



## **Weekly Briefing**

### **Croatia social briefing:**

### **A turbulence in Croatian judiciary system and society caused by the potential of same sex foster parenthood**

**Benjamin Petrović**


#### **China-CEE Institute**

Kiadó: Kína-KKE Intézet Nonprofit Kft.

Szerkesztésért felelős személy: Chen Xin

Kiadásért felelős személy: Huang Ping

 1052 Budapest Petőfi Sándor utca 11.

 +36 1 5858 690

 [office@china-cee.eu](mailto:office@china-cee.eu)

 [china-cee.eu](http://china-cee.eu)

# **A turbulence in Croatian judiciary system and society caused by the potential of same sex foster parenthood**

## **Summary**

*A desire of a same sex married couple to achieve a status of potential foster parents, led to a series of events which manifested on several levels. Their fight against discriminatory decision of the Center for Social Care in Zagreb, revealed certain discrepancies in Croatian judiciary system, causing legal turbulences. Additional controversy emerged from a hideous act of hate on a public masquerade as a response to the atmosphere the subject matter created.*

## **Achieving the status of potential foster parent**

After a long trial process between Ivo Šegota and Mladen Kožić, a same sex married couple, against the Center for Social Care in Zagreb, Administrative Court in Zagreb decided that all resolutions brought forward by the mentioned Center and Ministry of Social Policy and Youth regarding the plea of the couple to achieve the status of potential foster parents, are annulled. Therefore, Ivo Šegota and Mladen Kožić, were given the right to enter a legal role of foster parenthood. One of the first same sex married couples in Croatia, Šegota and Kožić have fought a long fight to have their rights, based on Croatian regulations and the European Convention on Human Rights, realized. Of course, in Croatia, a country where such initiatives are not yet established as regularities, and many of similar issues are considered to be a subject of discretion and rarity, the described process and a victory of a same sex couple over national institutions was something that caused a stir on several levels.

## **Legal perspective**

From a legal point of view, Croatian Law of Civil Partnership regulates that a same sex couple entering a legally-approved relationship has the equal rights and responsibilities as heterosexual couples. The main difference is that such couples cannot adopt children, but can act as their foster parents. Considering that their first plea for achieving the status of foster parents was rejected, even though the Law is clear, they have decided to file a law suit against the Center for Social Care in Zagreb and the designated Ministry of Social Policy and Youth

on the basis that their lawful right was stripped from them because of their sexual orientation. As previously mentioned, the Administrative Court in Zagreb decided in their favor, making the couple able to become foster parents. The decision was later approved by the Croatian Constitutional Court which added weight to the legality of the process, but caused legal issues which stem from questions of quality of national laws and the ability of Courts to nullify some of their aspects.

### **Reactions from various groups**

As expected, the subject shrouded in controversy caused a broad specter of reactions from various non-governmental organizations, media, politicians and celebrities. Different NGO-s promoting the rights of LGBT community declared how the Constitutional Court's decision is a significant step forward towards equality for all citizens regardless of their specificities such as sexual preference or gender identity. Their joy is considerably directed towards the explicit fact that the Croatian justice system decided in the favor of the couple and in that way, confirmed the legality of similar situations, therefore paving the way for the establishment of good practices in future procedures. It must be noted that such decisions are regulated by international law and supranational judiciary entities such as European Court of Human Rights which clearly stress that in regards of fostering, but also private and family life, should be no discrimination based on sexual preference.

On the other hand, those who represent traditional and conservative driven segments of society, argued that the Administrative and Constitutional Courts broke the legality of several Croatian laws, by presenting them as unconstitutional with their decision. Such stance is clarified with the point that the courts do not have the mandate by the people or the democratic legitimacy to unilaterally interpret the law. Putting the judiciary aspect aside, the same groups argued the issue of parentless children, stating that it is not in their best interest to be under the fostering care of same sex married couples because of unfavorable emotional and social environment.

### **Expert opinions on the Constitutional Courts decision**

Regarding the implications about the violation of Croatian constitutionality by the courts, an expert in legal matters, Peđa Grbin, member of Croatian Parliament, emphasized that the Administrative and Constitutional Courts used a mechanism of interpreting the Law and

deciding on how to implement it in practice by national administrative and judiciary bodies. He stated that the criteria for receiving the right of being a foster parent is not the type of living community of a couple, but its socioeconomic situation. Furthermore, it can be concluded that the Courts have decided that the Law is not unconstitutional, but it contains a discriminatory effect towards same sex couples. According to Miroslav Šeparović, the President of Constitutional Court in Croatia, “The issue lies within what is not stated in the law in which same sex persons are excluded from the potential role of foster parents. In line with that, Constitutional Court has directed the courts to implement the Constitution, international judiciary, antidiscrimination laws and the noted decision, in order to enable same sex couples, if they fulfill all the conditions, to become foster parents.”

In its reaction to the Courts decision, the Ministry of Social Policy and Youth declared that the decision of Constitutional Court is binding to all public and national bodies and institutions, by which every further decision will be made accordingly. Also, the Ministry stated that during the legislative procedure, the idea was to protect the best interests of children, who remain the first point of focus, along with the other socially sensitive groups, who are provided with the service of foster family. It is highlighted that the Constitutional Court did not nullify the law, but merely concluded that courts and other institutions are due to interpret and practice Croatian laws in line with their meaning and legitimate purpose.

### **Victory clouded in act of hate**

The social and cultural aspect of the story must be addressed also. Regardless of achieving an important step in establishing the members of LGBT community as equal citizens with the same rights as the others, the always polarized Croatian society again found itself on different sides when it comes to rights of different social groups, ways of life, traditions and habits. On a traditional masquerade parade in the city of Imotski, an oversized puppet portraying a homosexual couple with a baby was burned down, while the merry parade of children and adults clapped and happily enjoyed the sight. The hateful act immediately caused a wave of judgement and disgust. Such an occurrence provided a clear sight of immaturity of certain aspects of Croatian population, their uneducated and morally corrupt approach towards society which they are a part of, and a step down from any idea of portraying the county and its people as modern and progressive. The images of laughing children to the burning puppet added to the crude perception of the parade and caused reactions of several politicians and institutions which stressed the troubling environment for children to find themselves in and poor lessons they will

receive. Yet, the clear and decisive action towards the organizers of the parade has been nothing more than judgement of the act. Public representatives, distraught, called for action of those designated, asked the institutions to act, as if they have forgotten that they also represent certain institutions, and therefore have a much larger responsibility but mere presentation of unease.

### **Conclusion**

The decision of the Administrative and Constitutional Court towards providing the same sex married couples an opportunity and right to become foster parents is a definite small victory for human rights on several levels, from the rights of children for home and family, to the rights of various social groups. It will provide a judicial backdrop on how to act in future similar situations and establish a stronger legal representation of same sex couples and LGBT community as a whole. But the discrepancies between the laws and the constitutional decisions, inconsistencies between the actions and words of decision makers, politicians who heal their societal distraught with transferring of their responsibilities, and crude, uneducated and morally poor acts of masses, are a clear red flag, signaling that there is much more work to be done on several levels. Therefore, regardless of small quality steps, much bigger ones need to be made with society as a whole taking account of its actions in shaping the social environment for the future.