

**Monitoring Implementation of
the Council of Europe Recommendation to member states
on measures to combat discrimination on grounds of sexual orientation or gender identity**

**DOCUMENTATION REPORT CROATIA
12/2011**

[The following report format includes three elements: the text of the Recommendation and its Appendix (**bold**); checklists of actions required to implement the measures set out in the individual Paragraphs of the Recommendation and its Appendix, derived either from the text of these documents, or from the associated Explanatory Memorandum (*italics*); and information sources which can be used in documenting whether or not national authorities have carried out the actions listed (highlighted in colour.)

Recommendation

1. examine existing legislative and other measures, keep them under review, and collect and analyse relevant data, in order to monitor and redress any direct or indirect discrimination on grounds of sexual orientation or gender identity;

- i. Has a review been conducted of existing legislative and other measures which could result directly or indirectly in (a) sexual orientation or (b) gender identity discrimination?*
- ii. Are processes in place to ensure that the discrimination thus identified is redressed?*

The National Program for Protection and Promotion of Human Rights 2005-2008 for the first time included combating discrimination based on sexual orientation and gender identity in priority areas. This was included as a result of advocating of the Lesbian Group Kontra and Iskorak – Sexual and Gender Minorities' Rights Centre.

The National Program for Protection and Promotion of Human Rights 2008-2011 included the measure 99.1 - "Preparation of Legislative Analysis in the Aim of Sexual Minority Rights Realization". Implementing body: Office for Gender Equality of the Government of the Republic of Croatia. Timeframe: 2009".

Upon Kontra's and Iskorak's request for information on implementation of the measure 99.1 of the National Program for Protection and Promotion of Human Rights 2008 – 2011 we received no answer from the implementing body (Office for Gender Equality of the Government of the Republic of Croatia) in 2009, 2010 and 2011. Upon the same request in 2012 we received an answer that we should request this information from the Office for Human Rights of the Government of the Republic of Croatia. On 16 January 2012 we received the following answer from the Office for Human Rights: "In the field of advancement of legislation in regards to protection of members of sexual and gender minorities (measure 99.1), the new Equality of the Sexes Act (OG 82/08) that in Art, 6, Para 3 prohibits discrimination based on sexual orientation and the Anti-Discrimination Act (Official Gazette 85/08) that creates the prerequisites for realisation of equal opportunities and regulates protection from discrimination based on gender identity, expression or sexual orientation. Analysis of legislation with the purpose of realisation also rights of members of same-sex orientation was created as part of creation of these acts."

However, we have to emphasise that it is not clear from this answer if a specific analysis of legislation in regards to rights of LGBT persons was created (as prescribed by measure 99.1. and suggested by the Recommendation) or was it just a general analysis of anti-discrimination legislation, mentioning sexual orientation and gender identity as grounds that should be included in the new legislation. No such specific analysis (or broader document containing a specific review of legislation related to rights of LGBT persons) was presented to the public or published on the Office for Human Rights' or the Government's Office for Gender Equality's web pages.

During the process of accession to the European Union, the Republic of Croatia adopted anti-discrimination legislation prohibiting discrimination based on sexual orientation, gender expression and gender identity. Discrimination based on sexual orientation was for the first time prohibited in 2003 in the Gender Equality Act (OG 116/03), as well as in the Act on Amendments to the Criminal Code (OG 111/03), Act on Amendments to the Labour Act (OG 114/03), Scientific Work and Higher Education Act (OG 123/03), and in the Schoolbook Standards (OG 63/03). Discrimination on the grounds of gender identity and gender expression is explicitly prohibited in the Anti-Discrimination Act as mentioned above. The Volunteers Act (OG, nr. 58/07) also contains prohibition of discrimination based on gender expression.

However, in the last 9 years the Government of the Republic of Croatia has failed to implement its own anti-discriminatory laws, as well as international documents to which it is a signatory, in order to eliminate provisions in specific laws that result in direct or indirect discrimination based on sexual orientation and gender identity.

Namely, the current Families Act (OG 116/03, 17/04, 136/04 and 107/07) regulates marriage, relationships between parents and children, adoption, custody, the effects of non-marital partnerships of a woman and a man, and the proceedings of responsible bodies concerning family relationships and custody. In Art. 5 the Families Act defines marriage as a legally regulated union of a woman and a man.

The Same-Sex Unions Act (OG 116/03) regulates the minimal legal effect concerning the right to support from a partner, right to regulate property as well as regulating legal relationships of partners and provides for a ban of discrimination on the basis of same-sex union or the fact of homosexual orientation. The provisions of the Same-Sex Unions Act are taken from the Families Act and in some segments are rephrased. However, it is not possible to achieve other rights on the basis of a same-sex union, which if they came out of marriage or non-marital unions would be regulated by other legal acts. Although Article 21 of the Same-Sex Unions Act formally contains a ban on discrimination on the basis of same-sex union, it seems that it does not represent sufficient legal basis for the application of other laws. Numerous rights from other laws apply to marital and non-marital partners, while the lack of equal application to same-sex unions in the same way supports the argument that this is a discriminatory practice.

The specific laws, which the Government proposed and the Parliament passed, in previous years resulted regularly in discrimination of LGBT persons – directly or indirectly. For example, in past several years this became clear with the adoption of the Labour Act (OG 149/09), the Foreigners Act (OG 79/07, 36/09, 130/11, 86/12), the Asylum Act (77/07, 88/10) and the Medical Insemination Act (OG 88/09, 137/09, 124/11, 86/12), all of which denied same sex couples certain rights that were available to unmarried heterosexual couples – right to paid leave in case of death or illness of a partner, right to family reunion, right to medical insemination. In all the above cases LGBT organisations Kontra and Iskorak proposed the removal of discriminatory provisions, but were refused by the Government and the Parliament. The most recent of the above mentioned laws was the Medical Insemination Act, adopted in July 2012, which contains an explicit ban for women living in same-sex unions.

In 2012 the Government formed a working group for creating new legal regulation of same-sex couples' rights. Since the discriminative Medical Insemination Act was adopted after the working group was formed, it is not clear what will be the scope of rights that the new legislation will provide to same-sex couples.

In 2012 the Government also adopted the new Personal Names Act and placed into the parliamentary procedure the new State Registries Act, that eliminated some provisions which resulted in discrimination towards transgender persons. The Personal Names Act Bill included a change that would eliminate the practice of publishing the request for change of personal name on the notice board of the municipal body. The State Registries Act Bill included changes stating that change of name and gender marker are not to be visible on excerpts from state registries given to third parties. However, the State Registries Act Bill did not define what documents are necessary for change of name and gender marker on personal documents, although such a provision was already proposed by Social Democrat Party in 2010 and the Ministry of Administration announced that it will be introduced into the State Registries Act in correspondence with LGBT NGOs in 2012. Due to this, in the right to change of gender marker on personal documents is, on a practical level, available only to persons that went through medical gender reassignment including invasive genital surgery.

2. ensure that legislative and other measures are adopted and effectively implemented to combat discrimination on grounds of sexual orientation or gender identity, to ensure respect for the human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them;

- i. Has legislation against discrimination on the grounds of (a) sexual orientation and (b) gender identity covering employment, social security and health care, education, access to and supply of goods and services, including housing, been introduced?*

Yes.

The Croatian legal system embodies the fundamental principles of human rights through the Constitution of the Republic of Croatia (OG 41/01, cleansed text), chapters two and three, and special legislation.

Article 3 of the Constitution of the Republic of Croatia, among other things, defines equality, human rights and the rule of law as the highest values of the constitutional order of the Republic of Croatia and the basis for interpretation of the Constitution. Therefore, the Constitution, right after its basic provisions, 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 everyone in the Republic shall enjoy rights and freedoms regardless of numerous differing characteristics, whether those differing characteristics are explicitly defined in the Article (race, colour, gender, language, religion, political or other belief,

national or social origin, property, birth, education and social status) or they fall under “other characteristics” (as sexual orientation, gender identity, age, etc). The second Paragraph of the same Article states that everyone is equal before the law. That equality also applies to persons of different sexual orientation and gender identity.

The right to equality is subject to restrictions under Article 16 of the Constitution of the Republic of Croatia. However, every restriction must be proportional to the nature of the necessity for restriction, and set out in every individual case with the aim to protect freedoms and rights of others, public order, public morality and health.

Different legal acts explicitly ban discrimination based on sexual orientation – the Anti-Discrimination Act (OG, no. 85/08), the Act on Amendments to the Criminal Code (Official Gazette, nr. 105/04), Act on Amendments to Labour Act (OG, no. 137/04 - cleansed text), the Gender Equality Act (OG, no. 82/08), the Media Act (OG 59/04), the Scientific Activity and High Education Act (OG, no.123/03), the Asylum Act (OG, no. 79/07), the Volunteers Act (OG, no. 58/07).

Discrimination on the grounds of gender identity and gender expression is explicitly prohibited in the Anti-Discrimination Act. The Volunteers Act also contains prohibition of discrimination based on sexual orientation and gender expression.

The Gender Equality Act regulates general basis for the protection and promotion of gender equality as one of the fundamental values of the constitutional order of the Republic of Croatia, and it defines and regulates protection against discrimination based on gender, and creation of equal opportunities for women and men. The Act also contains prohibitions of discrimination on the basis of one’s marital status and sexual orientation.

- ii. *Has a comprehensive strategy, including long-term education and awareness raising programmes, aimed at tackling discriminatory or biased attitudes and behaviour within the general public and correcting prejudices and stereotypes, been implemented?*

No.

The National Policy for Promotion of Equality of the Sexes 2006-2010 (OG 114/06), as well as the National Program for Protection and Promotion of Human Rights 2005 – 2008 and the National Program for Protection and Promotion of Human Rights 2008 - 2011 contained a few measures aimed at combating discrimination based on sexual orientation and gender identity.

However, the measures intended to initiate public debates on LGBT rights were implemented through organisation or financing of round table discussions with very limited impact, while other existing measures – such as the measure for including representatives of LGBT organisations into work bodies for development of legal bills and policies, and the measure for creating an analysis of the legislation regarding human rights of LGBT persons remained unimplemented. The measure concerned with financing activities of LGBT organisations aimed at combating discrimination based on sexual orientation and gender identity contained in the National Program For Human Rights 2008 – 2011 was implemented in a way that actively undermined the work of organisations that criticise the work of the Government in the field of combating discrimination based on sexual orientation and gender identity.

The new National Policy for Equality of the Sexes 2011 – 2015(OG 88/11) contains a measure from the previous policy which obligates work bodies regulating adoption of laws, programs and strategies relating to LGBT rights to include representatives of organizations for the equality of LGBT persons. Measure 1.5.1. of the National Policy for Promoting Gender Equality 2006 – 2011 - *Implementing research for analysis of court practice and police conduct in criminal acts motivated by the sexual orientation of the victim*, has never been implemented and has not been transferred into the new National Policy. Instead of it a new measure – 1.1.7. – was incorporated: *Statistical data on court procedures and police conduct will be monitored in criminal offences motivated by sexual orientation of the victim*. This measure does not bring in any new activities, which have not existed before.

The new National Policy contains measure 1.1.4. - which states that the International Day against Homophobia and Transphobia (May 17th) will be commemorated, as well as measure 5.3.1. which states that round table discussions will be organized on issues of gender based violence against LGBT persons. However, having in mind the low impact round table discussions organized by implementing institutions have on the general public, and lack of measures that would introduce awareness raising campaigns organized by state institutions, the National Policy does not in fact sufficiently address awareness raising of the general public.

The measure 5.2.2of the National Policy prescribes: *Systematic education of the judiciary, municipal and county public prosecutors, health workers, workers in educational and upbringing institutions, family centres and police administrations, social workers and mental health professionals, in the goal of improving legal protection and help*

given to victims of violence, especially victims of sexual violence as well as victims of discrimination based on sexual orientation, gender identity and gender expression.

This kind of measure was introduced for the first time into the National Policy for Equality of the Sexes. LGBT organisations Kontra and Iskorak have since 2005 been advocating for measures which would systematically educate the judiciary, municipal and county public prosecutors, workers in educational and upbringing institutions and other state employees regarding LGBT rights. This measure represents a positive change in comparison to the previous Policy. Measure 5.2.2 speaks of education as a means of helping victims of violence, and also mentions victims of violence based on sexual orientation and gender identity. However, the measure itself does not make it apparent whether education intended to improve help for victims of violence will include special education regarding human rights of LGBT persons and violence against LGBT persons, or whether LGBT persons will only be mentioned as possible victims of violence. There is a need for far wider education of the judiciary and law enforcement which would include other types of discrimination and hate crimes against LGBT persons, unlike the education which deals strictly with violence.

In conclusion, the National Policy for Equality of the Sexes, following the example of the previous Policy, includes just a few measures that focus on protection of LGBT people. There have been no indications that measure 5.2.2. will be implemented in such a way, as was suggested, as to ensure detailed and systematic education on LGBT rights by LGBT organizations. Taking into consideration the vast breadth of homophobia in state institutions, this is much needed.

LGBT organisations Kontra and Iskorak approached the Ministry of Justice in February 2012, proposing adoption of the National Programme for Combating Discrimination Based on Sexual Orientation and Gender Identity. At the meeting with representatives of NGOs the Minister of Justice took the proposal of the NGOs and stated that the Ministry will work on finalising the final draft of the Programme and propose it to Parliament, but there were no actions from the Ministry after that. We requested information from the Ministry on this issue, but received no response.

3. ensure that victims of discrimination are aware of and have access to effective legal remedies before a national authority, and that measures to combat discrimination include, where appropriate, sanctions for infringements and the provision of adequate reparation for victims of discrimination;

i. Do effective legal remedies for victims of (a) sexual orientation or (b) gender identity discrimination exist at national level?

Effective legal remedies for victims of sexual orientation or gender identity have only partially been established at national level. Procedures initiated under the Anti-Discrimination Act are implemented with application of the Litigation Procedure Act and in that way effective legal remedies are ensured. It is still too early to talk about full effectiveness of legal remedies in procedures under the Anti-Discrimination Act, since all initiated procedures, if they have not been solved in an adequate manner in procedures of first degree, are in appeal procedures.

The general problem in the Republic of Croatia is that decisions on legal remedies in most cases are not adopted in a reasonable period of time. Considering that the Anti-Discrimination Act defines all “anti-discrimination procedures” as urgent, the need for a reasonable period of time in regards to legal remedies is even more emphasised.

From Kontra’s and Iskorak’s practice it can be concluded that the court of second degree has been deciding on appeals for two years already, and that in the context of urgency of procedures that is not a reasonable period of time, and therefore not an effective legal remedy.

However, if we take into consideration discrimination occurring in administrative procedures that are most common since they are the matter of everyday realisation of rights because citizens wish to, for example, realise their right to a family reunion, change sex and name on personal documents, get a confirmation of marital status, realise the right to inheritance or health insurance, then we may conclude that legal remedies is ineffective.

First of all, this is because of the fact that there is no adequate legal frame on a national level – for example a law regulating family reunion explicitly excludes same-sex unions, a law regulating change of sex and name on personal documents does not include persons who did not have “surgical and irreversible change of sex”, a law regulating issuance of permits for entering into marriage excludes persons who wish to marry same-sex partners abroad, etc.

It is clear that the European Convention of Human Rights and standards established by the practice of the European Court of Human Rights should be applied in all of the procedures mentioned above at the first and second instance, but it is not so.

Due to absence of an adequate legal frame, the existing legal remedies are not effective, appeals are rejected by referring to national regulations, and protection can be realised only on a constitutional level before the Constitutional Court or the European Court for Human Rights.

- ii. *Are there effective procedures to make victims aware of, and able to access, such remedies, even where a violation is committed by a person acting in an official capacity?*

There are no effective procedures to make victims aware of legal remedies, especially if a person acting in an official capacity committed the violation.

What's more, victims are often exposed to inappropriate comments and suffer due to failure of officials to provide them with help.

Awareness of citizens on the fact that this is a violation of their human rights needs to be enhanced.

- iii. *Are the remedies effective, proportionate and dissuasive?*

See i.

- iv. *Do the remedies include, where appropriate, adequate reParation for victims?*

Legal remedies do not include adequate reParations for victims because state bodies decide on legal remedies too long, therefore, decisions are not adopted in a reasonable period of time, considering the fact that these are discrimination procedures.

In that period victims of discrimination remain unprotected in everyday life. Some of them give up and find solutions through other legal institutes (if possible; for example, instead of family reunion – work permit for partner and such), while others are forced to wait for the valid decision. In the period of waiting for the decision to come into force, discrimination still occurs – this is the reason why the issue of effectiveness of legal remedies is of high importance.

In cases where victims of discrimination initiate procedures by application of the Anti-Discrimination Act, they have the possibility to request compensation of damages. It is still too early to talk about the effectiveness of decision making in such requests (all procedures are in phase of appeal), but the fact remains that urgent procedures are not dealt with urgently and the law does not prescribe deadlines for activity of courts.

4. be guided in their legislation, policies and practices by the principles and measures contained in the appendix to this recommendation;

5. ensure by appropriate means and action that this recommendation, including its appendix, is translated and disseminated as widely as possible

- i. *What steps have been taken to ensure as wide as possible dissemination of the Recommendation and its appendix?*

The Office for Gender Equality of the Government translated the Recommendation. The Recommendation is available on the web page of the Office. The Office reported on no other actions regarding distribution.

- ii. *Have the Recommendation and its appendix been translated?*

Yes.

- iii. *Have they been disseminated:*

- *within the lesbian, gay, bisexual and transgender communities?*
- *throughout public administration?*
- *throughout law-enforcement structures, including the judiciary and penitentiary system?*
- *to national human rights protection structures (including equality bodies)?*
- *throughout the educational system?*
- *throughout the health-care system?*
- *to representatives of public and private sector employees and employers?*
- *to the media?*
- *to relevant non-governmental organisations?*

No.

Appendix to Recommendation CM/Rec(2010)5

I. Right to life, security and protection from violence

A. "Hate crimes" and other hate-motivated incidents¹

1. **Member states should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator; they should further ensure that particular attention is paid to the investigation of such crimes and incidents when allegedly committed by law enforcement officials or by other persons acting in an official capacity, and that those responsible for such acts are effectively brought to justice and, where appropriate, punished in order to avoid impunity.**

- i. *Does the training of police officers ensure that they are aware of the need to make special efforts to investigate any (a) homophobic or (b) transphobic connotations in hate crimes or hate motivated incidents effectively, promptly and impartially, particularly where violence is involved?*

The Police Academy will implement education on hate crimes against LGBT persons in its official curricula in cooperation with Kontra and Iskorak, starting with the academic year 2012/2013. Education will be implemented through 3 modules that are part of the official curricula, 2 hours per module.

Under the module titled "Substantive Criminal Law" (in the year 1 of the Police Academy programme) lessons on "Introduction to Basic Terms Related to the LGBT Population, Facing Prejudices and Stereotypes against LGBT Persons" will be implemented. Students will be encouraged to talk about stereotypes and prejudices against LGBT persons (this will be done in form of a workshop). They will be familiarized with basic terminology related to the LGBT population and specifics of discrimination of LGBT persons.

Also, under the same module lessons "Hate Crimes against LGBT Persons" will be implemented. The students will be familiarized with criminal offences that most often constitute hate crimes against LGBT persons and specific characteristics of these criminal offences. The aim of these lessons is also to emphasize details that police officers need to pay attention to during investigation of certain criminal offences and submitting reports or criminal complaints to the Public Prosecutor's Office.

Under the module "Police Psychology" (year 3 of the Police Academy programme) lessons "Psychological Facets of Affirmative Work with LGBT Persons, Victims of Hate Crimes" will be implemented. Lessons will deal with the particular affirmative aspects of work with LGBT persons who experienced different forms of violence (emotional, psychological, sexual, economic). This is especially important for police officers who will take complaints from LGBT persons who experienced violence, since police officers are first in the process of taking care of LGBT persons, victims of violence.

Under the module "Psychology of Aggressiveness" (year 1 of the Police Academy programme) lessons "Conduct in Relation to Victims of Hate Crimes Motivated by Sexual Orientation or Gender Identity" will be implemented. The purpose of these lessons is to educate students to collect as much evidence as possible on hate crimes. It is important that students learn which information is important to gather in relation to certain crimes and which questions represent a violation of the victim's privacy.

- ii. *Is there an independent and effective machinery for receiving and investigating reports of hate crimes or hate motivated incidents allegedly committed by law-enforcement staff, particularly where sexual orientation or gender identity constitute one of the motives?*

There is no special independent and effective machinery for receiving and investigating hate crimes, allegedly committed by law-enforcement staff, particularly where sexual orientation or gender identity constitute one of the motives.

Any complaint regarding the work of police officers can be submitted to the Internal Control Department of the Ministry of Internal Affairs.

Other documentation assembled by grantee:

Cases of misconduct by police officers:

[Case 1 - Violations of Human Rights of a Lesbian by Police Officers](#)

The client was subject to actions of the "X" Police Department spanning a prolonged time period and on several occasions during 5 years.

Police officers told her that they are investigating her because "she and her lesbian lover killed, in a satanic ritual, a young man who has been missing for more than 25 years". Police officers interrogated her on several occasions for hours (14 hours on last occasion), on some occasions they would drive her to another police department without telling her where are they taking her, they denied her medications (she has epilepsy and uses methadone), threatened her physically, sexually harassed her, insulted her, interrogated her on her personal life while using a lie detector, offered her money to admit to murder, while bringing the father of the alleged victim and allowing him to pose questions to her and throw money at her, etc. They also questioned members of her family and friends. They went to the hospital where her partner works as a doctor and in front of patients and other doctors told her that her "lesbian lover is accused of murder". They searched her apartment without a warrant and took her diary. A police officer told her that he read her diary more than 20 times and that "there was nothing sweeter than that" to him. The last time they questioned her was on 11 March 2011 and a police officer told her "Next time I talk to you will be the last time". Before that he told her that if she doesn't accept money and admit to murder that he will "give money to two men that will take the money and they will be able to pull out the information from her and he doesn't give a fuck if they will pull out her fingernails, but he is sure that they know their job". He told her that she has one week before the next interrogation takes place. She called Kontra a day before the one week deadline passed, in fear of what is going to happen to her.

On 11 April, 2011, the attorney at law hired by Kontra and Iskorak on behalf of the client requested from the "X" Police Department a report on activities implemented.

On 6 May, 2011, the police replied that there was no lack of professionalism in activities implemented and that all actions were done in accordance with the law and to authorization of the police.

On 30 May, 2011, the attorney at law filed criminal charges against the perpetrators in the "X" Police Department because they are believed to have committed numerous criminal acts:

- in regards to Article 174, Para 1, of the Criminal Code (CC) – racial and other discrimination,
- in regards to Article 129, Para 2, of the CC – threats,
- in regards to Article 337, Para 1, of the CC – misuse of position and authority,
- in regards to Article 339, of the CC – improper work in the service.

On 30 May, 2011, a complaint was filed with the Ministry of Internal Affairs, Department for Internal Control, with a request that adequate disciplinary procedures be initiated regarding the police officers in question.

On 29 June, 2011, the Internal Control Department replied that they received our complaint and that they will inform us about what they ascertain to be facts in this investigation.

On 29 August, 2011, the Internal Control Department replied that documentation has been sent to the Municipal State Prosecutor in "X" for a judgment on merits.

On 21 June, 2012, a rush notice was sent to the Municipal State Prosecutor in "X" in regards to lack of reaction to the criminal charges filed on May 30th, 2011.

On 10 July, 2012, we received a correspondence from the Municipal State Prosecutor stating that the case was sent to the Office for Combating Corruption and Organized Crime - OCCOC (*Ured za suzbijanje korupcije i organiziranog kriminaliteta - USKOK*).

The Ministry of Internal Affairs in their responses didn't deny that actions were taken by the police officers towards the client and that these actions were "in relation to the case of disappearance" from more than 25 years ago. It is clear that in this case serious human rights violations took place. It is worrying that in the response of the Police Department "X" it was stated that "there was no lack of professionalism in activities implemented and that all actions were done in accordance with the law and to authorization of the police". We were not informed until the date of publishing of this report on further progress in regards to the criminal complaint. After the criminal complaint against him was filed, our client saw the police officer from this case on national television as working on another case,

Case 2 – Police Misconduct in a Case of Family Violence that Ended in Murder

On 23 April 2012 the media reported the following: "In Bjelovar, Josipa Pupačića Street, on Sunday at 3:20pm, a young man (26) armed with a knife committed homicide of another man (47). The victim G.T. had several stab wounds on his body. A neighbour says he heard ruckus in the street and saw a man running from the back yard

while in pursuit of him was T.G. wearing a red tracksuit, and he was attacking the victim with a knife. Locals say that the victim and perpetrator were lovers and that they fought and argued frequently”.

Later on, that day Kontra received a call in which we were informed by a woman from Bjelovar about comments made on Facebook by a Bjelovar police officer.

Namely, on his Facebook profile, which is open to the public, a person named “Kruno Karas”, for whom it was stated on his profile that he was employed by the Ministry of Internal Affairs, wrote: “Haha, I am not sorry one bit, faggots and dirt bags both of them, now at long last, without them there will be some peace...” Further on, when someone else asked him “what, were they problematic people??”, he answered: “No, fools... Every once in while they would call us for some stupid reason, and when you think about where it is that you have to go you wish sincerely that you could put on 3 pairs of gloves on your hands... Right, I am really glad, if only a couple more of them in the town would kill each other off, Bjelovar would be a fairy tale place...”

Considering that the police officer who used hate speech online was also one of the officers who responded to calls from the Bjelovar couple, the question arises whether this police officer conducted himself in accordance with the law in all previous cases regarding this couple, and whether he provided adequate protection to one or both people in the couple.

Instigating discrimination is a criminal act, and police officers especially must respect the law which it is their duty to uphold.

Because of all of the above, Kontra and Iskorak announced in the media that we will file a request with the Ministry of Internal Affairs to ascertain the legality of actions taken in all previous calls by the couple, and will request that adequate measures be taken against the police officer who publically used hate speech, especially seeing as this is behaviour incompatible with the work a police officer does. Additionally, we announced that we will request a report on interventions regarding calls from these two citizens.

After the public was informed on the disgraceful writing on the Facebook profile of said police officer who worked on calls from the Bjelovar gay couple, as the media reported, against him proceedings will be initiated by the Ministry of Interior. The Chief of the Bjelovar - Bilogora Police Department, Jakob Bukvić, in an official statement said that officers for legality of procedure in the Internal Control Department of the Ministry of Internal Affairs concluded that there are violations in relation to Article 25 of the Anti-Discrimination Act, due to which a motion to indict was filed. Also, it was stated that the police officer will face disciplinary measures because of his inappropriate behaviour outside of police duty. Additionally, violations of Article 25 of the Anti-Discrimination Act carry a monetary fine of 5000 to 30 000 Kuna”.

We welcomed publicly the fact that the Ministry of Internal Affairs had conducted an internal investigation, and also the measures taken according to the Anti-Discrimination Act.

After that we were informed that police officers did not allow the doctor to ascertain death of the murder victim G.T. One of the officers waved him away and said: “This guy is done for”. After that the police left the body on the street, uncovered, from 3pm to 8pm.

Additionally, we received information from a witness that this was a case of continuous domestic violence where in several incidents the police were called. The perpetrator of the violence was mostly the murder victim G.T., and the police did not react in accordance to the Protocol on Procedure in Domestic Violence Cases only because the couple in question was gay. T.G. previously tried to kill himself a few times, but the police never reacted to protect him, or his partner.

There was obvious misconduct of the police officers that worked on this case, because they were a same-sex couple, and this misconduct possibly led to the situation that ended in murder.

Case 3 – Refusal of Police Officers to take a Complaint in a Transphobic Hate Crime Case

On 3 January 2010 a group of young men carried out an attack on a transgender woman 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 years old.

On the day of the attack a group of youths waited her in front of the building where 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 apartment and called the police. The police officers told her that they would cruise

around the area and search for the attackers but that they “cannot file 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 officer, who made a note of her personal details and told her: “See what you look like – I would beat you up too.” The police officer then went into the room next door where there were several other policemen and spoke with them. After this another police officer 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 officer was visibly upset and said: “Well, who would you report? Get out of here!”

The victim turned to 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 was made to check the legality of the actions of the police officials when the victim came to the police station.

On 15 April 2010 we received a reply from the Ministry of Internal Affairs concerning the above request to check the legality of the behaviour of the police officials. In the Ministry’s reply it was stated that the victim was aware of the possibility of making a criminal complaint for the criminal acts of actual bodily harm and threatening behaviour – which is in direct conflict with what the victim described. The Ministry also states that it was not confirmed that the police officers acted in a hostile and discriminatory manner towards the victim.

Not until over half a year had passed from the attack, after which the letter of the Ministry of Internal Affairs had been sent, did police officers attempt to establish contact with the victim in order to confirm the facts of the incident. However, the client was discouraged by the early behaviour of the police officers and the Ministry of Internal Affairs, as well as by the passage of time, and informed us on 21 September 2010 that she did not wish to continue proceedings of filing a criminal complaint and that she had not contacted police officials.

Case 4 – Police Misconduct Related to a Homophobic Attack in Split

On 17 June 2012 a group of men attacked 6 young women at the beach Bacvice in Split because of the victims’ sexual orientation.

Two women received numerous punches and kicks to their heads and bodies by attackers and one of them was knocked to the ground and kicked several times while lying down. They pushed around, insulted and threatened all of them, shouting: “Dykes, all of you are sick, all of you should be killed!” At one moment one of the women took out her mobile phone, called the police and started filming what was going on. One of the attackers saw that and stole her mobile phone.

Two police officers came, but they did not arrest or take in the attackers. Police officer addressed one of the attackers by his last name, and the attacker in front of the police threatened the women: “We have beaten you last year at the Pride, we will beat you again”. When one of the women asked police officers why they are allowing this, one police officer pushed her so that she fell to the ground. The attacker told them that he doesn’t know why they called the police, because the police will not help them. They insisted that they want to report the incident and the police officers took them to the police station. At the police station the police officers acted with contempt towards them and did not take them seriously when they pointed out that this was a hate crime. One police officer told a woman, who complained about the behaviour of the police officers who came to the place of the incident, that he will “slap her”.

Two women received medical assistance at the Clinical Hospital Centre in Split, the Emergency Surgical Admissions, due to injuries.

On 20 June, 2012, an attorney at law on behalf of the victims sent a request to the Split-Dalmatia Police Department, I Police Station Split, for a report on actions taken and a list of names of police officers who worked on said case – in order to initiate proceedings against them in front of the Ministry of Interior.

2. Member states should ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance.

- i. *Do legislative measures to combat “hate crimes” and other hate motivated incidents exist? Do these measures recognise (a) sexual orientation and (b) gender identity as a possible motive in such crimes or incidents?*

In 2006 on the initiative of LGBT organisations Kontra and Iskorak, supported by the Serbian Democratic Forum and Women’s Network of Croatia, a definition of “hate crime” was introduced in the Criminal Code which allowed

courts when determining a sentence for a criminal act to consider the fact that a crime was committed out of hatred as an aggravating circumstance.

Namely, in an amendment to the Criminal Code (OG 71/2006) Paragraph 36 was added after Paragraph 35 of Art 89 and it states:

A hate crime is any criminal offence under this Act committed out of hatred towards a person because of his or her race, skin colour, gender, sexual orientation, language, faith, political or other belief, national or social origin, property, birth, education, social position, age, health status or other characteristics.

Aside from the changes in Article 89, in Article 91 for the crime of first-degree murder, the word “hatred” was added to Para 6, so Para 6 states: a person who kills a person out of ruthless revenge, hatred or other particularly low motives, which is punishable by a prison sentence of at least ten years or a long-term prison sentence. Thus, a crime committed out of hatred is an aggravated form of the basic crime.

By a decision of the Minister of Justice of 19 February 2009, a working group was set up to draft a new Criminal Code.

The *Lesbian Group Kontra*, *Serbian Democratic Forum* and *Better Future*, associations concerned with the rights of three marginalised groups – Serbian and Roma minorities and LGBT persons, addressed the working group with a proposal to introduce qualified forms of certain criminal offences when motivated by hatred.

CSOs for the protection of human rights argued that considering the occurrence and social danger of certain criminal acts (physical injuries, criminal offences against sexual freedom, murder, threat, etc.) it is necessary to prescribe in a special part of the Criminal Code and under individual criminal acts that it is a matter of a more severe form, qualified form of the criminal acts with consequently heavier sentences if the act was committed out of hatred.

Precisely because of the number and frequency of these criminal acts, and their social danger, it is opportune for “hate crime” to be identified as a qualified form in a separate part of the Criminal Code under individual criminal acts. In other cases of possible occurrence connected to other criminal acts, we proposed hate crime to be taken as an aggravated circumstance.

We also sought the introduction of “gender identity” as a basis in the definition of hate crime in order to harmonise it with the Anti-Discrimination Act, which is an organic law that ensures the protection and promotion of equality as the highest value of the constitutional order of the Republic of Croatia. Considering that the Anti-Discrimination Act was adopted a little under two years ago, we considered it important to introduce the expression “gender identity” in the definition of hate crime. This was important due to the fact that cases of hate crimes against transgender persons have been regularly recorded by LGBT organisations in Croatia.

Regarding the definition of family we proposed same-sex partners be included, as well as children of same-sex partners.

The new Criminal Code (OG 125/11) was adopted by the Croatian Parliament on 24 October, 2011.

As suggested by CSOs the new Criminal Code defines hate crime as an aggravated circumstance, but also as a qualified form of certain criminal acts - severe murder, bodily harm, severe bodily harm, particularly severe bodily harm, severe criminal offences against sexual freedom, inciting public disorder and female genital mutilation -- which frequently happen to members of marginalized groups. For the criminal offences of coercion and threat, the Public Prosecutor is obligated to initiate prosecution, when the offence is motivated by hate (otherwise a private complaint may be filed). Gender identity was also included in the definition of hate crime, and all provisions of the Criminal Code regarding married and non-married partners and their children apply equally to same-sex partners and their children.

The definition of the hate crime from the Criminal Code:

Hate crime is a criminal act committed because of race, skin colour, faith, national or ethnic origin, disability, sex, sexual orientation or the gender identity of another. Such acts will be considered an aggravated circumstance unless this Act explicitly prescribes more severe punishment.

An example of the introduction of hate crime as an aggravated form of a criminal act:

Severe bodily harm

Article 118

(1) A person who causes grievous bodily harm to another or seriously damages his health will be punished by a prison sentence of six months to five years.

(2) If the criminal act under Para 1 is committed as a hate crime, against a family member or a person who is especially vulnerable due to their age, severe physical or mental disorder, disability or pregnancy, or as an employee of the state in conducting their job or in office of public authority, the perpetrator will be punished by a prison sentence of one to eight years.

Definition of family from the new Criminal Code:

Family members are current married or non-married partners, their mutual children and also children of each of them individually, blood relatives in lineal consanguinity, blood relatives in collateral consanguinity, ending with the third degree, relatives by marriage, ending with the second degree in a married or non-married partnership, adopter and adoptee, relatives of the adopter in lineal consanguinity, relatives of the adopter in collateral consanguinity, ending with the third degree, relatives of the adopter by marriage, ending with the second degree. Regarding criminal acts of domestic violence members of the family are in accordance to this Law considered to be also the former married or non-married partner, children of each and their mutual children, and if after the marital or non-marital relationship ceased the reason for conflict had been the former marital or non-marital relations, persons who have children together, guardian and ward, fosterer, person living in the foster family and members of said family while this relationship lasts, child and person to whom the child was given to for nurturing and upbringing. Under the same conditions as family members, that is, persons considered family members in accordance with this Law, protection is given to same-sex partners and children each of them has individually, that is, former same-sex partners and children each of them has individually.

- ii. Does this legislation ensure that a bias motive related to (a) sexual orientation (b) gender identity may be taken into account as an aggravating circumstance when determining sanctions?

Yes. Moreover, for certain criminal offences, a qualified form of the criminal acts with consequently heavier sentences if the act was committed out of hatred is prescribed.

3. Member states should take appropriate measures to ensure that victims and witnesses of sexual orientation or gender identity related “hate crimes” and other hate-motivated incidents are encouraged to report these crimes and incidents; for this purpose, member states should take all necessary steps to ensure that law enforcement structures, including the judiciary, have the necessary knowledge and skills to identify such crimes and incidents and provide adequate assistance and support to victims and witnesses.

- i. Has a simple and comprehensible definition of “hate crimes”, which includes the motive of (a) sexual orientation and (b) gender identity been disseminated to the general public?²

No, the definition of hate crime is not present at the web pages of the Ministry of Internal Affairs. Also, under the special section on violence where information on domestic violence, violence during sport events, etc., is shown there is no information on violence motivated by hatred.

- ii. Do training programmes and procedures ensure that the police and judiciary possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?

The official curriculum of the Police Academy includes education on hate crimes against LGBT persons as described above. There are no specific programs related to hate crimes against LGBT people for judiciary.

- iii. Do training programmes and codes of conduct for the police and judiciary ensure that LGBT persons are treated in a non-discriminatory and respectful manner so that they feel safe to report hate crimes or other hate motivated incidents, whether as victims or witnesses, in relation to their (a) sexual orientation and (b) gender identity?

In 2011 the Protocol on Proceedings in Case of Hate Crime was adopted by the Government. Article 22 of the Protocol prescribes that “Towards victims of hate crimes, with the aim of avoiding secondary victimization, it is necessary to act with consideration, in a way that respects their dignity.” Article 23 prescribes that “It is necessary to encourage victims to report hate crimes, while responsible bodies and civil society organisations will ensure their safety.”

2e.g. through police websites or leaflets distributed in the community.

The official curriculum of the Police Academy includes education on hate crimes against LGBT persons as described above. There are no specific programs related to hate crimes against LGBT people for judiciary.

- iv. *Are units within the police tasked specifically with investigating crimes and incidents linked to sexual orientation and (b) gender identity?*

No. Units within the police are not specifically tasked with investigating crimes and incidents linked to sexual orientation and gender identity.

- v. *Are there special police liaison officers tasked with maintaining contact with local LGBT communities in order to foster a relationship of trust?*

No. There are no special police liaisons officers tasked with maintaining contact with local LGBT communities.

- vi. *Is there a system of anonymous complaints or on-line complaints, or using other means of easy access, which allow reporting by third parties in order to gather information on the incidence and nature of these incidents?*

No. There is no system for anonymous complaints or on-line complaints, or using other means of easy access, which allow reporting by third parties in order to gather information on the incidents and nature of hate crimes by state institutions.

On the other hand, civil society organisations possess more information since they do receive anonymous complaints. For example Lesbian Group Kontra and Iskorak have been providing direct legal help to victims of hate crimes since 2002 and often receive information on hate crimes that victims do not want to report to state institutions. However, when the Working Group for Monitoring Hate Crimes (coordinated by the Governmental Office for Human Rights) was formed, CSOs that deal with hate crimes were not included. After Kontra proposed at the round table discussion, with state institutions, for inclusion of organisations that provide help to victims of hate crimes, the working group included only one person from civil society, appointed by the Civil Society Advisory Body.

The LGBT population is an especially vulnerable social group. LGBT people frequently do not report hate crimes out of fear of their sexual orientation or gender identity being discovered, and due to a lack of trust in state institutions.

Because members of minority social groups generally rarely report hate crimes, organizations such as Iskorak and Kontra, but also the Serbian Democratic Forum and other organisations which offer legal assistance to minority groups, have important information at their disposal regarding hate crimes against certain social groups.

4. Member states should take appropriate measures to ensure the safety and dignity of all persons in prison or in other ways deprived of their liberty, including lesbian, gay, bisexual and transgender persons, and in particular take protective measures against physical assault, rape and other forms of sexual abuse, whether committed by other inmates or staff; measures should be taken so as to adequately protect and respect the gender identity of transgender persons.

- i. *Do training programmes and codes of conduct for prison staff ensure that prisoners are treated with respect and without discrimination in relation to their (a) sexual orientation and (b) gender identity?*

The Ministry of Justice in their answer stated: "At the Ministry of Justice of the Republic of Croatia, Department of Correctional System's Educational Centre we conduct mandatory education of all categories of state officers who work in the Correctional System, in the aim of giving them specialized information and skills needed for conducting specific duties in regards to inmates. Through educational classes and seminars officers acquire capacities for implementing provisions, which regulate serving of time in prison, how inmates are to be treated and communication skills. In this manner, officers are educated on how to treat all inmates with respect and without discrimination, which encompasses respect of the inmates' sexual orientation and gender identity. "

Other information provided by the grantee:

Case of Osijek prison

On 27 November, 2012, the Osijek prison director, Tomislav Cvitanušić, gave a statement to the "Večernji list" daily stating that: "...in the previous two years inmates who are minors have been placed in cells with adult prisoners, but only under certain conditions. Judges have approved these transfers. It was only done under the

condition that these were not persons who would have a negative effect on them. That means they cannot be placed in cells with homosexuals, drug addicts and repeat criminal offenders”.

Kontra and Iskorak issued a press release calling on the Ministry of Justice, Department of the Correctional System to publically state whether this is an isolated case of discrimination committed by a prison director or whether it was official instruction given by the Ministry of Justice – in which case it would constitute direct discrimination by the state system. Kontra and Iskorak requested that, if it was an isolated case, the Ministry of Justice terminate such practice, clearly state to the public that such conduct has nothing to do with the Government’s policies, and to properly sanction the Osijek prison director.

On the basis of Mr. Cvitanušić’s media statement Kontra and Iskorak filed a lawsuit against him in accordance with the Anti-Discrimination Act.

After the lawsuit was filed the prison director gave a public apology. In his public statement he said that he erroneously cited the old Rulebook on Serving Prison, which had been replaced in 2010 by a new one that does not contain the controversial provision. Furthermore, he apologized for his statement and emphasized that all inmates all treated in accordance to legal provisions.

Sergej Abramov, Ministry of Justice spokesman, stated for the media that discrimination is contrary to provisions set out in the Constitution as well as the Rulebook, and added that: “The statement given by the Osijek prison director is an isolated case and not official policy of the Ministry of Justice. The director was asked to report on the treatment of minors in question. Should it be determined that there was discriminatory conduct, those responsible will be sanctioned”.

The prison director’s apology and the statement of the Ministry of Justice followed only after Kontra and Iskorak had reacted and filed a lawsuit, which was two months after his statement was published by media.

- ii. *Are there effective measures to minimise the dangers of physical assault, rape and other forms of sexual abuse, including effective procedures for determining the disciplinary or criminal liability of those responsible, including for failure of supervision?*

The Ministry of Justice in their answer stated: “Officers in charge of security supervise, as part of their daily activity, the inmates in whatever space they occupy at the prison. The Prison Sentence Act defines the serious violations of professional duty of employees, such as: not reporting a prisoner’s behaviour which constitutes major disciplinary violations, relations with a prisoner that overstep prescribed duty or that are contrary to the purpose of serving prison, failing to take prescribed measures that results in damaging consequences or in a serious risk that they might occur, or prohibiting a prisoner from realizing his or her guaranteed rights.”

- iii. *Is there an independent and effective machinery for receiving and investigating reports of such crimes by prison staff?*

The Ministry of Justice in their answer stated: “In case there is knowledge of, or indications of abuse, officers must take all necessary measures to ascertain the facts, and inform the relevant state prosecutor about everything.”

- iv. *In the case of transgender prisoners, are there procedures to ensure that the gender identity of the individual is respected in regard to interactions with prison staff such as body searches and also particularly in the decisions taken on the placement of a prisoner in a male or female prison?*

No. The Implementation of the Prison Sentence Act prescribes in Article 134 that “The prisoner maybe searched only by authorised officer of the same sex”.

The Ministry of Justice in their answer in regards to this stated: There are no special procedures on the treatment of transgender inmates in regards to their interaction with prison staff or regarding their placement in either a male or female prison. Inspection is carried out by security employees who are of the same sex as the inmate, while all categories of prisoners are allocated separately (women are separated from men, minors are separated from adults, etc.).

5. Member states should ensure that relevant data are gathered and analysed on the prevalence and nature of discrimination and intolerance on grounds of sexual orientation or gender identity,

and in particular on “hate crimes” and hate-motivated incidents related to sexual orientation or gender identity.

- i. *Is there research into the nature and causes of hostile and negative attitudes to LGBT people, with a view to developing effective policies to combat these phenomena?*

No.

- ii. *Are there regular surveys into levels of social acceptance of / hostility towards LGBT people?*

No. Surveys have been conducted only on the initiative of civil society organisations. In 2007 the Puls Agency (independent agency hired by organisations Kontra and Iskorak) put various questions related to LGBT human rights to citizens of Croatia (N=800) and 71% expressed homophobic attitudes.

- iii. *Is there an effective system for recording and publishing statistics on hate crimes and hate-motivated incidents related to (a) sexual orientation and (b) gender identity?*

No. Kontra and Iskorak each year publish annual reports on human rights of LGBT people and request information on hate crimes from state institutions. Since the Protocol on Proceedings in Case of Hate Crime in 2011 was adopted, state institutions use it to deny information on hate crimes to CSOs. In previous years we received information from the Public Prosecutor's Office, as well as from the Ministry of Internal Affairs. Since the Protocol was adopted we have been instructed by the Public Prosecutor's Office to request the information from the Office for Human Rights of the Government. The Office for Human Rights refused to provide us with information on motives of hate crimes that have been recorded in 2011 and therefore it was impossible to conclude how many hate crimes motivated by hatred towards LGBT people were recorded by the Public Prosecutor's Office. This was explained by the fact that the Protocol prescribes documenting only certain information that was provided to us in a table.

B. “Hate speech”³

6. **Member states should take appropriate measures to combat all forms of expression, including in the media and on the Internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination against lesbian, gay, bisexual and transgender persons. Such “hate speech” should be prohibited and publicly disavowed whenever it occurs. All measures should respect the fundamental right to freedom of expression in accordance with Article 10 of the Convention and the case law of the Court.**

- i. *Do legislative measures penalising “hate speech” on certain grounds exist? Do these measures penalise (a) homophobic and (b) transphobic “hate speech”?*

The Constitution of the Republic of Croatia in Article 39 prescribes that any call for or incitement to war, or resort to violence, national, racial or religious hatred, or any form of intolerance shall be prohibited and punishable by law.

Article 39 of the Constitution in regards to hate speech is currently partially embodied in the Article 174, Para 3 and 4 of the Criminal Code.

Article 174, Para 3 prescribes: „Whoever, with the aim of spreading racial, religious, sexual, national, and ethnic hatred or hatred based on colour with the aim of demeaning, publicly states or disseminates ideas on the superiority or subordination of one race, ethnic or religious community, gender, ethnicity or ideas on superiority or subordination on the basis of colour, will be punished by prison sentence from three months up to three years.

Article 174, Para 4 prescribes: „Whoever with the aim from Para 3 of this Article by computer system disseminates or in any other way makes publicly accessible materials that deny, significantly underrate, approve or justify the criminal offence of genocide or crime against humanity, will be punished by prison sentence from three months up to three years.

Formulation of Article 174 is not in line with the Council of Europe Committee of Ministers Recommendation (No. R (97) 20) due to the fact that „hate speech“ is not entirely encompassed by the mentioned article.

The Criminal Code that is still in force in Article 174 provides the possibility of punishing those perpetrators who publicly state or spread thoughts about superiority or inferiority, but doesn't sanction racial or other hatred or

³See Explanatory Memorandum for definition of “hate speech”

discrimination which incites war or the use of violence or spreading of intolerance. It includes sexual orientation and other characteristics, but not explicitly gender identity.

The formulation of the article is not in accordance with the recommendation of the Council of Europe (No. R (97) 20) because "hate speech" was not totally covered by a legal resolution which was then in force.

Furthermore, the formulation of Article 174 is not in accordance with the Additional Protocol to the Convention on Cyber Crime, about the criminalisation of acts of racist or xenophobic nature committed via computer systems, because the Para 4 referred only to hate speech in relation to genocide or crimes against humanity. The article doesn't not encompass hate speech by the distribution of racist or xenophobic material via computer systems, or any kind of written materials, personalities or other representation of ideas or theories which advocate, promote or encourage hatred, discrimination or violence against persons or groups of persons on the basis of race, skin colour, national or ethnic origin, religion, etc.

The new Criminal Code that will come into force in 2013 includes legislative measures penalizing both homophobic and transphobic hate speech. The criminal offence of public incitement to violence and hatred that was introduced:

Public Incitement to Violence and Hatred

Article 325

(1) Whoever by press, radio, television, computer system or network, at public gathering or in any other way publicly incites or makes available to public leaflets, pictures or other materials that incite to violence or hatred towards a group of people or a member of a group based on their race, faith, nationality, ethnicity, background, skin colour, sex, sexual orientation, gender identity, disability or other characteristics,

will be punished by a prison sentence of up to three years.

(2) Punishment mentioned in Paragraph 1 of this Article will be applied to whomever publicly approves of, denies or significantly lessens the severity the criminal offence of genocide, crime of aggression, crime against humanity or war crime, directed against a group of people or member of a group based on their race, faith, nationality, ethnicity, background or skin colour, in a manner that is adequate to incite violence or hatred towards such group or members of that group.

(3) For attempt of criminal offence from Para 1 and 2 of this Article, perpetrator will be punished.

Formulations from the new Criminal Code are in accordance with international documents and fully cover hate speech based on sexual orientation and gender identity.

- ii. *Are media organisations, including those operating on the internet, encouraged to promote in their own practices (e.g. through codes of practice):*
- *a culture of respect, tolerance and diversity, and*
 - *to avoid negative and stereotyped representations of LGBT people?*

The Constitution of the Republic of Croatia prescribes:

Article 38

Freedom of thought and expression shall be guaranteed.

Freedom of expression shall specifically include freedom of the press and other media of communication, freedom of speech and public expression, and free establishment of all institutions of public communication.

Censorship shall be forbidden.

Journalists shall have the right to freedom of reporting and access to information. The right to correction shall be guaranteed to anyone whose constitutional and legal rights have been violated by public information.

The Gender Equality Act in Article 16 Para 2 prescribes that „Public display and presentation of any person in an insulting, belittling or humiliating manner, as regards his/her gender and sexual orientation, shall be forbidden.“

The Media Act (OG nr. 59/04) prescribes that „The media is prohibited to encourage or exalt national, racial, religious, gender or any other discrimination as well as discrimination on the grounds of sexual orientation.

Ideologies and national entities based upon such foundations are also prohibited. Prohibition also includes provoking national, racial, religious, sexual or any other hostility or intolerance, as well as hostility or intolerance on the grounds of sexual orientation, incitement of violence and war.“

There is mainly professional and informative reporting in the media on the subject of the rights of LGBT people, most frequently in a neutral tone. However, unfortunately, also homophobic articles that promote discrimination of LGBT people still appear occasionally.

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 in 2009. 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.

In relation to Split Pride 2011 and 2012 homophobic articles were published repeatedly in newspapers *Slobodna Dalmacija*, including an article that had bolded the words: “Don’t be gay” in the title.

On several occasions the Croatian Journalists’ Council of Honour reprimanded journalists due to homophobic writing.

iii. Has legislation for criminalising “hate speech” on the internet been implemented, and does this cover (a) homophobic and (b) transphobic “hate speech”?

Although the current provisions from Article 174 are not fully in line with international standards in relation to hate speech on the Internet, hate speech could be still prosecuted partly through Article 174 Para 3 and incitement to violence and discrimination could be prosecuted as criminal offences of incitement to other criminal offences – violent behaviour, race and other discrimination, violation of equality of citizens, violation of freedom of assembly, etc.

However, serious problems exist in regards to implementation of the existing legislation.

The Lesbian Group Kontra and Iskorak have submitted to the State Attorney’s Office a number of initiations of criminal proceedings related to Article 174, Para 3. The majority of cases were rejected as unjustified. Namely, the State Attorney’s offices considered that the existence of direct intent is crucial for the realization of this criminal offence, and that this interpretation is truly consistent with the formulation from Article 174 Paragraph 3. From the point of view of State Attorney’s Office the existence of this criminal offence cannot be proved unless the suspect literally admits that he had the intention of spreading hatred. In all cases perpetrators claimed that they did not intend to spread hatred, and because of that the criminal proceedings were stopped.

For other criminal offences under the Criminal Code intent can be proved, even if the suspect does not admit to it. The State Attorney’s Office so far did not try to develop methods of proving culpability for criminal offences under Article 174 Paragraph 3.

Only two cases of hate speech on the Internet against LGBT people ended in positive judgements. These cases represent an exception. The first case was against a blogger with Nazi ideology, who stated that he was aware that his actions were illegal. Second was the case of a priest who in his blog openly supported violence at Belgrade Pride 2010 and invited citizens of Croatia to do the same.

Cases of incitement to violence through Facebook reported to the State Attorney’s Office don’t get investigated or prosecuted at all, even in cases when there are perpetrators with names, surnames, pictures and workplaces stated in their profiles. Moreover, in such cases LGBT organisations don’t receive any response from state authorities. This is also the case with incitement to violence and hatred through comments below articles on news portals. Organisations Kontra and Iskorak, organisers of Split Pride repeatedly reported numerous calls for violence and violent gathering against Split Pride in 2011 and 2012 on Facebook and Internet portals, but never received any answer from the public Prosecutor’s Office. Only exception to this was one conviction in 2012 – the perpetrator received a fine of 5000 HRK (666 EUR) for incitement to violence against participants of Split Pride 2012 in the misdemeanour procedure.

Other information provided by the grantee:

Case of Martin Stojaković

On 7 November 2006, on the webpage www.blog.hr an unknown perpetrator (later identified as Martin Stojaković) posted web content (a blog) which is accessible at the web address <http://88power14.blog.hr> and placed a text of unacceptable content in English in which the neo-Nazi symbol "88!" was placed and signed himself off with "CROATIAN Skinhead Legion! 24/14/88".

On the next day, 8 November 2006, the same perpetrator placed new content on the above mentioned blog putting a title in English: "White Power for Europe", and then a text in Croatian as follows: *"Aryan brothers, it is time for us to leave our warm homes, leaving our children behind, to take up arms in our hands and to destroy the undesirables in our country! Let us do what we should have done long ago! White European Revolution. Let every competent nationalist begin action in his town! In the end victory is guaranteed!"* Then he called: *"Sons of Odin and Thor unite!"* and then accompanied the text with neo-Nazi symbols.

After that the same perpetrator posted texts with similar content in December 2006, and then from January to May 2007 and again in July 2007.

On 7 July 2007, during the Zagreb Pride 2007 event, the perpetrators, who were identified by the Zagreb Police Department, attempted to attack the Parade of citizens with home-made explosive devices, so-called Molotov cocktails, at the critical moment while the Parade was passing through Ban Josip Jelačić Square.

On 9 July 2007, the unknown perpetrator wrote a headline on the above blog in English: "Give me a Molotov... Shaken, Not Stirred...", the neo-Nazi symbol "88!", and then added text as follows: *"And so we are branded as terrorists, they are not accusing us of misdemeanours this time but of criminal charges for committing a hate crime. What can I tell you but YES if we had done it we would be proud, we will see perhaps a prison sentence following and after that we cannot guarantee for our actions. ... Can our government which we see is very homophobic really lock me up, a poor 18-year-old, and my girlfriend, in prison? What would they gain by that I ask myself, brothers? They would get a dick straight in the mouth ... so the police have brought misdemeanour charges but the Croatian courts fucked that right off and screwed on a criminal charge. For those who wish to support us, come tomorrow in front of the building of the 1st Zagreb Police Station, Strossmayer Square no. 3 at 8.30 in the morning."* And then he added in English: **"STAND UP BESIDE US, AND WILL HAVE OUR DAY, STAND UP AGAINST US GET OUT OF YOUR WAY!"** Underneath the text he stated the name and surname of one of the organisers of Zagreb Pride 2007 and his mobile telephone number, and after that posted the following text: *"Make his life miserable please...."* In the signature he posted: *"Your favourite Zagreb 'Barmen'"*.

On 31 July 2007, Lesbian Group Kontra and Iskorak – Centre for the Rights of Sexual and Gender Minorities brought criminal charges against an unknown perpetrator suspected of having committed the criminal offence of racial or other discrimination under Art 174 Para 2 and 3 of the Criminal Code.

On 22 February 2008, the Velika Gorica Municipal State Attorney's Office brought charges against young adult Martin Stojaković before the Velika Gorica Municipal Court – judge for youth for the criminal offences of racial or other discrimination under Art 174 Para 2 and 3 of the Criminal Code in connection with Article 89 Para 36 of the Criminal Code (hate crime).

When asked to plead, the accused, Martin Stojaković, the stated that he was not guilty. However, the accused circumstantially admitted committing acts which were incriminating for him, stating how in fact he had created a blog which was the subject of the charge, named "88 Power 14", explaining the meaning of these numbers, and that he had referred to members of the Jewish religious community as "Jewish scum" on the blog, and had written that homosexuals should be sent to camps, and that he had published the name of one of the Pride organisers on the relevant page of a blog, saying "make his life miserable" alongside his mobile telephone number. Furthermore, he stated that he was aware of the illegality of these attitudes according to Croatian positive legal regulations, because to his knowledge only Finland as a country did not consider the expression of such viewpoints to be illegal.

On 26 September 2008, the Velika Gorica Municipal Court found the accused Martin Stojaković guilty of the criminal offence against the values protected by international law – racial or other discrimination – as defined and punishable under Article 174 Para 2 and defined and punishable under Article 174 Para 3 of the Criminal Code in connection with Article 89 Para 36 of the Criminal Code. The accused was sentenced to a single prison sentence of a period of one year and two months, and on the basis of Article 70 of the Criminal Code a suspended sentence was applied to the accused with protected supervision by which the prison sentence of one year and two months will not be carried out if the accused does not commit a new criminal offence within a period of three years, and under the further condition that he must readily fulfil the special obligation to regularly report to a

parole officer. On the basis of the provision of Article 71 point H of the Criminal Code, the special condition of regularly reporting to the probation service was placed on the accused for the purposes of information about the circumstances which could encourage him to commit a new criminal offence.

Case of Franjo Jurčević

In October 2010 the parish priest of Kastav, Franjo Jurčević, published a text on his blog (which was also reported on by some media) in which he expressed support for the violence displayed by extreme groups on the streets of Belgrade during the Pride Parade and wrote that the events of Belgrade were “proof that moral freaks and psychopaths were more and more mastering the means of public statements, the streets, institutions and cities”.

In his text the priest stated: “The people of Belgrade have shown what they think about such psychopaths” and added that he was sorry for the policemen who had been injured but that they should have withdrawn and allowed “normal people to have a little discussion with these sick people”.

The parish priest further said that LGBT people should not have the right to public gathering, and aside from supporting the perpetrators of violence in Belgrade he openly incited hate-motivated violence in Croatia with the words: “Bravo for the normal people of Belgrade! This is how normal people of Zagreb should also act when these sick people occupy public streets and public spaces”.

The Lesbian Group Kontra filed a criminal complaint against Mr Franjo Jurčević for incitement to violence and hatred based on sexual orientation, described by the criminal offence of racial or other discrimination. After that the Municipal Public Attorney’s Office from Rijeka filed the bill of indictment against Mr Jurčević for the criminal offence of racial and other discrimination.

After serious media reactions to the above mentioned blog, Mr Jurčević tried to portray himself as a victim in the media and he ridiculed the procedures against him by saying that he invites his friends to bring him a little blanket to prison, and he also continued to give discriminative statements towards LGBT persons.

In 2011 the Municipal Court in Rijeka found Franjo Jurčević guilty, because he, with the aim of spreading hatred based on sexual orientation, publicly spread ideas of inferiority based on sexual orientation, and by that committed criminal offence against values protected by international law – racial and other discrimination, described and punishable by Article 174 Para 3 of the Criminal Code, and convicted him to 3 months in prison with a probation period of one year.

Incitement to violence at Split Pride 2011 and 2012

In May 2011 Kontra and Iskorak submitted a criminal complaint against unknown perpetrators due to a bomb threat in facilities of the European Movement in Split, during the public panel “Nothing against Split Pride” and incitement to violent gathering against Split Pride 2011 placed on the Facebook social network. On 1 July the criminal complaint was supplemented due to new threats made through Facebook and graffiti on the buildings of the streets of Split that incited to hatred, violence and discrimination.

On 3 March 2012 Kontra and Iskorak submitted a criminal complaint against unknown perpetrators in relation to incitement to violence against Split Pride 2012, for criminal offence against values protected by international law – racial and other discrimination (Article 174 Para 3 of the CC) and the criminal offence against freedoms and rights of a man and a citizen – violation of the right to public gathering and protest (Article 108 of the CC, in relation to the Article 37 – incitement, and all in relation to Article 89, Para 36 – hate crime). The criminal complaint also included Željko Mihoković, Robert Loncarek, Marija Despenić and Tomislav Mamić-Tomi whose identities were visible on Facebook.

On 10 May and 30 May 2012 we submitted supplements to the criminal complaint due to new activities on the Facebook social network in relation to the above criminal offences.

Kontra and Iskorak never received any replies from the state institutions in regards to the above complaints.

- iv. *Have internet service providers been encouraged to take measures to prevent the dissemination of (a) homophobic and (b) transphobic material, threats and insults?*

No.

- v. *If there are incidents of “hate speech”, are they publicly disavowed by leading public officials*

No.

7. Member states should raise awareness among public authorities and public institutions at all levels of their responsibility to refrain from statements, in particular to the media, which may reasonably be understood as legitimising such hatred or discrimination.

- i. *Have guidelines been issued or other measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from such statements?*

No.

- ii. *Have there been cases of statements by representatives of public authorities and institutions which may reasonably be understood as legitimising such hatred or discrimination?*

Yes.

Statements which may reasonably be understood as legitimising discrimination or violence against LGBT people are often used by representatives of state institutions, local authorities and representatives of political parties.

In September 2011 the Minister of Foreign Affairs (from the Croatian Democrat Union) during an interview "accused" the Social Democrat Party of "advocating for homosexual marriage and euthanasia". In that way a vulnerable social group was additionally stigmatised by a member of Government with the goal of getting more votes at parliamentary elections. The SDP's president, speaking in front of his coalition, defended himself saying: "In our Plan 21 we have declared that we stand for freedom of lifestyle choice, including the freedom to choose a consenting adult partner. However, this does not mean we will support the legalization of same-sex marriage".

In April 2012 the vice-president of the Government and the Minister at the ministry responsible for family matters stated that she would not allow adoption of children by same-sex couples because they would be stigmatised.

On 31 May 2012 (before Split Pride) a member of the Croatian Parliament Mr Zoran Vinković from the Croatian Democratic Alliance of Slavonija and Baranja stated during the discussion in the Parliament:

"It is written in the Bible that, if males and males would mate, females and females, you and we would not be sitting here. If I was the Mayor of Split, I would also ban this. If they like this, they can do it inside their own four walls and they don't have to force 99,9 percent of citizens to make anti-protests. As Mayor of Đakovo, I would not allow such a gathering because this means promoting deviance in Croatia. It would be better that we consider how to employ 350 000 unemployed, then to promote an illness. I personally believe that this is deviance and illness. I don't want to use the word gay in the Croatian Parliament, even though it is harder to be a faggot in your soul, it is certainly not easy to be a faggot in this normal life. For dykes we still don't have a Croatian term."

After this Ms Jadranka Kosor from the Croatian Democratic Union, who presided over the session, reacted and warned Mr Vinković that the Croatian Parliament adopted the Anti-Discrimination Act and that discrimination in Parliament is prohibited. Several other MPs from the Social Democrat Party and the Croatian People's Party reacted.

The Mayor of the City of Split and members of the City Council constantly make homophobic statements. The Mayor, Željko Kerum, and his sister Nevenka Bečić, President of the City Council, stated on several occasions that LGBT persons are not welcome in Split. The Deputy Mayor stated during a radio interview that the City Council does not support human rights of LGBT people.

8. Public officials and other state representatives should be encouraged to promote tolerance and respect for the human rights of lesbian, gay, bisexual and transgender persons whenever they engage in a dialogue with key representatives of the civil society, including media and sports organisations, political organisations and religious communities.

- i. *Has guidance been issued to public officials and state representatives in this respect?*

No.

- ii. *If so, is there evidence of public officials and other state representatives promoting tolerance for LGBT people in their dialogue with civil society, and encouraging the use of responsible and non-violent speech?*

n/a

II. Freedom of association

9. Member states should take appropriate measures to ensure, in accordance with Article 11 of the Convention, that the right to freedom of association can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, discriminatory administrative procedures, this including excessive formalities for the registration and practical functioning of associations, should be prevented and removed; measures should also be taken to prevent the abuse of legal and administrative provisions, such as those related to restrictions based on public health, public morality and public order.

i. Are organisations whose publicly stated purpose is to work for the well-being of LGBT people, whether for their human rights, or in other ways, prevented from gaining official registration?

No.

ii. If so, is this through the use of discriminatory administrative procedures, through restrictions based on public health, public morality or public order, or through other means?

n/a

iii. Are there examples of measures taken to:

- *ensure that LGBT organisations can operate freely,*
- *defend their interests when necessary,*
- *facilitate and encourage their work?*

No.

iv. Are LGBT organisations involved on a partnership basis when framing and implementing public policies which affect LGBT persons?

No.

Other information provided by the grantee:

The National Policy for the Promotion of Gender Equality 2006-2010 and the National Policy for Gender Equality 2011-2015 both included measures that prescribed inclusion of LGBT organisations in work groups for adoption of relevant laws.

State institutions have been failing to implement these measures on a regular basis and representatives of LGBT organizations have not been included in work groups for development of relevant laws, such as the Gender Equality Act, the Anti-Discrimination Act, the Employment Act, the Asylum Act, the Foreigners Act, the Criminal Code, etc. Also, even though Kontra and Iskorak requested so, the Office for Human Rights of the Government of Croatia did not include members of organizations for LGBT rights into the Work Group for monitoring hate crimes.

In 2012 a work group was established at the Ministry of Administration in order to create the proposal of changes to the Personal Name Act and State Registries Act in relation to rights of transgender persons. Representative of Kontra and Iskorak were in communication with the representative of the Ministry of Administration in the work group. However, the work of the work group was not transparent. Our representative was invited publicly to join the work group by the representative of the Ministry during the public panel on LGBT rights organised by the Ombudswoman for Gender Equality. The first meeting of the work group was scheduled to be held in Zagreb one day after Split Pride. Invitation for another meeting was sent to our representative by e-mail on Sunday for the meeting on Monday and she saw the e-mail after the meeting ended (members of the work group received the same e-mail two weeks earlier), therefore seeing it when it was too late. Although she requested certain proposals that were discussed and other materials several times, she never received them. When she met the Minister of Administration by accident she found out from him that she was actually not a member of the work group, but its expert consultant.

10. Access to public funding available for non-governmental organisations should be secured without discrimination on grounds of sexual orientation or gender identity.

i. Is public funding earmarked for NGOs accessible to LGBT organisations without discrimination?

Yes.

ii. *Has such funding been made available to LGBT organisations?*

The National Foundation for Civil Society grants general support and project grants to LGBT organisations. Also, local authorities have been giving funds for projects of LGBT organisations. However, these grants are insufficient for the functioning of civil society organisations. Government offices for human rights and gender equality that also provide funds have rarely provided funds to LGBT organisations and when they did so, they tried to control civil society by refusing to approve financial reports (the Gender Equality Office refused to approve a financial report of Kontra in 2006 and blacklisted the organisation) and refusing to fund civil society organisations that are critical of them (the Office for Human Rights refused Iskorak's project after the incident with HIV prevention brochure in 2009) and finally supporting a stolen project with the goal of undermining the work of organisations that were critical towards the work of the Government (Government Office for Human Rights supported the project of Zagreb Pride, Queer Zagreb and Centre for Peace Studies, that was proven to be Kontra's and Iskorak's project stolen in 2010).

11. Member states should take appropriate measures to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression to which they may be exposed, including when allegedly committed by state agents, in order to enable them to freely carry out their activities in accordance with the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities.

i. *Does the state provide effective protection from hostility and aggression for LGBT human rights organisations?*

Perpetrators who made threats, wrote graffiti, tried to break into the office, left faeces in front of the entrance of the office, poured urine under the entrance door of the office, threw a smoke bomb through the window into the office of Domine, one of the 2011 and 2012 Split Pride co-organizers, were never found and brought to justice. Threats and invitations to a violent gathering against Split Pride made through Facebook and a bomb threat during a public panel related to Split Pride were never investigated.

ii. *Are there examples of measures taken by the state to create an environment conducive to the work of such organisations, enabling them freely to conduct their activities, and promoting respect for their work?*

No.

iii. *Are LGBT human rights organisations able to work with*

- *national human rights institutions and ombudsmen,*
- *the media,*
- *other human rights organisations?*

Yes.

iv. *Are they able to take part in training sessions, international conferences and other human rights activities?*

Yes.

12. Member states should ensure that non-governmental organisations defending the human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons.

i. *Are LGBT organisations consulted on the adoption and implementation of measures affecting the rights of LGBT persons?*

LGBT organizations have not been included in work groups for development of relevant laws, such as the Gender Equality Act, the Anti-Discrimination Act, the Employment Act, the Asylum Act, the Foreigners Act, the Criminal Code, etc. Also, even though Kontra and Iskorak requested so, the Office for Human Rights of the Government of Croatia did not include members of organizations for LGBT rights into the Work Group for monitoring hate crimes.

ii. *Have there been such consultations regarding the implementation of this Recommendation?*

No.

III. Freedom of expression and peaceful assembly

13. Member states should take appropriate measures to ensure, in accordance with Article 10 of the Convention, that the right to freedom of expression can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity, including with respect to the freedom to receive and impart information on subjects dealing with sexual orientation or gender identity.

- i. Have the authorities ensured the freedom to receive and transmit information and ideas relating to sexual orientation and gender identity, including:*
- *activities that support the human rights of LGBT persons*
 - *publication of material*
 - *media coverage*
 - *organisation of/participation in conferences*
 - *dissemination/access to information on safe sexual practices?*

Yes.

- ii. Or, on the contrary, have there been cases where restrictions have been placed on freedom of expression?*

No.

- iii. Have the authorities encouraged pluralism and non-discrimination in the media in respect of issues of (a) sexual orientation or (b) gender identity?*

No.

14. Member states should take appropriate measures at national, regional and local levels to ensure that the right to freedom of peaceful assembly, as enshrined in Article 11 of the Convention, can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity.

- i. Have the authorities ensured freedom of peaceful assembly for LGBT people?*

The first LGBT Pride in Croatia was held in 2002 in Zagreb. Around 30 participants were attacked and injured after the Pride on streets of Zagreb. From 2003 – 2006 there were no incidents. In 2007 there was attempted attack with a Molotov cocktail during the Pride in Zagreb and 30 people were attacked after the Pride. In 2008 activists of Kontra and Iskorak were attacked in front of Kontra's office after coming back from the Zagreb Pride and also 2 other participants were injured. In 2009 and 2010 violent fascist gatherings were organized against Pride and although the organisers (registered political party and a group) announced the gathering alongside making threats and giving instructions how to make Molotov cocktails, state institutions did not prohibit the gatherings and in both years they attacked the participants, but were stopped by the police. Also, in 2009 and 2010 participants were attacked after the Zagreb Pride.

A serious failure of state institutions to protect the freedom of assembly of LGBT people occurred at the first Split Pride in 2011. Organizers of Split Pride – Kontra, Iskorak and Domine – had on multiple occasions before the event informed the Ministry of Internal Affairs and the Municipal State Attorney's Office of calls for a violent gathering in Marmontova Street. Graffiti, Facebook pages and flyers calling for violent gathering were documented by Split Pride organisers and sent to the above mentioned institutions with request for investigation, but Split Pride organizers received no answer. Although organizers requested that the City of Split remove graffiti, most of them have not been removed until today.

The 300 Pride participants were faced violent attackers, who threw a combination of explosive devices, tear gas, torches, stones, plastic bags with faeces, ashtrays and other objects at the marchers along the parade route and at the place of the assembly. At the place of the assembly attacks continued and police did not evacuate Pride participants for more than an hour after organizers requested evacuation because it was necessary for the safety of participants. Almost all participants were injured and for some medical help was provided.

After pressure from international institutions and media, the Ministry of Internal Affairs announced an internal investigation was to proceed on persons responsible in the Ministry for the violence at the Split Pride. However, the Ministry stated in March 2012 that there were no omissions by the Police related to Split Pride.

Up to this day there are only 2 verdicts in criminal proceedings related to Split Pride – both perpetrators received probation sentence. There were 65 misdemeanour proceedings initiated, of which 32 have been resolved; 24 received material fines (100 - 675 EUR), 6 dismissals, 1 acquittal, 1 disciplinary measure (for a minor).

In 2011, one week after Split Pride, Zagreb held its tenth annual Pride, a week after violence at the Pride in Split. For the first time after 4 years, Zagreb Pride proceeded without violence or major homophobic incident and with a significantly larger number than ever as direct result of the events in Split.

In 2012, city authorities in Split tried to ban peaceful public assembly of LGBT persons "Split Pride" by illegally changing their decision to grant the organisers (Kontra, Iskorak, Domine) permission to use the public spaces on the scheduled route, replacing it with another route (shorter, less visible, ending at a more hidden place that would also be harder to secure). The explanation that city authorities provided in media was that a group of citizens (5 people who were gathering in a local bar, holding up a picture of a young woman who was kidnapped and murdered by serial rapist and killer, and giving statements to journalists that police did not rescue her because they were protecting gays) requested from them to ban the Pride or move it to some place where citizens would not have to see it. City authorities also ordered a private company that holds a stage at Riva to dismantle the stage – which we already paid for. Split Pride organisers issued a press release stating that the city authorities are acting illegally and violating our freedom of assembly and that only the police can ban the Pride if they can't provide protection. Organisers – Kontra, Iskorak and Domine stated that the Pride will be held on the original route and that they will bring charges against the City of Split for violation of the freedom of assembly and ask for compensation of damages. Representatives of the Delegation of the European Union and numerous embassies already confirmed their participation at the Pride. At the end the Minister of Internal Affairs, via the Government's Facebook pages, stated that he is coming to Split Pride at Riva. Before the Pride the spokesperson of the Government stated that it is an individual decision of the ministers who will attend the Pride. We requested a clear statement from the government regarding the Pride (freedom of assembly of LGBT persons) and human rights of LGBT persons. 5 members of the Government attended the Pride: Minister of Internal Affairs, Minister of Foreign Affairs, Minister of Administration, Minister of Justice and Minister of Economy. Like the year before, there were numerous calls for a violent gathering against Split Pride, especially on Facebook pages. The media also published that football fans are planning attacks with Molotov cocktails. Our organizations received threats, and faeces were left in front of the entrance of Domine's office, and then tear gas was thrown into the Domine's office. We informed the Public Prosecutor's office on all threats and brought criminal complaints against perpetrators, but they were never found and we never received replies to our criminal complaints in regards to threats and calls to violence through Facebook pages.

Zagreb Pride 2012 went without incidents.

The freedom of peaceful assembly for LGBT people in the Republic of Croatia is still dependent on how much political pressure is asserted by international organizations and the media.

15. Member states should ensure that law enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons from any attempts to unlawfully disrupt or inhibit the effective enjoyment of their right to freedom of expression and peaceful assembly.

- i. If there has been hostility to LGBT freedom of assembly events, have the law enforcement authorities taken reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully?*

In 2009 and 2010 state authorities did not ban a violent fascist, "anti-gay", gathering although LGBT organisations Kontra and Iskorak requested it. The participants of these gatherings attacked participants of Zagreb Pride in 2009 and 2010.

In 2011 state institutions failed to protect the freedom of assembly of LGBT people during the first Split Pride.

In 2012 the City of Split violated the freedom of assembly of LGBT persons by trying to ban Split Pride in an unlawful manner and creating a negative atmosphere in relation to the Pride and human rights of LGBT persons.

- ii. In particular, have the police protected participants in peaceful LGBT demonstrations effectively?*

The police protected the participants of the LGBT Prides in Zagreb from 2003 – 2006 and 2011 – 2012 effectively. They failed to protect the participants during or after the Prides and/or prevent violent anti-gatherings in 2002 and from 2007 – 2010 in Zagreb and 2011 in Split.

- iii. Have the police acted with integrity and respect towards LGBT people and their supporters when policing LGBT freedom of assembly events?*

Throughout the years it often occurred that police officers were rude and insulting towards the Pride participants. For example, in 2006 the victim of such behaviour was even the Ombudswoman for Gender Equality (police officer cussed her during the march, saying: "Go to your mother's cunt").

16. Member states should take appropriate measures to prevent restrictions on the effective enjoyment of the rights to freedom of expression and peaceful assembly resulting from the abuse of legal or administrative provisions, for example on grounds of public health, public morality and public order.

- i. *Have the authorities placed restrictions on freedom of assembly events? If so, what have been the grounds?*
- ii. *Have conditions been placed, for example, with regard to the route or timing of demonstrations, which are not generally applied to other demonstrators?*

In 2012 the Split city authorities tried to ban a peaceful public assembly of LGBT persons Split Pride by illegally changing their decision to grant the organisers (Kontra, Iskorak, Domine) permission to use the public spaces along the scheduled route, replacing it with another route (shorter, less visible, ending at a more hidden place that would also be harder to secure).

The explanation that city authorities provided in relation to their decision in regards to Split Pride in 2012 in media was that a group of citizens (5 people who were gathering in a local bar, holding up a picture of young woman who was kidnapped and murdered by serial rapist and killer, and giving statements to journalists that police did not rescue her because they were protecting gays) requested from them to ban the Pride or move it to a place where citizens would not have to see it. City authorities also ordered a private company that holds a stage at Riva to dismantle the stage – which we already paid for.

- iii. *If restrictions have been placed on freedom of assembly events, has it been possible to challenge them in the courts or through other independent review mechanisms?*

Since this decision was contrary to national and international legislation and only the police have the authority to prevent public gatherings, the organisers simply stated for the public that they will not respect the decision of the city authorities. The police protected the public gathering along the original route and place of assembly.

17. Public authorities at all levels should be encouraged to publicly condemn, notably in the media, any unlawful interferences with the right of individuals and groups of individuals to exercise their freedom of expression and peaceful assembly, notably when related to the human rights of lesbian, gay, bisexual and transgender persons.

- i. *If there have been unlawful interferences with the right to freedom of expression and peaceful assembly,*
 - a. *Has there been encouragement to public authorities to condemn such interferences?*
- b. *Have public authorities actually condemned such interferences?*
 - i. *Where there has been public hostility towards the exercise of freedom of assembly by LGBT people, have the authorities upheld this right publicly?*

In 2009 and 2010 violent "anti-gay" protests were organized and although Kontra and Iskorak, as well as the Ombudswoman for Gender Equality, requested from state authorities to ban these illegal protests, they did not do so.

The violence at the first Split Pride was the result of serious and deliberate omissions made by the state authorities.

The President of the Republic of Croatia Mr Ivo Josipović expressed his support for Split Pride. He condemned the violence that happened during the first Split Pride and called upon the Ministry of Internal Affairs to investigate, due to their responsibility for the violence. On 14 June 2011 Mr Josipović in his public statement requested an investigation "on how was it possible that without knowledge of the police a parallel unregistered gathering was being held, on which several thousands of people were armed with different "props" from pyrotechnics and tear gas to rocks and bats." Furthermore he criticized the state authorities for not filing criminal charges against perpetrators.

Prime Minister Jadranka Kosor also condemned violence at Split Pride 2011, but stated that the police did their job well.

In the months leading to the second Split Pride, while organisers received numerous threats, the whole city was covered in graffiti and the city authorities busied themselves with creating a negative atmosphere by giving homophobic statements and illegally denying permits to organisers. The Government of the Republic of Croatia did not issue a clear statement in regards to freedom of assembly of LGBT persons. The official statement of the spokesperson of the Government before the second Split Pride was only that it is an individual choice of members of the Government whether to attend the Pride or not. On 1 June, after several contradictory statements, the Ministry of Internal Affairs issued a statement that the police will protect the participants along their route. At the end a record number of five members of Government attended the Pride, but still presence of ministers at Split Pride was presented to be their private choice.

The Ministry of Internal Affairs stated in March 2012 that there were no omissions by the Police in relation to Split Pride 2011.

- ii. *Or, on the contrary, have the authorities endorsed or supported hostility towards LGBT freedom of assembly events?*

The City of Split (the Mayor and members of the City Council) supported hostility towards Split Pride 2011 and 2012 by not removing graffiti inciting to violence, giving homophobic statements, publishing information on a petition to ban Split Pride at official web pages of the City of Split, illegally denying permits for use of public spaces, ordering a private company to dismantle the stage and placing big stone flower pots and metal fences in the middle of Riva to make it difficult for people to gather.

IV. Right to respect for private and family life

18. Member states should ensure that any discriminatory legislation criminalising same-sex sexual acts between consenting adults, including any differences with respect to the age of consent for same-sex sexual acts and heterosexual acts, are repealed; they should also take appropriate measures to ensure that criminal law provisions which, because of their wording, may lead to a discriminatory application are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination.

- i. *Does legislation criminalise same-sex sexual acts? Are there any differences in the age of consent? If either applies, what steps are the authorities taking to repeal the legislation?*

No.

- ii. *Are there any criminal law provisions which, because of their wording or scope are liable to be applied in a discriminatory manner regarding*
(a) sexual orientation or
(b) gender identity?

No.

- iii. *If so, what steps are the authorities taking to remedy this situation?*

n/a

19. Member states should ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used by public institutions including in particular within law enforcement structures, except where this is necessary for the performance of specific, lawful and legitimate purposes; existing records which do not comply with these principles should be destroyed.

- i. *What steps have been taken to ensure that public authorities comply with this requirement, in respect of (a) sexual orientation and (b) gender identity particularly with regard to records held by law enforcement authorities?*

Data on a person's previous gender exists in police registries. Kontra and Iskorak received complaints from transgender people who changed their name and sex on personal documents (including passport), but were insulted by police officers at the border after they checked their data in computers. For example, one of the clients reported that the police officer, after checking her passport, cursed and then exclaimed in front of other people: "I knew it! I knew it was a man!"

- ii. *What steps have the authorities taken to ensure that existing records are destroyed?*

There have been no actions to modify this practice.

- iii. *Have these steps been effective?*

Is there any evidence of:

- *the continued existence of such records*
- *the continuing collection of such data?*

n/a

20. Prior requirements, including changes of a physical nature, for legal recognition of a gender reassignment, should be regularly reviewed in order to remove abusive requirements.

- i. *Has a review of such prior requirements been conducted?*
- ii. *Are there still requirements which might be considered disproportionate or even abusive,⁴ such as:*
 - *irreversible sterilisation,*
 - *hormonal treatment,*
 - *preliminary surgical procedures, or proof of a person's ability to live for a long period of time in the new gender?*

The requirement for persons to go through medical gender reassignment surgery, including invasive genital surgery, still exists in practice due to interpretation of existing legislation and the Rules by the implementing body and relevant institutions.

In November 2011 the Ministry of Health adopted the Rules on Gathering Medical Documentation on Sex Reassignment (OG 121/11).

The Rules prescribe that "opinion of the National Health Council on the change of sex represents documentation that is basis for procedure of change of sex data in the registry of births." Requests for an opinion of the National Health Council should be submitted (form for this was published as part of the Rules). It is visible from the Rules that the form should be filled in by the endocrinologist, psychologist, doctor of general practice and a social worker.

Furthermore, the form gives possibility for the person in question to underline "three ways of change of sex: 1. medical treatment, 2. surgical procedure and 3. other way." No. 3 was not explained and it remained unclear why opinions of doctors are requested in the form if medical treatment is not necessary for change of data in personal documents.

Kontra and Iskorak requested clarification of the Rules from the Ministry of Health in November 2011. On 4 September 2012 we received an answer from the Ministry of Health simply stating, "in accordance with the view of the medical profession it is necessary to have an interdisciplinary team of experts" and listing again which experts were identified in the Rules as necessary to give their opinion. However, it was not explained exactly what medical documentation is necessary.

In two cases which Kontra and Iskorak worked on, the implementing body of the Rules on Gathering Medical Documentation on Sex Reassignment – the National Health Council first refused to implement the Rules with the explanation that the Rules are not clear, although both persons in question had forms filled in by all prescribed experts. Then, in September 2012 we received the opinion of the National Health Council in both cases stating that "change of the gender marker in the state registry is denied on the basis of the fact that sex reassignment was not done beyond return and completely".

In 2012 the Government adopted the new Personal Names Act (OG 118/12) and placed into the parliamentary procedure the new State Registries Act that eliminated some provisions which resulted in discrimination towards transgender persons. The Proposal of the Personal Names Act included a change that would eliminate the practice of publishing the request for change of personal name on the notice board of the municipal body. The State Registries Act Bill included changes that prescribe that change of name and gender marker are not to be visible on excerpts from state registries given to third parties. However, the State Registries Act Bill did not define the documents necessary for change of name and gender marker on personal documents, although such provisions were already proposed by the Social Democrat Party in 2010 and the Ministry of Administration announced that it will be introduced into the State Registries Act in a correspondence with LGBT NGOs in 2012. Due to this, the right to change of gender marker on personal documents is, in practice, available only to persons that went through medical gender reassignment including invasive genital surgery.

⁴ The Explanatory Memorandum draws attention to Committee of Ministers Recommendation Rec(2007) 17 on gender equality standards and mechanisms, which affirms 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."

21. Member states should take appropriate measures to guarantee the full legal recognition of a person's gender reassignment in all areas of life, in particular by making possible the change of name and gender in official documents in a quick, transparent and accessible way; member states should also ensure, where appropriate, the corresponding recognition and changes by non-state actors with respect to key documents, such as educational or work certificates.

- i. *Are there procedures in operation which ensure the full legal recognition of a person's gender reassignment?*
- ii. *Do these make possible the change of name and gender in official documents including birth certificates, identity papers, driving licences, passports, social insurance cards and numbers, electoral, land and text registers in a quick, transparent and accessible way?*

On 11 October 2012 the Croatian Parliament adopted the new Personal Names Act (OG 118/12). On the same day the State Registries Act Bill went through the first reading in the Croatian Parliament.

The new Personal Names Act included a change that eliminated the practice of publishing the request for change of personal name on the notice board of the municipal body, which existed before.

The positive State Registries Act (OG 96/93) prescribes that a change of personal name and gender marker are entered as additional entries and notes. This means if a person changes her name from Marko to Ana, she will have a birth certificate in which "Marko" will be entered in the basic entry, and below (in small letters at the bottom of the document) in additional notes: "By the decision of the municipal administrative body, no... the name was changed to Ana on the date...").

The new State Registries Act Bill that went through first reading in the Parliament included changes that change of name and gender marker are to be entered as original notes on excerpts from state registries given to third parties (birth certificate).

However, the State Registries Act Bill did not define what documents are necessary for change of name and gender marker on personal documents, although such a provision was already proposed by the Social Democrat Party in 2010, and the Ministry of Administration announced that it will be introduced into the State Registries Act in a correspondence with LGBT NGOs in 2012. The Proposal was not amended and discussed in the second reading until the date of submission of this report although two other sessions of the Parliament were closed.

- iii. *Are there procedures to ensure corresponding changes in key documents originated by non-state actors, such as*
 - *diplomas,*
 - *certificates of employment, and*
 - *insurance or banking documents?*

No.

Kontra and Iskorak worked on two cases of transgender persons in which Faculties refused to provide clients with diplomas with changed data.

Change of Data on Gender on a Degree Certificate of the Natural Sciences and Mathematics Faculty

A client approached us for the first time on 28 July 2010. M.L. changed her gender and personal name and so on 26 July 2010 asked the Natural Sciences and Mathematics Faculty of the University of Zagreb to issue a new degree certificate with the changed data.

On 12 July 2010 a decision was made refusing the request with the explanation that "in a disputed situation it is not possible to issue a new degree certificate with changed information as such a possibility is not sanctioned by valid regulations, and even more because the Faculty in exercising public authority issues degree certificates as public documents in accordance with the data from the official records at the moment the degree certificate is issued; that moment also includes the certain status situation of the person to whom the degree certificate is issued (including gender) and therefore it is appropriate to decide as stated by this Decision."

On 29 July 2010 Kontra and Isokrak made a complaint to the Administrative Court of the Republic of Croatia seeking the annulment of the disputed decision refusing the request to issue a new degree certificate because of change of gender. In the lawsuit we directly invoked the European Convention on the Protection of Human Rights and Fundamental Freedoms. We also pointed out that there was a violation of the Anti-Discrimination Act as well as the fact that the Rulebook on the Content of a Degree Certificate and Additional Documents Concerning Studies has been violated because the client was required to use her new name for legal purposes and the faculty prevented her in this.

On 19 November 2010 a report was sent to the court withdrawing the lawsuit for the reason that the faculty, after receiving the administrative complaint, changed its decision and issued a new degree certificate containing the changes that had been requested.

Change of Data on Gender on a Degree Certificate of the FEEC Faculty

On the 6 December 2010 a client approached us for help because she had changed her gender and her personal name and had therefore asked the Faculty of Electrical Engineering and Computing of the University of Zagreb to issue a new degree certificate in accordance with the changed data, which the faculty refused in a letter.

On the 16 December 2010 a request was sent to the Faculty to adopt its decision in the form of an administrative act so that, if the faculty refused to issue a new degree certificate, an administrative lawsuit might be commenced against that act.

The Faculty had not issued a decision within 60 days, so on 1 March, 2011, our client again requested with a rush note that they issue a decision within 7 days.

The Faculty had not sent a new decision, and therefore we began administrative proceedings.

On 22 December, 2011, the Administrative Court accepted the charges and requested that the defendant, the University of Zagreb, Faculty of Electrical Engineering and Computing, within 30 days adopt a decision regarding the accuser's demand for issuance of a new diploma which reflects her female gender identity and contains her name... (client's new name).

- iv. *If yes, do these procedures include the protection of the person's private life, so that no third party can become aware of the gender reassignment?*

n/a

22. Member states should take all necessary measures to ensure that, once gender reassignment has been completed and legally recognised in accordance with Paragraphs 20 and 21 above, the right of transgender persons to marry a person of the sex opposite to their reassigned sex is effectively guaranteed.

- i. *Is the right of a legally recognised transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?*

Yes.

23. Where national legislation confers rights and obligations on unmarried couples, member states should ensure that it applies in a non-discriminatory way to both same-sex and different-sex couples, including with respect to survivor's pension benefits and tenancy rights.

- i. *Does legislation confer rights and obligations on unmarried couples? If so, have steps been taken to ensure that these rights and obligations apply to same-sex couples?*

Article 35 of the Constitution of the Republic of Croatia prescribes that everyone shall be guaranteed respect for and legal protection of personal and family life, dignity, reputation and honour.

Article 61 of the Constitution regulates the right to respect and protection of family life. It is stated in the Article 61 that marriage and common-law marriage are regulated by the law.

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

The Family Act (Official Gazette nr. 116/03) states that „Marriage is a life union of a woman and a man regulated by the law“. It also states that „Common-law marriage is a life union of an unmarried woman and an unmarried man.“

The Same-sex Civil Unions Act became part of positive legislation of the Republic of Croatia in 2003, when it was published in the Official Gazette no. 116/03 and with the expiry of vacation legis.

The Act does not provide the same rights to same-sex partners as to heterosexual common-law partners, and that constitutes discrimination based on sexual orientation. Only the right to joint property and support by a partner are regulated. Other rights and obligations available to different-sex common-law partners (such as the right to inheritance, social and health insurance) are regulated either by the Family Act or specific laws and are not available to same-sex partners.

For example the Inheritance Act (OG nr. 48/03) in Article 8 defines as legal successor a marital spouse. According to the same article the common-law partners are equal to married partners in relation to the right to inheritance. Common-law marriage in relation to the Inheritance Act is a life union of an unmarried woman and an unmarried man that lasted a longer period of time and ceased to exist by the testator's death, under the condition that preconditions for validity of marriage existed. Same-sex partners are not mentioned under the Act, and therefore they don't have equal treatment regarding the right to inheritance in comparison with different sex common-law partners.

The Same-sex Civil Unions Act contains an anti-discrimination provision that prohibits discrimination based on sexual orientation or same-sex civil union. However, the Act is not used by legislator in order to amend specific Acts and eliminate discriminative practices towards same-sex couples.

24. Where national legislation recognises registered same-sex partnerships, member states should seek to ensure that their legal status and their rights and obligations are equivalent to those of heterosexual couples in a comparable situation.

- i. Does legislation recognise registered same-sex partnerships? If so, have steps been taken to ensure that their legal status and rights and obligations are equivalent to those of heterosexual couples?*

In 2012 the work group was established at the Ministry of Administration in order to create legislative changes for protection of the rights of same-sex couples.

The Medical Insemination Act containing an explicit ban for women living in same-sex unions was adopted after the work group was formed.

According to the statements of the Ministry of Administration (given to media and at the round table discussion organised by the Ombudswoman for Gender Equality) the work group did not decide yet on the scope of the rights what the new legislation will provide to same-sex couples.

25. Where national legislation does not recognise nor confer rights or obligations on registered same-sex partnerships and unmarried couples, member states are invited to consider the possibility of providing, without discrimination of any kind, including against different sex couples, same-sex couples with legal or other means to address the practical problems related to the social reality in which they live.

- i. If same-sex couples enjoy no rights or obligations, either through access to registered partnership or through their status as unmarried couples, have the authorities considered the possibility of implementing legal or other means to address the practical problems arising from this lack of recognition?*

n/a

26. Taking into account that the child's best interests should be the primary consideration in decisions regarding the parental responsibility for, or guardianship of a child, member states should ensure that such decisions are taken without discrimination based on sexual orientation or gender identity.

- i. What steps have been taken to ensure that decisions regarding the parental responsibility for, or guardianship of a child, are taken without discrimination based on (a) sexual orientation or (b) gender identity?*

No such steps have been taken. Representatives of the Government made discriminative statements in relation to same-sex couples raising children, including the Minister at the ministry responsible for family affairs.

- ii. In practice, are such decisions taken on a non-discriminatory basis?*

We don't have information on this subject.

27. Taking into account that the child's best interests should be the primary consideration in decisions regarding adoption of a child, member states whose national legislation permits single individuals to adopt children should ensure that the law is applied without discrimination based on sexual orientation or gender identity.

- i. What steps have been taken to ensure that decisions regarding adoption of a child by a single person (where such adoption is permitted by national legislation), are taken without discrimination based on (a) sexual orientation (b) gender identity?*

No such steps have been taken. According to information from the LGBT community we know that in practice single persons are being asked about, and discriminated against based on their sexual orientation.

ii. *In practice, are such decisions taken on a non-discriminatory basis?*

According to information from the LGBT community we know that in practice single persons are being asked about, and discriminated against based on their sexual orientation.

28. Where national law permits assisted reproductive treatment for single women, member states should seek to ensure access to such treatment without discrimination on grounds of sexual orientation.

i. *What steps have been taken to ensure that access by single women to assisted reproductive treatment (where permitted by national legislation), is without discrimination based on sexual orientation?*

The new Medical Insemination Act was adopted on 13 July 2012. It explicitly denies the right to medically assisted insemination to women living in same-sex unions. It also practically denies the right to medical insemination to single women, since the right is only available to women that are treated for infertility.

ii. *In practice, is such access granted on a non-discriminatory basis?*

No.

V. Employment

29. Member states should ensure the establishment and implementation of appropriate measures which provide effective protection against discrimination on grounds of sexual orientation or gender identity in employment and occupation in the public as well as in the private sector. These measures should cover conditions for access to employment and promotion, dismissals, pay and other working conditions, including the prevention, combating and punishment of harassment and other forms of victimisation.

i. *Does legislation⁵ exist which prohibits discrimination in employment in the public and private sector on grounds of (a) sexual orientation and (b) gender identity?*

Yes.

The Constitution of the Republic of Croatia prescribes that „Everyone shall have the right to work and enjoy the freedom to work“.

The Labour Act (OG no. 149/09) prohibits direct and indirect discrimination in the field of work and working conditions, including criteria for selection and conditions in employment, promotion, professional orientation, professional qualification and development, in accordance with special laws. Anti-Discrimination Act prescribes special measures for protection of discrimination that supplement provisions of the Labour Act and Litigation Procedure Act.

ii. *Does it cover:*

- *access to employment (including recruitment); promotion,*
- *dismissals,*
- *pay,*
- *harassment and other forms of victimisation?*

Yes, it covers all of the above.

iii. *Have the authorities promoted other measures to combat discrimination, harassment and victimisation, in both the public and private sectors, for example:*

- *adoption of codes of conduct for both employers and employees;*
- *training and awareness raising programmes for both employers and employees;*

⁵ Under the European Social Charter this legislation should cover both direct and indirect discrimination. It should also provide for the burden of proof in discrimination cases to rest with the employer. (See the Digest of Case Law of the European Committee of Social Rights -- Interpretation of the Different Provisions -- Article 1 -- right to work -- http://www.coe.int/t/dghl/monitoring/socialcharter/Digest/DigestSept2008_en.pdf). The EU Employment Directive provides the following definition of indirect discrimination: "where an apparently neutral provision, criterion or practice would put persons having aparticular sexual orientation at a particular disadvantage compared with other persons".

- *distribution to employees of materials explaining their rights, complaints mechanisms and remedies;*
- *recruitment efforts directed at LGBT persons;*
- *the adoption of non-discrimination policies explicitly referencing sexual orientation and gender identity;*
- *co-operation with and support for employee groupings of LGBT persons?*

No.

- iv. *Have steps been taken to abolish laws, regulations and practices which discriminate on grounds of (a) sexual orientation and (b) gender identity in access to and career advancement within certain professions and occupations, including particularly the armed forces?*

There are no laws or regulations that discriminate in such a way on the basis of sexual orientation or gender identity, including armed forces.

- v. *Specifically in relation to the armed forces:*
- *Have measures been taken to provide protection for LGBT persons against investigations, warnings, harassment, bullying, cruel initiation rites, humiliation and other forms of ill-treatment?*
 - *Do codes of conduct and training address the need to combat discrimination against LGBT persons and promote tolerance and respect?*

No.

- vi. *Do measures designed to combat discrimination in employment fully and effectively cover transgender persons?*

Yes. The Labour Act does not contain gender identity explicitly, but it does contain "other characteristics" and the Anti-Discrimination Act contains gender identity and gender expression.

- vii. *Have employment programmes focusing specifically on employment opportunities for transgender persons been developed?*

No.

30. Particular attention should be paid to providing effective protection of the right to privacy of transgender individuals in the context of employment, in particular regarding employment applications, to avoid any irrelevant disclosure of their gender history or their former name to the employer and other employees.

- i. *Have measures been taken to avoid disclosure of transgender persons' gender history or former name in the context of employment?*

The current State Registries Act Bill that went through the first reading in the Parliament would solve the problem of birth certificate when they are required by employers thus revealing the former name and sex of the person. However, persons that have not undergone the gender reassignment surgery are not able to change data on personal documents at all. The Government refused to solve this problem through the current Bill, although SDP proposed this change in 2010.

Cases of Faculties refusing to issue diplomas with new data have been recorded.

VI. Education

31. Taking into due account the over-riding interests of the child, member states should take appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; this includes, in particular, safeguarding the right of children and youth to education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment related to sexual orientation or gender identity.

- i. *Have*
- *equality and safety policies,*
 - *codes of conduct and*
 - *handbooks*

for educational staff been introduced or updated to ensure that LGBT pupils and students receive their education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment?

Civil education is still in an experimental phase. The Minister for Science, Education and Sport on September 6th, 2012, adopted a Decree on the Experimental Implementation and Monitoring of the Civil Upbringing and Education Curriculum, for twelve elementary and secondary schools for the 2012/2013 and 2013/2014 school years. Six schools, four elementary and two high schools (one a regular high school and one vocational training high school), were selected for the experimental implementation of the Civil Upbringing Education Curriculum, which is part of the IPA project "New Age of Human Rights and Democracy in Schools" conducted by the Youth of Croatia Network. Civil Education is implemented in form of modules – one module encompasses upbringing and education in relation to gender equality. Each module is implemented in 15 to 32 school classes. It is important to note that the module mentioned examines sex, gender, roles pertaining to both, stereotypes, discrimination but the issues of sexuality and sexual orientation are not dealt with at all. When examining the issue of family there is mention of different families (those with two parents, with one parent, with members of several generations), but same-sex families are not mentioned.

- ii. *Do initial and in-service training programmes for teachers and other educational staff address the need for them to*
 - a. *treat their LGBT pupils and students with respect*
 - b. *be able to detect, analyse and effectively respond to and combat discrimination on these grounds in schools?*

No.

- iii. *Is there support for the mounting of school campaigns and cultural events against homophobia and transphobia, including the participation, where appropriate, of representatives of LGBT organisations?*

No.

32. Taking into due account the over-riding interests of the child, appropriate measures should be taken to this effect at all levels to promote mutual tolerance and respect in schools, regardless of sexual orientation or gender identity. This should include providing objective information with respect to sexual orientation and gender identity, for instance in school curricula and educational materials, and providing pupils and students with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity. Furthermore, member states may design and implement school equality and safety policies and action plans and may ensure access to adequate anti-discrimination training or support and teaching aids. Such measures should take into account the rights of parents regarding education of their children.

- i. *Is information on*
 - a. *sexual orientation*
 - b. *gender identity**provided in school curricula and sex and health education classes?*

On September 28th, 2012, the Minister of Science, Education and Sport reached a decision on the introduction, monitoring and evaluation of implementation of the Health Education Curriculum in elementary and secondary schools. The curriculum will be implemented by having all content integrated into existing school subject curriculums, homeroom classes, school projects and other school activities. The implementation of the Health Education Curriculum, as well as the results of those teachings, will systematically be monitored and evaluated by the schools themselves (self-evaluation), as well as by the National Center for External Evaluation of Education. The Agency for Upbringing and Education will conduct professional development of teachers and professional associates in relation to content and topics pertaining to health education.

Health Education is to be divided into three modules: Healthy Living, Addiction Prevention, Prevention of Violent Behavior and Sex/Gender Equality and Responsible Sexual Behavior.

Health Education will be covered with up to 12 classes each year. Homeroom teachers will cover a part of the foreseen topics, and they will be assisted by professional colleagues, pedagogues, psychologists, social pedagogues and others. Sex/Gender Equality and Responsible Sexual Behavior is a module intended to give students information based on scientific facts but also insight into different schools of thought as well as diverse value perspectives. The module aims to enable students to adopt skills needed for making responsible decisions in regards to their physical and mental health, as well helping them to understand diversity and enabling them for critical thinking so as to develop a positive attitude about themselves and others.

The Sex/Gender Equality and Responsible Sexual Behavior module will be covered by 2 – 5 classes each year. The Sex/Gender Equality and Responsible Sexual Behavior module is not intended for the first two grades of elementary school or the 4th year of high-school.

Elementary grade 3 will have 2 classes to be held as part of homeroom classes where responsibility and respect towards one's own body is to be examined. Elementary grade 4 will also have 2 classes to be held as part of homeroom classes where differences of gender roles in society and family will be examined, as well as gender expectations among peers in schools. Elementary grade 5 will also have 2 classes to be held as part of homeroom classes where the following topics will be covered: role of media and media generated pressure in puberty and changes to one's body; topics of sexuality, changes that puberty brings on and masturbation. Elementary grade 6 will have 4 classes to be held as part of homeroom classes where there will be discussion on emotions in peer relations as well as the influence of media on peer relations. Among other things, these topics will cover sexual attraction, sex/gender stereotypes and pornography. Elementary grade 7 will have 3 classes to be held as part of homeroom classes where there will be discussion on topics of communication about sexuality, peer pressure, self-respect and risky behavior, as well as acceptance of sexual diversity. Among other things, there will be discussion on sexual minorities and their status throughout history, stigmatization and discrimination. Elementary grade 8 will have 1 class to be held as part of homeroom class where there will be discussion on self-respect, assertiveness and personal integrity needed for responsible decision making, responsible sexual behavior, as well as risks of premature sexual relations.

High school grade 1 will have 4 classes to be held as part of homeroom classes where the following content will be examined: developing skills needed for responsible sexual behavior, emotions and communication within a relationship, as well as media representations of sexuality. These topics will cover entering into sexual relations, sex/gender stereotypes and analysis of how pornography represents sexuality. High school grade 2 will have 4 classes to be held as part of homeroom classes where there will be discussion on developing skills needed for responsible sexual behavior, sexual/gender violence and violence in relationships. High school grade 3 will have 5 classes to be held as part of homeroom classes where the following topics will be covered: sexual rights and stereotypes, sexual health and frequent sexual problems among youth, as well as marriage, parenting and family, and stigmatization and discrimination of minority groups. As part of these the topics of same-sex marriage, different approaches to homosexuality (science, religion and activism), transsexual and transgender issues, violence and discrimination against sexual minority groups, acceptance and tolerance for sexual diversity, will be examined.

The number of hours allocated to the Sex/Gender Equality and Responsible Sexual Behaviour module is definitely too few for successfully learning about sexuality, responsible sexual behaviour, sex/gender and sexual orientation. It's impossible to have quality representations of all topics, or to present all aspects, go into matters at depth and develop serious discussion while also inspiring critical thinking. During the minimal time allocated it is possible to merely present the bare contents, superficially at that, leading us again to the conclusion that students will be ill prepared to adopt notions of respecting sex/gender equality, human rights and diversity. The classes allocated are insignificant because, within that time frame, topics can only be mentioned and nothing more.

There is also the issue of how well educated are the professionals giving course. Namely, the plan is to have homeroom teachers implement the modules. That means that real professionals in the fields of sex, gender and sexuality haven't been brought in to do the job. Educated people who are well acquainted with the topics will not be teaching, rather the topics will be presented by homeroom teachers who are educated for their given subject matter but not for these. This means, for example, that there will be physics professors who will teach about sex, gender and sexual behaviour during homeroom classes.

We note that the content of the Sex/Gender Equality and Responsible Sexual Behaviour module is contrary to the content of some other subject matter in other classes. For example, in religious education textbooks homosexuality is cited to be deviant, not researched enough by medicine and psychology and can't be approved under any circumstance. Also, for instance, biology and psychology textbooks only cite examples of relations and attraction between a woman and a man, while homosexuality is mentioned only in relation to HIV. Intersexual persons are not mentioned in textbooks, except in context of abnormality and antisocial behavior. Some topics currently covered by textbooks do not examine issues of sex/gender equality or issues of sexual diversity. Introducing the new modules' topics into the existing school programme is problematic because it is just a superficial introduction of new topics and it is like putting on a band-aid on a gaping wound in the existing school programme already lacking topics of sex, gender, equality and sexuality. This sort of approach will not enable a complete change of the school programme and quality and systematic introduction of a programme which will be implemented in the time necessary for its success. Content should rather be covered within existing classes (biology, psychology, sociology, ethics...) so as to continuously educate students, present the topics at length, and accommodate for the necessary discussions and critical review. The proposed solution represents just the beginning steps – which do not afford a successful education, nor can they accomplish the set goals.

These topics are once again relocated to the margins because they have been allocated to a couple of homeroom classes, lacking professionals and a systematic introduction of sex/gender equality and responsible sexual behaviour into the school curriculum.

ii. *Is it provided in a respectful and objective manner?*

No.

iii. *Are LGBT pupils and students provided with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity?*

No.

iv. *Are measures taken to adequately meet the special needs of transgender students in their school life, for example with regard to change of name or gender in school documents?*

No.

VII. Health

33. Member states should take appropriate legislative and other measures to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, they should take into account the specific needs of lesbian, gay, bisexual and transgender persons in the development of national health plans including suicide prevention measures, health surveys, medical curricula, training courses and materials, and when monitoring and evaluating the quality of health-care services.

- i. *Do*
- a. *the design of national health plans,*
 - b. *health surveys,*
 - c. *suicide prevention programmes,*
 - d. *medical training programmes,*
 - e. *training courses and materials*
 - f. *the monitoring and quality assessment of health-care services*
- take into account specific needs in relation to (a) sexual orientation and (b) gender identity?*

We do not dispose of any information concerning this question.

- ii. *Do training programmes for health professionals enable them to deliver the highest attainable standard of health-care to all persons, with full respect for (a) sexual orientation and (b) gender identity?*

The measure 5.2.2. has been introduced into the Policy for Gender Equality 2011-2015 – *Systematic education of the judiciary, municipal and county public prosecutors, health workers, workers in educational and upbringing institutions, family centres and police administrations, social workers and mental health professionals, in the goal of improving legal protection and help given to victims of violence, especially victims of sexual violence as well as victims of discrimination based on sexual orientation, gender identity and gender expression.*

However, this measure deals only with the treatment of victims of violence and not the standards of health care for LGBT persons in general. Furthermore, it is unclear if the above mentioned education will contain specific education on discrimination of LGBT persons or it will only mention them as potential victims of violence.

Also, although we requested information on implementation of the measures from the National Policy from the implementing bodies, we received no information on implementation of this measure.

- iii. *Are education, prevention, care and treatment programmes and services in the area of sexual and reproductive health available to LGBT people, and do they respect their needs?*

Men who have sex with men (MSM) include gay and bisexual men as well as men who may not identify as such but engage in sexual relations with men. MSM represents the most vulnerable group when it comes to the spread of HIV in Croatia. According to the data of the Croatian Institute for Public Health Care (CIPHC) every other (51.2%) registered HIV case of HIV infection is a MSM man, while in previous years 4 out of 5 cases newly diagnosed HIV positive persons have been MSM (82% in 2010, 74% in 2009)⁶. Croatia is a country with a low rate (prevalence) of HIV infection, less than 0.1% of the population is HIV positive, while according to research

⁶ Croatian Institute for Public Health: Epidemiology of the HIV Infection and AIDS in Croatia, <http://www.hzjz.hr/epidemiologija/hiv.htm> (26.8.2011)

conducted in Croatia the prevalence of HIV among MSM is 2.8 – 4.5%⁷. MSM men have at least 30 percent greater chance of being HIV positive.

National Program

In 2011 a new Croatian National Program for HIV/AIDS Prevention 2011-2015 was adopted (in remainder of text referred to as National Program). When the National Program was being discussed, organizations of the civil society (in remainder of text OCS), but also other organizations which participate in implementing the National Program, were asked by a representative of the Ministry of Health and Social Welfare (in remainder of text MHSW) for suggestions, to be given through the aids.hr mailing list where all partners in implementation of the National Program were included.

In the part of the National Program that deals with prevention among the MSM population it was deemed especially important that the MHSW accepted a suggestion by Mr. Kristijan Grdjan, National Advisor for HIV/AIDS and Human Rights at the UN Theme Group for HIV/AIDS, that activities include strengthening of outreach as a fundamental part of prevention. Other activities related to prevention among the MSM population include evaluation of structural interventions in the community in the goal of lessening stigmatization and discrimination due to sexual preference or gender, strengthening or, if needed, increasing the number of existing government and non-government institutions for prevention which successfully implement effective measures for HIV prevention among the MSM population, developing public health programs which will increase the number of people getting tested for HIV, increasing number of teams within the epidemiology services as well as the number of centres for free and anonymous testing and consultation for HIV (located within institutes for public health), conducting research and development, implementation and evaluation of measures in order to set up effective prevention of HIV and sexually transmitted diseases within the MSM population, advancement of the work of professionals dealing with the MSM population, especially so in primary health care. The MHSW, the Croatian Institute for Public Health, Institutes for Health, Iskorak, Second Step, Terra and other organizations working with this population have been signified as responsible for implementation.

The Program for HIV/AIDS and Sexual Diseases Prevention in the MSM Population, proposed by Iskorak, is directly complimentary to the National Program and falls within the priority category of HIV/AIDS prevention. The proposed activities – outreach, voluntary consultations and testing, education and information, behaviour and biology research of MSM population's sexual activity – directly effects the spread of HIV but also sexually transmitted diseases in a population that show risk taking behaviour, that is, within the MSM population. Stated activities are a product of Iskorak's and other relevant experts long experience in HIV/AIDS and were developed in accordance to the community's wishes and needs.

We stress that due to limited financial resources Iskorak implements its activities mostly in the city of Zagreb. Research shows that MSM outside of Zagreb are less educated about HIV, use condoms less frequently and rarely test for HIV.

Even though HIV infections are low in the Republic of Croatia, the percentage of MSM in the total number of those infected is worrisome – 51.2%. One of the National Program's main goals is to reduce the risk of infection within the MSM population. As part of the plan to realize this goal it is stated that the existing government and non-government institutions for the prevention (which successfully implement effective measures for HIV prevention in the MSM population) will be strengthened or their number increased.

Financing the National Program

Within the National Program a financing plan was presented. Financing is to be done from the State Budget from 2011-2013, and for 2011 45.758.448 Croatian Kuna were allocated, for 2012 45.757.448 Croatian Kuna are allocated, while for 2013 it is 45.706.448. Most of the resources (89%) comes from the Croatian Institute for Health Insurance and is for medical treatment. The financing plan foresees lessening of resources in the coming years, while current data shows stable growth of new HIV diagnosis each year. For example, by the end of 2010 HIV infection was diagnosed in 862 persons, which represents a 10.1% growth in relation to the previous year (792 persons). In the previous years we have had stable linear growth. The number of deceased does not follow the number of new infections due to successful treatment, which is in most cases life-long. If this trend should continue in less than 10 years the number of HIV positive persons will double which will in turn result in doubling of expenses for treatment in the state's budget.

In contrast to the National Program for Prevention of HIV/AIDS, where it is stated that capacities of organizations dealing with HIV prevention among MSM must be strengthened because of worrisome epidemiological data on HIV prevalence among MSM, in 2009 the MHSW allocated only 5.9% (273 000 Croatian Kuna) from overall

⁷ UNGASS Country progress report (2010), Prevalence of sexually transmitted infections among men who have sex with men in Zagreb, Bozicevic et al. (2006), Prevalence of HIV and sexually transmitted infections and patterns of recent HIV testing among men who have sex with men in Zagreb, Croatia, Bozicevic et al (2010)

resources intended for HIV prevention (4 624 996 Croatian Kuna) for HIV prevention among the MSM population, while in 2010 that was 8.5% (343 255 Croatian Kuna) from overall resources intended for HIV prevention (4 016 563 Croatian Kuna)⁸. In 2011 the trend of lowered financing of preventive programs for MSM continued – 260 000 Croatian Kuna were awarded, which is the same as in 2009. The total percentage of the overall finances is impossible to ascertain because the Office for Organizations has not published all data for 2011.

Due to the discrepancy between the total number of those infected and newly infected due to unprotected male homosexual sexual relations and the overall financial resources for financing HIV prevention in the MSM population, we turned to Member of Parliament Šime Lučin, the Vice President of the Committee for Human Rights and National Minorities. Mr. Šime Lučin posed a parliamentary question to the President of the Croatian Parliament who in turn forwarded it to the Minister of Health Mr. Darko Milinović. Mr. Milinović's reply notes the good epidemiological situation in the area of combating HIV/AIDS in the Republic of Croatia and mentions the MSM population as a population which had the weakest response to all health education and other preventive measures. The MHSW concludes that the number of HIV/AIDS infections is increasing but it cannot be deemed dramatic because the absolute numbers of newly infected persons range from 50 in 2008, 41 in 2009 and 56 in 2010. The MHSW stresses that in the CCT centres the MSM population also comes to be tested. The MHSW's response also gives an overview of overall resources for combating HIV infection which in 2009 totalled 43 455 000 Croatian Kuna, while in 2010 it was 46 454 450 Croatian Kuna. The MHSW also states that for the years 2012, 2013 and 2014 it has secured financial resources for combating HIV infection totalling circa 45 750 000 Croatian Kuna, thus securing the stability of implementation of preventive activities.

In its response the MHSW makes use of general information on prevention and combating of HIV in the Republic of Croatia so as to minimize the problem we brought forth to Mr. Šime Lučin. The MHSW notes the good epidemiological situation and the increase in infections among the MSM population, which is not drastic, without taking into consideration that the MSM population is a hidden population. According to a statement of the Ministry the MSM population has a weak response to the current preventive programs, which is true considering the small scope of those programs and that, considering how much the state had invested, the population has not been covered adequately the programs could not have been of such quality so as to secure satisfactory results of said population in regards to the foreseen measures against contagion. The absolute numbers cited by the MHSW are not relevant precisely because of the fact that the population in question is hidden due to stigmatization and discrimination to which it is exposed. It is also stated that the MSM population gets tested in the CCTs but it is not possible to ascertain how many MSM get tested in CCTs on a yearly basis because of statistical data which is not distributed in such a way as to show the number of tested MSM individuals. When presenting an overview of resources intended for combating HIV infection only the overall figures are shown which do not exclusively cover prevention but also the financing of free and anonymous HIV testing in CSTs and also the care and medical treatment of persons living with HIV – costs for anti-viral medication are covered by the Croatian Institute for Health Insurance. The resources for HIV prevention are located within the overall budget. The percentage of resources intended for prevention out of the total resources intended for combating HIV infections were for 2009 10.63%, while in 2010 they totalled 8.65%. In 2009, out of the total resources intended for combating HIV infections, resources intended for prevention of HIV among the MSM population totalled 0.63%, while in 2010 they totalled 0.74%. The number of newly infected persons keeps climbing each year as can be seen from data by the Croatian Institute for Public Health, while the projections of financial support for combating HIV infections are not based with this fact in mind. If financial projections are not revised and redirecting greater attention to preventive programs, the increase in number of infected people will represent a big financial burden on the state's budget because an ever greater part of resources will have to be put aside for treatment. Specifically because of this we see the need to initially increase resources for prevention of HIV infection in the MSM population, in a way so as to have resources distributed under the criteria of the percentage of newly infected persons, so as to prevent an even greater increase of expenses for the treatment of AIDS.

The World Bank's report shows that controlling the epidemic among MSM is critical for the national state of HIV epidemiology⁹. "Framework for Investment" which was recently presented in *The Lancet*¹⁰ also stresses the importance of strategic use of resources, that is, on increasing investments for the most vulnerable groups, such as MSM in Croatia. Good practice examples can be found in the USA which has a percentage of MSM among HIV infected persons similar to that of Croatia. The American Center for Disease Control (CDC) invests 43% of resources for the prevention of new HIV infections into MSM programs¹¹, while in Croatia that percentage is four times smaller.

Centres for Consultation and Testing for HIV (CCT)

⁸Data gathered by data basis search of the Office for Organizations of the Government of the Republic of Croatia on approved financial support from the state budget <http://www.uzuvrh.hr/potpore.aspx?pageID=58>

⁹Better HIV/AIDS Programs for Men Who Have Sex with Men Could Significantly Slow Global Epidemic (World Bank report, 2011)

¹⁰Towards an improved investment approach for an effective response to HIV/AIDS (*The Lancet*, 2011)

¹¹"In fiscal year 2009, 43% of CDC's Division of HIV/AIDS Prevention's budget was targeted towards MSM and MSM-IDU", CDC MSM report, <http://www.cdc.gov/hiv/topics/msm/index.htm>

The Croatian Institute for Public Health's (in further text CIPH) public health programs for HIV prevention among MSMs in Croatia are directed at ten Centres that offer free and anonymous consultation and testing for HIV/AIDS (in further text CCT). Nine CCTs work within epidemiology services of the Institute for Public Health, while one CCT functions as part of the Referent Centre for Diagnostics and Treatment of HIV/AIDS of the Hospital for Infectious Diseases Dr. Fran Mihaljević. According to official data of the CIPH available on their web site, in 2010 the CCTs tested 2 866 people and found 35 positive for HIV. In comparison in 2010 there were a total of 68 new HIV cases out of which 56 cases were probably infected through male homosexual sex. Data for 2011, at the time of writing this report, was not made available on the CIPH's web site. In CIPH's report there is no distribution of data on the total number of persons tested in such a way as to ascertain how many of the tested are MSM.

Data from the ECDC (European Centre for Disease Prevention and Control) indicate that the frequency of HIV testing in Croatia is lower compared to other European countries¹². The low frequency results in a high percentage of late presenters diagnosis – out of the 59 MSM who were diagnosed in 2010 57.5% are late presenters, that is, they had a CD4 cell count below 350/mm³.

The MSM population is a population that is extremely hard to reach and according to epidemiological data it is a high risk population in regards to HIV transmission. Due to fear of their sexual orientation being known and of stigmatization many MSM do not go to CCTs which are mostly located in medical facilities. This is especially pronounced in small towns where there is a higher probability that those being tested will have their sexuality exposed to medical workers and therefore the rate of discriminations remains high in these situations. In Zagreb a third (32.7%) of MSM tested themselves for HIV in the previous year, which is less than in Slovenia (38%), (London 50.8%) and the USA (61.9%). It is extremely necessary to make it easier for MSM to get tested in Croatia. Being tested on time makes it possible for the person to get timely treatment. Also, research shows that therapy is a preventive measure which may positively affect lessening of infection.

Croatian Institute for Transfusion Medicine

The stigmatization and discrimination of the MSM population is additionally increased by institutions such as the Croatian Institute for Transfusion Medicine (in further text CITM). On CITM's official web portal it is stated that persons who due to them being exposed to risks are permanently denied the possibility to donate blood. Later on it is stated that such behaviour includes men who have, during their life, had sexual relations with other men. On CITM's web portal as a relevant legal framework cites the Guidelines on Blood and Blood Components (OG 14/99), which is no longer in force and which, in Article 16, names homosexuals as persons who are permanently denied as blood donors.

According to the current, relevant legal framework for collecting blood samples – Guidelines on Special Technical Requirements for Blood and Blood Samples (OG 80/2007) the rule for denying someone the opportunity to give blood is based on sexual behaviour which leads to high risk of acquiring infectious diseases which may be passed by blood. The Guidelines also include a questionnaire and information for blood donors which states which people are those with higher levels of risk for acquiring diseases transmitted through blood, and among others, states that these are people whose sexual behaviour leads to greater risk of contagion. In the blood donors questionnaire the following question is asked of the donor: "I do not consider myself a person with higher risk for diseases transmitted by blood". High risk of diseases transmitted by blood is unprotected sex not a person's sexual orientation or protected sex between two men. Several donors have told us that the questionnaire for blood donors has not been updated in accordance with the Guidelines on Special Technical Requirements for Blood and Blood Donations (OG 80/2007). The information on CITM's web portal has not been updated either. We consider such behaviour by the CITM to be discriminatory against gay and bisexual men, and we have informed the Gender Equality Ombudswoman about this issue.

- iv. *Are health professionals and social workers encouraged to create an environment that is reassuring and open to young LGBT persons, for example through information campaigns?*

No.

- v. *Are patients in hospital or otherwise the subject of medical emergencies, free to identify their "next of kin", and are rules on issues regarding "next of kin" applied without discrimination on grounds of (a) sexual orientation and (b) gender identity?*

No.

34. Appropriate measures should be taken in order to avoid the classification of homosexuality as an illness, in accordance with the standards of the World Health Organisation.

- i. *Has homosexuality been removed from the national classification of diseases?*

¹² Croatia: 8.8 HIV tests per 1000 population. HIV/AIDS surveillance in Europe 2008

In year 2002 upon Kontra's and Iskorak's request for information, the Croatian Medical Chamber and the Croatian Psychiatric Association replied that homosexuality is not considered to be a disease, in accordance with the standards of the World Health Association.

- ii. *Have all policy documents, medical textbooks and training materials which may previously have treated homosexuality as a disease been corrected or withdrawn?*

No. Kontra and Iskorak received complaints from students of medicine that textbooks still have discriminative content.

Namely, a medical textbook used at the Faculty of Medicine in Rijeka titled "Spirituality and Psychiatry" written by prof. dr. Đulijan Ljubičić (head of the Clinic for Psychiatry at the Clinical Hospital Centre in Rijeka and professor at the Cathedra for Psychology Medicine and Psychiatry at the Medical Faculty in Rijeka) defines homosexuality as a disease and prescribes treatment.

Quote from the above mentioned textbook:

SEXUAL IDENTITY DISORDERS

Sexual identity represents an inclination towards one of the erotic answers of that person, for example homosexual, heterosexual or bisexual, and accordingly one chooses objects for sexual activities. Disorders are following:

1. *Transvestite behaviour,*
2. *Transsexual behaviour,*
3. *Homosexual behaviour.*

Cause for these disorders can be found in excretion of sex hormones. However, upbringing, family environment, but also sexual molestation in childhood play a role.

Treatment

While treating children it is necessary to improve existing sex role models and find them in the family or elsewhere. Adolescents are hard to treat due to a general identity crisis and confusion in relation to sexual identity. In treatment of adults psychotherapy is applied during which its aim is to help patient feel comfortably with their chosen sexual identity. Surgical sex change can be considered, that is irreversible change and has its risks and contraindications.

- iii. *Are measures in place to ensure that no one is forced to undergo any form of treatment, protocol or medical or psychological test or confined in a medical institution because of their sexual orientation or gender identity?*

No. LGBT organisations dealt with several cases throughout the years in which LGBT persons were forced to undergo treatment because of their sexual orientation.

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 confined since the age of 16 in the Lopača psychiatric hospital, and from the age of 18 to 21 had been forcibly confined 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 psycho-pharmaceuticals were administered to her and she was confined 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 by organisations Kontra and Iskorak 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 deprivation of freedom under Article 124 Para 3 in connection with Para 1 of the Criminal Code, of illegal medication under Article 241 Para 1 of the Criminal Code, both in conjunction with the criminal offence of racial or other discrimination under Article 174 Para 1 of the Criminal Code, all in conjunction with Article 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 received no answer in regards to the complaint.

Case of Jankomir Psychiatric Hospital

On 6 December 2010 a client asked Kontra and Iskorak for help, because his parents, with the help of the police, had moved him to the secure ward of the Jankomir Psychiatric Hospital against his will because of his homosexual orientation. We immediately briefed a lawyer who contacted the client and his doctor by telephone and after receiving power of attorney on 8 December 2010 submitted a request to the Ministry of Internal Affairs to explain the reasons for police intervention, the reasons for depriving the client of his freedom as well as the reasons for placing the client in a psychiatric hospital against his will. On the same day a request was sent to Jankomir Psychiatric Hospital for the client to be urgently released from psychiatric hospital.

On 27 December 2010 the Ministry of Internal Affairs replied to the request sent on 8 of December 2010 confirming that the client had committed a misdemeanour under Article 4 of the Protection from Violence in the Family Act and that they had intervened after being called by the client's father. According to the Ministry of Internal Affairs report the client showed signs of psychotic derangement and was taken to a psychiatric hospital.

After talking to the client, his lawyer and his family, the doctor of the psychiatric hospital released the client from hospital on 9 December.

On his release from hospital the Ministry of Internal Affairs continued with their official premises, completed a misdemeanour process, preferred charges and accompanied the client to the duty judge of the Zagreb Misdemeanour Court.

On 9 December 2010 a hearing was held at which the client stated his defence and was released by the duty judge without bail.

On 19 January 2011 the court found the client guilty of violence within the family, because he had thrown some cake mixture and sentenced him to a fine of HRK 500.

The client did not wish to commence proceedings against his parents or continue with the misdemeanour proceedings because he must continue to live with his parents as he has not yet completed university and is afraid that his sexual orientation will be disclosed.

This case shows a clear misuse of the Protection from Violence in the Family Act and the Protection of Persons with Mental Problems Act because the true reason for the incident, and the subsequent confinement in the secure ward of the Psychiatric Hospital was the client's sexual orientation.

35. Member states should take appropriate measures to ensure that transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise in the field of transgender health care, without being subject to unreasonable requirements; no person should be subjected to gender reassignment procedures without his or her consent.

- i. Do transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise?*

No.

There is only one endocrinologist that is working on this issue, but transgender people reported to CSOs that they are not satisfied with the level of care provided.

Adequate surgical services are not available in Croatia as reported by transgender people to LGBT CSOs. There are no surgeons performing final surgery.

Costs of medical gender reassignment are not covered by Croatian authorities.

Mirela Holy, MP of the Social Democrat Party posed a parliamentary question in relation to this issue to the Government. Ministry of Health answered in the following manner:

The National Health Care Strategy 2012 – 2020 foresees development of a Hospital Master Plan by mid 2013 which would define national, regional and local level activities, and give guidelines for establishing units for specific areas, in accordance with priorities, available professionals, equipment, work space capacities and needed financial resources. Development of the Master Plan, to be done in cooperation with professionals from this field of expertise, will take into consideration all recommendations received, as well as the recommendation for possible establishment of a functional centre for complete care of persons with sexual identity disorder, consisting of an interdisciplinary professional team (doctor of medicine – specialist endocrinologist, surgeon, psychiatrist, psychologist and social worker).

In relation to covering costs of the complete sex reassignment procedure: the Croatian Institute for Health Care Insurance (in continuation: the Institute) covers costs for all indisputable medically needed procedures carried out in contracted health care facilities of the Institute.

The provision in Article 22, sub-point 3, of the Mandatory Health Insurance Act (“Official Gazette”, number 150/08, 94/09, 153/09, 71/10, 139/10, 49/11, 22/12, 57/12 and 90/12; in continuation: the Act) states that persons insured with the Institute, as part of the health care protection of the mandatory health care insurance, are not insured for expenses of health services which are rendered in such a manner and in such a procedure which is not prescribed by this Act, that is, by subordinate regulations created on the basis of this Act, as well as for aesthetic procedures, except for aesthetic reconstruction of congenital anomalies, breast reconstruction following a mastectomy, aesthetic reconstruction after serious bodily injury.

The Croatian Institute for Health Insurance interprets “sex reassignment” operations, where in essence there is a change of sex characteristics, exclusively within the cited regulation in Article 22, sub-point 3, of the Act, which prescribes that persons insured with the Institute, as part of the health care protection of the mandatory health care insurance, are not insured for expenses of health services rendered in such a manner and in such a procedure which is not prescribed by this Act, as well as for aesthetic procedures.

Considering all of the above and seeing as there are no clear professional confirmations about the medical advantages of these sort of surgeries, and that it is often the case that healthy organs are removed, this issue of surgical sex reassignment surgery belongs to the field of esthetical surgery (change of appearance), and in accordance with the cited legal regulation the costs of these procedures mentioned cannot be covered by the resources of the mandatory health insurance.

- ii. If it was the practice to make transgender persons undergo therapy to accept their birth gender, has this practice now been abandoned?*

We don't have information on this issue.

- iii. Have measures been adopted to ensure that no child has their body irreversibly changed by medical practices designed to impose a gender identity without his or her full, free and informed consent, in accordance with his or her age and maturity?*

We don't have information on this subject.

36. Member states should take appropriate legislative and other measures to ensure that any decisions limiting the costs covered by health insurance for gender reassignment procedures should be lawful, objective and proportionate.

- i. Where legislation provides for the coverage of necessary health-care costs by public or private social insurance systems, is such coverage for gender reassignment treatment ensured?*

No. (See the answer of the Ministry of Health above)

- ii. If yes, is it ensured in a reasonable, non-arbitrary and non-discriminatory manner?*

n/a

VIII. Housing

37. Measures should be taken to ensure that access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity; such measures should in particular seek to provide protection against discriminatory evictions, and to guarantee equal rights to acquire and retain ownership of land and other property.

- i. Does legislation prohibit discrimination in such areas as:*

- *the sale or rent of housing;*
 - *the provision of loans for purchase of housing;*
 - *the recognition of the rights of a tenant's partner;*
 - *evictions*
- on the grounds of (a) sexual orientation and (b) gender identity?*

Yes.

The Anti-Discrimination Act applies to the conduct of all state bodies, bodies of local and regional self-government units, legal persons vested with public authority, and to the conduct of all legal and natural persons, especially in the following areas: 1. work and working conditions; access to self-employment and occupation, including selection criteria, recruiting and promotion conditions; access to all types of vocational guidance, vocational training, professional improvement and retraining; 2. education, science and sports; 3. social security, including social welfare, pension and health insurance and unemployment insurance; 4. health protection; 5. judiciary and administration; 6. housing; 7. public informing and the media; 8. access to goods and services and their providing; 9. membership and activities in trade unions, civil society organisations, political parties or any other organisations; 10. access to participation in the cultural and artistic creation.

- ii. *Are provisions in place to ensure non-discriminatory access to shelter and other emergency accommodation is provided in regard to (a) sexual orientation and (b) gender identity?*

No.

- i. *Is information available to landlords and tenants aimed at preventing such discrimination?*

We do not have information concerning this question.

- ii. *Are adequate and effective legal or other remedies available to victims of such discrimination?*
- iii. *Are any awareness raising campaigns conducted among housing agencies in order to level-up their knowledge on anti-discrimination provisions?*

No.

38. Appropriate attention should be paid to the risks of homelessness faced by lesbian, gay, bisexual and transgender persons, including young persons and children who may be particularly vulnerable to social exclusion, including from their own families; in this respect, the relevant social services should be provided on the basis of an objective assessment of the needs of every individual, without discrimination.

- i. *Have social programmes, including support programmes, been established to address factors which increase the vulnerability to homelessness of LGBT people, especially children and young people, including schemes of neighbourhood support and security?*

No.

- ii. *Have the relevant agencies been provided with training and awareness-raising programmes to ensure that they are aware of and sensitive to the needs of LGBT people facing homelessness, particularly young persons?*

No.

IX. Sports

39. Homophobia, transphobia and discrimination on grounds of sexual orientation or gender identity in sports are, like racism and other forms of discrimination, unacceptable and should be combated.

Homophobia and transphobia in sports are widespread. This was proven by statements of the president of the Croatian Football Association, Vlatko Marković and the executive vice president of Dinamo Football Club, Zdravko Mamić. We also documented in 2010 the brutal attack on Goran Hadžić by a football player of the first Croatian national league and his brother.

Homophobic statements in football associations

On the 7 November, 2010 when asked by a journalist "Could a player play for the Croatian national team if he was openly gay?", Mr. Marković stated for *Večernji list*: "While I am president, definitely not." When further asked:

"Did you ever meet such a player in your career?" Mr.Marković replied: "No, fortunately only healthy people play football."

On the 15 November, 2010 media reported that after the session of the Executive Board of the Croatian Football Association - CFA the executive vice president of Dinamo, Zdravko Mamić, commented on the statement of the president of the CFA, Vlatko Marković, of 7 November, 2010 which was given as an interview for the daily newspaper *Večernji list* and in which Vlatko Marković stated that while he was president of the CFA an openly gay player would not be able to play for the Croatian national team. According to the media, Mr.Mamić stated that if he were to be president of the CFA homosexuals would not play for the national team either. He further stated that he could not imagine such a player going in firmly to a tackle and that he thought that such people were more natural ballet dancers, writers or journalists.

We recall that back in 2004 a football manager, Otto Barić, then manager of the Croatian national football team was punished by UEFA for discriminatory statements regarding homosexuals.

LGBT people are exposed to discrimination and violence because of their sexual orientation and gender identity. Discrimination in the workplace (including sports clubs) is unfortunately a common occurrence in Croatian society, and the victims of discrimination rarely report such cases because they lack faith in state institutions.

The organizations Iskorak and Kontra filed joint charges for discrimination against the president of the Croatian Football Association, Vlatko Marković.

We also announced that we would report this to the disciplinary commission of UEFA, after which UEFA announced that it had commenced proceedings against Vlatko Marković on suspicion that he had breached rules concerning discrimination and behaviour of football officials. Namely, Article 11 of the Disciplinary Rulebook provides for sanctions for someone who insults the dignity of a person or group of people, while Article 5 deals with violations of integrity and sporting spirit.

On 28 June, 2011, the Zagreb County Court handed down a verdict denying the charges filed by organizations Iskorak and Kontra.

On 9 September, 2011, we filed an appeal on the verdict. On 29 December, 2011, the Gender Equality Ombudswoman directed a statement to the Supreme Court regarding her joining the lawsuit as intervener.

Attack on Goran Hadžić

The attack on Mr.Goran Hadžić occurred on the night of November 6th – 7th, 2010 at around 2:00 am. Mr.Hadžić reported the attack to the Legal Team of Iskorak and Kontra and asked us to forward the information stated in his statement. A lawyer was also briefed to work on the case.

Miroslav Šarić(24), a football player in the first division of the Croatian football league (a former football player of Dinamo, now playing for Inter) and his brother Marko Šarić (21) followed Mr.Hadžić after he left a gay bar. Without any provocation they attacked Mr.Hadžić with the intention of killing him, knocked him to the ground and kicked him exclusively in the head and would surely have succeeded in their intention to kill him had they not been prevented by the arrival of four passers-by. While they were kicking him in the head, both attackers repeated the words several times: "Kick him! Kill him! Kill him! Fucking faggot!"

Mr.Hadžić, a Croatian war veteran and war invalid, suffered serious physical injuries, a broken nose, hematomas on his face, and a cut lip (7 stitches). Because of bleeding from the head he was kept in hospital in Vinogradska Street for several days in the neurosurgery ward.

The Zagreb Municipal Public Prosecutor's Office classified the attack as a criminal act of causing severe bodily harm in conjunction with the criminal acts of violent behaviour and also defined it as a hate crime.

The attackers were held in prison in Zagreb.

The first hearing in this case was held on 29 December, 2010 at the Zagreb Municipal Criminal Court.

The Municipal Criminal Court in Zagreb handed down a verdict on 4 February, 2011. Marko Šarić and Miroslav Šarić were found guilty of committing a criminal act under Article 99, Para 1, in regards to Article 89, Para 36 of the Criminal Code – severe bodily harm as hate crime and Article 331, Para 1, in regards to Article 89, Para 36 of the Criminal Code – violent hate motivated behaviour.

They were punished in the following manner: for the criminal act in regards to Article 99, Para 1, of the Criminal Code, each received a jail sentence of 3 months, and both were convicted to a unique jail sentences of 7 months, while suspended sentences were cancelled.

Unfortunately, we have to note that even though the Court handed down a guilty verdict, for each criminal act it applied the minimum legal punishment for the defendants, and has thus sent a negative message to the public in regards to respecting human rights and basic freedoms.

Due to the fact that Mr. Hadžić decided to publically speak about his experience, this case has to a great extent helped the sensitization of the public regarding violence against LGBT persons.

40. Sport activities and facilities should be open to all without discrimination on grounds of sexual orientation or gender identity; in particular, effective measures should be taken to prevent, counteract and punish the use of discriminatory insults with reference to sexual orientation or gender identity during and in connection with sports events.

- i. *What measures have been taken to prevent the risk of exclusion from participation in sports on grounds of (a) sexual orientation and (b) gender identity?*
- ii. *By encouraging, for example:*
 - *the drawing up and dissemination of codes of conduct on questions relating to sport and sexual orientation or gender identity for sports organisations and clubs,*
 - *partnerships between associations representing lesbian, gay, bisexual and transgender persons and sports clubs,*
 - *anti-discrimination campaigns in the sports world,*
 - *support for sports clubs set up by lesbian, gay, bisexual and transgender persons themselves.*

We don't have information that such measures were implemented.

- iii. *Have effective measures been taken to prevent, counteract and punish the use of discriminatory insults during and in connection with sports events?*
- iv. *In particular:*
 - *Has homophobic and transphobic chanting at or around sports events been made a criminal offence?*
 - *Have the relevant provisions of the European Convention on Spectator Violence and Misbehaviour at Sports Events,¹³ the European Sports Charter¹⁴*
 - *and ECRI's General Policy Recommendation No.12¹⁵ been implemented in respect of (a) sexual orientation and (b) gender identity?*

The Prevention of Disorders at Sports Competitions Act (OG 117/03, 71/06 and 43/09) prescribes that among other things the following shall be deemed unlawful behaviour:

"attempt to introduce, introduction and display of a banner, flag or another object containing a text, image, sign or other marking which expresses or incites hatred or violence based on

racial, national, regional or religious affiliation". There is no mention of sexual orientation or gender identity in the law.

The Croatian Criminal Code contains the criminal offence of incitement to violence and discrimination that explicitly includes sexual orientation and gender identity.

- v. *Have specific appropriate measures been taken to:*
 - *put an end to the exclusion of transgender persons from sports activity or competitions,*
 - *remove the obstacles encountered by them in participating in sport (dressing room access),*
 - *recognize their preferred gender?*

No.

41. Member states should encourage dialogue with and support sports associations and fan clubs in developing awareness-raising activities regarding discrimination against lesbian, gay, bisexual and transgender persons in sport and in condemning manifestations of intolerance towards them.

- i. *Have steps been taken to encourage dialogue with, and support for sports associations and fan clubs in*
 - *developing awareness-raising activities*
 - *condemning homophobic and transphobic behaviour during and in connection with sports events?*

We do not dispose of any information concerning this question.

X. Right to seek asylum

42. In cases where member states have international obligations in this respect, they should recognise that a well-founded fear of persecution based on sexual orientation or gender identity may be a valid ground for the granting of refugee status and asylum under national law.

- i. *Is a well founded fear of persecution based on (a) sexual orientation and (b) gender identity recognized as a valid ground for the granting of refugee status and asylum?*

Article 33 of the Constitution prescribes: „Foreign citizens and stateless persons may obtain asylum in the Republic of Croatia, unless they are prosecuted for non-political crimes and activities contrary to the basic principles of international law. No alien lawfully within the territory of the Republic of Croatia shall be expelled or extradited to another state, except in pursuance of a decision made in accordance with a treaty and law.“

According to the Asylum Act (OG 79/07) asylum could be granted to a person persecuted in his/her country of origin because of, as the Act states, *“belonging to a social group sharing the same characteristics of sexual orientation”*.

This formulation guarantees asylum only based on belonging to a certain social group with special identity in the country of origin, thus linking the right of the individual to the factual existence of those social groups. Further on, this formulation states that a social group can also be a group based on shared sexual orientation. This definition should be omitted, since sexual orientation is not part of the identity of a group of people, but part of the identity of the individual, independent of the factual existence of a group or the organization of individuals into civil groups of shared identity. Namely, in countries which persecute gays and lesbians, in the sense of criminal persecution, and even condemning to death, or inhumane treatment, there are no social groups to which these individuals belong, because they are systematically persecuted by the state government or by other individuals, or groups, and in such circumstances they cannot form a social group to which they might belong.

Furthermore, the Act discriminates against same-sex couples and is contrary to national legislation and international documents. Provisions that regulate the right of uniting families and the right to freedom of movement exclude same-sex couples.

There is no political will to implement the Asylum Act and provide asylum to foreign citizens and stateless persons in the Republic of Croatia at all. Organisations Iskorak and Kontra dealt with two cases of asylum claims of LGBT persons and both were turned down.

- ii. *Are staff responsible for processing asylum requests provided with training in the specific problems encountered by LGBT refugees or asylum seekers?*

No.

Case of asylum claim and violations of human rights of transgender person by Croatian authorities

A Philippine citizen M.K.(a transgender person) approached Kontra and Iskorak in November 2009. She was staying in Croatia on a visa for a private visit to her partner who is a Croatian citizen. M.K. contacted us and told us that she was afraid to return to Philippines because she had been physically attacked and had stones thrown at her on the street because of her gender identity on several occasions and because her family were threatening to kill her, while the police were not offering her protection and that she wished to remain in Croatia. A policeman had sought sexual favours in return for police intervention. She engaged a lawyer to work on her case and a request for asylum in the Republic of Croatia was made on 30 December 2009.

On 1 April 2010 the Ministry of Internal Affairs made a decision refusing M.K.'s request for asylum because it was assessed that the asylum seeker had not given sufficient reasons from which it might be evident that she was persecuted because of her race, faith, nationality, membership of a certain social group or political views. Furthermore in essence it was stated that the state authorities had never persecuted the asylum seeker for her religious, political or ethnic membership, she was a citizen of the Republic of the Philippines, of Christian faith and a member of the Church of Jesus. It went on to state that the asylum seeker had left her country of origin for economic reasons and that according to the Rulebook on Procedures and Conditions for Establishing the Status of Refugees, a person who leaves his/her country of origin exclusively for economic reasons is considered to be an economic migrant and not an asylum seeker. Along with the above states decision M.K. was given an order to leave Croatia within 15 days.

On 5 May 2010 an appeal was lodged against the asylum decision. In the appeal reasons were argued in detail from which it emerges that the seeking of asylum is well-founded and which contest the assertions from the Ministry's decision on the grounds that the explanation contains quotations from the official web pages of institutional bodies of the Republic of the Philippines, which contain only declarative and formal statements about the protection of human rights. The Ministry of Internal Affairs did not mention all the reports which warn of the status of human rights in the Philippines to which the associations and Commission for Human Rights as an independent state agency make reference.

On 8 July 2010 a hearing was held before the body of second instance – the Commission for Asylum of the Republic of Croatia.

On 8 July 2010 the Commission for Asylum of the Republic of Croatia made a decision rejecting the appeal, which in essence repeated the arguments of the first instance decision.

On 29 September 2010 we received a decision of the Ministry of Internal Affairs which refused a delay in carrying out the Ministry's decision of 1 April 2010.

On 7 October 2010 the client commenced proceedings before the Administrative Court and sought a delay in execution of the decision until the decision of the Administrative Court.

On 19 October 2010 the Ministry of Internal Affairs left a message for the party to report to the Novi Zagreb police station which she immediately did. When she arrived at the police station she was deprived of her liberty, told that she was committing a misdemeanour because she was illegally in Croatia and that charges would be filed against her before a misdemeanour court for illegal stay in the Republic of Croatia.

Later the same day the police escorted the client to the duty of misdemeanour court in Oranice and a hearing was held. At the hearing the client stated that she was not guilty, made her defence and her defence lawyer presented documents which showed that she was not illegally in the Republic of Croatia because she had commenced proceedings to obtain asylum, she had commenced an administrative case and she had proposed to delay execution until the decision of the Administrative Court which had not yet been given to her.

The court made a decision for the proceedings to continue, but **banned her from leaving the territory of the Republic of Croatia, confiscated her passport and freed her without bail.**

After the court decision had been served on the party, the policeman who had been at the hearing and did not have any comments (the judge asked him if he had anything to say), approached her in the court corridor, detained her, took her to the duty department of the custody and escort unit, carried out an administrative procedure, informed her that she was being deported from the country and took her to Ježevo.

The police took it upon itself, to the client's detriment, to change the decision of the court and to deport her from the Republic of Croatia. The police refused to give a decision to the lawyer, and did not allow her to contact the client, so the client was not able to have a lawyer. Also, the client was not allowed to use her right to a telephone call on arrival at Ježevo. Her partner and his family were waiting for a call all night.

It is inconceivable that the police, to the detriment of a party, should in contradictory misdemeanour proceedings reject a court decision brought on the basis of direct inference of evidence.

We requested the Ministry of Internal Affairs immediately release the client in accordance with the decision of the Oranice Municipal Court and the laws of the Republic of Croatia, and we informed the media about everything.

The client's lawyer conducted intense correspondence with the reception centre in Ježevo concerning contacting her client.

On 22 October 2010 the Ministry of Internal Affairs were sent a request for immediate release. Later the same day the client was released from the reception centre and the MUP continued with activities to return her to her own country.

Because of the illegal action of the police the People's Ombudsman of the Republic of Croatia became involved in the case and sought a report from the Ministry of Internal Affairs on 27 October.

On 23 November 2010 an appeal was lodged against the decision of the Ministry of Internal Affairs of 29 September 2010 refusing to delay execution of the decision of the Ministry of 1 April 2010. With the appeal was also lodged a proposal to delay execution of the decision of 29 September 2010.

On 25 November 2010 the MUP decided to reject the appeal of 23 November 2010 as a result of which the client was forced to submit a new appeal on 28 December 2010. This was rejected as well and the client was forced to leave the country.

- iii. *Are asylum requests turned down on the ground that the claimant can escape persecution in the country of origin by keeping his or her sexual orientation or gender identity secret?*

No, they are dismissed on other grounds.

43. Member states should ensure particularly that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment, on grounds of sexual orientation or gender identity.

- i. *What procedures are in place to ensure compliance with this obligation?*

There are no such procedures and in two cases reported to Kontra and Iskorak of asylum seekers who faced risk to their lives due to their gender identity were sent back to their countries of origin.

- ii. *Are there documented cases where asylum seekers have been returned to such a country?*

Yes.

Right to Asylum in the Republic of Croatia Due to Persecution on the Basis of Sexual Orientation or Gender Identity (case of S.N.)

In October 2009 Kontra was contacted in regards to the case of S.N., a foreign citizen who has the status of an asylum seeker in the Republic of Croatia.

The client was situated in a reception centre. He gave as the reason for leaving his country of origin – namely, that he was discriminated in his country of origin (the country in question is kept secret in order to protect the client) because he is a homosexual. On 20 September 2006 he was walking in the street of his town, where he lived as a woman, 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 of 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 police stopped him at the airport, removed his international passport and returned him to the psychiatric institution where he stayed until 2009. There, he was 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.

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 be 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.

On 26 January 2010 S.N. received the decision of the Foreigners and Asylum Department of the Ministry of Internal Affairs in which it was stated that his request for asylum has been denied as groundless.

In the decision the Ministry quoted selectively various human rights reports on the status of rights of sexual minorities, using only information that were in favour of rejecting his complaint. For example, the Ministry quotes that homosexuality is not criminal offence in S.N.'s country of origin, but fails to quote information on police

brutality. Also it is stated that there is no continuity in the S.N.'s story, giving as an example the fact that he stated first that he was thrown from the fourth floor and then later that he stated that he was thrown from the third floor.

44. Asylum seekers should be protected from any discriminatory policies or practices on grounds of sexual orientation or gender identity; in particular, appropriate measures should be taken to prevent risks of physical violence, including sexual abuse, verbal aggression or other forms of harassment against asylum seekers deprived of their liberty, and to ensure their access to information relevant to their particular situation.

- i. *What measures have been taken to comply with this requirement?*
- ii. *In particular, have the staff of administrative detention centres, police and medical staff and voluntary organisations with access to such cases, received appropriate training and information on issues regarding (a) sexual orientation and (b) gender identity?*

We do not have any information concerning this question.

XI. National human rights structures

45. Member states should ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity; in particular, they should be able to make recommendations on legislation and policies, raise awareness amongst the general public, as well as – as far as national law so provides – examine individual complaints regarding both the private and public sector and initiate or participate in court proceedings.

- i. *Are national human rights structures clearly mandated to address discrimination on grounds of (a) sexual orientation or (b) gender identity?*

Yes.

The Gender Equality Act establishes institutions of the Office for Gender Equality of the Government of the Republic of Croatia and the Ombudswoman for Gender Equality.

It is prescribed by the Act that The Government of the Republic of Croatia shall pass a decree whereby it shall establish the **Office for Gender Equality** as a professional body to carry out tasks relating to the realisation of gender equality.

The Office shall carry out professional and other tasks, by:

1. Coordinating all activities aimed at achieving gender equality, including provision of professional assistance in the implementation and application of the Gender Equality Act and other regulations relating to gender equality;
2. Approving the implementation of action plans of government bodies, legal entities vested with public authority and legal entities whose majority shareholders are the state and units of local and regional self-government;
3. Proposing to the Government of the Republic of Croatia and to government bodies the adoption or amendments of laws and other regulations and adoption of other measures;
4. Developing national policy for the promotion of gender equality and monitoring its implementation;
5. Making research and analysis and reporting to the Government of the Republic of Croatia every two years on the implementation of the national policy;
6. Monitoring the level of harmonisation and implementation of laws and other regulations relating to gender equality in relation to international documents;
7. Preparing national reports on the extent to which the Republic of Croatia fulfils its international obligations in the area of gender equality;
8. Cooperating with non-governmental organisations active in the field of gender equality and providing a portion of funds for their projects or activities;
9. Promoting knowledge and awareness of gender equality;
10. Receiving petitions that regard violations of this Act and other regulations;

11. Reporting once a year to the Government of the Republic of Croatia on the activities of the Office during the previous year, not later than end of April.

The Anti-Discrimination Act provides for the protection and promotion of equality as the highest value of the constitutional order of the Republic of Croatia, creates prerequisites for the realisation of equal opportunities and regulates protection against discrimination on the grounds of race or ethnic affiliation or colour, gender, language, religion, political or other belief, national or social origin, property, trade union membership, education, social status, marital or family status, age, health condition, disability, genetic heritage, gender identity, expression or sexual orientation.

This Act applies to the conduct of all state bodies, bodies of local and regional self-government units, legal persons vested with public authority, and to the conduct of all legal and natural persons, especially in the following areas:

1. work and working conditions; access to self-employment and occupation, including selection criteria, recruiting and promotion conditions; access to all types of vocational guidance, vocational training, professional improvement and retraining;
2. education, science and sports;
3. social security, including social welfare, pension and health insurance and unemployment insurance;
4. health protection;
5. judiciary and administration;
6. housing;
7. public informing and the media;
8. access to goods and services and their provision;
9. membership and activities in trade unions, civil society organisations, political parties or any other organisations;
10. access to participation in the cultural and artistic creation.

The Central body responsible for the suppression of discrimination was established by the Anti-Discrimination Act in framework of authority of the People's Ombudsman and special ombudspersons. Special ombudspersons in the Republic of Croatia are Ombudswoman for Gender Equality, Ombudswoman for Children and Ombudsman for Persons with Disability. Cases of discrimination based on sexual orientation and gender identity fall under jurisdiction of the Ombudswoman for Gender Equality.

Therefore, within the scope of her work, **the Ombudswoman for Gender Equality is under obligation to:**

1. receive reports of discrimination from all the natural and legal persons;
2. provide necessary information to natural and legal persons that have filed a complaint on account of discrimination with regard to their rights and obligations and to possibilities of court and other protection;
3. if the court proceedings have not yet been initiated, examine individual reports and take actions falling within his/her competence required for elimination of discrimination and protection of rights of discriminated persons;
4. warn the public about the occurrence of discrimination;
5. with the parties' consent, conduct mediation with a possibility of reaching an out-of-court settlement;
6. file criminal charges related to discrimination cases to the competent state attorney's office;
7. collect and analyse statistical data on discrimination cases,
8. inform the Croatian Parliament on the occurrence of discrimination in his/her annual and, when required, extraordinary reports;
9. conduct surveys concerning discrimination, give opinions and recommendations, and suggest appropriate legal and strategic solutions to the Government of the Republic of Croatia.

- ii. *In practice do they*
- *make recommendations on legislation and policies,*
 - *conduct awareness-raising among the general public*
 - *examine individual complaints*
 - *participate in court proceedings*
 - *speak out in support of the exercise of rights by LGBT people, for example, when freedom of assembly events are opposed,*
- in relation to (a) sexual orientation or (b) gender identity?*

Office for Gender Equality and Office for Human Rights create national policies that include a smaller number of measures in relation to LGBT human rights, but these measures are not effective and not well implemented. They continuously refuse to support any initiatives for change of legislation in relation to human rights of LGBT persons proposed by LGBT organisations.

The Ombudswoman for Gender Equality takes part in court proceedings as intervener, speaks out in support of the exercise of rights of LGBT people on certain occasions, but her support is limited only to certain issues (no support for marriage equality, Office did not issue an opinion on Medical Insemination Act, etc.).

<http://www.vecernji.hr/vijesti/30-zatvorenika-tuzilo-zatvor-osijeku-zbog-spavanja-podu-clanak-480260>