

# **2010 Annual Report**

**on the Status of Human Rights  
and Gender Minorities in Croatia**





**ISKORAK**

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Financial support:



ISBN 978-953-98889-6-9

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## 1. Introduction

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### Legal changes

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

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

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

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

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

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

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

In 2005 and 2006 the Team for Legal Changes worked on the introduction of a definition of hate crime in the Criminal Code. The suggestion of the Team for Legal Changes on this was ac-

cepted by the Croatian Parliament mainly due to international pressure (OSCE, applying for EU membership) and support by the national minorities in Parliament in 2006.

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

There is still a lower court political will to remove discrimination against same-sex couples only at a legislative level. In 2006 the proposed Registered Partnership Bill was refused, the purpose of which was to secure for same-sex couples the same rights and obligations enjoyed by married couples, with the exception of adopting children.

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

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### **Summary of 2010 Report**

**Positive advances** in the status of the human rights of sexual and gender minorities in Croatia in 2010 are visible, as in previous years, in the increase in reports of incidents of violence and discrimination made to organisations for the protection of sexual and gender minorities. In 2010 an increased number of people were prepared to speak out publicly about their experiences of discrimination or violence on the basis of their sexual orientation. Namely, after the case of Neven Rauk in 2009, last year the media reported on the cases of the attacks on Damir Gerovac and Goran Hadžić and the case of discrimination at work in which Dario Krešić was the injured party.

Nevertheless, it is important to emphasise that the great majority of people who experience discrimination and violence never report such incidents because of their lack of confidence in the Croatian legal system, and fear of disclosure of their sexual orientation or gender identity.

LGBT persons are subjected to discrimination and violence in their everyday lives because of their gender identity and/or gender expression.

**The most negative event in 2010** happened on International Human Rights Day itself, 10 December 2010, and symbolically speaks of the state of the human rights of sexual and gender

minorities in the Republic of Croatia and the readiness of state institutions to protect the human rights of these marginalised groups.

After a shameful debate in the Croatian Parliament on the previous day, legal proposals which would have introduced mechanisms for the protection of basic human rights of transgender persons were rejected on International Human Rights Day.

Namely, we drew up a draft Bill on Amendments to the State Registries Act and draft Bill on Amendments to the Personal Names Act whose aim was the protection of the right to respect of the private lives of transgender persons, and presented them to state institutions and political parties at the beginning of the year, after which the SDP put them into parliamentary procedure.

The proposals contained protection mechanisms to ensure that a request for a change of name would not be published on the notice board of the responsible municipality, and that changes of gender and name are not evident on a person's birth certificate. It would also have enabled persons who have not undergone a complete sex reassignment procedure to change the data on their documents, which is especially important for the protection of the human rights of minors who are undergoing sex reassignment procedures but who are unable to complete the procedure because of their age.

An example of the breach of human rights which is the result of precisely the existing legal regulations is the case of a minor whose mother approached us over a year ago. Namely, her child had been badly treated in school by both pupils and teachers because of its gender identity and the Ombudswoman for Children had even reacted. After this, the child should have registered in a new school, but it was not possible to change the data on gender in the child's personal documents according to existing legal regulations (the name was changed to neutral with another explanation). Therefore data about the child's change of gender will be once more available to the staff of the new school. Given that personal documents are presented when registering for extracurricular activities and on numerous other occasions, there exist another large number of people without legal interest to whom private data about the child will be available.

Despite everything described, the above draft bills were placed at the end of the daily agenda in the Croatian Parliament and were refused urgent procedure, even though it was a case of legal proposals whose aim was to prevent the breach of the human rights of an extremely vulnerable social group.

And finally, in a shameful debate in the Croatian Parliament on 9 December 2010 (which only occurred by chance because all the items on the agenda were put out of order at the last minute), only four members of Parliament applied to speak. On the day before International Human Rights Day, almost nobody in the Croatian Parliament was interested in the debate about human rights. We would also like to mention that it was evident during the debate on the Anti-Discrimination Act that the majority of members of Parliament do not even know what gender identity is.

The Anti-Discrimination Act which bans discrimination on the basis of gender identity thus still exists only on paper, because other laws are not harmonised with it due to a lack of political will. By this behaviour, discrimination of transgender persons is openly supported by state institutions which refused to protect the human rights of transgender persons on precisely International Human Rights Day.

A year ago Lesbian Group Kontra also submitted a request to the Constitutional Court to assess the constitutionality of the above laws but we have not yet received any answer. Unfortunately, the only course available to citizens who are transgender persons in the Republic of Croatia is to fight for their human rights at the European Court of Human Rights which has already brought a number of positive judgements in similar cases.

**We would also like to highlight as a great setback to the protection of human rights the failure for the second consecutive year by the responsible institutions to ban the fascist protest entitled “anti-gay protest”** organised by the Croatian Pure Party of Rights. The announcements of the protest contained an incitement to violence and instructions for preparing weapons (Molotov cocktails), and participants at the protests shouted “Kill the faggots” and on both occasions physically attacked participants of Zagreb Pride. There was no reaction by the responsible institutions, the State Prosecutor’s Office and the Ministry of Internal Affairs despite requests from non-government organisations for the second consecutive year and despite the reactions and warnings of the Ombudswoman for Gender Equality and the People’s Ombudsman.

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## 2. Legislation

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### Constitution

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

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

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

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

The legislation of the European Union serves as guidance for legislative and constitutional changes with the aim of harmonizing the national legislation with EU standards. The primary

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

Furthermore, it is stated in the European Council Directive 2000/78/EU of 27 November 2000 that discrimination based on, among other grounds, sexual orientation may undermine the achievement of the objectives of the EC Treaty.

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

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

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

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

*Provisions form Section 1, containing General Provisions;*

*Article 14 para 1 reads: “Citizens of the Republic of Croatia shall enjoy all rights and freedoms regardless of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, education, social status or other characteristics.”*

*Provisions from Section 1, containing General Provisions;*

*Article 17 para 2 that adds to Para 1 in regards to restriction of individual rights and freedoms guaranteed by the Constitution during a state of war or an immediate threat to the independence and unity of the State, or in the event of severe natural disasters, reads: “The extent of such restrictions shall be adequate to the nature of the danger, and may not result in the inequality of citizens in respect of race, colour, sex, language, religion, national or social origin.”*



Provisions from Section 2, containing Personal and Political Freedoms and Rights; Article 39 reads: “Any call for or incitement to war, or resort to violence, national, racial or religious hatred, or any form of intolerance shall be prohibited and punishable.”

Provisions from Section 3, containing Economic, Social and Cultural Rights; Article 61 Para 1 prescribes that the family shall enjoy special protection of the State, and Paragraph 2 reads: “Marriage and legal relations in marriage, common-law marriage and families shall be regulated by law.”

To broaden the scope of protection of basic human rights and freedoms in the above provisions of the Constitution of the Republic of Croatia, Lesbian Group Kontra and the Women’s Network of Croatia appealed to the Croatian Government, the President of the Republic and parliamentary parties to propose the following changes:

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

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

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

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

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

On 23 November 2009 several NGOs decided to organise a round-table discussion regarding constitutional changes with the aim of indicating the “absence of a mechanism of the public debate that could influence changes to Constitution of the Republic of Croatia and initiating such discussion in relation to proposals of changes or amendments to Constitution of the Republic of Croatia proposed by individual organisations of civil society and/or citizens.”

The organisations Centre for Peace, Non-violence and Human Rights Osijek, Centre for Peace Studies, CESI, Documenta, GONG and Civil Committee for Human Rights invited by e-mail individual organisations to join them in order to create a joint list of amendments.

The association Iskorak took part in the round-table discussion. The representative of this association spoke in favour of introducing of sexual orientation into articles 14 and 17 of the Con-

stitution of the Republic of Croatia. Lesbian Group Kontra expressed an interest for cooperation in advocating certain amendments and creating a joint list of amendments with the above organisations.

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

On 9 February 2010, at the request of Lesbian Group Kontra, the European Parliament's Intergroup for LGBT Rights sent the responsible Croatian institutions a letter of support for amendments to include sexual orientation and same-sex unions in the Constitution of the Republic of Croatia. In the letter it states that the proposed amendments are completely in harmony with the legislation of the European Union, Art 19 of the Treaty on European Union and the Charter of Fundamental Rights. The Intergroup stated its belief that the adoption of the above amendments would contribute to the real equality of Croatian citizens and would send a positive political message to the European Union concerning the accession process.

At a meeting with non-government organisations on 10 February 2010 (a representative of Kontra was present at the meeting), representatives of the Croatian Democratic Union (HDZ) stated that the HDZ did not support the inclusion of anti-discrimination provisions concerning sexual orientation in the Constitution.

On 23 February 2010 session of the Committee for the Constitution, Rules of Procedure and Political System was held. Representative of the Lesbian Group Kontra presented proposals of amendments that would include sexual orientation and same-sex unions in the Constitution of the Republic of Croatia.

On 11 May 2010 the media reported that the president of the Social Democratic Party, Mr Zoran Milanović, stated that he would send a proposal to the HDZ that "the Constitution guarantees rights and freedoms irrespective of sexual orientation as well". The statement related to an amendment to Art 14, but not Arts 17, 39 and 61 of the Constitution. The proposal was never put into parliamentary procedure.

Considering that Lesbian Group Kontra in cooperation with Iskorak and the Women's Network of Croatia sent the draft amendments to all political parties in November 2009, it remains unclear why the president of the SDP did not make his public statements concerning the inclusion of sexual orientation in the Constitution until May 2010.

In *Jutarnji List* of 11 May it was stated: "The SDP admit that the proposal was sent to them by Iskorak and Kontra but it simply escaped their attention." From the above it is easy to draw the conclusion that there was no real intention to include the above amendments in the Constitution of the Republic of Croatia.

The president of the HSS, Mr Josip Friščić, made the following statement to the media concerning the amendments to Art 14 of the Constitution: "I do not know why some should be more equal than others." This demonstrated that as well as a lack of political will to oppose discrimination on the basis of sexual orientation, there also exists in the ruling coalition a basic and worrying lack of understanding of the Constitution of the Republic of Croatia, i.e. its provisions which concern equality before the law (Art 14).

At the sitting of the Committee for the Constitution, Rules of Procedure and Political System on 10 June 2010, the president of the largest opposition party, Mr Zoran Milanović, stated that the SDP was giving up the proposal to include sexual orientation in the Constitution because “the HDZ has no sympathy for it”.

On 16 June 2010 the amendments to the Constitution were adopted. None of the proposed amendments concerning the protection of the human rights of sexual and gender minorities were put into parliamentary procedure or adopted by the Croatian Parliament.

The intentional failure by the state institutions after a long public debate to include sexual orientation in the anti-discriminatory articles in which there already exist certain differential characteristics such as race, sex and religion, create a hierarchy of human rights in Croatia. Thus a clear message has been given to the public that there is no political will to oppose discrimination on the basis of sexual orientation in Croatia.

### **Personal Names Act and State Registries Act**

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

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

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

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

Seeing that no protective mechanisms are prescribed in the above laws for cases of change of gender, all citizens are able to find out about an individual person’s change of gender through the change of name procedure when the data is published on a notice board, and later on that information is also visible in documents (birth certificates).

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

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

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

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

It is experts' opinion that transsexual persons do not suffer from mental illnesses, but they are often deeply unhappy persons who are aware from an early age that they are different. The feeling that they are unable to express their true nature is a constant source of sadness, helplessness and not being understood or accepted. Social changes are difficult, from changing documents to confronting the disgust of their surroundings.

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

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

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

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

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

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

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

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

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

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

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

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

An example of the breach of human rights which is the result of precisely the existing legal regulations is the case of a minor whose mother approached us over a year ago. Namely, her child had been badly treated in school by both pupils and teachers because of its gender identity and the Ombudswoman for Children had even reacted. After this, the child should have registered in a new school, but it was not possible to change the data on gender in the child’s personal documents according to existing legal regulations (the name was changed to neutral with another explanation). Therefore data about the child’s change of gender will be once more available to the staff of the new school. Given that personal documents are presented when registering for extracurricular activities and on numerous other occasions, there exist another large number of people without legal interest to whom the private data about the child will be available.

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

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

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

— *The Bill on Amendments to the State Registries Act and the Bill on Amendments to the Personal Names Act*

We drew up a draft Bill on Amendments to the State Registries Act and draft Bill on Amendments to the Personal Names Act and presented them to state institutions and political parties at a round table entitled “Right of Respect of Private Life” on 19 January 2010. Present at the roundtable were the Ombudswoman for Gender Quality, a representative of the Ministry of External Affairs and European Integration, a representative of the Croatian Parliament’s Committee for Human Rights and the Social Democratic Party, and a representative of the Croatian People’s Party. After the roundtable the SDP put the drafts into parliamentary procedure.

The proposals contained protection mechanisms which would ensure that a request for change of name is not published on a noticeboard in the responsible municipality, and that changes of sex and name are not evident on a person’s birth certificate. It would also allow people who have not undergone the complete sex-change procedure to change their data on that document, which is particularly important for the protection of the human rights of children and minors who sometimes undergo sex-change procedures over many years, but are not able to complete the procedure because of their age.

The draft bills were put onto the agenda of the Croatian Parliament at the very end of initially the 17<sup>th</sup>, then the 18<sup>th</sup> and finally the 20<sup>th</sup> sitting of the Croatian Parliament and were refused fast track procedure even though they related to proposed legislation whose aim was to halt the breach of the human rights of an extremely vulnerable group.

On 18 March 2010 the Croatian Government published its Opinion concerning the Bill on Amendments to the Personal Names Act.

The published Opinion is generalized, unfounded, contradictory and displays a lack of understanding of the substance of the proposals which endeavour to protect the human rights of citizens.

Namely, the Government states that the proposals relate to a small number of people and is therefore unacceptable. It is the government’s obligation to protect the human rights of all

its citizens. Discrimination is by its very nature always directed at a small number of people, so according to the logic of the Government's argument every revelation of discrimination would be correspondingly unfounded because it did not affect the majority. The government's Opinion is contrary to the provisions of the Constitution, legally binding Conventions and the Anti-Discrimination Act.

It is further stated in the Opinion that "in the context of indirect discrimination it is necessary to prove the disproportionate effect of a seemingly neutral provision", which is completely outside the context of the proposals. The above statement is not correct even in the case of a court case because it is necessary to show that discrimination is probable, and the burden of proof is on the defendant. Through this Opinion the Government is discharging itself of the positive obligation which it took on by signing the Convention for the Protection of Human Rights and Fundamental Freedoms and will not be able to exculpate itself if it is sued by a discriminated citizen.

The Government's statements about the non-existence of absolute rights and the possibility of the limitation of certain rights again displays an elementary lack of awareness and implementation of the mandatory provisions of the Convention for the Protection of Human Rights. Some rights are absolute, and some are not. A country may limit those which are not, if there exists a legitimate interest for that, but any limitation must be proportional. In this particular case the state has no justified interest for limiting the rights of an individual.

Furthermore, the statement that the proposals are unacceptable because they relate only to transsexual persons and takes no account of other categories of persons and their possible discrimination, also displays elementary unawareness of the essence of human rights protection. It is not clear how the discrimination of other persons might occur because the government does not state a single reason on which it bases its opinion.

Finally the government states that it will, however, delete the entire article, in relation to all citizens, which makes the whole Opinion of the government hypocritical, motivated exclusively by the need for political confrontation without an argued and reasonable explanation.

In its Opinion on the Bill on Amendments to the State Registries Act, the government shows that it does not even know the positive legislative regulation on the rights of transgender persons, and denies the right to health care and the right to the protection of family life of transgender persons with whom the above legal proposal does not even concern itself.

Namely, as one of the reasons for not accepting the Bill, the fact is stated that it might happen "that a person who is married or is a parent might seek a change of sex".

We would emphasise that according to positive legislation it is now already formally possible to change data concerning gender on documents after completing a sex reassignment operation, but there exist certain flaws in the laws which have also been shown through practice concerning the protection to the right to privacy, and which this Bill would remove.

Also, according to positive legislation in the Republic of Croatia it is possible to change gender at the expense of the Croatian Institute for Health Insurance, or to seek treatment abroad at the Institute's expense. There are no legal barriers to changing sex for a person who is a parent. Furthermore, in national and international legislation there exists a ban on discrimination on the basis of gender identity and a positive obligation to protect family life.

The only aim of the proposed draft bills was the protection of the privacy of transgender persons so that data about a change of sex does not become available to persons without a legal interest (to employers, schools, etc via a birth certificate). Not only did the Government refuse to support the introduction of protection mechanisms concerning the right to privacy of transgender persons, but in its Opinion it also attacked the right to health care and family life of transgender persons.

In a shameful debate in the Croatian Parliament on 10 December 2010 (which only occurred by chance because all the items on the agenda were put out of order at the last minute), only four members of Parliament applied to speak. On the day before the International Human Rights Day, almost nobody in the Croatian Parliament was interested in a debate about human rights.

In the name of the HDZ Parliamentary party, Ana Lovrin repeated some of the statements from the Government's Opinion on the Bill on Amendments to the Personal Names Act. She said that she would propose a new Personal Names Bill by the end of the year. As at the date of this Report, the government has not sent such a proposal into Parliamentary procedure.

We would also like to mention that during the debate on the Anti-Discrimination Act in 2008 it was evident that the majority of representatives in the Croatian Parliament did not even know what gender identity is.

The Anti-Discrimination Act which forbids discrimination on the basis of gender identity thus still exists only on paper, because other laws are not harmonised with it due to a lack of political will. By this behaviour discrimination of transgender persons is openly supported by state institutions which refused to protect the human rights of transgender persons on precisely International Human Rights Day.

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### **The Criminal Code and Public Order Offences Act**

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In 2006 on the initiative of 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 and 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 reads:

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.

As well as the changes in Art 89, in Art 91 for the crime of first-degree murder, the word hatred was added to point 6, so point 6 reads: 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. A working group was also set up to draft a new Public Order Offences



Act. Representatives of organisations concerned with the protection of the rights of minorities were not included in the working groups.

On 3 March 2010 *Lesbian Group Kontra*, *Serbian Democratic Forum* and *Better Future*, associations concerned with the rights of three marginalised groups – Serb and Roma national minorities and LGBT persons, organised a round table on the topic “Hate crime and hate speech in Croatian legislation and practice”.

Through the cooperation of the three associations draft amendments were prepared whose aim was the better punishment of hate crimes and hate speech, and which were developed from work with users.

— *The proposals of Kontra, SDF and Better Future for amendments to the Criminal Code*

Because of the unclear aim of the provision of Art 89 para 36 by which “hate crime” was introduced and which relates to every criminal offence under the Act, if it is committed out of hatred, we proposed the introduction of aggravating characteristics to certain criminal offences.

We believe that taking into consideration the occurrence and social danger of certain criminal acts it is necessary to prescribe in a special part of the Criminal Code and under individual criminal acts that it is a matter of an aggravated form of the criminal acts with consequently heavier sentences if the act was committed out of hatred. The criminal acts for which we proposed the introduction of hate crime as an aggravated form are: actual bodily harm, grievous bodily harm, violation of the equality of citizens, violation of the right to work and other work-related rights, illegal deprivation of freedom, kidnapping, violence, threatening behaviour, racial or other discrimination, rape, sexual intercourse with a helpless person, sexual intercourse with a child, acts of indecency, removal of personal or family opportunities, serious theft, destruction or damage of other people’s possessions, negligent medication, failure to provide medical aid, bringing life and property into danger by dangerous acts or means, spreading of false and disturbing rumours and violent behaviour.

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

Grievous bodily harm

Article 99

(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 three years.

(2) A person who causes actual bodily harm or damages the health of another person so seriously that it brings into danger or destroys the life of the injured party, or permanently or significantly weakens any important part of his body or important organ, or results in the injured party’s permanent incapacity to work, or permanently or seriously damages his health or causes permanent disfigurement, will be punished by a prison sentence of one to eight years.

(3) If the injured person dies as a result of the grievous bodily harm, the perpetrator will be punished by a prison sentence of one to ten years.

**(4) If the criminal act under para 1 is committed as a hate crime, the perpetrator will be punished by a prison sentence of one to five years.**

**(5) If the criminal act under para 2 of this article was committed as a hate crime, the perpetrator will be punished by a prison sentence of one to ten years.**

**(6) If in cases under para 4 or 5 of this article the conditions under para 3 of this article occur, the perpetrator will be punished by a prison sentence of at least three years.**

(7) The perpetrator will be punished for an attempt at committing the criminal act under paragraph 1 of this article.

When individual cases from the media, or from everyday life, are partially analysed we must unfortunately conclude that it is necessary to act precisely in such a way. This is both for reasons of general and special prevention. Namely, it is undisputed that in recent times in society there have been occurrences of behaviour by individuals which in themselves have elements of various criminal acts and which it can be relatively easily concluded were motivated or inspired by hatred towards somebody because of their differences.

Those differences have sometimes been a matter of national identity, membership of a certain ethnic or religious community, sexual orientation or some other differentiating element.

Such examples are the case of a doctor who refused to treat a patient because of his nationality, cases of deliberate destruction of the property of Serb returnees, cases of threats towards such people, cases of violent behaviour towards Serb returnees, Roma, LGBT persons and other social groups.

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 an aggravated form in a separate part of the Criminal Code under individual criminal acts. In other cases of possible occurrence connected to other criminal acts, hate crime will be taken as an aggravating circumstance.

We also sought the introduction of the phrase “gender identity” in the definition of hate crime in order to harmonise it with the Anti-Discrimination Act, which is an organic law which ensures the protection and promotion of equality as the highest values of the constitutional order of the Republic of Croatia. Considering that the Anti-Discrimination Act was adopted a little under two years ago, we consider it important to introduce the expression “gender identity” in Art 89 para 36. This is important because the fact that a seemingly neutral provision, criterion or practice can place people against whom a “hate crime” due to their gender identity has been committed in a more unfavourable position, and the perception of the wider public demonstrates the need for the sensitisation and development of a non-discriminatory conscience by inducing wider standards into the Criminal Code.

— *Proposed amendments to the definition of hate crime:*

Article 89

**(36)** A hate crime is any criminal act under this Act committed out of hatred towards a person because of their race, skin colour, gender, language, religion, political or other belief, national or social origin, property, birth, education, social position, age, health status, **sexual orientation, gender identity** or other characteristics.

Furthermore, we proposed that a new definition of “hate crime” should be introduced, as well as editing the provisions of Art 174 of the Criminal Code – spreading racial or other discrimination, considering that the existing provision is not in accordance with the Conventions which bind Croatia.

The current formulation under Art 174 of the Criminal Code provides the possibility of punishing those perpetrators who publicly state or spread thoughts about superiority or inferiority, but does not sanction racial or other hatred or discrimination which incites war or the use of violence or spreading of intolerance.

The formulation of the article is not in accordance with the recommendation of the Council of Europe (No. R (97) 20) because “hate crime” is not totally covered by a legal resolution currently in force.

Numerous occurrences of “hate speech”, and not just the statement of ideas about superiority or inferiority, should be regulated by the Criminal Code. Wartime experiences demonstrate the need for every possible knowledge to be mobilised by the use of preventative, but also repressive, mechanisms with the aim of a general condemnation of hate speech and actions motivated by hatred.

Furthermore the formulation of Article 174 is not in accordance with the Additional Protocol to the Convention on Cybercrime, about the criminalisation of acts of racist or xenophobic nature committed via computer systems, because the current para 4 refers only to hate speech in relation to genocide or crimes against humanity. The article does 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 advance, 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.

— *Proposed amendments to Art 174:*

Racial or other discrimination

Article 174

(1) A person who on the basis of difference in race, faith, language, political or other beliefs, property, birth, education, social position, **sexual orientation, gender identity** or other characteristics, gender, skin colour, nationality or ethnic origin breaches the fundamental human rights and freedoms recognised by the international community, **will be punished by a prison sentence of one** to five years.

(2) A person who persecutes organisations or individuals because of their promotion of people’s equality will be punished by the sentence under paragraph 1 of this Article.

(3) A person who with the aim of spreading racial, religious, gender, national, ethnic hatred or hatred on the basis of skin colour **or sexual orientation or gender identity** or other characteristics, or with the aim of belittling, publicly states or spreads thoughts about the superiority or inferiority of a race, ethnic or religious community, gender, nation or thoughts about superiority or inferiority on the basis of skin colour or sexual orientation, or other characteristics will be punished by a prison sentence **of six months** to three years.

(4) A person who praises or justifies fascist, Nazi or other totalitarian ideologies or crimes committed against social groups or their members because of race, faith, national or ethnic origin or viewpoint; who incites or promotes racism, xenophobia, intolerant Nazi, fascist or neo-Ustasha ideology; who incites war or violence from national, ethnic, race or religious hatred or discrimination; who uses pronouncements, greetings or symbols which could cause a disturbance of public order or encourage racial, national or religious hatred or intolerance and/or hatred or intolerance towards certain social groups or their members who are different on the basis of their gender, sexual orientation or other characteristics, will be punished by a prison sentence of one to ten years.

(5) A person who, with the aim under para 3 of this article, distributes or otherwise makes available to the public materials which promote, significantly understate, approve or justify the criminal acts of genocide or crimes against humanity, will be punished by a prison sentence of **six months to three years**.

(6) A person who, with the aid of a computer system distributes or otherwise makes available to the public materials of racist, ethnic, religious, national or other intolerance or who produces, sells, imports or exports or otherwise makes available to the public or for that purpose possesses promotional material of racial, ethnic, religious or national intolerance or other intolerance, will be punished with a prison sentence of six months to five years.

The draft Criminal Code has not been made public as of the date of this report.

#### — *Public Order Offences Bill*

In December 2009 the working group of the Ministry of Internal Affairs prepared a Public Order Offences Bill which introduced Article 17 – promotion of intolerance as an offence punishable by a fine or prison sentence of a maximum of 60 days.

The proposed article 17 qualifies the following behaviour as an offence:

“(1) A person who in a public place by speech, singing, playing music, writing, drawing, emphasising, reproducing speech, music, texts, pictures or drawings with appropriate equipment, praises or otherwise supports regimes, organisations, parties, movements, associations, ideologies or ideas which advance, promote or encourage violence or discrimination against any person or group on the basis of the difference of their race, ethnic identity, skin colour... will be punished by a fine of HRK 3,000 to HRK 5,000 or a prison sentence of up to 30 days.

(2) A person who, with the aid of a computer system distributes or otherwise makes available to the public materials of racial, ethnic, religious or national intolerance will be punished by a fine of HRK 5,000 to HRK 10,000 or a prison sentence of up to 60 days.

(3) A person who produces, sells, imports and exports or otherwise makes available to the public or the possesses in larger numbers promotional material of racial, ethnic, religious or national intolerance will be punished by a fine of HRK 5,000 to HRK 10,000 or a prison sentence of up to 60 days.”

This draft bill is of concern because it introduces socially dangerous behaviour motivated by hatred which must belong to criminal law regulations into the sphere of legal regulations of misdemeanours “reserved” for less socially dangerous acts.

The proposed amendments to the Public Order Offences Act are in direct contradiction to the International Convention on the Elimination of All Forms of Racial Discrimination which was adopted by the General Assembly of the United Nations in 1965, and is in contradiction to all international documents which bind the Republic of Croatia and are stated in the introductory part of this proposal under the title “basis for adopting the law”.

In light of the fact that the European Court of Human Rights in Strasbourg brought a judgement in June 2009 in the case *Maresti versus Croatia* (Application No. 55759/07), the Ministry’s draft Public Order Offences Bill of December 2009 is unacceptable because it introduces discriminatory legislation. Namely, in the sense of the argument of the above judgement, a violation of the rule “ne bis in idem” will occur if misdemeanour proceedings are brought against the perpetrator first, which will consequently leads to the favourable treatment of perpetrators of such socially dangerous acts, because they will be exempt from responsibility under the rules of criminal proceedings.

Representatives of the Ministry of Justice, Ministry of Internal Affairs, Office for Human Rights of the Government of the Republic of Croatia, the Committee for Human Rights of the Croatian Parliament, Ombudswoman for Gender Quality, etc, participated in the round table of Kontra, SDF and Better Future at which we presented the above problem and submitted our proposed amendments to the Criminal Code and the Public Order Offences Act.

— *Working group for monitoring hate crime*

During the debate at a round table we were informed of the establishment of the Working Group for Monitoring Hate Crime coordinated by the Office for Human Rights of the Government of the Republic of Croatia, and we suggested the inclusion in the working group of non-governmental organisations which provide legal help to victims of hate crime.

The first meeting of the Working Group for Monitoring Hate Crime was held at the premises of the Office for Human Rights of the Government of the Republic of Croatia on 9 March 2010, with the agenda “Improving criminal legislation concerning the definition of hate speech and hate crime”.

*The following conclusions were reached at the meeting:*

- (1) The Working Group will once more consider the legislative determination of the definition of hate crime – which will be determined as a separate criminal act in conjunction with other criminal acts or as an aggravated form of separate criminal acts, in which there exists the possibility of incomplete coverage of all possible/future criminal acts,*
- (2) To include in the Working Group a representative of the Zagreb County Court in order to consider actual court practice concerning hate crimes,*
- (3) To include representatives of organisations of civil society concerned with the above problem,*
- (4) To harmonise the amendments of the Criminal and Misdemeanour Codes/Public Order Offences Act, in order to avoid double proceedings, especially after the case of Maresti versus the Republic of Croatia.*

It can be seen from the conclusions of the meeting that several problems which we have pointed out to the responsible institutions were considered at the round table. Above all the

need for harsher punishments for hate crime, and the inclusion of representatives of civil society in the Working Group and finally the problem of adopting provisions about incitement of intolerance into the Public Order Offences Act which would result in double proceedings.

The non-governmental organisations Iskorak and Kontra sent a letter to the Office for Human Rights of the Republic of Croatia on 4 January 2011 in which they expressed an interest in participating in the Working Group for Monitoring Hate Crime.

Kontra and Iskorak have been involved in offering direct legal help to victims of hate crime for the last nine years. Also, we have drafted amendments which introduced the definition of hate crime into the Criminal Code in 2006, and actively collaborate with other non-governmental organisations (Serbian Democratic Forum, Better Future, etc) on initiatives for improving the legislative framework and education of the public concerning hate crime.

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 belief in state institutions. Precisely for this reason non-governmental organisations for the protection of the rights of LGBT people have available data concerning hate crimes based on the sexual orientation or gender identity of the injured party.

Unfortunately, on 19 January we received a reply that only one representative of civil society would participate in the Working Group and that person would be nominated by the Civil Society Advisory Body.

Because members of minority social groups generally rarely report hate crimes, organisations such as Iskorak and Kontra, but also the SDF and other organisations which offer legal assistance to minority groups have important information at their disposal. It is of concern that the Working Group for Monitoring Hate Crimes did not recognise this.

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## **Families Act**

After the first judgements of the European Court of Human Rights in favour of same-sex couples – *Salgueiro da Silva Mouta versus Portugal* (1999, parenthood) and *Karner versus Austria* (2003, inheritance rights, flat occupation), in 2010 the first judgements were made in which the Court confirmed that same-sex partnerships are considered to be families according to the European Convention on Human Rights (*Schalk and Kopf versus Austria*, *P.B. and J.S. versus Austria*).

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 maintain, right to regulate the property and 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, while 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 find their regulation in other legal acts. Although formally Art 21 of the Same-Sex Unions Act contains a ban of discrimination on the basis of same-sex union, it seems that it does not represent a sufficient legal basis for the application of other laws. Numerous rights from other laws are applied to marital and non-marital partners and the lack of application to same-sex unions as well supports the argument that this is a discriminatory practice.

— *Proposed amendments to the Families Act presented by the associations Kontra and Iskorak*

On International Human Rights Day, 10 December 2010, *Lesbian Group Kontra* and *Iskorak – centre for the rights of sexual and gender minorities* organised a round table with the theme “The right to protection of the family life of same-sex couples”.

At the round table we presented for the first time a draft legal proposal whose goal is the protection of the family life of same-sex couples – a draft Bill on Amendments to the Families Act.

The introduction of two institutions was proposed – same-sex unions and unregistered same-sex unions – with equal rights and obligations as marriage and non-marital unions, by which protection of the family life of same-sex couples would be assured.

The guarantees under Art 35 of the Constitution and Art 8 of the European Convention for the Protection of Human Rights protect the privacy, respect and legal protection of personal and family life, dignity, reputation and honour and state that everything must be regarded from a legal point of view as well. The guarantees which protect family life relate to all forms of family, including same-sex unions, which comes out of the practice of the European Court of Human Rights.

The Republic of Croatia as a member of the Council of Europe and a signatory of the Convention has not taken all necessary steps for the promotion of equality of all people.

The legal regulations anticipated by the Same-Sex Unions Act are not sufficient because they regulate a minimal range of rights, at the same time not giving a justification why such a minimal range can be achieved relating to a non-marital union. The fact that it does not foresee that a same-sex union can be registered represents a problem on the question of proving such a union when it is a matter of asserting certain rights. Numerous rights, available to married and non-marital couples, such as the right to inheritance, rights to family pension, rights to health or pension insurance via partner are not available to same-sex couples, which represents discrimination.

At the presentation of the proposed amendments to the Families Act to the public, representatives of the Ministry of Families, War Veterans and Intergenerational Solidarity, Ministry of Foreign Affairs, Office for Human Rights of the Government of the Republic of Croatia, Office for Gender Equality of the Government of the Republic of Croatia, the Committee for Human Rights of the Croatian Parliament, and the Ombudswoman for Gender Equality all participated. The representative of the SDP stated his support for the proposal.

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## **Asylum Act**

On 29 April 2010 the Government of the Republic of Croatia prepared a Bill on Amendments to the Asylum Act.

Namely, the Government decided to change some provisions of the existing Asylum Act and intervene in the definition of “specific social groups”. Given that the Asylum Act recognises the possibility of granting asylum to asylum seekers if they are persecuted in their own country on the basis of sexual orientation, the government proposes the introduction of the following statement: “Sexual orientation cannot be considered an act which is considered a criminal act according to the legislation of the Republic of Croatia.”

Sexual orientation cannot be considered “an act”, but as “a characteristic”. Croatian criminal legislation does not recognise criminal acts highlighting the sexual orientation of the offender. The descriptions of criminal acts against sexual freedom and morality in the Criminal Code do not include the sexual orientation of the perpetrator and this cannot be a separate characteristic for any criminal act, nor does criminal legislation define the concept of “sexual orientation”.

Homosexual relations between adults who consent to sexual intercourse have been decriminalised in Croatia for over thirty years, and over ten years have passed since the minimum age of consent to sexual intercourse was unified for heterosexuals and homosexuals in the Criminal Code.

Considering the above facts, on 7 May 2010 the association Iskorak sent the Croatian Parliament a proposed amendment which would correct the mistake in the definition of the concept of sexual orientation.

The Croatian Parliament passed the Act on Amendments to the Asylum Act on 2 July 2010. The proposed amendment of Iskorak was not even considered at the sitting.

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## **3. Cooperation with state institutions and bodies**

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### **Government of the Republic of Croatia**

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The Programme of the Government of the Republic of Croatia in its mandate from 2008 to 2011 does not include protection from discrimination as one of its aims nor does it contain particular measures in this area. The exception is particular measures relating to the specific removal of discriminatory conditions in the employment of young people (under the chapter “Young People”). Also, in the chapter “Commerce” the following is stated: “In the area which affects work in the commercial sector, and is encompassed by the Labour Act, it is necessary to take account of and urgently pass amendments to the Labour Act in the following segments: protection of workers from discrimination on any basis...”

The Government of the Republic of Croatia is the implementing body of Measure 1.5.2 of the National Policy of Gender Equality, in which it is stated that representatives of organisations for



the equality of sexual and gender minorities should be included in working bodies for adopting laws, programmes and strategies concerning the rights of sexual minorities. The Government regularly fails to implement this measure, which was shown in 2010 by its failure to include representatives of organisations for the rights of sexual and gender minorities in working groups for the preparation of the draft Criminal Code Bill and Public Order Offences Bill. Also, despite a request by the associations Kontra and Iskorak, representatives of organisations for the rights of sexual and gender minorities were not included in the Working Group for Monitoring Hate Crime.

The Government of the Republic of Croatia in the last seven years has deliberately failed to implement its own anti-discriminatory laws (adopted for reasons of accession to the European Union), as well as international documents to which it is a signatory regarding the protection of the rights of sexual minorities, and especially regarding the protection of the rights of same-sex couples.

The specific laws which the Government proposes, and Parliament passes, are regularly contrary to positive anti-discriminatory legislation. For example, in 2009 this was clear from the adoption of the Labour Act and *Medical Fertilization Act*, of which the former is discriminatory regarding sexual orientation, while the latter is discriminatory regarding marital status and sexual orientation.

The Government also refuses to support legal changes which would remove the discrimination of transgender persons, which was shown by the examples of the Bill on Amendments to the State Registries Act and Bill on Amendments to the Personal Names Act.

Furthermore, in 2010 the Government refused to remove the homophobic content from the textbook *With Christ to Life* for the eighth form of primary school (the textbook was approved by the Ministry of Science, Education and Sport, and is on the official list of textbooks for primary schools for the academic year 2010/2011), which is further evidence of the lack of implementation of existing anti-discrimination provisions.

Anti-discrimination laws which have been adopted remain in force only on paper because there is no political will to provide adequate protection of human rights for one of the most vulnerable social groups.

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

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Although work on the subject of the protection of the rights of sexual and gender minorities falls under the National Policy for Promotion of Gender Equality, it could not be seen from the activities of the Office in 2009 that it was at all involving itself in this area. Also, from the competition held for the granting of financial support to associations by the Office it was obvious that not a single project or programme was approved which was concerned with sexual or gender minorities.

The Office for Gender Equality has no role at all in the implementation of even the meagre measures passed such as the National Policy for the Promotion of Gender Equality and the National Programme for the Protection and Promotion of Human Rights concerning the rights of sexual and gender minorities.

— *National Policy for the Promotion of Gender Equality 2006–2010*

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

In its sitting on 13 October 2006 the Croatian Parliament adopted a National Policy for the Promotion of Gender Equality 2006–2010 (OG 114/06) which was drawn up by the Office for Gender Equality of the Government of the Republic of Croatia. In 2006 Croatia did not have a national policy in this area for a full ten months because of the unprofessional work of the Office.

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

*In Chapter 3 “Commitments in the process of joining the European Union”, the following legal ground in the field of equal opportunities is included: fighting discrimination on the basis of sex and sexual orientation.*

*The strategic framework for implementation of the Policy on Gender Equality and the action plan contained a chapter on “Improvement of ways to combat and eliminate discrimination based on sexual orientation”. This chapter contained the following provisions:*

*1.5.1. The Ministry of Justice and the Ministry of Internal Affairs will conduct research with the aim of analysing judicial practice and police conduct while dealing with criminal offences motivated by the sexual orientation of the injured party. Deadline for the implementation of this activity: 2007.*

*1.5.2. Representatives of organizations for equality of sexual and gender minorities will be included in working bodies for adoption of laws, programmes and strategies, which are relevant to the rights of sexual minorities. Implementing body: competent bodies of state administration, Government of the Republic of Croatia. Deadline for implementation: 2007–2010.*

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

Namely, to clarify the statements from the previous paragraph we quote the amendments that were sent to the Office for Gender Equality on our behalf:

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

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

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

The majority of rights available to different-sex married and cohabiting partners are not available to same-sex partners. That is discrimination based on sexual orientation and same-sex union, which is contrary to provisions of the Gender Equality Act and Same-Sex Unions Act.

One of the aims of this programme chapter is the elimination of discrimination against same-sex couples in Croatian legislation.

1. *The Ministry of the Family, War Veterans, and Intergenerational Solidarity will propose a bill on changes to the Same-Sex Unions Act.*

*Implementation deadline: 2007*

2. *The Ministry of Justice and the Ministry of the Interior will make an analysis of police conduct and judicial practice in regards to criminal offences motivated by the sexual orientation of injured parties.*

*Implementation deadline: 2007*

3. *The Justice Academy, the Police Academy, the Ministry of Justice and the Ministry of the Interior will conduct workshops with the aim of systematic education of police officers, judges and state attorneys regarding cases related to discrimination and violence against sexual minorities. The aim of this provision is to enhance legal protection and help for victims of violence and discrimination.*

*Implementation deadline: 2007 and continuing thereafter*

4. *The Ministry of Science, Education and Sport will pay special attention to sensitivity to the rights of sexual minorities during the creation of the schoolbooks standard. The Ministry will create a special Instruction for the Assessment of the Quality of Schoolbooks from the perspective of the rights of sexual minorities.*

*Implementation deadline: 2007*

5. *The Ministry of Science, Education and Sport, the Institute for Education, the Office of the Ombuds-woman for Gender Equality and the Agency for Vocational Education will create an expert working group for creation of a programme of education of those responsible for educational activities.*

*Implementation deadline: 2007*

6. *The Ministry of Science, Education and Sport will include experts from the field of the human rights of sexual and gender minorities in expert committees for the creation of regulations and other documents under jurisdiction of the Ministry (educational plans and programmes, Regulation on Self Assessment, Codex on Ethics).*

*Implementation deadline: 2006/2007*

7. *The Government will include experts from the field of the human rights of sexual and gender minorities in working groups for the creation and adoption of laws, programmes, and strategies related to rights of sexual and gender minorities.*

*Implementation deadline: 2007 and continuing thereafter.*

It is clear by comparing the proposal of the Lesbian Group Kontra, Iskorak and the Women's Network with the Policy adopted by the Government that although it was suggested that the need for protection of the rights of sexual and gender minorities be explained, and seven activities were proposed, the explanation was not included, and only two activities were accepted. Sexual and gender minorities especially lesbian, bisexual and transgender woman are because of their status openly discriminated groups subjected to discrimination and violence. According to the Gender Equality Act the Office for Gender Equality has a duty to educate the public and send a clear message that this situation is unacceptable. In fact the Office has failed to do this by

avoiding the inclusion of a description of the situation and need for the protection of the rights of sexual minorities, especially lesbian, bisexual and transgender women.

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

The discriminatory behaviour of police officers while dealing with cases of discrimination and violence against sexual and gender minorities was one of the most important points of all previous reports on the status of human rights of sexual minorities in Croatia and one of the biggest problems for the Croatian LGBT community today. The Progress Reports of the European Commission for 2007, 2008 and 2009 repeatedly state that there has been no improvement in the Republic of Croatia concerning the implementation of legislation on hate crime. One of the main criticisms of the European Commission in the last three years has been insufficient support to victims of discrimination in the Republic of Croatia. The Progress Report for 2009 states that lesbians, gays and bisexual persons are subject to threats and attacks and that many cases have not been adequately investigated by the police and judicial authorities and that a large number of cases remain unreported.

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

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

The Policy itself in the majority of cases is not explicit about time limits. The ambiguous definitions and postponed activities contained in this Policy point to the fact that there was no real political will on the part of the Government to combat discrimination based on gender and sexual orientation.

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

February 2010 the Office published the Report on the Implementation of the National Policy for Promotion of Gender Equality 2006 – 2010 for the period from October 2006 until December 2008.

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

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

Implementing bodies: Ministry of Justice, Ministry of Internal Affairs

Timetable of implementation: 2007

Reporting bodies: Ministry of Justice, Ministry of Internal Affairs

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

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

In regards to the above report of the Ministry of Justice we emphasise that the Act on Amendments to the Criminal Code which contains the quoted provision about hate crimes came into force on 1 October 2006. The purpose of introducing the definition of hate crime was, basically, to state greater social condemnation of such type of criminality and in accordance with this it is necessary to keep separate statistics and indicators of the changing rates of this criminality, as well as to specially emphasise their occurrences in society, which could also be seen in the annual report on the work of state attorneys' offices. Four years after introducing the definition of hate crimes into the Criminal Code and three years after expiry of the deadline for implementation of the activity of analysis of court practice and police behaviour concerning criminal offences motivated by the sexual orientation of the injured party, it is stated in the report on implementation of this activity that consideration of the possibility of collecting such extensive data is in progress. Such actions by state institutions confirm the fact that there is no political will for quality engagement regarding this problem.

The first thing we noticed in the report of the Ministry of Internal Affairs is that it states incorrectly that Art 89 defines hate crime as a new criminal offence. Therefore, the persons who reported on implementation of this activity to the Ministry did not even know what hate crime

is (it is not defined as a separate criminal offence, but as an aggravating circumstance for existing criminal offences). Furthermore, since this report was for the period from October 2006 until December 2008 (published in February 2010), it remains unclear how the Ministry of Interior did not manage to collect the number of reports made to the State Attorney's Office and the status of cases regarding hate crimes. Namely, the State Attorney's Office delivered information on the number of reports to associations Kontra and Iskorak in December 2008. All this leads us to conclusion that there was no real attempt to implement this activity on the part of the relevant institutions.

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

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

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

Timetable of implementation: 2007 – 2010

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

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

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

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

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

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

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

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

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

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

In the period from October 2006 until the day of publication of this report, a number of working bodies for drafting laws, programmes and strategies concerning rights of sexual and gender minorities were formed. In the above period not a single working group included representatives of associations for the protection of the rights of sexual and gender minorities. That Activity 1.5.2 will never be implemented already became clear on the first occasion, during the creation of the National Programme of Protection and Promotion of Human Rights (2007), during the creation of the draft of the Anti-Discrimination Bill (2008) and the Medical Insemination Bill (2009), and then also during the creation of the draft of Criminal Code and the Misdemeanours against Public Peace and Order Act (2010) since representatives of sexual and gender minorities’ organisations were not included in working groups for drafting these documents as prescribed in the mentioned activity.

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

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

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

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

98.1. Measure: Organisation of public debates and seminars

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

Timeframe: 2008-2011

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

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

Timeframe: 2008-2011

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

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

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

Timeframe: 2009

None of the above measures was implemented. In 2008 and 2009 the Office for Gender Equality did not organise any public debates or seminars related to the rights of sexual and gender minorities. Not a single project or programme was selected from the area of sexual and gender minorities in the mentioned period through the competition for the allocation of financial support to organisations of civil society. As at the day of publishing this report, the Office has not published the analysis of legislation related to rights of sexual minorities. As at the day of publishing this report, the Office has not replied to the request made by the Lesbian Group Kontra and the Women's Network of Croatia on 30 December 2009, nor to the same request made on 3 January 2011, for information on implementation of actions from the National Programme for the Protection and Promotion of Human Rights.

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

The Office to date has not supported a single one of the proposed legal initiatives of civil society organisations for the advancement of the status of sexual and gender minorities (an amendment to the Sports Act, which would include sexual orientation in the anti-discrimination provisions of that Act, and the Registered Partnership Bill from 2006, amendments to Asylum Bill, Foreigners Bill, Anti-Discrimination Bill, Labour Bill, Medical Insemination Bill), nor the introduction of effective measures into national policies and programmes. The Office did not respond to a single request of civil society organisations related to implementation of the National Policy for Gender Equality and National Programme for Protection of Human Rights and Rights of National Minorities.

The only activity of the Office for Gender Equality from the adoption of the National Policy for Gender Equality (2006) until today regarding rights of sexual and gender minorities was the round-table discussion that the Office co-organised with the association Second Step in 2007



and granting HRK 6,600 (€904) to Lesbian Group Kontra via a competition in 2006 (the association's financial report was never approved, which we believe is connected with the fact that the Kontra publicly criticised the work of the Office).

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

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

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

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

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

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

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

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

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

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

Instead of that, in 2009 the Office for Human Rights disassociated itself from the only activity related to sexual minorities that it co-financed accidentally, because the project of the association Iskorak fell into the area of dealing with the problem of HIV, while the area of combating discrimination based on sexual orientation and gender identity, following the principle of standard practice of the Office, was not listed among priority areas for financing.

On 15 February 2010 the Government Office for Human Rights launched a competition for the allocation of funds from the state budget for which it did not invite associations to register their projects designed to fight against discrimination of sexual and gender minorities. After an incident in which the Office disassociated itself from the financing of a brochure intended for the MSM population in 2009, in 2010 the Office for the first time in the category concerning the prevention of HIV defined exclusively one area and that was prevention among drug addicts. Given that the probable route of infection in 48.5% of cases was male homosexual sexual relations, and, of 53 cases of diagnosed HIV in 2009, in 40 cases most likely route of infection was male homosexual sexual relations, it is obvious that the MSM population is the most threatened risk group (data from the Croatian Institute for Public Health). It is clear that in defining its priority area the government deliberately ignored the epidemic situation and need of the MSM population for preventative programmes, which indicates homophobia within the Government.

Furthermore, we wish to draw attention to the scandalous behaviour of the Office for Human Rights as a contact body in the area of the struggle against discrimination within the Programme for Employment and Social Solidarity – PROGRESS (VP/2010/008). We believe that the above competition was not transparent and was manipulated with the aim of undermining the activities of organisations which are critical of the Office.

The associations Iskorak and Kontra and filed several complaints with the Office for Human Rights concerning the above competition in which we warned the Office for Human Rights that the project “Together against discrimination of LGBTIQ persons” registered by the association Zagreb Pride and which received the support of the Office for a competition at European Union level is directly plagiarized from the project “Together against discrimination of LGB persons in the workplace” which is conducted by the associations Iskorak and Kontra and which received support from the European Commission (contract number EC 2006-0202-020305). An official translation and opinion from a court interpreter proved that this project was completely identical to ours with minor changes in individual expressions while the structure, content and even budget were identical. We informed the European Commission of our findings as well as the Central Finance and Contracting Agency and the Office for Cooperation with NGOs. We received

a reply in a letter from the European Commission that responsibility for the national pre-selection competition is exercised by the Office for Human Rights – who refuted the EC’s opinion and stated in a letter that they are not responsible for resolving this case.

In the meantime the association Zagreb Pride and their partners Domino – Queer Zagreb and the Centre for Peace Studies unofficially admitted that the project was plagiarized and that they received it from our former employee, but all the same they asserted that the project that was sent to the European Commission competition with the support of the Office for Human Rights was changed and therefore did not represent plagiarism of the project.

Further investigations by ourselves established that the association Zagreb Pride which achieved the support of the Office for Human Rights did not meet the criteria described in the guidelines of the PROGRESS competition, and that the Office’s support was gained by the association Domino – Queer Zagreb. The association Zagreb Pride did not meet the criteria described in section 9B with emphasis on the criteria “ratio annual income/total costs the application of 0.7” whereas their ratio is 0.13. It is obvious that the Office for Human Rights mistakenly or intentionally ignored the fact that the association Zagreb Pride did not meet the criteria defined in the guidelines of the PROGRESS competition and that it gave its support anyway to a project which was registered by the above association.

Furthermore, the results of the national competition were never publicly announced but information about the support for Zagreb Pride’s project was sent only to the associations which had applied to the competition. A letter with the results of the national competition among other things also included a list of members of the board which evaluated the registered projects among whom we especially draw attention to Mrs Suzana Kunac who is a member of the association B.a.B.e. Our opinion that there was a conflict of interests during the evaluation because the association B.a.B.e. is the main partner of the association Centre for Peace Studies in one of the largest human-rights projects in Croatia, “The House of Human Rights”. The Centre for Peace Studies is also a partner in the project registered by the Zagreb Pride and their coordinator Mr Gordan Bosanac is one of the programme assistants in the association Domino – Queer Zagreb, also a partner in the project, or by now already the lead organisation in this competition. We believe that the selection of members for evaluating the projects was not sufficiently transparent and thorough so as to exclude the possibility of manipulation during the project evaluation.

Taking the above into consideration we can with certainty conclude the following:

The project submitted to the Office for Human Rights by the association Zagreb Pride and their partners is plagiarized from the project which is being carried out by the associations Kontra and Iskorak – a fact which is proved by an official translation by a court translator and an EC contract, number 2006-0202-020305.

The project submitted to the Office for Human Rights at the first level and project submitted to the competition of the European Commission (PROGRESS) are different – a fact which is confirmed by the associations involved in defence of the project from the accusation of plagiarism.

Zagreb Pride is the association whose project received the support of the Office for Human Rights for the competition of the European Commission (PROGRESS) but they are not the

association which submitted the project to that competition, but with the knowledge and support of the Office for Human Rights, the association Domino – Queer Zagreb joined as the lead organisation which fulfilled the criteria prescribed by the guidelines of the PROGRESS competition and they received the support for the further competition.

Taking into consideration the above facts, we can state that there exists a reasonable suspicion that there arose a conflict of interest during the national competition and manipulation of the evaluation and selection of projects in favour of certain associations.

The Office for Human Rights was not cooperative with our attempts to resolve this problem, which additionally increases suspicion in the whole national competition and its manipulation.

We are of the opinion that the above facts directly and indisputably undermine the whole national competition or pre-selection of projects for the EC competition. Not only was the project which was submitted to the competition by Zagreb Pride plagiarized and thus should have been eliminated from the competition or else support for the above project withdrawn, the project was replaced by another, modified project just as the association which obtained the support of the Office for Human Rights was changed.

These facts clearly undermine the sense of the national competition and points to manipulation of the competition so that certain favoured associations might receive financial benefit in the PROGRESS competition. Therefore the other associations which applied to the same competition were placed in an unfavourable position in relation to the favoured associations. Considering that the Office for Human Rights decided to hold a public competition for submission of projects, they should have respected all the rules which are applicable to public competitions just as they should have taken the criteria prescribed by the guidelines of the PROGRESS competition into consideration during the evaluation.

We believe that such a manner of organising a competition and offering support exclusively to favoured associations is a direct attempt to control civil society and to pacify organisations which are critical towards the Government's policies.

We reported this case to the responsible organs of the European Commission.

We believe that it is important to consider the wider context of the consequences of illegitimate acts relating to the use of European funds, especially as Croatia is now in the final phase of negotiations with the EU, where other than showing that is no corruption and cheating in managing the finances of both the country and the European Union, it is also important to show the stabilisation of the economy, whereas establishing cheating of the European Commission could have damaging consequences for Croatia in this phase of negotiations to access the EU.

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

On 4 January 2011 non-governmental organisations Iskorak and Kontra sent a letter to the Government Office for Human Rights expressing an interest in participating in the Working Group for Monitoring Hate Crime, but this participation was refused with the explanation that only one representative of civil society could join the group and that representative would be selected by the Civil Society Advisory Body.

The Office for Human Rights is not involved in the area of the protection of the rights of sexual and gender minorities nor does it implement measures of the National Policy for Gender Equality, nor does it determine combating discrimination based on sexual orientation and gender identity as a priority area for the allocation of funds to civil society organisations, and if it accidentally happens that it finances an LGBT organisation, it disassociates itself from it in public by giving homophobic statements. In 2010 the Office went a step further, manipulating a competition of the European Commission, giving its support to a plagiarized project whose aim was to endanger the activities of associations which are extremely active and critical of the work of the Office concerning the fight against discrimination on the basis of sexual orientation.

The conclusion is that the Office for Human Rights of the Government of the Republic of Croatia does not even have the intention of participating in any way whatsoever as a relevant body of the Government in the protection of the rights of sexual and gender minorities, but quite to the contrary actively attempts to pacify associations which warn about problems in this area.

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### **Croatian Parliament**

In 2010 the conclusion, previously arrived at, that this institution is basically homophobic and transphobic was confirmed.

This is particularly evident from the debate on the Bill on Amendments to the State Registries Act and the Bill on Amendments to the Personal Names Act when only four members applied to speak, and proposals which would have introduced protection mechanisms concerning the human rights of transgender persons were rejected on International Human Rights Day.

During the debate on the legal proposals concerning the rights of sexual and gender minorities in previous years, the Speaker of the Croatian Parliament regularly failed to sanction members who expressed their opinions in a vulgar or insulting manner towards sexual and gender minorities (an example is the debate about the Anti-Discrimination Bill in 2008). In 2009, concerning the Labour Act, the relevant committees did not even give the opportunity to debate the rights of LGBT workers and discriminatory provisions in the bill.

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

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

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

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

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

In 2010 the Committee did not adopt the amendment of the association Iskorak to the Bill on Amendments to the Asylum Act. Iskorak was not invited to attend the Committee's sitting.

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

All the above leads us to the conclusion that the Committee is basically homophobic, and not prepared to co-operate on the protection of the human rights of sexual and gender minorities.

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### **Ombudswoman for Gender Equality**

The Ombudswoman monitors matters concerning the protection of the rights of sexual and gender minorities in accordance with the Gender Equality Act and the Anti-Discrimination Act. In the 2009 Report on the Work of the Ombudswoman for Gender Equality, the Ombudswoman mentioned the state of rights of sexual and gender minorities in a separate chapter.

In the part concerning the legislative framework, the Ombudswoman mentions the coming into force of the Anti-Discrimination Act on 1 January 2009 which, among other things, bans discrimination on the basis of sexual orientation.

Given that the current laws of the Republic of Croatia ban discrimination on the basis of sexual orientation, the Ombudswoman emphasises that it is essential to work more and systematically on public awareness.

Furthermore, the Ombudswoman emphasises that it is praiseworthy that a number of public awareness campaigns were carried out in 2009, and here she mentions the campaign within the project of the Office of the People's Ombudsman "Support for the implementation of the Anti-Discrimination Act", and two campaigns of the associations Kontra and Iskorak – "Different Loves, Equal Rights", and the campaign "Right to Work Without Discrimination" which were car-

ried out under the project “Together Against Discrimination of LGB Persons in the Workplace”. In the report are also mentioned two seminars for union officials of the Union of Independent Trades Unions of Croatia about discrimination in the workplace on the basis of sexual orientation which were held as part of Kontra’s project, and in which the Ombudswoman for Gender Equality participated.

The Report also states:

Campaigns are useful because they will have a long-term influence on the reduction of homophobia and homophobic statements and incidents, but as well as campaigns it is essential to educate people about human rights, tolerance of differences and non-violent communication through the education system.

Unfortunately, we are still witnesses to violent attacks on members of sexual minorities, but also to the fact that, except the reactions of the Ombudswoman for Gender Equality, members of associations for the protection of the rights of sexual minorities and some media, wider social condemnation of violent homophobic behaviour is lacking.

On 15 January 2009 the Ombudswoman issued a public statement in which she strongly condemned the hate crime which was cowardly perpetrated on 23-year-old N.R. because of his sexual orientation.

The Ombudswoman believes that a victim of any type of violence based on any ground is the same and that violence against any victim deserves equally wide and public social condemnation. We cannot fight hate crimes only by legislation and repression. Severe condemnation of violence against homosexuals should not come only from certain institutions, mostly ones dealing with gender equality or associations dealing with the protection of human rights or interests of members of LGBT community and only certain media. We will not be able to fight against the feeling of insecurity without the public and wide social condemnation of any violence.

There are also described in the Report five cases of complaints by the Ombudswoman concerning discrimination on the basis of sexual orientation.

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

### **Ministry of Internal Affairs**

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On 12 January 2011, following their previous request, Lesbian Group Kontra and the Women’s Network of Croatia received a report from the Directorate of Police concerning criminal offences committed under Art 89 para 36 of the Criminal Code – hate crimes.

In the period from 1 January 2010 to 30 December 2010 the Ministry for Internal Affairs recorded 34 cases in which according to the circumstances it was suspected or confirmed by criminal investigation that they were motivated by hatred towards a certain individual or group, and under Art 89 para 36 of the Criminal Code.

Of the above 34 criminal acts, 29 were solved for which a total of 65 people were charged. According to the MUP, scene-of-crime investigations were carried out for all of these criminal acts, while certain investigative work was carried out for 60% of the criminal acts (around 20 of the 34 crimes).

Criminal charges or a special report were sent to the relevant state attorney's offices for all 34 crimes. However in this year's report information was not included whether it was particularly noted in the criminal charge or special report whether the crimes were committed in conjunction with Art 89 para 36 of the Criminal Code. (In 2009, it was noted in the criminal charge or special report for 27 of 32 criminal acts that they were committed in conjunction with Art 89 para 36 of the Criminal Code.)

Of the 34 criminal acts there were 5 cases of racial or other discrimination under Art 174 of the Criminal Code, while no cases of violations of the equality of citizens under Art 106 of the Criminal Code were recorded.

According to motivation, 18 crimes were ethnically motivated, 6 crimes motivated by racial identity, 2 crimes concerned social orientation, 3 regional identity, 1 anti-Semitism, 1 origin of birth, and 3 were committed because of other characteristics (membership of a different sub-cultural group).

Of the total number of recorded criminal acts in the above period, there were the following:

- 9 criminal acts of violent behaviour under Art 331 of the Criminal Code,
- 5 criminal acts of grievous bodily harm under Art 99 of the Criminal Code,
- 3 criminal acts of actual bodily harm under Art 98 of the Criminal Code,
- 2 criminal acts of threatening behaviour under Art 129 of the Criminal Code,
- 5 criminal acts of racial or other discrimination under Art 174 of the Criminal Code,
- 7 criminal acts of destruction or damage of property under Art 222 of the Criminal Code,
- 1 criminal act of causing death by negligence and under Art 95 of the Criminal Code,
- 1 criminal act of bringing life or property into danger by dangerous acts or means under Art 263 of the Criminal Code,
- 1 criminal act of sexual intercourse with a child under Art 192 of the Criminal Code,

Given that the State Attorney's Office of the Republic of Croatia (DORH) has not made available statistical data about hate crimes for the year 2010 with the explanation that it does not maintain that type of data, it was not possible to compare the statistical data of DORH and the Ministry of Internal Affairs (MUP). In the years when DORH did make data available (2007 - 2009) there were visible differences in statistical data between DORH and MUP.

Generally speaking, our assessment is that there has been a visible improvement in the last two years in finding perpetrators of the crime of violent behaviour; however, we should bear in mind that such cases were widely publicised by the media as well as the fact that crimes of violent behaviour were committed whose perpetrators were not found, and that instances of police behaviour contrary to regulations were noted such as the refusal to record reports of crimes and insulting victims on the basis of their gender identity.



We hope that all cases will be solved in an equal way in practice, regardless of media publicity, which, unfortunately, has not been the practice to date.

We would emphasise that there are numerous examples of police mistreatment in the sense of insulting, belittling or mocking when victims come to report violence or discrimination, which as a rule happens at the level of behaviour of the regular police. As officials of the regular police are most frequently the first to have contact with the victim immediately after the commission of a crime, their unprofessional behaviour discourages victims from further insisting on the investigation of perpetrators and future reporting of such criminal acts. In this regard we consider that it is necessary for the Ministry of Internal Affairs, other than the efforts it has made for a limited education of police officials about hate crime, to organise education and training for regular police officials about the rules of civilised behaviour towards parties in their everyday work which would certainly have an effect on the quality of police behaviour not only in these but also in other cases.

### **State Attorney's Office of the Republic of Croatia**

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On 5 January 2011 the State Attorney's office of the Republic of Croatia (DORH) sent a letter concerning the request from the associations Kontra and Iskorak about statistical indicators concerning criminal acts committed out of hatred. Despite the fact that in previous years DORH has made available the data requested after similar requests, in the letter of 5 January DORH stated that it does not maintain statistics on the number of criminal acts committed out of hatred.

We would also mention that from the data received in previous years there have been significant differences in the statistical data between DORH and the Ministry of Internal Affairs.

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

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

The Act on Amendments to the Criminal Code which contains the quoted provision about hate crimes came into force on 1 October 2006. However, in reports on the work of state attor-

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

### **Ministry of Justice**

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

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

To our knowledge as at the date of publication of this Report that has been no improvement connected to this topic.

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

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

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## 4. Education

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

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

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

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### Health Education

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On 14 January 2008, the Ministry of Science, Education and Sport announced the results of the competition for the choice of primary and secondary schools for carrying out experimental programmes of health education of the GROZD Association and the Forum for Freedom of Education. For the implementation of the GROZD Association programme nine primary schools were selected.<sup>1</sup> and 5 three- and four-year secondary schools for the implementation of the programmes of the GROZD Association and the Forum for Freedom of Education.<sup>2</sup> By a decision of the Ministry for monitoring the implementation of experimental programmes and the external evaluation of the results, the National Centre for External Evaluation of Education was nominated in cooperation with the Ivo Pilar Institute of Social Science, Andrija Štampar School of National Health and the Croatian Institute for Public Health. For professional training of the implementers of the programmes, the Agency for Education was nominated in cooperation

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

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

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

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

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

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

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

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

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

The Committee concluded that “certain educational materials which are used in the regular teaching programme are biased, discriminatory and degrading, especially concerning the way in which people whose sexual orientation is different from heterosexual are described.” This conclu-

sion of the Committee is based on an examination of the content of a textbook for biology for the third year of high school entitled *Biology 3: Life Processes*, written by Ivana Regula and Milivoj Sijepčević which was approved by the Ministry of Education and published by Školska Knjiga.

The following was written in the textbook: “Many people have a tendency to sexual relationships of the same sex (homosexuals – men, and lesbians – women). It is believed that the greatest responsibility for this is borne by parents who prevent the correct development of sexuality in their children because of irregularities in family relationships. Today it has been demonstrated that homosexual relationships are the main cause for the increased spread of contagious sexual diseases (e.g. AIDS). Disease is spread within promiscuous groups of people who frequently change sexual partners. Examples of this are homosexuals because of sexual contact with numerous partners, drug addicts because of sharing contaminated needles and prostitutes.” In the Committee’s decision it is further stated that such statements stigmatise homosexuals and are based on negative and degrading stereotypes about the sexual behaviour of all homosexuals. Such statements serve only to attack the human dignity and have no place in sexual and reproductive health education. By officially approving or allowing the use of textbooks which contain such anti-homosexual allegations, the Croatian authorities did not fulfil their obligation to ensure effective education which does not promote social exclusion and does not insult human dignity. The Croatian authorities, stated the Committee, failed to fulfil their positive obligation concerning the ensuring of the right to health care through non-discriminatory sexual and health education.

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

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

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

In 2010 there was no progress connected to this topic. Therefore we continue to advocate the introduction of separate and mandatory sex education in Croatian primary and secondary schools.

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### **Catholic religious education**

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

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

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

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

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

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

#### — *Discrimination in textbooks*

The list of school textbooks for the academic year 2010/2011 includes the textbook *With Christ to Life* (published by Kršćanska Sadašnjost, Zagreb, 2008). The following is stated in this textbook: "It is God's intention for two beings of different in sexes to be attracted to each other and be fulfilled in responsible love. This means that **heterosexuality** is the basic point of reference for men. Attraction and orientation of opposite sexes towards each other is the consequence of the urge to create unity and birth, that is create a family. A man and woman therefore fulfil each other not only in a physical and emotional but also in a social and spiritual sense. We are, however, conscious of the fact that some people feel attraction towards persons of the same sex. Medicine and psychology have discovered various causes, not fully researched, of such a human state. Church tradition has always stated that 'homosexual acts are intrinsically disordered'. They are contrary to the natural law. They close the sexual act to the gift of life. They do not proceed from a genuine affective and sexual complementarity. Under no circumstances can

they be approved.” (Catholic Catechism 2357). “They do not choose their homosexual state; for most of them this represents a trial.”

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

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

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

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

On 17 May 2010 on International Day Against Homophobia, Lesbian Group Kontra sent a request to a representative of the Croatian Government for an urgent explanation concerning this subject, withdrawal of the shameful discriminatory textbook from sale and the putting into circulation of a new textbook in accordance with the laws and international regulations on protection from discrimination on the basis of sexual orientation.

In August 2010 we received a letter from the Ministry of Science, Education and Sport in which the Ministry clearly stated that it had no intention of removing the homophobic content from the religious education textbook for the eighth form of primary school *With Christ to Life* (published by Kršćanska Sadašnjost, Zagreb, 2008).

In its reply the Ministry made no mention of the homophobic content of the textbook, but solely concerned itself with describing the procedures of adopting all textbooks, including this one. Thus the Croatian Government made it quite clear that it has no intention of respecting its own laws concerning protection from discrimination, and that it is not at all bothered that children learn incorrect information from discriminatory textbooks.

We consider that it is quite the scandalous that the Head of the Office for Human Rights of the Government of the Republic of Croatia received our request on International Day Against Homophobia, only to send such a reply.

Lesbian Group Kontra informed the Ombudswoman for Gender Equality about this case and sought her opinion as to the compatibility of the content of the textbook with the Gender Equality Act and international regulations.

On 28 December 2010 we received a reply from the Ombudswoman for Gender Equality in which it states that, “The Ombudswoman for Gender Equality is authorised by the Act to give warnings, proposals and recommendations and to seek reports.”

The Ombudswoman sought an explanation from the Ministry of Science, Education and Sport on the content of the textbook which that Ministry had approved. In the letter from the Ombudswoman to the Ministry special emphasis was placed on the fact that the Ombudswoman was aware of the procedures of adopting textbooks so that the Ministry should concern its explanation precisely about the content of the textbook.

As at the date of publication of this Report we have not received any information from the Ombudswoman about a reply from the Ministry.

— *The Bartol Kašić case*

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

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

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

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

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

As at date of the publication of this report nothing has been done by the Zagreb Municipal State Attorney’s Office about this criminal complaint. This is particularly worrying if the fact is taken into consideration that on 5 February we additionally informed the Office of events after the complaint was made especially about the pressurising and intimidation of witnesses in the court proceedings. The witness intimidation was also reported to the police.



It is in the nation's interest that criminal offences are tried, and here it can be seen that there is no real will to try a criminal offence of racial or other discrimination.

The first hearing of the joint case was held in Zagreb on 25 May 2010. After the first hearing in an informal conversation in the courtroom the judge told the lawyers and Kontra's representative: "I do not see why it should be discrimination when somebody says that homosexual people are sick. When somebody says that fat people are sick is that also discrimination?"

The second hearing was held on 16 June 2010. The defence witnesses were examined and also Mrs Jelena Čorić-Mudrovčić.

Mrs Čorić-Mudrovčić, however, stated that "she did not make any such statement, but, while teaching a lesson about sexuality said that it is not permitted to insult any people, including homosexuals, regardless of their faith, race or sexual orientation but that they should be respected".

However, Mrs Čorić-Mudrovčić herself when asked by a journalist of *Jutarnji List* on 19 June 2010 "Do you personally believe that homosexuality is a disease?" replied: "I am not a doctor so I recommend that you ask such questions of meritorious experts such as, for example, Dr Vladimir Gruden, Dr Dubravka Kocijan Hercigonja...", quoting the names of people who have spoken about homosexuality as a disease in the media.

Gordana Barudžija, an adviser in the Agency for Education of the Ministry of Science, Education and Sport also gave evidence. Namely, monitoring was carried out at the request of the mother of a pupil of the eighth form who had reported the discrimination. Also, we would mention that the results of the monitoring were not made available to the person who sought it but only to the defendant. The monitoring was carried out in an extremely unprofessional way and the conclusions of the monitor were lacking and biased. Namely, when asked by the prosecutor how many pupils of those who had been questioned were from the eighth form a (in which the incident occurred), and how many from class 8B, the monitor did not reply. When asked how many pupils of those questioned had even been present at the lesson in question, the monitor also did not reply. The prosecutor asked for this information but the judge refused the request on the grounds that "it wasn't vital evidence". When asked whether the questionnaire even contained the direct question as to what the teacher said in the class, the monitor replied that the question had not been posed.

T-portal reported on the atmosphere in the courtroom: "Meanwhile, we should mention the rather inappropriate atmosphere in the small courtroom on the ground floor of the Zagreb County Court, in which, as well as a few members of the media, quite a few members of the public who were on the side of the defendant were seated in the public gallery whose members, with a few media exceptions, sniggered or rolled their heads, in the same way as the defence itself which caused the entire process to be 'a legal nonsense'.

"The judge did not overly react to all of this, but 'an extremely interesting moment', which she couldn't even see, occurred when one of the parents in the public who had generally been whispering things to people around her, was discovered pushing a leaflet into the hands of a journalist which 'mistakenly' shows what the Church's understanding of the Scriptures says about homosexuality and which was obviously printed especially for this and, heaven forbid, similar occasions."

The third hearing was held on 15 July 2010. On this occasion mothers of children who had attended the lesson in Bartol Kašić Primary School were to give evidence.

We are disgusted by the illegitimate behaviour of judge Vesna Kovačević-Ostoić during the questioning of a witness during the third hearing.

Namely, the judge shouted at one of the witnesses, the mother of a child who attended the class in Bartol Kašić School for a full half hour and intimidated and literally insulted her, saying “What a mother you are!”

The prosecutor’s authorised representative lodged a request for the judge to be exempted because of her structural victimisation of a witness who gave testimony about the discrimination perpetrated by the teacher, with statements of people who were present at the hearing attached to the request. The President of the County Court refused the request.

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

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

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

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## 5. Media

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2010 was marked by mainly professional and informative reporting in the media on the subject of the rights of sexual and gender minorities, most frequently in a neutral tone. However, unfortunately, as every year, there were also homophobic articles which promoted the discrimination of sexual minorities.

— *The Renato Baretić case*

On 11 November 2009, Iskorak submitted a complaint to the Journalists’ Court of Honour of the Croatian Journalists’ Association against a journalist of the print and electronic media *Nacional*, Mr Renato Baretić, who on 10 November 2009 published an article with the headline “How Milinović financed a pornographic faggot brochure”.

On 25 January 2010 the Journalists' Court of Honour considered the complaint of the association Iskorak and rejected it as unfounded stating that Mr Baretić had not broken the Codex. As well as this conclusion, a member of the Council, Mr Trpimir Matasović, stated a dissenting opinion considering that Mr Baretić had breached the provisions of the Codex, Art 5 and Art 13, because the journalist had not respected the responsibility of stating correct information and that he had used stereotypes and depicted people of homosexual sexual orientation in a derogatory manner.

Iskorak sent the Court's conclusion to the Central Committee of the Croatian Journalists' Association for alteration and confirmation that Mr Baretić had violated some provisions. The Central Committee of the Croatian Journalists' Association refused our request.

It is disappointing that the Croatian Journalists' Association, which has condemned the homophobic behaviour of journalists and editors for many years, has now shown sympathy for the extremely homophobic attitudes of journalist Renato Baretić, just because the content of the informational and educational brochure of Iskorak did not fit with their personal and institutional moral view of sexuality. Lack of bias and objectivity are the bases of professional and ethical work in journalism, and the lack of such an approach by the Croatian Journalists' Association was a setback to the achievements to date in the development of ethical journalism in Croatia. Iskorak's brochure was inappropriately and inaccurately called "pornographic", because its content was designed to prevent the spread of HIV and other sexually transmitted diseases, a problem about which the Croatian Journalists' Association should most certainly have relevant up-to-date knowledge.

We would like to emphasise that even the Ministry of Justice of the Republic of Croatia in its preparation of the new Criminal Code made a definition by which materials cannot be considered to be of pornographic content which among other things have medical, scientific or informational significance (see Art 11 para 5 under the chapter "Crimes against sexual freedom", draft of the Criminal Code, Ministry of Justice, 2010). Therefore even the announcement of the modernisation of Croatian regulations in the sense of a strict definition of pornography shows how backward and dangerous the opinions which Mr Renato Barišić stated were, confirmed, supported and justified by the highest ethical body of Croatian journalism – the Croatian Journalists' Association.

— *The Ivica Šola case*

On 25 May 2010 Iskorak submitted a complaint to the Journalists' Court of Honour of the Croatian Journalists' Association against a journalist of the print and electronic media *Glas Slavonije*, Mr Ivica Šola, for the publication of the discriminatory and homophobic article "Homosexuality is a disease". At its sitting on 5 July 2010 the Journalists' Court of Honour decided that Mr Ivica Šola had not breached the Honour Codex of Croatian Journalists.

— *The Sandra Golubić case*

On 10 May 2010 Iskorak submitted a complaint to the Journalists' Court of Honour of the Croatian Journalists' Association against Mrs Sandra Golubić, a columnist of the Karlovac Danas portal because of the publication of the homophobic and discriminatory article "When subcultures take over the world...". At its sitting held on 3 September 2010 the Journalists' Court of

Honour judged that the text of journalist Sandra Golubić was a serious breach of the Honour Codex of Croatian Journalists and she was therefore given a severe reprimand. We believe that this decision of the Journalists' Court of Honour was partly thanks to the associations Iskorak and Kontra because of its constant warnings to the Croatian Journalists' Association over years about homophobic texts, which appear in the Croatian media.

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## 6. Homophobic declarations by public persons

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### — *Discrimination in football*

The most prominent people in 2010 for their homophobic statements were the president of the Croatian Football Association, Vlatko Marković, and executive vice president of Dinamo Football Club, Zdravko Mamić.

On 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 15 November 2010 the media reported that after the sitting of the Executive Board of the Croatian Football Association (HNS) the executive vice president of Dinamo, Zdravko Mamić, commented on the statement of the president of the HNS, 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 HNS 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 HNS 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 homosexual people.

LGBT (lesbian, gay, bisexual and transgender) 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 reports of such cases because of a lack of belief in state institutions.

The associations Iskorak and Kontra and filed joint charges for discrimination against the president of the Croatian Football Association, Vlatko Marković, and the executive vice president of Dinamo Football Club, Zdravko Mamić.

We also reported 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 concerns violations of integrity and sporting spirit.

— *Incitement to violence by a parish priest*

In October 2010 the parish priest of Kastav, Franjo Jurčević, published a text in 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 Parade of Pride 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 as well as 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 right of free association is one of the fundamental human rights. The violence which occurred on the streets of Belgrade during the Parade of Pride indicates the state of the human rights of the LGBT population in Serbia, but also be danger of spreading hatred, the negative influence of the Church and the destructive actions of extremist groups whom the state refused to confront.

How terrible an incitement to shed blood on the streets Zagreb due to hatred based on sexual orientation such as that in Belgrade is, is well known by the participants of the Parade of Pride, including members of Kontra who went to Belgrade to show support to the event’s organisers, and during the peaceful gathering had to be protected by the special police. Damage running into millions was caused on the streets of Belgrade and even a van with a portable mammography unit was attacked and the mammography unit destroyed.

Because of the above we 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.

In an open letter we also repeated our request for the state to prevent the spreading of hate via the fascist “anti-gay” protest which has been held for the last two years, and which incites violence and whose participants have attacked participants of Zagreb Pride.

— *Homophobic statement by a member of Parliament*

On 13 July 2010 an interview was published in *Večernji List* with a member of Parliament from the Croatian Peasants Party, Mrs Marijana Petir. Among other things, the article stated: “But

she is not happy with the educational programme either. ‘I remember that on 1 December 2008 a programme for children was broadcast in the morning which propagated homosexual behaviour,’ said Petir, disgusted.”

This is a member of the Croatian Parliament who has repeatedly given homophobic statements in public. Namely, during a public debate about the need to adopt the Anti-Discrimination Act, HSS member of Parliament Mrs Marijana Petir publicly opposed its adoption, stating that its elements which protect the rights of sexual and gender minorities are too liberal. In her public statements she has expressed a particular fear that transgender persons could use public toilets according to their gender roles and so “men could go into female toilets” or “a man in a dress could go into a female changing room”, for example before or after aerobics or similar activities. Indeed MP Petir felt the fear of “a man in a dress in a female changing room” before after aerobics at a personal level, because she would be very upset if it happened to her. As if the rights of citizens and their social equality in society are based on the personal fears/fantasies of politicians!

This member of Parliament who, instead of the rights of all citizens, advocates the interests of the dogmatic beliefs of the Catholic Church in the Croatian Parliament also opposed adoption of the *Medical Fertilization Act* (proposed by the SDP), but not because of its actual lack of quality but because by such legal arrangements the proposers “wish to play God”. In opposing the right of women to medically assisted conception, Mrs Marijana Petir insulted women who have conceived with the help of medically assisted conception as well as parents who have adopted children, which can be best seen via the following statement:

“I believe that women who have had children in this way were happy when they gave birth but I think that they cannot be happy after they find out that the child is not their own.”

Also from her approach to public communication, it can be seen that Mrs Petir is completely ignorant of the problem with which she concerns herself, thus on the question of the security of embryos she stated as the biggest problem the question of “who will guard the fridges” and “how we can avoid the possibility of half brothers and half sisters falling in love”. The peak of her senseless statements was achieved when this fine member of Parliament stated that children conceived by medically assisted conception frequently fall ill.

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## 7. Violence and discrimination

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Violence and discrimination against sexual and gender minorities continue to be a frequent occurrence in Croatian society. The forms of violence are various, from psychological, verbal to physical violence. A serious problem continues to be the fear of victims who do not report the violence they experience because of possible stigmatisation by the community. Members of sexual and gender minorities in a great number of cases are not aware of their rights nor with the mechanisms of protection of those rights. They do not trust state institutions, especially the

police, whose officials continuously behave in a discriminatory manner while processing cases of discrimination and violence against members of sexual minorities. Precisely because of this, the real number of violent events is almost impossible to estimate, and until recently the cases which have come to be processed have exclusively been cases of violence against activists.

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

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

In order for us to provide better help in punishing discrimination and violence, Iskorak and Kontra jointly founded a Team for Legal Changes in 2002 whose activities include offering direct legal aid to LGBT persons and public advocacy for legal changes. We also regularly publish publications through which we inform the LGBT population about their rights and the laws of the Republic of Croatia.

Below under “Individual cases” we describe cases on which we worked during the last year.

## **Individual cases**

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In 2010 the Team for Legal Changes of Iskorak and Kontra worked on a total of 23 individual cases. In this part we lay out some examples of the cases we received. We do not describe all the cases in order to protect the anonymity of the victims.

### — *Attack on Neven Rauk*

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

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

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

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

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

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

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

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

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

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

at the hearing held on 25 March 2009 the defendants entered their pleas, mounted their defence, one witness was questioned and custody was ceased;

at the hearing on 9 April 2009 the victim was questioned;

at the hearing on 4 May 2009 the victim was questioned and recordings of the attack on N.R. were watched and listened to;

at the hearing on 3 June 2009 a witness who was a minor was questioned;

at the hearing on 14 July 2009 a witness who was a minor was questioned, the charges were changed in their factual description and in the legal qualification of the act;

at the hearing on 16 July 2009 the defendants again entered pleas to the amended charges, supplemented their defence, the parties make their closing speeches, the court concluded the debate and announced its judgement.



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

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

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

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

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

The state attorney filed an appeal against the judgement of the Municipal Court because of its decision on sentencing and in the appeal he proposed that the judgement be amended and that the first and second defendants be sentenced to stronger sanctions, i.e. non-suspended sentences.

On 11 May 2010 the Zagreb Municipal Court denied the state attorney’s appeal as well as that of both adult defendants. The Municipal Court denied all appeals and thus the sentence became final.

In the other trial, considering that the two attackers were minors, the proceedings against them were conducted in a youth court according to special rules of procedure. The proceedings regarding evidence in this case were finished on 28 April 2009 and considering that the proceed-

ings have not become final it is not possible to comment on them. Not entering into the matter of the debate we consider that it is important to emphasise that we have not received the sentence of the Municipal Criminal Court although almost two years have passed from the conclusion of the hearing to the date of this report. Because of this the victim asked the Court on 16 March 2010 to deliver the court's decision to him.

In this case an investigation was carried out after the filing of criminal charges by the associations and the perpetrators found and tried. The defendants were remanded in prison during the trial and released at the hearing on 25 March 2009. At the same hearing the victim requested the ordering of precautionary measures in accordance with Art 90 para 2 point 4 of the Criminal Procedure Act, a ban from approaching the victim and initiating and maintaining contact with the victim. The first and second defendants gave a promise in the court's minutes that they would avoid all contact with the victim. The first and second defendants made a promise which was entered into the hearing's minutes which we consider to be positive practice in the work of the court. Namely, when defendants are released from prison is necessary to protect the victims of criminal acts, something about which courts have previously not been concerned about in an appropriate manner.

However, we must emphasise that the proceedings in this case, as in a few others, are an exception resulting from the fact that the case received very intense media coverage, and also the associations were involved through the offering of legal aid, and the Ombudswoman for Gender Equality publicly reacted.

There are frequent examples of quite the opposite behaviour by police officials who insult the victims when they come to report violence or refused to accept their complaint or even commence misdemeanour proceedings against both victim and attacker.

— *Attack on a transgender woman*

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

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

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

The following morning the victim went to the police station. She described the attack to the police official, who made a note of her personal details and told her: "See what you look like – I would beat you up too." The police official then went into the next-door room where there were

several other policemen and spoke with them. After this another police official approached the victim and told her that she did not need to make a report because a report had been made when she called the police. The victim asked to see the record, or confirmation of the report at which the police official asked: “against which perpetrator?” The victim replied “against unknown attackers” and said that she needed the confirmation for further complaints. After this the police official was visibly upset and said: “Well, who would you report? Get out of here!”

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

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 officials 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 officials 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 officials and Ministry of Internal Affairs and 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.

— *Attack on a lesbian*

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

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

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

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

We mention that in this case it was a matter of a physical attack in a public place, motivated by the victim’s sexual orientation and that the police did not bring charges for violent behaviour and

racial or other discrimination, nor did ODO Dubrovnik bring charges for the above criminal acts.

On 12 July 2010 the main hearing was held regarding the charges brought by ODO Dubrovnik for the criminal act of making threats. The client was informed that she could bring criminal charges for the criminal act of violent behaviour under Art 331 of the Criminal Code and racial or other discrimination under Art 174 para 1 of the Criminal Code. Because of the small place where the attack occurred, the client decided that she would not commence proceedings on her own which had not been commenced by the bodies of state authority.

— *Attack on Damir Gerovac*

On 4 April 2010 at around 23.00 Mr Damir Gerovac was attacked while returning home in the centre of Zagreb. It was dark and rainy and he entered the passageway on Ibler Square. He heard someone running behind him after which he was hit on the head from behind. He fell to the ground and saw a group of youths who began to hit him shouting “Faggot, we’ll kill you!”

He succeeded in moving to the side and kicking one of the attackers and began to shout loudly. This frightened the attackers who ran off. He went home and called the police to report the attack. He also asked for medical help although he had slight physical injuries.

On 26 April a request was sent the MUP, Zagreb Police Department to be sent a report about the actions taken and afterwards he also sent several reminders.

On 19 October 2010 a report was received from the 5<sup>th</sup> Zagreb Police Station about the actions carried out regarding the reported attack on the client. The report stated that on 28 April 2010 Mr Gerovac was “invited to the official premises of the 5<sup>th</sup> Zagreb Police Station where he was shown several photographs of young male people who at the crucial time had had their identification checked in the area of responsibility of the 5<sup>th</sup> Zagreb Police Station, and that the subject, Damir Gerovac, had pointed out two young persons of those shown to him with 20% confidence, who were then invited to the official premises of the 5<sup>th</sup> Zagreb Police Station and interviewed about the circumstances of the attack when it was confirmed that the above people could not be connected with the perpetrator of the attack on the subject, Damir Gerovac.”

The client informed us that at the photograph recognition he actually recognised his attackers with 90% confidence (and not 20%!) while in the report it stated that the perpetrator was recognised with significantly less confidence. After the investigation that person was not brought in for an identity parade. The identity of the attacker has never been confirmed.

— *Attack on a minor and his mother*

On 2 July 2010 a user and her son who is a minor were walking past Dinamo’s stadium during the evening. Several girls in a group sitting nearby started to shout: “Faggot, are you a man or a woman?” After this a male youth from the same group started to follow them on his bicycle shouting: “What does your son look like? He should be killed!” They boarded a tram and the youth followed them onto the tram. Soon another group of 10-15 youths around 15 or 16 years of age with shaved heads arrived. They continued to insult, threaten and punch on the tram. Finally, they got off.

The user decided that she did not wish to make a criminal complaint but she wished to inform the organisations about the attack.

— *Attack on Goran Hadžić*

The attack on Mr Goran Hadžić occurred on the night of 6/7 November 2010 at around 02.00 hours. Mr Hadžić reported the attack to the Team for Legal Changes 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 footballer in the first division of the Croatian football league (a former footballer 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 State Attorney’s office classified the attack as a criminal act of causing grievous 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.

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

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

The user is situated in a reception centre. He gave as the reason for leaving his country of origin that he was discriminated in his country of origin (we do not say which in order to protect the user) because he is a homosexual. On 20 September 2006 he was walking around the town in which he used to live in women’s clothing and the police arrested him and held him for 24 hours. After that on 25 September 2006 the police entered his flat, beat him up and threw him through the window on the fourth floor. This caused serious injuries, broken bones, collarbones and ribs and as a result his spleen was removed. He bled heavily (he lost 2½ litres of blood) and damaged his liver. Because he was afraid of the police, he stated in the hospital that he had jumped out of the window. After treatment in the general hospital he was released on 27 November 2006. In December 2006 the police entered his flat once more and took him away to a psychiatric establishment. He escaped in 2007 and tried to go to France but the police stopped him at the airport, removed his international passport and returned him to the psychiatric establishment where he stayed until 2009. He was then mistreated by the nurses, tied to the bed and beaten and a pillow was put over his head in order not to leave bruises. He managed to escape from the hospital to his holiday home and researched on the Internet the possibilities for leaving the country il-

legally. He complained three times about what had happened to the state prosecutor's office in the place where he lived but they never replied to him.

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

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

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

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

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

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

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

On 26 January 2010 we received a Decision from the Ministry of Internal Affairs which refused the client's request for asylum, stating that it had not been established that the applicant had been persecuted for reasons of belonging to a certain race, faith, nationality, social group or because of his political views or that he was in any danger by returning to the country of his origin. Furthermore, it states that the applicant of the request could display his sexual orientation without any problems or fear that he might be discriminated against because of it, yet alone persecuted. It further states that the applicant had stated a number of facts which were inconsistent and self-contradictory in the submitted reports. For example the client first stated that he was thrown from the third floor, and then from the fourth floor of the building. According to the assessment of the responsible body, there was no objective element to the applicant's subjective fear of prosecution that his fear of persecution was founded.

On 9 February 2010 an appeal was made against the Decision, on the grounds that reports of international human rights organisations were selectively quoted in the Decision concerning the legislative situation, while parts relating to the actual situation of human rights in the country of origin were deliberately left out. This action of the Ministry as well as the fact that a very small number of requests for asylum in the Republic of Croatia are approved, leads us to conclude that there is no political will for approving asylum.

On 16 April 2010 the client stated that he wished to withdraw from the proceedings and return to his own country. The client was directed to a lawyer from his own country with whom we had established cooperation concerning this case and to whom he may turn if he has any problems.

On 19 April 2010 a statement was sent to the Ministry of Internal Affairs, Department for Foreigners and Asylum withdrawing the appeal on the direct instructions of the client, and the case was closed.

— *Right to asylum in the Republic of Croatia because of persecution on the basis of gender identity*

The client (a citizen of the Philippines, a transgender person) approached us in November 2009. She was staying in Croatia on a visa for a private visit to her partner who is a Croatian citizen. The client 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 but 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 the client's request for asylum because it was assessed that the asylum seeker had not given 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 country of origin exclusively for economic reasons is considered to be an economic migrant and not an asylum seeker. Along with the above decision the client 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 MUP 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 and which in essence repeated the arguments of the first instance decision.

On 29 September 2010 we received a decision of the MUP which refused a delay in carrying out the MUP'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 MUP 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 laid 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 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 MUP to 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 advocate conducted intense correspondence with the reception centre in Ježevo concerning contacting her client.

On 22 October 2010 the MUP 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 MUP on 27 October.

On 26 October 2010 we sent a request to the European Court of Human Rights in Strasbourg due to the serious breach of our client's human rights so that the Court might order the temporary measure of applying Rule 34 which would forbid the Republic of Croatia from deporting our client.

The Court took the opinion that there was no reason for ordering temporary measures, and left the client a deadline for submitting a regular request to the European Court which the client did on 24 November 2010 because the client's right to freedom and personal security and right to a fair trial were abused and in case of deportation her guarantee of the right to life and guarantee that nobody would dare subject her to torture and inhuman behaviour because she had stones thrown at her several times on the street because of her gender identity.

On 23 November 2010 an appeal was lodged against the decision of the MUP of 29 September 2010 refusing to delay execution of the decision of the MUP 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 result of which the client was forced to submit a new appeal on 28 December 2010.

— *Protection of the rights to privacy of a transgender child*

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

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

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

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

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

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

Namely, with regard to the constitutional and legal obligation to protect the well-being of the child, and the fact that experts agree that it would be advisable to change the child's personal documents, the opinions of a doctor and the Ombudsman were requested so that the child's gender could be changed in its birth certificate on the basis of the fact that it had long been living in a different gender identity, and irrespective of the fact that the operational procedure had not been carried out.

On 28 April 2010 a request to change the data concerning the gender and personal name of the client in the basic entry in the register of births was made to the Office of State Administration for the reason that the client had been living in its chosen gender identity from earliest childhood which was attested to by numerous medical documents.

On 12 May 2010 we received a Decision from the Office of State Administration refusing the request for the reason that the client had not submitted medical evidence of the third phase of a sex reassignment procedure having been carried out, that is evidence of the sex change operation having been carried out.

On 26 May 2010 an appeal was lodged against the Decision of the Office of State Administration which disputed it as not legally founded in its entirety. Namely, in the explanation to the decision it was stated as important for approval for entering a change of gender in the state register of births that medical evidence be provided that the third phase of the sex reassignment

procedure had been carried out, that is the sex change operation or physical change. Despite the well argued and explained request, the above body simply explained its decision without addressing the arguments of the submitter which supported the justification of its request. Also, the above body made an arbitrary interpretation of sub-legal provisions, that is the phrase “appropriate medical documentation” from the Instructions on Implementation of the State Registries Act, without taking into consideration the submitted arguments.

We pointed out a violation of Art 6 para 1 (right to a fair trial) of the European Convention for the Protection of Human Rights and Fundamental Freedoms which is analogously applied to administrative proceedings as well and which prescribes that in order to confirm their rights and obligations of a civil nature or in the case of having criminal charges filed against them, everybody has the right for a legally established independent and unbiased court to legally, publicly and in a reasonable period to investigate their case.

Concerning the arbitrary interpretation of the expression “appropriate medical documentation”, we stated that the meaning of “appropriate medical documentation” was not defined either in the State Registries Act or in the Instructions on Implementation of the State Registries Act and Register of Adoptions in the Register of Births. Thus, the Office relied on the argument without foundation that the expression “appropriate medical documentation” understood medical evidence concerning the sex reassignment operation, or physical change of sex.

On 17 June 2010 we received the Decision of the Ministry of Administration which refused the appeal against the decision of the Office of State Administration. In the explanation to the decision it was again stated that the sex reassignment operation had not been carried out.

We would like to mention that on several occasions we contacted the Ombudswoman for Children about this case. The Ombudswoman sought an explanation from the Ministry of Administration concerning the case.

A letter from the Ministry of Administration of 14 October 2010, among other things, stated:

*Furthermore, we accept that it is true that the State Registries Act and the Instructions on Implementation of the State Registries Act and Register of Adoptions in the Register of Births do not define the expression “appropriate medical documentation”, for the reason that the body of state administration is not responsible for describing the type of medical documentation which would prove change of gender. The expression “change of gender” is a medical expression which understands a change of gender by medical procedures and which should be supported by appropriate medical documentation.*

We would especially point out that there are no regulations in the Republic of Croatia which define in detail the medical and legal assumptions for the operational procedure of a change in gender. With this in mind we point out that bodies responsible for registering the change of personal data are not authorised to assess the legal aspects of transgender persons and the medical procedure of gender change given that this is in fact an area of healthcare and that of the gender change procedure itself should be governed by legal regulations governing healthcare. Therefore, we propose that in accordance with your powers under the Ombudsman for Children Act you commence an initiative to adopt regulations which would regulate the question of changes of gender and the legal aspects of transsexual persons in the Republic of Croatia.

Also, the Ombudswoman requested a reply from the Croatian Medical Chamber to the questions “What is appropriate medical documentation for a decision on a request for registering a change of gender” and “To what extent is Croatian practice in harmony with the practice of the European Court of Human Rights when deciding requests for a change of gender to be registered?”

In the reply of the Croatian Medical Chamber to the Ombudswoman of 20 September 2010 it is stated: “In the Republic of Croatia there is only one so-called special law (*lex specialis*) in force which regulates the area of medical documentation, the Healthcare Records Act, adopted in April 1978 and accepted into Croatian legislation by the Act on Accepting Federal Acts in the Area of Healthcare. Medical documentation in compulsory medical insurance is defined by the general acts of the Croatian Institute for Health Insurance, concretely by the General Conditions of the contract for providing health care under compulsory health insurance, by which contracted healthcare is agreed with the Croatian Institute for Health Insurance, which state that medical documentation concerning the provision of contracted healthcare for insured persons (medical history, hospital discharge letters and others) should be composed according to the rules of the profession. None of the above acts provides an answer to the question asked.”

The Croatian Medical Chamber did not consider itself competent to comment on the second question.

In a letter which we wrote to the Ombudswoman for Children on 14 July 2010 we emphasised that according to existing regulations it was not explicitly defined what the expression “appropriate medical documentation” means. Given this, the responsible administrative bodies allow themselves great freedom of discretion in deciding on parties’ requests. In the practice of the European Court of Human Rights there is a standard entitled “margin of appreciation”, and relates to a certain room for “manoeuvre”, or freedom which the European Court for Human Rights allows national institutions in meeting their obligations concerning implementation of the European Convention for the Protection of Human Rights and Fundamental Freedoms. But there cannot be any room for “manoeuvre” for bodies of state administration when in a national context the medical profession, which is first invited to define “appropriate medical documentation” in the Republic of Croatia, supports the assertion that approval for change of data of gender and name in the basic entry in the register of births should be granted to the party, on the basis of the submitted medical documentation.

The medical profession drew up documentation which substantially explained the need to change the data of gender and name in the basic entry of the register of births for this party of minority age. At the moment legal regulations do not contain a definition of “appropriate medical documentation”.

Considering that the legal standard in cases of doubt should always be on the side of the party, especially when it is a minor, and considering other legal standards for the protection of human rights, it was proposed to the Ombudswoman that in accordance with her legal powers she recommend to the administrative body that they decide the party’s appeal in accordance with existing international agreements on the protection of human rights and children. However, as described above, the Ombudswoman sought an explanation from institutions, also mentioning the possibility of adopting a law which would define this problem in more detail but she did not recommend a positive resolution of this case.

**We would especially like to mention that the Ombudswoman for Children forwarded all correspondence concerning this case to the Ministry of Education, the Representative of the Croatian Government at the European Court of Human Rights and other EU courts, Mrs Štefica Stažnik. This shows that the Office was conscious of the breach of the human rights of the child, and is a case of an attempt to divert responsibility to the representative of the Croatian Government who, it is already clear today, is expected to represent the Republic of Croatia in proceedings before the European Court of Human Rights. This case can be avoided if the Government acts according to the law. However, this is clearly a case of a lack of will to protect the rights of transgender persons.**

— *Right to health care for a transgender man*

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

On 14 June 2010 a request was submitted to exercise the right to health care abroad at the expense of the HZZO.

On 15 September 2010 the client made a statement discontinuing the proceedings before the HZZO to be referred to medical treatment abroad at the expense of compulsory health insurance.

— *Discrimination at the Faculty of Organisation and Information Technology in Varaždin*

On 9 November 2009 we were approached by Dr Dario Krešić, senior assistant at the Faculty of Organisation and Information Technology in Varaždin.

Namely, Dr Krešić approached us for the first time in 2009 because of harassment in the workplace by his fellow professors at the faculty and immediate superior Prof Željko Hutinski.

His colleagues and superior constantly made jokes and comments mocking the sexual orientation of Dr Krešić.

After a letter which our lawyer sent the Faculty's administration on 27 November 2009, Prof Kliček and Prof Hutinski apologised in writing for the harassment. After this our client expected a normalisation of relations at the faculty, but precisely the opposite happened. Dr Krešić was systematically stopped from being promoted at work and his relations with his colleagues deteriorated even more.

According to the Anti-Discrimination Act putting anyone in a less favourable position on the basis of sexual orientation is considered to be discrimination.

Because of all the above on 16 December 2010 our client commenced an individual lawsuit at the Varaždin Municipal Court which the associations Kontra and Iskorak joined as interveners. A lawyer was engaged to represent Dr Krešić in the proceedings.

The suit against the Faculty of Organisation and Information Technology in Varaždin is the first lawsuit of its type which is extremely important because generally speaking citizens do not report discrimination at the workplace due to their fear of losing their job.

Also, the majority of LGBT persons do not report discrimination from fear of having their sexual orientation disclosed, fear of discrimination and lack of trust in state institutions.

This type of discriminatory behaviour is especially shameful for an educational establishment.

In the judgement we expect discrimination to be proved, a ban on the prevention of promotion and a halt to any future discriminatory behaviour.

— Discrimination in joining a professional organisation

In February 2010 a client contacted us because she believed that her request for membership in a professional organisation was refused (although she satisfied the conditions of membership) because some of her works concerned LGBT topics. An advisory session with a lawyer was organised. The client decided that she would not make a complaint yet but that she would attempt to seek membership in the same organisation the following year.

— Change of data on gender on a degree certificate of the PMF 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, which moment also understands 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.”

A lawyer was engaged to work on the case. On 29 July 2010 a complaint was made 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 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 have 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 with the changes that had been requested.

— *Change of data on gender on a degree certificate of the FER Faculty*

On 6 December 2010 a client approached us for help because she had changed gender and her personal name and therefore had 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 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.

— *Misuse of the Protection from Violence in the Family Act and the Protection of Persons with Mental Problems Act*

On 6 December 2010 a client asked us to 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 MUP 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 MUP replied to the request sent on 8 of December 2010 confirming that the client had committed a misdemeanour under Art 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 MUP's report the client showed signs of psychic 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 MUP took party to 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.

— *Discrimination at the University of Zadar*

A female student from Zadar approached us because of discrimination on the basis of sexual orientation at the lecture of Prof Mira Klarin. Namely, during the presentation of a seminar by a number of students called “alternative forms of parenthood”, the professor did not prevent the students from making an obviously homophobic and scientifically baseless presentation. Instead of a warning the professor stated that the presentation had been excellently prepared. The professor placed the same presentation on the official website of the University of Zadar alongside the other presentations of her students. The association Iskorak sent the Ombudswoman for Gender Equality a request that Prof Mira Klarin should be warned of discrimination which she did not attempt to prevent and that she should remove the disputed presentation from the official website of the University of Zadar. The Ombudswoman for Gender Equality informed us by letter that the disputed content has been removed from the official website of the University of Zadar after a warning to Prof Mira Klarin.

— *“Anti-Gay” protests*

The Croatian Pure Party of Rights (HČSP, a registered political party) and Croatian Nationalists (according to the media, this is an association) announced in June 2009 a protest entitled “Anti-Gay Protest Against the Gay Parade – It Is Unacceptable for Them to Impose Their Distorted Lifestyle on Us”. The protest was called for 13 June 2009 – the same time as Zagreb Pride.

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

T-portal reported: “When the HČSP and the Croatian Nationalists announced an anti-gay protest, it was discovered that their Internet forums are dominated by hate speech, the praising of Ustashism and Nazism. For example, the association Croatian Nationalists in its invitation to the protest on the Internet invited ‘all nationalists, patriots, Ustashe, fascists, national socialists, skinheads and others who have the bravery’ to unite against homosexuals and ‘all together to remove this plague.’”

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

Namely, on 4 June 2009 Kontra sent an urgent request to the Zagreb Police Department to cancel the decision approving the holding of a public gathering, or protest entitled “Anti-gay protest” of the Croatian Pure Party of Rights and Croatian Nationalists because it contained all elements of the criminal acts of racial or other discrimination. Kontra also filed a criminal complaint against the organisers of the protest. On the same day a request to ban the public gathering called “Anti-gay protest” was submitted to the Zagreb Police Department. A request to ban the “Anti-gay protest” was sent to the Ministry of Internal Affairs.

On the same day, 4 June 2009, we went to the Zagreb Police Department on several occasions to agree on the taking of measures to prevent the gathering and spoke to the responsible



inspector, Mr Gašparović. We were informed that information concerning giving approval to the protest in question was inaccurate and furthermore, we were told that the police had already been informed by citizens who were concerned that an escalation of violence might occur because open incitement to violence and instructions for making weapons were given on the Internet website of the organisers.

On 4 June 2009 we also faxed the Ministry of Internal Affairs a complaint about the work of an official of the Zagreb Police Department who gave approval for the above gathering to be held, with a request that it take all measures within its powers without delay.

On 10 June 2009 Kontra submitted to the MUP, in the Zagreb Police Department, a request to make a decision banning the holding of the public meeting. On this occasion in the request we invoked the legal regulations on the basis of which a decision on banning the holding of a meeting should be brought. In this we mentioned that the holding of this gathering was contrary to the Public Gatherings Act because such a gathering incited hatred and intolerance regarding sexual orientation, and also represents a criminal act.

On 10 June 2009 we also sent a request to ban the holding of the gathering directly to the Ministry of Internal Affairs, marking it to be handed personally to minister Tomislav Karamarko. In this request we invoked the article of the Public Gatherings Act which gives the minister the authority to make a decision banning the holding of a peaceful gathering or public protest if the aim is the incitement or calling for war or use of violence on the basis of national, racial or religious hatred or any form of intolerance and if there exists the danger of a breach of public law and order.

On 10 June 2009 the largest opposition party, the Social Democratic Party, organised a press conference at which representatives of the party expressed their fear and concern at the holding of the above protest. "If the MUP gave permission for an 'anti-gay' meeting, this is unacceptable because they spread hate speech, call for the overthrow of the constitutional order and a 'final showdown'. We think that the speech of fear and hatred and everything that could happen on Saturday should be prevented. The MUP should take measures and take responsibility," stated SDP member of Parliament Šime Lučin at the press conference.

Despite all of the above, the gathering was not banned, and this action was explained by the Zagreb Police Department by a positive security assessment.

The protest was held on 13 June 2009 during the Zagreb Pride event on Ban Jelačić Square in Zagreb. The holding of this protest was a serious setback to the protection of human rights in the Republic of Croatia in 2009 and demolished the constitutional principle of equality before the law.

The fascist gathering was held in Zagreb whose participants shouted "Kill the faggot!" During the gathering itself they held their arms in the fascist salute to which the police did not react. Several participants of the gathering attempted to attack the Zagreb Pride procession. One of the participants of Zagreb Pride was attacked after the event. Proceedings of filing criminal charges against the organisers are in progress.

By this means we wish to make a public condemnation of the work of the Zagreb Police Department and Ministry of Internal Affairs. After examining the invitation and web pages of the organisers, which openly incite violence and the spreading of hatred, further security assessments were not necessary and a ban by the responsible institutions should have resulted.

The Republic of Croatia did not ban the gathering although it should have. In this way, contrary to the provisions of the Anti-Discrimination Act, there was a violation of the constitutional rights guaranteed under Article 39 of the Constitution, according to which every invitation or incitement to the use of violence, national, racial or religious hatred or any other form of intolerance is forbidden and punishable, but also the European Convention on the Protection of Human Rights, Article 10 and 11 (right to the freedom of expression and right to public gathering) relating to Zagreb Pride and Article 17 (misuse of rights) relating to the Nazi-flavoured counterdemonstration.

We did not receive a reply to our request to ban the gathering from the Ministry of Internal Affairs and Zagreb Police Department, which in itself is a direct violation of Article 46 of the Constitution. Because of the “silence of the administration” we submitted a reminder to the above institutions regarding the provisions of the General Administrative Procedures Act and launched an administrative dispute before the Administrative Court of the Republic of Croatia in order to highlight the serious breach of human rights which occurred from the failure to react by bodies of the state authorities. In the end we received a reply a year later, on 21 May 2010 before the holding of a second anti-gay protest.

In June 2010 an “anti-gay” protest was again announced whose organisers (the youth wing of the Croatian Pure Party of Rights) announced it with hate speech (“Is not support of this way of life in fact support of genocide according to which according to the number of victims not even Hitler’s Nazism can compare”), and used homophobic statements (“The height of illness is in fact endangering the health of citizens”) and a series of inaccurate information (“Is not the promotion of such a way of life which helps the spreading of AIDS and other diseases in fact endangering the health of citizens”).

On 10 June 2010 Lesbian Group Kontra sent a request the Ministry of Internal affairs, to minister Karamarko, to ban the holding of the “Protest against the gay parade”. Also on 14 June 2010 a request was also sent to the Zagreb police Department to ban the holding of the public gathering “Protest against the gay parade”.

On 10 June 2010 the Ombudswoman for Gender Equality made a public statement which states:

“The youth wing of the Croatian Pure Party of Rights made a public statement containing a series of inaccurate (e.g. ‘Is not the promotion of such a way of life which helps the spreading of AIDS and other diseases in fact endangering the health of citizens’) and homophobic (e.g. ‘the height of illness’) statements and also uses hate speech (‘Is not support of this way of life in fact support of genocide according to which according to the number of victims not even Hitler’s Nazism can compare’).

“I would remind people that the Republic of Croatia has adopted a series of laws in the area of the protection of the rights of sexual and gender minorities, such as the Gender Equality Act (OG 82/08), Same-Sex Unions Act (OG 116/03), Anti-Discrimination Act (OG 85/08), and that the Croatian Parliament has adopted the Act on Amendments to the Criminal Code (OG 71/06), which defines the new criminal expression hate crime which among the bases on which a hate crime can be punished as a criminal act, includes sexual orientation.

“I would also like to remind people that the European Parliament in 2006 adopted a Resolution on Homophobia (RC-B6-0025/2006) which requests member states of the EU to adopt

legislation banning discrimination and hate speech against minority sexual groups, and in Article 5 encourages member states and the Commission to strengthen the fight against homophobia through education – such as the campaign against homophobia in schools, universities and the media. The Resolution on Homophobia takes into consideration international and European commitments in the area of human rights such as those contained in the United Nations Convention on Human Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

“Therefore I give warning that discrimination on the basis of sexual orientation as well as hate speech is banned by law in the Republic of Croatia.”

The People’s Ombudswoman made a statement concerning this protest which stated that every incitement to belittling and discrimination is something that the police should take into consideration.

On 17 June 2010 Lesbian Group Kontra filed a complaint at the Zagreb Municipal Civil Court concerning illegal actions because the Ministry of Internal Affairs despite the request by Kontra, and the public statements of the Ombudswoman for Gender Equality and People’s Ombudsman, did not ban the “protest against the gay parade”, announced for 19 June 2010 at 14.00 hours.

The HČSP unjustifiably invoked the right to express an opinion, but those who incite violence and use hate speech do not have the right to invoke the right under Art 10 the European Convention for the Protection of Human Rights because through their activities they in fact contribute to destroying the rights and freedoms which the Convention protects.

We were put into an unenviable position by the actions of the police because we had to revert to the courts in a very short period, but the police left us no other method.

The president of the Litigation Department of the Zagreb Municipal Court Ana Gradišek failed to give a list of work for urgent procedure to the judge, although through normal procedure the list in this type of case should have been added to the agenda immediately, and a decision should have been brought the same day.

Also a reminder was sent to the Ministry of Internal Affairs about the request to react urgently and to deliver the same day, 18 June 2010, at 14.00 hours a decision banning the protest or notice from a responsible person that the Minister despite the additional argumentation would not ban the protest.

We would emphasise that it is clear from the behaviour of the responsible institutions that there is no political or professional will to confront the spreading of hatred and discriminatory behaviour.

During the protest itself, just as in the previous year, participants in the protest physically assaulted members of Zagreb Pride (about 10 of them with black hoods broke into the parade and began to physically attack the participants in Pride when the police stopped them). After the event two people were brutally beaten up.

— Association Katolik case

Several believers approached us because of homophobic articles on the website of the association Katolik in which homosexuality was equated with criminal acts such as necrophilia,

zoophilia, paedophilia and incest. After visiting the website of the association Katolik we confirmed the accuracy of the information received and contacted the Ombudswoman for Gender Equality to take the necessary action to remove the disputed content from the web page [www.katolik.hr](http://www.katolik.hr). The Ombudswoman for Gender Equality informed us that she had sent a warning to the Association Katolik with a recommendation that the disputed content should be removed from the association's Internet site and a proposal to commence misdemeanour proceedings to the state attorney's office.

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## 8. Health

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### — *Prevention of HIV in the MSM population*

In 2001, the General Assembly of the United Nations accepted the Declaration of Commitment on HIV/AIDS. As a signatory of this Declaration, the Republic of Croatia obliged itself to respect all points of this document. The Government of the Republic of Croatia funded a National Committee for the Prevention of HIV/AIDS in 2002 which adopts a National Programme for the Prevention of HIV/AIDS every five years.

The programme of prevention of HIV/AIDS and sexually transmitted diseases in the population of men who have sexual relations with men (MSM), proposed by the association Iskorak, proposes activities which directly supplement the National Programme for the Prevention of HIV/AIDS and has as its priority the prevention of HIV/AIDS infection. The proposed activities include outreach (work with users), voluntary advice and testing, education and information, behavioural and biological research on the sexual behaviour of the MSM population as a direct influence on the prevention of the spread of HIV as well as sexually transmitted diseases in populations with risky behaviour, that is in the MSM population. These activities are the product of many years of engagement by the association Iskorak as well as relevant experts in the area of HIV/AIDS and have been developed in accordance with the wishes and needs of the community. We would like to mention that the association Iskorak is only active in the city of Zagreb due to its limited financial means.

From 1995 to 2009, 792 people were registered as being affected by HIV (Croatian Institute for Public Health, 2010). The method of passing on HIV through sex is dominant in the Republic of Croatia mainly between men who have sexual relations with other men (48.5%). Of the 53 cases of diagnosed HIV in 2009, the likely route of transmission was male homosexual relations in 40 cases (75.5%). Furthermore, through our biological and behavioural research using the RDS (Respondent Driven Sampling) method at the end of 2006 we discovered the following data on the prevalence of sexually transmitted diseases in the MSM population: Gonorrhoea 13.1%, Syphilis 10.6%, Chlamydia 7.8%, Hepatitis B 7.3%. From the above data the presence of a high prevalence of sexually transmitted diseases can be concluded, especially syphilis which can increase the prevalence of HIV. The research also showed the prevalence of HIV in the MSM

population at a level of 4.5%. According to the World Health Organisation and UNAIDS a prevalence of 5% in a subpopulation (in our case MSM) represents a concentrated epidemic.

Although the incidence of HIV in the Republic of Croatia is low, we are concerned by the consistently roughly equal proportion of this group in the total number of infected persons. One of the main goals of the National Programme for the Prevention of HIV/AIDS is to reduce the risk of infection among men who have sexual relations with other men. As a plan to achieve this goal, it proposed a strengthening of the existing and where necessary increase in the number of government and non-government institutions for prevention which successfully carry out successful measures of prevention of HIV for men who have sexual relations with other men.

Contrary to the National Programme for the Prevention of HIV/AIDS where it is stated that they must strengthen the capacity of associations concerned with the prevention of HIV in the MSM population because of the worrying epidemic data about the prevalence of HIV in the MSM population, the Ministry of Health and Social Welfare in 2009 earmarked for the prevention of HIV in the MSM population just 5.9% (HRK 273,000) of the total funds intended for the prevention of HIV in risk groups (HRK 4,624,996). The association Iskorak is the only association in the Republic of Croatia concerned with the prevention of HIV in the MSM population. In 2010 the Ministry of Health and Social Welfare spent HRK 330,000 on the prevention of HIV in the MSM population which is again not sufficient to cover the needs of the MSM population for preventative programmes. We would like to mention that the Ministry of Health and Social Welfare completely delegated the overall prevention of HIV and other sexually transmitted diseases in risk groups (men who practice sexual relations with men, intravenous drug users, sellers of sexual services and their clients) to organisations of civil society which are included in the National Programme for the Prevention of HIV/AIDS. We welcome the inclusion of civil society organisations in the National Programme for the Prevention of HIV and AIDS but we believe that it is irresponsible of the Government of the Republic of Croatia to deny in this way its responsibility for the continuous improvement of the overall health system and epidemiologic service which should in fact be the foundation of successful prevention of sexual transmitted diseases among risk groups while civil society organisations should provide essential assistance to the health system. We consider the passing of responsibility for the overall prevention of HIV and other STDs among risk groups including the MSM population onto civil society organisations to be irresponsible of the Government even more because it does not pay the agreed financial funding on time (payment of funds is delayed by six months or more which raises a question mark over the sustainability of the civil society organisations) and because of the other demanding and unclear administrative tasks which are put upon the already undercapacitated organisations of civil society.

In 2009 the Ministry of Health and Social Welfare spent significantly fewer funds on the prevention of HIV in the MSM population if we take into consideration the financing of the last few years which even then was not adequate for the needs of the MSM population for preventative programmes. We believe the publication of the brochure *The Bottom Line* was a crucial factor in the reduction of funding in 2009. *The Bottom Line* was taken and translated from the leading British organisation for the prevention of HIV in the MSM population, the Terrence Higgins Trust, and has been printed in five editions in Great Britain. The brochure *The Bottom Line* is written in a language which is understandable by the population of men who have sexual relations with men and received positive review from Croatian experts Iva Žegura, professor of psychology, and

Branko Kolarić, doctor of medicine. We reported reactions to the brochure in last year's Annual Report on the Status of Human Rights of Sexual and Gender Minorities but now with a distance of time we consider that the reactions were not only homophobic articles in the media but also the reduction of financial support to the association Iskorak by the Ministry of Health and Social Welfare which indicates discriminatory behaviour.

The MSM population has the right to available preventative health programmes just as any other populations which are at risk. Our opinion is that funding intended for the prevention of HIV in Croatia should be distributed in relation to the epidemiological data about the prevalence of HIV. If according to the statistics of the Croatian Institute for Public Health the MSM population represents 48.5% of the total number of those infected by HIV then funding of the prevention of HIV and among this population should not be 5% which is the amount invested in the prevention of HIV in the MSM population in 2009. We believe that it is precisely because of the inadequate funding of HIV prevention programmes in the MSM population that we have the situation that in 2009 as many as 75.5% of newly identified HIV positive persons were men who have sexual relationships with men. It cannot be doubted that this trend will continue further if the Ministry Health and Social Welfare does not secure adequate funding for the prevention of HIV in the MSM population. We would emphasise that only the city of Zagreb is covered by the preventative programme of the association Iskorak while in other parts of Croatia no such programme exists.

Availability of health preventative programmes is part of the right to safeguard health and thus a basic human right. According to data of the World Health Organisation and UNAIDS every society has 2-3% MSM population which in the context of Croatia would be approximately 80,000 men. The needs of the MSM population for preventative health programmes is much greater than capacity of association Iskorak which is the only one working on the prevention of HIV in the MSM population in Croatia. Unfortunately, the reduction of financing by the Ministry of Health and Social Welfare additionally threatens the right of the MSM population to available preventative programmes for HIV and other sexually transmitted diseases.

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## 9. Public events

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### L-FEST

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From 26 to 28 November 2010 L--fest (Festival for the Promotion of Lesbian Culture) was held for the first time organised by Lesbian Group Kontra.

The emphasis of the Festival was on cooperation, i.e. joint action of lesbian artists from the country and graduates of various workshops, and therefore the Festival's theme was synergy (Greek *synergía*: joint work *sin-* + *érgon*: work).

The programme comprised photography workshops, an exhibition of the artist Ana Opalić in Galerija Nova, a creative writing workshop ("From story to scenario and back"), a cartoon

strip workshop of the artist Helena Janečić, a film projection, an evening of (inter)active literature and a concert in the Mosor cinema.

The Festival presented the latest trends of lesbian cultural and artistic creation in the country, and also exists as a platform for exchange of the same as well as a place for networking and achieving cultural and artistic cooperation among the Festival's guests.

### **“In Krapina everyone is a HOMO sapiens” campaign**

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At the beginning of the year Iskorak started a media campaign entitled “In Krapina everyone is a HOMO sapiens” whose aim was to spark a debate among the wider public about the non-existence of true differences between HOMO sapiens and Homo SAPIENS. Using this simple play on words they reminded the public of the fact that homosexuality has existed for as long as the human race has existed and Krapina, as the starting point for this campaign, suggested itself. As well as in Krapina this campaign was conducted in seven of Croatia's larger cities. A micro page [www.homosapiensi.info](http://www.homosapiensi.info) was also set up on which visitors could read information about the campaign, look at photographs of billboards in Croatia, read the media reactions to the campaign in one place and send their friends a postcard with a message “In \*your town\* everyone is a HOMO sapiens”. Although the campaign was not well received in Krapina whose inhabitants responded by tearing down the posters on the second day of the campaign, the campaign itself was excellently welcomed in other cities, the media and the community. The campaign achieved over 20,000 separate visitors, and also won the Outward 2010 award for the third best billboard in 2010 which is the first time in Croatia that an LGBT media campaign has received such a prestigious recognition.

### **“Iskorak against homophobia” campaign**

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The media campaign “Iskorak against homophobia” was thought up and realised on the occasion of the International Day against Homophobia (IDAHO) which is marked throughout the world on 17 May. The aim of the campaign was to introduce the wider public to the concept of “homophobia” and with events of the concept through true cases of homophobic incidents and discrimination. The central part of the campaign was the informative and educational website [www.homofobija.com](http://www.homofobija.com) and promotional video spot in which public persons stated their attitude to homophobia <http://vimeo.com/11805759>.

As part of the campaign two new publications of the association Iskorak were also presented: “Legally against homophobia” and “Behaviour towards the victims of homophobic violence”.

### **“Football against homophobia” campaign**

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The supporters association of Zagreb Football Club – White Angels – in cooperation with the associations Iskorak, Queer Zagreb and the Centre for Peace Studies, organised an action to symbolically mark International Day Against Homophobia in Football which is held on 19 February, and for which a match was initially announced but later cancelled.

At a football match between Zagreb and Rijeka on 26 February 2010, members of the supporters association and activists of the mentioned organisations set up a banner at the football stadium of Zagreb Football Club which read “FOOTBALL AGAINST HOMOPHOBIA” and also raised the rainbow flag as a symbol of the struggle for the rights of sexual and gender minorities.

Some forty people held a banner, both supporters and activists and there was no violent reaction among the rest of the public, except that the Armada (Rijeka football supporters) from the opposite eastern side of the stand readily answered with their own banners “Football against the phobia of women” and “Go and get treated”.

This action was the first action of its type in Croatia where organisations of civil society, especially organisations for the rights of sexual and gender minorities, successfully cooperated with a football club’s supporters association in the struggle against homophobia and discrimination because of sexual orientation or gender identity.

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### **Zagreb Pride 2010**

On 19 June 2010 the Zagreb Pride event was held. The theme of this year’s event was “Croatia can swallow it” and as the main visual element, a poster was used with a naked backside painted in various colours.

For the second successive year the Croatian Pure Party of Rights organised a fascist counterdemonstration during the event entitled “anti-gay protest”.

We consider the failure to ban the fascist demonstration by the responsible authorities which has been held for the second time simultaneously with the Zagreb Pride event to be a serious setback in the protection of the human rights of LGBT persons.

The participants of the anti-gay demonstration shouted “Kill the faggot!” during the protest and held their arms in the fascist salute to which the police did not react. Several participants of the demonstration attempted to attack the Zagreb Pride procession. Two participants of Zagreb Pride were beaten up after the event.

The holding of a fascist counterdemonstration however caused a greater number of participants (mainly from non-governmental organisations) to participate in the Zagreb Pride event.

We would emphasise that every year on the occasion of the Zagreb Pride event the Zagreb Police Department organise wide-ranging intervention measures in order to protect the event’s participants, but these only relate to protection during the duration of the event in a narrow area around the place where the event is held. Thus other parts of the city are not covered, and attackers most frequently follow their victims when they leave the event.

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### **Festival Queer Zagreb**

In 2010 Queer Zagreb held the eighth annual Queer Zagreb Festival, which, as in previous years, consisted of theatrical, dance, film and musical sections. Along with some familiar guests, the Festival also offered some fresh names in the world queer scene.



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

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### **Croatia Progress Report 2010 of the European Commission**

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For the fourth successive year the European Commission in its report expressed dissatisfaction concerning the implementation of legislation on the prevention of discrimination and hate crime. In the Report published on 9 November 2010, among other things, it is stated that there were no convictions for incitement to discrimination and violence. Particular emphasis was placed on the fact that LGBT persons experience threats and attacks, and the reactions of state institutions to such attacks are limited.

### **Same-sex couples are family – the case of P.B. and J.S. versus Austria**

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On 11 July 2010 the European Court for Human Rights brought its judgement in the case P.B. and J.S. versus Austria. The court concluded that Austria had breached the European Convention on Human Rights because it did not ensure the rights to health insurance to same-sex couples which were available to non-marital heterosexual couples. Also, the Court once again confirmed that according to the Convention same-sex partnerships are considered to be families.

The Court decided by a majority of five to two that Austria had breached Article 14 (banning discrimination) in concurrence with Article 8 (right to respect of private and family life) in the period to August 2006 when insurance was available only to heterosexual non-marital partners.

This is the second judgement of the European Court for Human Rights concerning same-sex couples and the Court once more confirmed that “same-sex couples who live in stable relationships are covered by the concept ‘family life’, just as non-marital heterosexual couples are”. The European Court made this historic interpretation of the Convention on Human Rights just a month previously, when it made its judgement in the case Schalk and Kopf versus Austria.

In light of the judgement of the European Court for Human Rights we call upon the responsible institutions to abolish discrimination of same-sex couples in Croatian legislature. The right to health insurance via a partner is just one of many rights which are withheld from same-sex couples in the Republic of Croatia. We seek this discrimination to be abolished, so Croatian citizens who live in same-sex partnerships are not forced to seek justice before European institutions.

### **Resolution on the Croatia Progress Report 2010**

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On 16 February 2010 the European Parliament adopted a resolution on the Croatia Progress Report 2010.

The European Parliament in its Report on the Republic of Croatia expressed “regret for the fact that Parliament and the Government failed to include in the constitution better protection for minority social groups, such as the LGBT population, and the principle of ecological sustainability.”

The European Parliament “calls upon the authorities to take a step forward and establish an appropriate classification and definition of hate crime, especially connected to criminal acts motivated by sexual orientation, cultural or ethnic identity”.

Furthermore, the European Parliament “welcomes the advance in implementation of legislation concerning hate crime; but warns that the authorities must more resolutely solve cases of threats and intolerance on the basis of racial or sexual orientation”.

By this Resolution the European Parliament once more invited Croatia to ensure real protection of the rights of sexual and gender minorities and reminded that the protection of the rights of all minorities is a condition for accession to the European Union about which it is not possible to negotiate.

In the light of the Resolution of the European Parliament, we would like to recall that Lesbian Group Kontra, the Serbian Democratic Forum and Better Future have sent the working group for the preparation of a draft Criminal Code a proposed amendment which would introduce stronger sanctions for hate crimes against all social groups.

Also, we expect state institutions to start to consistently implement the legal provisions concerning the sanctioning of hate crimes and prevention of discrimination.

We seek the introduction of permanent education of police officials about hate crimes on the basis of sexual orientation and better cooperation with non-governmental organisations which are concerned with the protection of the human rights of LGBT persons.

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## **11. Future activities of the Team for Legal Changes of Iskorak and Kontra**

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Offering direct legal assistance to LGBT persons who have experienced discrimination or violence on the basis of their sexual orientation, gender identity or gender expression;

Corporation with the police, state attorneys and courts concerning the elimination of hate crimes;

Publicly promoting stricter punishments for hate crimes and better legal definition and punishment of hate speech;

Promoting the introduction of anti-discrimination provisions on the basis of sexual orientation, gender identity and gender expression in the Constitution and all relevant legal regulations;

Promoting changes to the law with the aim of protecting the right to respect for the private lives of transgender persons (legal recognition of a new name and gender);

Promoting equality of same-sex couples with different-sex couples in regard of the rights which are obtained from marriage or non-marital union;

Work with unions and union officials on a programme of legal assistance and protection from discrimination in the workplace for LGBT persons;

Development of court practice in the bringing of joint law suits and participation in the role of intervener in court proceedings for the protection from discrimination in accordance with the Anti-Discrimination Act.

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## 12. Requests to state institutions

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

- remove discrimination of same-sex partners by ensuring them the rights and responsibilities available to different sex partners through the institutions of marriage and non-marital unions;

- introduce more severe punishments for hate crimes and better legal regulations for punishing hate crime exclusively in the area of criminal legislation, and to ensure their implementation;

- as soon as possible to include the banning of discrimination on the basis of sexual orientation and gender identity in the Constitution of the Republic of Croatia and all other relevant laws;

- introduce protection mechanisms in the relevant laws in order to protect the right to respect for the private lives of transgender persons;

  - increase institutional protection of the rights of sexual and gender minorities;

  - consistently implement anti-discrimination laws and policies;

- introduce into primary and secondary schools sexual education in which sexuality and sexual and gender minorities are spoken of objectively and take responsibility for its implementation.