SAME-SEX PARTNERS "COME OUT" IN NEW LEGAL PROVISIONS IN CROATIA

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I. Introduction

The position of homosexuals in Croatia until the beginning of the twentieth century could be described by the phrase “absorbed by silence”. Homosexuality was often mentioned only for laughs and used as an insult. The situation changed somewhat in the eighties: the first organization appeared at the time and also some bars started to welcome gay audience, therefore a rudimentary gay scene was created.

During the first half of the nineties, Croatia went through the period of war for national independence and the ethnic identity as well as Catholic traditions seemed to be predominant in the Croatian society. At the same time, the civil sector started to develop under the support of international community. Several new NGOs focused on the protection of human rights, but the rights of sexual minorities were never openly discussed nor promoted.

Homosexuality used to be rarely mentioned in the Croatian media, until the short and bitter campaigning for the new legislature concerning the same-sex partnerships in 2003.

False convictions are strong: in 1995 53% of respondents stated that they would not like to have a homosexual person as neighbor. Four years later, 46% of respondents were of the same opinion. Among women and younger generations, especially in large urban centers, social distance toward gays and lesbians is less pronounced. Almost two thirds of the students of the University of Zagreb stated that their friend's sexual orientation is irrelevant to them. Yet, there is no positive term for a homosexual person in the Croatian language (except for the internationally accepted one – gay), but more negative term – fagot (peder) is being used most frequently.

In spite of the inconvenient social situation, in the first years of this century, gay pride has been regularly organized in the Croatian capital - Zagreb, protected by strong police forces. Furthermore, there are several other cultural events (e.g. Queer festival), and it should be noticed that a quiet part of urban population showed a huge interest in such happenings.

\footnote{Most data, mainly to the beginning of the 21st century, stem from the source: The International Encyclopedia of Sexuality, Volume 4, Croatia (coauthors Štulhofer et alii), Continuum, New York, London, 2001, pp. 120-185.}
The activists of a few NGOs started a bitter campaign for the rights of homosexuals, exposing themselves to the reaction of the society. During the legislative campaigning, the public discussion was intolerant and full of offending words from the both sides – the traditionalist, conservative one and the homosexual-rights protectors' one. At the end, after a short and bitter campaign, homosexual NGOs managed to lobby among the members of Socialist-Democratic Party and their align political partners to enact a modest act concerning some rights arising from the same-sex partnership.

II. Legal regulation of same-sex partnerships

Legal introduction of same-sex partnerships was made through The Same-sex Partnership Act 2003, and was in a way a double standard: the same-sex partnership cannot be registered. This exposes partners to legal insecurity until the day of a judicial decision, which is to give declaration that some relationships fulfilled the legal requirements necessary in order to produce legal effects of same-sex partnership.

The effects of a same-sex union occur if partners cohabitate at least three years and if there are no impediments similar to those that exist regarding the spouses (if they are older than 18 years of age, if they are not relatives in the right line and relatives until the fourth degree/cousins, and if they are not deprived of legal capacity).

Furthermore, only some effects of unregistered same-sex partnerships are recognized, similar to extramarital unions: the alimony rights and the property rights. Each partner has the right to alimony if he/she does not have enough financial sources for life, or does not have enough property, as well he/she is incapable to work or cannot get a job. Also, the other partner has to have sources to support his/her present or ex partner. It is rather unlikely though that the alimony proceedings would be raised during the existence of the same-sex partnership, because that would mean that the relationship among partners is not good (if the alimony has to be sued in order to get it).

For the property rights, the same rules as for the extramarital heterosexual partnerships apply. This means that partners are co-owners in the equal parts without the possibility of proving otherwise, in regards to the property acquired during their union, if it has been the consequence of work and of the gamble winnings. Partners are allowed to sign a property contract as well, the same as spouses.

Nevertheless, all questions arising from uncertainty of the unregistered partnerships remain, especially taking into consideration the fact that such property-relations and obligations do not have to be known to third parties, who might be involved in some legal relations with one of the partners.

In other fields of law (inheritance, tax, retirement, health, citizenship law etc.), the partners do not enjoy any rights whatsoever on the basis of their legal status. Such a situation can be declared as hypocrisy, while the state offered some rights, but only those that can be the subject of the conflict of interests among partners. The state itself did not undertake any obligation, only the general prohibition of the discrimination of the persons on the basis of the fact that one lives in the same-sex partnership.

III. Conclusions and awaiting follow up

The same-sex partnership act will be possible to monitor and analyze law in action only after the July of 2006, when the period of three years required for the effects of the partnership will expire. At that point, partners will be enabled to recall on mutual rights recognized by The same-sex partnership act. Still, one can only have doubts in regards to how many persons will induce court proceedings and admit publicly that they had lived in a same-sex partnership.

Just shortly before the International Family Law Conference in Salt Lake City, NGOs have proposed another act that is more worked out and, what the author finds to be very important, offers the possibility to register the partnership.

As it had already happened before, the advocates recalled on human rights standards in the European Union, trying to argue that there is an obligation of the State who aspires to become a member of the European Union, to raise the protection of human rights of the persons regardless of their sexual orientation, also to the possibility to register their relationship, or even to introduce the same-sex marriage.

The author argues that no such obligation under human rights legal provision of the Council of Europe, or the European Union exists, and that is the upon the each state to decide how will it legally regulate the consequences of the same-sex partnership. The question that arises is the following: what is the purpose of law? Is it to move the frontiers of the particular social understanding, or to keep, as long as possible, the so-called traditional values, that attempt to protect traditional family life by means of legal provisions, excluding the legal recognition of other life-styles?

Regardless on how the legislature will further develop, one can notice that NGOs that represent the right of the homosexuals indeed gained some achievements, because due to the doctrine of acquired rights, it would be hard for any government to abolish such a legislation.