



**ERA – LGBTI Equal Rights Association for Western Balkans and Turkey, Dugine
Obitelji and LGBT Centar Split**

**Written Contribution on the position of LGBTI persons to the
3rd CYCLE OF THE UNIVERSAL PERIODIC REVIEW
of
REPUBLIC OF CROATIA**

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Statement of Interest

1. ERA – LGBTI Equal Rights Association for Western Balkans and Turkey in close partnership with its members: Dugine Obitelji and LGBT Centar Split is submitting this Written Contribution to the 3rd Cycle of the Universal Periodic Review of Republic of Croatia, which focuses on the position of LGBTI persons in the country.
2. ERA – LGBTI Equal Rights Association for Western Balkans and Turkey¹, is an umbrella regional association operating in 9 countries (Albania, Bosnia & Herzegovina, Croatia, Macedonia, Kosovo, Montenegro, Serbia, Slovenia and Turkey) with a current membership of 63 LGBTI organisations and objectives to strengthen capacities of LGBTI organisations in the region, lobby and advocate nationally, regionally and internationally for LGBTI rights and strengthen and improve the visibility of LGBTI movement and communities.
3. Dugine Obitelji² are LGBTIQ* parents, those who want to become that and their families. The Association is committed to protecting, promoting the rights and status of rainbow families in society, and supporting, informing, empowering and connecting the rainbow families in Croatia through education, advocacy, sensitization and information to the public, publishing and research, and direct support to rainbow families.
4. LGBT Centar Split Platform³ is an informal organization consisting of five non-profit LGBTIQ+ organizations gathered around the existing LGBT Center, a space in the property of the Split municipality. The goal of the Platform is the development of the LGBT Center as a socio-cultural

¹ For more information about ERA, please visit the website: <http://www.lgbti-era.org>

² For more information about Dugine Obitelji, please visit the website: <https://www.dugineobitelji.com/>

³ For more information about LGBT Centar Split, please visit the website: https://www.facebook.com/LGBTCentarSplit/?rdc=2&_rdr

center which offers a variety of social, cultural, health and educational activities for the LGBTIQ+ people of Split thus improving the life of the community in general.

Legal and Policy Framework

5. During Cycle II of Croatia, United States of America recommended to Croatia to strengthen human rights protections for lesbian, gay, bisexual and transgender persons, in line with Croatia's international obligations and commitments as well as with domestic legislation⁴.

Constitution of Croatia

6. Equality before the law based on different personal grounds is enshrined in Article 14 of the Constitution of the Republic of Croatia⁵. Sexual orientation, gender identity and expression and sex characteristics are not explicitly mentioned, however the article contains a phrase "or other personal grounds" which keeps an open list of different personal grounds.
7. In 2013, civil society organization "U ime obitelji" ("In the name of the family"), launched an initiative to change Article 62 of the Constitution of the Republic of Croatia, regulating marriage. The initiative to define marriage exclusively as union between a man and a woman was successful. It was confirmed in a referendum in late 2013 and by the Constitutional Court of Croatia⁶ on 14 January 2014.

Istanbul Convention

8. Croatia ratified the Istanbul convention on 13 April 2018, after series of protests against the ratification took place across the country⁷.
9. The main reason behind the protests were associated with the definition of gender and with promotion of gender equality. Ratification also faced fierce opposition of the Catholic Church, which argued that due to the Convention's definition of gender as "a social construct and fluid" it would pave the way for full legalization of same-sex marriage⁸. The ratification was put under question and calls to hold a referendum to ban the convention were raised in some parts of the Croatian society.

Antidiscrimination legislation

10. The 2008 Anti-Discrimination Law⁹ includes sexual orientation, gender identity and gender expression on the list of protected categories against discrimination, including in relation to access to either public and private services, or to access to establishments serving the public.
11. Other anti-discrimination directives that prohibit discrimination based on gender, gender expression, and/or sexual orientation have been included in various pieces of legislation since 2003, including the Penal Code, Gender Equality Law, Media Law, Labour Law, Asylum Law etc.
12. Croatian legal framework does not explicitly protect intersex persons, as there are no legal provision granting protection on the basis of sex characteristics.

⁴ Report of the Working Group on the Universal Periodic Review, A/HRC/30/14, paragraph 99.77.

⁵ Constitution of the Republic of Croatia, <https://www.zakon.hr/z/94/Ustav-Republike-Hrvatske>

⁶ [https://hr.wikisource.org/wiki/Promjena_Ustava_Republike_Hrvatske_\(drzavni_referendum_2013.\)](https://hr.wikisource.org/wiki/Promjena_Ustava_Republike_Hrvatske_(drzavni_referendum_2013.))

⁷ More about the protest available here: <https://www.youtube.com/watch?v=Ga2cWi96tpY>,

<https://www.radiosarajevo.ba/vijesti/regija/protest-protiv-istanbulske-konvencije-u-splitu-rivom-se-orilo-za-dom-spremni/296764>

⁸ <https://www.dw.com/en/croatia-ratifies-convention-on-womens-rights-despite-protests/a-43376424>

⁹ <https://www.zakon.hr/z/490/Zakon-o-suzbijanju-diskriminacije>

Same-sex partnership and family rights

13. During the Cycle II of Croatia, the delegation of Croatia stated the Law on registered partnerships allowed lesbian, gay, bisexual, transgender and intersex partners to have all the same rights as married couples except the right to adopt children¹⁰.
14. Same-sex couples in Croatia have benefited from a law on same-sex unions since 2003¹¹. That law granted same-sex partners, who had been cohabiting for at least 3 years, similar rights as enjoyed by unmarried cohabiting opposite-sex partners, in terms of inheritance and financial support, but not the right to adopt or any other rights included in family law.
15. By September 2014, Croatia put into effect the Life Partnership Act¹², which makes life partners equal to married partners in all areas apart from adoption. In November 2018, it was reported that until 30 June 2018 a total of 262 same-sex couples have registered as life partners in Croatia¹³.
16. In November 2017, the Ministry of Family, Youth and Social Policy included life partners in the draft which would change the Croatian Family law to give couples access to social welfare benefits¹⁴. However, such hard-won rights have frequently been under threat in Croatia, in their preparation process and also after being passed, due to active opposition from conservative parties and the very influential Catholic Church, the most notable of these being the marriage referendum of December 2013.
17. At the end of 2018, a discriminatory Law on foster care which excludes same-sex couples was adopted, despite clear messages made by civil society¹⁵, scientific community and national human rights institutions¹⁶ not to do so.

Access to Justice

18. During Cycle II of Croatia, Chile recommended to Croatia to strengthen the accountability and prosecution of law enforcement officers who commit abuses against lesbian, gay, bisexual and transgender persons¹⁷.
19. Despite legislative changes in Croatia ensuring improved access to justice to LGBTI individuals, there are still obstacles that they face. Underreporting of cases of violence and discrimination is still present. Prompt and impartial investigation into alleged cases of hate crimes has been carried out with some difficulties, with inconsistent implementation of legal provisions and inadequate processing by the police. Limited measures have been taken by the authorities in order to encourage victims to report SOGI-based hate crimes. Sex characteristics are not enlisted as protective ground in any law.
20. Even though the situation regarding hate crime legislation in Croatia is significantly better in comparison to other countries in the Western Balkans, where in all cases of hate crimes criminal

¹⁰ Report of the Working Group on the Universal Periodic Review, A/HRC/30/14, paragraph 11.

¹¹ https://narodne-novine.nn.hr/clanci/sluzbeni/2003_07_116_1584.html

¹²

https://uprava.gov.hr/UserDocsImages/Savjetovanja%20sa%20zainteresiranom%20javnošću/2013/zivotno_partnerstvo/Nacr%20zakona%20o%20zivotnom%20partnerstvu%20-%2017%2010.pdf

¹³ <https://amp.france24.com/en/20181211-croatian-activists-challenge-law-barring-gay-couples-fostering-children>

¹⁴ <http://lgbti.ba/prijedlog-zakona-o-socijalnoj-skrbi-u-hrvatskoj-ukljucivat-ce-i-zivotne-partnere/>

¹⁵ <http://hr.n1info.com/Vijesti/a354133/Udruga-Dugine-obitelji-trazit-ce-procjenu-ustavnosti-Zakona-o-udomiteljstvu.html>

¹⁶ <https://net.hr/danas/hrvatska/pravobranitelji-ce-o-zakonu-o-udomiteljstvu-posvajanje-diece-mora-se-omoguciti-i-istospolnim-zivotnim-partnerima/>

¹⁷ Report of the Working Group on the Universal Periodic Review, A/HRC/30/14, paragraph 99.111.

proceedings are now initiated *ex officio*¹⁸, underreporting of homophobic/biphobic/lesbophobic and transphobic hate crimes remains a serious concern, while hate crimes are still often wrongfully qualified as misdemeanour acts, with the most unjust consequence of such incorrect qualification by the police being the fact that the misdemeanour procedure prevents the initiation of criminal proceedings (in accordance with the principle *ne bis in idem*)¹⁹.

21. Data on hate crime is systematically collected by the Government's Office for Human Rights and Rights of National Minorities²⁰.

Access to Education

22. Specific research on sexual diversity in education is not available. Anecdotal cases give the impression that schools and teachers are not yet aware of and often not positive or supportive of sexual diversity. Sexual education is below standard and kept this way by Catholic church influence. Demeaning of sexual diversity in education materials has been eradicated, but a shift to a more supportive curriculum on sexual orientation, gender identity and expression has not been made. The government and the judicial system only ambiguously maintain anti-discrimination laws, but do not actively promote human rights practices²¹.
23. Reports cite discrimination against minorities in schools, and textbooks that use derogatory adjectives to refer to minorities²². The transgender community is very invisible in Croatia and remains the most marginalized part of the LGBT community²³.
24. Sexual orientation and gender (not specifically gender identity) are protected against discrimination in education. The Science Activity and High Education Act contains prohibition of discrimination based on sexual orientation related to the procedure of selection of students for universities, faculties and higher schools²⁴.
25. Religious education in schools in Croatia plays significant role. A considerable part of religious education is about relationships and sexuality, but it does not teach positively towards same-sex relationships²⁵.

Position of Trans Individuals

26. In Croatia, legal gender recognition process is regulated by law, but remains inadequate, complicated and lengthy, while the bodies responsible for its implementation have no clear guidance on implementation or they seemed to be ignoring prescribed timelines. There are no legal provisions for any gender options except male and female.
27. Birth certificates may be legally amended to recognise the change and the undertaking of gender affirming surgery no longer has to be stated on an individual's birth certificate, thus ensuring that

¹⁸ Prior to such changes occurring in 2013, the victims had to independently initiate criminal prosecution through private lawsuits and incur costs for legal services, if the criminal offense was not initiated *ex officio* by the law (e.g. cases of threats against LGBTI persons).

¹⁹ [Monitoring Implementation of the Council of Europe Recommendation to the member states on measures to combat discrimination on grounds of sexual orientation or gender identity CM/Rec\(2010\)5: Documentation Report on the Republic of Croatia](#), prepared by Zagreb Pride, 07/2018 p.6, p. 21 - 24.

²⁰ [Monitoring Implementation of the Council of Europe Recommendation to the member states on measures to combat discrimination on grounds of sexual orientation or gender identity CM/Rec\(2010\)5: Documentation Report on the Republic of Croatia](#), prepared by Zagreb Pride, 07/2018 p.6, p. 21 - 24.

²¹ GALE European Report 2017 on the Implementation of the Right to Education for Students who are Disadvantaged because of their Expression of Sexual Preference or Gendered Identity, p. 71: <https://www.gale.info/doc/galeproducts/GALE-European-report-2017.pdf>

²² *Ibid*, p. 72.

²³ *Ibid*, p. 73.

²⁴ *Ibid*, p. 73.

²⁵ For more information: *Ibid*, p. 74-75.

such information remains private. This is also the case for people who have not formally undergone gender affirming surgery, but have nevertheless undertaken hormone replacement therapy²⁶.

Position of Intersex Individuals

28. Intersex persons are not properly visible within Croatian society and they are not protected from discrimination and hate crimes, while sex characteristics are not mentioned or recognized in any existing legislation or public policy in Croatia.

Freedom of Association and Peaceful Assembly

29. Most public events of LGBT community are held in the capital of Zagreb (where most LGBT organisations are based) and the second largest city Split. Zagreb Pride²⁷ and Split Pride²⁸ are organised annually, with no major incidents happening in the recent years. Other events include cultural, sports and activist activities, as well as places of association like clubs and bars.

List of Recommendations

30.1 Within the next reporting cycle, ensure that all awareness-raising activities related to the Istanbul convention include vulnerable groups of women, mentioned in explanatory memorandum of the Convention, especially lesbians, bisexual women and transgender persons, as well as all LGBTI topics in order to achieve equality in Croatia;

30.2 Within one year, amend the current legislation to allow access to joint adoption and foster care for same-sex partners, as well as fertility treatment for same-sex couples and single women, with no additional and discriminatory requirements in comparison to heterosexual couples;

30.3 Within the next reporting cycle, secure consistent implementation of legal provisions related to hate crimes, adequate processing of hate crimes by the police and take concrete measures in order to encourage victims to report hate crimes based on sexual orientation and gender identity;

30.4 Within the next reporting cycle, introduce strategies on tackling violence and discrimination against LGBTI persons, including within educational and employment system, accompanied by relevant action plans of implementation on national level and within local governments in the country;

30.5 Within the next reporting cycle, amend antidiscrimination and criminal legislation to include sex characteristics as a personal ground for protection from discrimination and hate crimes and provide support to LGBTI civil society in organizing public campaigns and events to increase the visibility of intersex persons;

²⁶ For more information on trans persons in Croatia, please see: [Written Contribution to the Report on Legal Gender Recognition of UN Independent Expert on Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity](#), submitted by ERA – LGBTI Equal Rights Association for Western Balkans and Turkey (ERA), PINK Embassy Albania, Streha LGBT (Shelter), Pro LGBT, CEL Kosova, Subversive Front, The Coalition Margins, Association Spectra, Egal, Gayten – LGBT, Legebitra, TransAkcija Institute, Pembe Hayat and SPoD on 19 June 2018, p. 9-10.

²⁷ <http://www.zagreb-pride.net/en/>

²⁸ <https://www.facebook.com/lgbt.pride.split/>

30.6 Within one year and in cooperation with trans civil society organizations, introduce precise protocols and guidance on legal gender recognition and trans affirming health care, based on person's self-determination and in line with international standards and best practices;

30.7 Within the next reporting cycle and in line with United Nations Sustainable Development Goals (SDGs) and Agenda 2030, secure adequate representation of LGBTI civil society in all decision-making processes relevant for LGBTI communities in Croatia.

ANNEX

List of contributors

1. Vuk Raičević, ERA – LGBTI Equal Rights Association for Western Balkans and Turkey