



Weekly Briefing

**Croatia social briefing:
Historic sentence enshrines the right to adopt
for same-sex couples in Croatia
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Historic sentence enshrines the right to adopt for same-sex couples in Croatia

Summary

On 26 May 2022, the Croatian High Administrative Court ruled in favour of a same-sex couple whose adoptive application was rejected repeatedly by social welfare centres in the past. “Same-sex couples can apply for adoption as any other treatment would be discriminatory and not in accordance with the European Court of Human Rights’ statements”, the High Administrative Court of Croatia stated. Therefore, the High Administrative Court has officially opened an option of adoption for same sex-couples or “life partners”, as defined in the 2014 civil union law. Furthermore, the sentence effectively rejected the appeal made by the Ministry of Labour, Pension System, Family and Social Policies who tried challenging a pro-adoption decision from the Zagreb’s Administrative Court pronounced in April 2021, making it final. But how has this long legal battle started? Which were the welfare centre’s arguments rejecting the adoption application from same-sex couples? Last but not least, will same-sex couples really be able to exercise this right?

Introduction: Mladen and Ivo’s battle

The legal battle for exercising the right to adopt by same-sex couples started six years ago when Mladen Kožić and Ivo Šegota¹, a gay couple from Zagreb, applied to be evaluated as suitable for fostering children. After being welcomed to the social centre, the couple saw their request being rejected repeatedly. The social welfare centre, which is in charge of the evaluation of suitability for adoption, claimed that the 2014 civil union law does not contemplate the right to adopt for life-partners², though still guarantees the same rights as married couples. The paradox is that if one of them had applied alone, as a single foster parent, he wouldn’t have had any problem being evaluated, since single people were already entitled to apply for adoption, differently than “life partners”.

¹Downey, Leah (2022) “Historic court ruling legalises same-sex adoption in Croatia”. *Gcn.ie*, 31 May, Available at: <https://gcn.ie/same-sex-adoption-croatia/> (Accessed 09 August 2022).

²Euronews (2021) “Croatia: Court ruling paves way for same-sex couples to adopt children”. *Euronews.com*, 6 May. Available at: <https://www.euronews.com/2021/05/06/croatia-court-ruling-paves-way-for-same-sex-couples-to-adopt-children> (Accessed 09 August 2022).

Hence, the couple decided to bring the case to the High Administrative Court in Zagreb in 2017³, supported by the Dugine obitelji (Rainbow Family Association), a pro-LGBT NGO which financed the case⁴. The first binding sentence came in December 2020: the Croatian Administrative Court issued a judgement stating that “by a meaningful interpretation of the legal provisions in their interconnectedness, the foster family, in the court's view, may include the foster parent and his or her life partner. The legislator did not prescribe a specific sexual orientation anywhere, but just to satisfy the legal requirement for the foster license, whereas in this case the legal requirements “were not even examined because of the belief that life partners cannot be foster parents.” And continued saying that the first instance body (Social Welfare Centre) must “reopen the foster care application process and decide to grant permission solely on the merits of the plaintiff's request”, basically ordering social welfare centres to treat the adoption application regardless if persons are married, life partners or single people⁵.

Nonetheless, the Social Welfare Centre rejected again the Kožić's and Šegota's application disregarding completely the Administrative Court binding decision. "There are no legal prerequisites for initiating the licensing process because they are in a life partnership," and life partners are not expressly listed in the Foster Care Act as possible foster parents”⁶, explained the social welfare centre's director.

At that point, the couple decided to return to the Administrative Court sending an appeal on the welfare centre's decision to the Ministry of Labour, Pension System, Family and Social Policies.

In May 2021 Zagreb's Administrative Court backed the couple's stance, supporting the principle that “life partners” must be entitled to adoption as married couples are. In other words, the judgement deemed the current civil union law to be discriminatory since it implies a different treatment based on sexual orientation, guaranteeing equal treatment concerning family law for same-sex couples.

³Downey, Leah (2022) “Historic court ruling legalises same-sex adoption in Croatia”. *Gcn.ie*, 31 May, Available at: <https://gcn.ie/same-sex-adoption-croatia/> (Accessed 09 August 2022).

⁴Savage, Rachel & Starčević, Seb (2021) “Croatian court backs same-sex adoption in new LGBT+ win”. *Reuters.com* 6 May, 2021, Available at: <https://www.reuters.com/article/us-croatia-lgbt-family-idUSKBN2CN19I> (Accessed 09 August 2022).

⁵Stilin, Forrest (2020) “Croatia Gay Couple Foster Care Application Rejected: Court Decision Ignored”. *Total-croatia-news.com*, 28 January. Available at: <https://www.total-croatia-news.com/politics/41127-croatia-gay-foster-rejected> (Accessed 09 August 2022).

⁶ibid.

The Ministry of Family's appeal

The Court's decision was considered a big step ahead toward equal treatment regarding Family Law in a conservative Catholic country like Croatia. Indeed, it gave same-sex couples full rights to be assessed if suitable for fostering children, regardless whether they are married or in life-partnership. As a matter of fact, "the child's right to the best possible adoptive parents remains a priority, and this ruling does not automatically mean that life partners become adoptive parents - but life partners can now contact their Social Welfare Centre without fear and apply for an adoption evaluation" as the Rainbow Families Association declared⁷.

However, the 2021 judgement was not final. The sentence was challenged by the Ministry of Family, claiming same-sex couples should not be allowed to adopt and foster children if "the best interest of the child" is considered.⁸, going further than the welfare centre's position, which was mainly based on a legal argument.

The High Administrative Court's verdict

However, in May 2022 the High Administrative Court ruled in favour of the couple, making the previous sentence final with no possibility to appeal. The Court claimed that restricting adoption only to married couples entails a different treatment based on sexual orientation, and, therefore, it's discriminatory against life partners. The ruling decision, in other words, as the Court stated previously, finds the current Civil Union Law discriminatory since implies a different treatment and doesn't comply with the positions of the European Court of Human Rights.

By doing so, the Court rejected the competent Ministry's claims, mandating the social welfare offices to accept the same-sex couples' application for suitability and evaluation, as other treatment would be unfair and discriminatory.

The verdict has far-reaching consequences and importance for LGBT rights, on one side because it allows them to apply for adoption, but also because it removes the only difference in place between marriage and civil union, meaning the right to adopt, in accordance with the

⁷Euronews (2021) "Croatia: Court ruling paves way for same-sex couples to adopt children". *Euronews.com*, 6 May. Available at: <https://www.euronews.com/2021/05/06/croatia-court-ruling-paves-way-for-same-sex-couples-to-adopt-children> (Accessed 09 August 2022).

⁸Jutarnji.hr (2022) "Sud donio povijesnu odluku: Istospolne partnere više se ne smije diskriminirati kod posvajanja djece". *Jutarnji.hr*, 26 May. Available at: <https://www.jutarnji.hr/vijesti/hrvatska/sud-donio-povijesnu-odluku-istospolne-partnere-vise-se-ne-smije-diskriminirati-kod-posvajanja-djece-15202514> (Accessed 09 August 2022).

precedent judgment of the European Court of Human Rights on the issue and the Convention for the Protection of Human Rights and Fundamental Freedoms.

The only problem now is related to discriminative behaviours in the evaluation of same-sex couples' applications: the social welfare offices may be biased in evaluating a same-sex couple's request to adopt. Hopefully, this will not happen, but there is no doubt that LGBT people still witness discrimination, though, as we said before, this is a big step forward toward more equality and respect for human rights.

Conclusion

Regardless of the likely biased behaviour that may constrain and influence the application for adoption of a gay couple, the sentence and High Administrative Court ruling is a turning point for same-sex couples and equal treatment when it comes to family law. It is even more symbolically important considering the political environment in the country and the Balkan region, far to be progressive or laic. As a matter of fact, the discriminatory treatment experienced by Kožić and Šegota is triggered by the Civil Union Law which was approved after the 2013 referendum that enshrined marriage as solely the union between a man and a woman. Therefore, the 2014 Civil Union Law, which defined the contractors as "life partners", and the Foster Care Act which did not list life partners as possible fostering parents, basically forbade same-sex couples to adopt, hence implying a different treatment based on sexual orientation.

For this reason, the Administrative High Court ruling which essentially removed this mistreatment and the only difference between civil union and marriage, meaning the right to adopt, is a turning point not only for Croatia or the Balkan region but also a wake-up call for other European countries. Indeed, after the High Administrative Court's ruling, Croatia stands on the side of 14 EU member states which have allowed same-sex couples to jointly adopt children, regardless how much influence conservatism and religion may have on the society. Taking into account all this it can be concluded that the LGBT's rights situation is much brighter in Croatia than in Italy for instance, which is a consolidated democracy and one of the founders of the EU. In Italy, religion and the Catholic church have still ascendancy in the political environment: as a matter of fact, Italy has not yet approved a law which protects against discrimination based on sexual orientation or gender identity, remaining the only EU member not to have it. And of course, does not allow life partners or single people a right to adoption.

Consequently, considering the last development in Croatia and the situation in other countries, the LGBT' stances are becoming more publicly visible, though, as we said, a consistent part of the people has not seen an improvement positively, and this may split the society in two opposite blocks. But still, the Court's judgement is a final one and, as we stressed, it removed essentially the only difference in place between marriage and civil union by law, meaning the right to adopt and foster children.