**Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity - Gender, sexual orientation and gender identity**

**Republic of Croatia**

***1) Has the State adopted, in public policy, legislation or jurisprudence, working definitions of gender and related concepts (for example gender theory, gender-based approaches, gender perspective, gender mainstreaming) aiming to address violence and discrimination based on sexual orientation and gender identity? If so, please give examples, with commentary as needed to explain context, scope and application.***

***a) if that is the case, has the State carried out evaluations, assessments or evidence-gathering about the impact of the implementation of such actions and, if so, what are the main trends identified?***

***b) if that is not the case, please provide information as to the reasons.***

Promoting and respecting human rights is a core commitment and a central priority for the Republic of Croatia. Croatia continues to advocate the enhancement and protection of rights of LGBTI persons at the national and international level, and remains dedicated to combating and suppressing all forms of discrimination and violence based on sexual orientation. In addition, Croatia will continue with its efforts to prevent and address homophobic incidents and to combat hate crime against LGBTI persons in Croatia also through education, tolerance building, and awareness-raising activities. We are committed to a comprehensive protection of human rights with a conviction that all human rights are universal, indivisible, interrelated, interdependent, and mutually reinforcing. Croatia is a member of the United Nations LGBTI Core Group for Combating Violence and Discrimination.

**Legal framework**

The basic legal act in the Republic of Croatia, the **Constitution of the Republic of Croatia** states equality as one of the fundamental values and pays particular attention to the protection of human rights, combating discrimination and preventing abuse.

**The Criminal Code** (hereinafter referred to as CC ) prescribes ,, Hate crime’’ in Article 87 paragraph 21, as follows: A hate crime shall mean a criminal offence committed on account of a person's race, colour, religion, national or ethnic origin, language, disability, gender, sexual orientation or gender identity. Unless a more severe punishment is explicitly prescribed by this Code, such conduct shall be taken as an aggravating circumstance.

The CC prescribes certain criminal offences where the motive ,,out of hatred” is integral part of the legal description of the criminal offence (such as, for example Aggravated Murder, Bodily Injury, Serious Bodily Injury…) and a more severe punishment is explicitly prescribed by the Criminal Code. For all other criminal offences, the legal description of which does not explicitly contain the motive ,,out of hatred” alongside with a more severe punishment, the fact that it was committed out of hatred shall be taken as an aggravating circumstance when determining the sentence.

By the Act on Amendments to the Criminal Code (Official Gazette no. 126/19) for a number of criminal offences containing the motive ,,out of hatred'' the prescribed sentences were made stricter (for example Bodily Injury, Serious Bodily Injury). Stricter sentences were also prescribed for criminal offences Domestic Violence (Article 179a of the CC), Rape (Article 153 of the CC), Sexual Harassment (Article 156 of the CC), Lewd Acts (Article 155 of the CC), Serious Criminal Offences against Sexual Freedom (Article 154 of the CC). Also, the concept of the criminal offence Rape was changed in a way that any non-consensual sexual intercourse or sexual act equated with it shall be considered a criminal offense of Rape, even when there is no use of force or threat to the life and body of the raped or other person.

The CC prescribes criminal offence of Violation of Equality in Article 125. The perpetrator of this offence is whoever, on the basis of race, ethnic affiliation, skin colour, gender, language, religion, political and other convictions, national or social origin, property, birth, education, social status, marital or family status, age, state of health, disability, genetic inheritance, gender identity, expression, sexual orientation or other characteristics, denies, limits or conditions another the right to acquire goods or receive services, the right to carry out an activity, the right to employment and promotion, or whoever on the basis of any such characteristic or affiliation gives another privileges or advantages. The perpetrator shall be punished by imprisonment not exceeding three years. The same punishment shall be inflicted on whoever persecutes individuals or organisations because of their commitment to equality of people.

Furthermore the Article 325 of the Criminal Code prescribes criminal offence Public Incitement to Violence and Hatred.

Public Incitement to Violence and Hatred

Article 325 of the Criminal Code

(1) Whoever in print, through radio, television, computer system or network, at a public gathering or in some other way publicly incites to or makes available to the public tracts, pictures or other material instigating violence or hatred directed against a group of persons or a member of such a group on account of their race, religion, national or ethnic origin, language, descent, colour, gender, sexual orientation, gender identity, disability or any other characteristics shall be punished by imprisonment not exceeding three years.

(2) Whoever organises or runs a group of three or more persons for the purpose of committing the offence referred to in paragraph 1 of this Article shall be punished by imprisonment from six months to five years.

(3) Whoever participates in the association referred to in paragraph 2 of this Article shall be punished by imprisonment not exceeding one year.

(4) The same punishment as referred to in paragraph 1 of this Article shall be inflicted on whoever publicly approves of, denies or grossly trivialises the crimes of genocide, crimes of aggression, crimes against humanity or war crimes, directed against a group of persons or a member of such a group on account of their race, religion, national or ethnic origin, descent or colour in a manner likely to incite to violence or hatred against such a group or a member of such a group.

(5) The attempt of criminal offence referred to in paragraph 1 and 4 of this Article shall be punishable.

The aforesaid criminal offences shall be prosecuted ex officio. According to the **Criminal Procedure Act** (hereinafter referred to as CPA) , unless otherwise provided by law, the State Attorney shall initiate criminal proceedings if there are reasonable grounds for believing that a particular person committed a criminal offence prosecuted ex officio and there are no statutory obstacles to the prosecution of the said person. Proceedings shall be conducted without delay. In the case of proceedings in which the defendant has been temporarily deprived of liberty, the court and state bodies shall proceed with particular urgency.

According to the CPA, the victim has, among other, the right to access services providing support to victims of criminal offences, the right to efficient psychological and other professional assistance and support of the body, authority or institution providing assistance to victims of criminal offences as provided for by law, the right to protection from intimidation and retaliation and the right to protection of the dignity of the victim when testifying. Before questioning the victim, the body conducting the questioning shall carry out, in cooperation with the bodies, organisations or institutions providing assistance and support to victims of criminal offences, an individual assessment of the victim. The individual assessment shall include establishing whether there is a need to take special protection measures in respect of the victim and if yes, which ones (special method of questioning the victim, use of communication technology so as to avoid visual contact between the victim and the perpetrator and other measures provided for by law). Where the victim of a criminal offence is a child, it shall be presumed that special protection measures need to be taken and it shall be established which ones. The individual assessment of a victim shall take into account the personal characteristics of the victim, the type or nature of the criminal offences and the circumstances of the criminal offence. In this context particular attention shall be paid to victims who have suffered considerable harm due to the severity of the criminal offence, victims of a criminal offence committed with a bias related to their personal characteristics and victims whose relationship to the perpetrator makes them particularly vulnerable. In the same terms, victims of terrorism, organised crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence and exploitation, hate crime and victims with disabilities shall be duly included in the individual assessment.

CC is harmonized with Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenofobic nature commited through computer systems, and the CPA is in line with the Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

In Croatian legislation, the concept of gender and gender identity is contained in the following acts:

**Anti-Discrimination Act (OG 85/08, 112/12)** ensures the protection and promotion of equality as the highest values ​​of the constitutional order of the Republic of Croatia. This Act fulfils the preconditions for achieving equal opportunities and regulates protection against discrimination on the grounds of race, ethnicity, colour, sex, language, religion, political or other belief, national or social origin, property status, trade union membership, education, social status, marital or family status, age, health status, disability, genetic inheritance, **gender identity, expression or sexual orientation.**

**Act on Gender Equality (OG 82/08, 69/17*)*** prohibits discrimination on the grounds of **sexual orientation**, as well as the public display and presentation of any person in an insulting, belittling or humiliating manner, as regards his/her **gender and sexual orientation.**

**The Labour Act (OG 93/14, 127/17, 98/19)** prohibits direct or indirect discrimination in the field of work and working conditions, including selection criteria and conditions in employment, promotion, vocational guidance, professional training and upskilling, in accordance with this Act and special laws. The employer is obliged to protect the dignity of the employee during the performance of work from the actions of superiors, associates and persons with whom the employee regularly comes into contact in the performance of their duties, if such conduct is undesirable and contrary to this Act and special laws.

**Act on Protection against Domestic Violence (OG 70/17, 126/19)** prescribes protection against violence between persons: a spouse, an extramarital partner, a life partner, an informal partner, their joint children and children of each of them, a relative by blood in a direct line, a relative in the side line up to the third degree, in-law relative until the end of the second degree, adoptive parent and adoptee. Provisions of this Act also apply to a former spouse, former extramarital partner, former life partner, former informal life partner, persons having a joint child, and persons living in a joint household.

**Same-Sex Life Partnership Act (OG 92/14, 98/19**) enables a registered (and unregistered) life partnership of persons of the same-sex. The Act provides a clear legal recognition of the constitutionally protected “family life” status for same sex couples. This status is regulated through the legal form of “life-partnership”. Same sex couples can acquire status of life-term partners through an act of partnership registration. The same-sex partners are provided access to labour rights, retirement, health insurance and protection, social benefits, tax benefits, equal access to goods and services as well as other family privileges already granted to married different-sex couples. The Act lays down the principles on which a life partnership is based, which include equality, mutual respect of dignity, mutual assistance and respect of life partners. At the same time, the Act prohibits any form of violence in family life relationship as well as any form of discrimination, whether direct or indirect, based on a concluded life partnership, sexual orientation or gender identity.

**Policy Framework**

The concept of gender and gender-based violence is contained in the **National Strategy for Protection against Domestic Violence for the period 2017-2022.** National Strategy refers to all forms of domestic violence and, in accordance with applicable legal provisions, such as the Act on Protection against Domestic Violence and the Criminal Code, considers family members to be marital and extramarital partners, former spouses and extramarital partners, life partners or **informal life partners, i.e. persons living in the same-sex partnership under a special regulation.** Each measure of the National Strategy is based on one or more Articles of the Istanbul Convention, whereby its benefit is constituted.

New National Plan for Gender Equality Equality 2021-2027 will include measures that refer to gender identity and sexual orientation.

***2) Has the State ratified, signed, od adhered regional or international human rights treaties, declarations, programs or policies or any other international instruments aiming to address violence and discrimination based on sexual orientation and gender identity that involve the implementation of a gender framework (for example gender theory, gender-based approaches, gender perspective, gender mainstreaming)***

***a) if that is the case, has the State carried out evaluations, assessments or evidence-gathering about the impact of the implementation of such actions and, if so, what are the main trends identified?***

***b) if that is not the case, please provide information as to the reasons.***

**Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence**

Article 3 of the Convention defines the concept of gender and the concept of gender-based violence. In Article 4, the implementation of the provisions of the Convention by the Parties, in particular measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, **sexual orientation, gender identity,** age, state of health, disability, marital status, migrant or refugee status, or other status. Article 6 states, among other, that Parties of the Convention shall undertake to include a **gender perspective** in the implementation and evaluation of the impact of the provisions of the Convention.

Croatian Parliament, on the proposal of the Government of the Republic of Croatia, in 2018 adopted the Law on the Ratification of the Convention. By adopting this Law, Croatia ratified the Convention, it entered into force in relation to Croatia on 1 October 2018 and it became part of the internal legal order.

When depositing the instrument of ratification, in accordance with Article 78, paragraph 2 of the Convention, Croatia expressed the reservation, where it reserves the right to apply the provisions laid down in Article 30, paragraph 2, only in respect of the victims who exercise the right to compensation in accordance with the national legislation governing the issue of compensation for the victims of offences.

The Law on the Ratification of the Convention incorporated an interpretative statement as an institute stating how Croatia understands its obligations, stating that the provisions of the Convention do not contain obligations to introduce gender ideology nor redefine the constitutional definitions of marriage.

Croatian Ministry of Labour, Pension System, Family and Social Policy has been designated as the coordinator of the Convention implementation at the national level, in accordance with Article 10 of the Convention.

The Convention constitutes a legal framework for further upgrading of the framework necessary for the efficient prevention and prosecution and punishment of perpetrators. In the same way, its ratification enabled the strengthening of the existing human rights protection system and created additional prerequisites for more efficient proceedings of central government authorities and other entities providing assistance to victims. After entry into force of the Convention, its active application has started and is being continuously evaluated and monitored.

***3. What kind of information and data are collected by states to identify forms of violence and discrimination faced by people based on sexual orientation and gender identity? Is the data designed to capture causes and patterns of violence and discrimination against lesbians, gay men, bisexual women, bisexual men, trans women, trans men and gender diverse persons?***

***a) does this data collection take an intersectional approach (for example, connecting individual’s multiple social categories to enable more precise analyses (e.g. collecting data about LGBT persons by identities such as race, age, national status and ethnicity)?***

***b) does the data include information on the relationship between victims and perpetrators.***

The Ministry of Justice and Administration in accordance with the obligations arising from the Anti-Discrimination Act and the Protocol on Proceedings in Hate Crime Cases, collects and consolidates data from competent courts on cases in which they act. In both cases (and in terms of discrimination and hate crimes), one of the grounds on which data are segregated is both sexual orientation and gender identity.

Data collected in relation to discrimination are:

In civil cases:

• Number of unresolved cases at the beginning of the period

• Number of cases received

• Number of persons discriminated against according to the lawsuit (segregated by gender)

• Type of lawsuit (determination of discrimination, prohibition or elimination of discrimination, compensation for damages, publication of the judgement in the media, joint lawsuits, etc.)

• Final resolved cases (accepted claims, rejected claims or the case was resolved in another way)

• Number of unresolved cases at the end of the period

• Form of discrimination determined by a final judgment (in accordance with certain articles of the Anti-Discrimination Act)

• Number of persons discriminated against according to a final judgment (segregated by gender)

• Duration of the procedure

In criminal cases:

• Number of unresolved cases at the beginning of the period

• Number of cases received

• Number of persons discriminated against according to the indictment (segregated by gender)

• Criminal offense (Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Art. 104, Violation of Equality Art. 125, Violation of Freedom of Expression Art. 126, Sexual Harassment Art. 156, Public Incitement to Violence and Hate Art. 325.)

• Number of final resolved cases (conviction, acquittal or resolved in another way)

• Number and type of sentences imposed

• Number of convicted persons (segregated by gender)

• Number of persons discriminated against according to a final judgment (segregated by gender)

• Number of unresolved cases at the end of the period

• Duration of resolved proceedings

In misdemeanour cases:

• Number of unresolved cases at the beginning of the period

• Number of cases received

• Number of persons discriminated against according to the reporting

• Type of violation in accordance with the articles of the Anti-Discrimination Act (harassment, sexual harassment, failure to provide data, victimization, other according to other regulations)

• Number of legally resolved cases (conviction, acquittal or otherwise resolved)

• Number and type of sentences imposed

• Number of convicted persons (segregated by gender)

• Number of persons discriminated against according to a final judgment (segregated by gender)

• Number of unresolved cases at the end of the period

• Duration of resolved proceedings

Data collected in accordance with the Protocol on the Procedure for Hate Crime Cases:

In accordance with the new Draft Protocol on the Procedure for Hate Crime Cases, the so-called "Case tracking" system will be provided, monitoring of all cases related to hate crime from the beginning (from reporting, investigation, etc.) to the final verdict.

The competent authorities will collect the following data:

The Ministry of Internal Affairs:

• number of cases

• number of perpetrators

• number of victims

• place and time of commission of the offense

• indication of a criminal offense or misdemeanour

• an indication of the characteristic referred to in Article 87, paragraph 21 of the Criminal Code or Article 325 of the Criminal Code in connection with which the criminal offense was committed

• an indication of the characteristics referred to in Article 5 of the Protocol in respect of which the offense was committed

Judicial bodies (state attorney's offices and courts):

State Attorney's Office of the Republic of Croatia for individual state attorney's offices:

• number of case

• number of suspects

• number of victims

• place and time of commission of the offense

• indication of a criminal offense or misdemeanour

• an indication of the characteristic referred to in Article 87, paragraph 21 of the Criminal Code or Article 325 of the Criminal Code in connection with which the criminal offense was committed

• Attorney General's decision

The Ministry of Justice and Administration for courts:

• number of cases

• number of accused persons

• number of victims

• place and time of commission of the offense

• indication of a criminal offense or misdemeanor

• an indication of the characteristic referred to in Article 87, paragraph 21 of the Criminal Code or Article 325 of the Criminal Code in connection with which the criminal offense was committed

• an indication of the nature referred to in Article 5 of this Protocol in respect of which the offense has been committed

• first and second instance decision and sanction.

According to Croatian legislation the Ombudsperson for gender equality is responsible for handling discrimination complains based on sexual orientation, gender identity and its expression, gathering statistical data and reporting the Parliament on discrimination based on these ground. Therefore, the Annual report of the Ombudsperson for gender equality gives the statistical overview of discrimination cases handled by this institution including on discrimination based on sexual orientation and gender identity and its expression. It contains information of concrete discrimination cases or cases of violence, also against LGBTI people. However, the report does not provide any information on discrimination on multiple grounds experienced by LGBTI people.

Furthermore, the Office of the Ombudsperson, collects statistical data on discrimination, including on discrimination based on multiple grounds. Additionally, the Ombudsperson monitors discrimination court cases and presents the statistics on discrimination grounds pertinent to all discrimination related court cases in its Annual report.

Finally, the Office for Human Rights and Rights of National Minorities of the Government of the Republic of Croatia (GOHRRNM) has been designated as the central body in the Republic of Croatia for collecting, compiling and publishing data on hate crimes, and cooperating with civil society organizations and international organizations working in this field, such as OSCE and its Office for Democratic Institutions and Human Rights (ODIHR). Hate crime data are collected by the Ministry of Interior, the Prosecutor’s Office, and the Ministry of Justice and Administration and sent to the Government Office for Human Rights and Rights of National Minorities.

The GOHRRNM coordinates the collection of statistical data on hate crime and hate speech cases reported to the authorities, based on all grounds, including also when these criminal acts are motivated by someone’s sexual orientation and gender identity.

Since 2011, the recording of hate crimes by police and other authorities is regulated by the Protocol on procedure in cases on hate crime. The Protocol also sets out data gathering templates for each authority handling hate crime. Monitoring system is currently being upgraded by a Revised Protocol (to be adopted by the end of 1st quarter 2021) for data collection on hate crime. It will govern procedures for more detailed classification of data, including separate classification of hate crime and criminal offense of public incitement to violence and hatred. It will also disaggregate data based on motives (including sexual orientation and gender identity). The statistical templates in the Revised Protocol don’t contain information on the relationship between victims and perpetrators. There are some elements of intersectionality, since statistical forms include sex and age of victims, sex and age of perpetrator and crime/offense motivation.

***4. Is comprehensive sexuality education taught in schools?***

***a) If yes, please provide information as to the respective programs. Please provide examples (e.g.) copies of curricula, citation to policies).***

***b) If not, are there efforts deployed by the State to establish and promote comprehensive sexual education, which incorporates diverse sexual orientation and gender identity perspectives? What have been the obstacles to adopt such policies or programs? Also, is the State adopting any alternative measures?***

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***5. Are there examples where the concept of gender has been used in religious narratives or narratives of tradition, traditional values or protection of the family to hinder the adoption of legislative or policy measures aimed at addressing or eradicating violence and discrimination based on sex, gender, sexual orientation and gender identity?***

In 2018, during the time when the Law on the adoption of Council of Europe’s Convention on preventing and combating violence against women and domestic violence was in the procedure of public consultations, certain nongovernmental initiatives (e.g. the initiative named “Truth about the Istanbul Convention”), representatives of the Catholic church in Croatia as well as few members of the Parliament, were publicly claiming that the enactment of this law will bring to eradication of the traditional family and traditional family roles by introducing the so called “gender ideology” and were strongly opposing to the ratification of this document.

***6. Are there examples where a concept of gender has been used in religious, traditional or indigenous narrative or values in a manner which promotes the acceptance of persons with diverse sexual orientations or gender identity, or protects LGBT individuals from violence and discrimination as well as covering a wider range of persons?***

To our knowledge, there has been no use of the concept of gender in this context.

***7. Are there examples in which narratives or “gender ideology”, “genderism” or other gender related concepts have been used to introduce regressive measures, in particular but not limited to LGBT persons?***

In 2013 a nongovernmental group “In the name of the Family”, supported by few other conservative nongovernmental organizations, initiated a state referendum that subsequently led to the change of the Croatian constitution. Based on the referendum question and its results, the following stipulation was introduced in the Constitution text “Marriage is a living union between a woman and a man”. The initiators and promotors of the referendum used the label “gender ideology” to mark the positions that advocated for the equal rights of all persons (also within the family law and in regard to marriage) stating that traditional family is endangered by “gender ideology” and it necessitates this kind of (constitutional) protection.

***8. Are there initiatives taken by States in connection with the right to freedom of religion, belief or conscience (including the figure of conscientious objection) that have had the practical impact of limiting the enjoyment of human rights (including sexual and reproductive rights) of LGBT persons?***

No, there haven’t been any initiatives like that.

***9. Have there been public expressions or statements by political and/or religious leaders that have led to indefinite extension, modification or suppression of actions, activities, projects, public policies or application of gender frameworks?***

There have been no such events.

***10. Who are main actors who argue that the defenders of human rights of LGBT individuals are furthering a so called “gender ideology”? What are their main arguments? Have they been effective in regressing the human rights of LGBTI individuals? Have their strategies directly or indirectly also impacted on the human rights of women and girls?***

Please refer to the answer to question no. 7.

***11. Can you provide examples of coalitions working together on resisting attacks on gender ideology? Please share examples of feminist and LGBT and other groups working together and with what kind of frameworks, argument and results?***

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***12. What policies, programs and/or practices has the state adopted to meet Sustainable Development Goal 5 (gender equality) and 19 (reduced inequalities)? Do these rely on gender frameworks inclusive to diverse sexual orientations and gender identities and/or aiming to address violence and discrimination based on sexual orientation and gender identity? Please identify relevant examples.***

The Republic of Croatia has enacted the Anti-discrimination Act in 2009 which provides protection from discrimination in all areas of life, based on 17 discrimination grounds including sexual orientation and gender identity and its expression. With this act the victims of discrimination can initiate court proceedings requesting for protection and compensation. Also, the Office of the Ombudsperson works on cases of discrimination when they are based on sexual orientation and gender identity and its expression.

To this day, three strategic documents which defined actions for combating discrimination on the national level, were in force. Currently the Republic of Croatia is preparing a broad policy framework for protection of human rights and fight against discrimination on all grounds, which will be adopted by the Government in the middle of 2021.