



The Violations of the Rights of Lesbian, Gay, Bisexual and Transgender Persons in CROATIA

A Shadow Report

Submitted to the Human Rights Committee by:

Global Rights

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School

LORI

Zagreb Pride

Ženska soba - Women's Room – Center for Sexual Rights

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INTRODUCTION

This shadow report is a collaborative effort created and submitted by Global Rights, and the Human Rights Program at Harvard Law School.¹ This report offers an evaluation of Croatia's compliance with the International Covenant on Civil and Political Rights (ICCPR), particularly in regard to the protection of LGBT persons in Croatia.

Croatia ratified the ICCPR on October 12, 1992². However, the government has failed to completely enforce protection for the rights of individuals in Croatia based on their sexual orientation or gender identity. Continuing violence and discrimination against LGBT persons is of the utmost concern.

From October 12-30, 2009, Croatia will stand before the Human Rights Committee for consideration of its compliance with the Covenant. Non-governmental organizations may submit shadow reports to serve as an additional source of information for United Nations committee members.

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² Croatia acceded to the ICCPR on October 12, 1992. *See International Covenant on Civil and Political Rights New York, 16 December 1966*, United Nations Treaty Collection, at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en (Oct. 8, 2009).

EXECUTIVE SUMMARY

Although Croatia has taken serious steps to combat discrimination through the enactment of anti-discrimination provisions of existing laws as well as the 2008 Anti-Discrimination Act, the legislation remains meaningless without true enforcement and protection of the rights of LGBT individuals. In fact, Croatia's commitment to the principle of the equality of all its citizens comes into question when discriminatory statements and actions can be attributed to state actors at all levels.

Violence and hatred directed towards LGBT persons remains persistent and is chronicled here and in many other reports of the Croatian advocate community. Such behaviors stem from deeply-rooted and widespread cultural beliefs and social stigmatization of LGBT individuals. Anti-gay views continue to be espoused by conservative leaders and the Catholic Church, which is particularly distressing because of the importance of religion in Croatian society, and the influence that these leaders may have on family and social life.

In disregard of their obligation to protect all persons and enforce laws, law enforcement officials have failed to properly investigate and charge perpetrators of violence and hate crimes towards LGBT persons. There have been many reported incidents, including at recent Zagreb Pride Marches, that both shock the sensibilities and demand justice. Violence during the Zagreb Pride events in 2007, 2008 and 2009 seriously questions the ability of citizens to exercise their right to freedom of assembly and expression.

Violations of other rights of LGBT persons also abound. Between 2003 and 2008, from the ages of 16 to 21, a young woman was forcibly held in a psychiatric institution solely because of her homosexual orientation and was subjected to torture and other inhuman and degrading treatments and punishments, as well as forced to take various psychopharmaceuticals.

Groups seeking a location to hold peaceful and educational events were denied access because they would be discussing issues of sexual orientation and gender identity. And although a decision to undergo a sex-change operation is an extremely personal and private issue, law enforcement officials have used their access to that information through database checks to humiliate and mock transgender persons, violating their right to privacy.

These incidents demonstrate a lack of commitment to the protection of LGBT individuals and communities, and furthermore, a disregard for the state's duty to protect and prevent ICCPR violations.

SUBSTANTIVE VIOLATIONS OF THE CONVENTION

Article 2(1) and 26 (Non-Discrimination)

The principle of non-discrimination underpins the protection of individuals under the ICCPR, regardless of their sexual orientation or gender identity. Under Article 2(1), state parties are required to “undertake to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, *without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property birth or other status*”³ (emphasis added). The Human Rights Committee expands protection under Article 2(1) in General Comment 31 to say that state parties could also be held accountable for violations of ICCPR rights perpetrated by non-state actors if the state has failed to take measures to protect individuals from these violations.⁴

Article 26 states that “all persons are equal before the law and are entitled without any discrimination to the equal protection of the law.” It also requires the law to prohibit discrimination and guarantee “equal and effective protection against discrimination” on any protected ground, including race, colour, sex, language, religion, political opinion, national origin, property, birth or other status.⁵

In the case of *Toonen v. Australia*,⁶ the Human Rights Committee held that “the reference to ‘sex’ in Articles 2, paragraph 1, and 26 is to be taken as including sexual orientation.”⁷ However, in direct contravention of the broad protection required by the non-discrimination regime of Articles 2(1) and 26, practices and lack of enforcement of legal protections have been used to discriminate against LGBT persons in Croatia.

Discrimination through Lack of Enforcement

Croatia has made great strides recently to prohibit discrimination based on sexual orientation through legislative efforts. In 2003, prohibitions of discrimination were introduced into the Gender Equality Act, Criminal Code, Labour Act, Scientific Work and Higher Education Act and into schoolbook standards. The Same-sex Civil Unions Act was also passed. In July 2008, the Anti-Discrimination Act⁸ was passed, prohibiting discrimination on grounds including gender identity, expression and sexual orientation.⁹

Although there is no doubt that this new legislation is a tremendous improvement in protections offered to the LGBT community, there are also still causes for concern. In 2006, the Registered Partnership Bill was defeated, which would have given same-sex couples the same rights and obligations as heterosexual married couples, with the

³ ICCPR, *supra* note 2, at Article 2(1).

⁴ General Comment 31 to Article 2 of the ICCPR.

⁵ ICCPR, *supra* note 2 at Article 26.

⁶ *Toonen v. Australia*, Communication no. 488/1992, U.N. Doc. No. CCPR/C/50/D/488/1992 (1994).

⁷ *Id.* at para. 8.7.

⁸ The original version of the act can be found at <http://narodne-novine.nn.hr/clanci/sluzbeni/340327.html>; an English version can be found at http://www.unhcr.hr/eng/images/stories/news/refugee%20protection/docs/asylum/anitdiscriminationact_en.pdf

⁹ 2008 Annual Report on the Status of Human Rights of Sexual and Gender Minorities in Croatia [2008 Report], Astrae Lesbian Foundation for Justice, at 4-5.

exception of adoption rights.¹⁰ In addition, legislation is only the first step in ensuring that all persons are truly protected against discrimination and that their rights are equally protected.

Enforcement and implementation of these new laws has been undermined by discriminatory actions by state institutions and actors, including members of the Croatian Parliament, the body responsible for passing the laws in question. During debate on the bills, offensive and degrading comments about sexual and gender minorities were not sanctioned.¹¹ One Member of Parliament, Mr. Andrija Hebrang, chose to mock the idea of gender identity-based discrimination: “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.”¹²

Without faith in state institutions, the legal or law enforcement system, many victims of discrimination or violence based on their gender identity, expression or sexual orientation, do not report such incidents to the police.

Article 7 (Freedom from Torture and Cruel, Inhuman and Degrading Treatment or Punishment)

Article 7 of the ICCPR guarantees that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”¹³ State action is required for a direct violation of Article 7. However, the state may also be held responsible for violations by non-state actors if it has failed to adequately protect against them.

Violations are likely to be under-reported due to the underground nature of the LGBT community, the fear of being “out-ed” in a culture of intolerance and stigmatization, and the lack of official support and protection from violations. There are some signs that more victims are beginning to report cases, however.

While exiting the Global club on the night of April 29, 2007, two gay men were attacked by 3 people. The attackers punched and kicked the gay men and sprayed one of them with teargas. They also shouted out insults on the basis of their sexual orientation. The victims called out for help to a man on the other side of the street, who just laughed and ignored them. The victims had received minor physical injuries as a result of the attack, including visible bloody suffusions and swellings on their head. When they reported the incident to the police, they were charged, along with attackers, with a misdemeanor for disturbance of public law and order.¹⁴

On February 17, 2008, a transsexual who worked as a prostitute was attacked in her flat by two men who tried to force her to work for them as a prostitute. When she refused, they raped and beat her. She was beaten in the chest, breastbone and head and

¹⁰ 2008 Report, *supra* note 9, at 4.

¹¹ 2008 Report, *supra* note 9, at 19.

¹² 2008 Report, *supra* note 9, at 29.

¹³ ICCPR, *supra* note 2, at Article 7.

¹⁴ 2008 Report, *supra* note 9, at 30.

had to receive stitches in her head. They also threatened to kill her if she went to the police.¹⁵

On June 1, 2008, a man was physically attacked at the Western Railway Station in Zagreb. Two men approached and asked if he was a “faggot” and that they had come from Dubrava to beat up faggots. When he refused to stand up so they could hit him, they hit him in the knees.¹⁶

In August 2005, a same-sex couple was attacked by at least four perpetrators, including one woman, in the Zagreb borough of Gajnice. Using sharp objects and verbal insults, the perpetrators managed to injure one of the victims enough to need emergency surgical treatment at the Sveti Duh General Hospital. When the attack was reported to the officer at the local police precinct, he refused to act and instead asked: “What kind of man are you, afraid of women and children?”¹⁷

Zagreb Pride 2007, 2008 and 2009

As explained below (under articles 19 and 21) the Zagreb Pride March has unfortunately been the site of extreme and hateful acts of violence for several years. Police have failed to provide adequate protection, and worse, have been complicit in the violence and discrimination by failing to bring criminal charges to properly prosecute perpetrators and by mocking and discriminating against LGBT persons themselves.

Mental Suffering and Harm: Hate Speech

In General Comment 20, the Human Rights Committee extends Article 7 protections against mental, as well as physical, suffering and harm.¹⁸ There are not necessarily any clear bright-line rules regarding psychological and mental harm that reach the level of torture or cruel, inhuman, and degrading treatment. However, several cases discuss potential factors to consider, including: the threat of torture, the threat of violence to family and friends, and repeated death threats.¹⁹ In the case considered by the Committee in *Estrella v. Uruguay*, the threats were considered serious enough to amount to psychological torture. Again, this highlights the need to further investigate potential violations of Article 7.

Incidences of hate speech and hate crimes in Croatia are unfortunately too common. Although many of them are probably not reported, those that are reported cause sufficient concern. And because the Croatian Penal Code Section 174 Section 3 requires direct intent, most of these cases are impossible to prove.

On February 26, 2007, there was a sign on the office of the Forum for Freedom in Education that said: “Death to the faggots, Soros.” A similar note was also posted at the Women’s Centre a week earlier that said: “Serbian pigs, the slaughtering day is today!”²⁰

One case was thrown out by the Zagreb Municipal State Attorney’s Office because the suspect “did not have the intention of spreading hatred or derision but that he

¹⁵ 2008 Report, *supra* note 9, at 38.

¹⁶ 2008 Report, *supra* note 9, at 39.

¹⁷ Documenting Hate Crimes Against LGBT Persons in the Republic of Croatia [Hate Crimes], Abstracted by the Legal Team of Iskorak and Kontra, at “Gajnice 2005” Section.

¹⁸ ICCPR General Comment No. 20, 10 Apr. 1992, at paras. 1 and 5.

¹⁹ *Estrella v. Uruguay*, Communication No. 74/1980 (17 July 1980), U.N. Doc. Supp. No. 40 (A/38/40) (1983), at 150, paras. 1(6) and 8(3).

²⁰ Hate Crimes, *supra* note 17, at “Examples of Other Violations” Section

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...He did not have the intention of encouraging violence of any kind.” The direct intent requirement serves to hinder the just resolution of many cases of hate speech.

It is clear that LGBT individuals suffer real mental and psychological harm, whereby it is common for them to be verbally attacked and abused by family members, friends, and even strangers. The state should also more fully investigate and report on the treatment of LGBT individuals by state officials while the individuals are held in custody.

Article 9 (Right to Liberty and Security of Person)

Article 9 of the ICCPR protects against arbitrary arrests and detentions and provides that “everyone has the right to liberty and security of person.”²¹ Particularly relevant are the stipulations under Article 9 that “[n]o one shall be deprived of his liberty except on such grounds and in accordance with such procedure as established by law,”²² that “[a]nyone arrested or detained on a criminal charge shall be brought promptly before a judge...and shall be entitled to trial within reasonable time or release.”²³

Ana Dragičević from Rijeka was forcibly held in the Lopača psychiatric hospital twice, from the age of 16 to 18, released for a short period when she reached the major age, and from the age of 18 to 21 without a decision in county court, solely based on her homosexual orientation.

In May 2003, Ana was stopped by the police while she was with her girlfriend and, with the excuse of alleged drug abuse (later proven to be a false accusation), forcibly hospitalized in the psychiatry department of the Hospital of Rijeka for two months with her parents’ consent.²⁴

Later on, in October 2003, Ana was stopped again by the police and hospitalized in the Lopača psychiatric hospital. The Director of the hospital, Dr. Marija Vulin, carried out the hospitalization at the request of her parents. During the time spent in the institution, based solely on the diagnosis of homosexuality, various psychopharmaceuticals were given to her (Leponex among them, a treatment used for patients diagnosed with schizophrenia) and she was held in the same ward with serious psychiatric patients, with no separation between underage and older patients.²⁵

Treatment of patients, as per Ana’s account of her story, was extremely degrading: basic hygienic items (such as toilet paper or soap) were unavailable, and patients did not have privacy in the toilets. Ana was forced into isolation several times as a form of punishment for futile motives (such as not feeling well for labor activities she was forced to perform, or talking to other patients). During isolation Ana reported being tied to her bed for weeks and forced to wear a diaper, being heavily medicated, being

²¹ ICCPR, *supra* note 2, at Article 9, para. 1.

²² *Id.*

²³ *Id.* at para. 3.

²⁴ Ana Dragičević and the conditions in the Psychiatry institution Lopača in Croatia, testimony of Ana’s hospitalization, on file with LORI and Global Rights

²⁵ *Id.*

beaten by other seriously ill patients in isolation with her. She was able to take her first walk into the hospital park only after more than one year from hospitalization. Forced labor activities consisted in cleaning the facilities, including the toilets, assisting other patients (including performing personnel-related activities, such as changing diapers, feeding and cleaning seriously ill patients), washing clothes and working in the kitchen. In one case she was forced to assist a dying patient.²⁶

In this context, Ana attempted to commit suicide, being held in isolation as a consequence.²⁷

She was only released from these conditions after the Director was replaced on May 13th, 2008.²⁸

The treatment received by Ana Dragičević constitutes a violation of article 9, as well as of articles 2 (as her treatment was solely motivated by her sexual orientation) 7 (because of the tortures, treatments and punishments she was subjected to), and 17.

Article 17 (Right to Privacy)

Article 17 guarantees protection under the law against “arbitrary or unlawful interference” with the right to privacy, family and correspondence and against “unlawful attacks” on one’s “honor and reputation.”²⁹

On October 29, 2008, a transsexual Croatian woman was travelling to Serbia and was stopped by Croatian police officials at the border crossing. After checking information on the computer (where her previous name is still listed along with her new name), the police official turned to a colleague and said: “Fucking hell, I knew he was a man.” Again on October 31st, a police official, after examining her passport and her data on the computer, laughed and said: “Goodbye, boys.”³⁰

Article 19 (Freedom of Expression) and Article 21 (Freedom of Peaceful Assembly)

Article 19 protects the “freedom to seek, receive and impart information and ideas of all kinds,”³¹ Although there are some exceptions recognized under the ICCPR, they must be by law and as necessary “for the respect of rights or reputations of others,” for “national security,” “public order,” or “public health or morals.”

Article 21 of the ICCPR guarantees the “right to peaceful assembly,” only qualified by those restrictions under law and as necessary in “the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.”³²

The Lesbian Organization of Rijeka LORI staged several performances of a production entitled ‘Will it Be Different When I Tell Them that I’m Gay?’ After staging

²⁶ *Id.*

²⁷ *Id.*

²⁸ 2008 Report, *supra* note 9, at 43.

²⁹ ICCPR, *supra* note 2, at Article 17, paras. 1 and 2.

³⁰ 2008 Report, *supra* note 9, at 41.

³¹ ICCPR, *supra* note 2, at Article 19, para. 2.

³² *Id.* at Article 21.

a performance in Rijeka and Pula, they attempted to stage one in Zadar. However, the director of the Zadar City Library refused permission to stage the performance on library premises, stating that “it concerned a subject for which there was not yet a favourable climate in Zadar.” He also said it was “for their and his own good” because there were people who would disturb the performance if it were staged. He refused to have police presence to prevent such disturbances and explained that he was concerned that the presence of the police would have harmed the reputation of the Zadar City Library, since they had already been the subject of media attacks after allowing other events related to sexual and gender minorities.³³ Although criminal complaints have been filed for racial or other discrimination under Article 174, paragraph 1 of the Criminal Code and violation of freedom of expression of thought under Article 107, paragraph 1 of the Criminal Code, there is not yet any resolution to the case.

Zagreb Pride, 2007, 2008 and 2009

The failure of the authorities and law enforcement to protect participants during Pride events and to prevent serious episodes of violence to happen (in some cases with the complacency of the police) seriously undermined the exercise of the right to freedom of assembly and expression of LGBT activists and other participants.

As the European Court of Human Rights asserted in *Bączkowski and Others v Poland*,³⁴ where the judges established that a ban to a pride parade in Warsaw violated articles 11 (right to freedom of assembly), 13 (right to effective remedy) and 14 (prohibition of discrimination) of the European Convention on Human Rights (of which Croatia is state party), “[a] genuine and effective respect for freedom of association and assembly cannot be reduced to a mere duty on the part of the State not to interfere; a purely negative conception would not be compatible with the purpose of Article 11 nor with that of the Convention in general”.³⁵ The attitude of authorities may discourage citizens from exercising their right to peacefully demonstrate and, as the judges argue in *Bączkowski*, that constitutes a limitation to the exercise of the freedom of assembly.³⁶

During Zagreb Pride 2007, there were multiple distinct violent incidents as well as threats of violence. In one incident, a Slovenian citizen who was verbally and physically harassed tried to report the incident to the 1st Zagreb Police Station at Strossmayer Square 3 but was instead subjected to “incorrect behavior, insults, mocking and discrimination” including the refusal to take down a proper account of the incident, homophobic comments, and statements like “there would not have been an attack had we not come to the pride.”³⁷ A complaint was sent to the Minister of Interior Affairs about the discriminatory and unprofessional behavior of the police.

In another serious incident, a man prepared 6 inflammable devices, or “Molotov cocktails.” He joined a group of minors with bags of eggs and tomatoes and brought out the inflammable devices to throw at participants. He only desisted upon seeing the police.³⁸ The presence of weapons (bats, the “Molotov cocktails”) and items intended to

³³ 2008 Report, *supra* note 9, at 36.

³⁴ Application no. 1543/06, 3 May 2007

³⁵ *Bączkowski*, para. 64.

³⁶ *Id.*, paras. 67-68.

³⁷ 2007 Annual Report on the Status of Human Rights of Sexual and Gender Minorities in Croatia [2007 Report], Astrae Lesbian Foundation for Justice, at 53.

³⁸ *Id.*, at 48.

be used as weapons (bottles with inflammable liquid, a glass ashtray, eggs and tomatoes, smoke bombs) testify to the extreme hatred and violence of these homophobic protesters.

However, despite the number and seriousness of violent incidents during Zagreb Pride 2007, the Croatian Police failed to secure perpetrators to justice, with the only exception of Josim Situm, who was charged and convicted for hate crimes.³⁹ The Ministry of Interior Affairs also remained silent instead of correcting and punishing the behavior of the police.

In 2008, after the Pride march, five persons were attacked - three activists from Kosovo and two activists from Croatia. Police illegally held the citizens of Kosovo in custody for fourteen hours, providing them with no food or water in order to prevent them to return home without appearing before judge in Zagreb. They were not allowed to leave the police premises and they were not explained why they were being held there. After Zagreb Pride got assistance from a lawyer, Lidija Horvat, they decided to press charges against police officers and two perpetrators. This case is still pending.

During Zagreb Pride 2009, Croatian Police and the Minister of Interior Affairs allowed a violent gathering that promoted fascism, neo-nazism and hate crimes against LGBT persons (yelling “Kill, kill faggots” and “Faggots to concentration camps”).⁴⁰ The police did little to restrain the hatred and violence and one participant was verbally harassed and then violently attacked on his way home from the Pride March.⁴¹

In 2009, the police has committed numerous human and civil rights violations during the Pride event. It did not react to hate speech by anti-protest and it drastically reduced democratic standards of the right to assembly that has been established in the previous years during Zagreb Pride. Police also limited constitutional right to the freedom of assembly of the participants of Zagreb Pride as it tried to prevent March leader to interact with citizens, which has been practice at Pride and other protests for years now.

³⁹ See <http://gayrepublic.org/index.php?name=News&file=article&sid=2448>

⁴⁰ “Condemnation of Police Conduct, Condemnation of Violence and an Assessment of the Pride March” Zagreb Pride 2009 Organizational Committee Press Release, June 15, 2009.

⁴¹ *Id.*

CONCLUDING NOTES

In violation of ICCPR Articles 2(1), 7, 9, 17, 19, 21 and 26, the practices and policies herein described deprive Croatia's lesbian, gay, bisexual, and transgendered citizens of a range of rights, including the right to be free from discrimination based on their sexual orientation or status; the right to be free from cruel and degrading treatment or punishment; the right to liberty and security of their person; the right to privacy; the right to freedom of expression and the right to peaceful assembly.

Although great improvements have been made in enacting legislation to protect the LGBT community, the government has failed to protect the rights of LGBT individuals in practice. In fact, acts of discrimination by state actors themselves, along with their failure to protect LGBT individuals and groups from violent and hateful expressions of discrimination, serve to perpetuate the firmly entrenched prejudices of the general Croatian society.

In addition, Croatia should pass the proposed Registered Partnership Bill to protect the rights of same-sex couples and eliminate the direct intent requirement of the Croatian Penal Code Section 174 Section 3.

RECOMMENDATIONS

The Croatian Government should:

1. Ensure the right to freedom of assembly, movement and expression without political repression, instigation of fear and under full and adequate protection from violent groups and individuals before, during and after public gatherings.
2. Eliminate the direct intent requirement of Penal Code Section 174 Section 3 to ensure protection for victims of hate speech.
3. Adopt other legislation to counteract hate crimes and other violence against LGBT persons and to provide them with legal redress in the case of discrimination or abuse, even (and particularly) when committed by state actors.
4. Provide equality and human rights training for teachers and staff in schools, governmental officials at all levels, and law enforcement officers. Enact an accountability system whereby individual officials, staff or law enforcement officers can be warned, disciplined or fired for discriminatory behavior.
5. Conduct community outreach workshops to address longstanding and prevailing social and cultural beliefs and attitudes towards LGBT persons.
6. Ensure equal rights for same-sex couples through Family Law, which should include civil partnerships.
7. Actively condemn hate crimes against LGBT persons through State institutions, and especially representatives of executive power.
8. Ensure that public health officials, in particular, are given sensitivity training. Ensure that information regarding same sex reassignment procedures and other health issues relevant to the LGBT community are made available to the general public.

PROPOSED QUESTIONS FOR THE GOVERNMENT OF CROATIA

1. What is the government doing to ensure that LGBT citizens can fully exercise their right to freedom of assembly, movement and expression?
2. What is the government doing to ensure that state actors, as well as healthcare providers, are being educated, trained and sensitized to issues of LGBT rights? What are specific accountability mechanisms in place to ensure that violations do not occur?
3. What measures are being taken to address the specific instances of abuse and the violations described in this report as well as the general measures being taken to fight stigma and *de facto* discrimination against LGBT individuals?
4. What steps are being taken to ensure equal access for LGBT persons to HIV/AIDS awareness, testing, and treatment programs, and to accurately educate Croatian citizens about the sexual transmission of HIV/AIDS?