



**THE EFFECT OF EU INTEGRATION
PROCESS ON HUMAN RIGHTS
OF LGBT PEOPLE
IN SLOVENIA, CROATIA AND
MONTENEGRO**



The Effect of EU Integration Process
on Human Rights of LGBT People
in Slovenia, Croatia and Montenegro

Sarajevo, 2015

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INTRODUCTION

In December of 2014 at the Conference *The Effect of EU Integration Process on Human Rights of LGBT People*, which was organised in Banja Luka, LGBT activists from Croatia, Bosnia and Herzegovina, Serbia and Montenegro have discussed the advancement of human rights of LGBT people in the context of EU integration process. This process has a great influence on all the countries of the region. Regardless of the stage of integration these countries are in, European Union is a political subject with the greatest influence on legislative changes in these countries.

European Union's influence is limited to quantitative changes, which means that European Union and its mechanism are not as efficient when it comes to long-term qualitative changes. European Union can initiate legislative reforms; however its influence on political will needed for implementation and the distrust society has in legislative, is very limited. Therefore, European Union can define *socially acceptable behaviour* within its documents, but it cannot work in depth on enabling the change of social patterns and raising the awareness. These changes have to come from the society itself and cannot be expected from the European Union. The influence of European Union weakens after the state candidate becomes its member. It is of utmost importance for civil society organisations to seize the EU integration process as an initiator of changes and use it in the best possible way. After a state become a member of European Union, a great deal of responsibility is transferred to the national institutions for protection of human rights, thus it is necessary to work on strengthening of ombudspersons' institutions in the countries of the region.

Civil society organisations should definitely use EU integration process while they can, and increase their cooperation with EU institutions. It is necessary to simultaneously maintain

other approaches such as education, community work and empowerment of LGBT community, cultural and political engagement, policy recommendation, etc. In addition it is important to establish cooperation, network and exchange experiences with other organisations, both local and regional. Although this kind of joint activity, demands extra work and coordination, in long-term it is more efficient and enables better results to be achieved.

Civil society organisations in BiH can learn a lot from the experiences of countries from the region, when it comes to EU integration process. Most valuable experiences for BH civil society organisations are definitely the ones coming from Slovenia and Croatia as EU member states, and Montenegro, as a country that has made most progress on the legislative plan of protection of human rights of LGBT people in accordance to EU standards, for now.

THE INFLUENCE OF EU INTEGRATIONS TO THE STATE OF HUMAN RIGHTS OF LGBTIQ PERSONS IN MONTENEGRO

The text before you deals with the influence of EU integrations on respecting the human rights of LGBTIQ persons in Montenegro. From the beginning, the very EU integrations opened the door of cooperation between the institutions of the system and activists for human rights of LGBTIQ persons in Montenegro, and during the previous five years a significantly great number of activities in this field was realized, due to the limitation of page number, this text does not include detailed information about all events.

Newspaper articles, information available via internet, official documents of non-governmental and governmental institutions available to the author, as well as official data from published research were used in order to write this text.

The process of achieving equality of lesbians, gays, bisexual and trans* persons cannot be successful without cooperating with the institutions of the system, changing the existing and establishing a new legal regulation and its implementation, as well as a continuous education and an increase in the capacity of institutions to work in this field. In transitional societies where there is no developed LGTIQ movement, the process cannot be successful without the wider support from foreign organizations generally engaged

in human rights and organizations specializing in specific human rights (women's rights, the rights of people with disabilities and organizations engaged in human rights of other groups in society in an unequal position with regard to the majority). And in societies in which the situation is as it was in Montenegro at the beginning of the process, after that even visible LGBTIQ activists can be brave enough to publicly advocate their rights. Montenegro is an example of achieving significant results even in the beginning of the process in a country in which there is no organized LGBTIQ movement, LGBTIQ organizations that work continuously or visible activists.

In order for the process to succeed, it is crucial to have the political will of the state which will ensure a commitment to the collaboration with civil society organizations.

As the states in the Balkans always work and make only as much effort as they have to, the segment of international support, primarily that of EU institutions is of great significance to civil society organizations in transitional countries when it comes to human rights of LGBTIQ persons and presents the most significant allies in the struggle for human rights. The closed door of the state which activists and non-governmental organizations cannot open by themselves at the beginning of the process is opened by the blue flag with golden stars. The fulfilment of introducing and implementing antidiscrimination measures, and the obligation of respecting human rights and achieving equality of all social groups whose rights are denied, and which are a part of the obligations of the state which it has to fulfil on its way to EU integrations, leave a lot of room for action and can be one of the main arguments for getting the political will of the state to actively devote itself to the equality of LGBTIQ persons.

The combination of creating a wide coalition of activists, non-governmental organizations, international subjects, media and institutions which are in charge of human rights

and the struggle against discrimination have proven to be a successful recipe for a good-quality opening of a public discussion about the need for protecting LGBTIQ rights in Montenegro, and have lead through perennial work to raising the discussion on a political level and establishing an official state antidiscrimination policy on fighting against homophobia and transphobia.

The path from absolute ignorance, silence and the absence of legal solutions and LGBTIQ organizations to the official Government policy on fighting against homophobia and transphobia, the activity of several LGBTIQ organizations and visible LGBTIQ activists and the Montenegro Pride which went without an incident was neither short nor easy. But step by step, it was carried out and developed in accordance with the progress of Montenegro on its way of EU integrations.

From Decriminalization to EU Integrations, Law on Prohibition of Discrimination and a Visible LGBTIQ Movement

The legal changes on the federal level of SFRY of the seventies of the previous century (the legislation reform, decentralization, actually the transfer of government from the federal top to republic and provincial, first discussions on decriminalizing *unnatural fornication*) conditioned the decriminalization of the **male homosexual relationship** in Montenegro which followed Croatia, Slovenia and Vojvodina in this practice in the seventies, precisely in 1977. As in the case of many states, not just ex-Yugoslavia, *the female homosexual relationship* was not an object of professional interest of legislators, and therefore did not find its place in legal acts or bylaws of Montenegro. Based on the above mentioned, it is possible to conclude that the first significant step forward in fighting for the rights of LGBT persons was made by the state, even though probably without specifically intending to do anything related to the equality of LGBTIQ

persons. Then occurred the 30 years of silence in which the majority of citizens adhered to the principle of *ignorance is bliss*, and Montenegro was characterized as *the black point on the gay map*.

Twenty-six years later, on May 1, 2003, when Montenegro slowly entered into a more specific but still mostly declarative process of preparing for EU integrations, another change finally occurred in the form of the Media Law coming into force which in Article 23 states that *it is forbidden to publish information and opinions which encourage discrimination, hate or violence against persons or groups of persons due to them belonging or not belonging to a certain race, religion, nation, ethnic group, sex or **sexual orientation***.

In the same year, Free Rainbow (Slobodna duga), the first non-governmental organization in Montenegro was registered, with the goal of *promoting and defending the rights of sexual minorities*. The media attention was gained, however, the headlines and the very tone of the published texts reflected a high level of social intolerance of sexual minorities. Beside the content which represented homosexuality exclusively in relation to paedophilia and sexual abuse, *Fuck it, we're not faggots¹*, *There are 250 homos in Podgorica²*, there were only some newspaper article titles which, next to the use of incorrect terms, speculated on the number of men who are gay, but also on the date of the pride parade (then called *the gay parade*) in the capital of Montenegro. In presenting Free Rainbow to a general community the data on the organization that dominated was that it had 60 members, that it was *not a secret organization, regardless of the fact that they had to hide their address and phones*, but that it was also founded with the goal of *educating sexual minorities and encouraging those who want to come out into the public and declare being prone to **male - male** relationships*. In later writing Free Rainbow was characterized as an organization *founded in order to protect homo, trans or bisexual persons*

1 <http://arhiva.kurir-info.rs/Arhiva/2005/mart/02/SCG-01-02032005.shtm>

2 <http://arhiva.kurir-info.rs/Arhiva/2004/septembar/07/V-20-07092004.shtm>

living in Montenegro, especially because those people are often targeted by their surroundings.

In November of 2004 Free Rainbow was a host to *the most popular gay man in Serbia and Montenegro* and the editor of the magazine *Boy (Dečko)*, Atila Kovač. His guest visit on the first channel of RTCG resulted in the gathering of the fans of the Podgorica club Future (Budućnost) in front of the public service building and stoning immediately after the show. The NGO Human Rights Action from Podgorica addressed the State Attorney's Office in writing in December of 2004 in order to receive the data on the prosecution of the attackers; however, the response was not delivered until the end of the year. Also, Atila Kovač was not informed by the state authorities about conducting any kind of proceeding against his attackers despite the fact that the police arrested three people.

Thanks to the financial support of the Swedish Helsinki Committee and the program for building the capacity of the organizations which protect minority rights by the then Youth Cultural Center Juventas, in July of 2005 Free Rainbow took on the realization of the project under the title Solidary NGO Sector in Promoting Human Rights.

The concept of the program proposed by Free Rainbow had potential for a good-quality basis for all future activities in the field of human rights of LGBT persons, and the very organization had a positive image in the community and started to gather a great number of people interested in activism and change. However, the enthusiasm did not last long. Thanks to the impure motives of the organization management, Free Rainbow was shut down in September of 2005 and this episode of Montenegro LGBT activism, beside disappointment, strengthened the already critical level of distrust and fear.

The European Commission in its report for 2005 specifically mentioned sexual orientation and concluded: *Based on*

the reports of organizations dealing with human rights, discrimination on the grounds of sexual orientation presents a problem. Generally speaking, it seems that the level of protection against discrimination in Serbia and Montenegro is still far away from EU standards which demand applying the principles of equal treatment of persons in the field regardless of their race or ethnic background, as well as the establishment of the general framework for equal treatment in the field of employment and profession, regardless of their religion or beliefs, disability, age or sexual orientation. This opened the space for non-governmental organizations to specifically open this question before the state; however, great success was not possible due to the insufficient commitment of the state to the very EU integrations in that moment.

Regardless of the events which were not in favor of the Montenegro LGBT community, what was once started could not have been stopped and so the years 2006, 2007 and 2008 bore witness to certain changes. The capacity building of a certain number of GB activists continued in 2006 within Juventas. It began with Free Rainbow and towards the end of the same year resulted in their work in the field of sexual health and the rights of men who have sexual intercourse with other men through the program which is still on and significantly contributes to the Montenegro struggle for LGBT rights. Later on, the organization Queer Montenegro which organized the pride parade of LGBTIQ persons Montenegro Pride evolved from it.

The report of the European Commission on the progress of Montenegro in 2007 stated in the part concerning democracy and the rule of the law that serious judiciary reform and the adoption of new laws, especially when it came to the prohibition of discrimination were imminent in Montenegro; and that the respect and protection of minority rights in practice was not satisfying.

During 2008, several non-governmental organizations of which we can single out Human Rights Action, Youth Initiative

for Human Rights, Center for Civic Education, Center for Women and Peace Education Anima, as well as Juventas to some extent started with their programs i.e. activities to treat the issues of LGBTIQ rights and the conditions for creating a wider coalition of non-governmental organizations to advocate LGBTIQ rights in the future were established.

In the same year, the European Commission gave its opinion about the existing condition, and the discussion about adopting the Law on Prohibition of Discrimination began: *In the field of antidiscrimination measures, adopting the draft of the Law on Prohibition of Discrimination is put on hold. Lesbians, gay, bisexual and transgender (LGBT) persons are marginalized and discriminated in the Montenegrin society which is a consequence of homophobic attitudes and the lack of legal and practical protection of authority. With increasing efforts concerning the legislative framework, it is necessary to add antidiscrimination measures which cover sexual orientation and gender identity.*

2009 marked the beginning of the great public discussion on human rights of LGBT persons in Montenegro, but also a more specific commitment of Montenegro to EU integrations. That year, the state began paying more attention to the content of the progress report concerning sexual orientation and gender identity. In the same year, the establishment of a closer contact and collaboration between non-governmental organizations and international and EU institutions on the protection of LGBTIQ rights started.

In March this year, NGO Juventas opened the first online portal for Montenegro LGBT community - www.montenegro-gay.me. By opening this portal, LGBT persons in Montenegro for the first time had a place to get together virtually, a source of information, and to exchange information about various topics via the forum. The forum discussions later led to the organization of get-togethers for forum members which was a sort of a beginning of building the LGBT community in Montenegro. Some of the members of this forum formed an

activist group during the following year – Queer Brigade and later on the organization Queer Montenegro.

May 17, 2009 will stay remembered for marking The International Day against Homophobia in Montenegro. On that day, Juventas activists in the center of Podgorica did a survey with the citizens concerning their attitudes regarding homosexuality and shared informational materials of the first campaign for reducing homophobia in Montenegro - *So different, and yet the same*. This was the first public event related to LGBT rights in Montenegro and it went without incidents.

This year will be remembered for the (historic) first public coming out of a LGBT person from Montenegro. What makes this event even more meaningful is the fact that the first LGBT person who spoke publicly about their problems and life, with a full name and a photo – was a trans man. In August of 2009, the journalist of the independent daily newspaper *Vijesti* **Tanja Pavićević** published several confession texts of the Montenegrin **Marko Bojanić** who lives abroad in which he described in detail the cavalry he went through in Montenegro and the violence he had to face every day before he decided to leave Montenegro.³

An international academic conference Justice in the Balkans: Equality for Sexual Minorities was held in Podgorica from October 23 to 26, 2009, organized by The German Academic Exchange Service (DAAD) of the Alumni Club Montenegro with the support of several European and USA universities and the local organizational and logistics support of the NGO Juventas. The then homophobic minister for the protection of human and minority rights Ferhat Dinoša was announced as one of the panelists, but he was not present. Deputy Minister Sabahudin Delić (the opening) and the coordinator of the department for gender equality Irena Bošković (closing

³ <http://www.blic.rs/Vesti/Reportaza/105801/Bio-zarobljen-u-telu-zene> / - a short reflection on some of the aspects of the position of transgender persons in Montenegro, mr.sc. Aleksandar Saša Zeković

remarks) participated on behalf of the ministry which financially supported the organization of the conference. Beside the opening session and the closing remarks, nobody from the Ministry of Human and Minority Rights attended the conference during two full working days.

Soon after nobody graced the conference about the rights of LGBT persons with their presence, the former Minister of Human and Minority Rights presented his homophobia in public. At the beginning of November, in his statement for the show *Načisto* of the TV station *Vijesti* where the topic was homophobia in Montenegro, the former Minister of Human and Minority Rights Ferhat Dinoša stated: *I do not know how much **that** is present in Montenegro, but I have to say that it is not good news for this ambient. To be honest, I also would not be very happy to have that in Montenegro. However, as a man doing his job, and as a man outside of that job, I am ready to admit that it happens, that it exists and that in such cases it is necessary to leave room for breathing, if we do, it will not be suffocating for anyone.* Montenegrin non-governmental organizations publicly reacted to this statement asking for Dinoš to resign, but they also demanded the Government to dissociate from the attitude of the minister who is in charge of protecting human and minority rights. This case opened the question of human rights of LGBTIQ persons between the Government and EU institutions which started to react and draw attention to such and similar cases being inadmissible on the path of EU integrations.

Several non-governmental organizations made a request for the Minister of Minority and Human Rights to resign, and for the Prime Minister Milo Đukanović and the Government to dissociate from his scandalous statements concerning the existence of the LGBT population in Montenegro. Youth Initiative for Human Rights (YIHR) asked for the Ombudsman, who just took office, to evaluate if Dinoša violated human rights and freedoms by stating *that he would not be very happy to have that in Montenegro* when responding to the question of the journalist of TV *Vijesti* about the existence of

the LGBT population, while NGO Juventas invited minister Dinoš to an education. After that, fourteen non-governmental organizations asked the then prime minister Milo Đukanović to suggest to the parliament to dismiss Dinoš because of his *publicly expressed attitude towards sexual minorities*, but he did not officially react to this suggestion, while the president of the Parliament of Montenegro Ranko Krivokapić stated that *the issue of the freedom of sexual orientation should be opened in order to understand it better in the context of respecting human rights*. Đukanović later tried, also via a media statement, to dissociate himself from Dinoš's homophobic actions by saying that it was Dinoš's attitude and not the attitude of the Government.

The head of the neuropsychiatric clinic of The Clinical Center Montenegro, dr Željko Golubović soon joined Dinoš's homophobic statements. While being a guest in the show *Replika* on the Television of Montenegro, when responding to the question of the journalist Nevenka Čirović if homosexuality was considered a disease nowadays he stated: *According to the international classification of diseases which is valid all over the world, whether we accept it as disease or not, it is still standardized as a diagnostic category. That is something inevitable, something clear, something acceptable, which exists and should be adopted as given and as existing*. He also declared on the same show that the International Classification of Diseases admits, as he said *whether we accept it as disease or not*, that homosexuality should be diagnosed, actually that it needs to be classified under code F64 which is standardized according to the ICD-10 or the valid world disease classification.

The Medical Chamber of Montenegro did not undertake any kind of measures and actions to sanction Golubović, but they declared that they respect the right of any human, including the right to sexual orientation, to act in accordance with the guaranteed human rights and freedoms: *Our activity is based on contemporary standards and medical achievements, and the recommendations of the World Health Organization are*

the fundamental norms for us, which we observe, including the decision from 1981 which withdrew homosexuality from its list of diseases.

NGO Juventas tried for a year to achieve contact and organize a meeting with the Medical Chamber of Montenegro, as well as to obtain the information whether this case of violating medical ethics was officially deliberated, but the Medical Chamber did not shown any interest in it and the meeting never happened⁴.

Golubić's statement was negated by the Psychiatric Association which stated in a letter sent to NGO Juventas that they consider homosexuality neither as a disease, nor a disorder.

In November of 2009, the then minister Dinoša had the chance to meet up directly with a member of the LGBT community. On November 18, 2009, with the support of the European Commission, a round table on the topic of the position of human rights in Montenegro was organized. The round table was attended by the Minister as well as the former head of the Delegation of the European Commission Leopold Mauer. Even during this discussion with the civil sector representatives, Dinoša had several homophobic statements; including *Adam is not Adam without Eve. If somebody looks at life differently that is their right.*

This date will stay remembered for the first coming out of a gay man in front of the representatives of state institutions in Montenegro. The activist of NGO Juventas (the author of this text) then addressed Dinoš who asked the former minister to explain why he is not happy that there are LGBT persons in Montenegro and what is in that existence that makes him unhappy, but also asked the minister Dinoš to apologize for his statements. He did not apologize and did not specifically answer to the asked questions until the end of his minister term, but continued to repeat his former statements where

⁴ Juventas' archives

he added that he was also a religious man.

Only a day after this event, the newly appointed Montenegrin Ombudsmen Šučko Baković gave a statement for the daily newspaper *Vijesti* by saying that as soon as he takes an oath and formally and legally becomes the new Montenegrin ombudsmen, he will deal with the public actions of the Minister for Human and Minority Rights Ferhat Dinoša. There were no specific procedures of this institution regarding Dinoša, while, when it came to other politically less sensitive topics; the institution grew to be one of the leading NGO allies in the process of achieving LGBT rights.

Because of the great international pressure, especially that of EU institutions and the representation of the diplomatic core and non-governmental organizations, a few years later Dinoša was removed from office and was appointed for the Montenegro Ambassador in Albania. Specific remonstrance for his homophobic actions never happened nor was that stated as the reason why he was reassigned to another engagement.

Everything that was started in 2009 was continued in 2010 through activities directed at the general population, professionals and the LGBTIQ community itself. That year, the unstoppable process of a specific struggle against homophobia in Montenegro was set off on all levels.

In January of 2010 Juventas organized a research via thorough interviews with LGBT persons. The results of this research, together with consultations with LGBT persons concerning the issues they encountered and the ways in which these issues should be resolved, and the document containing the conclusions of these consultations served as the starting point for creating the *Action Plan for Fighting Homophobia* which will later become the officially adopted government policy against homophobia and transphobia - *Strategy for Improving Quality of Life of LGBT Persons*.

In May of 2010, as a part of the project *Montenegro - a Bright*

Spot on the Gay Map, the NGO Juventas, with the support of the EU Delegation in Montenegro, set in motion the successful initiative for creating the coalition Together for LGBT Rights. The coalition was composed of representatives of 20 non-governmental organizations, 10 governmental organizations and 4 medium. For the first time in Montenegro, a great part of the civil sector gathered together with the media and the governmental organizations with the aim of solving the problem of promotion and protection of human rights of LGBT persons. During its work in the following years, the coalition reacted publicly to cases of homophobia and transphobia, had regular meetings where they deliberated ways of resolving issues and arranged specific actions, but also created a draft of the Action Plan for Fighting Homophobia which will later become the starting point for creating the national Strategy for Fighting Homophobia. In the same month began a series of trainings and seminars for LGBT persons which Juventas organized with the aim of strengthening their capacities regarding activism. Juventas' seminars and trainings during 2010 were organized for medical workers as well, police officers, court and attorney's office employees and journalists.

In June, 2010 within the same project and with the support of EU Delegation, Juntas organized a study visit to organizations and institutions dealing with human rights of LGBT persons in Serbia. The participants of the study visit were the representatives of the Ministry of Human and Minority Rights, Institution of the Protector of Human Rights and Freedoms of Montenegro, Center for Social Work Podgorica and the Employment Bureau Montenegro.

Finally, on July 27, 2010 The Parliament of Montenegro with the vast majority of votes (67 *for*, 6 *against* and 4 *sustained*) adopted the Law on Prohibition of Discrimination which especially prohibited discrimination based on sexual orientation and gender identity. The greatest merit for the direct and regular input of prohibiting discrimination on the grounds of sexual orientation and gender identity in the very

text of this law was given by the civil sector representatives during a public discussion about the text of the law, and the requests of the EU institutions when it came to the equation of the domestic and the antidiscrimination EU legislation.

By adopting the Law on Prohibition of Discrimination, conditions were created for a specific pressure on the state to implement antidiscrimination policies by non-governmental organizations, while the EU institutions were able to specifically follow and evaluate only the procedures of competent institutions which resulted in the state being more serious about its procedures.

October 2010 was marked by the well-known case *Glamour noir*. While being a guest in the show of the Atlas TV *Glamour Noir*, broadcasted on October 11, 2010, a psychology professor of the general high school Slobodan Škerović from Podgorica, Biljana Babović, stated a series of homophobic attitudes. In the above mentioned show Babović, who was a guest expert – a psychology professor said that homosexuality is a disease, actually a disorder, and that she successfully treated homosexuality and she had cured 4 people of homosexuality by then. She also stated that the World Health Organization was working actively on putting homosexuality on the list of diseases, one gain, and that homosexuals are the main carriers of HIV infection.

Only a few days after the broadcast of this show, a great reaction ensued from the representatives of non-governmental organizations, coalition Together for LGBT Rights, as well as state institutions gathered within the National Coordinating Body for Fighting HIV/AIDS.

For the Montenegrin LGBT population, but also for the Institution of the Protector of Human Rights and Freedoms of Montenegro, October 13, 2010 was a significant day. On that day, for the first time a gay man from Podgorica, an activist of Juventas, in his name and the name of LGBT community addressed the Ombudsmen via a complaint

about discrimination on the grounds of sexual orientation. Submitting this report is historic because it is the first complaint of this kind that was resolved on a positive note. A disciplinary proceeding was initiated against professor Babović and she was fined while the Agency for Electronic Media issued an analysis of the show and a recommendation for all media concerning a positive approach when it comes to reporting on issues and human rights of LGBT persons.

A transition from 2010 to 2011 was marked by the beginning of visibility of LGBTIQ persons and by an introduction to the unstoppable process of visibility. Already in November 2010, a group of Juventas LGBT activists made a decision to form an activist group Queer Brigade on a seminar organized in hotel Residence in Miločer.

LGBT Forum Progress, a new LGBT organization in Montenegro was founded on January 24, 2011. Soon after this, the director of this organization Zdravko Cimbalević became the first publicly declared gay man in Montenegro, while one of the first activities of this organization was announcing the organization of the first Pride Parade in Podgorica.

NGO Juventas opened the first drop-in center for LGBT persons in Podgorica in November. The drop-in center became the first gathering place for LGBT communities with continuous workshops, cultural events and preventive health service offered to LGBT persons.

Sometime later, Juventas established telephone and online consultation services, as well as an online service for reporting homophobic violence, but also carried forward with activities in the field of increasing the capacities of police officers, medical workers and court and attorney's office employees when it came to working with LGBT persons.

The coalition Together for LGBT Rights headed by Juventas referred the draft of the Action Plan for Fighting Homophobia to the then Prime Minister Igor Lukšić and started an

initiative the Government for adopting this document. However, soon after referring the initiative, the Government rejected it and referred the coalition to cooperate with the Ministry of Human and Minority Rights headed at that time by the homophobic minister Ferhat Dinoša. Despite all previously realized activities, in this manner, the pressures of the international community and EU institutions, the lack of political will for promoting and protecting human rights of LGBT persons was proved formally.

Rejecting the acceptance of the initiative conditioned the change of strategy of the civil sector, an additional opening of this issue before EU institutions, and a reopening of the issue of implementation of antidiscrimination norms and the fulfilment of obligations from EU integrations.

In May of 2011, after an unknown person threw tear gas and for a few minutes interrupted the concert of the bend Lollobrigida organized by the NGO Juventas for the International Day against Homophobia and Transphobia and attended by 600 participants, mainly LGBTIQ persons, LGBT Forum Progress postponed organizing the Pride Parade in Podgorica which was scheduled for the end of May due to, as it was stated, the lack of political will and institutional support for organizing the gathering.

During June and July 2011 the relationship between the government and the NGO sector active in the field of promotion and protection of human rights of LGBT persons was compromised, even blunt violations of rights of some individuals and civil sector organizations active in this field by state officers who were given the role of establishing cooperation with the civil sector⁵. In August 2011, the Government of Montenegro in cooperation with Jovan Kojičić appointed for the advisor of the Montenegro Prime Minister for discrimination and with the non-governmental organization he leads, organized the conference Towards

⁵ Press release of the domestic non-governmental organizations about the boycott of the conference Towards Europe, towards Equality

Europe, towards Equality leaving out all organizations in Montenegro fighting for human rights of LGBT persons which resulted in the boycott of the conference where 26 domestic and 27 foreign organizations participated, as well as the temporary interruption of the cooperation of the civil sector with the Government. The domestic NGOs evaluated this move of the Government as an attempt to construct cooperation with the representatives of the civil society and further cooperation was conditioned by fulfilling certain conditions regarding the promoting and protecting human rights of LGBT persons. The collaboration was established and promoted because the Government representatives accepted the set conditions after which the next stage of mutual cooperation began.⁶

The draft of the Action Plan for Fighting Homophobia⁷ created by the coalition Together for LGBT Rights, after several months of lobbying and pressure from non-governmental organizations and the international community, was adopted as the starting point for creating a programming document for fighting homophobia and transphobia which the Montenegro Government adopted and implemented.⁸ An expert working group for preparing the analysis of LGBT topics in textbooks⁹ and an expert working group to prepare the analysis of the legal framework from the aspect of compliance to the international standards and jurisprudence of human rights were formed.¹⁰

During this year, with an increase in the visibility of LGBT persons in society, the number of cases of harassment, violence and discrimination grew, and a larger number of reported cases to competent institutions and/or non-

6 Press release - Government and civil society strengthen the collaboration and fight against homophobia

7 Action Plan for Fighting Homophobia of the coalition Together for LGBT Rights

8 Decision about forming the working team for making the programming document for fighting against homophobia

9 Decision about forming the expert working group for preparing the analysis of LGBT rights in textbooks

10 Decision about forming the expert working group for preparing the analysis of legal regulation from the aspect of LGBT rights

governmental organizations was recorded, mostly by Zdravko Cimbaljević, the then executive director of the LGBT Forum Progress. All cases were under the watchful eye of the EU institutions which followed the overall development and drew special attention to problems and areas that needed to be improved.

During 2012, an increased number of cases of violence, discrimination and harassment based on sexual orientation and gender identity were recorded, and the reported cases started to get court epilogues. This practice shows the lack of capacity of the prosecutor's office and courts and the inadequate or mild sanctioning of the offender. Work on the development of LGBT strategies was continued, as well as the discussion on organizing the Pride Parade in Podgorica. EU institutions continued to praise the positive shifts and to draw attention to problems in their reports about the progress of Montenegro. This year marked a noticeable attentiveness of the state to the content of part of the progress report concerning LGBT rights which lead to the final accomplishment of political will for the state to be the one to carry out the process. During 2012, with all previous intercessions and activities of the civil sector and the pressure of the EU institutions, the possibility of the state going into a fight against homophobia and transphobia became discernible. Finally, the state focused on the progress report on the way of European integrations and did everything it could in order for the grades in the report to be positive. It is clear that in this moment the state did not really understand the problems and needs of LGBT persons.

In November of 2012, a group of Juventas activists, members of the Queer Brigade founded the Montenegrin LGBTIQ association Queer Montenegro and Montenegro got another LGBT organization and two more people who came out publicly.

2013 presents another year of reversals and events which even the LGBTIQ activists did not expect at the beginning of the year.

By getting positive grades in the progress report, but also with significant criticism and objections from a part of the civil sector, the Government adopted the Strategy for Improving the Quality of Life of LGBT Persons with the Action Plan for Implementation for 2014.

By adopting the Strategy, the executive director of LGBT Forum Progress Zdravko Cimballević publicly announced that that organization would not organize the announced Pride Parade and that they would focus on the implementation of the Strategy and that that will be their priority. After that, Queer Montenegro announced the organization of the Pride Parade of LGBTIQ persons *Montenegro Pride* for October 20. Still, Montenegro did not wait until October for the Pride Parade to happen. LGBT Forum Progress soon announced the organization of the Pride Parade in Budva on July 24, 2013 when it was held with large police security and scenes of violence. Several months later, Queer Montenegro organized the first Montenegro Pride with great support from domestic, regional and international civil society organizations, representative bodies of the diplomatic core and the EU Delegation in Montenegro in Podgorica on October 20, 2013. The participants, 219 of them, were protected by 1,900 police officers while the hooligan groups clashed with the police on several locations and caused around 20,000 Euros of damage. Tens of hooligans were arrested, and the prosecutor's office did not think it was necessary to file criminal charges against them.

Organization of the pride would not have been possible without the influence the EU institutions had when it came to the adequate practice of competent institutions. The state had to everything in its power to enable LGBT persons to practice law to free gathering; otherwise the very process of EU integrations would have been rated significantly worse. EU integrations were again the main motive of the state to adequately respond to the demands of the civil sector. In support of this is the fact that the representatives of the Government publicly notified the representatives of Queer Montenegro, soon after Montenegro Pride 2013 that they do

not agree with the idea of re-organizing the pride and that they consider that it is necessary to devote themselves to other activities.

This marked the beginning of a new struggle and demanded an additional influence of domestic and international organizations on the state in order to change this attitude.

The campaign for re-organizing the pride followed in the beginning of 2014 and from the start encountered strong opposition from the state, especially from the Ministry of Human and Minority Rights which was also publicly stated via media. When they realized that they will not achieve much by themselves, the organizers of Montenegro Pride, again with the help of EU institutions, pressured the Government and opened this question on a high political level. After several months of meetings, discussions and talks, the organizers managed to explain the need for the continuity of the pride and the political will for the state to adequately treat the right to free gathering of LGBT persons was achieved again.

Together with the representatives of EU institutions and other international organizations, Queer Montenegro opened the question of how the prosecutor's office treats the classification of crimes committed out of hate and achieves collaboration, which resulted in two criminal charges against persons who tried to commit crime during the second Montenegro Pride 2014.

The result of all activities conducted in the partnership between domestic and international organizations and institutions was the absolutely peaceful Second Montenegro Pride which went without an incident.

When observing the enormous work done in Montenegro in only five years, we come to the conclusion that things are generally developing in a positive direction. However, all positive shifts were followed by a string of negative cases of homophobic attacks and cases of a homophobic attitude

of institutions towards individuals and organizations dealing with the promotion and protection of human rights of LGBT persons.

Activists for the protection of human rights of LGBT persons are continuously exposed to threats, most often directed via internet. LGBT persons still endure violence, discrimination and harassment on a daily basis which in most cases is not reported out of fear from further victimization. There is great and perennial work before the Montenegrin society which will undoubtedly result in the equality of LGBT persons. Until then, we should not forget about reality – the state will do how much it has to and how much is in its interest until further notice, by observing the progress report as an important matter and acting in accordance with it while gradually realizing that everything that is being done has to be done because of people in Montenegro, and not because of EU integrations. LGBT persons in Montenegro are still victims of various kinds of harassment, discrimination and violence on a daily basis, while sanctioning the perpetrators is still mostly inadequate. There are a lot of problems, and there are not a lot of years left until entering EU. It is up to the activists and LGBT organizations to wisely use the remaining time. In the process before us there will be more ups and downs, and we will still need the support of EU institutions and international organizations every time we open new and *politically sensitive* questions. The path to our freedom and equality will demand a stronger struggle for creating new and maintaining exiting alliances, and especially the unity in evaluating top-priority goals to be achieved in the following years.

HUMAN RIGHTS OF LGBT PEOPLE IN CROATIA ON ITS PATH TO THE EUROPEAN UNION

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Everyone is entitled to all the rights and freedoms (...)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. - The Universal Declaration of Human Rights, Articles 1 and 2

The democratic transition which implies the improvement of protection and an overall respect of human rights in Croatia was a difficult process, greatly burdened by the war and the consequent leaden and systematic violation of human rights. After the war, in a period of limited democracy and with a very poor index of respecting human rights, Croatia was a very *dark* place for anyone who was different until the beginning of the 2000s. The war made the society in Croatia brutal, at the same time strengthening the already present intolerance of anyone who did not fit into the given national - traditional - patriarchal matrix and value system. Stereotypes fed prejudice which enkindled hate and spread discrimination. The nineties were the years in which the *other* was isolated on the very margin of society. Reason and conscience that human beings are endowed with to treat each other with dignity and rights receded from the madness of a xenophobic, intolerant and chauvinist nationalism.

Lesbians, gay, bisexual, transgender, intersexual and queers persons¹¹ of the nineties were in the category of the invisible ones, appearing only sometimes in newspaper reports or the writings in *the black chronicle*¹², *believe it or not* sections and in similar contexts of ridicule and sensationalism. The social and political elite neither dealt with nor were interested in human rights of LGBT persons. The stereotypes and prejudice about LGBT persons based on the lack of knowledge on human sexuality were widely spread through the society in Croatia and blocked any kind of progress in the enjoyment of human rights of LGBTIQ persons. LGBTIQ persons were deep in the *closet*, invisible to the society from which they hid and were afraid of. LGBTQ persons saw the negation of their own identities as a necessity because being different was not welcome and was not a value but a flaw which could have had fatal consequences for LGBTIQ persons. The respect and the protection of the human rights of LGBTIQ persons in Croatia in the nineties did not exist as a problem for the simple reason of LGBTIQ persons *de facto* not existing in the eyes of the society and the state.

However, the contours of the present-day LGBTIQ movement in Croatia began to emerge in the darkness of those nineties. During the 80s, in the then socialist Croatia, the first lesbian group Lila Initiative originated from the feminist and women's movement. Some of its members formed the lesbian group Kontra in the second half of the nineties. Except for Kontra, there was also LIGMA (Lesbian and Gay - Man Action). The work of the first LGBTIQ associations in the early nineties was greatly marked by war. In such circumstances, the LGBT movement could not have done a lot; actually, it was not able to come to life. Being exposed to homophobic behavior, the fear of losing their job, friends and acquaintances, fear of physical and verbal attack and losing the support of their own families kept a great majority of LGBTIQ persons in the silence and dark of their closets, far from the public eye,

¹¹ The terms used in this text which denote gender, refer to persons of all gender and sexual identities whether they are used in masculine or feminine gender.

¹² The black chronicle is a newspaper section dealing with accidents and tragedies. (translator's note)

within their four walls. Activists gathered around LGBTIQ associations were despised and ridiculed by the society and systematically ignored by the state. From the current perspective, their step forward was important. Speaking the language of human rights, those activists decided to actualize and fully enjoy their right to freedom of speech and freedom of association.

The night of the nineties in which LGBTIQ persons did exist neither for the society nor for the state started to turn to day during the 2000s. This new age began to emerge when the government changed after the January 3, 2000 elections on and after the arrival of a wide coalition of parties including the social-democratic and the liberal party. The democratization of society in Croatia that followed after the change of the government preconditioned and encouraged gay men, lesbians, bisexuals, transgender, intersexual and queer persons to take into their own hands the advocacy of respecting human rights of LGBTIQ persons. It was a small, but a courageous number.

The transformation which started in Croatia when the government changed was caused by the strong political will of the elite to enter the European Union. Croatia initiated the beginning of European integrations by signing The Stabilization and Association Agreement with the European Union in 2001. This was the turning point important for many changes through which the state and the society went through in the following 12 years until the full membership in the European Union. The great progress in respecting, protecting and promoting human rights of LGBTIQ persons should be considered in this context. This was especially the triumph of the local LGBTIQ movement that knew how and managed to make the most out of a favourable political moment to achieve some of its goals and ultimately ensured the better life quality for lesbians, gays, bisexual, transgender and intersexual citizens of Republic Croatia.

The early 2000s were marked by the establishment of two

new LGBTIQ associations, LORI (in 2000) in Rijeka and Iskorak (in 2002) in Zagreb thus creating the preconditions for dealing systematically with human rights of LGBTIQ persons. Taking into consideration the change in the political situation, the systematic activity on increasing the visibility of LGBTIQ persons and their lives in public began for the first time. The society in Croatia, permeated by strongly negative stereotypes and prejudice towards LGBTIQ persons refused to discuss the problem of respecting and protecting the human rights of LGBTIQ persons. The consistency with the patterns from the nineties can be fully seen here. The media continued with sensationalist writing about LGBTIQ persons, often contributing to the propagation of stereotypes and prejudice and calling to discrimination and hate. Hate speech was represented in all spheres of the social and political life and any kind of public condemning was absent. The criminal and misdemeanour changes directed against LGBT persons did not exist and the institutions of investigation and prosecution were reluctant to act in such cases.

Enjoying the relative freedom of association, LGBTIQ persons created a platform for the further advocacy of human rights of LGBTIQ persons. Year 2000 was also significant for the LGBTIQ movement in Croatia due to the organization of the first Zagreb Pride, the pride parade of LGBT persons. The organizers were associations Iskorak and Kontra which wanted to draw attention to the systematic discrimination and violation of rights of lesbians, gay, bisexual, transgender, intersexual and queer persons in Croatia with this great public step forward of LGBT persons in Croatia. The parade named Stepping Forward against Prejudice¹³ gathered around 200 people, including the then Minister of the Interior, MPs and the High Commissioner of the United Nations for Human Rights in Croatia. For the first time, LGBT persons were supported by state and political officials, which was a kind of a precedent. Despite the participation of the Minister of

¹³ The name of the first pride parade in Zagreb is wordplay on the names of the LGBT associations who organized it. Iskorak can be translated as stepping forward, while Kontra can be translated as against. This is why the original title in Croatian Iskorak Kontra predrasuda actually means Stepping Forward against Prejudice. (translator's note)

the Interior, the Parade was marked by a great number of incidents: somebody threw tear gas at the participants, the gathered citizens called to hate and verbally threatened the parade participants, and overall 32 participants in total were hurt during and immediately after the Parade. The police did not manage to protect the citizens and their right to a peaceful public gathering.

However, the first Pride in Zagreb was a turning point in the fight for human dignity and human rights of LGBTIQ persons in Croatia, as Damir Hršak stated in his speech at Zrinjevac: *There is no return to silence, from today we will stop being invisible. We walked with our heads held high, aware of our human dignity and civil rights. We will never be punching bags and clowns for ridicule again.*

The pride parades during following years were dedicated to the increase in visibility of the burning issues that LGBTIQ persons encountered in Croatia: from discrimination, denying sexual and gender identities, hate speech, etc. Those pride parades were marked by a great number of members of the riot and basic police who were in charge of securing the public gathering and the public deprecation expressed because the parades were held. The parade participants were insulted on a regular basis and there were also frequent physical attacks on participants after the parades were held. Even if the police found the attackers and decided to prosecute them, those were still misdemeanor instead of criminal prosecutions which only further contributed to encouraging the hooligans to homophobia, biphobia, transphobia and hate crimes towards LGBTIQ persons. In 2009 and 2010, the Zagreb Pride Parade was accompanied by a counter-gathering organized by the Croatian Pure Party of Rights which spread messages which invited to hate and discrimination of LGBTIQ persons. The police approved both gatherings despite the warnings that it violated constitutional principles and Croatian laws which protect LGBTIQ rights of Croatian citizens. The public support grew year after year. Many figures from the social, cultural and political life attended the pride parades.

The president of Republic Croatia received an official visit from the member of the Organizing Committee of the Pride Parade in 2010. By 2011, the Zagreb pride parades mounted up from 1000 to 1200 participants.

The turning-point occurred in 2011. Namely, this was the year in which the Split Pride was held for the first time, the second pride parade in Croatia, which was marked by great riots and attacks on the parade participants. The parade participants were attacked by rocks, firecrackers, tear gas and similar, some of them were slightly injured, including 2 police officers. Due to the strong condemnation of the violence that followed, the police and the State Attorney's Office for the first time decided to strongly show how this kind of behaviour and violation of LGBT rights will not be tolerated anymore. The police filed over a hundred of indictments including 25 criminal charges received by the State Attorney's Office.

The state finally bared its teeth to the bullies and decided to use legal instruments at its disposal without hesitation. The pressure coming from the European Union which was in finishing negotiations with Croatia was crucial, exactly before closing Chapter - 23 Judiciary and Fundamental Rights. Several officials from European institutions and member states participated in the pride, and so, almost again unprecedented, the Ambassador of The Kingdom of Norway who participated in the Parade convened a press conference and expressed how shocked she was by what she had seen in Split that day. That was a clear sign for Croatian politics that it was necessary to take decisive action in order to protect the human rights of LGBTIQ rights.

Except for the political reaction, there was also the one of wider society. That year, the Zagreb parade was attended by a record of 3800 people, which on a large scale was a reaction to the violence from a week ago in Split. Public figures from the social, political and cultural life united in condemning the violence and calling to the full consideration

of LGBTIQ rights. The Zagreb Pride Parade in 2011 was a sort of a gathering of a Croatia committed to its citizens that spoke out for the full consideration and regard of human rights. LGBTIQ pride parades, whether in Zagreb or Split, always tried to follow the advocacy activities which LGBTIQ associations conducted within a wider LGBTIQ movement and were used as the locus of increasing the visibility of issues which LGBTIQ persons in Croatia must face. Advocating the human rights of LGBTIQ persons in Croatia through the whole first decade and the beginning of the second decade of the 21st century is seen best through the political advocacy in institutions. A great progress was made in the legislative and institutional framework in the context of respecting and protecting human rights of LGBTIQ persons in that period. The activists' persistence and commitment was additionally accelerated through a favourable political moment in which the main ally to the LGBTIQ movement was the European Union and its member states, imposing the adoption of high standards of protecting and respecting human rights as a condition of accessing to the Union.

A string of legal changes in the process of adjusting Croatian legislation with the European and the harmonization of the work of Croatian institutions in accordance with the new norms started in 2003. This was the year when the Croatian Parliament adopted the Gender Equality Act and a string of antidiscrimination amendments to the already existing laws. This is how the Labour Act prohibiting the direct and indirect discrimination of job seekers based on sexual orientation was changed. The amendments to the Higher Education and Scientific Activity Act guaranteed protection from being discriminated on the grounds of sexual orientation when being accepted into college. The amendments to the Electronic Media Act and the Croatian Radio Television Act determined the prohibition of spreading and denying intolerance, discrimination, hate and animosity towards LGBTIQ persons. The provision on banning discrimination in the Criminal Code was now changed and opened for other bases, including sexual orientation and hate crime was defined by law.

The Gender Equality Act represented an important step forward in protecting LGBTIQ persons from discrimination because for the first time it specified the general prohibition of discrimination based on sexual orientation and family status. It also covered sexual orientation and gender identity as terms which mainly cover the problems of violating, respecting and promoting LGBTIQ rights, which fall into the domain of the work of institutions as a precondition for a systematic resolution of the problems that LGBTIQ persons in Croatia must face.

So on the executive level of government, the Office for Gender Equality of the Government of Republic Croatia took over the promotion and respect of human rights in terms of recommending legal and policy solutions for improving their status, while the Ombudswoman for Gender Equality took over the supervision of the implementation of legal provisions about banning discrimination and receiving citizen complaints on the grounds of discrimination.

The influence of Europeanization in the context of EU integrations is maybe the most visible here. The norms, codes and institutional arrangements which were introduced in the above mentioned laws were transferred from the community acquis, actually from the European law into Croatia. The process did not end with this, because now, the more difficult part of the institutional adaptation and learning the content and skills in order to actually implement those new norms in practice followed. The significant contribution of the European Union and member states can be noticed in this part as well. Politically, it was almost equally important to ensure the acceptance of new legal solutions in the Croatian Parliament, as it was important to provide a continuous political, financial and technical-operational support to Croatian institutions in the consistent implementation of the law.

An important step forward also happened in 2003 when the Proposal for the Act on Same-Sex Unions, which was a solid law in its initial proposal, became a matter of discussion in

the parliament. Due to great pressure from the parliament opposition and the Catholic Church, as well as the weakness of the coalition government of January 3, the final and the adopted text of the Gender Equality Act was mutilated beyond recognition due to the accomplished political compromise. As far as I know, that act could have never been used in practice because of its inherent inapplicability. Gay activist often called it the act on *gay divorce*. Essentially, the Act enables the dissolution of same-sex unions, without the union ever being formally concluded, actually, its formal conclusion was never defined or predicted anywhere in the act. If the same-sex union was dissolved, the right to the distribution of jointly acquired assets was guaranteed, as well as the right of the financially weaker member of the union to an alimentation by their same-sex partner. A very likely reason why the Act was not used was that the dissolution of the union was preceded by a very unpleasant and inhuman court proceeding which proved cohabitation, thereby irrefutably violating and disrespecting the dignity of LGBTIQ persons.

As Croatia formally began with the negotiations about the accession to the European Union in 2005, so did the advocacy of LGBT rights become more intense in the period that followed? It is important to emphasize that exactly in this period of the negotiations, the European Union learned a lesson from previous expansions, especially concerning Bulgaria and Romania which accessed the Union in 2007, and, except for requesting to incorporate the norms of the European law into the Croatian legislation, it also insisted on their implementation. This was the key moment in the advocacy of both general and LGBTIQ human rights in Croatia.

Several significant events unfolded in this period. First of all, it is important to emphasize the enactment of the Antidiscrimination Law which introduced a general law that prohibits discrimination, including discrimination on the grounds of sexual orientation and gender identity to the Croatian legislation. The importance of this Law is that it

created a formal obligation to harmonize all other relevant laws with the norm of prohibiting discrimination. Also, the Antidiscrimination Law enabled an effective protection of human rights of LGBTIQ persons from discrimination and unfavourable treatment providing the possibility of suing for discrimination. LGBTIQ citizens received the opportunity to ask for the protection of their rights in court and individual civil actions. Equally, the Law enabled filing joint actions for discrimination, which LGBTIQ and other associations started to use against public figures which invited to discrimination or discriminated LGBTIQ people in their public action.

Hate crime was defined by the Criminal Code. As one of the sub measures in Chapter 23 - Judiciary and Fundamental Rights, it was predicted to keep records on committed hate crimes. So, in 2011 the Government of Republic Croatia passed the Protocol for Dealing with Cases of Hate Crimes which established the framework for police work and the State Attorney's Office when dealing with such cases and set up a work group for following hate crimes which was established by the Office for Human Rights of the Government of Republic Croatia. This was an important step in fighting against the violence on LGBT persons.

From 2007 until the end of Croatian negotiations with the European Union, the Croatian Parliament adopted many laws that were a part of harmonizing Croatian and European legislation. The above mentioned laws were to a great extent a product of that process. It is interesting to point out that the Antidiscrimination Law was adopted by the conservative - Christian democratic parliament majority which never before stood up publicly for the human rights of LGBTIQ rights. The political decision that Croatia must enter the European Union adopted by political elites influenced the occasional 'field trips' outside of dominant ideological patterns of political parties. The party's discipline was so rigid and persistent which is clearly visible in the case of the Antidiscrimination Law. Neither did the public opposition and intercession of the Catholic Church nor a number of

other religious communities to remove sexual orientation and gender identity from the list of grounds protecting from discrimination bear fruit.

The financial support that the European Union provided to LGBTIQ associations and organizations for human rights in the form of support of their projects is also a significant factor in strengthening the protection and promotion of human rights of LGTIQ people in Croatia. It is not easy to list all projects financed by the European Union, but a key significance had the ones which enabled the direct activities with police officers as being the ones most responsible and closest to LGBTIQ persons in case of an attack. Step by step, the police practice started to change systematically. The work is not done, there are still a lot of problems, but the progress is visible; from improving the relationship and practice in individual police procedures to a god-quality cooperation in organizing pride parades.

During the Croatian accession to the European Union, an important change occurred in the media treatment of LGBTIQ topics. That progress also came about slowly and gradually, but nowadays, in retrospect, the conclusion is that at least the mainstream media is more objective and supports the lives and problems of LGBTIQ people. After the disagreeable events at the Split Pride Parade in 2011, the most read Croatia portals united in condemning the violence and negation of human rights of LGBTIQ persons and invited citizens to go to the Zagreb Pride Parade as a sign of solidarity and support of respecting human rights in Croatia.

The change looked impressive on paper, maybe even colossal. In less than ten years from the beginning of the new millennium, the institutions of the Croatian state started to look differently and were filled out with a new content. The instrumental role of the European Union and member states was in the institutional transformation. The domestic activists of LGBTQ movements made the most out of the given political moment and in ten years managed to accomplish

the goals that many stronger LGBTIQ movements in much richer European states tried to accomplish for decades.

Nowadays, Croatia has three pride parades (In Zagreb, Split and Osijek) and the right of public gathering and freedom of speech is absolutely recognized. Year after year, the police guarding the parades are smaller in numbers. There is no more violence, and the ones who are opposed to the parade stay at home or mind their own business. The freedom of association of LGBTIQ persons is highly respected and nobody even thinks of disputing association or group registrations. The police and other civil servants mainly treat LGBTIQ persons professionally. There is still an excess, and probably there will be always. It is important that the ones whose rights or dignity are violated rebel against it and that the state has the instruments to sanction such homophobic behaviour.

All in all, the conclusion is that the process of accession to the European Union solved most of LGBTIQ problems. However, this is far from the truth. As it has been already said, there have been some improvements, but their progressiveness and continuation are not guaranteed. Nowadays, at the end of 2014 it has been a year and a half after Croatia has become a country of reformed state institutions in an unreformed society. The society has remained almost the same as it was during the nineties, maybe not so brutal nowadays, but it is still intolerant and intolerant.

With Croatia entering the European Union as a full member, the society in Croatia was *freed from the shackles* of Europeanization and European integrations. The outer pressure to the political elites stopped with the immediate closing of the negotiations that released the society off the hook. The referendum about the constitutional definition of marriage as a union between a man and a woman which prevents same-sex partner from entering a marriage in the foreseeable future would have never happened if Croatia was still at the door of the European Union.

The progress that has been made from the beginning of the 2000s till today is not safe but is under a great pressure to collapse. The human rights of LGBTIQ persons in Croatia are today threatened by the regression of rights. Rights are not safe. They are not safe because there is a great gap between the values adopted by the institutions and the values of the society. A great gap leads to a strong imbalance and when there is no external pressure (in some manner and help) on institutions, they become vulnerable to the attacks of the society, attacks in ideological terms. Some of the more recent examples are: civic education, health education, Life Partnership Act, etc.

It is obvious from the above mentioned that human rights of LGBTIQ persons in Croatia are not supported by most of the society. Even though in nature, rights should never depend on a society and one of the more important reasons why they exist are exactly to protect the minority or individuals from the society and its arbitrariness, in this context it is important to emphasize the importance of social support. Why? Because the European Union and Croatia made a colossal oversight: while the institutions were reformed, nobody dealt with the society. By this I do not mean that the LGBTIQ movement did not receive significant support and ground in society, but whether we want to admit it or not, it is minor. If nothing else, then a million of people who voted on the referendum about *marriage* confirm this.

A colleague once told me that he heard from the Bulgarians that *whatever you do in terms of human rights before entering the EU that is it*. In 2008, that sounded so unrealistic and unconvincing. Nowadays, that is Croatia's reality. Not everything is so dark in that reality. If nothing else, unlike the nineties, today at least we have a relatively strong LGBTIQ movement which defends human rights of LGBTIQ persons. At least, we lesbians, gays, transgender, intersexual and queer persons know that once you are out of the closet, there is no power, no reason that will bring you back in.

The struggle for human rights of LGBTIQ persons keeps on going even after entering the European Union. The context and the socio-political landscape were irreversibly changed. It is up to us to adjust and adapt new strategies and ways of expanding the human rights of LGBTIQ persons as well as watch over the respect and protection of the ones that we have already acquired.

THE INFLUENCE OF EUROPEAN UNION INTEGRATION PROCESS ON HUMAN RIGHTS OF LGBT PERSONS IN REPUBLIC OF SLOVENIA

The present report on the influence of the process of integration to European Union on human rights of LGBT individuals in Republic of Slovenia consists of three parts with regard to the phase of Republic of Slovenia's process of accession to European Union. In the first part, there is the analysis of existing legislation regarding sexual orientation before the process of accession with superficial mention of legislative changes introduced shortly after the achieved status of independence—the first part is therefore focused on the period between 1990 and 1996. The second part contains the analysis of legislative changes regarding sexual orientation in the period of Slovenia's entering into the negotiations with European Union until 2004 when Republic of Slovenia became the official Member state of European Union. The third part contains the analysis of the period after the Slovenian accession.

The report contains parallel analysis of the influence of different agents on the shaping of national legislation regarding sexual orientation and gender identity with the focus on national government institutions, important documents issued by European Union's institutions and LGBT non-governmental organizations and movements. The factors that contributed to the existing status of legislation in Republic of Slovenia cannot be analysed in isolation since different agents at different levels of political and social

life are constantly intertwined, connected and mutually conditioned.

National legislation regarding human rights of LGBT persons before the process of accession, 1990-1998

The Assembly of the Socialist Republic of Slovenia approved a new Criminal code of the Socialist Republic of Slovenia in 1976 in which homosexuality is no longer punishable (Mencin Čepлак & Kuhar 2010; Kuhar 2003; Velikonja 2004). Before the mentioned legal change, a sexual act between two men was considered a criminal offence, punishable with up to one year in prison. In this context it is interesting that the offence relates only to the sexual act between two men, which is in the Criminal code defined as “unnatural fornication” (Kuhar 2003). Decriminalization of homosexuality is interestingly enough done even before the rise of powerful networks of social movements (for example Magnus, Lilit) in the first half of 80’. Still, before the mentioned social movements contributed greatly to the entering and consolidating of LGBT human rights in the public—policy agenda.

In 1981, the Council of Europe published *Recommendation 924: On discrimination against homosexuals* (Parliamentary Assembly 1981). In it the Assembly recommends to the Committee of Ministers to urge the member states to decriminalize homosexuality, apply the same minimum age of consent for homosexual and heterosexual acts, eliminate restrictions on parenting (in the context of custody, visiting rights and accommodation of children) and to provide the right to sexual self-determination. Here one has to keep in mind that those recommendations and resolutions function only as an “expression of opinion by the Assembly and are not binding on the member states, nevertheless they still have an important declaratory role” (ILGA Europe).

In the case of Socialist Republic of Slovenia, the

decriminalization happened even before the EU's institutions started actively promoting human rights of LGBT individuals. As one of the main initiator of decriminalization later argued, the reason for decriminalization was inefficiency of criminalization as the sanction was implemented very rarely (Kuhar 2012).

In the 1986 social movement, Magnus articulates the first requirements for the elimination of discrimination on the grounds of homosexuality and requirements for inclusion of homosexuality as an equal life choice in curriculum (Velikonja 2004). The following year, in 1987, Magnus is also actively involved in the process of creating pressure for updating/ changing the federal constitution. In 1988 Journal for critique of science published *Gradivo za novo slovensko ustavo* ('Materials for the new Slovenian Constitution'), also known as '*Pisateljska ustava*' ('Writer's Constitution') in which there is explicitly written "that all men are equal before the law, regardless of their sexual orientation" (Velikonja in: Mencin Čeplak & Kuhar 2010: 285).

In 1989, some amendments to the Constitution of Republic of Slovenia are adopted. One of the adopted amendments is referring to the equality of citizens but it does not mention sexual orientation as the personal circumstance under which inequality is not admissible (Mencin Čeplak & Kuhar 2010). Also, in the same year the process of gaining Slovenian independence started, which resulted in strengthened nationalism and traditionalism and consequently in reduced public sphere and limited power of social movements, their requirements and objectives (ibid.), as civil society was dominated by the idea of national emancipation, which temporarily prevailed over the concept of civil society as a place of/for freedom. In the same year the political party ZSMS-LS (later known as LDS - Liberal Democracy of Slovenia) expressed support for initiatives of gay and lesbian movements and started actively promoting a change in legislation in such a direction that would allow marriage between persons of the same sex (ibid.).

The topic of human rights of transgender persons is not covered at all until the first explicit mention in resolution on discrimination against transsexuals, voted by European parliament on September 1989. In this case, one has to keep in mind that transsexual persons are only one of the groups, included in the broader category of transgender persons, which means that the first explicit mention of transsexuals covered only around 10% of broader transgender population. Overall, the legislation, concerning transgender identity started forming in 90' in certain national countries and in 2006 on the level of European Union, which introduced an explicit reference in relation to discrimination based on 'gender reassignment' for the first time in EU law. (Castagnoli, 2010)

Legislative changes regarding sexual orientation in Republic of Slovenia in the period of 1990-1996

In 1990, *The working draft of the new Slovenian constitution* (Delovni osnutek nove slovenske ustave) is published. LGBT movements required an explicit mention of homosexuality as a personal circumstance on which discrimination is prohibited but they did not succeed. Namely in the working draft, sexual orientation is abstractly placed under the 'other personal circumstances' in the Article 14: ¹⁴. The working draft officially entered into force in 1991. (Velikonja 2004)

One year after the declaration of independence, that is in 1992, Slovenia has requested for a Europe Agreement (now known as Association agreement), which was signed in 1996, when the government of Slovenia formally applied for EU membership (Urad vlade RS za komuniciranje).

Around the same time in 1993 A. Perdih and S. Zupanc filed

¹⁴ In that time there is an initiative of Roza club which sent an open letter to media and political organizations and parties. In mentioned open letter, Roza club stated that homosexuals are still the second-class citizens, which is manifested in the fact that there is no legal recognition of same-sex relationships. Another initiative demanded that heterosexual and homosexual intimate relationships are treated equally in terms of the rights and obligations (Velikonja 2004).

constitutional complaints regarding the Articles of Law on marriage and family relations, which was in force since 1976 and which allowed marriage only between persons of different sex (Velikonja 2004). The complaint was later denied with the argument that the social importance of a marriage lies in its ability to create a family, which must be protected by the national legislation, but the latter protects only the specific - heterosexual - family as it is defined in international document, Universal declaration of human rights, where the family is defined as a “natural and fundamental nucleus of society” (Velikonja 2004). Following the rejection of before-mentioned constitutional complaint the informal group was formed with the purpose of preparing the concrete proposals for changing the legislation, regarding marriage and family relations (ibid.). The group proposed a simple technical change, replacing the phrase “man and woman” with “two persons” which would prevent symbolic differentiation and ensure equality of rights for LGB persons as rights of heterosexuals and LGB persons would be governed in the same Article and thus avoiding the implication that same-sex relationships are fundamentally different from heterosexual ones (Mencin Čeplak & Kuhar 2010). The group’s proposals were focused more on social consequences of equal status of heterosexual and same-sex relationships, for example the right to inheritance, based on the recognized next of kin status of same-sex partners (ibid.). The mentioned proposals were denied with the same argument used in the case of constitutional complaint and this opinion stating the necessity of special legal treatment of same-sex relationships remained dominant until 2009 (ibid.).

Following the signed Europe Agreement (now known as Association Agreement) in 1994 there is a change in Slovenian Criminal code regarding human rights of LGB persons. The reason for this amendment is the starting process of Slovenia’s integration in the European Union as European Parliament issued a resolution on *‘Equal rights for homosexuals and lesbians in the European Community’*. The resolution called for decriminalisation of and equal age of consent for

homosexuals acts, equal social benefits, anti-discrimination laws, access to marriage (or equivalent legal framework), and equal adoption rights (Velikonja 2004; European Parliament 2010). The resolution played an important role particularly in the process of country's accession to the new member states. The influence of European Parliament was even more strengthened in 1998 when the Resolution on equal rights for gays and lesbians in the EC was issued, stating that *it will not give its consent to the accession of any country that, through its legislation or policies, violates the human rights of lesbians and gay men* (European Parliament 2010). Still the EU legislation at the time allowed national regulation of right to marry and create a family (Mencin Čeplak & Kuhar 2010; Velikonja 2004).

In 1997 the Treaty of Amsterdam is introduced (Office for Official Publications of the European Communities, 1997). The importance of the treaty for human rights of LGBT persons lies in Article 6. It explicitly mentions sexual orientation as a form of discrimination for which the European Union in relation to member states promotes taking action in fighting against it (ibid.). The treaty came into force in 1999 (ibid.) and while it includes explicit mention of sexual orientation in terms of anti-discrimination policy, it completely overlooks the transgender and other gender identity issues (Mos, 2013).

Legislative changes regarding sexual orientation in Republic of Slovenia in the period of 1998-2004

After 1998, when the process of Slovenian integration to the European Union officially started, the new law, regulating the area of same-sex relationships, started to form. In this case, same-sex relationships would still be regulated in a special law, separated from the one, regulating heterosexual relationships. Separated law was once again justified by the view that "community of same-sex partners cannot create all those legal consequences, which are typical for marriage" (The

draft law on registered partnership in: Mencin Čeplak & Kuhar 2010: 288). The 'legal consequences, typical for marriage' and the purpose of marriage is here defined in the context of the ability of creating a family and a 'family' is defined as a "community of parents and children" (ibid, 2010; Zakon o zakonski zvezi in družinskih razmerjih). The draft law on the registration of same-sex partners would, if adopted, enable only the registration of same-sex relationship and regulate property affairs. Because of unresolved dilemmas the draft law was not even subjected to coalition harmonization and same-sex relationships continued to be legally unrecognized and thus without any rights and obligations whatsoever. (Mencin Čeplak & Kuhar, 2010)

In the same year non-governmental organization DIC Legebitra is established with the goal of connecting gays, lesbians, bisexual and transsexual persons (Velikonja 2004). DIC Legebitra is currently the most important agent in civil society in the context of LGBT human rights.

In 2000, the European Parliament resolution on respect for human rights in the European Union is adopted. It urges the Member states to "guarantee one-parent families, unmarried couples and same-sex couples the rights equal to those enjoyed by traditional couples and families, particularly regarding the tax law, pecuniary rights and social rights" and "calls on those States which have not yet granted legal recognition to amend their legislation to grant legal recognition of extramarital cohabitation, irrespective of gender" (European Parliament, 2000). In the same year, Parliamentary Assembly adopted Recommendation 1474: Situation of lesbians and gays in Council of Europe member states, urging the member states to end discrimination on grounds of sexual orientation (Parliamentary Assembly, 2000).

As the resolutions of European Parliament and recommendations of Parliamentary Assembly are not legally binding to member states and are as such more or less just an expression of the *the political desire to act in a given area*

(Europedia 2011), it allowed legislation on national level of member states to form 'equivalent legal framework' instead of equal marriage as such, the Slovenian process of granting equal rights to LGB persons continued in direction of special and thus unequal treatment of same-sex relationship. From 2000 onward, legal changes of LGB rights were influenced by the so called Europeanisation of legislation: "European standard becomes the reason/argument for the adoption of specific legislation" (Mencin Čeplak & Kuhar 2010: 289) in the sense of the so called 'downloading' of legal standards¹⁵ from the level of European Union to the national context but not necessarily in those spheres where European Union's directives were not legally binding for member states as it is the case in the context of LGBT rights.(Mencin Čeplak in Kuhar 2010)

As Slovenia was already in the official process of accession to European Union, civil society or more specifically non-governmental organizations ŠKUC LL and ŠKUC Magnus started to form demands, placed in that context of Slovenian integration to European Union (Velikonja 2004). The process of accession and European Union's legal standards thus served as a basis for strengthen activities of non-governmental organizations, which could now place their demands in a framework, which was perceived as 'more legit' or 'more justified' by governmental institutions precisely because of the country's accession to European Union and its directives. The initiative from ŠKUC LL and ŠKUC Magnus is one example of 'crossloading' from different national legislations in European Union as it referred to legal practices regarding human rights of LGB persons from Germany and France (Velikonja 2004; Mos 2013). It tried to broaden the scope of previous attempts of changing the Marriage and Family Relations Act as it tried to include also the sphere of social security (beside the legal recognition of same-sex

¹⁵ This 'Europeanisation' of legislation has to be understood as an interactive process, where already-mentioned 'downloading' is only one element of Europeanisation, beside the so called 'uploading' of legislations from national contexts to the European level and the so called 'crossloading', where the legislation in one Member states has impact on legislation in other Member states (Mencin Čeplak & Kuhar, 2010).

relationships and regulation of property affairs and duty to maintain a partner) which was not contained in previous attempts (Velikonja 2004).

In this context, in 2001¹⁶ (three years before Slovenia became the official member state) the expert group was formed (Velikonja 2004). The group consisted also of representatives from civil society and LGBT non-governmental organizations (ŠKUC LL, Magnus, Roza klub and Legebitra) with the task of preparing a new version of the Same Sex Relationship Act (ibid.). Because of unsuccessful previous attempts in achieving proper changes in national legislation the functioning of the expert group and its objectives were set in compromising, politically pragmatic way (Mencin Čeplak & Kuhar, 2010). Namely, from the start point they excluded the possibility of gaining the right to adoption in same-sex relationships, as this would probably jeopardize the adoption of the entire law (ibid.). Non-governmental organizations also agreed to a certain degree of reproducing existing discrimination with the goal of achieving legal recognition of at least some rights of LGB persons. In the mentioned new version the same-sex relationships were still seen as 'naturally different' from heterosexual relationships, which means that the equal status was still denied and the second-class citizenship of LGBT persons was still being implicitly reproduced through the special treatment of same-sex relationships. This time also through the sacrifice of in the new version totally overlooking same-sex families (ibid.). The proposal of the law is submitted to the parliamentary debate in 2003. The procedure is blocked by SLS (Slovenian people's party) which stated that conclusion of same-sex partnership is not a human right as human rights are meant for protection of certain social values and same-sex partnerships are not among them since the legal recognition would promote formation of more same-sex partnerships and this would

¹⁶ In July of 2001 there was pride parade organized under the slogan *Obvoznica mimo nestrpnosti – pohod proti homofobiji* (Bypass the intolerance – March against homophobia) which marked the beginning of since then annually held pride parade (Velikonja 2004).

threaten the Slovenian nation (Velikonja 2004).

In 2003, there a new Employment Relationship Act is adopted, which includes a provision on non-discrimination: in Article 6 there is an explicitly mentioned prohibition to discriminate an employee based on sexual orientation (Velikonja 2004). The new Employment Relationship Act manifests *The employment equality directive* (or Directive 2000/78/EC) signed in 2000, which prohibits discrimination in the context of employment, occupation, vocational training and membership of employer and employee organisation, on grounds of religion and belief, age, disability and sexual orientation (The Council of European Union, 2000). As Slovenia at the time was considered as a 'new member state', it was obligatory that the Directive be transposed to national law by 1st of May (European Commission, 2008).

The before-mentioned proposed Law on same-sex partnerships is later stopped due to elections and the elected right-wing coalition, led by SDS (Slovenian democratic party), which withdrew the proposal, but the new government still had to prepare a new draft (Velikonja 2004). In that time, the Roman Catholic Church was politically revived (Mencin Čepлак & Kuhar, 2010) after the passive period in early 90' when it was somehow ignored due to its politically incorrect, passive, and hesitant attitude to Slovenia's independence (Flere & Kerševan, 1995).

In 2003, the newly formed right-wing coalition formed a law proposal Registration of Same-Sex Civil Partnership Act (ZRIPS, adopted in 2005), without the cooperation of national LGBT organizations. The act, which regulates the duty of a gay/lesbian to take care of his/her partner, does not include the right to sick leave for the care of a partner and it does not regulate the social, health, pension and similar issues (Velikonja 2004). The Registration of Same-Sex Civil Partnership Act also does not confer the status of next of kin to the persons in same-sex relationship, which means that the registration of same-sex relationship does

not create a family relationship/kinship (ibid.). The legal equation with heterosexual partnerships is largely achieved solely in the field of obligations (Mencin Čeplak & Kuhar, 2010). The Law on registration of same-sex partnerships is also problematic because of the inherent act of naming as the term 'registracija' (registration) in Slovenian language is used in the sphere of businesses, associations, cars, but not for the relationship (ibid.). In the process of registration of same-sex partnership all ceremonial elements are excluded, thus the registration is established solely as an administrative procedure: the legislator noted that the form of the law, which is completely reduced to the administrative procedure, is a result of 'careful consideration' on gays and lesbians living in the rural areas (ibid.). The exclusion of ceremonial elements is therefore meant for their protection by making the registration of same-sex partnership practically invisible. The legislator thus enabled the reproduction of homophobia as same-sex relationships are the ones that are somehow being 'punished' because of homophobia instead of the homophobic part of society; still the government highlighted the fact that they succeeded in the adoption of a law where left-wing coalitions had failed in 20 years (ibid.).

Due to the inadequacy of the Law on registration of same-sex partnerships adopted in 2005 and symbolic differentiation between heterosexual and same-sex partnerships non-governmental organizations called lesbians and gays for in-depth consideration before deciding to register their partnerships -In 2010 there were only 32 same-sex relationships registered (Velikonja 2004)¹⁷.

¹⁷ in October of 2006, the same-sex partnership is registered between Slovenian LGBT activist M. Blažič and his partner with the purpose of granting the legitimate interest so that they could file an initiative to review the constitutionality of the Law on registration of same-sex partnerships in the case of an Article 22, which speaks of inheritance. Constitutional Court in 2009 decided that the Article 22 is unconstitutional under the Article 14 of the Constitution, referring to the 'equality before the law' Invalid source specified. since the difference in existing legalization was not based on objective, non-personal circumstance but on the grounds of sexual orientation (Ministrstvo za delo, družino in socialne zadeve 2009). The legislator was ordered to eliminate the disparity within six months after the Constitutional Court's decision (Velikonja 2004).

Legislative changes regarding sexual orientation and gender identity in Republic of Slovenia in the period of 2004-2014

In 2005, Regulation of Execution of the Register of Deaths, Births and Marriages Act is adopted. Its importance for transgender persons lies in Article 37 regarding legal gender recognition: *A change of gender is entered into the register based on a decision by a competent public authority. The basis for issuing such a decision is a certified statement by a competent health care provider or medical doctor, which clearly states that a person has changed his/her sex* (Uradni list Republike Slovenije 2005). The Report by Slovenia on implementation of the European social charter raised questions about unclear criteria used in the process of legal gender recognition for transgender persons since "criteria vary, depending on the individual civil registry officer /.../ Thus, some are reported to accept a certified statement from a psychiatrist, on the basis of which they initiate legal gender recognition without requiring hormonal and surgical treatment. Others require a certified statement from a surgeon who has performed gender reassignment surgery" (Legebitra; Transgender Europe; ILGA-Europe 2010).

In the context of the right to marry and the right to create a family, the Charter of fundamental rights of the European Union in the article 9 states: "The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights" (Official Journal of the European Union, 2007). In the same year the Treaty of Lisbon is signed with Article 5b stating: "In defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation" (Official Journal of the European Union, 2007). Both documents are legally binding for member states. On the other hand, in both documents, The Charter of

fundamental rights of the European Union (2007) and Treaty of Lisbon (2007), the anti-discrimination policy of European Union is expressed in abstract way, without any concrete policies directing member states on how to tackle existing discrimination and denial of human rights of LGBT persons in their national context.

On September 2009 the Ministry of Labour, Family and Social Affairs, headed by Ivan Svetlik presented a proposal of a new Family Code – the proposal equates the legal status of heterosexual and same-sex partnerships and introduces inclusive definition of family which legally equates various forms of family life and regulates social parenthood. In the Article 3 marriage is defined as the life community of two persons (Ministry of Labour, Family and Social Affairs). Regardless of the introduced inclusive definition, the proposal was written without consulting the LGBT non-governmental organizations and civil dialogue (Velikonja 2004). One of the major novelties of the proposal is the possibility of adoption, not only for spouses, but also for unmarried partners, including the partners in same-sex relationships. (ibid.)

Due to strong opposition coming from *Civil initiative for the family and children's rights* (Civilna iniciativa za družino in pravice otrok) and parliamentary political parties in opposition¹⁸, the proposal is rejected in 2011 and the new proposal is drafted in a more compromising way in which the right to adoption of same-sex parents is excluded and symbolic differentiation of heterosexual and same-sex relationships is maintained despite of equal legal consequences of legally recognized heterosexual and same-sex partnerships (Mencin Čeplak & Kuhar 2010). In the second version of the Family code includes a more lenient definition of family. A family is defined as a child with one or both parents. Such a definition does not recognize social parenthood contained in the original proposal. In addition,

¹⁸ On the other hand, there was also a very strong campaign For all families! (Za vse družine!) pressuring to adoption of the Family Code, coordinated by national LGBT organizations

the adoption is possible only in the case of marriage or legally recognized extramarital union (ibid.). The adoption in the case of same-sex partnership is possible only in the case if one partner adopts biological child of his/her partner, in exceptional cases the adoption is permitted to one person if this is in the child's best interests (ibid.).

The second version of Family code was put to referendum in 2012 after *Civil initiative for the family and children's rights* managed to raise enough signatures and after Constitutional Court decided that the *suspension of the implementation or the rejection of the Family Code in the referendum will not result in unconstitutional consequences*.

During the campaign for the new Family code, there were two important documents on European Union's level regarding human rights of LGBT persons adopted. The first one is Resolution 1728: Discrimination on the basis of sexual orientation and gender identity by Parliamentary Assembly (2010a) and the second is Recommendation 1915: Discrimination on the basis of sexual orientation and gender identity (Parliamentary Assembly 2010b). Both documents are urging member states to end discrimination on grounds of sexual orientation¹⁹ and gender identity²⁰. It is also addressing the denial of rights to the 'LGBT families'.

The latest important document on European Union level is *Guidelines to promote and protect the enjoyment of all human rights by lesbian, gay, bisexual, transgender and intersex (LGBTI) persons*, adopted by Council of Europe in 2013. Although the document is primarily addressing the issue of violation of human rights in third countries, it is also important for internal policy on LGBTI human rights since it is the first document ever that explicitly refers to intersex persons (ibid.). In the context of Slovenia, intersex persons

19 Under the term of 'sexual orientation' heterosexuality, homosexuality and bisexuality are included (Parliamentary Assembly 2010a; 2010b).

20 The 'transgender person' is defined as "someone whose gender identity does not correspond to the gender he or she was assigned at birth" (Parliamentary Assembly 2010a; 2010b).

are subjected to obligatory medical procedures.

In 2014, Republic of Slovenia was one of the European states that signed the international *Declaration of intent* in which it is stated in Article 6 that the signatory country will intend to “guarantee the full legal recognition of a person’s gender identity in all areas of life, in particular by enabling the change of name and gender in official documents in a fast, transparent and accessible manner” (International Day Against Homophobia and Transphobia: Declaration of intent, 2014). This article is – although it is not legally binding – important in the Slovenian context for transsexual persons because of the mandatory 6 months long ‘real life experience’ after the hormonal therapy and before the legal recognition of person’s gender. The signature of Republic of Slovenia can be used by civil society organisations for creating pressure, if the government institutions will not take action in this context on their own initiative.

In 2014, the *Motion for a European parliament resolution: On the EU Roadmap against homophobia and discrimination on grounds of sexual orientation and gender identity* (Committee on Civil Liberties, Justice and Home Affairs, 2014) was signed. The motion tackles current lack of comprehensive policy at the European Union level to protect the fundamental rights of LGBTI persons and thus calls on the European Commission, member states and relevant agencies to work jointly in comprehensive policy (ibid.)

In the spirit of higher awareness on the level of European Union, which is evident in before-mentioned documents, Republic of Slovenia has also prepared the working draft of Partnership Act Law in which same-sex partnership has the same legal effect as a marriage between two persons of different sex. The draft law also regulates the long term union of two women or two men who have not conclude the same-sex partnership and thus the draft law equates it in rights and obligations with heterosexual extramarital union. Still the draft law does not include the regulation of adoption

and in the scope of medically assisted reproduction. The draft law also eliminates the constitutional violations in the context of inheritance in un/registered same-sex partnership since the Constitutional Court ordered National Assembly of the Republic of Slovenia to tackle the violations and eliminate them by 2013. (Ministrstvo za delo, družino, socialne zadeve in enake možnosti, 2014)

Hate speech and hate crime

In the context of hate speech and hate crime the Criminal code was changed in 2008 (Uradni list RS, 2008) by explicitly mentioning sexual orientation as a personal circumstance on which public incitement of hatred, violence or intolerance is prohibited: "Whoever incites publicly or inflames ethnic, racial, religious or other hatred, discord or intolerance, or encourages other discrimination due to physical or mental defects or sexual orientation, shall be punished with imprisonment of up to two years" (ibid.). Transphobic speech is abstractly placed under the "other hatred" but the latest change in Criminal code in 2012 (Uradni list RS, 2012) adopted also an explicit mention of gender as a personal circumstance on which public incitement of hatred, violence or intolerance is prohibited:

Whoever publicly encourages or incites hatred, violence or intolerance based on ethnic, racial, religious or ethnic origin, gender, skin colour, /.../ sexual orientation or any other personal circumstances and the offense is committed in a manner that may endanger or disturb public order and peace, or using threatening, abusive or insult, shall be punished with imprisonment of up to two years(ibid.).

By the latest change in Criminal Code the perpetrators of hate speech targeting transgender persons can be convicted. Here one has to mention high standards on which incitement

of hatred, violence and intolerance is perceived as such since the element of 'concrete danger' is required – an element of 'abstract danger' is therefore insufficient. In some degree that is probably also the reason for severe lack of judicial praxis regarding convictions in this context since in the last 12 years there were only three of them (Rovšek, 2012).²¹ As Rovšek warns in Mediawatch one can hardly convincingly argue that in this time in Slovenia there was no other case of hate speech by known perpetrators. The fact that the state does not or cannot effectively prosecute hate speech is a serious problem, also in regard of existence and expansion of democracy, human rights and equality (ibid.). One of the before-mentioned documents of Parliamentary Assembly (2010) is in Article 16.4 also mentioning the need of member states to tackle hate speech and hate crime as they are urging member states to "condemn hate speech and discriminatory statements and effectively protect LGBT people from such statements while respecting the right to freedom of expression".

European Union is in a unique position, as its 'script' and policies are embedded in EU legislation, and since this legislation supersedes the national legislation of member states, it can force them to comply with the script (Gerhards, 2010). Based on the official statements we can conclude that European Union tries to act as a politically avant-garde institution in the context of institutionalising and promoting LGBT(I) rights: as such, the European Union appears to be leading by example (Mos, 2013, str. 79). On the other hand one has to keep in mind that due to specifics of its institutional culture, the policy on LGBT rights is primarily driven by lowest-common-denominator, which is evident in European Union's main activities in the context of human rights of LGBT persons, consisted of declaratory politics, which are promoted non-coercively (ibid.). On the other hand, one cannot overlook the impact of European Union's institutions in relation to national civil societies and non-

²¹ Informations about convictions are not official. In one of the mentioned convictions, the perpetrator targeted gays and lesbians.

governmental organizations, which can and are empowered through the financial instruments available from European Union's institutions and member states. By providing financial instruments national non-governmental organizations are strengthened in their capacities to pressure national governmental institutions (Council of European Union, 2013). Therefore, we can identify three main actors in the context of securing and promoting human rights of LGBT individuals - non-governmental organizations and social movements, national governmental institutions and institutions of European Union.

In the case of Republic of Slovenia, we can notice that during the process of accession in European Union it included explicit mention of sexual orientation in the context of anti-discrimination policy. However, concrete mechanisms with which the equal rights would be granted to individuals regardless of their sexual orientation and gender identity were absent as we can notice in the context of symbolic differentiation of same-sex partnerships and unequal rights granted by the Law on registration of same-sex partnerships, currently in force.

In all three periods (before the process of accession, during the process and after it) analysed in the report. Differences are visible particularly between before and during the process of accession, that is between 1990-2004 as the Republic of Slovenia entered in the official negotiation in 1998 as there were explicitly - although minimal -stated conditions that had to be fulfilled in order to join the European Union. There are practically no important differences between during and after period as European Union's legislation is in most cases, regarding sexual orientation and gender identity, reduced to the lowest common denominator. Thus, the European Union's policy in the context of human rights of LGBT individuals is mostly expressed in such an abstract and mostly non-obligatory way that there are no concrete requirements for national countries on how to implement and how to protect human rights of LGBT individuals and their equal status

beside explicit prohibitions of discrimination on grounds of sexual orientation.

At this point, one also has to keep in mind that civil society or more specific - LGBT non-governmental organizations and social movements were and are continuously acting as an important mechanism for creating pressure from bottom-up to national institutions. As such, they have an important role in implementing and protecting human rights of LGBT individuals, the role of which could be even more empowered with the continuation of the support from supranational level of European Union and its institutions. On the other hand, the pressure of European Union's institutions has to transform more in the concrete guidelines as we can observe in the last approximately two years.

Human rights on general - not only human rights of LGBTI persons - are namely something which cannot be defined in an abstract way, since in that state they are always threatened by interpretations of those who do not have real intentions of enabling the equal status of marginalized (LGBTI) individuals.

APPENDIX

Authors

Nina Perger (1990.) has a degree in Sociology (Faculty of Social Sciences) and Social Pedagogy (Faculty of Education). Her interests range from academic engagement to practical pedagogic work and activism. In the last two years, she has published different articles in scientific journals on topics of gender and sexuality. She has been an active LGBT and human rights activist for several years and involved in different projects. Her expertise is focused on topics of gender and sexuality, queer theories, feminism, minority rights, hate speech, interactive and creative workshop methodology, youth work and creative activism. She is currently a Master's student of Social Pedagogy.

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About Sarajevo Open Centre

Sarajevo Open Centre has been recognized by our beneficiaries, but also by BiH civil society organizations, the media, public institutions, and international partners as one of the leading human rights organizations in Bosnia and Herzegovina.

Sarajevo Open Centre (SOC) advocates for the full respect of human rights and the social inclusion of LGBT people and women. Sarajevo Open Centre is an independent, non-partisan, and non-profit organization that empowers LGBT (lesbian, gay, bisexual, and trans*) people and women through community and movement building. SOC also promotes the human rights of LGBT people and women publically, and advocates on the national, European, and international level for improved legislation and policies in Bosnia and Herzegovina.

Between 2007 and 2011, we worked on different projects related to political science research and political education, literature, film and art promotion, and interreligious education without having clear program areas, an office, or employed staff. In 2011, we opened our first office and our first three team members began working full-time at Sarajevo Open Centre. The team has since grown from three (May 2011) to eleven (October 2014) full-time employees.

Sarajevo Open Centre is a member of many national, regional, and international networks of civil society organizations, leads the Initiative for Monitoring BiH's European Integration, and, together with the CURE Foundation, co-leads the Women's Network BiH. Sarajevo Open Centre is the creator and administrator of lgbt.ba, the only BH LGBT web portal, which is a virtual space for the LGBT community and the public.

www.soc.ba // www.lgbt.ba // www.zenskamreza.ba // www.eu-monitoring.ba

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