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| **Sexual and Gender Minorities in Croatia** |
| **Chapter taken from the Annual Report for 2016 of the Ombudsperson for Gender Equality of the Republic of Croatia, Zagreb, April 2017** |



# SEXUAL AND GENDER MINORITIES

## LEGAL GROUNDS AND SITUATION ASSESSMENT

In 2016 the trends of the previous years have largely continued. But this year, we must highlight the growing inefficiency of the judiciary system in combating criminal acts motivated by the hatred directed against persons of same-sex orientation and transgender persons.

### Implementation of the provisions of the Law on Lifelong Partnership of the Persons of the Same Sex

During 2016 there were no obstacles to the implementation of the provisions of the *Law on the Lifelong Partnership of Persons of the Same Sex.* According to the official statistics of the Ministry of Administration, in the period from January 1st to December 31st 2016, 66 life partnerships were registered, of which 35 among male life partners and 31 among female life partners.

Since August 6th 2014, whe the Law came into the force, until the end of 2016, a total of 174 life partnerships were registered, of which 92 between male partners and 82 among female partners.

### Physical integrity, dignity and criminal acts motivated by hatred

The Ombudsperson points out the inadequate efficiency of protecting the physical integrity of citizens of the same-sex orientation and of the suppression of criminal offenses motivated by hatred towards this group.

According to the Ministry of Justice's records, during the year 2016, four (4) new proceedings were initiated in connection with the criminal offense of hate crime motivated by prejudices about sexual orientation. Two proceedings were completed during the reporting year with convicting verdicts and in both proceedings, both offenders received a suspended sentence. The remaining two proceedings against two perpetrators are still ongoing. At the same time, data submitted by the Ministry of the Interior indicate that during the reporting year a total of 35 criminal offenses were identified for which the police found that they were motivated by hatred, with 3 criminal offenses motivated by hatred towards persons of the same sex orientation. The representatives of the judiciary, pointed out to the Ombudswoman a series of explainations about the existing practice of prosecuting hate crimes through misdemeanor proceedings. The Ombudswoman considers that the responsibility for the proper qualification and persecution of hate motivated violence is equally divided between all three judicial bodies. The police and the state attorney's office should work together in order to define the proper qualification of the offense according to the existing practice of the European Court of Human Rights. At the same time, the Ombudswoman thinks that misdemeanor courts have full and unlimited authority to determine their material jurisdiction.

### Freedom of assembly and expression

The Ombudswoman points out that during the reporting year the system of protection of the constitutional freedom of public gathering and expression of sex and gender minorities was exemplary. All of the gay prides were held without any apparent expressions of intolerance or obvious provocations.

### Labor market and the access to goods and services

The Ombudswoman still believes that discrimination based on sexual orientation in the labor market and in the access to goods and services is widespread although its visibility is relatively weak. In 2016, the same as in 2015, the Ombudswoman received two complaints in the area of work and employment because of the discrimination based on sexual orientation. According to the data of the Ministry of Justice, in 2016 three litigation proceedings were conducted in front of the civil courts because of the unfavorable treatment based on sexual orientation, two of which started in previous years and one was initiated in 2016. Out of three procedures, two have been solved as unappealable: one was resolved with a conviction, and the other „otherwise", by withdrawing a lawsuit or a settlement (it was not specified). In both cases, the court ruling was in favor of three victims, out of which two were female and one male.

### Closing commentaries and recommendations

The Gender Equality Ombudswoman's view is that, in 2016, the *Law on the Lifelong Partnership of Persons of the Same Seks* continued to be successfully implemented in practice. However, despite the significant shift in equality of the sexual and gender minorities, in regard to their civic status and material rights, the problem of physical violence against this social group remains high. The Ombudswoman included the following recommendations into her Annual Report for 2016: (1) To define precisely misdemeanor legal provisions in order to ensure that the acts motivated by hatred based on prejudices the same sex orientation citizens will be persecuted according to the criminal and not misdemeanor proceedings; (2) Improve the system of collecting and processing data related to the court disputes involving litigating, administrative, misdemeanor and criminal courts in relation to discrimination based on sexual orientation; (3) Prompt action of all the bodies included in the Protocol on treatment of hate crimes actions motivated by the prejudice to persons of same sex orientation; (4) Develop a training program for state attorneys and judges who make rulings in anti-discrimination disputes, especially in criminal-law proceedings.

## PROBLEMS OF GENDER DYSPHORIC PERSONS

In 2016 the Ombudswoman received six complaints of gender dysphoric persons and continued to monitor the level of protection of the rights of gender dysphoric persons, based on the received citizens' complaints, as well as upon her own initiative. The Ombudsperson continued to emphasize the importance of the protection of fundamental human rights of gender dysphoric persons by referring to the statutory provisions of the Anti-Discrimination Act, the Civil Register Act and the Ordinance on the method of collecting medical documentation, and determining conditions and assumptions for gender change or life in another gender identity. She also pointed to the most common legal difficulties faced by the gender dysphoric persons, such as the slow procedure for issuing opinions by the National Health Council, issues related to re-issuing of certificates, diplomas and health certificates after sex change, therapeutic system and health care system in regards to the issues of gender dysphoric persons etc. The status and the rights of gender dysphoric persons in our society in the past few years have been significantly improved, but the Ombudswoman emphasizes again that the transition from one sex to another has not yet been "covered" by the appropriate rapid, efficient and transparent procedures of the competent authorities.