

**2009 Annual Report
on the Status of
Human Rights of Sexual
and Gender Minorities
in Croatia**





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1. Introduction

Legal changes

Lesbian Group Kontra and Iskorak – Group for Promotion and Protection of Different Sexual Orientations started cooperation in the field of advocating LGBT (lesbian, gay, bisexual, transgender) rights in spring 2002, which also marked the beginning of more intense advocacy of the protection of rights of sexual and gender minorities within the Croatian legal system.

While advocating the human rights of LGBT persons, we have often referred to international documents for the protection of human rights, especially those issued by the Council of Europe and European Parliament.

We have achieved significant cooperation with non-government organizations and male and female activists for the protection of the human rights of LGBT persons in Slovenia, Serbia, Bosnia and Macedonia, as similar changes have also happened in other countries in the region.

The greatest improvement in the protection of sexual and gender minority rights in Croatian legislation occurred in 2003. After successful advocacy of the protection of the rights of sexual and gender minorities in Croatian legislation, most of our bills were passed by Croatian Parliament in July 2003.

For the first time in Croatian legislation sexual orientation was explicitly identified in articles prohibiting discrimination based on certain differential criteria. Prohibitions of discrimination based on sexual orientation were introduced into the Gender Equality Act, Criminal Code, Labour Act, Scientific Work and Higher Education Act, and into schoolbook standards. Also the Same-Sex Unions Act was passed.

The changes in Croatian legislation were a result of public advocacy by the Lesbian Group Kontra and Iskorak, as well as pressure arising from Croatia's application to join the EU.

Protection of sexual minorities in the Criminal Code was explicitly stated in 2003 in the context of the criminal offence of glorifying fascist, Nazi and other totalitarian states and ideologies or promoting racism and xenophobia (Art 151a of the Criminal Code; OG 111/03). But, by a decision of the Constitutional Court of 27 November 2003, no. U-I/2566/2003, this act was entirely annulled. In 2004 the Lesbian Group Kontra & Iskorak continued with public advocacy of the rights of sexual and gender minorities, and the Act on Amendments to the Criminal Code was passed, which explicitly mentioned sexual orientation in Art 174 para 3 of the Criminal Code (criminal offence of racial or other discrimination). The Act on Amendments to the Criminal Code, including the above amendment, was passed by the Croatian Parliament on 13 July 2004. Also, the Parliamentary Committee on Human Rights accepted an amendment from the Team for Legal Changes to the Media Act that referred to inclusion of sexual orientation in the anti-discriminatory provisions of that Act. Unfortunately, the Committee did not accept the amendment from the Lesbian Group Kontra & Iskorak that referred to gender identity. The Media Act, including the amendment referring to sexual orientation, was passed by Parliament on 10 May 2004.

In 2005 and 2006 the Lesbian Group Kontra & Iskorak worked on the introduction of a definition of hate crime in the Criminal Code. The suggestion of the Lesbian Group Kontra & Iskorak on this was accepted by the Croatian Parliament mainly due to international pressure (OSCE, applying for EU membership) and support by the national minorities in Parliament in 2006. There is still noticeable resistance to the elimination of discrimination of same-sex unions at the legal level. In 2006 the proposed Registered Partnership Bill was refused, the purpose of which was to secure for same-sex couples the same rights and obligations enjoyed by married couples, with the exception of adopting children.

This Anti-Discrimination Act was passed by the Croatian Parliament on 9 July 2008, after a long public debate. The Act widens the institutional framework for protection from discrimination. It introduces the institution of interveners and the institution of joint legal action, and gives greater powers to the Office of the People's Ombudsman who according to the Act carries out the tasks of the central body responsible for the elimination of discrimination. For the first time in Croatian legislation, this Act introduces the banning of discrimination on the basis of gender identity.

The last six years have marked a great milestone for the LGBT community in Croatia at the legal level. But, although some of the rights of LGBT persons are now protected by Croatian law, implementation of these newly-passed laws is made difficult by discriminatory actions by state institutions in specific cases. Most of the time, victims do not even report discrimination or violence, since they have no confidence in the Croatian legal system, especially the police. The community is especially discouraged by homophobia within institutions, even within the Croatian Parliament which passed the above laws but whose members publicly use hate speech aimed against sexual and gender minorities, breaking these same laws and showing the public how little they value the same laws they raised their hands in favour of in the hope of endearing themselves to the international community.

Summary of 2009 Report

Positive advances in the status of the human rights of sexual and gender minorities in Croatia in 2009 are visible, as in previous years, in the increase in reports of violence and discrimination to organisations for the protection of sexual and gender minorities. In 2009 we noted an increase in the number of reports of violations of the human rights of transgender persons. We believe that this was a consequence of the increased activities of civil society organisations in that field and public discussion brought by the Anti-Discrimination Act.

Nevertheless, the great majority of people who experience discrimination and violence never report such incidents because of their lack of confidence in the Croatian legal system, and fearing disclosure of their sexual orientation.

Transgender persons are subjected to discrimination and violence in their everyday lives because of their gender identity or gender expression. Legislation regulating the procedures for change of name and sex in personal documents does not contain protection mechanisms for the protection of the right to privacy of transgender persons and that results in violations of human rights of that extremely vulnerable social group.

The most negative event in 2009 was failure of the state institutions to prohibit the fascist protest named “Anti-Gay Protest Against the Gay Parade – It Is Unacceptable for Them to Impose Their Distorted Lifestyle on Us”, organised by the Croatian Pure Party of Rights and the Croatian Nationalists.

The protest was held on 13 June 2009 at the same time as the Zagreb Pride event on Ban Jelačić Square in Zagreb. The fact that the protest was held represents a serious setback in the protection of human rights in Republic of Croatia in 2009 and a violation of the constitutional principle of equality before the law.

The protest was announced in the media ten days before Zagreb Pride event was held. The organisers’ stands were based on Nazi ideas on the superiority of the white race, and the organisers’ web site and announcements of the protest were furnished with fascist iconography and instructions on making weapons (Molotov cocktails).

On 3 June 2009 Lesbian Group Kontra requested the competent authorities to prohibit the gathering, or protest named “Anti-Gay Protest” of the Croatian Pure Party of Rights and the Croatian Nationalists because the protest contained all elements of the criminal offence of racial or other discrimination. Considering that the protest was announced by hate speech and invitation to a public lynching, we also filed a criminal complaint with the State Attorney’s Office in Zagreb.

Despite all the above, the protest was not prohibited, and the Zagreb Police Department justified this action by a positive security assessment. The fascist gathering was held in Zagreb. Participants in the protest shouted: “Kill the faggots!” and held their arms in a fascist salute and the police did not react. Several participants in the gathering tried to attack the participants in Zagreb Pride during the event. One of the participants in Zagreb Pride was attacked after the event. Proceedings in regards to the criminal complaint against the organisers are in progress.

In this we would like to express our public condemnation of the work of the Zagreb Police Department and the Ministry of Internal Affairs. After seeing the announcement and web pages of the organisers that were inciting violence and spreading hatred, further security evaluations were not necessary and prohibition by the competent authorities should have taken place.

The Republic of Croatia did not prohibit the gathering, although it should have done so. Therefore, contrary to the provisions of the Anti-Discrimination Act, it violated constitutional rights guaranteed by Article 39 of the Constitution that prohibits any call for or incitement to war, or resort to violence, national, racial or religious hatred, or any form of intolerance, but also the European Convention on Human Rights, Article 10 and 11 (right to freedom of expression and right to freedom of assembly) in regards to Zagreb Pride and Article 17 (abuse of rights) with regard to this counterdemonstration with Nazi overtones.

We never received answers to our request from the Ministry of Internal Affairs and the Zagreb Police Department, which in itself constitutes a direct violation of Art 46 of the Constitution. Due to the “silence of the administration” we submitted a motion to speed up proceedings in accordance with the provisions of the General Administrative Proceedings Act and we are going to initiate an administrative dispute at the Administrative Court of the Republic of Croatia in order to draw attention to the serious violation of human rights that occurred as the result of state authorities’ failure to react.

2. Legislation

Labour Act

The Labour Bill, created by the Ministry of Economy, Labour and Entrepreneurship, was included in the agenda of the 15th session of the Croatian Parliament.

Lesbian Group Kontra created proposals of amendments to this Bill and sent them to the competent authorities on 16 November 2009, with the support of the Women’s Network of Croatia and Iskorak and also with the support of the Union of Independent Trades Unions of Croatia.

The Union of Independent Trades Unions of Croatia supported the proposed amendments and participated in their creation. This was the result of the cooperation of Kontra and the Union on the project “United against Discrimination at Workplace”, funded by the European Commission.

Namely, although the Same-Sex Unions Act was adopted in 2003, the proposer of the Bill behaves as though same-sex unions do not exist in Croatian society and does not mention them in parts of the Bill which concern certain rights, nor in parts which are intended to prevent conflict of interests.

Article 3, which prescribes exceptions from the application of the section which determines working hours (including an exception for an employer’s family members who live in a joint household with the employer and who carry out certain tasks for the employer under terms of employment), does not mention an employer’s same-sex partner who lives in a joint household with the employer and who carries out certain tasks for the employer under terms of employment.

Same-sex partners are also not mentioned in Article 65 of the Bill, which deals with the right to freedom from the obligation to work with pay (paid leave) for important personal needs, especially in connection with the serious illness or death of a close family member, including marital or non-marital partner. Considering that this is the matter of a right which a worker uses in order to care for an ill person, or because of the death of a person close to them, it is unthinkable that such a right is not available in the case of the death or illness of a same-sex partner.

Article 141 para 2 which sets out restrictions to voting rights on workers’ councils for members of a company’s managerial or supervisory bodies and members of their family, does not prescribe the same restrictions for their same-sex partners, which could lead to cases of conflict of interest.

Article 3 of the Constitution of the Republic of Croatia, among other things, defines equality and the rule of law as the greatest values of the constitutional order of the Republic of Croatia. Therefore, immediately after its basic provisions it determines the protection of human rights and fundamental freedoms. In connection with this, Article 14 of the Constitution of the Republic of Croatia states that every person in the Republic of Croatia has rights and freedoms irrespective of numerous differing characteristics, whether those differing characteristics are explicitly defined in the Article or are “other characteristics”. The fact that the second paragraph of the same Article states that everyone is equal before the law, that

equality also applies to persons of homosexual orientation. The right to equality is subject to restrictions in accordance with Article 16 of the Constitution of the Republic of Croatia which must be appropriate to the needs of those restrictions with the aim of protecting the freedom and rights of other persons and the legal order, public morals and health but emphasising that every restriction of freedom and rights must be appropriate to the nature of the need for that restriction and set out in every individual case. The Same-Sex Unions Act (OG 116/03) bans discrimination on the basis of a same-sex union or the fact of homosexual orientation. The Gender Equality Act (OG 82/2008) and the Anti-Discrimination Act (OG 82/2008) ban discrimination on the basis of sexual orientation.

In Article 13 of the Treaty of Amsterdam, the European Union promotes the “carrying out of suitable actions for the prevention of discrimination based on sex, racial or ethnic origin, religion or belief, invalidity, age or sexual orientation”. European Council Directive 2000/78/EU of 27 November 2000 obliges member states to pass legislation which forbids discrimination, on several bases including sexual orientation, in employment.

In 2003, the European Court of Human Rights brought a judgement against the Republic of Austria for transgressing Article 14 in conjunction with Article 8 of the European Convention on Human Rights when the Austrian authorities refused to interpret the legal definition of “life partner” in the context of same-sex unions in relation to a case of inheritance of residential rights. The court found that unequal treatment of same-sex couples (in comparison with non-marital different-sex couples) breaches the European Convention on Human Rights.

In order to harmonise the Employment Bill with positive international and national legislation, it is necessary to make the following amendments:

Limitations in application

Article 3

- (1) The provisions of this Act on working hours, breaks and daily and weekly holidays do not apply to workers on seagoing fishing boats.
- (2) The minister responsible for employment (hereinafter: the minister), with the agreement of the minister responsible for fishery, will adopt regulations on working hours, holidays and leave for workers on seagoing fishing boats.
- (3) The provisions of this Act concerning working hours, breaks and daily and weekly holidays do not apply to workers who conduct an employer’s business in a managerial capacity as authorised by statute, articles of association, memorandum of association or other rules of the employer and who independently makes decisions about the organisation of work and business of the employer, nor do they apply to workers who are family members **or same-sex partners** of an employer who is a physical person if they live in a joint household with the employer and carry out certain tasks for the employer under terms of employment, if they have agreed with the employer independence in their determination.

Paid leave

Article 65

- (1) During a calendar year, a worker has the right to exemption from the obligation to work with pay (paid leave) for important personal needs, but especially in connection with entering into marriage, a spouse giving birth, serious illness or death of a close family member **or same-sex partner**.
- (2) A worker has the right to leave under paragraph 1 of this article in a total duration of seven working days annually unless differently prescribed by collective agreement, work regulations or employment contract.
- (3) A member of the close family under paragraph 1 of this article is considered to be: spouse, direct blood relatives and their spouses, brothers and sisters, stepchildren and adopted children, children entrusted to care and upbringing or children cared for outside their own family, stepfather and stepmother, adoptive

parent, a person whom the worker is obligated by law to maintain, and a person who lives with the worker in an non-marital union.

Voting rights

Article 141

(1) All workers who are employed with a certain employer have the right to vote and be elected.

(2) Members of the employer's managerial and supervisory bodies and members of their families **and their same-sex partners** as well as workers under Article 127 paragraph 1 of this Act do not have the right under paragraph 1 of this Article.

At the 29th session held on 25 November 2009 the Committee for Human Rights and the Rights of National Minorities of the Croatian Parliament discussed the Labour Bill submitted by the Government of the Republic of Croatia to the Speaker of the Croatian Parliament by an act of 22 October 2009.

Since we did not receive return information on the request to take part in the session of the Committee for Human Rights and the Rights of National Minorities of the Croatian Parliament, we contacted the Committee by telephone. We received the answer that the session of the Committee would be held in a small room and therefore there would be no place at the session for civil society, non-governmental organisations and associations of trades unions that proposed amendments to the Bill.

The Committee also received amendments from the Ombudswoman for Gender Equality and four associations of trades unions as a contribution to the debate on this issue. Despite the appeals of civil society organisations, the Ombudswoman for Gender Equality failed to include the amendments aimed at elimination of discrimination based on sexual orientation from the Bill in her proposal of amendments.

The Committee did not adopt Kontra's amendments and also it did not adopt numerous amendments of associations of trades unions and the Ombudswoman for Gender Equality aimed at protection of the human rights of workers.

The Committee's vice-president, Mr Šime Lučin proposed the adoption of the amendments regarding same-sex couples at the discussion in Croatian Parliament. The discussion on the Bill was closed on 27 November 2009. The Labour Act was adopted on 4 December 2009. The Croatian Parliament did not adopt the proposed amendments that would amend the Act in order not to discriminate against workers living in same-sex unions.

In the last six years the Government of the Republic of Croatia has regularly and intentionally failed to implement its own anti-discrimination laws (adopted in order to harmonise with the European Union), as well as international documents to which it is a signatory, in regard to the protection of the rights of sexual minorities, and especially in regard to the protection of the rights of same-sex couples. Almost all laws have remained useless pieces of paper because there is no political will to provide adequate protection of human rights for one of the most vulnerable social groups.

Adoption of the Labour Act is continuation of such practice. An act was adopted that does not protect the rights of citizens and is liable to abuses.

Medical Insemination Act

From 1978 the reproductive rights of women in the Republic of Croatia were regulated by the Act on Health Measures for Realisation of the Right to Free Decision Making in the Birth of Children (OG 18/78). This Act prescribed that "women and men who cannot realise their desire to have children have the right to medical assistance". Until 2004 some hospitals in practice provided medically assisted insemination for women without male partners and heterosexual non-marital couples, while others refused to provide such procedures for women who are not married.

In October 2004 the Government placed into parliamentary procedure the Medically Assisted Insemination Bill. This Bill was discriminatory towards women in regards to their marital status, by denying the right to medically assisted conception to women who are not married or living in a non-marital union (non-marital unions are defined by the Family Act (OG 116/03) as a union of an unmarried woman and an unmarried man, lasting at least 3 years or less if a mutual child is born in the union).

During the public debate emphasis was on the extremely homophobic statements by members of the committee for the creation of the Bill. Of special concern was the fact that the committee members, relying on the strong homophobia present in Croatian society, invoked the example of women living in same-sex unions as their main argument against giving the right of medically assisted conception to single women. Such was also the comment of Mr Čorošić who said that allowing medical insemination to same-sex couples would have been contrary to the Croatian national spirit because “we are not like that”. Lesbian Group Kontra, Iskorak and the Women’s Network of Croatia publicly reacted to the statements by the members of the committee considering them to be ultimately insulting for citizens of Croatia who care about the protection of human rights in their country.

The Women’s Network of Croatia, Kontra and Iskorak sent proposals for amendments aiming at the elimination of discriminatory provisions and harmonisation of the Bill with positive national legislation and international documents.

The Bill was withdrawn from the schedule of the session of the Parliament without any explanation, most likely under pressure of the Catholic Church, whose representatives are strongly opposed to any form of medically assisted conception in public debate. They went as far as to call children conceived by medically assisted insemination “things”.

After the public debate on the Bill, hospitals that provided medically assisted insemination to women without male partners ended such practice.

Bill on the Treatment of Infertility and Fertilisation Procedures with Biomedical Support

The Social Democratic Party (SDP) prepared and put into procedure a Bill on the Treatment of Infertility and Fertilisation Procedures with Biomedical Support, which was put onto the agenda of the 6th sitting of the Croatian Parliament.

On 13 October 2008, the Lesbian Group Kontra & Iskorak and the Women’s Network of Croatia publicly condemned the extremely frivolous way in which the SDP behaved on such an important subject as the reproductive rights of women via this Bill.

The above Bill would withhold the right to medically assisted fertilisation from women who are not married or in a non-marital union, and was directly contrary to positive Croatian legislation. Back in July 2003 the Republic of Croatia passed the Gender Equality Act with the aim of protecting women from discrimination in all areas of life, including reproductive rights, especially with regard to their marital and family status. The marital status of a woman should not limit her right to decide freely about her body. The reproductive rights of women should be guaranteed to all women, and not just those who are married or in a non-marital union.

Of particular concern is the fact that the Bill refers to an early embryo (up to 14 days old) as a person in that it stated on the subject of storage that after a period of at most 10 years, “the early embryo should be allowed to die”. The word “die” according to the rules of the Croatian language is used only for human beings. And thus the SDP has placed itself amongst those who speak of life existing from conception to death.

The Bill did not receive the recommendations of the relevant committees of the Croatian Parliament. The Bill was assessed as incomplete by the Committee for Health and Welfare. The representative of the Government of the Republic of Croatia at a sitting of the Committee for the Family, Youth and Sport stated that the Government did not accept this Bill because it had objections to the proposed normative solutions, to its harmonisation with the directives of the European Union, and other international legal

instruments. On 21 November 2008 at the 7th sitting of the Croatian Parliament, the decision was made not to accept the Bill.

Medical Insemination Act

On 28 May 2009 the media reported that the Medical Insemination Bill, drafted by the Government of the Republic of Croatia would soon be placed into parliamentary procedure. It was stated that the current draft denied the right to medical insemination to unmarried women.

On 5 June 2009 the association Parents in Action (RODA) started on the Internet a “Petition for Withdrawal of the Medical Insemination Bill”. The petition contained among other things the disagreement of the above association with denial of the right to medically assisted insemination to non-marital heterosexual couples, but denial of the same right to single women and women living in same-sex unions was not mentioned.

On 5 June the Women’s Network of Croatia, Kontra and Iskorak expressed concerns in an open letter to the Government regarding media reports that the Bill contains provisions that are discriminatory towards women in regards to their marital status. Furthermore, we stated in the open letter that medical insemination is not only a method for treatment of infertility, but also help to women without male partners to have children. We requested from the Government of the Republic of Croatia that it harmonise the Bill with positive national and international legislation and to put into parliamentary procedure a Bill that will not discriminate against women with regards to their marital status.

On 16 June the Parliamentary Committee for European Integration discussed the Medical Insemination Bill. Members of the Committee during the discussion had the following objections and opinions:

- The Bill is not harmonised with the acquis of the EU and the Convention on the Protection of Human Rights. The right to medical insemination or right to treatment of infertility is a basic human right, and the Bill discriminates and restricts the availability of this right on the basis of marital status.
- Adoption of the Act by urgent procedure is not necessary considering the dynamic of the process of negotiations and harmonisation with the acquis of the EU, and two readings in the Parliament would contribute to greater quality of legal solutions.

After the discussion the Committee for the European Integration did not take a stand, since the opinions of the members if the Committee on its conformity with the acquis of the EU differed (4 votes for and 4 against).

On 23 June 2009 the Parliamentary Committee for Legislation adopted the Bill and recommended its adoption by urgent procedure. In the discussion it was stated that individual provisions of the Bill should be re-examined in the part regarding the position of non-marital unions.

On 23 June 2009 the Parliamentary Committee for Gender Equality discussed the Medical Insemination Bill. The Committee adopted the Bill with 7 votes for and 5 against adoption of the Bill. President of the Committee, Gordana Sobol, issued a dissenting opinion under Art 51 of the Rules of Procedure. She stated that she deeply objects to the adoption of the Bill, since it contains discriminatory provisions that are contrary to the Gender Equality Act and the Anti-Discrimination Act because they restrict certain type of medical assistance based on marital status, and implementation of certain medical procedures is harmful to the health of women and it is contrary to the right to availability of procedures that are less harmful to the health of women.

On 23 June also the Parliamentary Committee for Health and Social Welfare adopted the Bill and recommended its adoption with seven amendments that mostly concerned technical details and medical aspects of the Bill.

On 23 June the Parliamentary Committee for Human Rights and Rights of National Minorities adopted the Bill with 4 votes for, 3 against and 1 abstention. During the discussion members of the Committee had different opinions whether the right to medically assisted conception should be available only to married couples, or also to couples living in civil unions, or to all persons regardless of their marital status.

The Medical Insemination Bill was included on the agenda of the 85th session of the Government on 8 June 2009. It denied the right to medically assisted insemination to unmarried women.

On 16 June 2009 the association RODA sent an open letter to MPs before the 11th session of the Croatian Parliament. The letter contained following paragraph: "We would like to draw attention to some more unacceptable shortcomings, for example by denying the right to medically assisted insemination to non-marital partners and women without partners in the Republic of Croatia, two more positive Acts are violated – the Family Act and the Gender Equality Act, and non-anonymity of the donation of the genetic material suggests that there will be no donations."

On 18 June 2009 the Ombudswoman for Gender Equality sent an opinion on the Medical Insemination Bill to the proposer, the Ministry of Health and Social Welfare. In her opinion the Ombudswoman among other things stated the following:

The Act includes, among other things, issues of gender equality, since it deals with questions of reproductive health and reproductive rights of women and prohibition of discrimination based on marital and family status.

International documents that Republic of Croatia has ratified and that are legally and politically binding (UN Convention on the Elimination of All Forms of Discrimination against Women, Beijing Platform and Action Plan – as documents adopted at the World Conference on Women held in Beijing in 1995) and national documents that refer to gender equality are more than clear concerning the health of women. According to those documents the state has the responsibility to "promote and ensure the highest attainable standard of physical and mental health of women", and the "importance of sexual and reproductive health of women" is emphasised.

Recommendation CM/Rec (2007)17 of the Committee of Ministers to member states on gender equality standards and mechanisms and Explanatory Memorandum to Recommendation among elements that indicate the existence of political will and determination of states for gender equality in the field of protection of health, sexual and reproductive rights, states in Art 44:

"44. This further implies that women's and men's health must be considered of equal value and that both women and men must have a non-negotiable right to decide over their own body, including sexual and **reproductive matters**. Such acknowledgement must be reflected in the development, implementation, **access to**, monitoring and evaluation of **health-care services** and in research priorities."

In its report on the observed phenomenon of unconstitutionality in the system of pension insurance, the Constitutional Court of the Republic of Croatia stated the following: "In relation to family the Constitution does not create differences between marital and non-marital union. Both types of unions are recognised by the Constitution and regulated by the law. ... The Constitutional Court reports to the Croatian Parliament on the need of amendments to the Pension Insurance Act regarding modification of the legal presumptions for recognition of rights to a family pension of a non-marital widow, or widower of the insured party, as a member of his family." (U-X-1457/2007 of 18 April 2007, OG 43/07)

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

Due to all the above, and having in mind that the Gender Equality Act is an organic act, and the Ombudswoman for Gender Equality is authorised to evaluate harmonisation of the regulations with the mentioned Act and to warn and give recommendations, **I believe that all provisions of the proposed Medical Insemination Act that do not ensure the same rights to non-marital couples or persons that are not in either of these unions, are discriminatory towards these persons and couples.**

On 30 June the Women's Section of the Union of Independent Trades unions publicly reacted. In the public reaction it was stated that the Bill "discriminates against infertile women based on marital and family status threatening that couples or individuals that are not registered will not have the right to medically assisted insemination, although they suffer from infertility".

On 8 July 2009 the Minister of Health and Social Welfare Mr Darko Milinović presented the Medical Insemination Bill to the Croatian Parliament. Mr Milinović, while presenting the discriminatory Medical Insemination Bill, stated that women in non-marital unions (heterosexual) could not enter the procedure of medically assisted conception. In so doing, he gave the example of someone of his acquaintance. "I told her, if that companion of yours isn't ready to say 'I do' before the registrar and to me more importantly, before God, then he's not capable of taking care of children," said the Minister while presenting the Bill.

The Women's Network of Croatia, Kontra and Iskorak publicly reacted to the statement of the Minister of Health to the Croatian Parliament, stating that it was a direct attack on the constitutional order and it violated the constitutional principles of secularity and gender equality. The Government of the Republic of Croatia is obliged to protect the rights of all its citizens regardless of their gender or religious conviction. Gender equality forms one of the highest values of the constitutional order of the Republic of Croatia and forms a basis for the interpretation of the Constitution. A Bill that restricts the reproductive rights of women on the basis of their marital status presents a severe violation of human rights guaranteed by Articles 3 and 14, as well as Article 62 of the Constitution of the Republic of Croatia that guarantees and especially protects maternity. It was announced that if the Croatian Parliament adopts the Medically Assisted Conception Bill in the form in which it was proposed by the Government of the Republic of Croatia, the Lesbian Group Kontra & Iskorak and the Women's Network of Croatia were going to submit a proposal for the evaluation of the constitutionality of the newly adopted Act to the Constitutional Court on the day of its entry into force. Furthermore, we announced that we were going to inform all international institutions of this severe violation of human rights in the Republic of Croatia.

On 11 July and then 17 July 2009 the association RODA organised protests against adoption of the Medical Insemination Bill in the proposed form in several Croatian cities.

On 16 July the Government of the Republic of Croatia amended the Bill with an amendment that allows medical insemination for non-marital couples. The Bill was not harmonised with positive anti-discrimination legislation, since the Act remained discriminatory towards single women and women living in same-sex unions.

The Medical Insemination Act was adopted in this form on 17 July 2009. Although this is an act concerning fundamental rights and containing penal provisions, the act was not adopted by a two-thirds majority in the Croatian Parliament, but in an ultimately shameful manner, by the support of a narrow majority of present MPs.

Reproductive rights of women as part of human rights are guaranteed to all women by the Constitution of the Republic of Croatia and international documents. Regardless of numerous warnings, reactions and protests of the Ombudswomen for Gender Equality, parents' associations, women's associations and associations for the rights of sexual minorities, the state authorities decided to severely violate the human rights of Croatian citizens by adopting a discriminatory law.

The Government has the obligation to protect the rights of all citizens of the Republic of Croatia and cannot choose which groups of citizens will be discriminated against based on the amount of pressure from the public or the attitude of the Church.

Furthermore, the parents' associations warned the public that this Act does not actually ensure the right to medical insemination to anyone. Namely, the Act that was adopted limits insemination to only three egg cells and forbids the freezing of the embryos, procedures that were routinely implemented in Croatia for over twenty years, and instead of that an experimental method of insemination of frozen egg cells is introduced, which was never implemented in Croatia and which does not ensure a good chance of conception.

On 30 July 2009, the day when the Medical Insemination Act entered into force, the Women's Network of Croatia organized demonstrations in front of the Constitutional Court of the Republic of Croatia named "My uterus, my ovaries; the decision is not up to State and Church officials!" Members of the Women's Network of Croatia, in accordance with previous announcements, submitted the proposal for the evaluation of the constitutionality of the Medical Insemination Act. After submitting the proposal, members of the Women's Network distributed informative flyers on women's reproductive rights on the Flower Square and T-shirts and stickers with slogan "My uterus, my ovaries; the decision is not up to State and Church officials!"

After this action also President of the Republic of Croatia and the association RODA submitted proposals for evaluation of constitutionality of the Act.

Constitution

In 2009 the Government of the Republic of Croatia founded a working group with the task of creating proposed changes to the Constitution, that are required due to the expected accession of the Republic of Croatia to the European Union.

On 16 November 2009 Lesbian Group Kontra created and with the support of the Women's Network of Croatia and Iskorak sent to the working group and relevant institutions a proposal for constitutional changes. We acted in this manner because we believe that constitutional provisions need to be broadened in respect to protection of human rights and fundamental freedoms, regarding sexual orientation.

Lesbian Group Kontra, together with the association Iskorak has advocated the introduction of sexual orientation into the Constitution since 2002.

In 2003 the Same-Sex Unions Act became part of the positive legislation of the Republic of Croatia. Furthermore, prohibition of discrimination based on sexual orientation is also recognised in the Anti-Discrimination Act, Gender Equality Act and Criminal Code, as well as numerous other laws. In order for the principle of legality to be consistently respected, it is necessary for legal regulations to be in line with the Constitution of the Republic of Croatia, which at this moment does not recognise rights and freedoms that include sexual orientation.

The legislation of the European Union serves as guidance for legislative and constitutional changes with the aim of harmonizing the national legislation with EU standards. The primary legislation of the European Union, or treaties, is effectively the constitutional law of the European Union. The Treaty of Amsterdam includes formal recognition of human rights. It amends Art 6 of the EU Treaty so as to reaffirm the principle of respect for human rights and fundamental freedoms and prescribes that more effective action should be taken to combat discrimination with an explicit reference to sexual orientation.

Furthermore, it is stated in the European Council Directive 2000/78/EU of 27 November 2000 establishing a general framework for equal treatment in employment and occupation that discrimination based on among other grounds sexual orientation may undermine the achievement of the objectives of the EC Treaty.

It is unacceptable that legal acts that are subordinated to the Constitution recognise and prescribe protection from discrimination based on sexual orientation, and international contracts also provide protection from discrimination based on sexual orientation, and the Constitution as the basic act of the state does not contain explicit provisions that protect fundamental rights and freedoms in regards to sexual orientation.

In order for the normative provisions of a legal system to live, it is necessary for the courts to implement them in their adjudication processes. For courts to be able to faultlessly perform their functions, it is necessary for them to have firm grounds while making decisions and the Constitution is certainly the primary basis of the normative order of a legal system. Therefore, a precondition for unified and precise court practice is a unified and precise source of normative provisions.

Besides, court practice should be considered through the adjudication processes of the European Court for Human Rights, since international contracts that have been ratified and come into force are above

national legislation. In this context it is necessary to examine the case *Dudgeon v. U.K.* (1981), then *Karner v. Austria*, where the European Court for Human Rights found that there had been a violation of the Convention by the Austrian court in denying the status of “life partner” to Siegmund Karner thus enabling him to inherit the right to tenancy of his partner. Also, in the case *E.B. v. France* the European Court for Human Rights firmly established the principle that state officials may not discriminate against individuals on the basis of sexual orientation in procedures of the adoption of children.

The proposal of Lesbian Group Kontra was related to Heading III of the Constitution that determines *Protection of Human Rights and Fundamental Freedoms*; below we give an overview of the constitutional provisions for which we are proposing changes in their original form:

1. Provisions form Section 1, containing *General Provisions*;
Article 14 para 1 reads: “*Citizens of the Republic of Croatia shall enjoy all rights and freedoms regardless of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, education, social status or other characteristics.*”
2. Provisions from Section 1, containing *General Provisions*;
Article 17 para 2 that adds to Para 1 in regards to restriction of individual rights and freedoms guaranteed by the Constitution during a state of war or an immediate threat to the independence and unity of the State, or in the event of severe natural disasters, reads: “*The extent of such restrictions shall be adequate to the nature of the danger, and may not result in the inequality of citizens in respect of race, colour, sex, language, religion, national or social origin.*”
3. Provisions from Section 2, containing *Personal and Political Freedoms and Rights*;
Article 39 reads: “*Any call for or incitement to war, or resort to violence, national, racial or religious hatred, or any form of intolerance shall be prohibited and punishable.*”
4. Provisions from Section 3, containing *Economic, Social and Cultural Rights*;
Article 61 Para 1 prescribes that the family shall enjoy special protection of the State, and Paragraph 2 reads: “*Marriage and legal relations in marriage, common-law marriage and families shall be regulated by law.*”

To broaden the scope of protection of basic human rights and freedoms in the above provisions of the Constitution of the Republic of Croatia, we propose the following changes:

In the Constitution of the Republic of Croatia (OG 56/90, 135/97, 8/98 – cleansed text, 113/00, 124/00 – cleansed text, 28/01, 41/01 – cleansed text and 55/01 – correction) in Heading III *Protection of Human Rights and Fundamental Freedoms*:

1. In Section 1 “*General Provisions*”, Article 14 para 1 after the word “sex” the words “sexual orientation” are added, and the Article is amended to read: “*Citizens of the Republic of Croatia shall enjoy all rights and freedoms regardless of race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth, education, social status or other characteristics.*”

Further clarification of the Article

Article 14 states that everyone in Croatia has rights and freedoms irrespective of numerous differing characteristics and lists protected grounds (race, colour, gender, language, religion, political or other belief, national or social origin, property, birth, education, social origin or other characteristics). Discrimination based on sexual orientation represents a common occurrence in Croatian society. Explicit constitutional protection from discrimination based on sexual orientation would provide firm ground for unified and precise court practice and punishment of this type of behaviour.

2. In Section 1 “*General Provisions*”, Article 17 Paragraph 2 after the word “sex” the words “sexual orientation” are added, and the Article is amended to read: “*The extent of such restrictions shall be adequate to the nature of the danger, and may not result in the inequality of citizens in respect of race, colour, sex, sexual orientation, language, religion, national or social origin.*”

Further clarification of the Article

Article 17 regulates restrictions of individual rights and freedoms guaranteed by the Constitution during a state of war or an immediate threat to the independence and unity of the State, or in the event of severe natural disasters. Apart from the already protected grounds, the extent of such restrictions should not result in the inequality of persons in respect of sexual orientation. The aim of this change is to provide firm legal ground for eliminating inequalities and discrimination based on sexual orientation.

3. In Section 2 “Personal and Political Freedoms and Rights”, Article 39, after the words “religious hatred” the words “intolerance based on sexual orientation” are added, and the Article is amended to read: *“Any call for or incitement to war, or resort to violence, national, racial or religious hatred, intolerance based on sexual orientation or any form of intolerance shall be prohibited and punishable.”*

Further clarification of the Article

Article 39 prohibits any call for or incitement to war, or resort to violence, national, racial or religious hatred, or any form of intolerance. Intolerance based on sexual orientation is a common occurrence in Croatian society and it is necessary to provide constitutional protection from this type of intolerance in order to ensure firm ground for unified and precise court practice and punishment of this type of behaviour.

4. In Section 3 “Economic, Social and Cultural Rights”, Article 61, after the words “common-law marriage” the words “same-sex union” are added, and the Article is amended to read: *“Marriage and legal relations in marriage, common-law marriage, same-sex union and families shall be regulated by law.”*

Further clarification of the Article

Article 61 is related to the right to respect and protection of family life. It is stated that marriage and common-law marriage are regulated by the law. The Same-Sex Unions Act (OG 116/03) also became part of positive legislation of the Republic of Croatia, but the Act does not provide the same rights to same-sex partners as to heterosexual common-law partners (only the right to joint property and support by a partner are regulated, while the right to inheritance, social and health insurance, and numerous other rights and obligations are not regulated by the Act). Introducing this change would provide constitutional ground for better legal regulation of same-sex civil unions and elimination of existing inequality.

On 23 November several NGOs decided to organise a round-table discussion regarding constitutional changes with the aim of indicating the “absence of a mechanism of the public debate that could influence changes to Constitution of the Republic of Croatia and initiating such discussion in relation to proposals of changes or amendments to Constitution of the Republic of Croatia proposed by individual organisations of civil society and/or citizens.” The organisations Centre for Peace, Non-violence and Human Rights Osijek, Centre for Peace Studies, CESI, Documenta, GONG and Civil Committee for Human Rights invited individual organisations to join them in order to create a joint list of amendments.

The association Iskorak took part in the round-table discussion. The representative of this association spoke in favour of introducing of sexual orientation into articles 14 and 17 of the Constitution of the Republic of Croatia. Lesbian Group Kontra expressed an interest for cooperation in advocating certain amendments and creating a joint list of amendments with the above organisations.

A coalition was formed that started working on a joint list of amendments, that was finalised by the end of January 2010 and sent to the relevant institutions. The list contained, among others, amendments to Articles 14, 17, 39 and 61, regarding rights of sexual minorities.

Personal Names Act and State Registries Act

In 2008 the Anti-Discrimination Act was passed that for the first time in Croatian legislation regulated protection against discrimination on the basis of gender identity.

Regardless of that, transgender persons are subjected to discrimination and violence in their everyday lives because of their gender identity. Serious problems exist in regards to the right to privacy of transgender persons that are the result of discriminatory legislation.

Namely, the Personal Names Act prescribes that after receiving a request for change of name, the municipal administrative body is obliged to publish an announcement on a notice board on the submitted request for the change of personal name and from practice we know that the whole request is often published on the notice board.

The State Registries Act prescribes that a change of personal name and sex are entered as additional entries and notes. This means if a person changes her name from Marko to Ana, she will have a birth certificate in which “Marko” will be entered in the basic entry, and below (in small letters at the bottom of the document) in additional notes: “By the decision of the municipal administrative body, no... the name was changed to Ana on the date...”). Seeing that no protective mechanisms are prescribed in the above laws for cases of change of gender, all citizens are able to find out about an individual person’s change of gender through the change of name procedure when the data is published on a notice board, and later on that information is also visible in documents (birth certificates). Considering that the directions on the implementation of the National Registers Act are unclear because they contain two mutually contradictory provisions, in practice cases occur where the change of sex itself is also entered on the birth certificate in the supplementary notes.

Furthermore, it is impossible to make a change of sex in personal documents unless a person has gone through the whole procedure of change of sex, and possesses adequate medical documentation.

In November 2009 Kontra made a proposal for the evaluation of the constitutionality of the Personal Names Act and State Registries Act. On 20 November, Transgender Remembrance Day, activists of Kontra, Women’s Network of Croatia and Iskorak – Centre for Sexual and Gender Minorities’ Rights organised an action of submitting the proposal for evaluation of constitutionality of the above acts and handing out flyers on the rights of transgender persons.

Considering that gender identity represents the most intimate aspect of private life, we believe that positive provisions of the law are not harmonised with Art 35 of the Constitution and Art 3 of the Convention on Human Rights, since implementation of the above acts leads to inhuman treatment of vulnerable individuals and does not guarantee respect and legal protection of private and family life, dignity, reputation and honour.

The discriminatory nature of certain provisions derives from the fact that the Republic of Croatia as a member of the Council of Europe and signatory to the European Convention on Human Rights has not undertaken all necessary actions to promote equality of all persons. This is a matter of venerable individuals for whom protective mechanisms have not been introduced and there is no objective or reasonable justification of valid cause for that.

It is experts’ opinion that transsexual persons do not suffer from mental illnesses, but they are often deeply unhappy persons due to their awareness from early age of their differences and lack of acceptance of their surroundings.

When we weigh up the right of transsexual persons to protection of privacy in relation to the right of citizens to express their opposition to the change of name and to state their reasons for opposition, there is no doubt that the right to protection of privacy of specially vulnerable individuals should take precedence.

In order to make the change of name in state registries, a transsexual person has to file a request according to the provisions of the Personal Names Act to the competent government administration body that decides upon the request by resolution.

Considering Art 7 para 1 of this Act, that prescribes the obligation of publishing an announcement concerning the submitted request on a notice board, specific situations of change of names of transsexual persons are noticed. The question is whether the publishing of such procedures is justified and in proportion, or unjustified and out of proportion to intervention into the right to respect of private life.

Namely, the reasons for publishing an announcement, set out in Art 7 para 2, are not acceptable from the aspect of a transsexual person who is changing personal name after changing gender and sexual identity. Possible opposition of citizens to the procedure of the change of name and stating the reasons for such opposition would represent further violation of the right to privacy. The Personal Names Act should have a protection mechanism in regards to transsexual persons, in order to protect them from publishing information on their personal name, since this would represent intervention in a protected right that is not justified or proportional.

A transgender person, who in numerous social transactions needs to submit her/his birth certificate which contains visible facts of change of sex and personal name, is not able to realise the right to “equal rights” in comparison to all other persons who submit their birth certificates with the aim of completing such social transactions.

Apart from the above, the availability of data on change of sex and personal name to relevant institutions, for example the Ministry of the Interior without limitations to the circle of authorised personnel, creates constant problems to transgender persons when crossing the Croatian border, since they are exposed to statements and questions concerning their sex, gender, name, etc. and these questions are not related to the travel of the transgender person.

Also we want to point to the need for regulation of the “legal phase” of the change of sex not only for persons who change sex with surgical procedures, but also for persons who do not go through all medical treatment in sex-reassignment procedures.

For example, certain transgender persons live in a different gender identity for long period of time and have external physical characteristics of the opposite sex because they take prescribed hormonal therapy and/or have undergone one or more procedures, etc. These external characteristics are different from the personal name and sex that is published in their personal documents (for example, a person with entered name Marko and male sex has external physical characteristics of a woman). For such citizens there is no legal possibility of changing the sex entered in personal documents. Considering the obvious incongruity between documents and gender identity, these persons are additionally and specially checked on each crossing of the border and they are ordered by border police officers to report without delay for medical examination in one of the clinical medical centres for verification and identification of sex in order to get a certificate of gender.

A number of transgender persons, due to often severe complications that are result of the surgical procedures of sex reassignment and hormonal therapy, do not go through the whole operative procedure that consists of multiple operations, and they go only through certain procedures or do not undergo medical treatment at all.

Exactly due to these circumstances and possible post-operative complications, citizens address the Croatian Institute for Health Insurance for approval and financing of operative procedures in other countries or regardless of that undergo procedures in other countries.

There are also specific situations that need to be considered – when transsexual persons are children. Then a specialist doctor very early on prescribes hormonal and other therapy and they are in constant psychiatric treatment, but surgical procedures are not undergone until a certain age. In this way children live in a different gender identity for up to eight years or even more until they come of age.

It is experts’ opinion that it is needed for the children’s wellbeing to change the entry of sex in the birth certificate because a child’s birth certificate is often used, and children are generally a vulnerable group of individuals, who are exposed to enormous pressure in these situations from their peers and the rest of their surroundings. Considering this issue leads to considering the Art 62 and 64 of the Constitution of the Republic of Croatia that prescribes that the State protects children and creates social, cultural and other conditions under which realization of the right to dignified life and obligation of all to protect children is promoted.

All the described examples, regardless of whether they concern children or adults, are contrary to Art 35 of the Constitution and lead to exclusion, marginalisation and dehumanization of approach to already vulnerable individuals.

These examples point to the need for harmonisation of laws with the Constitution of the Republic of Croatia in order to enable and legally regulate procedures of change of sex in the personal documents of transgender persons, not only after operations, but also after a long period of living in a different gender identity and to introduce protective mechanisms into existing legislation for the protection of basic human rights.

Considering all the above, the association Kontra, after submitting the proposal for evaluation of constitutionality of the above acts, started drafting proposals of changes and amendments to the Personal Names Act and State Registries Act with the aim of presenting them to state institutions and initiating legal changes even before the Constitutional Court adopts its decision.

3. Cooperation with state institutions and bodies

Government of the Republic of Croatia

The Programme of the Government of Republic of Croatia for the mandate of 2008-2011 does not contain fighting against discrimination in its goals and also does not contain special sets of activities in that field. The exception is special measures in regards to elimination of discriminatory conditions in the employment of young people (under the chapter “Youth”). Also in the chapter “Commerce” it is stated: “In the field that affects work in sector of commerce, and which falls under the sphere of the Labour Act, it is necessary to take into consideration and urgently adopt changes and amendments to the Labour Act in following the segments: protection of workers from discrimination based on any grounds...”

The Government of the Republic of Croatia is the implementing body of Activity 1.5.2 of the National Policy for Promotion of Gender Equality, that prescribes that “representatives of organisations for equality of sexual and gender minorities will be included into working bodies for adoption of laws, programmes and strategies related to rights of sexual minorities.” The Government regularly fails to implement this activity, what was evident in 2009 by the Government’s failure to include representatives of organisations for rights of sexual and gender minorities in the working group for creation of the Labour Bill.

In the past six years the Government of the Republic of Croatia has intentionally and regularly failed to implement its own anti-discrimination laws (adopted due to accession to the European Union), as well as international documents to which it is a signatory, in respect to the protection of the rights of sexual minorities, and particularly regarding the protection of the rights of same-sex couples.

Specific pieces of legislation proposed by the Government and adopted by Parliament are contrary to positive anti-discrimination legislation on a regular basis. In 2009 this was evident through two new discriminatory bills that the Government placed into parliamentary procedure – the Labour Bill and the Medical Insemination Bill, of which the first bill was discriminatory in regards to sexual orientation and the second bill was discriminatory in regards to marital status and sexual orientation.

Almost all anti-discrimination laws remain unimplemented since there is no political will for ensuring adequate protection of the human rights of one of the most vulnerable social groups.

Members of the Government of the Republic of Croatia give homophobic and transphobic statements in public on a regular basis, and that points to the lack of political will to fight discrimination based on sexual orientation and gender identity.

For example, Mr Darko Milinović, deputy prime minister of the Government and minister of health and social welfare stated in 2008 that he refused the offer of an employee of a gym to relax in the sauna because he knows that “they [homosexuals] love doctors”.

Office for Gender Equality of the Government of the Republic of Croatia

Although work on the subject of the protection of the rights of sexual and gender minorities falls under the National Policy for the Promotion of Gender Equality, it is not clear from the activities of the Office in 2008 that it is involved in this area at all. It is also obvious from the competition for the allocation of financial support to organisations that not a single project or programme was selected from the area of sexual and gender minorities.

The Office for Gender Equality has no role at all in the implementation of even weakly defined measures such as the National Policy for the Promotion of Gender Equality, as well as the National Programme for the Protection and Promotion of Human Rights.

National Policy for the Promotion of Gender Equality 2006-2010

The Gender Equality Act (OG 116/03, OG 82/08) states that the Office for Gender Equality is responsible for drafting the National Policy for Promotion of Gender Equality and monitoring its implementation. The Act also states that the Office shall cooperate with civil society organisations that are active in the field of gender equality.

At the request of the Lesbian Group Kontra & Iskorak and the Women's Network of Croatia, the following provisions were implemented into the Policy:

- In Chapter 3 "Commitments in the process of joining the European Union", the following legal ground in the field of equal opportunities is included: fighting discrimination on the basis of sex and sexual orientation.
- The strategic framework for implementation of the Policy on Gender Equality and the action plan contained a chapter on "Improvement of ways to combat and eliminate discrimination based on sexual orientation". This chapter contained the following provisions:
 - 1.5.1. The Ministry of Justice and the Ministry of Internal Affairs will conduct research with the aim of analysing judicial practice and police conduct while dealing with criminal offences motivated by the sexual orientation of the injured party. Deadline for the implementation of this activity: 2007.
 - 1.5.2. Representatives of organizations for equality of sexual and gender minorities will be included in working bodies for adoption of laws, programmes and strategies, which are relevant to the rights of sexual minorities. Implementing body: competent bodies of state administration, Government of the Republic of Croatia. Deadline for implementation: 2007-2010.

However, we also have to report that unfortunately most of our complaints and proposals to the Government Office for Gender Equality were not included in the National Policy on Gender Equality. This kind of conduct shows selective implementation of the Gender Equality Act by the Government Office for Gender Equality.

Namely, to clarify the statements from the previous paragraph we quote the amendments that the Women's Network of Croatia sent to the Office for Gender Equality on our behalf:

IV. Improvement of the position of women, members of sexual minorities

The major aim of this programme chapter is combating and eliminating discrimination based on sexual orientation through the implementation of existing legal solutions and proposing new measures for the elimination of all forms of discrimination against women.

Lesbians, as women of different sexual orientation, are affected by specific forms of discrimination. The problem of discrimination against women who are members of minorities is not sufficiently recognized by the public and state authorities.

The majority of rights available to different-sex married and cohabiting partners are not available to same-sex partners. That is discrimination based on sexual orientation and same-sex union, which is contrary to provisions of the Gender Equality Act and Same-Sex Unions Act. One of the aims of this programme chapter is the elimination of discrimination against same-sex couples in Croatian legislation.

1. The Ministry of the Family, War Veterans, and Intergenerational Solidarity will propose a bill on changes to the Same-Sex Unions Act.
Implementation deadline: 2007
2. The Ministry of Justice and the Ministry of the Interior will make an analysis of police conduct and judicial practice in regards to criminal offences motivated by the sexual orientation of injured parties.
Implementation deadline: 2007
3. The Justice Academy, the Police Academy, the Ministry of Justice and the Ministry of the Interior will conduct workshops with the aim of systematic education of police officers, judges and state attorneys regarding cases related to discrimination and violence against sexual minorities. The aim of this provision is to enhance legal protection and help for victims of violence and discrimination.
Implementation deadline: 2007 and continuing thereafter
4. The Ministry of Science, Education and Sport will pay special attention to sensitivity to the rights of sexual minorities during the creation of the schoolbooks standard. The Ministry will create a special Instruction for the Assessment of the Quality of Schoolbooks from the perspective of the rights of sexual minorities.
Implementation deadline: 2007
5. The Ministry of Science, Education and Sport, the Institute for Education, the Office of the Ombudswoman for Gender Equality and the Agency for Vocational Education will create an expert working group for creation of a programme of education of those responsible for educational activities.
Implementation deadline: 2007
6. The Ministry of Science, Education and Sport will include experts from the field of the human rights of sexual and gender minorities in expert committees for the creation of regulations and other documents under jurisdiction of the Ministry (educational plans and programmes, Regulation on Self Assessment, Codex on Ethics).
Implementation deadline: 2006/2007
7. The Government will include experts from the field of the human rights of sexual and gender minorities in working groups for the creation and adoption of laws, programmes, and strategies related to rights of sexual and gender minorities.
Implementation deadline: 2007 and continuing thereafter.

It is clear by comparing the proposal of the Lesbian Group Kontra, Iskorak and the Women's Network with the Policy adopted by the Government that although seven activities along with explanations were proposed to the Office for Gender Equality, it accepted only two.

Lesbians, bisexual and transgender women are especially exposed to violence and discrimination, due to their status of belonging to a doubly discriminated group. According to the Gender Equality Act, the Office for Gender Equality has the responsibility to educate the public and to send a clear message that this situation is unacceptable. By neglecting to implement a description of the situation and the need to protect the rights of sexual and gender minorities, the office failed in this responsibility.

The Same-Sex Unions Act provides same-sex couples with only two rights: the right to joint property and to support by a partner. It does not provide same-sex partners with other rights and responsibilities available to different-sex partners through the institutions of marriage and common-law marriage. That is discrimination based on sexual orientation and same-sex union, so the Act is contrary to both itself (Article 21 of the Same-Sex Unions Act prohibits discrimination based on same-sex union and sexual orientation) and to the Gender Equality Act. The Office for Gender Equality refused to point to the discriminatory status of same-sex couples and refused to take the initiative to change that condition. It showed that it also acts in a discriminatory manner in relation to sexual and gender minorities.

Misconduct of police officers while dealing with cases of discrimination and violence against sexual and gender minorities was one of the most important points of all previous reports on the status of human rights of sexual minorities in Croatia and one of the biggest problems for the Croatian LGBT community today. Problems with implementation of anti-discrimination legislation, including marginal support to victims have been noted in European Commission's Progress Reports on Croatia for 2007, 2008 and 2009. The Progress Report for 2009 states that lesbians, gays and bisexual persons are subject to threats and attacks and that many cases have not been adequately investigated by the police and judicial authorities and that a large number of cases remain unreported.

The Gender Equality Act and all other anti-discrimination acts will remain unimplemented if victims of discrimination and violence cannot have confidence in the police and the justice system while reporting criminal offences. That is especially the case if there is a significant possibility that police officers will also act in a discriminatory manner. In spite of all that, the Office for Gender Equality deliberately failed to deal with the problem of discriminatory conduct towards sexual and gender minorities by police officers in the National Policy.

In the Croatian educational system, sexual rights do not exist in Croatian schools as a mandatory subject and there is no education on human rights. It is of great concern to us that the Office for Gender Equality does not recognise this problem as well.

The Policy itself in the majority of cases is not explicit about time limits or commitments for relevant institutions regarding certain activities that should improve the position of women and sexual minorities in Croatian society. The ambiguous definitions and postponed activities contained in this Policy point to the fact that there was no real political will on the part of the Government to combat discrimination based on gender and sexual orientation.

Each year since the adoption of the National Policy, Lesbian Group Kontra and the Women's Network of Croatia have sent the Office for Gender Equality a request to provide information about the implementation of the National Policy of Gender Equality, but the Office has never delivered this information on the principle of the standard practice of not respecting legal time limits. Until February this year not even one annual report on the work of the Office or implementation of the National Policy for Promotion of Gender Equality 2006-2010 was published on the web pages of the Office for Gender Equality (the last published report was for 2004). On 12 February 2010 the Office published the Report on the Implementation of the National Policy for Promotion of Gender Equality 2006 – 2010 for the period from October 2006 until December 2008.

Regarding implementation of Activity 1.5.1 the following is stated in the Report:

1.5.1. An investigation will be carried out in order to analyse court practice and police behaviour concerning criminal offences motivated by the sexual orientation of the injured party.

Implementing bodies: Ministry of Justice, Ministry of Internal Affairs

Timetable of implementation: 2007

Reporting bodies: Ministry of Justice, Ministry of Internal Affairs

The Ministry of Justice reported that in the context of existing statistics that are maintained by the Ministry and judicial bodies it was not possible to extract data on criminal offences motivated by sexual orientation, considering that besides the criminal offence of racial or other discrimination

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

The Ministry of Internal Affairs reported that by the changes to Criminal Code in 2006 a new provision was added to Article 89 that defines hate crime as a new criminal offence. During 2006 one criminal offence motivated by sexual orientation was evidenced, and in 2007 the Municipal Criminal Court in Zagreb made two convictions for this criminal offence. The number of reports to the State Attorney's Office and the status of cases have not yet been collected. At the end of 2006 a Memorandum was signed between the Ministry of Internal Affairs and the Office for Democratic Institutions and Human Rights of the Organisation for Security and Co-operation in Europe (OSCE) on combating hate crime, and the Ministry of Internal Affairs also committed to implement training on hate crimes into existing educational programme for education of police officers.

In regards to the above report of the Ministry of Justice we emphasise that the Act on Amendments to the Criminal Code which contains the quoted provision about hate crimes came into force on 1 October 2006. The purpose of introducing the definition of hate crime was, basically, to state greater social condemnation of such type of criminality and in accordance with this it is necessary to keep separate statistics and indicators of the changing rates of this criminality, as well as to specially emphasise their occurrences in society, which could also be seen in the annual report on the work of state attorneys' offices. Four years after introducing the definition of hate crimes into the Criminal Code and three years after expiry of the deadline for implementation of the activity of analysis of court practice and police behaviour concerning criminal offences motivated by the sexual orientation of the injured party, it is stated in the report on implementation of this activity that consideration of the possibility of collecting such extensive data is in progress.

Such actions by state institutions confirm the fact that there is no political will for quality engagement regarding this problem.

The first thing we noticed in the report of the Ministry of Internal Affairs is that it states incorrectly that Art 89 defines hate crime as a new criminal offence. Therefore, the persons who reported on implementation of this activity to the Ministry did not even know what hate crime is (it is not defined as a separate criminal offence, but as an aggravating circumstance for existing criminal offences). Furthermore, since this report was for the period from October 2006 until December 2008 (published in February 2010), it remains unclear how the Ministry of Interior did not manage to collect the number of reports made to the State Attorney's Office and the status of cases regarding hate crimes. Namely, the State Attorney's Office delivered information on the number of reports to associations Kontra and Iskorak in December 2008. All this leads us to conclusion that there was no real attempt to implement this activity on the part of the relevant institutions.

Regarding the implementation of Activity 1.5.2, the following is stated in the Report:

1.5.2. Representatives of organisations for the equality of sexual and gender minorities will be included in the working bodies for the adoption of laws, programmes and strategies connected with the rights of sexual minorities.

Implementing bodies: Competent bodies of state administration, Government of the Republic of Croatia

Timetable of implementation: 2007 – 2010

Reporting bodies: Ministry of Science, Education and Sport, Committee for Gender Equality of the Croatian Parliament, Office for Gender Equality

The Ministry of Science, Education and Sport includes representatives of organisations for equality of sexual and gender minorities in the work of certain working bodies, for example the Committee for Evaluation of Programmes for Health Education.

In 2006 HRK 160,000 (€22,069) was spent on the work of working bodies.

The Committee for Gender Equality of the Croatian Parliament held a session in July 2007 on the theme “Analysis of the Rights of Same-sex Unions in the Republic of Croatia”.

The Office for Gender Equality in cooperation with the association Second Step – Centre for Social Integration of Sexual and Gender Minorities, organised a round-table discussion on International Day Against Homophobia,³ that is commemorated on 17 May, on the day when the World Health Organisation removed homosexuality from the International Classification of Illnesses in 1990. At the round table discussion held in the Journalists Home in Zagreb, with the presence of MPs and the Office for Gender Equality, Second Step presented the *Programme for Combating Homophobia in Five Steps*.

The Office for Gender Equality lists only itself, the Ministry of Science, Education and Sport and the Committee for Gender Equality of the Croatian Parliament as reporting bodies for the mentioned activity, although all relevant bodies of state administration and the Government of the Republic of Croatia are defined as implementing bodies for this activity.

Of the three activities that the Office describes as implementation of the activity that prescribes including representatives of sexual and gender minorities’ organisations in the working bodies for the adoption of laws, programmes and strategies, two activities are in fact initiatives of civil society organisations.

Namely, it is unclear why the Office describes in the report for this activity the round-table discussion of the association Second Step from the 2007, since this was not a working body of the Government created in order to draft a specific law, programme or strategy.

Furthermore, the session on the theme of “Analysis of the Rights of Same-sex Unions in the Republic of Croatia” also from 2007 was also organised at the initiative of civil society organisations, this time associations Kontra and Iskorak. This also was not a meeting of a working body created to draft a specific law, programme or strategy.

The information that the Ministry of Science, Education and Sport includes representatives of organisations for equality of sexual and gender minorities in the work of certain working bodies is entirely false. The only example mentioned is the Committee for Evaluation of Programs for Health Education. This Committee did not include representatives of LGBT organisations. The only representatives of non-governmental organisations on the Committee were Ms Renata Jelušić, president of the association Parents in Action and Mr Amir Hodžić, representative of the Centre for Education, Counselling and Research, while according to media reports the Committee consisted mostly of persons “from an extremely conservative milieu”, like Zlatko Miliša, from the Zadar Faculty of Philosophy, or Goran Dodig, a psychiatrist from Split and former member of the Croatian Social-Liberal Party, who for example, three years ago wrote in *Fokus*: “Try to imagine where the fake call for the equality of woman has brought us... Women have never had more reason to protest than today; their families have been taken away from them, their children have been taken away, and again they pay the price.” We emphasise that as the result of the above process the Ministry of Science, Education and Sport introduced an experimental programme that was evaluated as discriminatory in regards to sexual orientation into primary and secondary schools in Croatia, and then finally after four years of work on finding an adequate solution for the introduction of sex and afterwards health education, gave up on introducing a separate subject of sexual or health education and stopped working on this issue entirely.

In the period from October 2006 until the day of publication of this report, a number of working bodies for drafting laws, programmes and strategies concerning rights of sexual and gender minorities were formed. In the above period not a single working group included representatives of associations for the protection of the rights of sexual and gender minorities. That Activity 1.5.2 will never be implemented already

became clear on the first occasion, during the creation of the National Program of Protection and Promotion of Human Rights (2007), and then also during creation of the draft of the Anti-Discrimination Bill and the Medical Insemination Bill (2009), since representatives of sexual and gender minorities' organisations were not included in working groups for drafting these documents as prescribed in the mentioned activity.

Organisations for the rights of sexual minorities occasionally participated at their own request in sessions of parliamentary committees at which the already proposed Bills were discussed. However, in 2009 a request for a representative of Lesbian Group Kontra to participate in the session of the Committee for Human Rights and Rights of National Minorities at which the Labour Bill was discussed, was rejected with the explanation that "there are not enough chairs".

National Programme for the Protection and Promotion of Human Rights from 2008 to 2011

The Office for Gender Equality was also an implementing body for the following activities from the National Programme for the Protection and Promotion of Human Rights from 2008 to 2011:

98. Aim: To increase tolerance towards sexual and gender minorities

98.1. Measure: Organisation of public debates and seminars

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

Timeframe: 2008-2011

98.2. Measure: Encouraging activities for the purpose of raising public awareness of the unacceptability of discrimination on the basis of sexual orientation

Implementing body: Office for Gender Equality of the Government of the Republic of Croatia

Timeframe: 2008-2011

99. Aim: To improve legislation in the area of protection of members of sexual and gender minorities

99.1. Measure: Preparation of an analysis of legislation for the purpose of achieving the rights of members of same-sex orientation

Implementing body: Office for Gender Equality of the Government of the Republic of Croatia

Timeframe: 2009

None of the above measures was implemented. In 2008 and 2009 the Office for Gender Equality did not organise any public debates or seminars related to the rights of sexual and gender minorities.

Not a single project or programme was selected from the area of sexual and gender minorities in the mentioned period through the competition for the allocation of financial support to organisations of civil society.

As at the day of publishing this report, the Office has not published the analysis of legislation related to rights of sexual minorities.

The Office did not answer the request made by the Lesbian Group Kontra and the Women's Network of Croatia on 30 December 2009 for information on implementation of actions from the National Programme for the Protection and Promotion of Human Rights.

Our conclusion is that the work of the Office was directed to the preparation of declarative documents, and that the Office itself did not implement the activities in which it was listed as the implementing body.

The Office to date has not supported a single one of the proposed legal initiatives of civil society organisations for the advancement of the status of sexual and gender minorities (an amendment to the Sports

Act, which would include sexual orientation in the anti-discrimination provisions of that Act, and the Registered Partnership Bill from 2006, amendments to Asylum Bill, Foreigners Bill, Anti-Discrimination Bill, Labour Bill, Medical Insemination Bill), nor the introduction of effective measures into national policies and programs. The Office did not respond to a single request of civil society organisations related to implementation of the National Policy for Gender Equality and National Program for Protection of Human Rights and Rights of National Minorities.

The only activity of the Office for Gender Equality from the adoption of the National Policy for Gender Equality (2006) until today regarding rights of sexual and gender minorities was the round-table discussion that the Office co-organised with the association Second Step in 2007 and granting HRK 6,600 (€904) to Lesbian Group Kontra via a competition in 2006 (the association's financial report was never approved, which we believe is connected with the fact that the Kontra publicly criticised the work of the Office).

Office for Human Rights of the Government of the Republic of Croatia

On 10 March 2009, the Office for Human Rights of the Government of the Republic of Croatia announced a competition for the allocation of funds from the state budget but did not invite organisations to register projects concerned with combating discrimination based on sexual orientation and gender identity. Following this, in its decision on the allocation of funds for the projects and programmes of organisations of civil society in the areas of protection and promotion of human rights in 2009 made on 22 April 2009, funds were not allocated to a single project or programme aimed at combating discrimination of sexual and gender minorities. Since the competition included financing of projects of organisations dealing with problematic of HIV/AIDS and hepatitis, association Iskorak was granted HRK 30,000 (€4,100) for a project of prevention of HIV/AIDS.

In this project the association Iskorak took over and translated the brochure of the leading British organisation for prevention of HIV and AIDS, the Terrence Higgins Trust, intended for homosexual men. The brochure was published with the financial support of the Office for Human Rights.

Unfortunately, several media published extremely homophobic articles in regards to this brochure, calling it vulgar, scandalous and pornographic due to the explicit style of writing on gay sex and illustrations with dolls, and condemned institutions for financing this kind of brochure.

When asked by a journalist about the brochure *The Bottom Line*, published as part of the above project, Mr Luka Mađerić, head of the Office for Human Rights, stated the following:

“One of the priorities of this year’s competition of the Office for Human Rights for projects of associations of civil society dealing with the promotion and protection of human rights was prevention of HIV/AIDS. Association Iskorak applied, their project was evaluated as of sufficient quality by the independent group responsible for evaluation of projects, and the project was then financed. However, it was not stated anywhere in this project that a brochure with this name and that kind of content would be published. If we had been aware of the plan to publish this brochure with inappropriate content, the project would certainly not have been financed.”

The head of the Office also emphasised that the Office’s logotype was published on the brochure without their permission and stated that in the contract they signed with Iskorak on financing the project is clearly specified that the Office is not responsible for any damage caused by the beneficiary during the implementation of the project.

Associations working in the field of prevention of diseases should have the possibility of communicating with users in the way that they consider best for achieving the goals of their projects. The brochure *The Bottom Line* was not even written by the association Iskorak. It was taken from the leading British organisation for prevention of HIV and AIDS, the Terrence Higgins Trust, and was just translated into Croatian, and the way of communicating with users that was used in the brochure is common for this type of brochure.

It is scandalous for the Office for Human Rights to disassociate itself from a project it previously co-financed, due to homophobic articles in the media (one of journalists calls homosexual men “arse-lovers” and “heterophobes”), instead of reacting to such articles, which is the Office’s legal obligation and one of the main purposes for its existence.

The National Programme of Protection and Promotion of Human Rights prescribes only three activities related to the rights of sexual and gender minorities and they are aimed at raising public awareness of discrimination of sexual minorities and creating analysis of legislation. According to the best of our knowledge, these activities have not been implemented, and the Office did not respond to our questions on implementation of activities that were sent to the Office on 30 December, despite the legal deadline of 15 days that is prescribed for delivering an answer.

Instead of that, the Office for Human Rights disassociated itself from the only activity related to sexual minorities that it co-financed accidentally, because the project of the association Iskorak fell into the area of dealing with the problem of HIV, while the area of combating discrimination based on sexual orientation and gender identity, following the principle of standard practice of the Office, was not listed among priority areas for financing.

According to Activity 1.5.2 of the National Policy for Promotion of Gender Equality, representatives of organisations for the equality of sexual and gender minorities should be included in the working bodies for the adoption of laws, programmes and strategies connected with the rights of sexual minorities. The Office for Human Rights of the Government of Croatia regularly avoids implementing this activity, and therefore it did not include representatives of sexual and gender minorities’ organisations in working groups for creation of drafts of the National Programme for Protection and Promotion of Human Rights (2007) and the Anti-Discrimination Bill (2008), what is contrary to the above activity of the National Policy for Promotion of Gender Equality.

The Office for Human Rights is not involved in the area of the protection of the rights of sexual and gender minorities nor does it implement measures of the National Policy for Gender Equality, nor does it determine combating discrimination based on sexual orientation and gender identity as a priority area for the allocation of funds to civil society organisations, and if it accidentally happens that it finances an LGBT organisation, it disassociates itself from it in public by giving homophobic statements.

The conclusion is that the Office for Human Rights of the Government of the Republic of Croatia did not even have the intention of participating in any way whatsoever as a relevant body of the Government in the protection of the rights of sexual and gender minorities.

Croatian Parliament

In 2009, the earlier conclusion that this institution is basically homophobic and unwilling to cooperate with civil society was confirmed. This can especially be seen from the procedure of adopting the new Labour Act, from denying a presence to civil society organisations at sessions of relevant parliamentary committees and the failure to adopt amendments that would remove discrimination of same-sex couples in Croatian legislation.

During debates on bills concerning rights of sexual and gender minorities in previous years there was also a lack of sanctions by the Speaker of the Croatian Parliament against members who stated their opinions of sexual and gender minorities in a vulgar or insulting manner (for example during the debate on the Anti-Discrimination Bill in 2008). In 2009, the relevant committees did not even give the opportunity for the rights of LGBT workers and discriminatory provisions in the Labour Bill to be debated.

Committee for Human Rights and the Rights of National Minorities of the Croatian Parliament

On 16 November 2009, Lesbian Group Kontra with the support of the Women’s Network of Croatia, Iskorak, and the Union of Independent Trades unions sent draft amendments to the Labour Bill to the Committee for Human Rights and the Rights of National Minorities of the Croatian Parliament concerning the elimination from this Bill of provisions that would have a discriminatory effect upon sexual minorities.

Since we did not receive a reply to our request to take part at the session of the Committee, we contacted the Committee by telephone. We received the answer that the Committee would hold its session in a smaller room and that therefore there was no place at the session for civil society – non-governmental associations and associations of trades unions that proposed amendments to the Bill. The secretary of the Committee simply stated: “There are not enough chairs”.

We would again draw attention to Activity 1.5.2 of the National Policy for Promotion of Gender Equality, which has never been implemented and which prescribes that representatives of organisations for the equality of sexual and gender minorities should be included in the working bodies for the adoption of laws, programmes and strategies connected with the rights of sexual minorities. However in this case not only were representatives of associations for protection of rights of sexual and gender minorities left out, but the entire civil society.

The Committee did not adopt Kontra’s amendments, but neither did it adopt numerous amendments of associations of trades unions and the Ombudswoman for Gender Equality aimed at protecting the human rights of workers.

In previous years cooperation was established with the Committee concerning certain draft amendments (introducing definition of hate crimes in the Criminal Code, amendment to the Anti-Discrimination act relating to the institution of intervener, etc.), but cooperation was never established in relation to rights of same-sex couples and that leads us to the conclusion that the Committee is basically homophobic.

Ombudswoman for Gender Equality

In the 2008 Report on the Work of the Ombudswoman for Gender Equality, the Ombudswoman mentioned the status of rights of sexual and gender minorities in a special chapter. In the part concerning the legal framework, the Ombudswoman mentions adoption of the new Gender Equality Act (OG 82/08), that prohibits, among other grounds, discrimination based on sexual orientation.

Furthermore, the Ombudswoman states that “European Parliament taking into consideration the Convention of the United Nations on Protection of Human Rights and Fundamental Freedoms, adopted the Resolution on Homophobia in Europe (RC-B6-0025/2006) that urges Member States to adopt legislation that prohibits discrimination and **hate speech towards sexual minorities**, and in Art 5 urges Member States and the Commission to step up the fight against homophobia through education, such as campaigns against homophobia in schools, in universities and in the media...”

Considering that anti-discrimination legislation is not sufficient to protect the rights of sexual and gender minorities, the Ombudswoman pleaded for “implementation of a wider, systematic campaign of raising awareness on tolerance and non-violence towards members of sexual and gender minorities in which the media have one of the key roles.”

The Ombudswoman issued a public statement in which she condemned the physical attack on activists of Kontra and Iskorak that happened on 26 June 2008 after the Zagreb Pride event and she also condemned the physical attack that happened at the same time on three young men, citizens of Kosovo.

The Report states that not one case of violence on anyone and on any basis should be treated as less important and remain unpunished.

On 15 January 2009 the Ombudswoman issued a public statement regarding the attack on Neven Rauk.

The following was stated in the public statement: “I strongly condemn the hate crime that was committed in a cowardly manner against 23-year-old Neven Rauk due to his sexual orientation. I recall my previous statements of 30 June 2008 and 27 April 2007 in which I also condemned violence against members of the LGBTIQ community and I emphasise again the lack of wider social condemnation of homophobic behaviour.

“I believe that a victim of any type of violence based on any ground is the same and that violence against any victim deserves equally wide and public social condemnation. We cannot fight hate crimes only by legislation and repression. Severe condemnation of violence against homosexuals should not come only

from certain institutions, mostly ones dealing with gender equality or associations dealing with the protection of human rights or interests of members of LGBT community and only certain media. We will not be able to fight against the feeling of insecurity without the public and wide social condemnation of any violence.”

On 13 June 2009 the Ombudswoman participated in the Zagreb Pride march.

On 18 September 2009 the Ombudswoman for Gender Equality presented the activities of her office related to protection from discrimination based on sexual orientation in a seminar on discrimination at workplace based on sexual orientation for trades unions officials that was organised by the Lesbian Group Kontra and the Institute for Mobilisation, Intervention and Action – M.I.A. in cooperation with the Union of Independent Trades Unions, under the project “United against LGB Discrimination in the Workplace”, financed by the European Commission. The Ombudswoman also presented the activities of her office relating to protection from discrimination based on sexual orientation at a second seminar under this project for lawyers of the Union of Independent Trades Unions that was held on 16 October 2009.

From 23 to 26 October 2009 the Ombudswoman for Gender Equality participated in the international conference on equality for sexual minorities held in Podgorica, named “Justice in the Balkans: Equality for Sexual Minorities”.

In November 2009 the Ombudswomen for Gender Equality despite the appeal of civil society organisations did not include in her proposal of amendments to the Labour Bill amendments aimed at eliminating discrimination based on sexual orientation from the Bill.

The Ombudswoman for Gender Equality includes in the work of her office activities aimed at the protection of the rights of sexual minorities, cooperates with non-governmental organisations for protection of the rights of sexual minorities and regularly condemns violence against LGBT persons. On the other hand, the Ombudswoman in certain cases fails to use her legal powers to propose changes to acts that contain discriminatory provisions towards sexual minorities.

The Ombudswoman for Gender Equality is limited in her actions by the fact that each year she can be relieved of her duty before expiry of her mandate, in the case that the Croatian Parliament does not accept the annual report on the work of the Office of the Ombudswoman for Gender Equality.

Our recommendation is to eliminate the requirement for the annual report of the Ombudswoman to be accepted by the Croatian Parliament, in order for the Office of the Ombudswoman for Gender Equality to be able to independently implement activities for which it was founded. We also recommend increasing the capacity of the Office by the additional employment of persons who would deal exclusively with discrimination based on sexual orientation and gender identity.

Ministry of Internal Affairs

On 13 January 2009, following their previous request, Lesbian Group Kontra and the Women’s Network of Croatia received a report from the Directorate of Police concerning criminal offences committed on the basis under Art 89 para 36 of the Criminal Code – hate crimes.

In the period from 1 January 2009 to 30 December 2009, the Ministry of Internal Affairs recorded 32 criminal offences “which according to all circumstances were committed or it was suspected or confirmed by the criminal investigation that they were motivated by hatred towards a particular individual or group”, and all on the basis of Art 89 para 36 of the Criminal Code.

Of the 32 criminal offences, 29 were solved, for which a total of 47 people were charged. According to the Ministry, crime scene investigations were carried out for all the criminal offences, while further investigative work was carried out for 18 offences.

All 32 criminal offences resulted in criminal charges or a special report to the responsible state attorney’s office, while in 27 of the above 32 criminal offences it was specially indicated in the criminal complaint or special report that they were committed on the basis under Art 89 para 36 of the Criminal Code.

The reason that for five criminal offences it was not specially indicated Code in the criminal complaint or special report that they were committed on the basis under Art 89 para 36 of the Criminal is that in these

criminal offences there was the basis for suspicion, therefore presumption on the basis of all the circumstances of the criminal offences that they were motivated by hatred on the basis under Art 89 para 36 of the Criminal Code, while for the remaining 27 criminal offences the motive for committing the criminal offence was determined with certainty.

Of the 32 criminal offences, there were 3 criminal offences of racial or other discrimination under Art 174 of the Criminal Code, while no criminal offences were noted for violation of the equality of citizens under Art 106 of the Criminal Code.

According to motives, 18 criminal offences were ethnically motivated, 4 criminal offences were related to sexual orientation, 2 connected to regional background, 2 connected to parentage, and 6 connected to other characteristics (belonging to a different subculture group).

Of all the evidenced criminal offences in the above period, according to structure there was:

- 10 criminal offences of violent behaviour (Art 331 CC),
- 4 criminal offences of grievous bodily injury (Art 92 CC)
- 4 criminal offences related to the criminal offence of threatening behaviour (Art 126 CC),
- 4 criminal offences of violation of reputation of the Republic of Croatia (Art 151 CC),
- 3 criminal offences of racial or other discrimination (Art 174 CC),
- 3 criminal offences of destruction or damage of other persons' property (Art 222 CC),
- 2 criminal offences of attempt of murder (Art 90 in conjunction with Art 33 CC)
- 1 criminal offence of bodily injury (Art 98 CC)
- 1 criminal offence of spreading of false and disturbing rumours (Art 322 CC)
- 1 criminal offence of bringing into danger life or property by generally dangerous actions or means (Art 263 CC)

Despite the fact that the information delivered by the State Attorney's Office for 2009 was incomplete, differences in statistical data between State Attorney's Office and the Ministry of Internal Affairs are visible.

Generally we judge that in last two years there was a visible advance in finding the perpetrators of criminal offence of violent behaviour; however, it should be borne in mind that all such cases were widely reported by the media and we hope that it will happen in practice that they are solved in an equal fashion as those cases which are not covered by the media at all, which up to now, unfortunately, has not been the practice.

We emphasise that there also exist numerous examples of police mistreatment in the sense of insulting, disparaging or mocking behaviour when victims come to report violence or discrimination, and that this as a rule happens at the level of the regular police. As officers of the regular police are most frequently the first to be in contact with the victim directly after the committing of a criminal offence, this unprofessional behaviour by them deters victims from further insistence on the prosecution of the perpetrator and future reporting of such criminal offences. In this respect we consider that, except that efforts have been made for the limited education of police officials about hate crimes, it is necessary that the Ministry of Internal Affairs organises education and training for regular police officials about the rules of civilised behaviour towards parties in their everyday work, which will certainly be reflected in the quality of police procedures not only in these but also in other cases.

State Attorney's Office of the Republic of Croatia

On 11 March 2010, the State Attorney's Office of the Republic of Croatia delivered only a partial reply to the previous request of the Kontra and the Women's Network of Croatia concerning statistical indicators of the criminal offences motivated by hate.

The State Attorney's Office delivered following statistical data for the period from 1 January 2009 to 30 December 2009:

	2009
NUMBER OF CASES	19
REJECTIONS OF CRIMINAL COMPLAINTS	4
INITIAL INVESTIGATION PHASE	1
INVESTIGATIVE ACTIONS	-
WITHDRAWAL FROM PROSECUTION	-
INDICTMENT PHASE	9
VERDICTS	5 guilty verdicts

Despite the fact that the information delivered by the State Attorney's Office for year 2009 was incomplete, differences in statistical data between State Attorney's Office and the Ministry of Internal Affairs are visible.

The State Attorney's Office stated that in 2009 they worked on altogether 19 cases committed on the basis under Art 89 para 36 of the Criminal Code (hate crimes), while the Ministry of Internal Affairs noted 27 criminal offences in which they specially indicated in a criminal complaint or special report to the State Attorney's Office that those criminal offences were committed on the basis of Art 89 para 36 of the Criminal Code. The difference of 8 cases between the statistical data of the Ministry and the State Attorney's Office is not possible to examine, since the State Attorney's Office did not deliver an explanation along with the table, so we can only notice the illogicality since the State Attorney's Office is working on 8 cases fewer than the Ministry reported in the same year.

From the statistical data of the State Attorney's Office related to previous years it can be seen that criminal offences motivated by hatred are not in practice placed in conjunction with the criminal offence of racial or other discrimination, although cases of these criminal offences are possibly ideal for conjunction with the criminal offence of racial or other discrimination. Namely, by an act under the crime of violent behaviour, for example, there is also established a violation of the provisions of the Convention on the Protection of Human Rights and Fundamental Freedoms, by which is also established the essence of the criminal offence of racial or other discrimination under Art 174 para 1 of the Criminal Code.

The Act on Amendments to the Criminal Code which contains the quoted provision about hate crimes came into force on 1 October 2006. However, in reports on the work of state attorneys' offices in 2007 and 2008 criminal offences connected to hate crimes are not mentioned at all, although according to the internal directives of the State Attorney's Office of the Republic of Croatia, statistical data were also maintained for that period. The report on the work of state attorneys' offices in 2009 was not published by the date of publishing this report. We emphasise that the purpose of introducing the definition of hate crimes was, basically, to state greater social condemnation of such type of criminality and in accordance with this it is necessary to keep separate statistics and indicators of the changing rates of this criminality, as well as to specially emphasise their occurrences in society, which could be seen also in the annual report on the work of state attorneys' offices.

The Ministry of Justice was one of implementing bodies for Activity 1.5.1 of the National Policy for Promotion of Gender Equality 2006–2010.

The Ministry reported that “in the context of existing statistics that are maintained by the Ministry and judicial bodies it was not possible to extract data on criminal offences motivated by sexual orientation, considering that besides the criminal offence of racial or other discrimination under Art 174 of the Criminal Code, other criminal offences can also be motivated by sexual orientation. The possibility of collecting such extensive data in the context of the upgrade of the Integrated Information System for Management of Court Cases (ICMS) is being considered in order to identify such criminal offenses and create analyses.”

We emphasise that the purpose of introducing the definition of hate crimes into Croatian criminal legislation in 2006 was, basically, to state greater social condemnation of such type of criminality and in accordance with this it is necessary to keep separate statistics and indicators of the changing rates of this criminality, as well as to specially emphasise that their occurrences in society.

Four years after introducing definition of hate crimes into Criminal Code and three years after expiry of deadline for implementation of Activity 1.5.1, it is stated in the report on implementation of the above activity that collection of such extensive data is being considered. This points to a lack of political will in state institutions for gathering information on hate crimes and their adequate punishment.

4. Education

The educational system in the Republic of Croatia does not satisfy the basic standards for education about human rights. The programme of Catholic religious education in most lessons addresses the theme of human sexuality in primary schools, and the religious education textbook approved by the Ministry contains much content which encourages children to discriminate against sexual minorities.

In the National Policy for Promoting Gender Equality from 2006 to 2010 (OG 114/06), in the chapter about gender sensitive education for 2006 it is stated that a textbook standard would be issued which follows the requirements of the Gender Equality Act. This textbook standard was adopted on 17 January 2007. Under point 2.4 Ethical Demands, it is stated that the textbook should reflect the richness of diversity of Croatian society, enable the acquisition of knowledge about the equality of individuals and social groups and promote the right to difference. Demands related to national, ethnic and religious minorities and gender equality were emphasised whereas sexual and gender minorities are not explicitly mentioned nor are any demands related to them specified.

Although the question of gender sensitive education is addressed in some segments of the National Policy for Promoting of Gender Equality, this does not also apply to sexual and gender minorities. Furthermore, the above National Policy states the need for widening health education in primary and secondary schools with topics about sexuality but with the emphasis on sexually transmitted diseases. Education about sexuality is most certainly broader than just the context of sexually transmitted diseases, but the National Policy does not achieve this breadth.

Health Education

On 14 January 2008, the Ministry of Science, Education and Sport announced the results of the competition for the choice of primary and secondary schools for carrying out experimental programmes of health education of the GROZD Association and the Forum for Freedom of Education. For the implementation of the GROZD Association programme nine primary schools were selected¹, and 5 three- and four-year secondary schools for the implementation of the programmes of the GROZD Association and the Forum

¹ OŠ Vladimira Nazora, Daruvar; OŠ Eugena Kumičića, Velika Gorica; OŠ Ljudevita Gaja, Nova Gradiška; OŠ Šime Budinića, Zadar; OŠ Eugena Kumučića, Slatina; OŠ Novi Marof, Novi Marof; OŠ Retkovec, Zagreb; OŠ Žuti Brijeg, Zagreb; OŠ K. Š. Gjalski, Zabok.

for Freedom of Education.² By a decision of the Ministry for monitoring the implementation of experimental programmes and the external evaluation of the results, the National Centre for External Evaluation of Education was nominated in cooperation with the Ivo Pilar Institute of Social Science, Andrija Štampar School of National Health and the Croatian Institute for Public Health. For professional training of the implementers of the programmes, the Agency for Education was nominated in cooperation with the organisations which had prepared the programmes. According to the same decision, health education programmes should be carried out experimentally during the second half of the 2007/2008 school year in the fifth year of the selected primary schools and the first year of the selected three- and four-year secondary schools. The experimental programme was carried out with the obligatory agreement of the parents of those pupils who participated in the implementation of the programmes.

On 18 December 2008, the Ministry of Science, Education and Sport held a press conference at which the results of only the evaluations of the programmes were presented and announced that it considered that in accordance with this there was no need for the programmes to be implemented in primary and secondary schools because pupils already obtained sufficient knowledge about health education through existing subjects. Such a standpoint is contradictory to the Ministry's efforts to introduce a single national curriculum which will widen the existing educational programme in schools by introducing new subjects. Also, the evaluation of the experimental programmes did not have as its purpose the investigation of the needs of health education, because the need for this had already been confirmed earlier through the work of nominated commissions of the responsible ministry, but rather the purpose was to evaluate the quality of individual programmes, which was omitted.

It should be emphasised that health programmes which were proposed for implementation are not adequate in our opinion, even more so because just two lessons were anticipated for content about human sexuality during a school year.

In 2009 there were no advances connected to this theme. Therefore we continue to promote the introduction of separate and obligatory sexual education in Croatian primary and secondary schools.

On 30 March 2009 the European Committee of Social Rights which monitors the harmonisation of national policies and programmes with the European Social Charter, made a decision connected with the suit of the organisation INTERIGHTS (International Centre for the Legal Protection of Human Rights) against the Republic of Croatia because of the lack of a comprehensive educational curriculum of sexual education as required by Art 11 of the European Social Charter.

The Committee found a breach of Art 12 para 2 of the European Social Charter relating to the anti-discrimination provisions of the Charter for the following reasons:

“Taking into consideration the anti-discrimination provision in the preamble of the Charter, education about sexual and reproductive health must be provided to children without direct or indirect discrimination on any basis, understanding that the ban on discrimination covers the full educational process, including the way in which education is conducted and the content of educational material on which education is based.

“The obligation that health education should be provided without discrimination includes two aspects: children must not be discriminated against in access to such education and education may not be used as a tool for strengthening degrading stereotypes and perpetuating forms of prejudice which contribute to the social exclusion of historically marginalised groups and other groups which are confronted with discrimination the effect of which is the denial of their human dignity.”

The Committee concluded that “certain educational materials which are used in the regular teaching programme are biased, discriminatory and degrading, especially concerning the way in which people whose sexual orientation is different from heterosexual are described.” This conclusion of the Committee is based on an examination of the content of a textbook for biology for the third year of high school entitled *Biology 3: Life Processes*, written by Ivana Regula and Milivoj Sljepčević which was approved by the Ministry of Education and published by Školska Knjiga.

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

The following was written in the textbook: “Many people have a tendency to sexual relationships of the same sex (homosexuals – men, and lesbians – women). It is believed that the greatest responsibility for this is borne by parents who prevent the correct development of sexuality in their children because of irregularities in family relationships. Today it has been demonstrated that homosexual relationships are the main cause for the increased spread of contagious sexual diseases (e.g. AIDS). Disease is spread within promiscuous groups of people who frequently change sexual partners. Examples of this are homosexuals because of sexual contact with numerous partners, drug addicts because of sharing contaminated needles and prostitutes.”

In the Committee’s decision it is further stated that such statements stigmatise homosexuals and are based on negative and degrading stereotypes about the sexual behaviour of all homosexuals. Such statements serve only to attack the human dignity and have no place in sexual and reproductive health education. By officially approving or allowing the use of textbooks which contain such anti-homosexual allegations, the Croatian authorities did not fulfil their obligation to ensure effective education which does not promote social exclusion and does not insult human dignity. The Croatian authorities, stated the Committee, failed to fulfil their positive obligation concerning the ensuring of the right to health care through non-discriminatory sexual and health education.

The textbook was withdrawn not long after the complaint was made to the Committee.

The complaint by INTERIGHTS also related to the TeenStar program, based on the teachings of the Catholic Church, which advised total abstinence, called homosexual relations deviations, opposed contraception, stated that condoms do not prevent HIV and so on. Unfortunately, in this case the Committee did not look into the meritum of the case, asserting that TeenStar, although approved and financed by the authorities, is not a compulsory programme nor is it a substitute for regular health education, but is being conducted on an experimental basis and only if the parents choose it.

However, the Committee warned the authorities in several articles that “they have the obligation to ensure in the legislative framework that programmes which are approved by the state are objective and non-discriminatory.”

Catholic religious education

In accordance with the Treaty between the Holy See and the Republic of Croatia concerning cooperation in the area of upbringing and culture, signed in Zagreb on 18 December 1996, Catholic religious education lessons are held in all public primary and secondary schools and in preschool establishments and are treated as a compulsory subject for those who choose it, under the same conditions under which the teaching of other compulsory subjects is carried out.

Schools as a rule place religious education in the middle of the daily timetable of classes so that pupils whose parents do not give their assent for them to attend religious education lessons are also forced to sit in on the lessons. Thus in fact all children who attend public schools in the Republic of Croatia, attend religious education classes with the difference that some of them do not receive a grade for the subject.

The programme of Catholic religious education for primary schools still allocates most lessons to addressing the topic of human sexuality.

Within the framework of the Programme of Catholic Religious Education in Primary Schools, approved by the Ministry of Education, which has been adopted from the beginning of the 2003/2004 school year, in the teacher’s instructions of the teaching unit which addresses the topic of human sexuality is mentioned, amongst other things, “discussion about the whole meaning and relationship of the ideas of ‘love’ and ‘sex’ and the assessment of wrong forms of sexuality (sexuality, prostitution, incest, transvestites...)”.

The associations Kontra and Iskorak publicly reacted to the discriminatory content of the religious education programme and filed a complaint with the Ombudswoman for Children and the Ombudswoman for Gender Equality in connection with the above content. After the reaction of the ombudswomen to the alleged discriminatory content, in 2005 the Ministry of Science, Education and Sport published a Correction of the Programme of Catholic Religious Education (OG 14/05) and replaced the word “wrong” with the word “sinful”.

Finally, on 15 September 2006 the Ministry of Science, Education and Sport adopted its Decision on the Educational Plan and Programme for Primary Schools, which regulated the content of the optional subject of Catholic Religious Education (OG 102/06). There is no direct discrimination of sexual minorities in this programme as there was in the Programme of Catholic Religious Education for Primary Schools of 2003 and the Correction of 2005. However, in the Programme which is currently in force, emphasis is put on human heterosexuality, which is developed further in an extremely discriminatory manner through the textbook also approved by the Ministry of Science, Education and Sport and in practice.

Namely, the list of school textbooks for the academic year 2009/2010 includes the textbook *With Christ to Life* (published by Kršćanska Sadašnjost, Zagreb, 2008). The following is stated in this textbook: "It is God's intention for two beings of different in sexes to be attracted to each other and be fulfilled in responsible love. This means that **heterosexuality** is the basic point of reference for men. Attraction and orientation of opposite sexes towards each other is the consequence of the urge to create unity and birth, that is create a family. A man and woman therefore fulfil each other not only in a physical and emotional but also in a social and spiritual sense. We are, however, conscious of the fact that some people feel attraction towards persons of the same sex. Medicine and psychology have discovered various causes, not fully researched, of such a human state. Church tradition has always stated that 'homosexual acts are intrinsically disordered'. They are contrary to the natural law. They close the sexual act to the gift of life. They do not proceed from a genuine affective and sexual complementarity. Under no circumstances can they be approved." (Catholic Catechism 2357). "They do not choose their homosexual state; for most of them this represents a trial."

The content of this textbook is scientifically baseless and is extremely discriminatory towards sexual minorities. Homosexuality is not an unresearched "human state", but an equally valuable variation of human sexuality, as is heterosexuality, which is the opinion of the competent world (World Health Organisation) and Croatian (Croatian Psychiatric Association and Croatian Medical Chamber) institutions. The assertion that it is a case of a particular "human state", with emphasis on the search for medical and psychological causes, suggests precisely the opposite: that it is an anomaly, or disease, and this is contrary to a series of international and national regulations which regulate the banning of discrimination and the right to complete and accurate information.

We would mention that numerous lesbians, gays and bisexual persons throughout history have been the victims of attempts to change their sexual orientation by medical methods such as compulsory hospitalisation, electric shocks, medications for mental illnesses and similar. It is precisely because of this that it is extremely dangerous to give children incorrect information which may lead them to the conclusion that homosexuality is a disease. While Croatian children learn from disgraceful textbooks about an "unresearched human state", 17 May is marked throughout the world as the International Day of the Struggle against Homophobia to commemorate the erasure of homosexuality from the International Classification of Diseases of the World Health Organisation on 17 May 1992.

Furthermore the quote that homosexuality is "unnatural" (i.e. an anomaly), although taken from church documents, is not dealt with in a critical way but is presented simply as it is to children in the context described above.

Finally it concludes that the "homosexual state" presents a trial for homosexual persons. Sexual orientation is a part of the personality of every individual person. By asserting that "the homosexual state presents a trial", a direct attack is made on the personality of homosexual persons and their rights to health, which includes the natural development of sexuality, is denied.

The Bartol Kašić case

In October 2009 parents of children who attend the eighth year of Bartol Kašić Primary School in Zagreb informed the media that religious education teacher Jelena Čorić-Mudrović was teaching eighth-year pupils in religious education classes that homosexuality is a disease.

One of the mothers stated: “My daughter is not enrolled in religious education classes, but she was forced to stay there during the lesson because she had nowhere to go. The teacher allowed the children who do not take that class to remain and do their homework or draw.”

After the case was covered by the foreign media, the Ministry of Science, Education and Sport invited parents to make their complaints to the Ministry’s inspectorate.

Lesbian Group Kontra filed a criminal complaint on the suspicion that the religious education teacher and Bartol Kašić Primary School had committed the crime of racial or other discrimination because they had breached on the basis of sexual orientation basic human rights and freedoms recognised by the international community, and had publicly stated and taught the idea of the inferiority of homosexual groups of people on the basis of sexual orientation and thus committed a crime under Art 174 para 1 and 3 of the Criminal Code.

Also, we made a joint complaint under the provisions of Art 24 of the Anti-Discrimination Act in order to determine discrimination with the demand for all further similar discriminatory behaviour to be banned and for the judgement to be published in the media.

At a time when sexual education does not exist in primary schools, we believe that it is completely unacceptable for this topic to be addressed within a programme of religious education, especially for the reason that by such actions persons of homosexual orientation are explicitly discriminated against, or pupils are encouraged to discriminate. The long-term consequences of such a programme is to increase rather than reduce discrimination against the LGBT population because of passing on information which is scientifically baseless and belongs to religious dogma.

We believe that religious education should be conducted in religious institutions, and not in public schools. If religious education already exists in schools, it should be timetabled as the first or last lesson so as not to put pressure on attending religious education.

There is an urgent need to harmonise the national educational programme and all textbooks with positive anti-discrimination legislation and start to strictly punish cases of schools in which discrimination on whatever basis is promoted.

5. Media

2009 was marked by mainly professional and informative reporting in the media on the subject of the rights of sexual and gender minorities, most frequently in a neutral tone. However, unfortunately, as every year, there were also homophobic articles which promoted the discrimination of sexual minorities.

One example are the texts published in *Slobodna Dalmacija*, *Jutarnji List* and *Nacional* concerning the publication by the association Iskorak of a brochure about safe sex.

Namely, the association Iskorak adopted and translated a brochure intended for homosexual men by the leading British organisation for the prevention of spreading HIV and AIDS, the Terrence Higgins Trust. The brochure was printed with the financial help of the Office for Human Rights of the Government of the Republic of Croatia, the City of Zagreb and the Ministry of Health and Social Welfare.

Unfortunately several media published extremely homophobic articles connected with the above brochure, calling it vulgar, scandalous and pornographic exclusively because of its explicit style of writing about gay sex and illustrations with dolls, and condemning the state institutions for financing such brochures.

It is a worrying fact that one brochure about safe sex becomes news in newspapers for its explicit writing about gay sex (just as was the case with a novel for children which became news because it contained gay characters). However, even more worrying was the statement by the head of the Office for Human Rights of the Government of Republic of Croatia in which, after the homophobic articles in the newspapers, he completely disassociated himself from the brochure which the Office had financed.

6. Presidential Elections

During the campaign for the presidential elections of 2009, journalists asked the candidates amongst other things questions about the human rights of LGBT persons.

For example, on 23 November 2009 the answers of the presidential candidates to question how they would behave towards a “colleague who was openly homosexual” were published on the www.predsjednički-izbori.com website.

The majority of presidential candidates stated that they would be indifferent to the sexual orientation of their colleague. The only candidate who did not restrain himself from making a homophobic comment to this question was Mr Damir Kajin (IDS). He stated: “Although some of them consider that I am a homophobic, I am not, but I would not allow them to adopt children...” Such statements are evidence of the level of lack of education of members of parliament and presidential candidates. Indeed encouragement to discrimination on the basis of sexual orientation in various segments (especially connected to the procedure for adopting children) is one of the most frequently expressed expressions of homophobia by Croatian politicians.

A similar statement was given by the presidential candidate of the Croatian Democratic Union Mr Andrija Hebrang, this time in a separate interview on HRT, which was published on the same website. Namely the following was published on the website: “A sensitive topic was also spoken about, about the possibility of homosexual marriages. ‘I am against such marriages because they do not produce what is sacred, and that is a child which must be the mainstay of marriage. I would give homosexuals all rights, even above the standards of the EU,’ Hebrang explained, emphasising that he would not allow people in such marriages to adopt children because, growing up in such a union, the children would form an incorrect picture of marriage.”

On 30 December 2009 a debate was held at 8 pm on HRT between the two presidential candidates who succeeded in entering the second round of elections – Mr Milan Bandić (independent candidate) and Mr Ivo Josipović (SDP).

When asked by a journalist: “If you discovered that your daughter was a lesbian, would you allow her to live in a same-sex marriage?” Mr Josipović replied that the only thing that would be important to him was the happiness of his child.

Mr Bandić replied to the same question: “We live in the 21st century, but I would do everything I could in bringing her up to avoid such a situation.”

Lesbian Group Kontra publicly posed the question to Mr Bandić: “What methods of upbringing do you consider suitable for changing the sexual orientation of a child?”

Sexual orientation is part of the identity of the individual, and denial of the right to self-determination while growing up is an attack on the individual’s personality.

It is stated in the Constitution (Art 63 para 2): “Parents are responsible for ensuring the right of the child to the full and appropriate development of their personality,” while discrimination on the basis of sexual orientation is banned in Croatian legislation by a range of laws.

In a public reaction to the above statement, we made a statement that such discriminatory attitudes by a presidential candidate was an expression of the belittling of people on the basis of their sexual orientation and creates an environment in which the same was justified, if not even desirable. Such an environment is against the civilised principles of equality in society and represents the degradation of all the achievements and protection of human rights and basic freedoms. The fact that a presidential candidate who entered the second round of the elections displayed during a debate ignorance of his own country’s legislation, as well as a lack of respect towards basic human rights and basic fundamental freedoms by

using discriminatory discourse in public is a concern for all citizens of the Republic of Croatia who care about the building of a democratic society which respects the rights of individuals to their own identity and self-determination.

We sought a public apology from Mr Bandić as well as a guarantee that he would not act in the same way again; however we did not receive any kind of reply from this presidential candidate.

In the second round of presidential elections the majority of votes was won by the candidate of the Social Democratic Party Mr Ivo Josipović.

7. Homophobic declarations by public persons

In 2009 the majority of homophobic declarations by public persons was connected to the presidential elections (see chapter 6). This is of particular concern because it indicates not only the level of unawareness of the presidential candidates (who were also members of parliament or the mayor of Zagreb) but also the fact that the above candidates intended to win over Croatian citizens to vote for them precisely by such statements. Also, a good opportunity for giving homophobic statements was seen by the vice president of the HDZ Andrija Hebrang in the publication of a novel about soft toys.

Grga the teddy bear, Mrkvoje the bunny, Maki the monkey and Andrija Hebrang

In 2009 the novel *Cuddly Monsters* was published, the first Croatian novel for children which deals with sexual and gender minorities in an affirmative way. The novel was presented the first time in Zagreb on 19 March and the publication of the novel was partly supported by the associations Kontra and Lori.

This is a book for children which, through the lives of and relationships between the soft toys, supports the right to difference and acceptance of the same, through simple examples which are understandable by children. The book departs from the flood of fairy tales and stories which are based on traditional gender roles and stereotypes in heteronormative terms.

The novel is about a life of two girls – Doris and Ivana – who move into a flat together. In the flat are also Grga the teddy bear, Mrkvoje the bunny rabbit, Verica the squirrel, Maki the monkey, Uško Floppy Ears, Sivka Floppy Ears and Cornelia the turtle.

A quotation from book: “Doris is no longer a child, she will move into a new flat. Yes. Children often do that when they stop being children. There she will live with this other girl who is called Ivana. One day the two of them will become mummy and mummy.”

After a public announcement was made about the presentation of the novel and the support of lesbian organisations, many of the media began to write about it.

The fact that in 2009 a novel about cuddly toys became the main news in newspapers and that representatives of state institutions were asked for their opinion about it because the girls from the book will “one day become mummy and mummy” indicates the desperate state of the rights of sexual minorities in the Republic of Croatia.

When asked by a journalist from *Jutarnji List* about the book, vice president of the HDZ Andrija Hebrang stated: “Why should someone force anything on my children? I respect them but if I do not go out on the street and shout that I’m heterosexual then they do not need to shout that they are homosexuals.” Mr Hebrang also stated that he considered the novel to be extremely unsuitable for children.

It is extremely worrying that the vice president of the leading party in Croatia can make statements to the newspapers that a children’s book about cuddly toys is unacceptable for children because the book writes affirmatively about sexual minorities and encourages children to accept differences.

8. Violence and discrimination

Violence and discrimination against sexual and gender minorities continue to be a frequent occurrence in Croatian society. The forms of violence are various, from psychological, verbal to physical violence. A serious problem continues to be the fear of victims who do not report the violence they experience because of possible stigmatisation by the community. Members of sexual and gender minorities in a great number of cases are not aware of their rights nor with the mechanisms of protection of those rights. They do not trust state institutions, especially the police, whose officials continuously behave in a discriminatory manner while processing cases of discrimination and violence against members of sexual minorities. Precisely because of this, the real number of violent events is almost impossible to estimate, and until recently the cases which have come to be processed have exclusively been cases of violence against activists.

However, precisely in this area we have noted certain advances over the years. Victims of violence ever more frequently turn to non-governmental organisations for help, and we have also had cases in which the victims have openly spoken out in public about the violence they have suffered. All this points to the fact that LGBT persons more and more are interested in their rights and decide to use them.

Also, it is necessary to mention that in the last two years there have been two cases in which an investigation has been carried out and the perpetrators punished, but these were exceptions, cases which from the very beginning were given extensive media coverage, with support and legal help of non-governmental organisations and the engagement of the Ombudswoman for Gender Equality (the case of an attack on citizens of Kosovo after Pride in 2008, the case of the attack on Neven Rauk in 2009).

In order for us to provide better help in punishing discrimination and violence, Kontra founded a telephone line for legal help and regularly publishes publications to inform the LGBT population about their rights under the laws of the Republic of Croatia and continuously offer users help.

From 2002 the associations Iskorak and Kontra cooperated in this area; however this cooperation ceased in summer 2009 and the activity of offering direct legal help was continued by Kontra. Under "Individual cases" below we describe cases on which the association Kontra worked in the first half of the year in cooperation with the association Iskorak, and later independently.

Individual cases

In 2009 the association Kontra worked on a total of 23 individual cases. Of these, 18 cases concerned punishable acts against several persons on the basis of their sexual orientation.

In this part we lay out some examples of the cases we received. We do not describe all the cases in order to protect the anonymity of the victims.

Attack on Neven Rauk

On 12 January 2009 four attackers, of whom two were minors, attacked the gay young man Neven Rauk because of their hatred towards persons of homosexual orientation.

Namely, they created a profile on an Internet portal in which they presented themselves as a young man of bisexual orientation and agreed a meeting with the victim. They took photographs of him with the intention of publishing the photographs on the Internet, and when the victim began to run they followed him.

The victim fled to a bus but the attackers then followed his bus in a car. When Neven Rauk got out at a stop, three of the four attackers approached him and surrounded him saying to him, "You are the one, where are you running to, come and talk to us, you know I could kill you." They took photographs of him and then one of the attackers kicked him in the head as result of which Neven Rauk fell to the ground.

In doing so the victim's glasses and bag fell to the ground. The attackers took the bag and left. Neven Rauk again ran to the bus which he had previously got out of and the bus driver called an ambulance. The victim was offered medical help in Sveti Duh hospital where it was confirmed that he had received injuries from a blow to the head and a broken nose, a tear to the upper eyelid of his left eye, haematoma, erosion of the cornea of the left eye and slight scratches to the skin of his nose.

In the report of the Zagreb Police Department of 13 January 2009 the following was stated: “On Monday, 12 January around 21.30 hours in the area of Medveščak, Remetska Street, three unknown perpetrators used physical force to carry out an attack on a 23-year-old man and stole his bag with his documents. The material damage was not confirmed.” The Zagreb Police Department did not make a connection between the attack and the sexual orientation of the victim and no investigation was made in that direction until the associations filed their criminal complaint.

The victim himself informed the media about the attack and turned to us for legal help. The associations Kontra and Iskorak filed a criminal complaint for the crime of aggressive behaviour and racial or other discrimination in conjunction with Art 89 para 36 of the Criminal Code (hate crime). We immediately informed the media about this.

On 15 February 2009 at the invitation of a police official, the user went to the 5th Police Station in Bauerova Street in Zagreb and was taken to the police’s criminal investigation department in Heinzelova Street. An identity parade of the perpetrators was carried out at the criminal investigation department. The user recognised one of the perpetrators (attackers) with 80% confidence and asked to see him face-to-face in order to be completely certain. The following day the user recognised the perpetrators face-to-face at an identity parade.

In the proceedings following the attack the victim Neven Rauk, two court cases were conducted, one against the two attackers who were minors and one against the two attackers who were adults.

An investigation into the two adult attackers was carried out during which several sessions were held and N.R. was questioned at a session held at the County Court in Zagreb on 10 February 2009.

After the investigation had been completed the Municipal State Attorney in Zagreb filed charges and a criminal court case was conducted during which six sessions were held as follows:

- at the session held on 25 March 2009 the defendants entered their pleas, mounted their defence, one witness was questioned and custody was ceased;
- at the session of 9 April 2009 the victim was questioned;
- at the session on 4 May 2009 the victim was questioned and recordings of the attack on N.R. were watched and listened to;
- at the session on 3 June 2009 a witness who was a minor was questioned;
- at the session of 14 July 2009 a witness who was a minor was questioned, the charges were changed in their factual description and in the legal qualification of the act;
- at the session of 16 July 2009 the defendants again entered pleas to the amended charges, supplemented their defence, the parties make their closing speeches, the court concluded the debate and announced its judgement.

The Municipal Court in Zagreb in its judgement pronounced the defendants guilty because: the first defendant in order to find an outlet for violence, abuse and especially insolent behaviour put somebody else in a humiliating position, and the act was committed from hatred, and the second defendant helped the others in their intent in order to find an outlet for violence, abuse and especially insolent behaviour to bring somebody else into a humiliating position in a public place and the act was committed out of hatred, and **thus they committed** a crime against public order – violent behaviour – described and punishable under Art 331 para 1 of the Criminal Code conjoined with Art 89 para 36 of the Criminal Code and conjoined with Art 38 of the Criminal Code in relation to the second accused.

On the basis of Art 331 para 1 conjoined with Art 89 para 36 of the Criminal Code the court sentenced the first defendant Alen Baričević to a prison sentence of ten months suspended, on the basis of Article 67 of the Criminal Code, for three years from the confirmation of judgement.

The court sentenced the second defendant Petra Mihetec on the basis of Art 331 para 1 conjoined with Art 89 para 36 of the Criminal Code conjoined with Art 38 of the Criminal Code to a prison sentence of eight months suspended, on the basis of Article 67 of the Criminal Code, for three years from the confirmation of judgement.

As mitigating circumstances in favour of the first defendant the court judged the fact that he was employed, the father of two young children, and a young person as well as the fact that the first defendant had not previously been convicted of a crime. In relation to the second defendant, the previous lack of convictions were also taken as mitigating circumstances as well as the fact that she was a young person. The court also took their proper and correct behaviour before the court into consideration as mitigating circumstances for the first and second defendants.

In the reasoning to the judgement, amongst other things, the following was stated: "Taking mainly into consideration the danger of the acts of which the first and second defendants stand accused, the ever greater frequency of violent behaviour precisely in the younger population of society to which the first and second defendants belong, the fact that the act was motivated by intolerance and extreme aversion towards persons of homosexual orientation and the consequences which the attack had on the victim, the court, taking account of all mitigating circumstances on the side of the first and second defendants, pronounces a sentence of imprisonment on the first defendant for the duration of ten months, and a sentence of imprisonment for the second defendant for a duration of eight months."

In this case, after a criminal complaint had been filed by the associations, a proper investigation was carried out, and the perpetrators were found and convicted. However, we emphasise that this case is an exception resulting from the fact that it was covered very widely in the media and a case in which the associations were involved through the offering of legal help and the Ombudswoman for Gender Equality also publicly reacted. There are frequent examples of quite the opposite behaviour by police officials who insult victims when they come to report violence and refuse to record complaints or even commence misdemeanour charges both against the victim and against the attacker.

Attack on a transgender girl

On 3 January 2010 a group of young men carried out an attack on a transgender girl in a small town in Croatia.

During the week before the attack (from Wednesday 30 December 2009) the victim noticed that she was being followed by different people, whom she estimated to be aged from 18 to 21.

On the day of an attack a group of youths awaited her in front of the building in which she lives. She recognised some of them as neighbours, or people who lived in the same neighbourhood, but she did not know their names. They surrounded her saying: "Are you are a man or a woman? If I see you once more around here we will smash your head in! We will kill you!" Then one of the attackers who had been sitting on a bicycle dismounted, grabbed the victim by the neck, threw her against the wall of the building and then punched her in the face. After this she managed to escape into her flat and called the police. The police officials told her that they would cruise around the area and search for the attackers but that they "cannot make a report because it is Sunday", and that she would have to go to the police station and report the attack the following morning.

The following morning the victim went to the police station. She described the attack to the police official, who made a note of her personal details and told her: "See what you look like – I would beat you up too." The police official then went into the next-door room where there were several other policemen and spoke with them. After this another police official approached the victim and told her that she did not need to make a report because a report had been made when she called the police. The victim asked to see the record, or confirmation of the report at which the police official asked: "against which perpetrator?" The victim replied "against unknown attackers" and said that she needed the confirmation for further complaints. After this the police official was visibly upset and said: "Well, who would you report? Get out of here!"

The victim turned to the association Kontra for help and a lawyer was engaged to work on the case. A report of the intervention and measures carried out was sought from the police station and a request made to check the legality of the actions of the police officials when the victim came to the police station.

The right to visit a same-sex partner in prison

On 25 January 2009 we were approached by M.A., who was living in a same-sex partnership with her partner K.L. The user shortly had to serve a prison sentence and sought help from us because she wished her partner to visit her in prison according to the criteria which apply to marital and extramarital partners.

On 26 January a meeting was arranged in order to seek advice from a lawyer, who was then engaged to secure the rights of the user on the basis of the Same-Sex Unions Act. On 27 January 2009 the lawyer drew up statements which stated the fact of the existence of a same-sex union and the wish of the parties to secure rights to visits and telephone calls while M.A. was serving her prison sentence. The statements were notarised by a public notary.

On 12 February 2009 K.L. informed us that M.A. had asked when she was admitted to prison for her partner to visit and presented the statements we had prepared. The prison management granted her visiting and telephone rights on the basis of the statements.

In further contacts with K.L. we were informed that after the case with M.A., as a precedent, another couple of same-sex partners in the same prison were allowed visits and telephone calls to a broad extent.

On 3 March 2009 when M.A. was moved to serve her sentence in a different prison a check was carried out to secure full visiting rights and it was confirmed that visits were not allowed to the full extent. The parties' prepared statements were therefore sent to prison, after which M.A. secured the right for K.L. to visits and contact according to the rules which applied to marital and extramarital partners.

Attack on a lesbian

On 15 July 2009 we were approached by user A.L., who was in a relationship with I. H. The user lives in a small town in Primorje. On 13 July during the evening she was returning home by bicycle when the father of I.H. intercepted her on his motorbike. He grabbed hold of her, punched her in the head and threatened to kill her if she came near his daughter. A.L. sought medical help and reported the attack to the police. The user also stated that the mother of her partner had also threatened her on several occasions by telephone because she did not wish her daughter to be in a relationship with A.L., because it was a same-sex relationship.

A meeting was held with the party in order to give her advice. A lawyer was engaged to work on the case. A report was requested from the police on the measures they had carried out and from the Municipal State Attorney (ODO) in Dubrovnik.

ODO Dubrovnik brought charges against the perpetrator for a crime under Art 129 para 2 of the Criminal Code – threatening behaviour. Criminal proceedings are underway.

A report was received from the Ministry of Internal Affairs that a criminal investigation was carried out because of the criminal complaint of A.L. and a report delivered to the ODO Dubrovnik.

We mention that in this case it was a matter of a physical attack in a public place, motivated by the victim's sexual orientation and that the police did not bring charges for violent behaviour and racial or other discrimination, nor did ODO Dubrovnik bring charges for the above criminal acts.

The user did not express the wish to bring further criminal complaints.

Rights to health care and the right to protection of private life of a transgender woman

On 20 March 2009 we were approached by K.M. who had severe health problems. The user had undergone a series of operations abroad in sex reassignment procedures ten years previously. However, complications had arisen which required new operations.

The user stated that there was no doctor in Croatia who was qualified to carry out the necessary operations. She also described how the general practitioner in the place where she lives had told other people about her state of health as a result of which the user had experienced some unpleasantness.

On 27 March 2008 a request was delivered to the Croatian Institute for Health Insurance (HZZO) in order to secure the rights to health care abroad at the HZZO's expense. It was stated in the request that K.M.

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

For the purposes of resolving the request sent to the HZZO, extensive medical documentation was chosen which was given to a court interpreter for translation. On 9 April 2009 a declaration of secrecy for the court interpreter was drawn up.

On 15 April 2009 a report was sent to HZZO with the translated medical documentation and a request for HZZO to help K.M. organise an examination in order to obtain the recommendations of a specialist doctor of an approved health institution, which is a condition for obtaining approval.

On 15 July 2009 a decision was received from HZZO in which the request of K.M. was refused because she had not satisfied the requirements nor submitted a completed form proposing for her to be sent for medical treatment abroad which should have been completed by a specialist doctor.

According to K.M., the reason for the lack of necessary documentation was the refusal of the specialists who had been contacted to give an opinion.

The user also stated that she had been issued a birth certificate in which her old name had been entered in the main entry and that she wished this to be changed in order to protect her right to privacy.

Protection of the rights to privacy of a transgender child

On 21 May 2009 we were approached by the mother of the child S.F. and an interview was conducted with the mother in order to ascertain the legal problems which the child S.F. was having after commencing the procedures for a sex change.

S.F. is a child who for many years has been living in a different gender identity. Because of their gender identity the child has been mistreated by teachers and pupils in primary school and in 2008 the Ombuds-woman for Children reacted, sending a letter to the school after which the situation improved. The name of the child was changed to neutral at the request of the mother (who explained that everyone called the child that). However, in the birth certificate it is visible that a change has been made because the change of name has been entered in the supplementary notes. It was not possible to change the child's gender in the document because the child had not gone through the complete sex-reassignment procedure.

The mother also stated that the child's old name was written in their pupil's record and expressed the fear that because of this the child could have problems after enrolling in secondary school (because future teachers would find out about the child's change of sex on enrolment).

On 16 July 2009 a letter was sent to the primary school which S.F. was attending and delivered to the head teacher. In the letter the school was requested to make a copy of his pupil's record with the child's new name.

In a conversation with the head teacher's office it was agreed that they would try to find a solution during September.

In a conversation with a lawyer the head teacher stated that the pupil's record was not a document which needed to be submitted when enrolling in secondary school and that the child would be issued with a certificate with their name as used for legal purposes.

Currently proceedings are being prepared to check the legality of the regulations which regulate the entry of data into a birth certificate upon change of sex and name. Namely, with respect to the constitutional requirement to protect the welfare of children and with respect to the fact that experts agree that it would be expedient to change the child's personal documents, opinions are being sought from doctors and the ombudsman for the child's change of sex to be entered on the birth certificate on the basis of the fact that the child has already been living for a long time in a different gender identity, irrespective of the fact that the operational procedures had not been completed.

Right to asylum in the Republic of Croatia because of persecution on the basis of sexual orientation or gender identity

On 5 October 2009 the organisation Human Rights Watch brought us by e-mail into contact with S.N., a foreign citizen who has the status of an asylum seeker in the Republic of Croatia.

The user is situated in a reception centre. He gave as the reason for leaving his country of origin that he was discriminated in his country of origin (we do not say which in order to protect the user) because he is a homosexual. On 20 September 2006 he was walking around the town in which he used to live in women's clothing and the police arrested him and held him for 24 hours. After that on 25 September 2006 the police entered his flat, beat him up and threw him through the window on the fourth floor. This caused serious injuries, broken bones, collarbones and ribs and as a result his spleen was removed. He bled heavily (he lost 2½ litres of blood) and damaged his liver. Because he was afraid of the police, he stated in the hospital that he had jumped out of the window. After treatment in the general hospital he was released on 27 November 2006. In December 2006 the police entered his flat once more and took him away to a psychiatric establishment. He escaped in 2007 and tried to go to France but the police stopped him at the airport, removed his international passport and returned him to the psychiatric establishment where he stayed until 2009. He was then mistreated by the nurses, tied to the bed and beaten and a pillow was put over his head in order not to leave bruises. He managed to escape from the hospital to his holiday home and researched on the Internet the possibilities for leaving the country illegally. He complained three times about what had happened to the state prosecutor's office in the place where he lived but they never replied to him.

The user has never been convicted in his country of origin nor had any other problems connected to work, the army, religious or political membership.

He stated that he had not left his country of origin for economic reasons, but because he had been imprisoned in a psychiatric establishment because he was homosexual. He cannot hide in another part of his country because the police are searching for him throughout the country. If he returned to his country he would certainly once more be placed in a psychiatric establishment.

For the purpose of explaining the reasons for which he had made a request for asylum, the user attended a hearing on 7 September 2009 at the asylum seekers' reception centre. At this hearing he stated that he had problems with the police because of his homosexuality. He was walking in his town in women's clothing on 20 September 2006 and the police took him to the police station. There they beat him up and held him for 24 hours. The party was requested to describe the circumstances of his first arrest on 20 September 2006 in more detail and he stated that a policeman had seen him in a park and told him that he was not allowed to walk in women's clothing and arrested him to explain the situation. When asked how they behaved towards him in prison, the user stated that they beat him on his legs with a truncheon and insulted him telling him that he did not was not allowed to walk around town in women's clothing nor live the life of a homosexual. They forced him to admit that he was homosexual. When asked by the chairwoman of the proceedings if he considered himself a homosexual he replied that he did. The police entered his flat in which he was alone on 27 September 2006 at about 5 o'clock in the morning. They knew where he lived because when he was arrested the first time he told them that he occasionally stayed at that address. They told him that they did not want homosexuals in the country, beat him up and threw him through the window on the fourth floor. As a result he was in hospital for two months, his spleen was operated on and his liver and lungs received stitches. In the fall he broke his shoulder, arm and hip and those bones healed unevenly. In the hospital he stated that he had jumped out of the window because he was afraid that the police would take revenge on him. The third meeting with the police happened in December 2006 when they came to him in his flat and took him away to the psychiatric establishment. He did not remember whether he was alone in the flat at that time. He believes that the police had put him in the psychiatric establishment just to get rid of him so he would be unable to complain about them. In this establishment he was diagnosed as schizophrenic but states that he is not ill. When he was housed there all his documents were taken away from them.

The user stated that before he was arrested on 20 September 2006 he had never worn women's clothing in public but just in his flat. After his arrest he had not worn women's clothing in town because he was afraid of the police. He believes that he has been homosexual since the age of 18 but does not remember how long he has been wearing women's clothing. Before the above events he had never had any problems with the police. As far as he knows, it is not forbidden for men to wear women's clothing in his country of origin.

He was exempted from military service because of problems with his heart. He initially received a delay then he was exempted due to his injured spleen. Conscription takes place after the age of 18 is attained.

He does not wear women's clothing (although he has a need to) in the asylum seekers' reception centre because there are Muslims there and their faith forbids this and he is afraid that he would be attacked. Nor has he walked around town in women's clothing because he is afraid that he would have problems.

He decided to seek asylum in Croatia because that was the cheapest way for him to leave his country of origin. He believes that if he returned to his country of origin he would once more have problems because of his homosexuality (and perhaps even been killed) and he cannot hide any more within his country of origin. He also states that the police are seeking him in his country of origin because they believe that he should be in a psychiatric establishment. He complained to the city authorities that he had been imprisoned in this establishment but they had never replied to him.

After making contact with the user via e-mail, a meeting was held in order to give advice and a lawyer was engaged to work on the case. On 23 November 2009 a meeting was held with the chairwoman of the asylum approval procedure. On 27 November 2009 a report was given to the reception centre for asylum seekers in connection with the asylum approval procedure. Kontra also sent a letter to the Foreigners and Asylum Department of the MUP in support of the user's request to be granted asylum.

Residence visa in the Republic of Croatia on the basis of same-sex union

On 12 November 2009 a user sought legal advice. The user T.M. is a citizen of the Philippines and has been in a same-sex union with Croatian citizen A.N. for over a year and a half. On 1 October 2009 the user was given a visa for purposes of a private visit to the Republic of Croatia with a duration until 5 January 2010. Considering that the couple wished to continue living together in Croatia, a check of the legal grounds on the basis of which foreigners can obtain a temporary residence permit within the Republic of Croatia is being currently carried out.

Meetings have been organised between the user and a lawyer in order to give advice. After the advice the users decided not to commence procedures in order to get a residence permit on the basis of same-sex union because simpler solutions for obtaining such permits exist.

Right to health care for a transgender man

On 25 November 2009 we were approached by a user who stated that he was unable to complete a sex-reassignment procedure in Croatia because there were no experts who were able to conduct the necessary operations. A meeting was held with the party and the complete medical documentation which the party possessed was examined. The party was familiarised with the procedure to meet the conditions to commencing proceedings before the HZZO with the aim of financing the sex reassignment operation abroad.

Breach of the right to privacy of a gay man

On 14 December 2009 we gave a legal opinion to a party whose right to privacy was breached by the Internet. Namely, a photograph of the user in which he is kissing another man was posted on an Internet portal. Considering that the photograph was removed from the portal, it seems that the user's complaint was accepted and that the photograph was removed.

The case of Ana Dragičević

On 4 January 2009, the newspaper *Jutarnji List* published information about the case of Ana Dragičević from Rijeka, who had been accommodated since the age of 16 in the Lopača psychiatric hospital and from the age of 18 to 21 had been forcibly accommodated in the same hospital without a decision by the responsible county court, exclusively because of her homosexual orientation. In the newspaper report it was stated that the hospitalisation in this case had been carried out by the then director of the hospital in question, Dr Marija Vulin, at the request of the parents. The victim, Ana Dragičević, herself described how the suspect treated her in such a way that progress in her medication was seen only when the victim lied to her that she in fact had heterosexual tendencies. During the treatment, it was described, various psychopharmaceuticals were administered to her and she was accommodated in a hospital ward with serious psychiatric patients. It was further stated that after five years in this hospital she was released from it only after Dr Marija Vulin was replaced, which was done after the Inspectorate of the Ministry of Health and Social Welfare confirmed irregularities in the work of that psychiatric institution.

It was also reported in the media that the Rijeka Municipal State Attorney's Office commenced an investigation of this case. However, it was not stated for which criminal offences the investigation was being conducted. Also, the injured party told the media that she had a lawyer who had himself offered her legal help, and would represent her in a civil suit.

Given that state institutions are not sufficiently educated for such cases, and in principle do not correctly classify criminal offences motivated by hatred of sexual minorities, after learning about this case, the associations Iskorak and Kontra filed a criminal complaint.

The complaint was filed against Marija Vulin, director of the Lopača psychiatric hospital and possible co-perpetrators, or helpers on suspicion that, to the damage of the injured party Ana Dragičević, they committed the criminal offence of illegal curtailment of freedom under Art 124 para 3 in connection with para 1 of the Criminal Code, of illegal medication under Art 241 para 1 of the Criminal Code, both in conjunction with the criminal offence of racial or other discrimination under Art 174 para 1 of the Criminal Code, all in conjunction with Art 89 para 36 of the Criminal Code because it was suspected that the criminal offences were motivated by the sexual orientation of the injured party.

We informed the media about the filing of the criminal complaint after being asked by journalists.

Discrimination in the workplace

On 9 November 2009 we were approached by M.K., a professor at a university in a small town. He told us that his colleagues at his workplace were mocking him and insulting him on the basis of his sexual orientation.

On 27 November a lawyer sent a letter on behalf of the party to the Faculty with a request for the protection of rights pertaining to working relations, as the protection of human rights guaranteed by the Constitution of the Republic of Croatia and the European Convention for the Protection of Human Rights.

After this the Dean of the Faculty conducted an investigation to establish the responsibility of employees who had committed discrimination. The user received a written apology from his colleagues because of their previous behaviour.

On 4 December 2009 the request of the party, who informed us in writing of all the measures undertaken, was satisfied.

Anti-Gay Protest

In June 2009, Croatian Pure Party of Rights (registered political party) and Croatian Nationalists (according to media writings, association) announced the protest named „Anti-Gay Protest Against the Gay Parade – It Is Unacceptable for Them to Impose Their Distorted Lifestyle on Us”. The protest was announced for 13 June 2009 – for same time as Zagreb Pride manifestation.

The organisers’ stands were based on Nazi ideas on the superiority of the white race, and the organisers’ web site and announcements of the protest were furnished with fascist iconography and instructions on making weapons (Molotov cocktails).

T-portal published: „When Croatian Pure Party of Rights and Croatian Nationalists announced the Anti-Gay Protest, it was discovered that on their internet forums dominates hate speech, glorification of Ustashism and Nazism. For example, the association Croatian Nationalists in their invitation to protest over the internet invited “All nationalists, patriots, “Ustaše”, fascists, National-Socialists, Skinheads and the rest who have courage” to unite against homosexuals and “all together to eliminate this plague.”

On 4 June 2009 Lesbian Group Kontra requested the competent authorities to prohibit the gathering, or protest named “Anti-Gay Protest” of the Croatian Pure Party of Rights and the Croatian Nationalists because the protest contained all elements of the criminal offence of racial or other discrimination.

Namely, on 4 June 2009 Kontra submitted an urgent request to the Zagreb Police Department to put out of power the decision on approving the public gathering or protest organised by the Croatian Pure Party of Rights and the Croatian Nationalists because the protest contained all elements of criminal offences of racial and other discrimination under Art 174 Para 1, 2 and 3 of the Criminal Code. Furthermore, Kontra filed criminal complaints against organisers of the protest. On the same day we submitted request to the Zagreb Police Department to forbid the public gathering named “Anti-Gay Protest.” We submitted request to the Ministry of Internal Affairs to prohibit the protest named „Anti-Gay Protest. “

On the same day, 4 June 2009 we went on several occasions to the Zagreb Police Department for consultations with the purpose of taking actions for prohibiting the gathering, and we talked to the authorised inspector Mr. Gašparović. We were informed that the information in media on approval of the gathering is not correct. Furthermore, inspector stated that the police was already contacted by citizens concerned that there could be escalation of violence since internet pages of organisers contain open invitations to violence and instructions on making weapons.

On 4 June 2009 we also faxed to the Ministry of Internal Affairs a complaint on the work of the Zagreb Police Department for giving approval for holding mentioned gathering.

On 10 June 2009 Kontra submitted to the Ministry of Internal Affairs, Police Department of Zagreb, and a proposal for adoption of decision on prohibiting of public gathering. On that occasion we indicated the legal basis for prohibiting the gathering. We stated that holding that gathering is contrary to the Public Gathering Act, because such gathering incites to hatred and intolerance based on sexual orientation and represents criminal offence.

On June 10 2009 we submitted the proposal for adoption of the decision on prohibiting the gathering also directly to the Ministry of Internal Affairs, with indication that it should be received by minister Tomislav Karamarko. In that proposal we referred to the article of the Public Gathering Act that gives authority to the minister to prohibit peaceful gathering or public protest if it is aimed at calling for or incitement to war, or resort to violence, national, racial or religious hatred, or any form of intolerance, and if there is danger of disturbing public peace and order.

On June 10 2009 the biggest opposition party Social-democrat Party organised a press conference on which representatives of the party expressed fear and concern due to holding of mentioned gathering. „ If the Ministry of Internal Affairs issued the permit for „Anti-Gay Protest“ that is unacceptable because they spread hate speech, call to abolishing constitutional order and „final confrontation. “ We believe that hate speech and all that could happen on Saturday should be prevented. Ministry of Internal Affairs should take actions and take on the responsibility“; stated MP Šime Lučin at the press conference.

Despite all the above, the protest was not prohibited, and the Zagreb Police Department justified this action by a positive security assessment.

The protest was held on 13 June 2009 at the same time as the Zagreb Pride event on Ban Jelačić Square in Zagreb. The fact that the protest was held represents a serious setback in the protection of human rights in Republic of Croatia in 2009 and a violation of the constitutional principle of equality before the law.

The fascist gathering was held in Zagreb. Participants in the protest shouted: "Kill the faggots!" and held their arms in a fascist salute and the police did not react. Several participants in the gathering tried to attack the participants in Zagreb Pride during the event. One of the participants in Zagreb Pride was attacked after the event. Proceedings in regards to the criminal complaint against the organisers are in progress.

In this we would like to express our public condemnation of the work of the Zagreb Police Department and the Ministry of Internal Affairs. After seeing the announcement and web pages of the organisers that were inciting violence and spreading hatred, further security evaluations were not necessary and prohibition by the competent authorities should have taken place.

The Republic of Croatia did not prohibit the gathering, although it should have done so. Therefore, contrary to the provisions of the Anti-Discrimination Act, it violated constitutional rights guaranteed by Article 39 of the Constitution that prohibits any call for or incitement to war, or resort to violence, national, racial or religious hatred, or any form of intolerance, but also the European Convention on Human Rights, Article 10 and 11 (right to freedom of expression and right to freedom of assembly) in regards to Zagreb Pride and Article 17 (abuse of rights) with regard to this counterdemonstration with Nazi overtones.

We never received answers to our request from the Ministry of Internal Affairs and the Zagreb Police Department, which in itself constitutes a direct violation of Art 46 of the Constitution. Due to the "silence of the administration" we submitted a motion to speed up proceedings in accordance with the provisions of the General Administrative Proceedings Act and we are going to initiate an administrative dispute at the Administrative Court of the Republic of Croatia in order to draw attention to the serious violation of human rights that occurred as the result of state authorities' failure to react.

9. Public events

National campaign "Different Loves, Same Rights"

In March 2008 Lesbian Group Kontra in cooperation with the association Iskorak started a campaign for the rights of sexual minorities which was entitled "Different Loves, Equal Rights".

The campaign started in Zagreb on 12 March 2009 with a press conference in the showroom of Galerija Nova and with the distribution of postcards on Ban Jelačić Square.

The campaign was conducted in four Croatian cities: Osijek, Split, Dubrovnik and Zagreb. The campaign's promotional materials (jumbo posters, B2 posters, postcards and the website <http://www.kontra.hr/kampanja/>) consisted of six photographs of same-sex couples in various situations which symbolised the different rights of LGB persons (the right to marriage, equal rights of same-sex couples for children, the right to work, the right to education, equal rights and obligations in health care, the right to life without violence). The goal of the campaign was to highlight breaches of the human rights of lesbians, gays and bisexual persons.

The photographs were the work of artist Ana Opalić, who was also one of the models for the campaign. All the models were LGB persons (six female couples and one male couple). The models in five photographs were from Croatia and in one photograph the models were activists of the Labris lesbian organisation from Serbia with which the association Kontra has cooperated over many years.

The campaign was conducted from 12 March to 26 March 2009. The campaign's jumbo posters were erected in the above four Croatian cities in the city centres. The smaller posters were placed in universities, cafes, libraries and organisations for the protection of human rights.

On 12 March the beginning of the campaign was announced at a press conference in Galerija Nova in the centre of Zagreb. After the conference an action was held of distributing postcards to citizens of Zagreb on Ban Jelačić Square. On the same day at 20:00 hours the opening of an exhibition of the campaign's posters (in B2 format) was held in the same gallery (the posters were also set up in the gallery during the press conference).

A party was also held in cooperation with the group ZbeleTron (an informal group which regularly organises lesbian parties in a cafe in Zagreb) to promote the campaign. The party was advertised on the campaign's website and a Facebook group was opened especially for that purpose. Unfortunately, immediately after the opening of the "Facebook event" an unknown perpetrator using the nickname "Clown Hunter" made a threat with the following content: "I'll come and burn you all with petrol you blasphemers!" The association Kontra informed the police about the threat and the time and place where the party was being held as well as other events connected with the campaign.

On 16 March 2009 there was an action of distributing postcards in Osijek on the main square and surrounding streets. One person said to an activist who was distributing leaflets: "Just you fight for your rights, I was unable to." There were also negative reactions of citizens who threw away or tore up the leaflets.

An action of distributing postcards was organised in Split on 20 March 2009. We encountered positive reactions of citizens and this time also police officials who even asked for more postcards in order to share them with their colleagues.

An action of distributing postcards was held in Dubrovnik on 25 and 26 March. In the majority of cases the reactions of citizens was neutral. However one person approached an activist and threatened to beat her up.

The campaign attracted wide attention from the media and once more a public debate about the human rights of LGB persons was opened. The campaign launch was reported on by all important media (national television, other television stations, daily newspapers, radio stations, Internet portals etc). After a report on the campaign on national television a large number of viewers contacted the television station with negative comments. They complained that "their children could see two men kissing" because the report contained some pictures from the wedding of Elton John. The daily newspapers reported on this, but in a positive manner, criticising homophobia among viewers and generally in Croatian society. The actions in Split and Dubrovnik were also reported on by the local media.

The campaign ended with a press conference on 30 March 2009 in the showroom of Galerija Nova and also received great media attention. As an additional activity alongside this campaign a legislative initiative was announced for the legal enablement of marriages and all rights pertaining to that institution for same-sex couples.

Generally we assess the campaign to have been successful and to have contributed to the raising of awareness of this problem among citizens.

Zagreb Pride 2009

On 13 June 2009 the Zagreb Pride 2009 event was held and was attended by some 300 participants by police estimate, or 800 participants by organisers' estimate. The theme of this year's event was "For an open city" with the slogan "Get involved!" This was, as the slogan of the previous year's event, intended to attract a larger number people to participate in fun and company, without any kind of political message.

Despite this, simply the fact that this was a matter of a very visible LGBT event (frequently accompanied by sensationalist photographs and depictions in the media) provoked the Croatian Pure Party of Rights and Croatian Nationalists to organise a fascist protest entitled "Anti-gay Pride".

We believe that the failure by the relevant institutions to ban this fascist protest which was held at the same time as the Zagreb Pride event was the most negative event of 2009.

The holding of a fascist counterdemonstration nevertheless led to a greater number of participants in the Zagreb Pride event. Participants of the anti-gay protest shouted "Kill the faggots" during their protest

and held their arms in a fascist salute to which the police did not react. Several participants of this event attempted to attack the Zagreb Pride procession. One of the participants in Zagreb Pride was beaten up after the event in front of the building in which he lives.

We would emphasise that every year during the Zagreb Pride event in the Zagreb Police Department conducts extensive intervention measures in order to protect the participants of the event but this protection only lasts for the duration of the event in a narrow area around the place where the event is held. Thus other parts of the city remain uncovered and attackers most frequently follow their victims after they leave the event.

Queer Zagreb Festival

In 2009 Queer Zagreb held its regular festival and film projections and published three books in the area of queer culture. The LGBTIQ community also had the opportunity throughout the year to read the monthly *Queer List* published by Queer Zagreb, for which even people from public life spoke, which is certainly an important advance towards tolerance towards LGBTIQ persons

It is worth pointing out that after the homophobic reaction of the Education and Teacher Training Agency relating to the “Nazi Terror Against Homosexuals” exhibition held in September 2008, the agency corrected its homophobic viewpoint during 2009 and showed its best intention to include this topic in the regular curriculum of education of secondary school history teachers. We highlight this as a good example of an institution which is ready to change its homophobic standpoint.

Also in November 2009 Queer Zagreb had its own stand at the Interliber international book fair for the first time. During Interliber many minor verbal incidents were noted involving some dozen citizens who commented on the Queer Zagreb stand with homophobic statements. Queer Zagreb also launched a petition against homophobia in sport which was signed by 600 people in 45 days.

“Right to Work Without Discrimination” campaign

On 14 October 2009 the “Right to Work Without Discrimination” campaign was launched with the erecting of jumbo posters in five Croatian cities (Zagreb, Rijeka, Osijek, Split and Pula) organised by Lesbian Group Kontra. The campaign was part of the “Together against discrimination in the workplace” project, financed by the European Commission which was carried out by Lesbian Group Kontra in partnership with the M.I.A. Institute and the association Iskorak.

The photographs, which were taken before the campaign, pictured various workplaces (bank, dentists surgery, shop, cafe, school, theatre, etc), and were an integral part of the campaign’s posters (jumbo and B2), leaflets, diaries and calendars.

Stickers for the jumbo billboards with the slogans “We do not employ queers” and “We do not employ lesbians”, which were later placed with the aim of attracting attention to this problem, point to the homophobia present at a great number of employers in Croatia.

The original idea for the campaign was photographs of LGB persons in various workplaces to promote the right to work. Unfortunately, because of the fear of discrimination within the LGB population, we were not able to find a sufficient number of people who would pose for photographs with their name and occupation.

At the presentation of the campaign in a press conference we pointed out that in 2007, the agency Puls (an independent agency, commissioned by Kontra) conducted a survey in Croatia (N=800). 49% of those asked answered that homosexual persons should be banned from work in public services. Furthermore, 67% of those questioned stated that homosexual persons should be forbidden from working with children within the education system. Only 28% of those questioned did not display a negative attitude towards LGB persons.

For these reasons we decided to draw attention to the problem of discrimination in the workplace with which LGB persons are faced every day.

As part of the campaign there were actions of distributing campaign promotional material which contained information about LGB employment rights in five Croatian cities – Zagreb, Rijeka, Osijek, Split and Pula.

The “Right to Work Without Discrimination” campaign ended on 12 November 2009 with a press conference at the Centre for Human Rights and with the distribution of promotional material in the centre of Zagreb.

The campaign attracted widespread media interest, including reporting on actions in certain towns by the local media. A public debate was opened on the rights of LGB employees which resulted in a greater amount of discrimination at the workplace reported to the associations compared to previous years.

10. Protection of the human rights of sexual and gender minorities by international institutions

Croatia Progress Report 2009 of the European Commission

In its report the European Commission for the third year in a row states that there has been no advance in the Republic of Croatia related to the implementation of legislation concerning hate crimes. It also stated that there have not been more convictions for the crime of encouraging racial or other hatred. Particular emphasis is placed on the fact that more work needs to be done on the prevention of discrimination on the basis of sexual orientation. Furthermore, it is emphasised that lesbians, gays and bisexual persons are exposed to threats and attacks and that many cases are not adequately investigated by the police and judiciary and that a large number of cases remain unreported.

The European Parliament supported the Directive on the Prevention of Discrimination

On 2 April 2009 the European Parliament adopted a report which supported the introduction of a new anti-discriminatory directive of the European Union which would ban discrimination on the basis of age, invalidity, religion or sexual orientation in all areas except employment (this area is already governed by Council Directive 78/2000). Members of the European Parliament sent a strong signal to the Council of the European Union that discrimination must be eradicated and that the new directive is the best way to do so.

The Lisbon Treaty came into force

The Lisbon Treaty on amendments to the Treaty of the European Union and the Treaty Establishing the European Community was signed in Lisbon on 13 December 2007 with the aim of resolving matters to do with the further institutional functioning of the European Union. The Lisbon Treaty supplements existing contracts about the European Union and European Community, without replacing them. The Treaty came into force on 1 December 2009, after it had passed the process of ratification in all member states of the EU. The Lisbon Treaty introduced a legally binding human-rights charter, the Charter of Fundamental Rights of the European Union.

Article 21 of the Charter on Fundamental Rights reads:

- 1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.*

The Lisbon Treaty strengthened the obligation of the institutions of the European Union and member states in connection with the prevention of discrimination, amongst others on the basis of sexual orientation, through policies and actions.

Report on the Commissioner for Human Rights of the Council of Europe on human rights in relation to gender identity

On 29 July 2009 Thomas Hammarberg, the Commissioner for Human Rights of the Council of Europe, published a report about human rights in relation to gender identity in which he points out to Council of Europe member states the necessity to protect specific human rights concerned with gender identity. The reason for preparing the report is based on the fact that the right to express gender identity is one of the key aspects of the right to life. According to the Commissioner's report, the human rights of transgender persons have long been ignored and neglected, even though they are an example of a problem which is serious and specific for one group of people. Transgender persons frequently encounter a higher level of discrimination, intolerance and violence. Their basic human rights are endangered, including the right to life, right to integrity and rights to health. The rights of transgender persons relate to "pre-operative" and "post-operative" transgender persons, and also persons who choose not to undergo hormone therapy or surgery.

Hammarberg's report was based on numerous international documents which the Republic of Croatia is obliged to respect, commencing with the UN Covenant on Economic, Social and Cultural Rights, EU directives which apply the principle of equal treatment of men and women to the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity.

The report states that the possibilities of commencing proceedings for sex reassignment and change of name in identification documents is crucial for transgender persons in order for them to live in accordance with their chosen gender identity. Namely, the possibility to live in the chosen gender identity, which would be also legally recognised, is conditioned on identification documents which are necessary in everyday life. Frequently long-lasting administrative procedures relating to a change of name and the recognition of gender result in the impossibility of travel outside the country and could also lead to limitations in participation in education or possibilities of employment, or in all areas where it is necessary to submit a birth certificate or other documents on which gender are stated. This means that transgender persons without proper documentation are effectively prevented from participating in the job market which as a consequence leads to unemployment.

Legal recognition should be also achievable for transgender persons who for some reason are unable or do not wish to undergo the experience of hormonal therapy or surgery.

The Commissioner's office received many reports from transgender persons who, because of a lack of documentation, are subjected to discrimination and exclusion from society to a worrying degree. It is important to mention that, even when someone successfully resolves the legal recognition of their new gender, he or she still encounters many practical problems in the framework of institutions such as hospitals, police or prison. The UN's special investigation pointed out cases of serious breaches of human rights of transgender persons, including the right to life.

Because of this members of the Council of Europe are given 64 recommendations according to which non-discriminatory international standards with protection of human rights should be applied, specific protection for transgender persons should be included in criminal legislation among hate crimes, and efficient procedures should be developed for change of gender and names in birth certificates, identification documents, passports and the like. Measures of health care should be made available and a range of other recommendations which are also contained in the judgement of the European Court for Human Rights as a source of rights

11. Future activities of the Lesbian Group Kontra

- Offering direct legal assistance to LGBT persons who have experienced discrimination or violence on the basis of their sexual orientation, gender identity or gender expression;
- Cooperation with the police, state attorneys and courts concerning the elimination of hate crimes;
- Publicly promoting stricter punishments for hate crimes and better legal definition and punishment of hate speech;
- Promoting the introduction of anti-discrimination provisions on the basis of sexual orientation, gender identity and gender expression in the Constitution and all relevant legal regulations;
- Promoting changes to the law with the aim of protecting the right to respect for the private lives of transgender persons (legal recognition of a new name and gender);
- Promoting equality of same-sex couples with different-sex couples in regard of the rights which are obtained from marriage or non-marital union;
- Work with unions and union officials on a programme of legal assistance and protection from discrimination in the workplace for LGBT persons;
- Development of court practice in the bringing of joint law suits and participation in the role of intervener in court proceedings for the protection from discrimination in accordance with the Anti-Discrimination Act.

12. Requests to state institutions

In order to protect the rights of sexual and gender minorities in the Republic of Croatia as well as possible, we call upon the relevant institutions to take the following measures:

- remove discrimination of same-sex partners by ensuring them the rights and responsibilities available to different sex partners through the institutions of marriage and non-marital unions;
- introduce more severe punishments for hate crimes and better legal regulations for punishing hate crime exclusively in the area of criminal legislation, and to ensure their implementation;
- as soon as possible to include the banning of discrimination on the basis of sexual orientation and gender identity in the Constitution of the Republic of Croatia and all other relevant laws;
- introduce protection mechanisms in the relevant laws in order to protect the right to respect for the private lives of transgender persons;
- increase institutional protection of the rights of sexual and gender minorities;
- consistently implement anti-discrimination laws and policies;
- introduce into primary and secondary schools sexual education in which sexuality and sexual and gender minorities are spoken of objectively and take responsibility for its implementation.