

HUMAN RIGHTS PRACTICE REVIEWS

Croatia

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1. Introduction

This human rights review will cover around three years (2014-2017) outlining the most relevant human rights issues in Croatia. Attention will first be given to human rights issues that received the most media coverage, followed by the most important decisions of the Croatian Constitutional Court and the European Court of Human Rights regarding Croatia. Sometimes it will be impossible to neatly divide these sections, so in some places court decisions and media coverage of these issues will be presented jointly. However, the main focus will be given on the courts' decisions, in particular regarding their impact on legislative changes in Croatia. Finally, the conclusion will provide a short overview of the most relevant governmental and non-governmental organizations that work on the promotion and protection of human rights in Croatia.

2. Human Rights Issues in the Media

The first matter presented here will concern human rights issues that received the most media coverage and public attention in Croatia from the end of 2013¹ until July 2017. All these issues are in relation to 'family' rights, namely, the right to marriage, the right to register same-sex partnerships and the right to an abortion.

2.1. Constitutional Referendum

The constitutional referendum that posed the question whether the Croatian Constitution should be amended by defining marriage as a union between a man and a woman, creating a constitutional prohibition against same-sex marriage received a lot of media and public attention. The referendum was held in December 2013 and 1,436,835 citizens, or 37.90% of registered voters, turned up at the referendum. Out of those that turned up, 65.87% of voters were in favour of plac-

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1 The review regarding human rights issues in the media goes beyond 2014 since the constitutional referendum from December 2013 received a lot of media attention both in Croatia and worldwide and concerns an important human rights issue, in terms of taking a step backwards from current European trends.

ing such a definition in the Constitution, while 33.51% voters were against such a definition.

In Croatia, the definition of marriage as a union between a man and a woman was already included in the Family Act;² however, at the time (in late 2013) the generally accepted opinion was that there is a need to place a definition of marriage between a man and a woman in the Constitution.

Following the referendum, changes were made to the Croatian Constitution in 2014,³ where it is now stated in Article 62 paragraph 2 that marriage is “matrimony between a woman and a man.”⁴ This referendum, together with its results, was widely covered by both the Croatian and the international media.

2.2. Adoption of the Same-Sex Partnership Act

Another human rights issue widely covered in the media and closely related to the aforementioned referendum was the adoption of the Same-Sex Partnership Act⁵ in July 2014, which came into force in September 2014. This Act grants same-sex couples most of the rights that married couples enjoy, except in the field of adoption. It defines the statutory rights of same-sex couples in much the same way, in areas such as inheritance, pensions, tax and medical care. The adoption of this legislation received a lot of media coverage and it was generally welcomed, especially after the referendum on the constitutional definition of marriage that was held seven months earlier. The Act was passed in the Croatian Parliament with 89 votes for and 16 against.

However, despite the liberalization of legislation concerning same-sex couples in Croatia, there is still a lot of discrimination towards the LGBT population. Discrimination occurs at an institutionalized level⁶ and on an everyday level, where persons of homosexual orientation are still very often subjected to ill-treatment from their co-citizens, and at the same time they are not sufficiently protected by institutions.⁷

2.3. Decision on the Constitutionality of the Legislation on Abortion

The decision on the constitutionality of the legislation of health measures for exercising the right to decide freely on giving birth, the so-called legislation on abortion, also received a lot of media coverage. The Constitutional Court’s decision was delivered on 21 February 2017 after the constitutional complaint was

2 Family Act (2003), Official Gazette Official Gazette 116/03, 17/04, 136/04, 107/07, 57/11, 61/11, 25/13, 05/15.

3 Croatian Constitution (consolidated version), Official Gazette 56/90, 135/97, 8/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14.

4 Up until 2014, there was no paragraph 2 in Article 62 of the Constitution.

5 Same-Sex Partnership Act, Official Gazette 92/14.

6 The most recent case of institutionalized discrimination of LGBT persons will be presented *infra*: *Pajić v. Croatia*, Application no. 68453/13, judgment of 23 February 2016.

7 The most recent is the case where a homosexual filed a complaint to the ECtHR against Croatia for a violation of several Convention rights due to the inactivity of authorities in protecting him against violence that he has been suffering from his neighbours on over 20 occasions during the period of 4 years. His complaint was accepted as admissible on 30 March 2017, so the Court’s final judgment is still pending. His situation also received a lot of media coverage.

made in 1991 by the 'Croatian Movement for Life and Family' and then again by the association 'In the Name of Family' (the same association that instigated the referendum on the constitutional definition of marriage) in October 2016. Therefore, the decision came 26 years after the first request, but only six months after the repeated request by the most powerful conservative association in Croatia. The decision is available online,⁸ and in it the Court stated that abortion is and should remain in accordance with the Constitution. However, the Court instructed the Croatian Parliament to adopt a new piece of legislation within the next 2 years since the existing one consists of terms and institutes that no longer exist in the Croatian constitutional order.

This decision received a lot of media coverage and public attention, as abortion has been every woman's right guaranteed under the legislation for the last 40 years, and it seemed that a different decision from the Constitutional Court would be an enormous step backwards in human rights protection.

Despite this decision, proponents of an abortion ban held a peaceful assembly 'Walk for Life' on 20 May 2017, where they wanted to draw attention to their main goal: the prohibition of abortion. This assembly also received a lot of public and media attention.

3. Decisions of the Croatian Constitutional Court

Within the last three years, the most important decision of the Croatian Constitutional court is the decision presented here on the constitutionality of the legislation of health measures for exercising the right to decide freely on giving birth. Three other Constitutional Court decisions that will be summarized here concern politicians and their claims of human rights violations.

The first two decisions are from July 2015, when the Constitutional Court delivered its decisions on Ivo Sanader (former Croatian prime minister), annulling two corruption convictions and ordering a retrial. Ivo Sanader was sentenced to imprisonment for war profiteering in the Hypo Bank graft case and for taking a bribe from the Hungarian MOL oil company for forfeiting management rights in Croatia's INA oil company.⁹ The Constitutional Court found a violation of several applicants' human rights; namely, it found a violation of the principle of proportionality when deciding on the length of obligatory pretrial detention and a violation of the procedural aspect of the right to personal liberty.

The third relevant Constitutional Court decision is the one regarding another politician Branimir Glavaš. Glavaš was convicted in two cases of war crimes against Serb civilians in the city of Osijek in 1991-1992 by the Zagreb County Court's judgment. In July 2010, the Supreme Court confirmed the verdict but reduced Glavaš's sentence (from 10 to 8 years in prison). The Constitutional Court quashed the ruling convicting Glavaš, ordering new proceedings against

8 Available at: http://narodne-novine.nn.hr/clanci/sluzbeni/2017_03_25_564.html (last accessed 28 March 2018).

9 Constitutional Court decisions U-III-4149/2014 published in Official Gazette No 89/15 and U-III-4259/2015 published in Official Gazette No 133/15.

him. It found that the Supreme Court and the county court had wrongly applied the law regarding the nature of the armed conflict in Croatia. Also, the Constitutional Court ordered the Supreme Court to review if the applicant's human rights had been breached (namely, the right to equality before the law/procedural equality; the right to reasoned judgment; the right to an effective legal remedy; and the right to legal assistance).¹⁰ In the new proceedings, by a decision of 7 June 2016, the Supreme Court quashed the Zagreb County Court's judgment of 7 May 2009 and remitted the case. The proceedings are currently pending before the Zagreb County Court.

4. Judgments of the European Court of Human Rights

This part of the review will cover the most relevant judgments of the European Court of Human Rights (ECtHR) against Croatia that have had a large impact on the legislative changes and on the administrative practice of domestic courts and other authorities. Even though the ECtHR delivers only declaratory judgments, meaning that it (on most occasions) only states that there has been a violation of a certain Convention provision, it is the process of execution of its judgments that brings important (legislative) changes. After the ECtHR delivers a judgment, it is up to the state to choose the implementation measures and the Committee of Ministers to monitor the execution of those judgments. The implementation of measures and execution of judgments often includes general measures like legislative changes, in order to prevent possible future violations of the Convention.

Several judgments against Croatia that required legislative changes concerned family issues, and they actually triggered the adoption of the new Family Act (2015).¹¹ Those judgments are *Krušković v. Croatia*, *Đorđević v. Croatia*, *A.K.L. v. Croatia* and *X v. Croatia*.¹²

The most important judgment that directly prompted changes in the Family Act is *Krušković*. In this case, the applicant was divested of his legal capacity when in June 2007 K.S. gave birth to a daughter, K, and named the applicant as the child's father. The applicant, with the consent of the child's mother, gave a statement at the Rijeka Birth Registry saying that he was the father of the child, and he was subsequently registered as such on the child's birth certificate. However, this registration was later annulled since, as a person divested of his legal capacity, he did not have the right to recognize K as his child before the law. According to the Family Act from 2003 (in force at the time), only the competent Welfare Centre had the legal capacity to require recognition of the applicant's paternity by bringing a civil action against the applicant, seeking the establish-

10 Constitutional Court decisions U-III-4150/2010, decision from 1 December 2015.

11 Family Act, Official Gazette 103/15, in force from 1 November 2015.

12 *Krušković v. Croatia*, Application no. 46185/08, judgment of 21 June 2011; *Đorđević v. Croatia*, Application no. 41526/10, judgment of 24 July 2012; *A. K. and L. V. Croatia*, Application no. 37956/11, judgment of 8 January 2013, and *X v. Croatia*, Application no. 11223/04, judgment of 17 July 2008. Although these judgments are older than 3 years, it is the legislative changes they prompted that are of relevance for this report (and those changes are from 2015).

ment of the fact that the applicant was K's father. However, it took almost 3 years for the Welfare Centre to bring a civil action, despite the fact that the applicant wanted to register as the child's father. This case was still before the national courts at the time when the case was decided by the ECtHR. In its decision, the Court found a violation of Article 8 of the Convention and said,

[a]s a consequence of the above-described legal position, the applicant was left in a legal void until the proceedings for establishing his paternity were instituted. Furthermore, he had no means to compel the Opatija Social Welfare Centre to institute such proceedings. Thus, more than two and a half years passed between the time when the applicant gave his statement that he was the biological father of K and the institution of the court proceedings in the matter by the Opatija Social Welfare Centre.... In these circumstances, the Court finds that the respondent State has failed to discharge its positive obligation to guarantee the applicant's right to respect for his private and family life.¹³

Therefore, the Court found a violation of Article 8 of the Convention since the applicant had no possibility of having his paternity recognized, even though both he and the mother agreed that he is the father. The Court accepted a public interest in protecting persons divested of their legal capacity from giving statements to the detriment of themselves or others; however, it found that no fair balance had been struck.

As a result, changes were made to the Family Act (2015) according to which people in the same position as Mr Krušković (divested of their legal capacity) were given the right to be registered as a father of a child, if the mother gives her consent (regardless of her legal capacity), or a child older than 14 years.¹⁴ The draft of the final proposition of the Family Act issued by the Croatian government clearly states that this judgment was one of the main reasons for the proposed changes in the Family Act.

There have been several other changes in the Family Act that have been prompted by the previously listed ECtHR judgments (in note 12): for example, Article 132 of the Act in the part where it provides shorter deadlines (24 hours) for notifying the Social Welfare Centre of the court's proceedings concerning a violation of a certain child's right – *Dorđević v. Croatia*; or Article 188 stating that even a parent divested of his or her legal capacity needs to give consent to the adoption of a child – *X v. Croatia*; and, finally, Article 190 paragraph 2 providing for a special court proceeding where a judicial decision can be delivered that will substitute/replace parental consent in cases of adoption – *A.K. and L. v. Croatia*.

Another judgment that obliged Croatia to make legislative changes is the aforementioned *Pajić v. Croatia*,¹⁵ since the Court clearly stated that the Aliens

13 *Krušković v. Croatia*, *Ibid.*, paras. 40 and 44.

14 Family Act, 2015, Article 63.

15 *Pajić v. Croatia*.

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Act¹⁶ in force is discriminatory. In this case, the applicant sought a residence permit in Croatia for the purposes of family reunification with her same-sex partner. They had been in a relationship for 2 years and planned to live together and start a business. Croatian authorities refused her application, as it did not meet the requirements of the Aliens Act, which does not allow family reunification for same-sex couples. This was the applicant's main reason for lodging an application to the Court. The applicant first stated that her stable same-sex relationship should be considered as family life under Article 8 of the Convention. Furthermore, she argued that the blanket exclusion of same-sex couples from the possibility of family reunification, which was open to unmarried different-sex couples, constituted direct discrimination in violation of Article 14 (in connection with Article 8). The Court agreed with the applicant and found that her relationship fell within the concept of 'private life' as well as 'family life', as she and her partner maintained a stable relationship, with regular contacts and a serious intention to live together in the same household in Croatia.¹⁷ In considering whether there was discrimination, the appropriate comparison was an unmarried heterosexual couple seeking to obtain a residence permit for family reunification. This possibility was expressly provided for within the Aliens Act,¹⁸ while same-sex couples were tacitly excluded from its scope, which amounted to a difference in treatment based on sexual orientation. In this context, the Court emphasized that the margin of appreciation for the state was narrow and the difference in treatment should pursue a legitimate aim and be proportionate to achieving this. The Court noted that

competent domestic authorities did not advance any such "justification", nor did the Government adduce any particularly convincing and weighty reasons to justify the difference in treatment between same-sex and different-sex couples in obtaining the family reunification... Instead, the relevant provisions of the Aliens Act provided for a blanket exclusion of persons living in a same-sex relationship from the possibility of obtaining family reunification, which cannot be considered compatible with the standards of the Convention.¹⁹

In conclusion, the Court found a violation of Article 14 in conjunction with Article 8. This judgment received a lot of media coverage, and in July 2017, the Aliens

16 Aliens Act, Official Gazette 130/11, 74/13.

17 *Pajić v. Croatia*, paras. 61-68.

18 Aliens Act, Article 56.

19 *Pajić v. Croatia*, paras. 83 and 84.

Act has been amended and Article 56b has been added to the Act regulating temporary residence for the purpose of life partnership.²⁰

Furthermore, it is important to mention three recent cases decided by the Court against Croatia, *Dragojević, Bašić* and *Matanović*, that all concern the application of the Criminal Code Procedure.²¹ In those cases, the ECtHR strongly criticized the practice of the Croatian courts, stating that the Croatian law, as interpreted and applied by the national courts,

did not provide reasonable clarity as to the authorities' discretion in ordering surveillance measures and it did not in practice – as applied in the applicant's case – provide sufficient safeguards against possible abuse.²²

In all three cases, the investigating judges authorized the use of secret surveillance measures to monitor the applicants' telephones, and following that surveillance (i.e., based on the results of the surveillance) the applicants were convicted of criminal offences. For the Court, the problematic issue was that

the investigating judge's orders on the use of secret surveillance measures referred to an application for the use of secret surveillance by the competent State Attorney's Office and indicated the statutory phrase that "the investigation [could] not be conducted by other means or that it would be extremely difficult [to do so]".

"They did not, however, provide relevant reasoning as to the particular circumstances of the case and, in particular, why the investigation could not be conducted by other, less intrusive, means...[T]he lack of reasoning in the investigating judge's order, accompanied by the circumvention by the domestic courts of this lack of reasoning by retrospective justification of the use of secret surveillance, was not in compliance with the relevant domestic law and did not therefore secure in practice adequate safeguards against various possible abuses."²³

20 According to the Committee of Ministers the execution of the case is closed and regarding the main general measures adopted the Committee of Ministers acknowledged that 'the Same-Sex Partnership Act 2003 was replaced by a new Act in 2014 enabling persons in registered partnerships with same-sex partners (or informal ones having lasted for over three years) or living in same-sex marriages to request a residency permit for family reunification in administrative proceedings before the Ministry of Interior. The judgment was published, translated and disseminated.' (Available at: <http://hudoc.exec.coe.int/eng#{%22fulltext%22:%22pajic%20v%20croatia%22,%22EXECDocumentTypeCollection%22:%22CEC%22,%22EXECIdentifier%22:%22004-10279%22}}>) (last accessed 4 June 2018.)

21 *Dragojević v. Croatia*, Application no. 68955/11, judgment of 15 January 2015; *Bašić v. Croatia*, Application no. 22251/13, judgment of 25 October 2016; and *Matanović v. Croatia*, Application no. 2742/12, judgment 4 April 2017.

22 European Court of Human Rights, Factsheet – Personal data protection, June 2017, available at: www.echr.coe.int/Documents/FS_Data_ENG.pdf (last accessed 26 March 2018), p. 4.

23 *Matanović v. Croatia*, paras. 113-114.

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Therefore, the procedure for ordering and supervising the implementation of the interception of the applicant's telephone did not comply with the requirements of lawfulness, nor was it necessary in a democratic society, meaning it led to a violation of Article 8 of the Convention.²⁴

These cases also received a lot of media coverage, since they have a great effect on the criminal procedure system, particularly on the work of investigative judges and prosecutors. Regarding the execution of these judgments, the Committee of Ministers examined the Action Plan send by the Croatian authorities in April 2018 and stated how 'the authorities indicated that following the Court's judgment, the domestic courts aligned their case-law with Convention standards warranting proper reasoning of surveillance order. They referred to the Supreme Court's decisions of 7 February and 4 May 2017 which relied on the Court's findings in *Dragojević* and *Matanović*. In 2011 the new Code of Criminal Procedure entered into force enabling defendant's access to recordings and the possibility to request their reproducing during the hearing. Awareness-raising, publication and dissemination have also been taken.'²⁵

Finally, it is important to mention judgments of the Court concerning the issue of ownership rights, on the one hand, and the special protected tenancy on the other. Croatia was one of the countries that, from 1953, had a system of special protected tenancies, namely the 'right to a flat', entitling its holder to permanent and unrestricted use of a flat for living purposes. After the changes in the political system in 1991, special protected tenants who lived in socially owned flats had the right to purchase the flats in which they held such tenancy under favourable conditions. However,

holders of specially protected tenancies in respect of privately-owned flats or socially-owned flats which flats had passed into social ownership by means of confiscation had no right to purchase the flats in respect of which they held such tenancy. They, together with those holders of specially protected tenancies who had, but did not avail themselves of, the right to purchase the flats, became the so-called protected lessees with the entry into force of the Lease of Flats Act on 6 November 1996.²⁶

Relevant cases for this issue are *Statileo v. Croatia* (in note 26); *Mirošević-Anzulović v. Croatia*,²⁷ *Bego v. Croatia*²⁸ and *Gošović v. Croatia*,²⁹ in all of which the Court found a violation of the applicants' right to peaceful enjoyment of property (Article 1 of Protocol 1). In its judgments, the Court concluded that the main problems were the shortcomings in the legislation itself, namely, the inadequate level of

24 *Ibid.*, paras. 113-114.

25 Committee of Ministers, execution of judgments, *Dragojević v. Croatia*, (leading) available at: [http://hudoc.exec.coe.int/eng#{%22EXECIdentifier%22:\[%22004-12061%22\]}](http://hudoc.exec.coe.int/eng#{%22EXECIdentifier%22:[%22004-12061%22]}) (last accessed 4 June 2018).

26 *Statileo v. Croatia*, Application no. 12027/10, judgment of 10 July 2014, para. 30.

27 Application no. 25815/14, judgment of 4 October 2016.

28 Application no. 35444/12, judgment of 15 November 2016.

29 Application no. 37006/13, judgment of 4 April 2017.

protected rent, restrictive conditions for the termination of protected leases and the absence of any temporal limitation to the protected lease scheme. The Court therefore considered that the Croatian authorities

should take appropriate legislative and/or other general measures to secure a rather delicate balance between the interests of landlords, including their entitlement to derive profit from their property, and the general interest of the community – including the availability of sufficient accommodation for the less-well-off.³⁰

Soon after the first judgment concerning this issue – *Statileo v. Croatia* – the Croatian authorities informed the Committee of Ministers that it will make the necessary changes in legislation in order to repair the problem and prevent possible future violations. However, in their report to the Committee of Ministers from 2016, the authorities indicated that although the legislative process was expected to be brought to an end before December 2015, it was interrupted because general elections were held in November 2015 and then again in September 2016. According to the authorities, the legislative work should have been resumed once the parliament and government were formed. However, in June 2017, even though the new government and parliament were formed, no changes in the legislation have yet been made, while in the meantime the European Court delivered three new judgments – *Bego*, *Mirošević-Anzulović* and *Gošović*. If the government does not start with the reparation of the situation soon, further judgments can be expected, since this is a very common problem in Croatia.

Another problem regarding human rights protection in Croatia is the problem of detention conditions, and this problem has been recognized by the Court and by the European Committee for the Prevention of Torture (CPT).

As to the judgments of the ECtHR, there have been numerous judgments where the Court addressed the problem of poor detention conditions. The leading case in this regard is *Cenbauer v. Croatia*³¹ from 2006, while in the last three years there have been the cases of *Lonić*³² and *Muršić*.³³ Comparing today's situation in Croatian detention facilities with the situation 10 (and beyond) years ago, it is clear that the situation is improving. The CPT visited Croatia in March 2017, and its delegation will most likely recognize this improvement. The CPT's delegation paid special attention to the treatment and conditions of detention of persons held in prisons and in one correctional institution for juveniles, as well as the situation of and legal safeguards for patients in psychiatric institutions. Their report has not been published yet; however, the delegation presented its preliminary observations to the Croatian authorities.³⁴

30 *Statileo v. Croatia*, para. 165.

31 Application no. 73786/01, judgment of 9 March 2006.

32 Application no. 8067/12, judgment of 4 December 2014.

33 Application no. 7334/13, [GC] judgment of 20 October 2016.

34 Council of Europe, CPT, 2017 News, 'The CPT visits Croatia', available at: www.coe.int/en/web/cpt/-/the-cpt-visits-croatia (last accessed 27 March 2018).

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At this point, it is worth mentioning that the Croatian Helsinki Committee (CHC), as a civil society organization for the promotion and protection of human rights, has a project for monitoring prisons, where it also visits places of detention and points out problematic issues.³⁵

5. Conclusion

In the light of the aforesaid considerations, we can conclude that there are several relevant human rights issues that Croatia is facing at the moment: the growth of conservative civil associations that have not only successfully held a referendum on the constitutional definition of marriage, but also raised the question of the constitutionality of abortion. At the same time, same-sex couples have been granted the same statutory rights as married couples, which shows a trend towards the '*Europeanisation*' of same-sex legislation.

Furthermore, the biggest impact on legislative improvements concerning human rights protection is exerted by the judgments of the European Court of Human Rights, as they remain the main trigger of legislative changes (and changes in the conduct of national judges and courts). The role of the Constitutional Court of Croatia is also very important, since it is the last national resort for applicants claiming a violation of their human rights, as well as for examining the constitutionality of national legislation.

The Media too have a far-reaching role in addressing human rights issues together with the civil society organizations that are relatively numerous in Croatia. Besides the Croatian Helsinki Committee mentioned earlier, other non-governmental organizations worth mentioning here are GONG (a civil society organization founded in 1997 to encourage citizens to actively participate in the political processes), Women's Network Croatia, Civic Committee for Human Rights, and others.

Finally, governmental organizations that promote and protect human rights also have an influential role in human rights promotion and protection, such as the Ombudsman of the Republic of Croatia, the Ombudsman for Children, Gender Equality Ombudsman and the Croatian Government's Office for Human Rights and the Rights of Minorities. The latter regularly publish reports on the human rights situation in Croatia regarding current problems.

35 Website of the Croatian Helsinki Committee, available at: www.hho.hr/ (last accessed 27 March 2018).