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# 2008. ANNUAL REPORT ON THE STATUS OF HUMAN RIGHTS OF SEXUAL AND GENDER MINORITIES IN CROATIA



ILGA  
EUROPE



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Lesbian  
Foundation  
for Justice**

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## 1. Introduction

### Legal changes

The Team for Legal Changes of Iskorak and Kontra was founded in spring 2002, which also marked the beginning of a more intense advocacy of the protection of rights of sex and gender minorities within the Croatian legal system.

While advocating the human rights of LGBT (lesbian, gay, bisexual, transgender) 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 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 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 Civil Unions Act was passed.

The changes in Croatian legislation were a result of public advocacy by the Team for Legal Changes, as well as the 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 into 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 the Parliament on 10th May 2004. In 2005 and 2006 the Team for Legal Changes worked on the introduction of a definition of hate crime into the Criminal Code. The suggestion of the Team for Legal Changes on this was accepted by the Croatian Parliament mainly due to international pressure (OSCE, applying for EU membership) and support by the national minorities in Parliament in 2006. There is still noticeable resistance to the elimination of discrimination of same-sex unions at the legal level. In 2006 the proposed Registered Partnership Bill was refused, the purpose of which was to secure for same-sex couples the same rights and obligations enjoyed by married couples, with the exception of adopting children.

The last four 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 these same laws they raised their hands in favour of in the hope of endearing themselves to the international community.

### Summary of 2008 Report

The greatest advance in the protection of the rights of sexual and gender minorities in 2008 was achieved by the adoption of the Anti-Discrimination Act. This Act was passed by the Croatian Parliament on 9 July 2008, after a long public debate. This Act by definition ensures the protection and promotion of equality as the greatest values of the constitutional order of the Republic of Croatia, creates the prerequisites for achieving equal opportunities and sets out protection from discrimination including on the basis of gender identity, expression and sexual orientation.

The newly adopted 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.

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

Of particular concern is the fact that there does not exist in the Republic of Croatia an appropriate system of offering health care to transsexual persons for sex change operations and the treatment of possible complications which occur as a result of such operations. Croatian doctors are not sufficiently trained to offer such types of health care.

There exist significant problems in respect of the right to privacy of transsexual persons. Namely, after a sex change operation the police do not erase data on a person's previous sex from the police records. Police officials in the majority of cases are extremely transphobic and it happens that they openly mock and show data about a person's change of sex to other people (for example at national borders during document checks).

Transsexual persons often experience violence on the basis of their gender identity or gender expression; however, they very rarely decide to report such incidents to the police due to their lack of trust in state institutions and fear of disclosing their identity.

Positive advances in the state of the rights of sexual and gender minorities in the Republic of Croatia in 2008 can be seen as in previous years in the increase in reporting of violence and discrimination to associations for the protection of sexual and gender minorities. More and more people are finding the courage to report homophobic, biphobic and transphobic hate crimes. *However, a large number of people who have experienced discrimination and violence never report such incidents because of their lack of faith in the Croatian legal system and fear of disclosing their sexual orientation.*

The most negative event in 2008 was the decision by the Ministry of Science, Education and Sport to desist from introducing any kind of sex education in schools.

The disgraceful fact that the Ministry of Science, Education and Sport, after four years of work on finding an adequate solution for the introduction of sex and afterwards health education, decided not to introduce a separate subject and to completely stop working on this problem. In those four years, the Ministry received opinions from the offices of the Ombudswoman for Children as well as the Ombudswoman for Gender Equality, which the Ministry never respected. But in order to adopt some kind of decision, the Ministry engaged two expert commissions, only, in the end after that unnecessary financial expense, to collect inadequate programmes from non-governmental organisations which will not even be used. From all this it can be seen that the responsible ministry, at taxpayers' expense, has only created unimplementable programmes with the clear intent of returning to the beginning – when a public debate was started on this subject back in 2004.

The above analysis confirms that pupils in primary and secondary schools obtain information about different sexual orientations and gender identities in the regular education system based exclusively on the dogmatic viewpoints of the Catholic Church and possibly other religious communities.

Practice shows that the majority of perpetrators of criminal offences of violence against sexual and gender minorities are minors, therefore still attending either primary or secondary school, and that they receive information about different sexual orientations and gender identities through the regular educational system based on the dogmatic viewpoints of the Catholic Church or other religious communities. They receive other information about sexuality only during biology classes when they learn about reproductive systems and the reproduction of animals, as well as humans, and to a small degree during other subjects when, for example, they learn about literature or history. Such a system demonstrates that the state does not give accurate and complete information about human sexuality to pupils of primary and secondary schools, resulting in children being deprived of fundamental rights guaranteed by the Convention on the Rights of the Child, European Convention for the Protection of Human Rights and Fundamental Freedoms, and other international and national legal documents. By manipulating the public domain, unjust use of the resources of the State budget, giving false and unachievable promises, totally ignoring the opinion of the ombudswoman and frustrating children and their rights, the responsible Ministry of Science, Education and Support, headed by minister Dragan Primorac, has set the Croatian education system back four years, and left the teaching of children at the level of education of several hundred years ago.

## 2. Legislation

### Anti-Discrimination Act

At the end of 2007, the Office for Human Rights of the Government of the Republic of Croatia opened a public debate about the Anti-Discrimination Bill. The opening of the public debate was preceded by an invitation from the Office for Human Rights to certain representatives of civil society to help draft the Anti-Discrimination Bill which they refused to do because of the non-transparent method of forming the working group as well as because of a lack of capacity. Representatives of organisations concerned with the protection of the rights of sexual and gender minorities were not included in the working group despite the fact that their inclusion is explicitly stated as a measure of the National Policy for Promoting Gender Equality from 2006 to 2012.

As a result, the Office for Human Rights of the Government of the Republic of Croatia itself prepared the initial version of the Anti-Discrimination Bill which was then supposed to be worked on further by the working group of the Ministry of the Family, Veterans' Affairs and Intergenerational Solidarity.

The Team for Legal Changes of Iskorak and Kontra, commenting on the above draft, emphasised the fact that the Republic of Croatia has since 2003 already passed a range of anti-discrimination regulations which ban discrimination in various areas, such as the Gender Equality Act, Labour Act, Same-Sex Unions Act, Civil Servants Act, Volunteers Act and others. In this process it was confirmed, not only in respect of the protection of the rights of sexual and gender minorities, that the existing legal regulations are not being applied and that discrimination is a highly prevalent social problem for which an appropriate solution has not been found. Implementation of the existing laws for protection from discrimination is insufficient, the Government of the Republic of Croatia still has not adopted the National Strategy for the Elimination of all Forms of Discrimination, and a similarly nor has it brought into operation sanctions against discrimination. The European Commission also attracted attention to this problem in its Croatia Progress Report for 2007 and 2008, adding in the 2007 Report that several homophobic incidents had been noted. Therefore we believe that, in the context of implementation, adoption of this Act will only be of corrective nature.

The Bill itself encompassed several important social problems for which adequate solutions have not yet been found. Namely, the Bill prescribes that the activities of the central body responsible for eliminating discrimination should be performed by the People's Ombudsman. Although it is anticipated in the Bill that responsibilities are not mutually exclusive in practice, this can lead to a problems because both Offices would in fact need to co-operate, which would bring into question their independence. Furthermore, within the area of responsibility of the People's Ombudsman would also be the offering of legal aid to parties which includes legal advice relating to discrimination, in accordance with the legal regulations on the offering of legal aid. This kind of arrangement necessarily depends on the adoption of a special legal regulation on gaining the right to legal aid, which has still not been done, and there is not even place for such an arrangement in the Anti-Discrimination Act. In contrast to the provisions of the People's Ombudsman Act according to which he may select the cases which he chooses to work on, according to the provisions of the Anti-Discrimination Act, he would be obliged to become involved without being able to choose selectively.

The Bill also regulated the possibility of providing misdemeanour sanctions for the perpetrators of discrimination. We considered that this possibility is contrary to the principle of the banning of double punishment (*ne bis in idem*), because discrimination is already criminalised in the Criminal Code and may be considered either as the criminal act of violation of the equality of citizens (Art 106 para 1 of the Criminal Code) or as the criminal act of racial or other discrimination (Art 174 of the Criminal Code). In cases of legal persons and their responsibilities for discrimination, it is impossible to apply in an appropriate manner the Act on Responsibilities of Legal Persons for Criminal Acts. Although Croatian criminal legislation (also including misdemeanour laws) recognizes the possibility of the overlapping of criminal and misdemeanour offences, this should be considered in the light of the opinion of the European Court of Human Rights and taken into consideration that in no way can there be a case of identical characteristics of individual acts. In cases of discrimination both as a misdemeanour and as a criminal act, then this is a case of identical characteristics of both acts.

Furthermore, in cases of misdemeanour sanctions, attention should be drawn to the fact that the highest punishment envisaged by the then Anti-Discrimination Bill is a fine (sometimes starting from a minimum of 20,000 kunas) or a prison sentence up to 90 days. On the other hand, in cases of criminal acts under Art 106 para 1 and Art 174 para 1 of the Criminal Code, then fines are not envisaged at all but exclusively prison sentences being within a range from six months to five years for both criminal offenses. Taking into consideration the general purpose of setting criminal sanctions, it is obvious that the intention of the legislation was to punish discrimination as a more

serious criminal act and that it considered that fines or prison sentences below six months were not sufficient to achieve this purpose. We therefore considered that by introducing misdemeanour sanctions, a wrong message will be sent to potential perpetrators of discrimination and thus the possibilities of retribution by society for discrimination as a form of delinquent behaviour are reduced.

#### The final draft of the Anti-Discrimination Bill

On 13 March 2008 a meeting was held by the head of the Office for Human Rights of the Government of the Republic of Croatia with representatives of the organisations Iskorak and Kontra concerning the new Anti-Discrimination Bill, with the final draft of the Bill which had been prepared by the working group of the Ministry of the Family, Veterans' Affairs and Intergenerational Solidarity. This draft at that stage had not been presented to the public and the Team for Legal Changes of Iskorak and Kontra asked for the text of the draft before the meeting itself. This request was not met by the Office and so it was impossible for the organisations to comment on the text of the draft law at the above meeting.

Asked by the representatives of organisations Iskorak and Kontra why representatives of organisations for the protection of the rights of sexual minorities had not been included in the workgroup, the head of the Office replied: "We wanted to include you but we had to leave places for experts." We would like to reiterate that measure 1.5.2 of the National Policy for Promoting Gender Equality 2006 to 2012 prescribes that representatives of organisations for the equality of sexual and gender minorities should be included in working bodies for the adoption of laws, programmes and strategies connected to the rights of sexual minorities. From such behaviour of the Government Office it is clear that the Government has no intention of applying the provisions of its own Policy for the Promotion of Gender Equality and that it has no intention of involving experts for the protection of the rights of sexual minorities in processes of drawing up anti-discrimination laws, programmes and strategies.

On the other hand, the head of the Office praised the Bill at the meeting, especially emphasising the introduction of provisions forbidding discrimination on the basis of gender identity for the first time in Croatian legislation (which the Team for Legal Changes had been publicly arguing for since 2004).

The new bill also contained misdemeanour provisions, changed in relation to the previous bill, so that there was no longer any significant overlapping of criminal and misdemeanour acts. Now the essence of a misdemeanour seeks the behaviour of the perpetrator "with the aim of instilling fear in another person or creating a hostile, humiliating or insulting atmosphere", based on any kind of difference and which act as a consequence results in injury to the dignity of the other person. This is a matter of criminal provisions which do not anticipate prosecution for a misdemeanour for the essence of discrimination as defined by the Anti-Discrimination Act but rather is a case of the criminalisation of discriminatory harassment. The implementation of this provision is questionable at the level of dispensing misdemeanour justice because it requires the court to prove the existence of a direct intention to commit the misdemeanour and to confirm that the consequence followed, that consequence being precisely the injury to the dignity of the person subjected to the incriminating act. One of the reasons in the public debate why it was necessary to introduce misdemeanour provisions was precisely in order to facilitate the sanctioning of discrimination because misdemeanour proceedings are faster and more easily implemented than criminal proceedings. However, this is now a question of a misdemeanour offence with a consequence for perpetrating which requires direct intention.



The Bill also contained the possibility of the participation of third parties in legal proceedings through the institution of interveners. In this way it would be possible for, for example, a trades union or organisation of civil society which is concerned with the protection of human rights to become involved in legal proceedings on the side of the plaintiff who asserts that he was subjected to discrimination and thus through its participation it can contribute to the legal proceedings by bringing in important facts for the case in question. This intervener could have the status of co-plaintiff in the legal proceedings. However, the proposer regulated that irrespective of the result of the case, the intervener should itself bear the costs of its participation in the case. Therefore civil society organisations would have significantly limited opportunities to participate in legal cases as interveners on the side of people who assert that they are victims of discrimination considering that they themselves would have to bear the costs of participating in the case without regard to the outcome of the case. Such a solution was against the provision of Article 154 para 1 of the Civil Procedure Act in which it is confirmed that the party which completely loses a case is required to pay the costs of the other side and its intervener. Given that the court makes a decision on the participation of interveners applying in an appropriate manner the provisions of the Civil Procedure Act, there is no need in advance to limit in any way whatsoever the participation of interveners in order to prevent unnecessary litigation. Other than this, by enabling a larger number of participants to be included in the elimination of discrimination by participating in proceedings, it can only advance the reduction of discrimination at all levels.

On 28 March 2008, the Office for Human Rights of the Government of the Republic of Croatia held a public presentation of the draft Anti-Discrimination Bill in the Centre for Human Rights. Representatives of the Team for Legal Changes of Iskorak and Kontra suggested in the public debate that the provision be abolished which prescribes that interveners in cases concerned with discrimination should bear their own costs. The head of the Office for Human Rights of the Government of Republic of Croatia replied to this suggestion arguing that the provision had been introduced “in order to prevent possible abuse”. The text of the draft Bill also contained provisions concerning the forbidding of discrimination on the basis of sexual orientation and gender identity.


On 15 May 2008, the Government of the Republic of Croatia sent the Anti-Discrimination Bill into Parliamentary procedure. On 16 May 2008 the Team for Legal Changes of Iskorak and Kontra sent the Committee for Human Rights and Rights of National Minorities of the Croatian Parliament a proposed amendment to the Anti-Discrimination Bill with a final proposal which would delete the provision in which it was prescribed that interveners in cases concerning discrimination should bear their own costs.

The Committee for Human Rights and Rights of National Minorities of the Croatian Parliament at its 9th sitting held on 27 May 2008 considered the Anti-Discrimination Bill with the final draft Bill which the Government of the Republic of Croatia had delivered to the Speaker of the Croatian Parliament. The Committee unanimously decided to propose to the Croatian Parliament that it adopt the Anti-Discrimination Act along with the amendment which deleted the provision which prescribes that interveners in cases connected to discrimination should bear their own costs.

The Bill also received the recommendation of all the other relevant parliamentary committees as well as numerous experts in the area of the protection of human rights.


At the 4th sitting of the Croatian Parliament on 28 May 2008, the debate on the Anti-Discrimination Bill with the final draft Bill was concluded under urgent procedure, first and second readings.

On 30 May 2008 it was published in the media that the Catholic Church had applied pressure on the Government because of the provision which bans discrimination on the basis of gender identity. Representatives of the Government made it understood through its announcements that the above




provision would be withdrawn from the final bill. Given that the Bill had passed all parliamentary procedures under urgent procedure including the debate of 28 May, it should have been passed during the 4th plenary sitting of the Croatian Parliament which was concluded on 30 May. However, the procedure in the Croatian Parliament concerning this Bill was halted without a vote, without any explanation. All the other bills from the 4th sitting were passed according to the prescribed procedure before the conclusion of the sitting. No valid reason was given for this halt of procedure given that a vote was held for all the other bills. From the above, the conclusion is unavoidable that the Rules of Procedure of the Croatian Parliament, according to which a debate is followed by a vote, were grossly breached due to pressure on the legislature by the Catholic Church. By such behaviour the procedure for passing laws and other acts is exposed to ridicule and allows particular interests to outweigh the general good which is supported by the majority.

On 3 June 2008 the deputy prime minister of the Republic of Croatia, Mrs Jadranka Kosor, held a public presentation of the Gender Equality Bill in the Centre for Human Rights. This Bill also contained a provision on the banning of discrimination on the basis of gender identity and the provision was deleted after pressure from the Catholic Church. At the presentation in the Centre for Human Rights, a text of the Bill which did not include gender identity was presented for the first time. After the end of the presentation, representatives of the Team for Legal Changes of Iskorak and Kontra presented her with a rosary in front of the media. This was a public action by which representatives of the Team for Legal Changes wished to demonstrate their concern connected to the influence of the Catholic Church on the Government and the protection of the rights of transgender persons. The media followed this action and reported on the weakness of the Government in the face of the Catholic Church.




The Team for Legal Changes of Iskorak and Kontra, in cooperation with the Women's Network of Croatia, Centre for Peace Studies, Zagreb Autonomous Women's House, B.a.b.e. and Transparency International Croatia, organised a press conference on 4 June 2008. At the press conference special emphasis was placed on the fact that the Ministry of the Family, Veterans' Affairs and Intergenerational Solidarity had prepared a bill, that the bill had been adopted by the Government, had received recommendations from all other relevant parliamentary committees and had passed a debate in the Croatian Parliament. Furthermore a wide public debate had been carried out over a period of nine months prior to the debate in the Croatian Parliament. The Bill had been positively judged by respected legal experts. Despite all this the procedure of voting was halted because representatives of the Catholic Church applied pressure on the Government. Special attention was given to gender identity, because the majority of criticism from the Catholic Church was directed at gender identity. At the press conference an explanation was sought from the Croatian Parliament as well as from the Government of the Republic of Croatia why it came to a failure to vote on the final Anti-Discrimination Bill considering the fact that it had been the clear intention of the Government that the Bill be voted on because it was put into urgent parliamentary procedure. The proposer of the Bill was also asked to officially explain the allegations in the media concerning the deletion of all the provisions on gender identity. The Croatian Parliament was asked to adopt the final Anti-Discrimination Bill which contains the provision relating to the banning of discrimination on the basis of gender identity.



On 18 June 2008 on the initiative of the Team for Legal Changes of Iskorak and Kontra, ILGA Europe (International Lesbian and Gay Association) sent a letter to the Government and Croatian Parliament expressing its concern concerning the Anti-Discrimination Bill and the deletion of the provision relating to gender identity.



Between 24 and 25 June 2008 a representative of the Team for Legal Changes of Iskorak and Kontra attended informal consultations of the European Commission with non-governmental organisations



connected with its Croatia Progress Report. Consultations with representatives of the Council of Europe were a significant opportunity for representatives of non-governmental organisations from Croatia to present the current problems related to the Anti-Discrimination Bill. After the meeting, the Legal Team received information that the Catholic Church was applying pressure on the Government of the Republic of Croatia also to delete the provision on the banning of discrimination based on sexual orientation from the draft bill, and there was a great likelihood that this would happen. On its return, the Legal Team informed the representative of the European Commission from the team for Croatia who had attended the consultations with non-governmental organisations of its discovery after which the representative contacted the European Commission Delegation in Zagreb. The European Commission Delegation then informed the Legal Team that it was working on this matter. The Legal Team contacted the European Commission Delegation on two more occasions – relating to sexual orientation and gender identity and later relating to direct intent in incitement to discrimination.

On 2 July 2008 after the sitting of the Government finished, the deputy prime minister, Jadranka Kosor, announced that amendments to the Anti-Discrimination Act had been voted for with its coalition partners. The government decided to make four amendments to the Anti-Discrimination Act before it was voted on in the Croatian Parliament.

One of the amendments, adopted in agreement with the Croatian Bishops Conference (HBK), was that the People's Ombudsman as the central body for the implementation of law, before making its report on implementation would have to consult with all registered religious communities in Croatia. She added that the amendments also clarified some provisions of the law and enabled free and unhindered representation of the doctrines, procedures, beliefs and aims of various organisations among which was the Catholic Church. One amendment states that incitement to discrimination would be punished if it was committed with intent.



An amendment of the HDZ parliamentary party relating to the deletion of discrimination based on gender identity and expression was withdrawn.

When asked by a journalist whether the law would be carried, the deputy prime minister said that she had spoken the previous day with the president of the Croatian Peasant Party (HSS), Josip Friščić, and that she thought there wouldn't be a problem.

She also said how the question of same-sex marriages had been clarified in talks with the HBK "because the law in no way allows that, and does not even offer a glimmer of light for same-sex marriages or adoption of children".

On 3 July 2008 the Team for Legal Changes of Iskorak and Kontra published a public reaction relating to the announcement of the Government. In connection with the amendment concerning the work of the People's Ombudsman we found that consultations with religious communities were acceptable only in cases of discrimination based on religious belief. However, any kind of involvement of religious communities in legal questions of other types of discrimination would be unacceptable. Concerning the amendment about the unhindered spread of dogma, the Legal Team stated that this could also be applied to fascism and hate speech, and that such a provision was contrary to the positive provisions of the Criminal Code concerning hate speech. Furthermore, concerning incitement to discrimination, the Legal Team warned the Government of the Republic of Croatia that Council of Europe Directive 2000/43/EC did not prescribe direct intent for incitement to discrimination. Indeed, it prescribes that incitement to discrimination should be treated as discrimination. The Legal Team informed the Delegation of the European Commission about this and asked that it encouraged the Government of the Republic of Croatia to follow in full the directives of the Council of Europe and standards of the European Union relating to the Anti-Discrimination Bill.

On 4 July 2008 the European Commission Delegation in the Republic of Croatia informed the Legal Team that the European Commission was following the process of the adoption of the Anti-Discrimination Bill because it was one of the conditions for closing chapter 19 and concerns basic human rights. Furthermore, the European Commission informed us that the provisions on gender identity and sexual orientation were still contained in the draft bill. The Commission shared our viewpoint concerning direct intent in incitement to discrimination and informed us that it would bring this question up with the Government.

On 9 July 2008 at the invitation of the Centre for Human Rights, we participated in a press conference on the Anti-Discrimination Bill. We warned the public that the Anti-Discrimination Bill was one of the best legal solutions proposed by the Croatian government and that the Bill should be passed in the original form in which it was presented to the Croatian Parliament.

On the same day the Croatian Parliament passed the Anti-Discrimination Act with all the proposed government amendments. The provisions relating to sexual orientation and gender identity remained in the Act. Thus the Anti-Discrimination Act became the first law which includes a provision on the banning of discrimination on the basis of gender identity in Croatian legislation. The amendment concerning the institution of intervener proposed by the Committee for Human Rights and Rights of National Minorities was also passed.

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

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

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

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

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

The Bill did not receive the recommendations of the relevant committees of the Croatian Parliament. The Bill was assessed as incomplete by the Committee for Health and Welfare. The representative of the Government of the Republic of Croatia at a sitting of the Committee for the Family, Youth and Sport stated that the Government did not accept this Bill because it had objections to the proposed normative solutions, to its harmonisation with the directives of the European Union, and other international legal instruments. On 21 November 2008 at the 7th sitting of the Croatian Parliament, the decision was made not to accept the Bill.

It has been announced that the Government will soon put a different legal solution into procedure.

## Gender Equality Act

On 13 October 2007, it was announced in the media that the Constitutional Court would repeal the Gender Equality Act. Information also appeared in public that the Constitutional Court would also repeal the Same-Sex Unions Act. The reasons for repealing these laws are based on the fact that in 2003 they were passed without the necessary number of votes of Members of Parliament (a total of at least 76 votes), because in both cases involved organic laws.

On 16 January 2008, the Constitutional Court of the Republic of Croatia gave a statement from its sitting held on that day as follows:

*“In matters of evaluating the agreement of laws with the Constitution, the Constitutional Court has: - repealed the Gender Equality Act (Official Gazette no. 116/03) because of its formal non-agreement with the Constitution of the Republic of Croatia. The Constitutional Court has, evaluating the legal nature of this Act, concluded that this is an organic law, because it concerns a constitutionally agreed human right and a fundamental freedom under Article 3 and Article 14 para 1 of the Constitution, and in accordance with the provision of Article 81 para 2 of the Constitution the votes of the majority of all members of the Croatian Parliament, that is at least 76 votes, were necessary for its adoption. Seeing that the Act in question was passed with 75 votes, the procedure of its adoption was not in accordance with the above provision of the Constitution and therefore the Constitutional Court has repealed it, not examining in doing so its contents’ agreement with the Constitution. Considering the importance of the Act and its application, the Constitutional Court on the basis of its power under Article 55 of the Constitutional Act on the Constitutional Court of the Republic of Croatia has delayed the cessation of force of the Act until 15 July 2008 in order to leave the Croatian Parliament enough time to bring it into line with the Constitution.”*

No mention of the debate concerning the Same-Sex Unions Act can be found in the above announcement of the Constitutional Court and no decision on this matter had been announced at the time this report was prepared.

The Gender Equality Bill which was prepared by a workgroup appointed by the Ministry of the Family, Veterans’ Affairs and Intergenerational Solidarity included certain changes compared to the Gender Equality Act of 2003. Among other things, it included a banning of discrimination on the basis of gender identity, which was included thanks to the lobbying of non-governmental organisations, especially the Women’s Network of Croatia. A public debate about the Bill was held parallel with the debate on the Anti-Discrimination Bill.

After open pressure of the Catholic Church on the Government of the Republic of Croatia, the banning of discrimination on the basis of gender identity was deleted from the Bill. On 3 July 2008, deputy prime minister of the Republic of Croatia, Ms Jadranka Kosor, held a public presentation of the Gender Equality Bill in the Centre for Human Rights, where the amended text of the Bill was presented which did not mention gender identity. At the end of the presentation of the Bill, representatives of the Team for Legal Changes of Iskorak and Kontra presented her with a rosary in front of the media. This was a public action by which the representatives of the Team for Legal Changes wished to demonstrate their concern relating to the influence of the Catholic Church on the Government and protection of the rights of transgender persons. The media followed the action and reported on the weakness of the government in the face of the Catholic Church.

The Gender Equality Act was passed on 15 July 2008. The Act as passed does not contain the banning of discrimination on the basis of gender identity. Considering that this ban is contained within the Anti-Discrimination Act this would mean in practice that only the People’s Ombudsman will be

able to receive and act upon allegations on the basis of gender identity, while the Ombudswoman for Gender Equality could only work on allegations based on discrimination on the basis of sexual orientation.

## Public Gatherings Act

On 10 December 2007, in cooperation with organisations of civil society, the organisations Iskorak and Kontra filed a request for the assessment of the constitutionality of the Public Gatherings Act.

Provisions of this Act ban citizens from gathering publicly within 100 metres of the building of the Croatian Parliament, Constitutional Court and Government of the Republic of Croatia. A misdemeanour charge was filed on the basis of this provision against activists of the Team for Legal Changes of Iskorak and Kontra because within the national campaign “We aren’t homophobic, but...” they handed out leaflets to Members of Parliament in front of the building of the Croatian Parliament. The relevant provisions of the Public Gatherings Act state as follows:

*“Article 11*

*(1) As an exception from the provision under Article 10 of this Act, peaceful gatherings and public protests may not be held:*

*... at least 100 metres from a building in which is seated or sit the Croatian Parliament, President of the Republic of Croatia, Government of the Republic of Croatia or Constitutional Court of the Republic of Croatia.*

*(2) In a case under paragraph 1 subparagraph 6 of this Article, the provision of Article 4 paragraph 1 of this Act is not applied in the part which determines the number of participants of a gathering.”*

We draw attention to the fact that activists from the Team for Legal Changes of Iskorak and Kontra were reported for a misdemeanour by the 1<sup>st</sup> Zagreb Police Station of the Zagreb Police Department, because on 29 April 2007 they distributed leaflets to Members of Parliament and journalists as part of the “We are not homophobic, but...” campaign, which clearly pointed out the homophobia in the Croatian Parliament and sent a political message to Members of Parliament with the aim of promoting the widening of the range of rights of same-sex couples. Such a political message was of a critical nature to the existing political structures. However, although they were in a rather greater number (a total of four persons), the activists of the Team for Legal Changes on 13 July 2007 gathered in front of the building of the Croatian Parliament in order to thank the Croatian Parliament for adopting the Volunteers Act which contains a ban on discrimination on the basis of gender and gender expression, the consequence was not police intervention nor later misdemeanour charges. Although a police official sought the identity documents of the participants in this gathering, the same man just said that everything was in order and that the activists could continue to distribute leaflets on condition that they were not aggressive and that they did not disturb public law and order.

In order to test the efficiency of the system and application of the disputed provision of the Public Gatherings Act, the activists on 28 November 2007 organised a symbolic action of distributing leaflets of an invented hairdresser salon called Mira within a circle of 100 metres of the building of the Croatian Parliament, the Government of the Republic of Croatia and the Constitutional Court. The activists also distributed leaflets to police officials, who showed some interest in whether there wives could have some kind of holiday discount. From the above it follows that the application of the provisions of the Public Gatherings Act is discretionary and depends on the assessment of police officials as to what kind of gathering is in question, not entering into an appreciation as to whether such a gathering is a threat to public security, but only assessing whether in any particular case it is a


question of demonstrating the political opinion of citizens, or whether it is an opinion in accordance with the standpoints of the ruling political structures. On 29 November 2007, activists of the Team for Legal Changes participated in a hearing at the Magistrates' Court in Zagreb. Both of them, Ms Sanja Juras and Mr Kristijan Grđan, were found guilty of holding a public gathering in front of the Croatian Parliament, where public gatherings are strictly forbidden by law, regardless of the number of participants. Before the hearing, the Team for Legal Changes of Iskorak and Kontra asked the Magistrates' Court in Zagreb permission for other people (journalists, human rights activists) to be present and to monitor the hearing. The president of the Magistrates' Court, Ms Ana Krleža-Jurišić, did not grant permission for monitoring the proceedings explaining her decision by the fact that the room in which the proceedings were to be held was too small. However, this was not a satisfactory reason given that in such circumstances the president of the court is obliged to allocate a larger room.

The Team for Legal Changes of Iskorak and Kontra prepared a statement concerning the case of the misdemeanour prosecution of activists for handing out leaflets on St Mark's Square which was signed by representatives of non-governmental human rights organisations. Activists of the Team for Legal Changes with the support of other human rights activists handed out leaflets to journalists in front of the court building before the hearing. The activists showed the media pictures of the police officers who had accepted leaflets of the fictitious Mira hairdressing salon and gave statements concerning the right to public gatherings. The judge heard the activists after which they were informed that a second hearing would be set. The case had good media coverage.

On 10 December 2007, the Team for Legal Changes of Iskorak and Kontra organised a public action for the International Day of Human Rights. Namely, activists of the Team for Legal Changes with the support of other representatives of civil society organisations proposed the initiation of proceedings to assess the accordance of the Public Gatherings Act with the Constitution of the Republic of Croatia. The action was held on St Mark's Square in the building of the Constitutional Court. The action was covered by the media.


On 19 March 2008, the second hearing was held at the Magistrates' Court in Zagreb concerning the handing out of leaflets. The police officer who had brought the charges against the activists was questioned as a witness. He stated: "On the occasion in question, I noticed two people at the entrance to the building of the Croatian Parliament handing out leaflets which promoted same-sex unions and also a number of journalists were gathered there, and because public gatherings are banned on St Mark's Square, I approached these people and charged them. The promotion of any kind of ideas is also banned and so because of this I reported this promotion as a misdemeanour. I emphasise that the accused had not reported anywhere that they would hand out leaflets. After my warning the accused did not disperse but said they would hand out leaflets and then dispersed." The defendant Ms Sanja Juras stated how she knew that leaflets for a hairdressing salon had been distributed on St Mark's Square and that the police had not reacted in the same way.

At the end of March 2008, the Government of the Republic of Croatia announced that it would organise a public gathering on St Mark's Square in order for the president of the United States of America, Mr George Bush, to have direct contact with citizens during his visit to the Republic of Croatia. Analysing St Mark's Square as a place of gathering of a large number of citizens from a security aspect, Mr Mate Laušić, who is, judging from his responsibilities to date, one of the greatest security experts in this country (to whom the Government had also entrusted the security of St Mark's Square during this gathering), stated for the media that, "St Mark's Square is a very well chosen location for today's speech of President Bush to these citizens, because it is generally well protected, and all access points are easily controlled."



On 2 April 2008, the Team for Legal Changes of Iskorak and Kontra, the Women's Network of Croatia and Anti-imperialistic Action publicly reacted stating their deep dissatisfaction about the decision of prime minister Sanader and the Government of the Republic of Croatia to organise a meeting with the President of the USA, whose Government was responsible for numerous violations of human rights, and which was due to be held on St Mark's Square, where public gatherings were forbidden by the Act on Amendments to the Public Gatherings Act. The statement said that this action was illegal and a clear message to the public that the provisions on banning public gatherings on St Mark's Square had no other purpose other than to limit citizens' rights to express political opinions in front of state institutions. Furthermore, in order to demonstrate to the public the deliberate breaking of its own laws by the Government of Croatia, the Women's Network of Croatia, Anti-imperialistic Action and the Team for Legal Changes of Iskorak and Kontra announced the filing of a misdemeanour complaint against prime minister Ivo Sanader for holding an illegal gathering on a public square.

On 4 April 2008, the Magistrates' Court in Zagreb made its judgement in favour of the defendants Sanja Juras and Kristijan Grđan. The judge explained that in her opinion the defendants had not acted contrary to the provisions of the Public Gatherings Act considering that the two of them did not represent an organised gathering, nor even a group of citizens. The judge emphasised the part of the statement of defendant Sanja Juras relating to the fact that the police officers had not reacted to the citizens who had been handing out the hairdressing salon leaflets on St Mark's Square.



On 5 April 2008, the Government of the Republic of Croatia, on the occasion of the arrival of the president of the United States of America in the Republic of Croatia, organised a large public gathering on St Mark's Square in Zagreb in which 3000 people participated, being members of the State bodies, as well as citizens who had earlier expressed an interest in participating in this gathering via representatives of local government. The American president participated in this gathering. The participation of the American president in any kind of public gathering at this moment was a very high risk event from the standpoint of security in not only Croatian but also global terms. By organising this meeting right on St Mark's Square in Zagreb, at a distance of less than 100 metres from the seat of the Government of the Republic of Croatia, Croatian Parliament and Constitutional Court of the Republic of Croatia, the Government demonstrated that no security reasons exist why peaceful gatherings and public protests should be banned on St Mark's Square.

On 7 April 2008, the Team for Legal Changes of Iskorak and Kontra filed a misdemeanour complaint against prime minister Mr Ivo Sanader, for holding an illegal gathering on St Mark's Square.

On 10 April 2008, the Team for Legal Changes of Iskorak sent a report to the Constitutional Court of the Republic of Croatia concerning the proposal for commencing proceedings for an assessment of the agreement of the Public Gatherings Act with the Constitution of the Republic of Croatia. The report consisted of information about the public gathering on St Mark's Square which was organised by the Government of the Republic of Croatia.

On 11 April 2008, Lesbian Group Kontra sought permission from the Ministry of Internal Affairs to hold a public gathering on St Mark's Square on 17 May, the International Day of the Struggle Against Homophobia.

On 24 April 2008, Lesbian Group Kontra sent a reminder to the Ministry of Internal Affairs concerning a decision on the permission to hold a public meeting.

On 15 May 2008, Lesbian Group Kontra received an official notification from the Ministry of Internal Affairs in which the request for holding a public meeting on St Mark's Square was refused. Lesbian Group Kontra filed a complaint at the Constitutional Court relating to inconsistent action, referring to the fact that the Government of the Republic of Croatia had organised a public meeting on the same location.





## Legal Aid Act

On 18 February 2008, the Government of the Republic of Croatia organised a public presentation of the Legal Aid Bill. Representatives of the Team for Legal Changes of Iskorak and Kontra attended the presentation.

After the reading of the Legal Aid Bill, the Team for Legal Changes established that the provision which defines close family members did not include same-sex partners. Such practice is not surprising, given that not a single law defines same-sex partners as close family members, despite the ban on discrimination on the basis of same-sex partnerships under the Same-Sex Unions Act.

The Bill was restrictive towards non-governmental organisations which offer free legal aid to clients regardless of the fact that legal fees would not be covered by the state. The provision prescribed that only registered civil society organisations could offer free legal aid. In order to receive permission for offering free legal aid, the organisations would have had to register with the Ministry of Justice. This represents an additional administrative burden for civil society organisations.

The Team for Legal Changes of Iskorak and Kontra as well as the Women's Network of Croatia prepared draft amendments to the Legal Aid Bill, relating to the above problems. The amendments were not passed by the Croatian Parliament. The Legal Aid Act was passed on 16 May 2008.

## Act on Amendments to the Pensions Act

On 29 February 2008, the Government of the Republic of Croatia at its seventh sitting adopted the Bill on Amendments to the Pensions Act, with the final draft of the Bill and sent it into Parliamentary procedure.

The Bill contains changes which had as their aim making marital and non-marital partners the same in respect to rights to family pensions. Same-sex partners are not mentioned in the above draft.

The changes which would secure these rights for non-marital partners, while not to same-sex partners, are discriminatory based on sexual orientation, i.e. against same-sex unions.

The Team for Legal Changes of Iskorak and Kontra sent a draft to the Committee for Labour, Social Policy and Health of the Croatian Parliament; however, the above parliamentary committee of the did not even debate the amendments.

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

We would like to recall that discrimination based on sexual orientation, or same-sex unions is illegal according to the Gender Equality Act and the Same-Sex Unions Act. The Republic of Croatia is a signatory to the European Convention on Human Rights and, according to the interpretation of the European Court for Human Rights, discrimination of same-sex compared to different-sex non-marital partners is banned (*Karner vs. Austria*, 2003).





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

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

During 2008, the Government of the Republic of Croatia prepared and proposed to the Croatian Parliament the Anti-Discrimination Act, in which on its own initiative it included gender identity and sexual orientation as basis for discrimination. However, although it opened and encouraged public debate on many occasions connected to the above law, non-governmental organisations for the protection of the rights of sexual and gender minorities were not included in the preparation of this legal document. The Government of the Republic of Croatia members of the academic community included in the preparation of this law; however, of representatives of civil society only the Croatian Helsinki Committee was included, which is more generally concerned with the protection of human rights. The deputy prime minister of the Government of the Republic of Croatia, Ms Jadranka Kosor, emphasised in public statements how the Centre for Human Rights, representing civil society, also participated in the preparation of the draft bill, but this is a public institution which belongs within the organisational remit of the Government of the Republic of Croatia and does not represent a non-governmental organisation.

Also, the Government of the Republic of Croatia prepared and sent into parliamentary procedure the Legal Aid Act. However, although the Government received the remarks of organisations in the public debate, these were not adopted until political pressure was put on the Government by the Committee for Human Rights and the Rights of National Minorities of the Croatian Parliament.

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

On 3 April 2008, 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 concerned with the protection of the rights of sexual and gender minorities to register its projects. 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 2008 made on 18 June 2008, funds were not allocated to a single project or programme for the protection of the rights of sexual and gender minorities.

In accordance with measure 1.5.2 of the National Policy for Gender Equality, representatives of organisations for the equality of sexual and gender minorities should be included in working bodies for adopting laws, programmes and strategies connected to the rights of sexual minorities. Although it participated in including members in the working group for the adoption of the Anti-Discrimination Act, the Office for Human Rights of the Government of the Republic of Croatia did not also include representatives of organisations concerned with equality of sexual and gender minorities, contrary to the above National Policy measure.

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





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

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

The Team for Legal Changes of Iskorak and Kontra and the Women's Network of Croatia sent the Office for Gender Equality a request to provide information about the implementation of the National Policy of Gender Equality, but the Office never delivered this information on the principle of the standard practice of not respecting legal time limits.

The Office for Gender Equality of the Government of the Republic of Croatia most of all sees its engagement on the question of the protection of the rights of sexual and gender minorities in the public domain, which happens very rarely, and the presence of representatives of the Office is only of a decorative nature. In other spheres, similarly as for the Office for Human Rights, the Office for Gender Equality has no role at all in the implementation of even bleakly prescribed measures such as the National Policy for the Promotion of Gender Equality, as well as the National Programme for the Protection and Promotion of Human Rights.

## **Croatian Parliament**

In 2008, the earlier conclusion that this institution is basically homophobic and transphobic was confirmed. This can especially be seen from the debate on the Anti-Discrimination Bill, which despite the regular procedures prescribed by the Rules of Procedure of the Croatian Parliament was withdrawn from voting because of the provisions on gender identity even though the Croatian Parliament had previously debated them. Furthermore, the Croatian Parliament does not adopt legislation which would harmonise the rights of same-sex couples with the rights of persons who live in marriage and in this way reduce discrimination of sexual and gender minorities. During the debate on the Bills, there was also a lack of sanctions by the Speaker of the Croatian Parliament against members who stated their opinions of sexual and gender minorities in a vulgar or insulting manner.

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

On 5 March 2008, the Team for Legal Changes sent a draft amendment to the Anti-Discrimination Act to the Committee for Human Rights and the Rights of National Minorities of the Croatian Parliament concerning the elimination of discrimination by which interveners in legal proceedings involving discrimination are put in an unequal position compared with interveners in other kinds of legal proceedings. Namely, the proposed provision prescribed that regardless of the outcome of the proceedings the intervener must bear his own costs of participating in a case, which was contrary to the positive provisions of the Civil Procedure Act. The Committee for Human Rights and the Rights of National Minorities accepted the proposal of the Team for Legal Changes and inserted the amendment in the final draft of the Anti-Discrimination Act by which the provision proposed by the Government of the Republic of Croatia was deleted. After the debate had been conducted, the Government of the Republic of Croatia withdrew the above provision from the final draft Bill thus harmonising the position of interveners who participate in discrimination proceedings with the position of interveners in other legal proceedings.





## **Gender Equality Ombudswoman**

In her Report for 2007, the Gender Equality Ombudswoman mentioned in a special section the situation of the rights of sexual and gender minorities. Considering that anti-discrimination legislation was not sufficient for the protection of the rights of sexual and gender minorities, the Ombudswoman promoted a wide condemnation by society of violence against members of sexual and gender minorities. Also, the Ombudswoman brought attention, though in a neutral tone, to the rights of same-sex couples. The Ombudswoman also addressed the monitoring of media articles and their analysis. Although in the Report for 2007 she described some of these as examples of cases of discrimination, she did not describe a single concrete case of discrimination against members of sexual and gender minorities, nor any action which would be taken in such cases.

On 30 June 2008, the Ombudswoman in a public statement condemned the physical attack on activists of Iskorak and Kontra which happened on 26 June 2008 after the Zagreb Pride event and the physical attack which was also carried out on three young persons, citizens of Kosovo.

## **Ombudswoman for Children**

In her Report for 2007 the Ombudswoman for Children was especially critical of the problem of health education and the actions of the Ministry of Science, Education and Sport. In 2008, the Team for Legal Changes had to no particular cooperation with the Ombudswoman for Children.

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

On 15 December 2008, the State Attorney's Office of the Republic of Croatia delivered a reply to the previous question of the Team for Legal Changes of Iskorak and Kontra concerning statistical indicators of the criminal offences motivated by hate. The State Attorney's Office of the Republic of Croatia delivered some data relating to hate crimes from the day the Act on Amendments to the Criminal Code came into force by which the definition of a hate crime was introduced.

During the above period, a total of 69 persons were reported to the State Attorney's Office amongst whom in some cases one person was reported for more than one criminal offence, and so a total of 76 cases were dealt with in this way. The State Attorney's Office rejected a total of 19 cases, in 20 cases an investigation was commenced, and 37 cases resulted in charges. The remaining cases are unsolved of which two are in the hands of the police and two in the hands of the State Attorney's Office. During the above period a total of 14 court verdicts were brought of which 13 were guilty verdicts and in one case judgement was made against an unknown perpetrator. During the above period the State Attorney's Office received 45 complaints against known and unknown perpetrators of which 41 were cases of criminal complaints brought by the victims or citizens' organisations. There were five cases concerning hatred towards persons because of their sexual orientation.

A statistical overview shows that the majority of hate crimes were committed under the criminal offence of violent behaviour under Article 331 of the Criminal Code (27), and then the criminal offence of threatening behaviour under Article 129 of the Criminal Code (20), the criminal offence of racial or other discrimination under Article 174 of the Criminal Code (8), the criminal offence of damaging or destroying other persons' belongings under Article 222 of the Criminal Code (4), the criminal offence of attempted serious bodily harm under Article 99 in connection with Article 33 of the Criminal Code (3) and one each of the criminal offences of attempted first-degree murder (Art 91 in connection with Art 33 of the Criminal Code), disturbing the sanctity of the home (Art 122 of the Criminal Code),



endangering life and property by a dangerous act or means and serious criminal offences against general safety both committed and attempted (Art 263, Art 271 in connection with Art 263 and 33 and Art 271 in connection with Art 263 of the Criminal Code), and the criminal offence of preventing a official person from carrying out official duties under Art 317 of the Criminal Code.

In cases of criminal offences committed against persons because of their sexual orientation (5), criminal charges were brought against two people for the criminal offence of racial or other discrimination under Art 174 of the Criminal Code and against two perpetrators for the criminal offence of violent behaviour under Art 331 of the Criminal Code, while criminal charges were brought against one perpetrator for the attempted criminal offence against general safety under Arts 271 in connection with Art 263 and 33 of the Criminal Code. Four of the above cases are currently in criminal proceedings before the court, while in one case the criminal charges were rejected on the basis of the Youth Courts Act.

From the statistical data of the State Attorney's Office it can be seen that criminal offences motivated by hatred are not in practice placed in conjunction with the criminal offence of racial or other discrimination, although cases of these criminal offences are possible 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.

In his reply to the sought statistical data, the State Attorney's Office of the Republic of Croatia emphasises that criminal offences under Article 89 para 36 of the Criminal Code are merged in the annual report on the work of state attorneys' offices and that the same data for 2008 will be published in 2009. However, 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 and that in the report on the work of state attorneys' offices in 2007 criminal offences connected to hate crimes are not mentioned at all, although according to the internal directives on the State Attorney's Office of the Republic of Croatia, statistical data were also maintained for that period. We emphasise how 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 that their occurrences in society, which could be seen also in the annual report on the work of state attorneys' offices.

Furthermore, the State Attorney's Office of the Republic of Croatia does not conjoin criminal offences motivated by hatred with the criminal offence of racial or other discrimination, although all criminal offences for which the legal classification under Art 89 para 36 of the Criminal Code could be relevant could be placed in an ideal conjuncture with the criminal offence of racial or other discrimination.

## **Ministry of Internal Affairs**

The Team for Legal Changes of Iskorak and Kontra following its previous request received on 23 December 2008 a report from the Directorate of Police concerning criminal offences committed on the basis under Art 89 para 36 of the Criminal Code – hate crimes. For the purposes of this report and comparisons with the statistics of the State Attorneys' Office of the Republic of Croatia, we also use statistical data of the Ministry of Internal Affairs which will be published in the 2007 Annual Report on the Status of Human Rights of Sexual and Gender Minorities.

In the period from 1 October 2007 to 1 December 2008, the Ministry of Internal Affairs recorded 43 criminal offences “which according to all circumstances were committed or suspected or it was confirmed by the criminal investigation that they were motivated by hatred towards a particular individual or group”, and all on the basis of Art 89 para 36 of the Criminal Code.

Of the 43 criminal offences, 34 were solved, for which a total of 46 people were charged. According to the MUP, crime scene investigations were carried out for all the criminal offences, while further investigative work was carried out for 30 offences. Of the 43 criminal offences, there were 6 criminal offences of racial or other discrimination under Art 174 of the Criminal Code, while no criminal offences were noted for violation of the equality of citizens under Art 106 of the Criminal Code.

17 of the above 43 criminal offences resulted in criminal charges or a special report to the responsible state attorney’s office.

According to motives, 34 criminal offences were ethnically motivated, 4 criminal offences were related to sexual orientation, 2 connected to political beliefs, 2 connected to parentage and one for other characteristics (belonging to a different subculture group).

Of all the evidenced criminal offences in the above period, according to structure, 10 criminal offences related to the criminal offence of threatening behaviour (Art 126 CC), 15 criminal offences of destruction or damage of other persons’ property (Art 222 CC), 6 criminal offences of racial or other discrimination (Art 174 CC), 4 criminal offences of destroying the sanctity of the home (Art 122 CC), 2 criminal offences of violent behaviour (Art 331 CC), 2 criminal offences of bringing into danger life or property by generally dangerous actions or means (Art 263 CC), and one each of the criminal offences of grievous bodily harm (Art 92 CC), violation of the reputation of the Republic of Croatia (Art 151 CC), robbery (Art 218 CC) and spreading of false and disturbing rumours (Art 322 CC).

When compared with the statistics of the State Attorney’s Office of the Republic of Croatia some inconsistent data is found. Namely, if the total number of criminal offences reported from the coming into force of the Act on Amendments to the Criminal Code from 1 October 2006 to 1 December 2008 are compared, it can be seen that the Ministry of Internal Affairs which recorded a total of 75 criminal offences motivated by hatred. However, according to the data of the Ministry of Internal Affairs a total of 26 criminal offences were reported to the State Attorney’s Office of the Republic of Croatia in the given period, while the State Attorney’s Office states that it received a total of 41 criminal allegations or special reports from the Ministry of Internal Affairs. Therefore, the Ministry of Internal Affairs does not consider that it submitted 15 criminal allegations to the State Attorney’s Office for criminal offences committed on the basis of Art 89 para 36 of the CC.

Furthermore, concerning the data during the period from 1 October 2007 to 1 December 2008, the Ministry of Internal Affairs stated that crime scene investigations were carried out for all 43 criminal offences, whereas further investigative actions were carried out for 30 offences. In comparison with the data of the State Attorney’s Office of the Republic of Croatia it emerges that 20 criminal offences were under investigation. Although it is possible that the investigation of some criminal offences had been completed, the statistic of 30 criminal offences for which further investigative actions were carried out is still not accurate because in the period from 1 October 2007 to 1 December 2008 the Ministry of Internal Affairs reported just 17 criminal offences to the State Attorney’s Office of the Republic of Croatia, and for initiating investigations it is just the latter state body which is responsible and it could not request the responsible courts to carry out investigations for acts which were not reported to it.

In connection with sexual orientation, the Ministry of Internal Affairs states that four criminal offences were registered, while it is not visible from the data delivered whether any criminal charges or special reports were filed as result of those criminal offences with the responsible public

prosecutors. The State Attorney's Office of the Republic of Croatia, however, states that of all the criminal allegations received in the period from 1 October 2006 to 1 December 2008 only 5 were evidenced which related to criminal offences motivated by hatred towards persons because of their sexual orientation.

From the above it emerges that there exist differences in the statistical data between the State Attorney's Office of the Republic of Croatia and the Ministry of Internal Affairs. Also, that some certain criminal offences are not reported to the State Attorney's Office of the Republic of Croatia which is understandable if they are prosecuted privately; however, the police is also required to deliver to the State Attorney's Office victims' proposals to commence criminal proceedings.

Generally we judge that 2008 saw a visible advance in finding the perpetrators of criminal offences of violent behaviour and robbery; however, it should be borne in mind that all such cases were widely reported by the media and we hope that in practice it will happen that they are solved in an equal fashion as those cases which are not covered by the media at all, which up to now, unfortunately, has not been the practice.

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

## 4. Education

### Health education

On 14 January 2008, the Ministry of Science, Education and Sport announced the results of the competition for the choice of primary and secondary schools for carrying out experimental programmes of health education of the GROZD Association and the Forum for Freedom of Education. For the implementation of the GROZD Association programme nine primary schools were 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 with the organisations which had prepared the programmes. According to the same decision, health education programmes should be carried

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. Gjalški, Zabok.

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

out experimentally during the second half of the 2007/2008 school year in the fifth form of the selected primary schools and the first form 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 efforts of the Ministry 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.

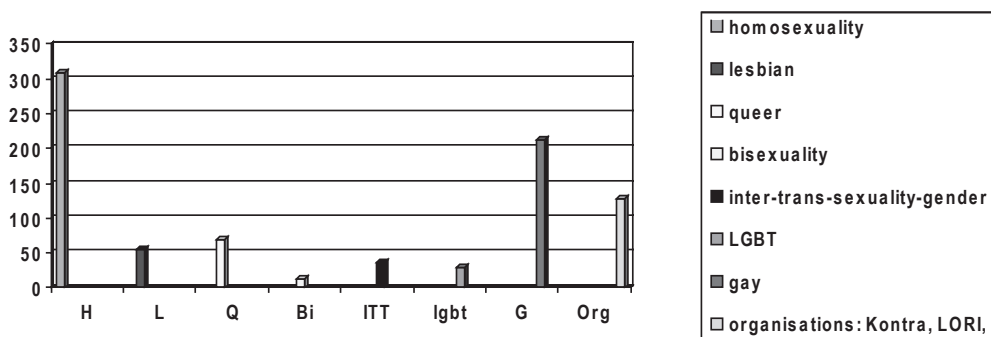
It should be emphasised that health programmes which were proposed for implementation in the opinion of our organisations are not adequate, even more so because just two school hours were anticipated for the content about human sexuality during a school year.

Therefore we continue to press for the introduction of separate and compulsory sex education in Croatian primary and secondary schools.

## 5. Media

In 2008 mostly professional and informative reporting was noted in the media – 92.3% of neutral and positive reporting. The percentage of neutral reporting is far the greatest (82.2%), as is befitting for newspaper reporting, although for the affirmation of the topic of sexual and gender minorities a positive approach (10.1%) would be very helpful. Negative homophobic articles comprise 5.4%. There is also a small but very harmful percentage of sneering (so-called ironic) articles – 2.3%. Certain media continue to cover this topic in a sensationalist manner, but this is mainly a question of media which normally report in such a manner.

The focus of media interest can be concluded according to the appearance of keywords in individual articles: bisexuality, gay, homosexuality, intersexuality, lesbian, queer, LGBT, transsexuality, transgender, and organisations (for easier illustration two categories are merged):





As we can see, “homosexuality” has by far the most dominant occurrence, as a general expression which most commonly covers the whole community of sexual minorities (it appears 309 times). It is followed by one more generally accepted euphemism, “gay”. Half as frequently (128) were mentioned organisations which are concerned with the rights of sexual and gender minorities – three of them: **Kontra (63), Iskorak (55), Lori (10)**; that is, a significant number of times. Technical terms “transsexuality”, “transgender”, “intersexuality”; together with the correct appellation “LGBT”; and the special expression for homosexual women “lesbian” appear quite rarely (<55). The expression “queer” (69) forced its way to the top of the last group especially because of the events connected to the Queer Zagreb Festival.

Analysis of the articles was conducted with consideration to:

- main or subsidiary topic:



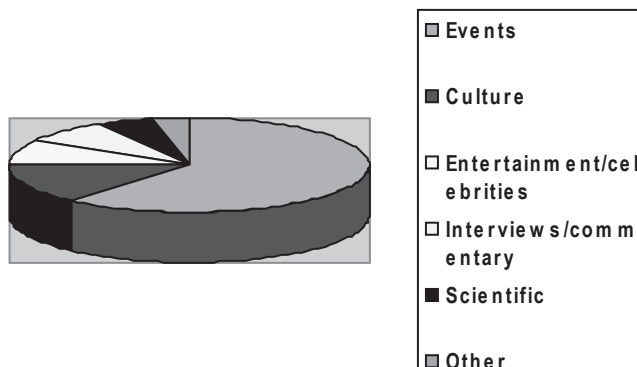
- national or foreign events:



- manner in which the subject is addressed (positively, neutrally, negatively, ironically/jokily):



- content of article (divided into several categories – events/reporting; cultural events; comments by the public/columns/interviews; scientific investigations/surveys; entertainment/celebrities; other)



The most important elements of the analysis, after the viewpoint of the article itself, is the data as to whether homosexuality is the main or a subsidiary subject – the ratio is 73.5%-26.5%. Considering that the topic of homosexuality is readily mentioned incidentally in various media reports as salacious details most commonly in order to increase the sensationalism of the article, only when it was the main topic can it signify a step toward greater social acceptability (although that is only one possible interpretation – articles which treat homosexuality as a main subject can also be negative). Similarly, considering that people like to consider homosexuality as a problem of “other people”, every article which refers to the LGBT community in our country contradicts the attitude that homosexuals are “somewhere else” and becomes evidence of the existence of LGBT persons in everybody’s neighbourhood. Considering that only one quarter of articles related to foreign events and mentioned the LGBT community incidentally, we can consider that this is absolutely correct.

In terms of content, the category of events and reporting to which all political events belong – for example, the adoption of laws, positive and other results of court processes, public campaigning – has the greatest percentage, at 61.1%, while, for example, sensationalist articles for amusement, gossip about celebrities and the like have just 8.1%. Personal stories and readers’ letters, as well as columnists’ columns (8%) represent the majority of negative attitudes, but they do not even have to be objective/neutral. The negative use of the results of scientific investigations (almost all of the 5.2% of the total segment) is of concern.

### Qualitative analysis

As in previous years, certain newspapers – **Hrvatsko Slovo** (Zoran Vukman’s Globopolis column 18. 7.), **Glas Koncila** (“Dangerous Law”, 8.6; “Law in Totalitarianism”, 22.6; “Sexual (Dis)orientation”, 20.7; “The Disorder of Sexual Identity”, 9.11) and especially **Fokus** (“Terror of the Minority over the Majority”, 7.6; “The Demands of Homosexuals are Against the Interests of Society” 25.7; “Is Croatia Mine, Theirs or Nobody’s?”, 1.8; “Peril of the Individual, Family, Society, People and Country”, 2.8; “Marriage is the Best Medicine for Paedophilia”, 17.10), - which publish the majority of negative articles continued to adopt and persevere in homophobic attitudes. Fokus is a newspaper which itself asserts that it attempts to “promote values which are woven into the Croatian historical and cultural identity”. Furthermore: “We follow and comment on events and happenings which are important for the stability of society as a whole.”

**Homophobia and homocracy.** The guiding principle of some articles which follow the fight for rights of homosexual persons is that if majority rights are given to the minority, the majority will be discriminated against, which indicates a serious lack of understanding. The **Glas Slavonije** of 9.2 in an article “Homophobia and Homocracy” considers that the decision to use the expression “parent A and parent B” in England in place of the customary formulation “mummy and daddy” to be one more piece of evidence that “as homosexuals, declared or not, have their powerful lobbies in almost all spheres of human activity that are important for life, from medicine to the economy via politics, it will be more and more dangerous to speak critically about this social group without serious existential and legal consequences.”

In the **Glas Dalmacije** of 12.2 Don Andro Ursić was interviewed and said: “I just think that paedophilia and homosexuality are psychic disorders.” Furthermore, the same Don Andro stated for the **Večernji List** of 23. 8: “Homosexuals are like a broken down car ... which has a faulty electronic-mechanical system. ... Every man who seeks the same sex is disturbed.” Particularly inappropriate was the article “Terror of the Minority over the Majority” by Zdenko Tomac, who in the **Fokus** of 27.6, on the occasion of the Anti-Discrimination Act, stated: “The right of homosexual marriages for the adoption of children is a serious violation of the human rights of the child.”

Dr Adalbert Rebić, a theologian, in the *Globus* of 18.7, stated that homosexuality is “an unnatural occurrence and that all people who have such a proclivity should try to free themselves from that proclivity, either through medication or some other professional procedure (psychology, psychiatry...)” Marijan Horvat-Mileković in the *Fokus* of 1.8 states: “Homosexuals on the attack, heterosexuals in retreat.” Here are also *Fokus*’s marking of the invitation to “so-called Zagreb Pride” of 13.6 and the statement of Ljubidrag Jakić of 21.10 in the *Makarska Kronika* about the law “by which homosexuals have almost become equal in rights with heterosexuals, i.e. normal people”.

**Outing as a weapon (V. T.)**. In an article by Marija Lokas in the **Jutarnji List** of 17.6 entitled “Enough sticking of noses into other people’s intimate and private lives” was published a comment on the fact that a Croatian actor was outed in public – compromising photographs were published on the Internet which had also been sent by e-mail to all employees of the theatre where he was then working, as well as to another 700 e-mail addresses. In a later article in the same newspaper, “Split over Outing” by Tomislav Mamić, the case was commented on as part of the LGBT policy of greater visibility of well-known, homosexual persons which part of the that population supports, and part does not. We must be aware of the fact that fear of outing is very strong in Croatia and that the media should not be misused for that purpose.

**New law on discrimination**. An article entitled “Bozanić Destroys Kosor’s Law” in the **Jutarnji List** of 30.7 addresses the topic of the year: the new discrimination law and the relationship of Church and state, carefully weighing up the opposing viewpoints – for and against. In disputing the provision about transsexuals – i.e. about the “banning or discrimination on the basis of gender identity and expression” which had not yet appeared in Croatian legislation, and later also disputing the rights of same-sex unions, the political right and the conservative Catholic Church united. Their counterweight was made up of non-governmental organisations, and also in the beginning the Ministry of Jadranka Kosor, which had prepared the law. Allegedly, the Bill had to be withdrawn at the express request of the Church which interpreted it in a radical sense, “the rights to enter into marriage, the adoption of children” of all different sexualities, which, of course, is unacceptable. The non-governmental organisations emphasised that this was mostly a question of “protecting transsexuals from physical violence and from harassment and discrimination in job hunting and at work”.

**The Journalists’ Court of Honour** at its sitting held on 29.2.2008 unanimously reprimanded editor Dušan Miljuš and journalist and author Boris Cvetković for the article “Gay Pimp Procured Young Homeless Man” which was published on 19.1.2008 in **Jutarnji List**. The Team for Legal Changes of Iskorak and Kontra, which made the successful request for a reprimand, considered that Article 19 of the Code of Honour had been breached – “A journalist must avoid the publication of details ... about ... sexual orientation ... if it is not relevant to the public interest” – because it is unnecessary and unjust to mention sexual orientation in connection with a male prostitution and procurement; as well as Article 16 of the Code of Honour – “A journalist should protect a person’s intimacy from unjustified or sensationalist revelations in public” or if not that act “must be justified by the public interest” – which was not the case in the matter in question because the sex and sexual orientation of suspect and victim are irrelevant for the criminal act committed.

On 20.12 **Slobodna Dalmacija** published an article with the title “Brutal Gay Murder in Zagreb; hacked his lover with a machete and ended up in psychiatry”. On 21.12 leading daily newspapers **Jutarnji List** and **Večernji List** – in articles entitled “Professor’s Murderer Molested” and “Who Was the Third Man Who Shouted: Stop It!”. The media would certainly made a sensation of the brutal murder of respected professor M.V. with his own machete with a 60 cm blade even if it hadn’t been committed by his lover D.B., whom he had previously attempted to sexually molest and wounded with a bottle. But due to the sexual orientation of this professor this came to the

forefront. Both newspapers also set out alongside the article a “chronology of homosexual murders” – from passion, rape or jealousy. Therefore, although the characteristics of those murders were very different, they were all connected by the fact that they involved same-sex relationships – with either two or more lovers, a rapist or a pimp. **Večernji List** also set about stating the reasons for the brutality of “*this kind of*” murder, especially mentioning a case when a homosexual man forced a heterosexual into a sexual act: “in such cases hysterical attacks are a frequent consequence, “homosexual panic” as they call it in forensic psychiatry, and so the crime scene was quite bloody.” The newspapers did not hesitate either to state how the professor in question had brought a whole series of men into his house and that it was as busy “as a railway station”, and it was also stated that his lover was in a long stable relationship with his girlfriend.

## 6. Homophobic declarations by public persons

### Marijana Petir, “men in high heels” and “unfortunate women in confinement”

During the public debate on the need to adopt the Anti-Discrimination Act, HSS Member of Parliament Ms Marijana Petir publicly opposed its adoption, considering that its scope which protects the rights of sexual and gender minorities was too liberal. In her public statements she declared particular misgivings because transgender persons might use a public toilet which belongs to their gender role and so in this way “men might go into women’s toilets” or “a man could go into a women’s changing room in a dress”, for example before or after aerobics or similar activities. In fact Member of Parliament Petir had personally experienced fear of “a man in a dress in a female changing room” before or after aerobics, because she would be extremely uncomfortable if it happened to her. As if the rights of citizens and social equality were based on the personal fears/fantasies of politicians!

The Member of Parliament who represents, instead of the rights of all citizens, the interests of the dogmatic beliefs of the Catholic Church in Parliament also opposed the adoption of the Medically Assisted Fertilisation Act (proposed by the SDP), but not because of its actual lack of quality, but because the proposers “wished to playing God” through such legal regulation. Opposing the right of women to medically assisted fertilisation, Ms Marijana Petir insulted women who have become pregnant by means of medically assisted fertilisation, as well as parents who have adopted children, which is most obvious in the following statement:

*“I believe that women who have obtained children in this way were happy when they gave birth, but I think that they cannot be happy after they realise that the child is not theirs.”*

And also, from her way of public communication, it is clear that Mrs Petir is totally uninformed about the subjects which she concerns herself with, and so concerning the safety of preserving fertilised cells highlighted as the greatest problems the questions “who will guard the fridges” and “how will we prevent the possibility of half-brothers and half-sisters falling in love”. The height of her nonsensical pronouncements was scaled when this admirable Member of Parliament stated that children conceived via medically assisted fertilisation become ill more often.

### Darko Milinović in the sauna

Speaking about the situation in the health system, minister of health Darko Milinović stated on 10 May 2008 in *Večernji List* how he had refused the offer of an employee of a gym to relax in the sauna because he knows that “they [homosexuals] love doctors”.

## **The Government of the Republic of Croatia, the Catholic Church and the Anti-Discrimination Act**

On 30 May 2008, an article was published in Jutarnji List under the title “Bozanić Destroys Kosor’s Law” discussing the problem of the Anti-Discrimination Act, because of which the Catholic Church had applied pressure on the Government of the Republic of Croatia because it contained a ban of discrimination on the basis of gender identity. In order to calm tensions between the Government and the Croatian Bishops Conference, the representative of the Office for Human Rights of the Government of the Republic of Croatia, Mr Luka Mađerić, stated: “Gender identity is not mentioned in the directives of the Council of Europe so there will be no harm done to the Act if we throw out gender minorities.”

In the parliamentary debate, HDZ Member of Parliament Mr Andrija Hebrang stood out due to his statements and quips: “I see no need at all for us in Croatia to go into that area above all the requests and standards of the EU. These concepts are unclear and undefined for us. Gender identity, what is that? I suppose it’s when I tell you that I’m in fact a woman and you discriminate against me.”

On 5 June 2008, representatives of the Catholic Church publicly explained themselves concerning the Anti-Discrimination Act. The following was published in Glas Koncila: “Let’s mention only homosexual associations, but also the Ombudswoman for Children, who said that a positive, affirmative speech about marriage represents discrimination of same-sex and non-marital unions and children whose parents are not married.” After this the main editor of Glas Koncila, Rev Miklenić, gave his own opinion and stated: “In the weave of this belief, extreme liberalism and individualism are preparing the ground for the hegemony of globalism which has the aim of unifying mankind so that the privileged might rule.”

On 11 June 2008, deputy prime minister Jadranka Kosor exclusively explained the Anti-Discrimination Act to Jutarnji List. She stated that the proposed Anti-Discrimination Bill did not allow the adoption of children. Furthermore, she said: “This government and the HDZ are against that and the adoption of children will certainly not be allowed in our mandate.”

## **7. Violence and discrimination**

Violence and discrimination against sexual minorities continue to be a frequent occurrence in Croatian society. The forms of violence are different, from psychological, verbal to physical violence. The burning problem is still the fear of victims who do not report the violence they experience because of the possible stigmatisation in their community. Members of sexual minorities in a great number of cases are not familiar with their rights, nor with the mechanisms of protection of those rights. They have no confidence in state institutions, especially in the police, whose officials continuously act in a discriminatory manner while treating cases of discrimination and violence against members of sexual minorities. This is precisely the reason why the actual number of violent events is almost impossible to estimate, and until recently cases which came to prosecution were exclusively cases of violence against activists.

However, we note certain advances in precisely this area over the last few years. Victims of violence more and more frequently turn to the Team for Legal Changes, and we have had also cases in which victims have openly spoken out about the violence which they have experienced in public. All this is evidence of the fact that LGBT persons are more and more interested in their rights and decide to use them. In order to help them in this, the Team for Legal Changes of Iskorak and Kontra set up a

telephone line for legal help, regularly hands out a guide to the use of anti-discrimination provisions and laws of the Republic of Croatia and continuously offers direct legal help to users.

## Structure of cases of the Team for Legal Changes

In 2008, the Team for Legal Changes did not have any cases via the online advisory service of the [www.gay.hr](http://www.gay.hr) portal, given that that webpage was not active due to it being redesigned.

## Individual cases

In 2008, the Team for Legal Changes worked on a total of 21 individual cases. Of these, punishable acts were recorded in 17 cases against several persons on the basis of their sexual orientation.

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

### Violent behaviour in front of a gay club

On 1 May 2007, two users (gay men aged approximately 20 years) contacted the Team for Legal Changes for help, stating that they had been attacked during the night of 29/30 April when exiting the Global club.

Three attackers punched and kicked the users and insulted them on the basis of their sexual orientation. One of the attackers sprayed one of the users in the face with teargas. Nevertheless the users managed to escape, but the attackers ran after them. They succeeded in escaping to the 1<sup>st</sup> Police Station where they subsequently reported the attack.

The users assert that at the moment of the attack they noticed a male person on the other side of the street who had come out of the Global club and who was not previously known to them, and that they shouted to him to call the police, whereupon that person only laughed and ignored their call for help.

The users remembered the physical appearance of the attackers and the exact time of the attack. They received minor physical injuries in the form of visible bloody suffusions and swellings on their heads. They did not seek medical help. They were not under the influence of alcohol when they were attacked.

The users allege that when they were giving their statements to the police they were separated. A female police officer questioned one of the users while the other user was questioned by a male police officer in civilian clothes. The users allege that they gave the same statement to the police twice.

The users also allege that they heard from the police that the attackers had been found but they had not been confronted with them for purposes of recognition.

The police charged the users as well as the attackers with the misdemeanour of disturbance of public law and order.

A lawyer was engaged in this case to represent the users.

After holding the preliminary hearings and main hearing, the Magistrates' Court in Zagreb acquitted all the accused.

Criminal charges were not brought against the attackers due to the lack of evidence.

### Judgement for the Molotov cocktail attack on participants of Zagreb Pride 2007

On 26 January 2008, the Zagreb Municipal Criminal Court made a preliminary judgement concerning the case of the attack with Molotov cocktails on the participants of the Zagreb Pride event. Namely, Josip Štimun was initially sentenced to one year and two months of prison and was ordered to undergo compulsory psychiatric treatment.

The Team for Legal Changes in a public reaction welcomed the decision of the court. However, it seems that the evidence shows that there was more than one perpetrator and we wonder why the others were not also convicted. In a statement for Jutarnji List the judge stated: "They all ran away, but not because they themselves decided to abandon the attack but because the police came."

In the report of the Zagreb Police Department on the event the following is stated: "At 12.45 in the Harmica passage two Croatian citizens (born in 1988 and 1986) and a minor (born in 1990) were found without personal identification documents and in front of them were several bottles with combustible liquid, a bag with eggs and tomatoes which were most probably intended to be used for an attack on the participants of the parade. Misdemeanour charges will be brought against them according to the Public Gatherings Act by regular procedure." The three perpetrators who were found with Josip Štimun at the scene of the event were arrested on the same day. The police brought misdemeanour charges in the Zagreb Magistrates' Court according to the provisions of the Offences Against Public Law and Order Act. Regardless of this, the perpetrator who attempted to carry out a Molotov cocktail attack was arrested only after the Investigative Court issued a warrant for his arrest.

A whole series of violent attacks was noted in connection with the Zagreb Pride 2007 event. We especially emphasise that the police in all cases of physical attacks on participants of the event only brought misdemeanour charges. Not one criminal charge connected to violent behaviour was brought by the police. The attempted attack with Molotov cocktails was the only case in which the Zagreb Municipal State Attorney's Office sought the initiation of a criminal investigation, and that against only one perpetrator. In the process of reporting violence, cases of homophobic behaviour by the police were noted (insulting the victims on the basis of their sexual orientation and nationality in the case of Slovenian citizens); however, such behaviour was not punished even after it was reported to the Ministry of Internal Affairs. In the reply of the Ministry of Internal Affairs to the victims it was stated that they were not co-operating with the police and that the perpetrators had not been found.

### Hate speech on a blog

On 7 November 2006, on the webpage [www.blog.hr](http://www.blog.hr) an unknown perpetrator posted web content (a blog) which is accessible at the web address <http://88power4.blog.hr> and placed a text of unacceptable content in English in which the neo-Nazi symbol "88!" was placed and signed himself off with "CROATIAN Skinhead Legion! 24/14/88".

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

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

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

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

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

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

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

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



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

The above case is the first case of hate speech which has finished in a positive judgement in the Republic of Croatia. Organisations Kontra and Iskorak have made criminal complaints in ten other cases for the criminal offences of racial or other discrimination under Art 174 para 3 of the Criminal Code. From the viewpoint of the municipal state attorney's offices, in all the reported cases the existence of the criminal offence was not possible to prove if the accused did not literally admit that he had the intention of spreading hatred. In all cases the perpetrators stated that they did not have the intention of spreading hatred and therefore the criminal proceedings were halted. For other criminal offences under the Criminal Code, intention can be proved even in cases when the accused does not admit its existence.

Although this case ended in a positive judgement, we believe that this was an exception, given that the accused admitted that he supports Nazi ideology and that he was aware that his actions were illegal.

We consider that the courts should develop methods of determining guilt for criminal offences under Art 174 para 3 of the Criminal Code in future.

#### Suspected hate speech on the occasion of the Zagreb Pride event

On 1 August 2007, the Team for Legal Changes filed a criminal complaint at the Zagreb Municipal State Attorney's Office against B.P. because of the suspicion that on 7 July 2007 at 11.35 on Ban Jelačić Square, before the parade of the Zagreb Pride 2007 event was supposed to pass by that place, police officers spotted him "sticking leaflets of unacceptable content to lamp posts" – according to the Zagreb Police Department – and thus committed the criminal offence of racial or other discrimination under Art 174 para 3 of the Criminal Code.

On 29 February 2008, the Zagreb Municipal State Attorney's Office adopted a judgement which rejected the alleged crime because it was not found that the actions of the suspect would comprise a criminal offence under Art 174 para 3 of the Criminal Code. In this explanation it sets out the statement of the accused as follows:

*"In the interview with the suspect, the above named stated that he did not have the intention of spreading hatred or derision but that he personally agreed with the statements contained in the leaflet, which he had copied from the Internet, and that he considered that they express personal beliefs and opinions according to his conception of normality in the world of sexuality, marriage and family and that he had the same right of promoting his heterosexual opinions and preserving the family and traditional values as the organisations which promote the rights of sexual and gender minorities. He did not have the intention of encouraging violence of any kind which was clear from the texts of the leaflet in question. ... Furthermore he considered that he also has his civic right to intimacy, which was violated because he understood the public gathering – Gay Pride – is the forcing of the lesbian and homosexual population on the public which he considers is a matter of every person's intimate choice, and that it should not be the subject of public display."*

Further on in the explanation it was stated that important subjective and objective elements of the cited criminal offence were not found in the behaviour of the accused. Namely, that it did not emerge from the interview with the accused that he had committed a criminal offence with direct intention, wishing to deride or spread hatred towards people of sexual orientations which were unacceptable to him.

### Threats to activists of the Team for Legal Changes

On 20 February 2008, at around 13.00 in the office of the Iskorak organisation, in a room which is used by the Team for Legal Changes, a call was received on the telephone which was answered by an activist of the Team for Legal Changes. An unknown male person made a death threat against the activists, inspired by the Noćna Mora programme on the Otvoreni television station in which Dorino Manzin Devananda participated and accused certain activists of publishing news about the "gay phone book". The unknown man's threat frightened the activist, and she went to the 5<sup>th</sup> Zagreb Police Station in order to report it.

The police officials of the 5<sup>th</sup> Zagreb Police Station took a statement from the victim who stated that she considered that the criminal offence of threatening in a qualified way had been committed against her considering that it was a case of a death threat to activists of the Team for Legal Changes, or the Iskorak organisation. While the victim's statement was being taken, one of the police officials went into the next-door room to her colleague and said the following in such a way that it was heard in the room where the victim and other police official were sitting: "Here, I'm giving you this piece of paper but that does not mean that I'm hitting on you. Just so you know whom we are dealing with," and after that she laughed. After this the victim asked for a confirmation of her report which she received only after convincing the police officials that she had the right to this under the law.

After this the victim received a call from an official of the 5<sup>th</sup> Zagreb Police Station. He told her that they had found the perpetrator, but that he was "some peasant", and that "he was frightened because the whole village knew that he was a faggot". The police official further said that because of this he did not think that the perpetrator was dangerous, and that if the activist wished she could press charges herself. In order to do so, she could call him at the 5<sup>th</sup> Police Station so he could read her the name and surname of the perpetrator on the following Tuesday, but not on Monday as he would be busy then.

After receiving this call, the activist requested in writing that the criminal prosecution be continued, because it was a matter of a criminal offence which is prosecuted officially, and also for the data of the perpetrator to be delivered to her. Up to the publication of this report she has not received official notification of what actions have been carried out.

### Verbal attack on activists

On 21 June 2008, two activists of the Kontra organisation asked the Team for Legal Changes for help. On 21 June at around 21.00 in the evening the users were taking a walk, and at the entrance into Ribnjak Park saw two men both of whom had shaved heads. One of them approached them and verbally harassed them and threatened them because of the T-shirt which one of the complainants was wearing (there was a picture of Che Guevara on the T-shirt). They did not reply to this verbal violence. As they continued on their way, they noticed that the same men were following them. They ran away and went to the 1<sup>st</sup> Police Station to report the event. They approached a police official who was standing in front of the police station and recounted the events to him, but he refused to intervene telling them to run away in such situations.

On 22 June 2008, the Team for Legal Changes and the injured parties sent a report to the 1<sup>st</sup> Zagreb Police Station requesting that the perpetrators be identified and punished according to law. We are also asking that they inform us about the measures they have carried out.

On 30 July 2008, a report of the 1<sup>st</sup> Zagreb Police Station was delivered to the organisations Kontra and Iskorak. In the report it is stated that the police officers of the 1<sup>st</sup> Zagreb Police Station received

a report from the organisations about an event on 21.6.2008. Police officials of the 1<sup>st</sup> Zagreb Police Station of the Zagreb Police Department conducted interviews with the victims about the circumstances of the event and that the whole case was sent on for further action by the 5<sup>th</sup> Zagreb Police Station because Ribnjak Park, where the event occurred, was in the area of responsibility of that police station.

Up to the day of publication of this report the perpetrators in this case have not been found.

#### Discrimination of gay couples on Duilovo beach

On 28 June 2008, the media reported that bathers of the Duilovo beach in Split had positioned a sign forbidding the entry and bathing of gay couples. It was stated that the bathers did this out of disgust at couples who were behaving inappropriately in a public place in such a way that they were “*passionately caressing and orally satisfying themselves*”. The organisations Iskorak and Kontra did not at this stage take any action against the perpetrators because an unknown person removed the above sign.

On 14 July 2008, the daily newspaper 24 Hours published an article with the title “After the Sign Now a Picture Bans Gay Couples from Bathing”. In the article it was stated that citizens of Split, who live near Duilovo, decided to place a picture on the beach banning gay couples from bathing there. Unknown persons made a No Gay Bathing sign with green spray paint which they placed every morning on the green picture for changing cubicles, and in the evenings they would take the sign away with them. The sign consists of a picture of two male persons holding hands, crossed out with a line from the top left to bottom right hand side, under which the word “GAY” is written.

The organisations Lesbian Group Kontra and Iskorak, Centre for the Rights of Sexual and Gender Minorities, filed a criminal complaint in this case to the Split Municipal State Attorney’s Office against unknown perpetrators suspected of the criminal offence of racial or other discrimination under Art 174 para 1 of the Criminal Code by placing the above sign.

By placing the No Gay Bathing sign the unknown perpetrators, bathers at Duilovo Beach, unlawfully limited the rights of other persons to enter and use a public space exclusively because of their sexual orientation. In a statement for the public, the Team for Legal Changes of Iskorak and Kontra stated that citizens who were offended by the inappropriate behaviour of certain persons should call the police and report an offence according to the provisions of the Offences Against Public Law and Order Act, and not carry out actions which violate the rights and freedoms of others.

The Ombudswoman for Gender Equality in a statement for the daily newspapers supported the actions of the Team for Legal Changes in this case.

On 17 October 2008, the Split Municipal State Attorney’s Office delivered a report on the action of the Team for Legal Changes of Iskorak and Kontra. In the report it was stated that the Municipal State Attorney’s Office received on 23 July 2008 a criminal complaint from the organisations which was brought against unknown perpetrators. The Municipal State Attorney’s Office, upon receiving a crime report from the General Criminality Section of the Split-Dalmatia Police Department, requested the gathering of the necessary information, in other words the carrying out of criminal investigations with the aim of establishing the identity of the perpetrators of this criminal offence.

Acting on the request of the Municipal State Attorney’s Office, the General Criminality Section of the Split-Dalmatia Police Department on 26 September 2008 delivered a special report in which it states that officials of the 2<sup>nd</sup> Split Police Station had carried out appropriate investigations in the scope of which they had observed the beach in the Duilovo district and spoken with bathers on the beach in

question as well as with Ms Đurđica Kučko, who had taken a photograph of the sign in question and sent it to the 24 Hours daily newspaper, and that in the course of doing so they had not obtained any useful information about the identity of the person who had placed the sign, nor while observing the area of the beach had they seen the sign in question, nor any person or persons placing or removing it. It is further stated in the report that “at the moment the identity of the perpetrator cannot be confirmed, in other words there is no basic suspicion that any person in particular has committed the criminal offence in question, nor is there a place for any further state attorney action.”

Up to the day of publication of this report the perpetrators in this case had not been found. We would mention that it is a question of a small area, and that the criminal offence was committed on several occasions at the local beach. All this points to an inadequate investigation.

#### Discrimination of lesbian associations by the Zadar City Library

Lesbian Organisation Rijeka – LORI in January 2007, with the financial support of the National Institute for the Development of Civil Society and the Global Fund for Women, and with the support of the Alarm Forum organisation prepared a theatre performance called “Will it Be Different When I Tell Them that I’m Gay?” This performance was staged on 25 July 2007 in Rijeka, and on 9 November 2007 in Pula. It was also planned to stage a performance in Zadar.

Members of Lesbian Organisation Rijeka asked the director of the Zadar City Library, Mr Ivan Pehar, for permission to stage this performance on the library’s premises, but received a negative answer from him. Namely, as they themselves state, the director, Mr Ivan Pehar, informed Lesbian Organisation Rijeka that the performance could not be staged on the premises of the Zadar City Library because it concerned a subject for which according to Mr Pehar there was not yet a favourable climate in Zadar. Furthermore, they also say that director Pehar announced that he was refusing Lesbian Organisation Rijeka “for their and his own good” seeing as he was acquainted with people in Zadar who were “duty hooligans” and that they would cause disturbances if the performance was staged. When the representatives of Lesbian Organisation Rijeka said that they would inform the police about the performance in the same way as they had in Rijeka, Mr Pehar replied that “he did not wish the police here”. Furthermore, he explained his fears for the reputation of the Zadar City Library, which according to the words of another official of that library was already the target of media attacks after it had opened its doors to subjects concerned with sexual and gender minorities. Although the representatives of Lesbian Organisation Rijeka tried several times to tell director Pehar that this was a matter of a performance whose aim was to sensibilise the public, especially parents and influence better acceptance of members of sexual and gender minorities in their families, director Pehar told them that the library was open to cooperation and that this refusal did not mean that they could not discuss it the following year but that they also were surely currently counting on the pre-election period.

On 18 November 2007, the Team for Legal Changes are Iskorak and Kontra filed a criminal complaint against Ivan Pehar with the Zadar Municipal State Attorney’s Office for the criminal offences of violating expression of thought under Art 107 para 1 of the Criminal Code in concordance with the criminal offences of racial or other discrimination under Art 174 para 1 of the Criminal Code, all in connection with Art 89 para 36 of the Criminal Code because he committed both criminal offences on the basis of the sexual orientation of the victims.

On 25 March 2008, the Zadar Municipal State Attorney’s Office adopted a decision in which it rejected the criminal complaint of the Team for Legal Changes of Iskorak and Kontra. In the

explanation amongst other things the following is stated: “Invited to explain himself in regard to the alleged crime, complainee Ivan Pehar emphasised that he made his decision on the basis of the judgement that such activity could result in negative consequences of damage to the reputation and functioning of the Zadar City Library, and that to date they have not had to obtain police security for a single programme held, and that he had checked and confirmed that the performance in question had been held in Rijeka on a square as a public place with police security. On 11 October 2007, they received an e-mail request from Lesbian Organisation Rijeka for permission to stage a performance but with inadequately described content. Generally they do not charge non-profit organisations for the use of the hall which is situated within the Children’s Department and they are open to different opinions which could be seen in the programmes to date which also included the projection of a cycle of queer films in March of the same year. In connection with the assessment of the programme, he had consulted with the library’s development team and in this case they considered that such a performance could negatively affect the direction of the sexual identification of children, and that according to the annual plan and programme they gave priority to the fight against illiteracy, and also that a large number of citizens had telephoned and requested them not to allow such performances to be held otherwise they would forbid their children from going to the Library. Despite the fact that he had refused, Lesbian Organisation Rijeka had posted leaflets around the city of Zadar with information about the staging of the performance in the Library but overwritten with the word “Cancelled”, although a date had not been agreed with them. They intended to hold a round table soon in the Library on the topic of sexual orientation in the presence of experts from various fields and he would not allow the minority to terrorise majority in such a way. He bore all responsibility for his decisions and had nothing against anyone in regard of their sexual orientation or any other difference, but it was his right, obligation and duty to protect the interests and dignity of the Zadar City Library whose founder was the City of Zadar which also to the greater part finances it.

Further in the explanation it is stated that “from the facts established in this way it emerges that complainee Ivan Pehar in his work to date has not displayed prejudice or intolerance towards members of homosexual organisations, considering that in March of the same year he had approved the use of the same hall in the Library for the projection of films which support the rights of gay people, and that he was planning to hold soon a expert tribunal on this topic, and in the specific case the request of the complainant was refused until further notice for security reasons...” Furthermore, as the “complainee as director is required to maintain the primary business of the Library and its work programmes, he is authorised to decide independently whether any of the programmes were not in accordance with the interests of the Library as a public institution which has 12,000 users who are minors who would be exposed in the area of the Children’s Department to content of a type to which their parents, as their lawful guardians, had expressed their opposition, and at the same time the development team had given priority during 2007 to the battle against illiteracy.”

The Team for Legal Changes of Iskorak and Kontra requested the Gender Equality Ombudswoman to monitor the case. The Ombudswoman on 8 November requested a written explanation from the complainee to which he responded.

On 14 April 2008, the Team for Illegal Changes of Iskorak and Kontra drew up a criminal complaint which Lesbian Organisation Rijeka filed with the Zadar Municipal Court against Ivan Pehar for the criminal offence of racial or other discrimination under Art 174 para 1 of the Criminal Code and violation of the freedom of expression of thought defined and punishable under Art 107 para 1 of the Criminal Code.

### Violent behaviour, rape and forced prostitution

On 30 April, the Team for Legal Changes was contacted by a user who stated that she was a transsexual person. The user worked as a prostitute, which she advertises via a webpage, stating her address.

On 17 February 2008, two men attacked her in her flat who wished to force her to work for them as a prostitute. They told that they have “other girls who work for them”. When she refused to be their prostitute, they beat her up and raped her. One of the men held her while the other hit her. She received blows to the chest, breastbone and head. She has stitches in her head. They threatened that they would kill her if she went to the police.

The attackers also damaged and took some things from her flat. The victim had seen one of the attackers two months earlier when he invited her for a drink, and also both attackers a few days earlier.

The victim reported the attack to the appropriate police station. She recognized the perpetrators from photographs after a police official showed them to her in her flat.

The user was offered legal help in the form of engaging a lawyer to act on the case. Consultations were conducted with the lawyer and activists of the Centre for Women Victims of War (which deals with cases of people trafficking). The lawyer recommended complaining to the Office for the Suppression of Corruption and Organised Crime at the Municipal State Attorney’s Office. After the consultations, the activists reported the case. The client was advised to leave her home for a while which she refused.

### Harassment via e-mail messages

On 14 May 2008, an anonymous male user sent a question to the Team for Legal Changes of Iskorak and Kontra using the system of the webpage [www.gay.hr](http://www.gay.hr). He stated that he had communicated with a man using the Forum of [www.gay.hr](http://www.gay.hr) website and that they had regularly corresponded and chatted about various topics (sexual orientation, music, lifestyle etc). After some time the user wished to break off communications. However, his virtual friend began to write him harassing messages. For example, he knew a lot of private information about the user’s family and brother, although the user had not talked about his family with him. The user said that he had not received threats from his friend and that he had not disclosed private information to the user’s family members.

The user was informed that he had not committed a criminal offence by the actions in question and that in a legal sense nothing could be done, especially as he was not making threats nor had the up to then spread private information about the user. The user was also warned that it was probably the case of a person who was known to his family (friend, acquaintance or neighbour), but with whom the user had not had earlier contact.

### Homophobic attack at the Western Railway Station in Zagreb

On 1 June 2008, a user (aged 40) reported that he had been physically attacked by unknown perpetrators. He described how he was sitting on a bench at the Western Railway Station in Zagreb. Before he went to his car, two men aged 25 and 30 approached him and asked: “Are you a faggot?” They said that they had come from Dubrava in order to beat up faggots. One of the perpetrators asked the user to stand up because he did not wish to hit him while he was sitting. After he refused,

the attacker hit him in the knee. The user ran away to the office of the railway station in order to hide. After the perpetrators left, the user went to his car and left the scene.

The Team for Legal Changes did not take any legal action against the perpetrators because the user did not wish to report the case to the police.

#### Verbal attack

On 4 June 2008, a user (aged 34) reported that he and his friend had experienced a verbal attack. Namely, he was walking down the street with his friend when two neighbours who were sitting on a bench with children and other neighbours began to shout at the user's friend: "Gay is OK! Fuck your mother, faggot." After the user's friend turned around, they stood up and began to shout: "What are you looking at, faggot? Fuck your mother!"

The Team for Legal Changes did not take any legal action against the perpetrators because the user did not wish to report the case to the police.

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

On 7 July 2008, a user sought legal advice. Her partner was a citizen of Great Britain, with residency in the Republic of Croatia for the previous three years. The couple lived together in a rented flat in Zagreb. This year the user's partner requested a visa from the Republic of Croatia but the request was refused. The user asked whether the possibility existed for a partner to be granted a residency visa in the Republic of Croatia on the basis of a same-sex union.

Furthermore, her partner had founded a building company and had bought a house in Croatia. A few years ago, her partner had been offered work as a director, but the Croatian authorities did not find that this was sufficient reason for a residency visa.

A meeting was organised between the user and a lawyer for advice. After receiving advice, the users did not decide to commence proceedings to obtain a residency visa on the basis of same-sex union, because that existed simpler solutions for obtaining such a visa.

#### Parental maintenance

On 27 February 2008, the Team for Legal Changes was contacted by an anonymous user asking a question in connection with her friend. She stated that her friend was of age and a regular student, and that she was afraid that if her parents found out that she was a lesbian that they would stop maintaining her. The user asked about the duty of parents to maintain adult children. Activists of the Team for Legal Changes informed the user of the positive provisions of the Families Act according to which parents are required to maintain adult children while they are undergoing regular schooling.

#### Violent behaviour in front of the Global club

On 27 April 2008, the Team for Legal Changes was contacted by an anonymous user who stated that on the night of Saturday 26 and Sunday 27 April 2008 his friend was physically attacked in Pavao Hatz Street in front of the nightclub Global. The user stated that his friend had reported the event to the police, but had not also sought medical help. Activists of the Team for Legal Changes advised

the user to send his friend for medical help and to contact the Team for Legal Changes again for further action. Neither the user nor his friend sought the intervention of the Team for Legal Changes afterwards.

#### Harassment in the workplace

On 24 November 2008, the Team for Legal Changes was contacted by an anonymous user who said that his employer was harassing him because of his sexual orientation. He was employed on a fixed term contract in a private company. The user claimed that at the end of 2008 the employer told him to find a new job. He contacted his employer only by letter and did not formalise his accusation. The user was informed of the possibility of commencing legal action against the employer and the support of the Team for Legal Changes was offered to him, but afterwards he did not make contact for further action.

#### Violent behaviour in front of a public toilet

A user reported to the Team for Legal Changes that he had been physically attacked by unknown perpetrators.

On 1 July 2008, at around 22.30 he arrived at Ban Josip Jelačić Square in order to meet with friends. Before he met up with them he went to the public WC in August Cesarec Street. While he was walking across Ban Jelačić Square, he was spotted by a group of people who were observing him in an unusual way, but he paid no attention to them and continue to walk towards the WC. In front of the WC he noticed a male person standing there.

After he came out of the WC, the man was waiting for him there and he was in the company of one other man from the group who had been watching him cross Ban Josip Jelačić Square. Then the men began to question him: "What are you" and "Are you a punk" because he was wearing a punk T-shirt which a friend had given him. Then they asked him to remove the T-shirt, which he refused, to which they said: "We know you, you are a faggot," after which they said "faggot" and "big faggot" several times and pushed him. The user then moved away from them and returned to the public WC from where he called the police.

The user states that he remembered one of the perpetrators well and that he could recognize him. He says that both perpetrators had shaved heads, both were around 1.85 m tall and of medium build. They weren't wearing any kind of symbols, but according to their behaviour and physical appearance he thinks that they looked like members of the Bad Blue Boys.

After the user called the police, he waited for them in the public WC, while the attackers left the scene of event. The user was not hurt and therefore did not seek medical help.

The Team for Legal Changes of Iskorak and Kontra engaged a lawyer to work on the case. A criminal complaint was filed against the perpetrators for the criminal offences of violent behaviour and racial or other discrimination.

On 11 September 2008, an interview was conducted with the user in the 1<sup>st</sup> Zagreb Police Station. The interview was conducted by police official Davor Ujkić. The victim was accompanied to the 1<sup>st</sup> Police Station by lawyer Lovorka Kušan and by Sanja Juras, coordinator of the Team for Legal Changes. Before the beginning of the interview with the victim the police official said to the representative of the Team for Legal Changes: "I know exactly who you are, Ms Juras," and asked the victim to sign an official statement for the representative of the Team for Legal Changes to be present during the



interview so that “there won’t be any problems.” During the interview the police official asked the victim why he thought he was attacked. The victim replied that he was attacked because he was gay, at which point the police official jumped from the table and shouted: “That means you admit it!” The lawyer warned the police official that this was not an acceptable way to talk about somebody’s sexual orientation, and that crimes are admitted, but not sexual orientations. The police official brought the text of the Criminal Code and after studying it stated that he thought the police would not bring criminal charges for the criminal offence of racial or other discrimination because he did not know “which right of the victim was violated”.

The victim was invited later to identify the perpetrator through the card file in the Section for Extreme Violence and Terrorism, but the identification was not successful.

#### Violation of the right to privacy and health care

The user is a transsexual woman. She was born in the Republic of Croatia. She lived abroad for a while, where she underwent a sex change operation. After the operation she changed her name.

In her birth certificate issued in November 2008, the old name of the user is stated as well as her female sex. In the column for comments and later additions was stated data about the change of name. Nothing is stated about the change of sex. The problem is that the old name is stated, by which it is easy to conclude that her sex was changed. The user is seeking intervention of the Team to delete the old name.

The user also described that on 31 October 2008 she travelled to the Republic of Serbia. Police officials at the border crossing on the Croatian side after examining her passport checked her data on the computer, laughed and said to her and her friend: “Goodbye, boys.”

Two days before this a similar incident had happened at the border crossing with the Republic of Slovenia, also on the Croatian side. After checking the data in the computer, the police official turned to her colleague and said: “Fucking hell, I knew he was a man.”

Because of the above events the user suspects that the data on her sex change, i.e. data about her previous sex and name is contained in the police register, and is requesting the intervention of the Team for Legal Changes to have this data erased.

The user also describes medical problems that have arisen as consequences of the sex change operation, and is afraid that she cannot receive the necessary medical help in the Republic of Croatia.

#### Violent behaviour connected to the Zagreb Pride 2008 event

The Team for Legal Changes of Iskorak and Kontra contacted the organisers two weeks before the event was held concerning the violent events of the previous year. The Team for Legal Changes prepared leaflets for participants in the event with instructions on how to act in cases of violence, which contained telephone numbers for the ambulance service, the police and the Team for Legal Changes. The organisers were told that they could publish the leaflet on their webpage. The Team for Legal Changes also informed them that two activists, Kristijan Grđan and Sanja Juras, wished to attend the event, in order to monitor events. Given that both activists are public persons, the organisers were asked to provide protection/transport to their office (as had been done in the first four years), from where they could offer legal help in cases of attack. The organisers replied that they would publish the leaflets on their webpage, but they were not sure whether they would arrange for the participants to leave the event in safety.

A week before the event, activists of the Team for Legal Changes checked the webpage of the Zagreb Pride Event and saw that the leaflets had been published on the webpage, but the telephone number of the Team for Legal Changes for providing legal assistance had been removed and replaced by the telephone number of one of the organisers of the event. An activist of the Team for Legal Changes called the organisers and requested that the leaflets be published in their original form, because the Team for Legal Changes has a system set up for providing legal assistance to people who have experienced discrimination or violence because of their sexual orientation, and that they recommended victims to call their legal helpline, and not the private telephones of the organisers. One of the organisers, Marko Jurčić, replied that in that case the Team for Legal Changes had to tell him who was attacked. The activist of the Team for Legal Changes replied that the Team for Legal Changes had to protect the confidentiality of users' data, after which the organiser replied that he would not return the original text to the leaflet of the Team for Legal Changes on the website. The organiser was therefore requested to remove the leaflet in its entirety from the webpage which was done.

To the request of the activists of the Team for Legal Changes for protection/transport to their office so they could reply to calls for legal assistance after the event, the reply was received from the organisers that some of them would be escorted to the offices of Green Action in Frankopanska Street (in the opposite direction from the offices of Iskorak and Kontra), but that it had been decided at the meeting that the activists of the Team for Legal Changes would not be offered protection to return to their own office.

On the day of the event, two homophobic attacks occurred. Immediately after the event finished, activists of Iskorak and Kontra, Kristijan Grđan and Sanja Juras, were attacked in front of the entrance to the building where the office of Lesbian Group Kontra is situated. One of the attackers punched Mr Kristijan Grđan several times from behind in the head, as a result of which he lost his balance and fell on Ms Juras, who also lost her balance and in her fall was caught on the fence. During this event the attacker shouted, "Faggot, fuck your mother, faggot, I'll kill you!"

At almost the same time, three participants in the Zagreb Pride event, citizens of the Republic of Kosovo, were attacked in Varšavska Street in front of the sex shop. They were wearing T-shirts with a Zagreb Pride slogan. One of them suffered serious physical injuries and was taken to hospital, while the other two suffered lighter injuries. Activists Kristijan Grđan and Sanja Juras met the victims in the trauma clinic in Draškovićeve Street because they had also come to the hospital due to their injuries. The activists offered help and legal support to the attacked participants of the Zagreb Pride event. They brought them T-shirts to replace the ones which they were wearing and offered them money for a taxi. The activists offered legal support in the form of engaging a lawyer, which the victims accepted.

After they had taken statements from the attacked activists, police officials in the 5<sup>th</sup> Zagreb Police Station classified the attack as a misdemeanour. We emphasise that the described attacks represented the criminal offences of violent behaviour and of racial or other discrimination, which are considered hate crimes, and not just misdemeanours. Finally, the Zagreb Police Department carried out a full criminal investigation.

In relation to the participants in the Zagreb Pride event, the citizens of the Republic of Kosovo, the police identified four attackers. The attackers of Kristijan Grđan and Sanja Juras were not found.

The victims participating in the Zagreb Pride event have not replied to the e-mail correspondence of the activists of the Team for Legal Changes in connection with this case.

On 16 June 2008, Mr Marko Jurčić, one of the organisers of the Zagreb Pride 2008 event, called activist Sanja Juras at about 18.00 and asked her to write a letter of invitation to the Kosovo citizens

so they could come to Croatia to identify the perpetrators. In the telephone conversation Mr Jurčić said that the Kosovo citizens needed to leave in three hours and that he could not send them a letter of invitation because he was in Serbia. He said that he had spoken with a police official from the Section for Extreme Violence and Terrorism on behalf of the victims and that was the reason why the police had not sent them a letter of invitation to come to Zagreb.

The activists of the Team for Legal Changes immediately contacted Mr Mraović from the Section for Extreme Violence and Terrorism (with whom they had previously cooperated) and also contacted the Kosovo citizens in order to get their personal data so they could write the letter of invitation for them.

After the Kosovo citizens arrived, activists of the Team for Legal Changes contacted them to arrange a meeting the following day in front of the police station where the interview and the identification of the suspects was carried out. As activists Sanja Juras and Kristijan Grđan had also been attacked on the same day, they all participated in the identification of the suspects. The investigation was carried out professionally and immediately two attackers of the Kosovo citizens were identified. The attackers of activists Kristijan Grđan and Sanja Juras were not identified, because they have not been filmed by cameras nor had the activists seen their faces clearly.

After the Kosovo citizens came to the office of the Team for Legal Changes, they authorised a lawyer to represent them in the criminal proceedings against the attackers. They took the lawyer's telephone number so that they could contact her if something happened.

The following evening they were again invited to be interviewed by the police officials. The victims did not call the lawyer, but instead one of the organisers of the Zagreb Pride event. They were held in the police station for seven hours. At that point the organiser of the Zagreb Pride event asked a representative of the Centre for Peace Studies for help. That person called the same lawyer, who said that she could not intervene at that moment and recommended that another lawyer should carry out the necessary work.

After that we discovered that the Centre for Peace Studies had engaged in the lawyer's colleague to represent the victims in the case of this attack. Since then we have not received any further information about the case.

#### The case of Ana Dragičević

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

It was also reported in the media that the Rijeka Municipal State Attorney's Office commenced an investigation of this case. However, it was not stated for which criminal offences the investigation

was being conducted. Also, the injured party told the media that she had a lawyer who had himself offered her legal help, and would represent her in a civil suit.

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

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

The Team for Legal Changes informed the media about the filing of the criminal complaint after being asked by journalists.

## 8. Public events

### Zagreb Pride 2008

On 28 June 2008, the Zagreb Pride 2008 event was held, at which around 100 participants were present. The theme of this year's event was "You have the Courage" and was intended to invite a greater number of participants for purposes of fun and companionship, while any kind of political message was left out.

Concerned by the fact that the organisers of the Zagreb Pride event had not adjusted the theme of the event to the then existing political situation, which was that the Anti-Discrimination Bill had just been thrown out of regular parliamentary procedure because of the pressure which had been put on Members of Parliament by the Catholic Church because of the provision about banning discrimination on the basis of gender identity. Furthermore, the organisers of the event had not found any space at all for this subject in their programme, although at that moment they did not even know whether the Anti-Discrimination Bill would be even returned to Parliamentary procedure, nor in what form.

The apolitical nature of the event itself was also obvious in that the organisers of the event invited members of the European Parliament, Ms Jeanine Hennis-Plasschart from the Dutch Liberal Party and Ms Ulrike Lunacek, vice president of the European Green Party, for whose political messages there was no space in the event's programme. It is precisely the political nature of these people which is the reason why they participated in the event, and it was not even possible to present them just as people from political life who are interested passers-by but rather their role should have been highlighted and used in the context of the then current political situation, which was not done at all.

We remind you that the Team for Legal Changes of Iskorak and Kontra had previously prepared safety recommendations for participants of the Zagreb Pride event and had sent these to the parade's organisers. In the security recommendations it was stated that during the parade and after it, all day and evening, as had been the practice in previous years, there would be a team of activists on duty and the telephone numbers were given on which victims of any kind of violence could seek help. However, the organising committee of the Zagreb Pride event placed the text of our recommendations on their official web pages, and in doing so deleted the contact lines for legal

assistance of the Team for Legal Changes of Iskorak and Kontra and instead placed the personal contact details of individual event organisers. After the intervention of our organisations the safety recommendations were removed from the official website of the Zagreb Pride event. Namely, the organisers requested that the Team for Legal Changes inform them of who exactly was attacked, in cases where they contacted the telephone number from the leaflet. After the refusal of the Team for Legal Changes to disclose confidential information about their clients, the leaflet was removed from the pages of Zagreb Pride.

Also, we would like to draw attention that contrary to the practice of previous years, when other organisations organised this event, the organisers did not prepare a system of offering direct legal assistance to potential victims of violence, nor did they give any kind of security instructions, and so the participants of the event were not aware that they could be attacked and that they should take additional measures for their own safety – indeed the citizens of Kosovo who were attacked in Varšavska Street were wearing T-shirts with an advert for the Zagreb Pride event. It is a fact that over the last few years the Zagreb Pride event has been followed by numerous violent incidents, and it is also a fact that the actions of the police for the protection of the participants after they leave the event are inadequate, but that does not reduce the responsibility of the organisers to take security measures before and during the course of the event.

Also, the activists of the Team for Legal Changes of Iskorak and Kontra, Sanja Juras and Kristijan Grđan, requested that the event organisers arrange transport to their office at the end of the parade where they would carry out the planned duty period, because they were both publicly known as persons who promote the rights of sexual and gender minorities and as such are more recognizable and more prone to possible violence. After a debate about this, the organisation committee of the Zagreb Pride 2008 event refused to offer the activists the protection they requested. These activists, while they were returning from the event, were followed by two young men who physically attacked them in front of the entrance to the building where the official premises of Lesbian Group Kontra is situated and inflicted head wounds on activist Kristijan Grđan.

We emphasise that every year on the occasion of the Zagreb Pride event wide intervention measures are taken by the Zagreb Police Department for the protection of the participants of the event, but which only relate to protection during the actual duration of the event in a narrow area around the place where the event is held. Therefore other parts of the city remain uncovered and attackers most frequently follow victims when they leave the event. Also, not even the intervention measures of protection alongside the procession itself prevented the perpetrators from attacking the citizens of Kosovo right next to the place where the event was being held!

#### Festival Queer Zagreb

In the period between 1 and 9 October 2008, the Queer Zagreb Festival was held. The theme of the festival was “Crime, sexuality, gender”, and 10 performances and 5 exhibitions were held and 12 films were shown. No incidents were noted during the festival.

#### Happy gay holiday

On 5 August 2008, activists of the Team for Legal Changes held a public action to mark the erection of the No Gay Bathing sign on Duilovo beach in Split by unknown persons (for a more detailed description of this case see the chapter “Violence and discrimination”). Special cloth beach bags were made which consisted of a drawing of a same sex couple holding hands underneath which was written “Happy gay holiday”. The reactions of citizens were mostly positive.

## 9. International practice for the protection of human rights of sexual and gender minorities

### Croatia Progress Report 2008 of the European Commission

The European Commission in its report for 2007 and emphasized that the level of protection against discrimination was not in accordance with European standards, and that the support for victims of discrimination was inadequate. Homophobic incidents and a lack of decisiveness of the state to fight the problem of discrimination were also noted. One of the complaints was also the non-adoption of the National Strategy for the Elimination of All Forms of Discrimination.

In its report for 2008, the European Commission mentions the adoption of the National Programme for the Protection and Promotion of Human rights 2008–2011, and the adoption of the Anti-Discrimination Act, noting progress in legislation. On the other hand, the European Commission repeated its criticism of the previous year connected to the implementation of anti-discrimination legislation. It states that up to the date of publication of the Report only one conviction for hate crime had been recorded. Also, it states that there was not a single conviction for hate speech. The reaction of institutions connected to the encouragement of racial and national hatred was limited. Statistics did not exist on court cases concerning discrimination. It was again stated that support to victims of discrimination was marginal, and that the level of protection from discrimination in practice and in court proceedings was not in accordance with the standards of the European Union.

### E.B. vs France

On 22 January 2008, the European Court for Human Rights made its judgement in the case of E.B. vs France.

The complainant E.B. was a lesbian, a teacher in a children's nursery who has lived with another woman since 1990. She sought permission to become a potential adoptive parent in February 1998 but her request was refused because of her sexual orientation. In June 2002, the highest administrative court in France confirmed this decision.

The European Court for Human Rights found in this case that Article 8 (respect and protection of family life) and Article 14 (banning of discrimination) of the European Convention for Human Rights had been violated. Thus 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. This decision followed the positive practice of the court – Smith and Grady vs Great Britain (discrimination in the workplace) and Mouta vs Portugal (custody of a biological child) concerning protection from discrimination.

The European Court for Human Rights judged that European countries may no longer justify the exclusion of lesbians, gays and bisexual persons from procedures of the adoption of children. The court established the principle that everybody should have equal treatment on the basis of their individual personalities as a parent in procedures for adopting children. The sexual orientation of the adopter is unimportant and cannot be used for his/her exclusion from adoption procedures. It is in the best interest of children within Europe and beyond that potential adopters are not excluded from consideration for adoption for unimportant and discriminatory reasons.

The Team for Legal Changes informed the Croatian public about the judgement that had been brought and reminded it of the statement of the Ombudswoman for Children of 14 April 2006: "When it is a question of the adoption of a child, considering that a large number of heterosexual couples

are waiting to adopt, I always give them priority.” Considering that it is precisely this action, i.e. giving priority on the basis of sexual orientation which is contrary to the European Convention on Human Rights, which is also shown by the practice of the European Court for Human Rights, the Team for Legal Changes warned the Ombudswoman not to violate the human rights of parties and the provisions of international legislation by her statements and future behaviour in cases of discrimination on the basis of sexual orientation in the adoption of children.

#### Tadao Maruko vs the German National Theatre

On 1 April 2008, the European Court of Justice brought its judgement in the case of Tadao Maruko vs the German National Theatre.

Mr Maruko lived with his partner in a registered union. After the death of his partner the pension fund of the German National Theatre refused to pay him a family pension, because such pensions were intended exclusively for marital partners. Mr Maruko brought charges against the German National Theatre and the Bavarian Administrative Court in Munich to the European Court of Justice, seeking an interpretation of Directive 2000/78/EC, which relates to equality in the workplace.

The European Court of Justice judged that refusing the request for a family pension to a living same-sex partner commits direct discrimination on the basis of sexual orientation, if such a right in a comparable situation is available to marital partners.

The Team for Legal Changes welcomed the judgement of the European Court of Justice in this case which sends a clear message that discrimination of same-sex partners in individual rights is contrary to the legislation of the European Union and as such cannot be justified in any situations at all.

The Team for Legal Changes directed a public appeal to the Government of the Republic of Croatia and the Croatian Parliament to adopt as soon as possible legal amendments which would erase discrimination of same-sex couples in respect of rights to a family pension, as well as other rights which are not given to them by Croatian legislation. Adopting the above amendments would lead to the harmonisation of Croatian legislation with the legislation of the European Union, to which the Republic of Croatia committed itself by signing the Stabilisation and Association Agreement in the process of joining the European Union.

### 10. Future activities of the Team for Legal Changes

- 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 crime;
- 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 equality of same-sex couples with different-sex couples in regard of the rights which are obtained from marriage or non-marital union;
- Carrying out a national campaign with a special emphasis on marriage and adoption of children;
- Work with unions and union officials on a programme of legal assistance and protection from discrimination in the workplace for LGB 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.

## 11. Recommendations of the Team for Legal Changes

In order to protect the rights of sexual and gender minorities in the Republic of Croatia better and better, we call upon:

- The Croatian Parliament and Government of the Republic of Croatia to eliminate discrimination against same-sex partners by ensuring them the rights and responsibilities available to different-sex partners across the institutions of marriage and non-marital unions;
- the responsible institutions to introduce a ban on discrimination on the basis of sexual orientation in the Constitution of the Republic of Croatia and all other relevant laws as soon as possible;
- state institutions to consistently implement anti-discrimination laws and policies;
- responsible organs to strengthen the institutional protection of the rights of sexual minorities;
- the Ministry of Science, Education and Sport to introduce sex education in primary and secondary schools in the scope of which sexuality and sexual and gender minorities are objectively talked about, and to take responsibility for its implementation;
- Croatian Television and all independent television stations to actively apply our recommendations for the translation of foreign films and in this way eliminate discriminatory or derogatory phrases from that aspect of its films. We also request that they include emissions and films addressing LGBT identities in their programmes. We expect that these programmes will be emitted at times when the majority of citizens can watch them. We ask all the media not to give more public space to the spreading of hatred and encouraging of violence against sexual minorities;
- members of sexual minorities to more and more use the legal instruments of the Republic of Croatia in order to assert their rights and protect and defend their identity;
- the responsible institutions to recognize the rights and needs of transgender persons and alongside sexual orientation to also introduce a ban on discrimination on the basis of gender expression and gender identity in the Constitution of the Republic of Croatia and relevant laws.

### **Sanja Juras,**

Coordinator of Lesbian Group **Kontra**  
and Team for Legal Changes of Iskorak  
and Kontra

### **Kristijan Grđan,**

Coordinator of **Iskorak** – Centre  
for the Rights of Sexual and Gender  
Minorities