sexual orientation and gender identity	0	0	0	0	0	0	2 See Annex 2

Number of LGBT individuals who were denied the right to asylum or to subsidiary protection despite having invoked the fear of persecution on grounds of sexual orientation and gender identity	N.R.	N.R.	N.R.	N.R.	N.R.	1 See Annex 2	0
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Note related to Table 3:

Similarly to data related to family reunification of same sex families, the research done for this Report showed the problem LGBT sensitive data collection. The Ministry of Interior, as a competent body responsible for granting asylum/subsidiary protection does not statistically collect case data reflecting sexual orientation of individuals requiring such protection. Ministry officials responsible for asylum protection recognized that there were “less than 5” requests for asylum/subsidiary protection in last 3 years. No such requests are known to them before that. However, this too should be taken with significant reserve. Information collection is organized in a manner that makes it rather likely that relevant information acquired at the local level (more than 20 unites) will not necessarily reach the central level responsible for policy issues and statistics.

In any case, even there were few relevant requests these cases were not reflected as sexual orientation persecution cases in official statistics. Consequently, the Table 3 shows only cases which were established with certainty. This does not mean that there were no other cases. However, it could not be established with certainty whether and when these other cases occurred since they are not statistically accounted and reported.

This finding has been notified to the Ombudsperson for Sex Equality and it will be included in her 2013 Annual Report to the Parliament.

Table 4: LGBT partners in asylum/subsidiary protection

	2000	2001	2002	2003	2004	2005	2006
Number of LGBT partners of persons enjoying refugee/ subsidiary protection status residing in your country falling under Art 2/h Directive 2004/83/EC	Not Applicable Croatia joined July 1, 2013	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
Number of LGBT partners of persons enjoying refugee/subsidiary protection status who were denied the possibility to	--	--	--	--	--	--	--

stay with their partner							
	2007	2008	2009	2010	2011	2012	2013
Number of LGBT partners of persons enjoying refugee/ subsidiary protection status residing in your country falling under Art 2/h Directive 2004/83/EC	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
Number of LGBT partners of persons enjoying refugee/subsidiary protection status who were denied the possibility to stay with their partner	--	--	--	--	--	--	--

#### 4. Family reunification

The Ministry of Interior does not collect LGBT sensitive data related to requests for residence permits for the purposes of family reunification. Consequently, it is difficult to provide any reliable statistics.

The only decision related to the reunification of family that can be confirmed with certainty is a denial of the request for a residence permit for the purposes for a family reunification submitted by a lesbian couple in 2011.

*Table 5: LGBT partners in family reunification*

	2000	2001	2002	2003	2004	2005	2006
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Number of LGBT partners of third country nationals residing in your country benefiting from family reunification	Not available since data is not recorded (N.R.)	N.R.	N.R.	N.R.	N.R.	N.R.	N.R.
Number of LGBT partners of third country nationals residing in your country who were denied the right to benefit from family reunification	N.R.	N.R.	N.R.	N.R.	N.R.	N.R.	N.R.
	2007	2008	2009	2010	2011	2012	2013
Number of LGBT partners of third country nationals residing in your country benefiting from family reunification	N.R.	N.R.	N.R.	N.R.	N.R.	N.R.	N.R.
Number of LGBT partners of third country nationals residing in your country who were denied the right to benefit from family reunification	N.R.	N.R.	N.R.	N.R.	N.R.	1	N.R.

## 5. Freedom of assembly

The most serious violation of freedom of assembly occurred during the 2011 Split Pride. The following data reflect the degree of violation.

According to the 2012 Annual Work Report by the Ombudsperson for Sex Equality to the Parliament, the Ministry of Interior reported 44 crimes motivated by hate towards the LGBT population during 2011 Split Pride parade. Furthermore, the police reported that hate crime criminal proceedings were initiated against 22 individuals and misdemeanour proceedings against another 62 individuals.

The 2012 Split Pride was not violent event. However, the local government tried to discourage the organizers. Consequently, The Ombudsperson issued 2 public warnings to the Split local government in 2012 due to their illegal decision to change the route of the Split Pride parade approved by the Ministry of Interior and their efforts to discourage the organizers by preventing them to construct a stage to address the participants and restraining their access to electricity outlets.

*Table 6: LGBT and freedom of assembly*

	2000	2001	2002	2003	2004	2005	2006
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Number of demonstrations in favour of tolerance of LGBT people, gay pride parades, etc	0	0	1	1	1	1	1
Number of demonstrations against tolerance of LGBT people.	0	0	1	1	1	0	0
	2007	2008	2009	2010	2011	2012	2013
Number of demonstrations in favour of tolerance of LGBT people, gay pride parades, etc	1	1	3	1	2	2	2
Number of demonstrations against tolerance of LGBT people.	0	0	0	0	1	1	0

## 6. Hate speech and Criminal law

No additional statistical data available.

*Table 7: Homophobic and/or transphobic speech*

	2000	2001	2002	2003	2004	2005	2006
Number of criminal court cases regarding homophobic and/or transphobic hate speech initiated (number of prosecutions)	Not available because data is not recorded (N.R.)	N.R.	N.R.	N.R.	N.R.	N.R.	N.R.
Number of convictions regarding homophobic and/or transphobic hate speech (please indicate range of sanctions ordered)	N.R.	N.R.	N.R.	N.R.	N.R.	N.R.	N.R.

Range of sanctions issued for homophobic and/or transphobic hate speech							
Number of non-criminal court cases initiated for homophobic and/or transphobic statements	N.R.	N.R.	N.R.	N.R.	N.R.	N.R.	N.R.
Number of non-criminal court cases initiated for homophobic and/or transphobic statements which were successfully completed (leading to a decision in favour of the plaintiff, even if no sanctions other than symbolic were imposed)	N.R.	N.R.	N.R.	N.R.	N.R.	N.R.	N.R.
	2007	2008	2009	2010	2011	2012	2013
Number of criminal court cases regarding	N.R.	1	N.R.	N.R.	1	N.R.	N.R.

homophobic and/or transphobic <b>hate speech</b> initiated (number of prosecutions)							
Number of convictions regarding homophobic and/or transphobic <b>hate speech</b> (please indicate range of sanctions ordered)	N.R.	1	N.R.	N.R.	N.R.	0	N.R.
Range of sanctions issued for homophobic and/or transphobic hate speech		Conditional sentence of 1 year imprisonment. The perpetrator was put on probation for 3 years.					
Number of non-criminal court cases initiated for homophobic and/or transphobic statements					1	1	
Number of non-criminal court cases initiated for homophobic					1	1	

bic and/or transphobic statements which were successfully completed (leading to a decision in favour of the plaintiff, even if no sanctions other than symbolic were imposed)							
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Note related to Table 7:

Research conducted for the purposes of this Report revealed a significant problem related to statistical collection of data concerning the hate speech crime and hate crimes in general.

First, systematic collection of data related to hate crimes is a rather new development. On the initiative of the Public Ombudsperson the Ministry of Justice started systematic collection of data concerning judicial proceedings related to hate crime only in 2011. Consequently, first statistics became available only for 2012.

Second, the manner in which collected data is statistically accounted is rather crude. Hence, statistics show the number of committed hate crimes per year. However, they do not identify a nature of a particular hate crime (hate speech, threat, assault, etc.)

Consequently, it is likely that a significant number of hate crimes marked in Table 8 is actually hate speech crimes.

Furthermore, Croatian system of criminal justice often treats circumstances that could easily be qualified as hate speech as discrimination motivated by hate or violation of the fundamental freedom of assembly (e.g. assault on Pride parade).

*Table 8: Hate crime motivated by homophobia and/or transphobia*

	2000	2001	2002	2003	2004	2005	2006
Number of criminal court decisions in which homophobic and/or transphobic motivation was used as an aggravating factor in sentencing	Not reported	N.R.	N.R.	N.R.	N.R.	N.R.	N.R.
	2007	2008	2009	2010	2011	2012	2013

Number of criminal court decisions in which homophobic and/or transphobic motivation was used as an aggravating factor in sentencing	N.R.	2  (1 discrimination motivated by hate conviction although facts also suggest hate speech)  1 assault motivated by hate)	N.R.	N.R.	N.R.	11 criminal convictions (10 conditional imprisonment 1 imprisonment)	4 criminal conditional convictions (Criminal Code Art 87/21)
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## 7. Transgender issues

No additional statistical data available.

*Table 9: Registered gender/ sex transitions*

	2000	2001	2002	2003	2004	2005	2006
Number of name/ sex changes effected due to change of gender	0	0	0	0	0	0	0
Number of persons who changed their gender/sex in your country under the applicable legislation	0	0	0	0	0	0	0
	2007	2008	2009	2010	2011	2012	2013
Number of name/ sex changes effected due to change of gender	0	1	0	0	0	0	2
Number of persons who changed their gender/sex in your country under the applicable legislation	0	0	0	0	0	0	2

## 10. Intersex

No additional statistical data available.

**Table 10: Requirements for rectification of the recorded sex or name on official documents**

Country	Intention to	Real life	Gender dysphoria	Hormonal treatment/ physical adaptation	Court order	Medical opinion	Genital surgery leading to sterilisation	Forced/ Automatic divorce	Unchan SEAble	Notes
HR	✓	✓	✓	✓	✘	✓	✘	?		Croatian law allows rectification on two separate grounds: 1) life in different gender

Notes: This is not a table about the requirements for accessing gender reassignment treatment. This means, in particular, that gender dysphoria diagnosis might be in practice required by medical specialists as a precondition for a positive opinion. This situation is not captured by this table, which illustrates the conditions for legal recognition of gender reassignment.

Please use the following three symbols:

✓= applies; ?=doubt; ✘=removed;

**Table 11: Discrimination on grounds of sexual orientation in legislation: material scope and enforcement bodies**

Country Codes	Material scope			Equality body	Comments
	Employment only	Some areas of RED <sup>49</sup>	All areas of RED <sup>*</sup>		
HR			✓	✓	

Please use the following three symbols:

✓= applies; ?=doubt

<sup>49</sup> Employment discrimination is prohibited in all EU Member States as a result of Directive 2000/78/EC. Directive 2000/43/EC (Racial Equality Directive) covers, in addition to employment and occupation, also social protection (including social security and healthcare), social advantages, education and access to and supply of goods and services which are available to the public, including housing.

**Table 12: Discrimination on grounds of gender reassignment or identity in national legislation**

Country Codes	Form of “sex” discrimination	Autonomous ground	Dubious/unclear	Comments
HR	✓	✓		Autonomous ground in criminal law. In civil-law area it is considered form of sex discrimination due to case-law of the Ombudsperson for Gender Equality.

Please use the following three symbols:

✓= applies; ?=doubt

**Table 13: Criminal law provisions on ‘incitement to hatred’ and ‘aggravating circumstances’ covering explicitly sexual orientation**

Country Code	Criminal offence to incite to hatred, violence or discrimination on grounds of sexual orientation	Aggravating circumstance	Comments
HR	✓	✓	

Please use the following three symbols:

✓= applies; ?=doubt

**Table 14: Definition of ‘family member’ for the purposes of free movement, asylum and family reunification**

Country Codes	Free movement <sup>50</sup>		Family Reunification		Asylum		Comments
	spouse	partner	spouse	partner	spouse	partner	
HR	?	?	?	?	?	?	The Foreigners Act provides definition of family for the purposes of free movement and family reunification that does not include within its scope homosexual spouse or partner. The Asylum Act refers to the definition of the family used in the Foreigners Act
	No	No	No	No	No	No	

Please use the following symbols:

✓= applicable; ? = doubtful/unclear

<sup>50</sup> In the vast majority of the Member States, no clear guidelines are available concerning the means by which the existence either of a common household or of a ‘durable relationship’ may be proven for the purposes of Art. 3 (2) of the Free Movement Directive.