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THE RISE OF POPULISM AND THE RIGHTS OF WOMEN IN CROATIA: SOME CONSTITUTIONAL CONSIDERATIONS****

Summary: *Over the past thirty years, the countries of Central and Eastern Europe have been undergoing transition, including democratic transition, which was marked primarily by adopting the EU acquis, including that on gender equality and women's rights. These processes have not been welcome everywhere and by all political actors. As a result, in the conditions of polarization of society between the progressive liberal left and the conservative and populist right, which is gaining more and more momentum, a democratic crisis widely regarded as democratic regression and illiberalism has emerged. The aforementioned populist movement processes often put in the political foreground, often as the basic or unifying idea (opportunistic synergy) of the right-wing political spectrum, certain democratic achievements of women's rights and gender equality, such as the right to abortion or the Istanbul Convention, but only with the aim of protecting so-called traditional values, the traditional family and protecting national identity in the context of the relationship between national and European norms from "dangerous" "gender politics" and "gender ideology" imposed by the corrupt EU political elite. The strengthening of these processes was also influenced by some other socio-political, economic and technical circumstances, such as the migrant and health crises, economic crisis, but also the development of technology and social media, which enabled the global networking of anti-gender actors. Anti-gender movements*

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and strategies are not unknown even in the sphere of constitutional law, and, according to an interesting classification by Rubio-Marin, there are three basic strategies recognized to have been used by the aforementioned anti-gender actors, which are: regressive constitutional erosion, constitutional entrenchment and constitutional preemption. The described processes and movements did not bypass Croatia either, for which the paper follows the implementation of the described strategies on practical examples: the regulation and interpretation of the right to abortion, the constitutional referendum on marriage and the ratification of the Istanbul Convention.

Keywords: *democratic backsliding, gender equality, women's rights, anti-gender, constitutional strategies, Croatia*

1. INTRODUCTION

A lot has been written on the crisis on democracy and the rule of law in Europe, the crisis of constitutional democracy, democratic backsliding and illiberalism,[1] whereby the crucial challenges addressed were in connection with the guarantees of judicial independence, the independence of constitutional courts, the undermining of supervisory institutions and the overall crisis of institutional trust in the climate of substantial polarization of society. Likewise, many authors, starting from the 1980s, which were marked by the surge of populist political parties,[2] devoted their research to the populist phenomenon[3] as well to the relation between democratic backsliding and conservative populist projects.[4]

However, the topic of the relation between the crisis of democracy and the growth of populism directed at the rights of women, i.e. the topic of gender aspect of populism and the gendered nature of democratic backsliding,[5] is relatively new and, although not completely ne-

1 Select papers include: Adam Przeworski, *Crisis of Democracy* (Cambridge University Press 2019); Biljana Kostadinov, 'Vladavina prava – backsliding ili globalni kraj liberalne demokracije' in *Ustavne promjene i političke nagodbe. Republika Hrvatska između ustavne demokracije i populizma* (HAZU 2021) 365–379; Martin Loughlin, 'The Contemporary Crisis of Constitutional Democracy' (2019) 39(2) OJLS 435–454; Kim Lane Scheppele, 'Autocratic Legalism' (2018) 85(2) U Chi L Rev 545–583; Tímea Drinóczi, 'The Unfolding Illiberalism in Hungary' (2021) 46(3-4) RCEEL 352–380; Kim Lane Scheppele, 'The Rule of Law and the Frankenstate: Why Governance Checklists Do Not Work' (2013) 26(4) Governance 559–562; Branko Smerdel, 'Kognitivna disonanca ili promjena paradigme: Kriza ili propast ustavne demokracije: što nakon populističke kontrarevolucije?' in *Ustavne promjene i političke nagodbe. Republika Hrvatska između ustavne demokracije i populizma* (HAZU 2021) 51–71.

2 Cas Mudde, 'The Populist Zeitgeist' (2004) 39(4) Govt & Oppos 541.

3 Among different authors writing about populism we highlight: Cas Mudde, 'The Populist Zeitgeist' (2004) 39(4) Government and Opposition 541–563; Cristóbal Rovira Kaltwasser, *Populism vs. Constitutionalism? Comparative Perspectives on Contemporary Western Europe, Latin America, and the United States* (Policy Brief, The Foundation for Law, Justice and Society 2013) <https://ora.ox.ac.uk/objects/uuid:0b3a92d0-401b-4af8-a4bd-89afb98e7454/files/m9aa11e2c361d04b11b64a57564b66b30> accessed 21 October 2026; Mark Tushnet and Bojan Bugarič, 'Populism and Constitutionalism: An Essay on Definitions and Their Implications' (2021) 42(6) Cardozo Law Review; Berto Šalaj, 'Što je populizam?' (2012) 3(11) Političke analize 55–61.

4 See, e. g.: Paul Blokker, 'Populist Understandings of the Law: A Conservative Backlash?' (2021) 14(1) PACO <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3784236> accessed 21 October 2026; Anne Pintsch, Daniel Hammerschmidt and Carl Meyer, 'Introduction: the decline and rise of populism in Europe and their effect on democracy promotion' (2022) 35(4) CRIA 405–423; Yann Algan and others, 'The European Trust Crisis and the Rise of Populism' 2017 BPEA 309–382.

5 Silvia Suteu, 'The Rule of Law Crisis Was Always Gendered: The Anti-Gender Playbook in Europe' (2025) 21(1) EuConst 58, 59.

glected, especially by political scientists, sociologists, and a select few constitutional scholars,[6] there is still plenty of room for improvements in research, primarily concerning the countries in Central and Eastern Europe, and in particular in Croatia, where this topic has mostly been neglected.

The countries of Central and Eastern Europe share a common socialistic tradition and have gone through similar, albeit not equally as peaceful,[7] democratic transition in the 90s. On the constitutional plan, the wave of new democratic constitutions brought upon a thorough change of the systems of government (constitutional revolution),[8] and the devotion of constitution makers of new democracies to the field of human rights has been clearly visible, qualitatively and quantitatively. All countries in said region established their constitutional courts and have gradually been integrated into the United Nations and the Council of Europe. Most of them also ratified the majority of international human rights protection documents of those organizations, including those regarding women's rights. They have also gradually, but not with the same dynamic, become European Union (hereinafter: EU) members who have harmonized their legislations with EU gender equality *acquis*. Accepting EU gender equality directives and anti-discrimination legislation has led to the understanding of EU as the major driver of progress on gender-related issues.[9] Naturally, the actual implementation of gender equality acquis is an entirely different matter, but the fact is, the supranational nature of EU membership overall was not met with open arms everywhere, mostly due to the principle of supremacy of EU law.[10] The growing Euroscepticism and the rise of illiberal governments in Hungary (starting from 2010) and Poland (starting from 2015) are the best indicators of the described "welcome" status, not to mention the massive expansion in the number of proceedings before the Court of Justice of the EU, mostly concerning judicial reforms, but also partly regarding the rights of women and gender equality.[11] On the other hand, some countries from the region, such as Slovenia, have been rather friendly towards accepting and implementing the aforementioned EU standards.[12]

This paper aims at exploring the influence of the growth of (right wing) populism on women's rights in Central and Eastern Europe, with emphasis on the constitutional dimension of this relationship, i.e. exploring different constitutional strategies used by anti-gender actors in synergy with populist parties in Croatia. In that context, in the second section of the paper we continue by discussing the specifics of anti-gender movement mobilization and the growth of right-wing populism in the last two to three decades in Central and Eastern Europe with specific reference to the networking and opportunistic synergy of the two against the so-called

6 Valuable contributions in this sense were made by, e.g.: Agnieszka Graff and Elżbieta Korolczuk, *Anti-Gender Politics in the Populist Era* (Routledge 2021); Silvia Suteu, 'The Rule of Law Crisis Was Always Gendered: The Anti-Gender Playbook in Europe' (2025) 21(1) EuConst 58–89; Martin Loughlin, 'The Contemporary Crisis of Constitutional Democracy' (2019) 39(2) OJLS 435–454.

7 Some countries had largely peaceful transitions, such as Hungary, Poland, Czechoslovakia, while others, like Croati and Romania, were not as fortunate in that regard.

8 Branko Smerdel and Smiljko Sokol, *Ustavno pravo* (Narodne novine 2009) 79.

9 Barbara Havelková, Mathias Möschel and Anna Śledzińska-Simon, 'Women, gender, and constitutionalism in Central and Eastern Europe: Introduction to the symposium' (2025) 23(2) I-CON 486, 492.

10 *Ibid.*

11 *Ibid.*

12 *Ibid.*, 493.

"gender ideology". The focus of the third section of the paper is on defining and explaining the means and aims of said strategies. The overall aim of the paper is to reach conclusions on whether those strategies have become a staple in the Croatian anti-gender arena and how much they, together with the lack of care by the government, have negatively impacted the rights of women in Croatia.

2. THE GROWTH OF POPULISM AND WOMEN'S RIGHTS: "OPPORTUNISTIC SYNERGY" (RIGHT-WING) POPULISM AND ANTI-GENDER ACTORS

The wave of anti-gender politics in Central and Eastern Europe grew simultaneously with the growth of illiberalism and anti-EU rhetoric. It started in Poland (2012/13 onwards), then continued in Slovakia (2014/15 onwards), Hungary (2017 onwards),[13] and it has certainly not bypassed Croatia either (2013 onwards). The current wave of conservative anti-gender movements in Central and Eastern Europe is part of the global anti-gender movement based on the anti-liberal idea of gender and family.[14] We could say that the anti-gender movement phenomenon is not particularly new since it has existed for a couple of decades already, becoming especially apparent during multiple countries' conservative actors' responses to the decision of World Conferences of Women in Cairo and Beijing in 1994 and 1995,[15] though it should be noted that the initial leading role in the "resistance" to the introduction of the term "gender" was played by the Vatican, as well as other religion organizations.[16] It could also be said that the dynamic and adaptability of its growth was quite intensive, particularly in the past two decades, marked by strong anti-gender mobilization and global networking of various anti-gender scenes, mostly ultraconservative religious and right-wing populist political actors. This sort of networking should not come as a surprised, as the right-wing populism has served as a fertile ground for promoting political goals and visions of society under patriarchal control. Lastly, this wave should definitely not be considered solely as something accidental or an incidental part of democratic backsliding, but as its core, a common meeting ground for most right-wing based movements.[17] The main preoccupation of those movements are women – specifically, women's sexual and reproductive rights, including the right to abortion, actions against the so-called gender ideology, sexual education, gender studies and opposing the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (hereinafter: Istanbul Convention). What differs those movement from their previous more or less similar iterations is the intensity, complexity, networking – which became much more pronounced with the rise of the Internet and various social media, and its

13 Eszter Kováts, 'Anti-gender politics in East-Central Europe: Right-wing defiance to West-Eurocentrism' (2021) 13(1) Gender – Zeitschrift für Geschlecht, Kultur und Gesellschaft 76, 78.

14 Suteu (n 5) 59.

15 Nur Sinem Kourou, *Right-Wing Populism and Anti-gender Movements: The Same Coin with Different Faces* (GPoT Policy Brief No 68, 2020) <https://www.iku.edu.tr/gpot/policy-brief-nur-sinem-kourou-right-wing-populism-and-anti-gender-movements-same-coin-different> accessed 21 June 2026.

16 Graff and Korolczuk (n 6) 38.

17 Kováts (n 14) 87.

proximity with right-wing populism.[18] This should not come as a surprise seeing as the current anti-gender discourse is structured as entirely populistic in nature, opposing the "pure, innocent gender-conservatives" and the "corrupt, immoral elites" spreading "gender ideology".[19] The differentiation between "us" and the "dangerous them" is the very core of populism, which is also apparent in other segments of populism opposition, such as anti-elitism, anti-pluralism, nationalism and anti-gender positions in general. As Dietze and Roth rightly observe, "the specter of right-wing populism is haunting Europe",[20] a "specter obsessed with gender and sexuality".[21] Even though the anti-gender attitude of populist parties is often not immediately apparent and recognizable ("blurred and incoherent"),[22] it is impossible to properly analyse it without involving the gender dimension. Moreover, we can agree with Mostov's take on populism as being "always gendered and dangerous to women and democracy".[23] Although gender is not usually perceived to be in connection with nationalistic ideologies, due to the particularly emotional response to gender politics, gender has indeed arisen as the ideal ideological catalyst for right-wing populist scene and an extremely important instrument of realizing different populist goals,[24] i.e. as a "meta language" and an "effective bridge".[25] Therefore, we can view the relation anti-gender movements and right-wing populism through the lens of "opportunistic synergy" in which both actors reap their own benefits: while populists accept anti-gender rhetoric to "increase moral legitimacy in the eyes of traditional values",[26] anti-gender actors seek to not only participate in all stages of legislative procedures,[27] but also to put forward proposals for constitutional review and/or to organize petitions and protests.

To answer how, so to say, a theological movement body grew political limbs, it is necessary to explain different, concurrent or preceding, socio-political, economic and technological circumstances over the past two to three decades made this transformation possible.[28] Notably, different crises that disproportionally affected women, such as the great financial crisis of 2008 and the 2019 pandemic, which redefined political goals of ultraconservative actors who are, under the disguise of "crisis of family", trying to pass on the goals of preserving the "natural family" and "family values". This was further emphasized in Central and Eastern Europe by the rise to power of right-wing populists with the migrant crisis in 2015/16, who tried to represent immigrants – mostly people of other religions – as a "threat to Europe and to Europeans" (e.g. Law and Justice in Poland, Lega in Italy, AfD in Germany), bringing together

18 Graff and Korolczuk (n 6) 7.

19 *Ibid.*

20 Gabriele Dietze and Julia Roth, 'Right-Wing Populism and Gender: A Preliminary Cartography of an Emergent Field of Research' in Gabriele Dietze and Julia Roth (eds), *Right-Wing Populism and Gender: European Perspectives and Beyond* (Transcript 2020) 7.

21 *Ibid.*

22 Ronald Car, 'Gender Equality: A Task for Militant Democracy, Not for Culture Wars?' in Martin Mejstřík and Vladimír Handl (eds), *Current Populism in Europe: Gender-Backlash and Counter-strategies* (Heinrich-Böll-Stiftung 2021) 15.

23 Julie Mostov, 'Populism is Always Gendered and Dangerous' (2021) 5 Frontiers in Sociology 1.

24 Mara Malagodi and Elettra Stradella, 'Conceptualising the Link between Constitutional Degradation and Gender Populism' (2025) 21(1) EuConst 8, 12.

25 Dietze and Roth (n 20) 16.

26 Graff and Korolczuk (n 6) 24.

27 *Ibid.*

28 *Ibid.*, 42.

"gender ideology" and "islamophobia".[29] Finally, the previously unprecedented spread of conservative and anti-gender agendas, due to the global connection of relevant networks and actors, has been fueled by technological advancements, including social networks and platforms for online petitions, etc.[30] The cooperation of other ultraconservative and political actors is facilitated and promoted by various transnational organizations, such as the global *pro-family*, but actually *anti-choice* and *anti-LGBT*, network, the World Congress of Families, renamed in 2016 to the International Organization for the Family.[31]

The opportunistic synergy of anti-gender actors and right-wing populists has found its ideal niche in Central and Eastern Europe. In this context, Graff and Korolczuk explain that, unlike in the 1990s, when the role of the West was to help the East in the establishment of liberal democracy, today the roles have been reversed and the role of the East is to help the West and save it from "rampant individualism and secularization".[32] In these countries, resistance to Western "gender ideology" routinely involves presenting gender as "the Ebola from Brussels",[33] where the emphasis is on the (undemocratic) way in which the policy of sexual and reproductive rights was introduced,[34] i.e. on presenting the resistance to the gender equality *acquis* as "the mark of national sovereignty and a chance to reclaim its rightful place in the moral geography of Europe."[35]

Although right-wing populism is not a new phenomenon in Central and Eastern Europe, what has specifically characterized it in the last few decades, besides its networking with anti-gender actors, is its exceptional ability to adapt the concrete goals of the struggle to specific local conditions: somewhere it is the right to abortion, elsewhere the Istanbul Convention, same-sex marriage, or the introduction of sex education. Of course, migrations of potential "targets" in the geographical and temporal dimension are a frequent occurrence, but, in general, it can be concluded that in most former socialist countries the focus is on the following three areas: the alleged threat to the "traditional family", opposition to the Istanbul Convention, and the right to abortion.[36] In all three of those narratives, the networking of anti-gender movements with populist parties and politicians is present. Malagodi and Stradella state that the current right-wing populism should be referred to as "gender populism", since it properly accepts anti-gender ideology, and often even represents the institutional and political version of that ideology – i.e., it identifies with a set of discourses about sex, gender and sexuality.[37]

29 *Ibid.*, 43.

30 *Ibid.*

31 *Ibid.*, 47.

32 *Ibid.*, 54.

33 *Ibid.*, 92.

34 *Ibid.*, 18.

35 *Ibid.*, 27.

36 Suteu (n 5) 60.

37 Malagodi and Stradella (n 24) 9.

3. THE GROWTH OF POPULISM AND WOMEN'S RIGHTS IN CROATIA: SOME CONSTITUTIONAL CONSIDERATIONS

The rhetoric and legal engagements of networked anti-gender actors, with a special role of populists, in reducing the achieved level of women's rights also have their significant constitutional dimension. The relation between populism and constitutionalism is generally quite complex.[38] One of the main characteristics of this relationship is the selective and partial acceptance of the determinants of constitutionalism by populists, or acceptance of only those that suit them to achieve their desired goals. In addition, the constitutional arena that is available to various anti-gender actors to achieve their intended goals is rich with constitutional strategies. In fact, they are not only quite diverse, but are such that they undoubtedly contribute to constitutional erosion, or the so-called "abusive constitutionalism",[39] especially in countries in which democratic and rule of law backsliding are present.

Rubio-Marin distinguishes between three constitutional strategies commonly used by anti-gender actors: 1. the strategy of regressive constitutional erosion, 2. the strategy of constitutional entrenchment, and 3. the strategy of constitutional preemption.[40]

The first tactic refers to constitutional litigation, which aims to nullify or (seriously) limit the previously guaranteed level of women's rights, either through legislation or case law, especially in countries where (constitutional) courts are "politically packed".[41] The above is best supported by the dynamics of the erosion of the right to abortion in the USA (*Dobbs v Jackson Women's Health Organization*, 2022) and Poland (Decision of the Constitutional Tribunal from 2020). The Polish example shows how the right-wing collation in power from 2015-2023, combined with the unlawful appointment of the members of the Constitutional Tribunal, contributed to the erosion of democratic norms,[42] erosion of democratic legitimacy of institutions,[43] and, ultimately, the erosion of women's rights. In Hungary, the proposal of a "heartbeat law" in 2022 came from a right-wing party (Jobbik, in 2016.)[44]

The second strategy involves the (mis)use of constitutional amendments to strengthen the "traditional gender order".[45] It is especially promising in countries where the procedure for amending the constitution in a parliament with a sufficiently strong parliamentary majority is not "overly burdensome",[46] i.e. in countries with poorly regulated referendum institutions, especially in relation to popular initiative referendums. Recently, the tactic of constitutional reform in Central and Eastern European countries has been used in the fight against same-sex marriage, i.e. in favour of the constitutional definition of marriage as a life union between a

38 *Ibid.*, 19.

39 Ruth Rubio-Marín, 'Anti-Gender Constitutionalism' (2025) 21(1) EuConst 32, 37.

40 *Ibid.*, 39.

41 *Ibid.*

42 Suteu (n 5) 73.

43 Rubio-Marin (n 39) 40.

44 Suteu (n 5) 71.

45 *Ibid.*

46 *Ibid.*, 45.

man and a woman. For example, the Hungarian Fundamental Law from 2011 defined marriage not only as a life union between a man and a woman, but also as the basis for the survival of the nation.[47] Attempts to amend the constitution by introducing the definition of marriage as a heterosexual institution through popular initiative referendums were recorded in several former socialist countries, some of which were successful (Croatia, 2013), while others failed due to an insufficient number of collected signatures (Slovakia 2014, Romania 2018).[48]

Finally, the third tactic refers to presenting the protection of the "traditional family" as a sign of constitutional sovereignty, which is conveyed through the prism of national identity.[49] and the relation between supranational norms and the national constitution, and is especially present in constitutional debates surrounding the constitutionality of the Istanbul Convention. The mobilization against the so-called "gender ideology" of the Istanbul Convention opened numerous constitutional debates in several countries of Central and Eastern Europe, whose constitutional courts had the opportunity to decide on the compatibility of the provisions of the Istanbul Convention with national constitutions that "articulate a binary and biological understanding of sex."[50] The constitutionality of the Istanbul Convention was questioned before the constitutional courts of Bulgaria (2018), Latvia (2021), Moldova (2022) and Lithuania (2024).[51] Only the Bulgarian Constitutional Court found that the Convention was in violation of the Constitution, since the Convention "was incompatible with the binary biological conception of sex enshrined in the Constitution."[52] While in some countries (like Croatia) the ratification of the Istanbul Convention, due to pressure from conservative anti-gender actors, was accompanied by a political "interpretative declaration" about not accepting the obligation to introduce "gender ideology", in other countries the constitutional controversies appeared after the ratification of the Convention. Poland ratified the Convention in 2015, but when the Law and Justice (Prawo and Sprawiedliwośc, PiS) came into force, an evaluation of the Convention's constitutionality was requested (2020), which was officially withdrawn four years later when the new establishment took over.[53]

The following section paper will show how all three constitutional strategies are a part of the repertoire of anti-gender actors in Croatia as well. However, not all strategies were successful nor did they lead to constitutional erosion, or to an erosion of the rights of women.

As one of the former socialist states that proclaimed its democratic Constitution on December 22, 1990, Croatia has, over time, and intensively from 2000 onwards, managed to build a fairly good legal and institutional framework regarding women's rights, gender equality and non-discrimination.[54] The construction of this framework was strongly influenced by

47 Malagodi and Stradella (n 24) 40.

48 Rubio-Marin (n 39) 48.

49 *Ibid*., 39.

50 *Ibid*., 50.

51 Dovilė Pūraitė-Andrikienė, 'Conclusion on the Constitutionality of the Istanbul Convention of the Lithuanian Constitutional Court: Context, Reasoning, and Legal Consequences' (2025) 8(1) Access to Justice in Eastern Europe 322 <https://ajee-journal.com/upload/attaches/att_1734361289.pdf>.

52 Rubio-Marin (n 39) 52.

53 *Ibid*.

54 For an overview of legal and institutional framework see, e.g.: Anita Blagojević, 'Gender Equality in the Republic of Croatia. Two Steps Forward, One Step Back' in Irene Spigno, Valentina Rita Scotti and Juliano Luccas Pereira Da Silva (eds), *The Rights of*

the process of Europeanization. However, simultaneously with this process, with the growth of Euroscepticism as a response to the acceptance and implementation of EU standards in the field of gender equality, there was a growth of anti-gender movements in Croatia, which intensively linked their legal mobilization with populist politicians and parties. At the same time, it should be emphasized that this mobilization of conservative organizations is part of a transnational conservative movement, that is, these organizations do not have an indigenous dimension, but are often branches of transnational conservative organizations.[55] The key actors of the Croatian anti-gender scene were (and still are) various institutions (including religious), conservative civil society organizations, and conservative and far-right populist parties and politicians who actively support policies directed against gender equality and women's rights.[56] The growth of the anti-gender scene, from the first phase in 2006, marked by the mobilization against sex education, through the second phase in 2013, marked by successful lobbying for the marriage referendum, to the phase of entering the political scene from 2014 onwards,[57] is proof of the exceptional continuity, capacity and organization of these networked actors. The opportune synergistic networking with the political scene involves two groups of main actors: on the one hand, there are numerous conservative organizations (such as Vigilare and Voice of Parents for Children (Glas roditelja za djecu – GROZD) and popular initiatives (such as In the Name of the Family (U ime obitelji)), and on the other hand, there are anti-gender and populist political parties, from the first anti-gender party, Croatian Growth – HRAST, to the electoral victory of the Homeland Coalition in the 2016 parliamentary elections, and then the winning of parliamentary seats by far-right populist parties in the 2020 and 2024 elections (Bridge Party, Homeland Movement and Croatian Sovereigns). Moreover, the Homeland Movement, a right-wing populist political party with a pronounced anti-gender discourse, focused specifically on opposing "gender ideology" and the Istanbul Convention, and is currently part of the ruling coalition.

The networking of anti-gender actors with populist parties occurred at an "ideal moment" marked by a crisis of democracy and the rule of law, a pronounced distrust of citizens in all government institutions, and the growing of division in society. All these circumstances present fertile ground for populist actors, especially in countries that have extremely poor legal regulation of referendums, a parliament that ignores the constant warnings of the profession about the necessity of reforming that legislation, as well as the decisions of the Constitutional Court, for example one related to the necessity of passing a new "Abortion Law", but the Constitutional Court that is also unwilling to engage more actively in solving the accumulated problems.

Women in Comparative Constitutional Law (Routledge 2023) 17–34.

55 E.g. The Vigilare Association is a branch of the conservative organization Tradition, Family and Property and closely cooperates with the members of said association in Poland, Antonija Petričušić and Diandra Delić, 'Osporavanja reproduktivnih prava žena pravnom mobilizacijom antirodnog pokreta u Republici Hrvatskoj' (2024) 54(1) Revija za sociologiju 33, 46.

56 *Ibid*., 44.

57 Tanja Vučković Juroš and Maja Gergorić, 'Mobilizing the Womb: Anti-Abortion Activism and the Institutionalization of the Anti-Gender Movement in Croatia' in Roman Kuhar and Adriana Zaharijević (eds), *Anti-Gender Mobilizations in the Post-Yugoslav Space: Hidden Connection* (Palgrave Macmillan 2026) 38–40.

3.1. STRATEGY OF THE REGRESSIVE CONSTITUTIONAL EROSION: THE RIGHT TO ABORTION

The liberal 1978 Act on Health Measures for the Exercise of the Right to Free Decision-Making on Childbearing (hereinafter: the Abortion Act), which regulated the right to abortion, is one of Croatia's longest-standing legislative acts.[58] It is directly grounded in the 1974 Constitution of the Socialist Federal Republic of Yugoslavia, which was the first constitution in the world to explicitly guarantee the right "to free decision-making on childbearing" (Art. 191 of the SFRY Constitution). This provision was not included in the new Constitution of the democratic and sovereign Republic of Croatia. Under the aforementioned Abortion Act, abortion is legally permitted in the Republic of Croatia upon the pregnant woman's request up to ten weeks from conception.

The greatest challenge to this Act in its nearly half-century existence was the constitutional review before the Croatian Constitutional Court. It took the Constitutional Court of the Republic of Croatia 26 years from the initial proposal to reach a decision.[59] Although it rejected arguments regarding the unconstitutionality of the right to abortion, the Constitutional Court ordered the Croatian Parliament in its ruling to enact a new abortion law within two years. However, this still has not happened to this day.

The abortion law has been challenged by numerous petitioners, including the Croatian Movement for Life and Family, the Croatian Catholic Association "WE" and the Association "In the Name of the Family".[60] In its petition, the Croatian Movement for Life and Family argued that the right to abortion conflicts with the constitutional provision guaranteeing every human being the right to life (Article 21 of the Constitution of the Republic of Croatia), citing "scientific facts" that confirm a conceived, unborn child is a person.[61] Consequently, this petitioner viewed abortion as a denial of the right (to life) rather than as a right itself.[62] The Association "In the Name of the Family" also identified the unconstitutionality of the abortion law in its disregard for fathers, given that the procedure is performed at the request of the pregnant woman.[63] The Association believed this undermined the equality of both parents in relation to the child.[64]

In its ruling, the Constitutional Court noted that international law does not provide an answer to the question of when human life begins and that its protection in international human rights instruments is of a general nature. That means that the interpretation of the beginning

58 Ivana Tucak, Josip Berdica and Laura Seleš, 'Future of the Abortion in Croatia' in Ivan Pavić, Nikša Alfirević and Suzana Vuletić (eds), *Bioethics and Social Ethics in The Modern World: The Environmental and Social Sustainability Context(s)* (Palgrave Macmillan 2025) 71, 80.

59 *Ibid.,* 80.

60 *Ibid*., 82.

61 U-I-60/1991 et al. Ustavni sud [Constitutional Court] February 21, 2017, *Narodne novine [Official Gazette]* 25/2017, para. 4.1; *ibid.*, 82.

62 U-I-60/1991 *et al*. Ustavni sud [Constitutional Court] February 21, 2017, *Narodne novine [Official Gazette]* 25/2017, para. 4.1 and 4.1.1; *ibid*., 82.

63 Abortion Act, Art. 18.

64 U-I-60/1991 et al. Ustavni sud [Constitutional Court] February 21, 2017, *Narodne novine [Official Gazette]* 25/2017, para. 4.6, Tucak, Berdica and Seleš (n 58) 83.

of human life falls within the purview of individual states.[65] Although a woman's right to freely decide on childbearing is not explicitly guaranteed by the new Croatian Constitution, it is protected by the right to privacy under Article 35 of the Constitution – as interpreted by the Croatian Constitutional Court – which guarantees a woman the right to make autonomous decisions regarding conception and pregnancy. This right is not absolute; however, when restricting it, the legislature must strike a balance with the state's legitimate interest in protecting the unborn.[66]

Although the Croatian Constitutional Court has thus afforded constitutional protection to the right to abortion, the situation in practice is far from ideal. Croatia ranks low in the "Contraception Policy Atlas Europe 2025" published by the European Parliamentary Forum on Sexual and Reproductive Rights.[67] The issue of abortion is largely linked to the strong influence of the Catholic Church in Croatian society, a fact supported by data showing that 78.97% of Croatia's inhabitants identify as Catholic.[68] Timely access to abortion is hindered by the high proportion of doctors and other healthcare professionals who refuse to participate in performing abortions. While the lack of official records makes it impossible to determine the exact number, data collected by the Ombudsperson for Gender Equality in 2019 indicated that nearly 60% of healthcare professionals (specifically 58.8%) held this stance.[69] Furthermore, significant public attention is drawn to initiatives advocating for the protection of life from conception, such as the "March for Life" (which has organized public gatherings and national marches for the protection of life from conception since 2016)[70] and the public prayers held by the "Knights of the Immaculate Heart of Mary".[71] Paradoxically, however, although the majority of Croatian citizens identify as Catholic, this does not dictate their stance on abortion; all studies show that most citizens believe women should have the right to choose whether to give birth. A recent survey revealed that 75% of Croatian citizens hold this view, while 70% do not support the public prayers organized by the aforementioned Knights.[72]

Although seven years have passed since the deadline set for the Croatian Parliament to enact a new abortion law, the majority of parliamentary parties do not question the Constitutional Court's ruling regarding the constitutional right to privacy, which protects a woman's right to abortion. The only significant exception is the Homeland Movement, a party that is

65 U-I-60/1991 *et al*. Ustavni sud [Constitutional Court] February 21, 2017, *Narodne novine [Official Gazette]* 25/2017, para. 26, *ibid*., 86.

66 U-I-60/1991 et al. Ustavni sud [Constitutional Court] February 21, 2017, *Narodne novine [Official Gazette]* 25/2017, para. 44.1, *ibid*., 86–87.

67 CONTRACEPTION POLICY ATLAS EUROPE, Tracking government policies on access to contraceptive supplies, family planning counselling and the provision of online information on contraception, European Parliamentary Forum for Sexual & Reproductive Rights, 2025 <https://www.epfweb.org/sites/default/files/2025-02/CCInfoEU_A3_EN_2025_FEB14%20BIS.pdf> accessed 1 June 2026.

68 Rezultati Popisa stanovništva 2021. [The Croatian Bureau of Statistics 2021 Census] <https://dzs.gov.hr/vijesti/ objavljeni-konacni-rezultati-popisa-2021/1270> accessed 1 May 2026.

69 Izvješće Pravobraniteljice za ravnopravnost spolova za 2018. godinu [Croatian Ombudsman for Gender Equality, 2018 Report] <https://www.prs.hr/application/uploads/IZVJE%C5%A0%C4% 86A/Izvje%C5%A1% C4%87e_o_radu_Pravobraniteljice%20za%202018%20godinu.pdf> 315, accessed 2 June 2026, see also Antonija Petričušić, Reproduktivna prava kao ljudska prava <https://informator.hr/strucni-clanci/reproduktivna-prava-kao-ljudska-prava#footnote-2581-8> accessed 2 June 2026.

70 March for Life website <https://hodzazivot.hr/o-nama/> accessed 2 June 2026.

71 Knights of the Immaculate Heart of Mary website <https://vitezovi-bsm.hr/hr/3/Tko+smo+mi> accessed 2 June 2026.

72 A 2024 research showed that 75% of female citizens in Croatia supported the woman's right to abortion <https://voxfeminae.net/vijesti/novo-istrazivanje-75-gradanki_a-rh-podrzava-pravo-na-pobacaj/> accessed 2 June 2026.

part of the current ruling coalition. Their political platform emphasizes the need to protect life from conception to natural death.[73] As already noted, the issue of abortion is largely linked to the strong influence of the Catholic Church in Croatian society, and not so to the influence of anti-gender and populist actors. As shown, the constitutional review process demonstrates that the attempt to repeal existing abortion regulations was unsuccessful. Therefore, the first selected case can be viewed through the prism of the attempt of regressive constitutional erosion.

3.2. STRATEGY OF CONSTITUTIONAL ENTRENCHMENT: CONSTITUTIONAL DEFINITION OF MARRIAGE

Another common constitutional strategy used by anti-gender actors is constitutional entrenchment, which, as previously stated, represents the misuse of constitutional changes with the aim of strengthening the traditional gender order.

The process of anti-gender politics penetrating into constitutional matters in reached its culmination on December 1, 2013, when, based on 683,948 signatures collected as part of the popular initiative "In the name of the family", received by the Croatian Parliament on June 14, 2013, and in accordance with the decision of the Croatian Parliament of November 8, 2013,[74] a referendum was held on the proposal to amend the Constitution of the Republic of Croatia, which proposed that Art. 62 of the Constitution be amended with a new provision according to which marriage would be defined as the life union of a woman and a man. Despite the fact that the earlier constitutional amendment of 2010 removed from the Constitution the provision on the majority of voters required to participate in a referendum to pass a referendum decision,[75] 37.9 percent of voters participated in the referendum, and as many as 65.87 percent of voters were in favor of the proposal.[76]

During the 2013 campaign, which we can basically regard as political because it very quickly took precedence over the usual issues of governance in Croatia, Željka Markić, the campaign leader from the civil association "In the Name of the Family" (which later gave rise to the popular initiative with the same name), appeared on nearly all relevant political radio and television shows in Croatia. However, the organizers of the referendum initiative constantly

73 Politički program Domovinskog pokreta [Homeland Movement Political Agenda] 10 <https://dp.hr/wp-content/uploads/2024/03/Politicki-pogram-Domovinskog-pokreta.pdf> accessed 2 June 2026.

74 *Narodne novine [Official Gazette]* 134/2013. The decision to call the referendum passed with 104 out of 151 M.P. votes, even though the Constitution does not explicitly stipulate the majority required for such a decision, so it could have been passed by a simple majority.

75 In political terms, the purpose of the constitutional amendment was to ensure that the EU accession referendum, which occurred in January 2012, did not fail due to low turnout. For the Parliament decision to call the referendum on the accession of the Republic of Croatia to the European Union, see *Narodne novine [Official Gazette]* 151/2011.

76 Izvješće Državnog izbornog povjerenstva Republike Hrvatske o državnom referendumu održanom 1. prosinca 2013. [State Electoral Commission Report on the State Referendum held on December 1, 2013] para. 3–4, <https://www.izbori.hr/arhiva-izbora/data/referendum/2013/izabrani/i_81_000_0000.pdf> accessed 21 May 2026.
For comparison, a total of 56.29 percent of voters took part in the 2011 parliamentary elections, see Konačni službeni rezultati izbora [2011 Parliamentary Elections Results], <https://www.izbori.hr/site/UserDocsImages /Izbori_izvjesca/konacni_sluzbeni_rezultati_2011.pdf> accessed 21 May 2026.

emphasized that their access to the media was limited and that they were victims of hate speech from "LGBT portals", such as Crol.hr and VoxFeminae.[77]

At one point, even the Croatian Government joined the campaign. A video clip was recorded showing representatives of the ruling "Kukuriku" coalition, calling on citizens to vote "against" in the upcoming referendum. The clip was ultimately not released under the sponsorship of the Government, but was, nevertheless, posted on the Kukuriku Coalition's YouTube channel.[78] Croatian Radio and Television Network (HRT), the provider of public broadcasting service in Croatia owned by the Republic of Croatia, adopted a decision at the Programme Council meeting on November 20, 2013, prohibiting the expression of personal views related to the upcoming marriage referendum, even on the employees' social media profiles.[79]

Publications by reputable international news portals before and after the referendum regularly wrote about the strengthening of right-wing and conservative forces in the midst of the economic crisis and high unemployment and deep social and political divisions that the initiative led to, as well as the strong involvement of the Croatian Catholic Church in the campaign.[80]

Croatia was also called out during the debate on the Proposal for the Annual Report on Human Rights and Democracy in the World for 2013 and the European Union's policy in that area.[81]

The importance of this topic for Croatian society and state was further supported by 11 public university professors of constitutional law who signed and published a joint statement in June 2013, warning about the problems and potential political implications of the shortcomings of Croatian referendum legislation.[82]

A documentary film titled "Referendum" was released in 2013 on the impact of the described popular initiative and the divisions it caused in Croatia.[83]

77 „Dr. Markić: 90% medija bilo je PROTIV referenduma o braku, a 70 % birača ZA, to krivotvorenje stvarnosti nastavlja se" <https://narod.hr/hrvatska/dr-markic-90-medija-bilo-je-protiv-referenduma-obraku-a-70-biraca-za-to-krivotvorenje-stvarnosti-se-nastavlja> accessed 21 May 2026.

78 „Video: članovi Vlade pozvali građane da glasaju 'protiv': ministri nisu odustali od spota" <https://www.jutarnji.hr/vijesti/hrvatska/video-clanovi-vlade-pozvali-gradane-da-glasaju-protiv-ministri-nisu-odustali-od-spota-923558> accessed 21 May 2026.

79 „Zabrana izražavanja stavova o referendumu za djelatnike HRT-a je kršenje temeljnih ljudskih prava!" <https://www.index.hr/vijesti/clanak/Zabrana-izrazavanja-stavova-o-referendumu-za-djelatnike-HRT-a-je-krsenje-temeljnih-ljudskih-prava!/712630.aspx> accessed 21 May 2026.

80 „Svijet: Konzervativna Hrvatska zabranila istospolne brakove" <https://www.crol.hr/portal/vijesti/svijet2/5171-svijet-konzervativna-hrvatska-zabranila-istospolne-brakove.html> accessed 21 May 2026.

81 Available at: <https://www.eeas.europa.eu/sites/default/files/documents/2013_human-rights-annual_report_ en.pdf>. The report proposal was also supported by one Croatian M.E.P. from the Croatian People's Party, <https://narod.hr/eu-svijet/eu/uropski-parlament-hns-ov-eurozastupnik-rados-glasao-za-izvjesce-protiv-hrvatske> accessed 21 May 2026.
The controversial parts of the Report proposal that were highlighted by our representatives, as well as the petition on the CitizenGO platform that collected over 150,000 signatures, resulted in the removal of the controversial parts regarding Croatia from the final version of the Report. <https://narod.hr/eu/uspjeh-u-bruxellesu-iz-izvjesca-izbrisano-vrijedanje-hrvatske-i-referenduma-o-braku> accessed 21 May 2026.

82 „Apel 11 profesora radi sprečavanja ustavne krize" <https://www.vecernji.hr/vijesti/apel-11-profesora-radi-sprecavanja-ustavne-krize-567551> accessed 21 May 2026.

83 Željka Markić, Dražen Ilinčić i Ljiljana Bunjevac Filipović: „Referendum" (Dokumentarni film) <https://www.youtube.com/watch?v=JjnE22QNYUQ> accessed 21 May 2026.

In December 2023, organized by the Croatian M. P. Nino Raspudić, a round table was held at the Parliament titled "10 years since the national referendum on marriage: a look back at the past and lessons for the future".[84]

After the proposal for the decision to call the referendum had been put forward by a Parliament committee, the Constitutional Court addressed the referendum issue on three separate occasions – first, with a warning (before the referendum was called), then, with a statement (after the referendum was called, but before it was held) and, finally, with a decision (after the referendum was held).

In Warning U-VIIR-5292/2013 issued on October 28, 2013,[85] The Court warned that the procedure must be approached carefully, given that it was the first referendum of its nature since the establishment of independent and sovereign Republic of Croatia. Therefore, it was necessary to ensure that the decision to call and the procedure that would ensue were within the framework of the Constitution, especially in the situation where the rules on the procedure and the method of implementation of the popular initiative in Croatia have not been precise enough to not require any clarification regarding content and form of the referendum proposal.[86] The wording of certain parts of the proposed referendum calling decision was criticized, for example – that the actual subject of the referendum decision was to forward a proposal to the Parliament instead of adopting the amendment at the referendum itself, which would imply that the amending decision lay with the Parliament.[87] The Court did not in any way express its opinion on the constitutionality of the referendum question itself, considering that such an action outside the procedure initiated by the Parliament would be an act of "impermissible voluntarism".

Before voting on the proposal for a decision to call the referendum, the Parliament rejected another proposal to submit the referendum proposal and question for constitutional review in accordance with Art. 95 of the Constitutional Act on the Constitutional Court, which the Court, in November 14, 2013 Statement[88] saw as an expression of political and legal will by the Parliament to deem the referendum proposal and question constitutional.

However, the Court continued the Statement by saying that the fact that the Parliament did not request constitutional review did not mean that the Court ceased to have a general supervisory power over the constitutionality of the whole referendum process, as this power stems from Art. 125, paragraph 9 of the Constitution. It added that said power may, however, only be used exceptionally, when such an unconstitutionality of the referendum question or such a serious procedural error existed that would threaten to undermine the structural characteristics of the constitutional state, its constitutional identity, including the highest values of the constitutional order of the Republic of Croatia.[89] Because of this, it offered its interpretation of legal implications of passing the referendum in proposed form.

84 „Okrugli stol u organizaciji zastupnika Nine Raspudića" <https://sabor.hr/hr/press/okrugli-stol-u-organizaciji-zastupnika-nine-raspudica> accessed 3 June 2026.

85 U-VIIR-5292/2013 Ustavni sud [Constitutional Court] October 24, 2013, *Narodne novine [Official Gazette]* 131/2013.

86 *Ibid*., para. 7.

87 *Ibid*., para. 5.

88 Sus-1/2013 Ustavni sud [Constitutional Court] November 14, 2013, *Narodne novine [Official Gazette]* 138/2013.

89 *Ibid*., para. 5.

The Court cited Art. 12 of the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe and Art. 9. of the Charter of Fundamental Rights of the EU (as well as the Official Explanation of the Charter),[90] as well as examples of relevant case law, pointing out that marriage and family life – protection to which persons in same-sex unions who do not have the right to marry are also entitled – are not synonymous or identical legal institutes. It pointed out that the case law showed the mentioned provisions neither prohibit nor prescribe marriage between persons of the same sex, but that the European Court of Human Rights has, regardless, closed the door to a rigid interpretation of marriage under Art. 12 of the Convention exclusively as a union of persons of the opposite sex. The regulation of access to marriage, however, remained a matter of national legislation.[91] The Court also emphasized that the referendum on the constitutional definition of marriage is not a referendum on the right to respect for family life, as it is a permanent value of the Croatian constitutional state and is guaranteed to all persons, regardless of their sex and gender. A positive referendum outcome should not affect further development of legal framework of institutes of extramarital and same-sex unions in accordance with the constitutional requirement that everyone in Croatia has the right to respect and legal protection of their personal and family life and human dignity. The incorporation of proposed provision in the Constitution would not prevent further development of legislation regarding the exercise of the right to family life through the institutes of extramarital and same-sex unions, not would it prejudicate current or future possible similarities or differences in people's rights between those two institutes.[92]

The referendum proposal was, in terms of its content, a copy of existing legal provision of the Family Act, meaning the Court, had it found the referendum proposal question unconstitutional, would have indirectly also found the provision of Art. 5 of the Family Act unconstitutional. At the end of the Statement, the Court commented on the potential argument according to which the proposed amendment would bring a novelty to the Croatian legal system by giving constitutional character to an existing statutory norm, and found that such a thing should be done only exceptionally and would, by no means, be acceptable as a rule, referring to an opinion by the Venice Commission.[93] These exceptions could only be justified with deep-rooted social and cultural characteristics of society.[94]

Finally, in the Statement the Court repeated its earlier warnings about inadequate legislative framework for referendums and popular initiatives of the current Referendum Act (which, with minimal amendments in 2016 and 2017, is still in force today) stated in October 20, 2010 Decision U-VIIR-4696/2010[95] and added that more than three years after entry into force of the Constitutional Act for the Implementation of the Constitution (adopted after the

90 Explanations relating to the Charter of Fundamental Rights [2007] OJ C303/21. From relevant parts of the Explanations that refer to Art. 9 of the Charter, it is visible that the wording of the Article has been consciously modernized to cover cases in which national legislation recognized arrangements other than marriage (*arrangements other than marriage*) for founding a family.

91 *Ibid*., para. 6.3.

92 *Ibid*., para. 7.2, 12.

93 *Ibid*., para. 9.1, see European Commission for Democracy through Law (Venice Commission), *Opinion on the Fourth Amendment to the Fundamental Law of Hungary* (CDL-AD(2013)012, 2013) <https://www.coe.int/en/web/venice-commission/-/opinion-on-the-fourth-amendment-to-the-fundamental-law-of-hungary-adopted-by-the-venice-commission-at-its-95th-plenary-session-venice-14-15-june-2013-1> accessed 21 October 2026.

94 *Ibid.*

95 *Narodne novine [Official Gazette]* 119/2010 .

constitutional amendment in 2010), the Parliament had not fulfilled its obligation, for which it was given only six months. Unfortunately, this obligation has still not been fulfilled in mid-2026. The lack of political will by the Parliament keeps forcing the State Electoral Commission, in cooperation with other state bodies, to fill the legislative gaps with *ad hoc* instructions.

From the perspective of the current topic, the least interesting was the third act by the Court, which was the January 14, 2014 Decision on the completion of the supervisory review on the constitutionality and legality of the referendum procedure, in which Art. 62 of the Constitution was amended with a new paragraph.[96] However, the Court did emphasize that regulatory deficiencies also existed regarding rules on the competent body for drafting the normative text of constitutional amendments, or for controlling it when it is proposed by voters, as well as regarding rules on the procedure and manner in which constitutional amendments would be published.[97]

Although the selected case generally has no implications for the rights of women, as it primarily concerns same-sex couples, the inclusion of the traditional definition of marriage in the Constitution has contributed to the spread of political and symbolic debates directed against gender equality. The 2013 Marriage Referendum was a turning point for anti-gender mobilization in Croatia,[98] showing how anti-gender actors "successfully reframed LGTB rights and emerged as influential political actors."[99] The referendum was followed by other anti-gender activities that expanded to the area of public and political life, such as a campaign against the ratification of the Istanbul Convention.

96 SuP-O-1/2014 Ustavni sud [Constitutional Court] January 14, 2014, *Narodne novine [Official Gazette]* 5/2014

97 *Ibid*., para. 8. The Constitutional Court pointed out that the Parliament is authorized to draft a new, consolidated text of the Constitution, which has also not been done to date. Other shortcomings of the referendum regulation, as well as the interpretations offered by the Constitutional Court, were written about by, e.g., Horvat Vuković, see Ana Horvat Vuković, 'Ustavni sud Republike Hrvatske i referendumi narodne inicijative 2013.–2015.: analiza i prijedlozi' (2016) 37(2) Zbornik Pravnog fakulteta Sveučilišta u Rijeci 805–835; *cf* Anita Blagojević and Ana Sesvečan, 'Ustavnopravni okvir referenduma u Republici Hrvatskoj: trenutno stanje i budući izazovi' (2019) 56(4) Zbornik radova Pravnog fakulteta u Splitu 835–876. Smerdel also warned about many other shortcomings since the introduction of popular referendum initiative, see Branko Smerdel, *Ustavno uređenje europske Hrvatske* (Narodne novine 2020) 423–432; Branko Smerdel, 'Neposredno odlučivanje i njegove ustavne granice' (2010) 10(11) Hrvatska pravna revija 1–9; Branko Smerdel and Robert Podolnjak, 'O referendumu narodne inicijative u Hrvatskoj i Sloveniji' in Branko Smerdel and Robert Podolnjak (eds), *Referendum narodne inicijative u Hrvatskoj i Sloveniji: ustavnopravno uređenje, iskustva i perspektive* (Hrvatska udruga za ustavno pravo 2014) 1–13; Branko Smerdel, 'Ustav, populizam i kraj liberalne demokracije – „referendumanija" ugrožava temelje ustavnog poretka' (2019) 56(4) Zbornik radova Pravnog fakulteta u Splitu 761–784.
The GONG association (civil organization focused on monitoring elections and encouraging active and responsible participation of citizens in political processes) offered its view of the shortcomings of the legislative framework on referendums and popular initiatives in the form of recommendations published in 2012 in a document titled "Analiza referenduma u Hrvatskoj u odnosu na europske standarde" [„Analysis of referendums in Croatia in relation to European standards"] <https://www.gong.hr/media/uploads/dokumenti/Analiza referendumauHrvatskojuodnosunaeuropskestandarde2.pdf> accessed 21 October 2026. The Ombudsman also warned about said shortcomings <https://www.ombudsman.hr/hr/analiza-regulacija-referenduma-ne-odgovara-demokratskim-standardima/> accessed 21 October 2026.

98 Tanja Vučković Juroš, Ivana Dobrotić and Siniša Flego, 'The Rise of the Anti-Gender Movement in Croatia and the 2013 Marriage Referendum' (2020) 72(9) Europe-Asia Studies 1523, 1524.

99 *Ibid*., 1523.

3.3. STRATEGY OF CONSTITUTIONAL PREEMPTION: THE ISTANBUL CONVENTION

The third strategy commonly used by anti-gender actors, according to Rubio-Marin, is constitutional preemption, i.e. presenting the protection of "traditional family" as an expression of constitutional sovereignty through the lenses of national identity and the relation between supranational norms and the norms of the national constitution.

In Croatia, this strategy materialized during the ratification process of the Istanbul Convention.

The Convention was signed in mid-2011 and came into force in August 2014. Croatia signed the Convention in early 2013, but the ratification was delayed for years and only took place in April 2018, accompanied by an interpretative statement by the Government, which contained the following positions of the Croatian Government: 1. the aim of the Convention is exclusively to protect women from all forms of violence and to prevent, prosecute and eliminate violence against women, 2. Croatia believes that the provisions of the Convention do not contain an obligation to introduce gender ideology into the Croatian legal and educational system or an obligation to change the constitutional definition of marriage, and 3. the Convention is in accordance with the Constitution and will be applied taking into account its values, principles and provisions.[100]

The Government, aware of the sensitive sociological and political circumstances at the time regarding the concept of gender and its embodiment in constitutional and legal norms, and having learned from the experience of the recently held state referendum on marriage in 2013, decided to approach the ratification process slowly and cautiously, officially justifying delays with reasons like substantial costs and complexity of preparing the implementation of Convention principles into national legislation.[101] The process was so slow that the opposing political parties rightly questioned whether it was even underway and, finally, in 2017, they submitted their own proposal of ratification act for the Convention.[102] Only after this proposal did the Government submit its own draft proposal of the ratification act for mandatory public consultation. However, even after the consultation was concluded, the proposal was nowhere to be seen. Under increasing political pressure, which even resulted in opposition party interpellation on the work of the Government regarding the ratification of the Convention in March 2018.,[103] seeking to pressure the Government into formally submitting their proposal

100 Informativna brošura o Istanbulskoj konvenciji, Vlada Republike Hrvatske [Informative broshure on the Istanbul Convention, Government of the Republic of Croatia] <https://vlada.gov.hr/UserDocsImages/Vijesti/ 2018/03%20o%C5%BEujak/27%20o%C5%BEujka/Istanbulska_letak_FINAL.pdf> accessed 28 May 2026.

101 See Informative broshure (n 82); even then it was obvious that, even within the ruling political party, there was no consensus regarding the ratification of the Convention.

102 Prijedlog Zakona o potvrđivanju Konvencije Vijeća Europe o sprječavanju i borbi protiv nasilja nad ženama i nasilja u obitelji, s Konačnim prijedlogom zakona <https://edoc.sabor.hr/DocumentView.aspx?entid=2004139> accessed 29 May 2026.

103 Interpelacija o radu Vlade Republike Hrvatske po pitanju ratifikacije Konvencije Vijeća Europe o sprječavanju i borbi protiv nasilja nad ženama i nasilja u obitelji <https://edoc.sabor.hr/DocumentView.aspx?entid=2007971> accessed 29 May 2026.

of the ratification act to the Parliament within 30 days, the Government finally submitted its proposal of the ratification act to the Parliament in April 2018.[104]

Unlike any other political decision of the Parliament in recent history, the issue of ratification of the Istanbul Convention led to divisions inside governing political parties, especially on the political right, as is evident from the fact that the ratification decision was not supported by fourteen representatives of the ruling party of the Coalition.

Outside the sphere of state political institutions, the campaign against ratification was led by the popular initiative "The Truth about Istanbul", supported by the European Christian Political Movement,[105] but one should not neglect the influence of the Croatian Bishops' Conference, which openly spoke out against ratification in the April 2018 Statement.[106] In May 2018 the initiative also collected signatures for calling the referendum on cancellation of the Convention. It insisted that the Convention introduced gender ideology and the concept of gender identity in the Croatian legal system, even though the term "gender identity" has existed in the Anti-Discrimination Act since its adoption in 2008.[107] The concept of gender and its use in the Convention was also considered controversial by members of the Croatian Academy of Sciences and Arts (HAZU), who voiced their opinion in a statement by the Scientific Council for Education and Schooling in December 2017.[108] After the statement was heavily criticized, HAZU distanced itself from it, stating that it did not represent the position of the organization.[109] The referendum initiative ultimately proved unsuccessful, given that, although more

104 It is also worth noting that very important amendments to the Standing Orders of the Parliament were adopted at the end of 2018, which enabled an item on the agenda to be discussed in the following working week by 30 or more M.P. signatures, instead of it, as was often the case, remaining in the "drawer" of the Speaker of the Parliament, being formally included in the agenda, but not discussed or voted on until there was political will by the ruling majority, see Poslovnik o izmjenama i dopunama Poslovnika Hrvatskog sabora [Amending Act on the Standing Orders of the Croatian Parliament], Art. 17, *Narodne novine [Official Gazette]* 29/2018.

105 „Istina o Istanbulskoj" Civil Initiative Website <https://istinaoistanbulskoj.info/gradanska-inicijativa> accessed 29 May 2026.

106 Izjava Hrvatske biskupske konferencije o ratifikaciji Istanbulske konvencije [Statement by the Croatian Bishops' Conference on the ratification of the "Istanbul Convention"] <https://hbk.hr/dokumenti-hbk/izjava-hbk-o-ratifikaciji-ratifikaciji-istanbulske-konvencije/> accessed 29 May 2026.

107 Zakon o suzbijanju diskriminacije [The Anti-discrimination Act], *Narodne novine [Official Gazette]* 85/2008. It should be pointed out that the unofficial translation of the Act on the Croatian Ombudsman website gives an inaccurate translation of certain terms, e.g. the term *gender identity* in Article 1 is referred to as "native identity", <https://www.ombudsman.hr/wp-content/uploads/2020/06/Anti-discrimination-Act.pdf> accessed 2 June 2026.

108 Izjava znanstvenog vijeća za obrazovanje i školstvo Hrvatske akademije znanosti i umjetnosti <https://narod.hr/wp-content/uploads/2017/12/Izjava_ZVOS_Istanbulska_konvencija.pdf> accessed 30 May 2026. The statement, among other things, contains the following: *The Istanbul Convention would impose a "gender-neutral" upbringing on children and young people, which is completely unacceptable from the point of view of freedom of education because the concept of gender in the Istanbul Convention is defined exclusively by "behavior, activities, roles"... Violence is defined exclusively as "gender-based" with the implication that only men are perpetrators and women are victims... so it is obvious that the Istanbul Convention seeks to promote scientifically unproven theses about the gender and sexual structure of humans. ... school education about the positions of women and men in society must not be aimed at denying male-female sexual and all other consequential differences because they are biologically, evolutionary, anatomically and functionally given. ... education ... must not serve as a basis for social discrimination. This cannot be achieved by violently denying and tabooing differences, but by raising awareness of the value of the human person, both female and male. ... Gender ideology ... poses a danger to the healthy and natural development of children and young people due to the unforeseeable consequences that may arise from its implementation in school curricula."*

109 „Na Izjavu Znanstvenog vijeća HAZU-a uslijedile brojne reakcije" <https://web.archive.org/web/2017122917 4317/> <http://vijesti.hrt.hr/422635/na-izjavu-znanstvenog-vijeca-hazu-a-uslijedile-brojne-reakcije> accessed 30 May 2026.

than 370,000 valid signatures were collected, it was not enough to force the Parliament to call referendum and so the proposal did not get to reach the stage of constitutional review.[110]

Despite everything described above, many positive effects of implementation of the Istanbul Convention in Croatia were shown in the GREVIO Report for the Republic of Croatia from May 2023, proving that irrational fears by the political right have not materialized.[111]

Although an interpretative statement in itself lacks a distinct legal dimension, given that it does not exempt a state from the obligation to implement the international document, its political dimension cannot be overlooked. Therefore, it can be viewed as a kind of concession made to reach a compromise with conservative and anti-gender actors in order to ratify the Convention, rather than the means of restricting rights of women.

4. INSTEAD OF A CONCLUSION: THE RIGHTS OF WOMEN IN CROATIA IN THE WEB OF POPULISM AND LACK OF CARE BY THE GOVERNMENT

As shown in the paper, the indicated phenomena of the crisis of constitutional democracy, democratic regression and illiberalism, which were partly caused and partly led to the polarization of society and the rise of populist parties, which were initially a characteristic of democratic transition countries, and today are increasingly widespread in Western countries, did not bypass Croatia either. Furthermore, we can conclude that their appearance and development has closely followed other countries in our surrounding, which should not be surprising in today's highly technological and globalized world of communications.

Although right-wing populism is not a new phenomenon in Central and Eastern Europe, what has specifically characterized it over the last few decades – beyond its interconnectedness with anti-gender actors – is its remarkable ability to adapt its goals to specific local conditions. While the shifting of potential "targets" across geographical and temporal dimensions is a common occurrence, one can generally conclude that in most former socialist countries, the focus lies on these three areas: the alleged threat to the "traditional family", opposition to the Istanbul Convention, and the right to abortion.

The rhetoric and legal activities of interconnected anti-gender actors – with populists playing a very particular role aimed at curtailing the established level of women's rights – also possess a strong constitutional dimension. The constitutional arena available to various anti-gender actors for achieving their envisioned goals is rich in constitutional strategies. Indeed, these strategies are not only quite diverse, but also undeniably contribute to constitutional

110 Many constitutional law experts have spoken out in the media stating that such a referendum would not be permitted even if enough signatures had been collected, i.e. that, even if the issue were not deemed unconstitutional, the referendum decision could not have the direct effect of terminating the Convention, see, for example, Đorđe Gardašević <https://faktograf.hr/2018/04/10/referendum-istanbulska-konvencija-ustavni-sud/> accessed 29 May 2026; Mato Palić <https://www.tportal.hr/vijesti/clanak/sprema-nam-se-referendum-o-istanbulskoj-ustavni-strucnjak-to-je-vratolomija-pucanj-u-prazno-foto-20180410/print> accessed 29 May 2026.

111 Baseline evaluation report: Croatia, GREVIO, May 2023 <https://rm.coe.int/baseline-evaluation-report-on-croatia/1680ac76c9> accessed 29 May 2026.

erosion. Following Rubio-Marín's classification, we conclude that the three common strategies employed by anti-gender actors within the sphere of constitutional law are: 1. regressive constitutional erosion – achieved by influencing constitutional court jurisprudence or legislation aimed at annulling or severely limiting the guaranteed level of women's rights; 2. constitutional entrenchment – the misuse of constitutional amendment processes – particularly prevalent in countries where anti-gender actors perceive that amending the constitution is not overly difficult (as has been observed in Croatia regarding the popular initiative referendum, despite its numerous legislative shortcomings and the apparent difficulty of amending the constitution through this mechanism); 3. the so-called constitutional preemption, which entails framing the protection of the "traditional family" as a mark of constitutional sovereignty – viewed through the prism of national identity and the relationship between supranational norms and the national constitution – while simultaneously opposing the spread of so-called "immoral Western ideas" propagated by "radically liberal" political elites. The analysis demonstrates that all three constitutional strategies formed a regular part of the repertoire of anti-gender actors in Croatia. all three constitutional strategies are a part of the repertoire of anti-gender actors in Croatia as well. However, not all strategies were successful nor did they lead to constitutional erosion, or to an erosion of the rights of women. The cases analyzed demonstrate different forms of political and legal mobilizations through various constitutional strategies. While the first case, the Marriage Referendum, was successful and resulted in a Revision of the Constitution, the other two cases were unsuccessful. The constitutional review proceedings concerning the law regulating abortion did nor result in the repeal of the statutory right to abortion, and the Istanbul Convention was ratified despite the opposition from conservative and anti-gender actors. Although all three strategies demonstrate the systematic efforts of anti-gender actors to challenge gender equality, their impact to the rights of women has been limited, due to the employed institutional responses, ranging from the Constitutional Court's upholding of the constitutionality of the right to abortion, to the Government's willingness to make what was considered necessary for the ratification of the Istanbul Convention.

Croatia is a country that, generally speaking, has worked towards a solid legal and institutional framework on women's rights, gender equality and non-discrimination, with a noticeably strong influence Europeanization. However, at the same time, there was also a strong growth of euroscepticism towards the implementation of EU gender equality standards, clearly recognized as part of the transnational conservative movement, and politically expressed through the activities of populist parties, some of which are not only politically active today, but also part of the political power, which speaks in support of the conclusion about the danger of Euroscepticism rooting itself deeper in Croatian society and politics. Religious organizations and various civil society organizations, though often gathered around individual conservative viewpoints, significantly contributed to the emergence and spread of populist parties, which reached their peak in the previous decade through activities aimed at shaping specific results in forms of constitutional definition of marriage, the non/ratification of the Istanbul Convention, and the (lack of) activity and decision willpower by institutions such as the Constitutional Court and the Croatian Parliament regarding the formulation of new regulation of the right to abortion.

The influence of populist parties in Croatian politics has, objectively, still remained at a low level, largely confined to sporadic activity from the political opposition. It seems that the current example of political coalition involving one such party is only a byproduct of opportunistic behaviour rather than an indicator of their factual political growth.

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RAST POPULIZMA I PRAVA ŽENA U HRVATSKOJ – ODABRANI USTAVNOPRAVNI ASPEKTI

Sažetak

Tijekom posljednjih trideset godina zemlje srednje i istočne Europe prolazile su kroz tranziciju, uključujući demokratsku tranziciju, koju je ponajprije obilježilo prihvaćanje pravne stečevine EU-a, među ostalim, i onu koja se odnosi na rodnu ravnpravnost i prava žena. Ti procesi nisu svugdje i kod svih političkih aktera naišli na odobravanje. Kao rezultat toga, u uvjetima polarizacije društva između progresivne liberalne ljevice te konzervativne i populističke desnice, koja sve više dobiva na zamahu, pojavila se demokratska kriza koju se opravdano opisuje kao demokratsku regresiju i neliberalizam. Spomenuti populistički pokreti politički u prvi plan često stavljaju – ili kao temeljnu ili kao ujedinjujuću ideju (oportunistička sinergija) desnog političkog spektra – određena demokratska postignuća vezana uz prava žena i ravnopravnost spolova, poput prava na pobačaj ili Istanbulske konvencije, ali isključivo s ciljem zaštite takozvanih tradicionalnih vrijednosti, tradicionalne obitelji i nacionalnog identiteta (u kontekstu odnosa nacionalnih i europskih normi) od „opasne" „rodne politike" i „rodne ideologije" koje nameće tzv. korumpirana politička elita EU-a. Na jačanje tih procesa utjecale su i druge društveno-političke, gospodarske i tehničke okolnosti, poput migrantske i zdravstvene krize te gospodarske krize, ali i razvoj tehnologije i društvenih mreža, što je omogućilo globalno umrežavanje aktera koji se protive rodnoj ravnopravnosti (antirodni akteri). Antirodni pokreti i strategije nisu nepoznanica ni u sferi ustavnog prava. Prema zanimljivoj klasifikaciji Rubio-Marina, prepoznate su tri osnovne strategije kojima se koriste spomenuti akteri: regresivna ustavna regresija, ustavno učvršćivanje i ustavna preempcija. Opisani procesi i pokreti nisu zaobišli ni Hrvatsku. Stoga se u radu prati provedba opisanih strategija na praktičnim primjerima: regulaciji i tumačenju prava na pobačaj, ustavnom referendumu o braku te ratifikaciji Istanbulske konvencije.

Ključne riječi: *demokratska regresija, rodna ravnopravnost, prava žena, antirodni pokreti, ustavne strategije, Hrvatska*

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