

(E)Uturus: Laws on Reproductive Technologies in Contemporary Croatia

By

Zorana Barisic

Submitted to

Central European University

Department of Gender Studies

*In partial fulfillment for the degree of Master of Arts in Gender Studies*

Supervisor: Associate Professor Éva Fodor

Second Reader: Associate Professor Anna Loutfi

Budapest, Hungary

2013

## **ABSTRACT**

Within the span of three years, Croatia introduced the most conservative and potentially the most liberal law in Europe on medically assisted reproduction (MAR), all while under the shadow of its accession to the European Union. The aim of this thesis is to show why these laws were passed and how the undergoing process of Europeanization affected significant changes happen to the laws on MAR in such a short period of time in Croatia.

I argue that Europeanization played a significant role in the policy making process in Croatia when it comes to makings of these laws. The will show how the notion of “Europe” can easily be used by the actors on a national level in order to push their own agendas. The use of Europeanization process as a means for policy making process on a national level bared little or none connection to the EU whatsoever in Croatian case. I will show how HDZ (the Croatian Democratic Party) actively used a technical framework provided by the Europeanization process in order to push the controversial law on medically assisted reproduction in 2009. Also, I will show how the process of accession to EU imposes a discourse actively reproduced by the actors on a national level in order to legitimize their actions and discipline other actors in order to destabilize their position within the political system. I will show how SDP (the Social Democratic Party) did the latter to make space for changes of the 2009 law implicitly labeling it as non-appropriate for a European country.

## ACKNOWLEDGMENTS

I would like to thank Éva Fodor, my mentor, for her support through all of this and without whom this paper would never see broad daylight. Thank you for your guidance, knowledge and help.

I also want to thank my second supervisor, Anna Loutfi, for taking me under her wing and for helping me with insightful comments.

Ivana, my Lemonworld companion, thank you for tolerating me, listening to me and telling me when to get a grip. You are my endless source of pride.

Željko, thank you for the peculiar ways of understanding and support throughout years. One could have not asked for a better partner in crime.

Gordana and Zdenko, thank you both for bestowing me with your confidence, unconditional love and support. Thank you for teaching me there is never an end to one's quest for knowledge and that the mind can never be open enough. One could not have better people standing behind her. This tiny piece of work is dedicated to both of you.

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## INTRODUCTION

Within the span of three years, Croatia introduced the most conservative and, potentially, the most liberal law in Europe on medically assisted reproduction (MAR), all while under the shadow of accession to European Union. What makes Croatia interesting, in that sense, is how these laws were positioned compared to laws in the member countries.

In Croatia, a newly made law on medically assisted reproduction in 2009 became aligned with a very specific arrangement that was most similar to Italy's previous regulation in that field. Italian regulations<sup>1</sup> in the area were perceived as so highly controversial that the Constitutional Court of Italy, after multiple court verdicts on the matter, had to step in. Consequently, the Court "forced" changes to the law in order to ease the rigor of the law visible in bans on external donors and freezing of the embryos (among other issues). Till this day, even with these changes to the law, Italian couples fighting infertility are regular "visitors" of the European Court for Human Rights<sup>2</sup>. Apart from Italy, no other member state, apart from Croatia who was in the middle of the negotiating process when passing its own law, came even close to the strict regulations which Italy had.

What makes the case of Croatia even more surprising is that, over three years, a "conservative" law (from 2009) was replaced by a law whose content can easily be put in line of the "more liberal" solutions in EU on a wide range of issues which are involved with medically assisted reproduction. More specifically, the Croatian law from 2012 presented solutions which are not even available in countries such as Sweden or Finland<sup>3</sup>. These

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<sup>1</sup>ESHRE. (2008). Retrieved from: [http://ec.europa.eu/health/blood\\_tissues\\_organs/docs/study\\_eshre\\_en.pdf](http://ec.europa.eu/health/blood_tissues_organs/docs/study_eshre_en.pdf) (Accessed May 13th, 2013)

<sup>2</sup>Gazeta Wyborcza, "ECHR condemns Italian law on assisted reproduction", Press Euro, August 29, 2012. <http://www.presseurop.eu/en/content/news-brief/2601161-echr-condemns-italian-law-assisted-reproduction> (Accessed May 13th, 2013)

<sup>3</sup>ESHRE. (2008). Retrieved from: [http://ec.europa.eu/health/blood\\_tissues\\_organs/docs/study\\_eshre\\_en.pdf](http://ec.europa.eu/health/blood_tissues_organs/docs/study_eshre_en.pdf) (Accessed May 13th, 2013)

include single women's eligibility for these treatments or the possibility of embryo donations that are not available in countries such as Denmark or Austria<sup>4</sup>.

While much research in the area of reproductive cells has been conducted within academia, including specific issues from a gender perspective in the EU, a deeper analysis of these issues, especially from a gender perspective, is still missing when it comes to ex-Yugoslavian countries. Despite of the fact that all ex-Yugoslav countries, with the exception of Slovenia who is already a part of the Union, aim at full European integration, the effects of Europeanization in the policy making process in the field of reproduction remain unexplained.

In this research, I will show how Europeanization affected policy making process of laws on medically assisted reproduction in Croatia. Policies on reproduction are used as a defining criterion for sexual citizenship or gender roles. They also present a specific regulation of relations between individuals themselves with the state. Hence, an analysis of these laws and the procedures and discourses that prevailed during the policy making process is needed in order to gain a clearer idea on what exactly made Croatia regulate issues inherent to the medically assisted reproduction in such differing ways in such a short period of time. In doing so, it is necessary to take into account the effects of Europeanization and the solutions of other member states in the area of reproductive cells as they clearly consist of patterns in regulations of certain areas. On the other hand, membership in EU makes states into active creators of the European landscape and presenters of differing notions of "European-ness". With Croatia's peripheral positioning that comes with the EU candidate status, it is important to focus on the discourse created through such relation to EU and how it is projected inside, on a national level, when it comes to policy making.

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<sup>4</sup> Ibid.

The aim of this thesis is to show why these laws were passed and how the undergoing process of Europeanization affected significant changes happen to the laws on MAR in such a short period of time in Croatia. Who were the actors and what kind of alliances between these actors were made in order to influence and gain support for the content of the law?

I argue that Europeanization played a significant role in the policy making process in Croatia when it comes to makings of these laws. I will show, in this research, how the notion of “Europe” can easily be used by the actors on a national level in order to push their own agendas. The use of the Europeanization process, as I will show in this thesis, as a means for policy making process on a national level bore little or no connection to the EU. I will show how HDZ (the Croatian Democratic Party) used Europeanization in order to push the controversial law on medically assisted reproduction in 2009 while also having a monopoly on the content of the law. Also, I will show how the process of accession to the EU tends to impose a discourse actively reproduced by the actors on a national level in order to legitimize their actions and discipline other actors in order to destabilize their position within the political system. I will show how SDP (the Social Democratic Party) did the latter in order to make space for changes of the 2009 law implicitly labeling the original law as inappropriate for a European country.

My methodology consists of analyzing the discourse used during parliamentary debates, within the official opinions from the Parliamentary committees during the policy making periods and official statements from non governmental groups. The analyzed material was obtained from the video recordings of the Parliamentary debates in 2009 and 2012, from press clippings from that period, from statements from several NGO groups, including the Catholic Church and from the archives of the Croatian Parliament, focusing specifically on opinions of the parliamentary committees. I use this variety of sources in order to place these laws in a larger social context of contemporary Croatia and to show different



approaches to the laws in terms of policy making from various actors and their influences on it.

I will position this research within the existing literature on reproductive policies in terms of nationalism, ideas on family and positioning of women in my first chapter. I will also present the theoretical framework I am working with when it comes to processes of Europeanization and how they affect the policy making process on a national level. In chapter number two, I present my extensive analysis of the policy making processes and the discourses used during those processes in 2009 and 2012. Finally, I will present my final conclusions and the limitations to the research I have conducted.

## **1.THEORETICAL BACKGROUND**

This research will dwell into the policy making process in a particular field of reproduction - medically assisted reproduction. The research will be positioned within a specific frame of Europeanization that, in general, is used as an umbrella term for the processes states in the accession to European Union had to start in order to become full time members of the EU.

In this chapter, I will outline multiple theories connected to the reproductive policies from different perspectives. I will present my research within the existent literature on Europeanization as a specific discursive concept. Additionally, I will position the issues with gender mainstreaming and notions of “family policies” as places of “complete freedom” for national legislatures in relation to Europeanization. Then, I will present theories dealing with the nationalistic, heteronormative and patriarchal connotations that come with the policy making process in the field of reproduction.

### **1.1. Europeanization as a discursive concept**

As a candidate for membership in European Union, Croatia underwent a great deal of transformation of its policies under the direct influence of the European Union since opening the negotiations with EU in 2005. Consequently, a great range of concepts, ideals and values has been introduced in different areas of politics and policy making.

In this section, I will present one specific concept of Europeanization that defines it through discursive frame. I refer to discourse here as “a key mediating factor that helps explain the impact of Europeanization on national policy, mainly in the sense of its rhetorical function, coordinative policy and communicative political discourses” (Schmidt in Lombardo and Forest 2013:2). I find this view of Europeanization more appropriate in terms of examining the transformation of policies on national levels due to specificities inherent to reproductive policies that I am analyzing in this research. I will also explain the reasoning behind

autonomy of member states given by the EU in “private matters” to show how member states indeed have a wide area of “maneuvering” when it comes to reproductive policies. I will focus on the effect that Europeanization has on the discourse and on the construction of certain ideas that are perceived as inherent to the Europeanization by the actors on national level. The concept behind this sees Europeanization in two ways, first one being the cognitive activity (enabling actors to make sense of reality) and the other that sees it as having the normative character that assesses and judges that reality in compliance to the existing norms and values (Radaelli 2004, Schmidt and Radaelli 2004). This affects the formulation of the policies (their content with implicit and explicit meanings and understanding of the problem with the intended solution to it) and the way they are communicated to others. This happens through a number of processes of construction, diffusion and institutionalization of (formal and informal) rules, procedures, norms, styles that are first constructed on the level of European Union and only then transcribed into discourses on a national level including both structures and public policies (Radaelli 2004). As such, on one hand, Europeanization is perceived as crucial to every candidacy as it demands compliance to European *aquis communautaire*. On the other hand, Europeanization is used as an explanatory model for defining problems and solutions through policies on a national level that are not perceived as obligatory for a membership in the EU.

Radaelli (2004) points out that, in order to understand a process as a part of or influenced by the Europeanization, it needs to precede the changes which means that the actors involved in making certain policies do need to undergo certain acquiring of European concepts. It is the internalization of EU norms that is done through “exchanging ideas and (re) framing their strategic interests” within their national institutional context (Radaelli in Lombardo and Forest 2013:6). When it comes to policy making, this will result in either response to or usage of European framework by those same actors as it provides ground for action. Overall, this

way of making policies is referred to as “policy learning” (Schmidt and Radaelli 2004). This way of policy learning has a tendency to form processes of policy making through deliberation and communication, but in a way that makes candidates (and member states) free in terms of frameworking those same policies so they are synchronized with the national culture, interests or values. Here, the discourse is presented in a rather dynamic manner as it shows the usage of “framing and reframing of cultural norms” in order to give support to what is perceived as norms of European Union (Schmidt in Lombardo and Forest 2012:5).

When it comes to gender policies and directives that aim at the national legislatures, member states and membership candidate states have little space for maneuvering as they are obligatory and of normative nature. Hence, directives on discrimination based on gender, age, disability, sexual orientation, ethnicity, religion and race become a part of the national legislature. Consequentially, an adoption of directives through Treaty of Rome and, afterwards, Treaty of Amsterdam heralded a widening of the concept of equal opportunities and positive actions<sup>5</sup>. Employment and labor market remained the focuses of direct and normative action when it comes to gender mainstreaming, while all “other policies” fall far from the Union’s regulation. Hence, the instruments that European Union introduced for other areas, where gender mainstreaming comes into place, were soft laws which are not legally binding. Hence, policies regarding family (including reproduction and marriage) remain to be defined through the national legislature of the candidate countries and those who are already members as they are “labeled” private (“family policies”) (Vega et al, 2008).

The ideas in connection to the gender equality in general have a tendency of changing by the discursive struggles that are visible through processes of fixing, bending, stretching and shrinking (Lombardo, Meier and Verloo, 2009). Despite of this, most authors observing the

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<sup>5</sup> Treaty of Rome covers this in the article 141 EC, while Treaty of Amsterdam covers this in article 141.4. Retrieved from [http://europa.eu/eu-law/treaties/index\\_en.htm](http://europa.eu/eu-law/treaties/index_en.htm) (Accessed on May 13th, 2013)

connections between Europeanization and gender mainstreaming, have a tendency in focusing on the feminist struggles that come with the decision making processes in the member states of EU. As a result, due to the previously mentioned soft measures when it comes to the specific gender issues, merely balanced participation in the public sphere appears to be the aim of these struggles. The other side to the soft measures is the fact that these are volatile to different meanings once the process of implementation starts, making them easy to subvert (Bruno et al Lombardo and Forest 2013:11). As such, “family policies” have been influenced by the processes of bending as they are thoroughly related to the economic matters which resulted in adjusting the “concept of gender equality to make it fit some other goal than the achievement of gender equality itself” (Lombardo, Meier and Verloo 2009:5).

On a wider scale, this resulted in positioning gender equality as not “...a clearly defined political issue that requires comprehensive understanding of the problem and political responsibility, systematic efforts, and respective institutions to be set right” (Jalušič in Lombardo, Meier and Verloo 2009:59). This might be related to the fact that concepts tend to be highly volatile in terms of bending where there are powerful discourses and actors. In addition, this designated a framework for women’s as traditional and non-contested on one hand, while also open to hegemonic feminist discourses as a result of “femocrates” strategies within EU (Meier et al. 2005, Verloo and Lombardo, 2009). Lombardo and Verloo (2009) find the reasoning for exclusion of certain groups of women in specific discourses of the powerful actors that fall in a trap of certain biases and that could potentially be explained by the ignorance when it comes to intersectional approach that is perceived as crucial. Hence, due to projecting particular interests as universal, certain groups remain on the outskirts positioned as the Others.

Construction of a policy is very much a product of an interaction between different actors who exchange their ideas, events and actions (Ferree and Merrill in Lombardo, Meier and Verloo, 2009:11). The policy constructing that I will focus on here is one introduced by Verloo (2005:20), who defines it as “an organizing principle that transforms fragmentary or incidental information into a structured and meaningful policy problem, in which a solution is implicitly or explicitly included”. A new solution to a policy problem that diverges from the existing one will come to fruition the moment that the discourse on the national level changes actors preferences and the perceived problem in a way that it legitimizes that change (Schmidt and Radaelli in Lombardo and Forest 2013:7). Consequently, there are two possible paths the solution to this matter can go. First is the possibility of actors refusing to reference EU and choosing a discursive frame that is completely embedded with national terms which happened in Croatia in 2009 law (Lombardo and Forest 2013:7). The second possibility is of actors using EU not only in a referencing manner, but also through discourse in order to legitimize either certain parts of the solution or complete policy solutions to the presented problem (*ibid.*). I will show how the latter happened in Croatia in 2012 when significant changes to the solutions in the 2009 law were presented.

Europeanization does not only present a wide area for the translation of different policy solutions to national levels, but it also presents a highly volatile concept that allows for specific constructions of discourse to be built on it. These constructions, as I will show, have been used in Croatia during the makings of laws on medically assisted reproduction in differing manners proving that the top-bottom perspective on policy making during the period of negotiation does not represent a real picture when it comes to case of Croatia. Not only did national actors reshaped and reframed policy solutions to the presented problems along the line of their own party interest and core values, but also, when it comes to 2012, they actively

used notion of “European-ness” in order to legitimize their positions to certain policy solutions.

## **1.2. Nationalism, family and gender roles**

Now I turn to the specific issues covered by the policies on reproduction as they are crucial to content analysis of the laws from 2009 and 2012. I will present theories on nationalism, heteronormative family and gendered roles that are crucial to constructions of public and private. More specifically, I will show the prevailing theories on women’s roles in nationalist discourses and positioning of women in the private sphere.

With all the advances in the area of medically assisted reproduction, it comes as an expected consequence that the controversies these technological changes trigger cause an expanding of the social institutions and present challenges to ideas such as “a natural fact” (Franklin and Ragone 1998:5-9). Not only does this present a puzzle for theologians and jurists, but it reconstructed the traditional concept of reproduction in the context of new transnational identities as it “...offered a reverse example of a related process” (Franklin and Ragone 1998:5-9). This comes as a novelty to the policies on reproduction as they tend to incorporate strong notions of nationalism.

The ideas on the future of nation are an integral part to the regulation in the field of reproduction. Reproduction is constructed as a site where political contestation and resistance appear (Rapp and Ginsberg 1991). It is multiple in terms of signifiers as it is a site of critical local and global interface as well as the site of social stratification (Rapp and Ginsberg 1991). As Calhoun (1997:79-83) noted, homogenization of the nation, creation of national unity and subordination of local identities begins within the confines of the nation-state. Verdery (1996:63) expands on this by explaining how the modern nation-state positions itself as relational to the geographical territory through the “physical body” being tied to the state with

“a set of meanings and affects”. Gal and Kligman (2000) observe how it is the state that, as an authority through discourses on reproduction, defines those who are supposed to reproduce and those who are not supposed to reproduce. It is then natural to expect the post-socialist era to provide a continuation of this discourse and practice as the change to “the new system” is perceived through a gendered connotation of a “nation’s rebirth” (Verdery 1994:254). This idea becomes visible with the usage of a historical narrative that lists events in the history of a certain nation (Gal 1994). The justifications for such practices are located within the wider frame of how politics on reproduction are enacted in post-socialist societies revealing them as locations of “intersection of politics and the life cycle” (Gal 1994, Kligman 1992:364). Based on this, it is imminent then that the discourse enacted by the state in these processes is going to be highly gendered and that the elements to the nation state are going to take upon certain terminology that is closely tied to ideas on gender.

Based on his observations, Anderson (1983) frames nationalism as an ideology grounded in a possibility of imaging shared feelings, stories and ideas of space by different people in different places within borders. As such, nationalism results in a construction of “identities that are ambiguously placed between past and future” (Hall 1992:612). The duality of this concept is visible through the tradition that these roles are embedded with in post-socialist societies. Women are positioned as securers of the past and men as securers of the future due to hierarchy of significance of their actions – “women may create life in this world, but more fundamental to the nation’s continuity is its life eternal, ensured through culture, heroic deeds, and qualities of the spirit: the realm of men”(Verdery 1996:73). Gal and Kligman (2000) say that the politics in transition was un-merciful towards women due to their “past debts” that stem from the perception of women as the biggest winners of the previous system. It is due to this paradoxical “debt” that their status in the newfound democratic arena is being restricted to sole role of reproducers (now that the idea of women as workers is perceived as a



communist relict). Consequently, a national identity has been constructed and internalized through familial relations that formed multiple layers of women's roles within the context of the modern nation-state. More specifically, Yuval-Davis and Anthias (1989) claim women's roles fall in line of being biological reproducers of ethnic collectivities, reproducers of boundaries of ethnic/national groups, reproducers of collectivity and transmitters of its culture, signifiers of ethnic/national differences and participants in national, economic, political and military struggles. Consequently, the idea of the progress of the nation was positioned within the public arena, the male domain, while the concept of family remained confined to the private sphere. Private sphere here is the domain of female as reproduction is a domestic activity inherent to femininity and maternity which results in limited importance given to it (Franklin and Ragone 1998:2).

As opposed to the prevailing theories that are centered around women's position and roles in nationalist discourses, I will show how Croatia diverged by creating specific construction of men and their roles as central to discourses produced both in 2009 and 2012. On the other hand, I will show how Croatia did not diverge from positioning women in the private sphere where they are recognized specifically through the maternal role.

### **1.3. Signifiers**

Area of reproduction, meaning family, is then embedded with constant negotiations between the family itself and the state that recognizes family as a political institution. This results in a constant change of borders between private and public in an implicit manner that is invoked through interactions (Gal and Kligman 2000:51). Other theories that cover the reproductive policies view them as an area provided for a construction of certain ideas on family, women or masculinity. The notions that come "with" the policy making in the field of reproduction can be viewed as the Laclau's (2005) "floating signifiers" that are opening a space for re-signifying those concepts as a part of the constant struggle through interaction of groups in

the field of political. Signifiers are those entities, such as family and a woman, that then become ambiguously open to plurality of ideas that redefine them. Exertion of hegemonic ideas onto these signifiers presents them as non fixed and open for influence of alliances between different groups who then “fulfill” these signifiers with particular interests presented as universal. Hence, the field of struggle becomes the field of projection of certain concepts onto signifiers such as women or family.

As such, the family is put in relation to the state as indisputably natural, as McClintock (1993) proposes, when it comes to pro-reproductive measures which results in strong regulation by that same state. It is no surprise then that the families are symbols of unions and mediums used for the preservation of the imagined community. At the same time, for Heng and Devan (1992:350), families represent the areas that, under the assumption of being cornerstones of a nation, are highly regulated and used to reaffirm the existing hierarchies of power. This resulted in channeling women’s relation to the public, in this case, the nation, through the relation to man, meaning marriage. At the same time, it is women’s citizenship that is fully recognized on the condition of being married. Hence, there a paradox inherent to woman’s citizenship and a political status in such “...that women have been included and excluded from thee concepts on the basis of sexual difference. In various countries women’s reproductive capacities have both excluded them from sharing full citizenship rights and been crucial to the nation-state, because only women can bear future citizens” (Oaks in Franklin and Ragone, 1998).

In addition, men’s role in the makings of reproductive policies resulted in multiple concepts of masculinity within the context of nationalism. In connection to the mentioned hierarchies of power, Peterson (1999) offers a concept of the masculine subordinating the feminine through processes of decision making that reproduces the discourses on masculinity through the laws while also legitimizing the existing order of relations within the society between

men and women. Nagel (1998) goes further and explains this as means for the explicit preservation of masculine honor, the sons of the nation. Rather, this way, reproductive policies as used as channels for regulation of women's bodies, meaning sexuality, and as such they reenact the patrilineal connotations that are inherent to reproduction of the discourses on the role of masculine.

Additionally, this goes in line with Waylen and Randall (1998:10) who argue that reproductive policies can be interpreted as policies through which the state not only constructs, but also regulates both men and women's bodies. Heng and Devan (1992:350) argue that the construction of discourses on men's roles are grounded in the idea of the preservation of social values such that, as a consequence, result in narrative copies of "...a fantasy of self-regenerating fatherhood and patriarchal power, unmitigated, resurgent and in endless (self-) propagation, inexhaustibly reproducing its own image through the compliant, tractable conduit of female anatomy – incidental, obedient, and sexually suborned female bodily matter" while at the same time establishing "state fathers, whose creative powers incorporate and subsume the maternal function". Hence, it is not only that a certain discourse on masculinity prevails during the policy making process, but it is also utilized in a way so that the existing patriarchal hierarchy of values remains intact. Hence, it is clear how reproductive policies, from a decision making perspective, tend to be completely "occupied" by men while also producing specific discourses on masculinity. In Croatia's case, from the decision making perspective, making of laws on medically assisted reproduction, as I will show in the next chapter, was no different.

On the other hand, heteronormativity is a crucial element in terms of how sexual practices of the individuals are positioned within the society and regulated. As Wieringa (2012:518) argues, heteronormativity does not just signify a certain sexual practice that excludes non-heterosexual relationships, as it is also used in order to create a hierarchy between

heterosexual relationships. Hence, heteronormativity occupies a much wider “space” in terms of influence as it “informs the normativity of daily life, including institutions, laws and regulations that impact on the sexual and reproductive lives of members of society” as well as shaping “the moral imperatives that influence people’s personal lives” (Wieringa 2012:518). I will show how the heteronormative ideal prevailed in both of the laws in Croatia excluding the sexual minorities in differing manners.

Overall, policies on reproduction touch a variety of issues while also providing policy solutions include nationalism through the prism of a normative family. On the other hand, heteronormative family also tends to prevail as a focal point in the discourses surrounding these policies regulating both women and men and the roles they are supposed to perform. What makes Croatia interesting is that men’s roles, in the policy making process, were not “restricted” just to their crucial role in the decision making, but a range of vivid ideas on men’s roles as fathers prevailed in the discourses during the debates. When it comes to the influence of European Union on this matter in particular, it is rather implicit and non-obliging for actors on national level who regulate them. Be that as it may, Europeanization as concept does present a strong means of legitimizing certain policy problems and the solutions for it while also creating a specific framework for deliberation of those policies. Hence, I now turn to the analysis of the laws in Croatia on medically assisted reproduction in order to show how all of the previously mentioned concepts were presented and used in this particular country.

## **2. CREATING THE CITIZENS: ANALYSIS OF THE POLICY MAKING PROCESS**

As previously mentioned, I refer to a specific concept of Europeanization that frames it as transformation of policies on the national level in order to become synchronized with EU's *aquis communautaire*, but with a specific focus on the discourse that is produced during these transformations. In this chapter I will discuss how the process of Europeanization has affected the policy making process in Croatia in the field of medically assisted reproduction laws as I find it central to my analysis. As reproductive policies fall in the category of family policies the direct impact of European Union remains uncertain. This meant that, in terms of content, the laws were very much under the authority of the actors on the national level.

I argue that HDZ (Croatian Democratic Union), then party in power, used this “demand” (the regulation of the preservation of reproductive cells) in 2009 as a way of finally setting a real policy agenda on the matter of medically assisted reproduction that was still regulated by a thirty year old law from Yugoslavia. I argue that the Europeanization in this particular case was utilized as means for creating a procedural framework usually used for laws that are in adherence to European's *aquis communautaire*.

I will show that this framework allowed for a monopoly on the content of this law as it transmitted a set of specific values and beliefs that would fall in the category of “traditional Catholic values” in Croatia. Those values and beliefs fell under the categories of heteronormativity, existing power relations, traditional gender roles and certain patriarchal notions which showed a lack of adherence to certain anti-discriminatory acts that European Union insists on obliging to. The regulation of the preservation of reproductive cells I referred to earlier was secondary to the making of the law which is supported by the fact that the actual implementation of the part of the law that dealt with the preservation of the reproductive cells (in form of banks) was not implemented. On the other hand, I will show

how the discourse during the makings of the law in 2012 by left wing coalition lead by the Social-democrats, who came into office by the end of 2011, actively used the discourse that connected notions of “Europe” as ones symbolizing advancement during the policy making process. Overall, the aim is to show the multiple ways through which the concept of Europeanization was being utilized on a national level from 2009 to 2012.

First I will discuss the content of the laws from 2009 and 2012. Then I will present the context within which these laws were made. After that, I will present the main actors, their positioning within the European and national context due to Croatian’s accession to the Union. Then, I will present an analysis of the policy making process in 2009 and 2012 and, finally, derive conclusions from the analysis.

## **2.1. Contextualization**

As a candidate for membership in the European Union, Croatia was no exception during its accession years in introducing obligatory directives and obeying to all other legal transformations in order to fulfill the Union’s demands. It is worth noting that the negotiations between European Union and Croatia (2005-2011) were led by right wing party, HDZ (Croatian Democratic Union)<sup>6</sup> during that period.

Due to the regular Commission’s reports which presented the advancement assessments in different areas, certain problems were put on the policy agenda of the government demanding solutions that needed to be in sync with the *aquis communautaire* of the European Union. What Croatia was asked to show a specific advancement in the Progress Report<sup>7</sup> from 2008 by the European Commission was, among issues in other areas, in the field of tissues and cells (with

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<sup>6</sup>HDZ was the leading party in office from 2003 to 2007 and from 2007 to 2011.

<sup>7</sup>European Union, European Commission. (2008). *Croatia 2008 Progress Report accompanying the Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2008-2009*. Retrieved from [http://ec.europa.eu/enlargement/pdf/press\\_corner/key-documents/reports\\_nov\\_2008/croatia\\_progress\\_report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/press_corner/key-documents/reports_nov_2008/croatia_progress_report_en.pdf) (Accessed April 7th 2013)

the special acknowledgment of reproductive cells)<sup>8</sup> that was a part of the chapter on Consumer and health protection. In addition, this was named as "...a key element for the accession negotiation on this chapter"<sup>9</sup> (Consumer and health protection). Basically, the issue of preservation of reproductive cells needed to undergo a transformation that was in sync with the Union's regulatory acts in order for Croatia to end the negotiations in the field of Health and Consumer protection.

Until 2009, the area of medically assisted reproduction was regulated by a law from Yugoslavia from 1978. The "Law on health measures for acquiring the rights to freely decide to procreate children"<sup>10</sup> covered a wide range of reproductive issues such as abortion, sterilization, planned parenthood, contraception and medically assisted reproduction. In the area of medically assisted reproduction the law was applicable only to married couples and it allowed for male donors of reproductive cells in case that the husband of a woman undergoing the procedure was infertile. Hence, the law was limited to the achieved technological advances in this area in Yugoslavia in 70s. As such, the law was used as a point of reference on the matter of donations and state's financing of the procedures, but, other than that, regulatory measures in this area were missing leaving it for medical institutions to implement the new technologies in medically assisted reproduction. Hence, the law from 2009 on medically assisted reproduction that finally regulated these procedures came at a very specific time.

Due to the process of syncing with the European *aquis communautaire* that covers enormous range of laws in different fields, certain side effects of such quick transformation of national

<sup>8</sup>Retrieved from [http://ec.europa.eu/enlargement/pdf/press\\_corner/key-documents/reports\\_nov\\_2008/croatia\\_progress\\_report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/press_corner/key-documents/reports_nov_2008/croatia_progress_report_en.pdf) (Accessed April 7th, 2013)

<sup>9</sup>Retrieved from [http://ec.europa.eu/enlargement/pdf/press\\_corner/key-documents/reports\\_nov\\_2008/croatia\\_progress\\_report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/press_corner/key-documents/reports_nov_2008/croatia_progress_report_en.pdf) (Accessed April 7th 2013)

<sup>10</sup>"Zakon o zdravstvenim mjerama za ostvarivanje prava na slobodno odlucivanje o radjanju djece" (in Croatian). Retrieved from [http://hr.wikisource.org/wiki/Zakon\\_o\\_zdravstvenim\\_mjerama\\_za\\_ostvarivanje\\_prava\\_na\\_slobodno\\_odlu%C4%8Divanje\\_o\\_ra%C4%91anju\\_djece](http://hr.wikisource.org/wiki/Zakon_o_zdravstvenim_mjerama_za_ostvarivanje_prava_na_slobodno_odlu%C4%8Divanje_o_ra%C4%91anju_djece) (Accessed on May 13<sup>th</sup>, 2013)

legislative were bound to happen. As Zielonka and Mair (2002:16) note: “...the European Union insists that the applicant states meet the formal democratic criteria” which also results in a practice that “works against transparency, accountability and active popular participation”. In this case, not only did HDZ actively used only a technical framework for the deliberation of “European laws”, but it did so in order to deny the participation of other actors whose positions opposed theirs on this matter. Consequently, this resulted in a monopoly on ideas that were transcribed into law – from banning the freezing of embryos to heteronormative structure of the law itself highly inflicted with the patrilineal notions. The notions of “the Europe” and the promise of adherence to certain anti-discriminatory Directives that were directly “touched” in these laws escaped HDZ in terms of discourse and the actual content. Further, this pointed to Europeanization as ever morphing discursive concept available to the actors on national level. As such, the language used for and during the processes of accession to European Union on a general level continues to be open for reinterpretations and re-significations by the national actors in certain areas such as reproduction.

The duality in HDZ’s position stems from the paradox inherent to the process of Europeanization. The ideas of being “fully integrated into the national culture of the state in which they are citizens/or reside, and will thereby maintain the vital differences in the so-called “mentalities” that differentiate intra-European national cultures” was used implicitly as a legitimizing tool for HDZ (Laitin in Zielonka and Mair, 2002:56). As such, HDZ’s policy making process resulted in a law that, in its content, was unique among European countries’ regulation of medically assisted procedures. The law also engaged with highly ideological stance with the ban on freezing of embryos (implicitly qualifying as pro-life). Laitin (in Zielonka and Mair 2002:78) positions national levels as pretenders from the periphery who cynically observe the centre which results in the imitation of that centre (in this case the EU)



in an instrumental manner while actually reproducing nationalism. Hence, law from 2009 presented a perfect example of the previously mentioned “differentiation” on a national level providing an insight to a pattern.

It is clear from here to what extent HDZ’s used their positioning as a party leading the negotiations with the EU and adhering to values inscribed in *aquis communautaire* in terms of agenda setting. On the other hand, it also shows how much the existence of the technical framing that exclusively comes with the accession to EU in terms of deliberations manages to become a site through which certain nationalist and religious ideas get communicated through the content of laws.

## **2.2. The laws in short**

I will first present the “Law on medical reproduction” that was passed in July, 2009. According to the article 1 of the law only married women are allowed to undergo treatments of medical reproduction. With additional amendments made in a parliamentary session that happened a couple of months afterwards<sup>11</sup> (September, 2009) women in common marriages were also added to the law as being eligible to the procedures of medical reproduction. They were supposed to prove the status of their relationship, along with their male partners, in an extra-contentious procedure before undergoing any procedures of the medically assisted reproduction. Article 6 of the law stated that a woman, in order to be eligible for the treatment, needs to be in adequate age for giving birth. What exactly is an adequate age for giving birth is not specifically noted in this or other articles of this law.

The crucial parts of the law were articles that put a direct ban on freezing of the embryos. This meant that only female reproductive cells (eggs) could be freeze. Further, the law states that only three cells (eggs) can actually be fertilized and maximum of three impregnated eggs

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<sup>11</sup> Croatian parliament, “Law on medical reproduction” (in Croatian), Narodne novine, July 17<sup>th</sup> 2009. . Retrieved from [http://www.zakon.hr/zakoni/Zakon\\_o\\_medicinskoj\\_oplodnji.doc](http://www.zakon.hr/zakoni/Zakon_o_medicinskoj_oplodnji.doc) (Accessed on May 14th 2013)

could be to be put in the woman undergoing this treatment. The law legally recognized donating and preservation of gametes. In terms of donors of the reproductive cells (gametes), the law is explicit in terms of consent that the donors need to give when it comes to donation, the absolute prohibition of any monetary (or other) exchange or contracts for those reproductive cells and the restriction of donation of reproductive cells to only one couple<sup>12</sup>. In terms of the latter, the couple can have up to three children conceived with the help of the same donor. Article 11 explicitly states that spouses of the donors need to give their written consent to the donation.

Article 18 also specifically prohibits that the donor of the reproductive cells be a person in blood relation to the couple or in such relation that he/she would not be permitted to enter marriage with one or the other part of the coupling (male donor to woman undergoing the medically assisted reproduction or female donor to man that is married to the woman undergoing the medically assisted procedure). On the other hand, article 10 sets up a right of the child to access the register of donors if he/she was conceived with the help of donor reproductive cells once he/she turns 18 years (full age by Croatian law). The same article also provides the same right to legal guardians of the child and the doctor of the child on exceptional basis if medically justified. It also provides the right to access this register of the court and the body of public administration when needed and in connection to the implementation of law. In relation to these articles, it needs to be noted that a Statutes that would regulate all these measures in relation to the donors have not been implemented, hence the donation of reproductive cells as a crucial part of this law has not been enacted at any point while this law was in force in Croatia.

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<sup>12</sup>Article 19 also limits the donation only to those couples who have less than three children who have been conceived through medically assisted procedures.

Now I turn to the “Law on medically assisted reproduction” that was passed in July 2012<sup>13</sup>. It is worth noting that, in the introductory part of the law from 2012 unlike the law from 2009, there is an explicit proclamation of the accordance of this law to a number of European Union acts. Another notable change is that the law was expanded to (single) women who are infertile, but are not married, common married or in same sex union. The law was also expanded to a person who has a disability, but is not restrained from giving statements that relate to their personal condition, as being eligible for undergoing the treatments. The ambivalent definition of the age limit from the law in 2009 was removed, and now women over 42 years old can undergo the treatments financed by the state only if their doctors decide they are able to do so. The ban on freezing embryos was lifted and the state covers the expenses of the preservation of the embryos that were not used during the process of medically assisted reproduction up to five years. The same regulation is applied when it comes to the preservation of the female reproductive cells.

The “new” law continues to regulate donating and reproductive cells. When it comes to the terms under which the donations are being done, the new law has some similarities with the law from 2009. The main difference is that now the donation of embryos can be provided and financed by the state, according to the article 8. Another novelty is that the donor/s can provide their cells and embryos to different couples, but their “donation” can only be used “until” it successfully results in births of three children. The main similarity is the continuation of access to the register of donors (of reproductive cells and embryos) for the child once he/she reaches full age, for the legal guardian of the child, for child’s doctor and for the court and other state bodies when in connection to the implementation of the law (article 15).

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<sup>13</sup> Croatian Parliament, “Law on medically assisted reproduction” (in Croatian), Narodne novine, July 13<sup>th</sup> 2012. Retrieved from [http://narodne-novine.nn.hr/clanci/sluzbeni/2012\\_07\\_86\\_1962.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2012_07_86_1962.html) (Accessed on May 1st, 2013)

The law from 2012 also has an article that binds the parents of a child conceived through either donated reproductive cell or an embryo to inform the child about his/her conception through medically assisted reproduction. When it comes to monetary (and other) exchange between the couples and donors undergoing the procedures it continues to be prohibited. The same ban applies to contracts, but the article does state that the donors should be provided a reimbursement when it comes to their medical expenses. The law is identical to the one from 2009 in terms of prohibiting donations of reproductive cells if the donor is in blood relation to the couple. On the other hand, the earlier obligation of the donors to get a written consent from their spouses in order to be able to donate the reproductive cells has now been removed from the law.

Overall, the main differences between these two laws are that, with the law from 2012, a single woman with the infertility problem can now also undergo the procedures at the expense of state and the ban on freezing of the embryos was lifted and not only reproductive cells are “eligible” for preservation. Consequentially, the donations of the embryos are now also legally regulated, both for donors and for women undergoing the procedures of medically assisted reproduction.

. As Calhoun (1997:79-83) noted, reproduction policies are used as means, among other, for homogenizing the nation or creating national unity. Hence, policies on reproduction signify a construction of specific gender roles and citizenship of those individuals to whom these laws apply to. Implicitly, families occupy the centre of the content of these laws as they represent symbolic unions in service of larger (national) communities (Anderson, 1983, McClintock, 1993, Heng and Devan, 1992). This is clear with state’s affirmative act in the 2009 law that only recognized married couples as eligible for treatments of infertility at state’s expense. The recognition and regulation that comes with it points to the ideal citizens and,

consequently, ideal parents of different sexes that represent that nation and its future through their progeny. Crucial ideas of these laws are through the positioning the heteronormative family as something indisputably natural to the state's pro-reproductive measures regulated by the state in 2009 and, in a somewhat less explicit manner, in 2012

What comes through the comparison of these two laws is a specific regulation of citizenship. As woman's political positioning was completely conditioned on her marital status, her citizenship was the result of mediation stemming from familial relations (McClintock; 1993:65). This is clear by the previously mentioned example of married couples being the only ones eligible for the treatments by the 2009 law, but it also points to the specific regulation applicable to single women from 2012 law. The whole article on single women revolved explicitly around the marital status of a woman and the absence of it as crucial to the eligibility. On the other hand, marital status was also crucial for the recognition by the law through the regulations on donations in 2009. By the 2009 law, every single donor had to have a written consent from their spouses agreeing to the donation made by their partner. Also, both partners undergoing the procedure had the right to draw their consent just before the fertilized cell is put into a woman. This opens a space for possibility of woman undergoing the painful procedures just to be denied of the treatment in its final period by her spouse.

As previously mentioned, citizen's bodies are crucial for the modern nation state as they represent a vessel of meanings and effects prescribed by the state. In that sense, it is necessary to remember that laws regulating reproduction have a tendency to simplify women's roles to a notion of the reproducer. In the case of Croatia, a woman becomes the focus of regulation as she is perceived, first and foremost, as a reproducer of the future citizens of the state. In that sense, the notion of family, where woman's role is nested through

this perspective, becomes crucial for the state. The right on health care, as guaranteed by the Constitution, now becomes a point of state's involvement in order for (re)signification of relational power hierarchies to take place. The exemplified usage of paternal terms as main symbols of state regulations and the prevalence of masculine discourse (be that through the usage of political theory or religious dogmas) points to the decision-making processes being dominated by men. Further, it points out positioning of masculine over feminine throughout the process of deciding during the policy making process in order to legitimize the existing social order grounded in patriarchal notions (Peterson, 1999). In a sense, it is then necessary for patriarchal system to continue existing by re-ascribing the passive attributes to an idea of a Croatian woman who, at the same time, needs to be eagerly proactive, but only in sense of reproduction of new Croatian-ness.

For Bacchi and Beasley (2002), the woman's body becomes a public site of negotiation and "a compromise" is allowed by the state if those same processes are under the supervision of medical community. Women become labeled as patients who must be controlled not only by the doctors, but also their husbands through consents due to the possible implications this might have for a specific political order - heterosexual and married family (Bacchi and Beasley 2002:342). Not only does this imply a specific context in which a child can be born in state's eyes, but it shows how woman full citizenship is conditioned by their marital status. The result of this is the perception of one's autonomy over a body as a signifier of full citizenship, by which the women undergoing the MAR procedures who are not seen as being in control "do not measure up on the citizen scale" and as such they "can be regulated in ways deemed inappropriate for full citizens" (Bacchi and Beasley 2002:344). The role of doctors will be shown in the next chapter. Not only were both ministers, who were crucial to the makings of these laws in 2009 and 2012, doctors, but the impact of the medical community in general on both laws (during and after the policy making process) was

extraordinary which further proves how the state bestows this community in order to legitimize its intervention in private lives of its citizens.

Despite of the fact that the law from 2012 includes single women, both laws create a clear perception of heterosexism's institutionalization with the "corollary exclusion of non-heterosexual identities and practices" which comes hand in hand with the general notion of marginalization of LGBT groups in concepts of nationalism (Peterson; 1999:39). It is important to mention that an article explicitly forbidding transsexual persons from undergoing these treatments from 2009 was removed in the 2012 law. The transphobia and homophobia present in debates and in the very content of the laws (such as explicit stipulation that the woman eligible for the procedure is not in same-sex union) shows to what extent the reproductive policies communicate the ideas on "the appropriateness" of those single women who do decide to undergo the procedure and on the community into which the child is brought in (in case of a successful treatment).

Overall, nationalist discourse has a tendency to appear during the debates in the field of reproduction as these policies imply ideas on the future of the nation. The other side of this discourse is the active usage of heteronormative family that is central to the construction of the role of women and the exclusion of all other individuals who fall outside the heteronormative frame. The specific positioning of the family comes from it being a symbolic medium of union for the national imaginary on one hand. On the other hand, it is also the site of (re)production of new citizens meaning a site of state's high interest.

### **2.3 The Actors**

Now I turn to the actors I find crucial when observing the policy making process of the laws as I find it useful in shedding some lights in terms of their political standing, their power and the relations that come through it during the policy making processes in 2009 and 2012.

### 2.3.1. HDZ

The Croatian Democratic Union, CDU or HDZ (in Croatian language), was in power in 2009 as it was their second consecutive term in the office since 2004, when they announced that the “Law on medical reproduction” is underway. In order to give an idea about HDZ’s position it is necessary to point out the main elements of this party and how they relate on a national level. HDZ is defined in their statute as

“Croatian state-constitutive party that does depart from their fundamental principles that make this party one that gathers all classes of Croatian nation and other citizens in Republic of Croatia on the principles of democracy and Christian civilization, and on tradition and identity of Croatian’s society and nation”<sup>14</sup>

In its short history of Croatia’s existence (22 years this year), HDZ was the leading government party for almost sixteen years altogether in Croatia. It is worth noting that during the 1990s (during which HDZ was constantly reelected for the office) it was also labeled as a nationalist, authoritarian party as there was „...a total interference of political authority within society: everything was subjected to principle of the leader (all institutions were subjected to leader, from Parliament to „favorite football club“)” (Hlad in Lalović 2000:190). The nationalist element to party’s ideology was clear as the public discourse<sup>15</sup> of the party was rooted in notions such as „historical memories“ and the newly constructed meta – stories that rotated around the ideas such as „...millennium struggle” and “oldest European nations“ within the context of the newly found Croatian state (Zakošek 2007:31).

One of the strongest focuses of the party during the 1990s was definitely in the area of demography that was interlinked with nationalist politics. Subsequently, this resulted in specific programs that fell under the field of reproduction. This was particularly visible

<sup>14</sup>The official site of HDZ. Retrieved from [http://www.hdz.hr/mi\\_smo/povijest/](http://www.hdz.hr/mi_smo/povijest/) (Accessed on May 10<sup>th</sup> 2013)

<sup>15</sup> „...the legitimacy crisis of socialism resulted in the demise of socialist ideology and the rise of the old currents of nationalistic ideology. It also became clear during the 1960s that a supranational or combined Yugoslav identity could not substitute the national identities of the constituent nations...”(Zakošek; 2007:33-34)



during the era of Franjo Tuđman (1990-1999), the leader of the HDZ and the president of Croatia. His speeches were focused on the demographic difficulties:

“...Croatia’s...national wellbeing is in jeopardy, not only with the scattering of Croatians to all continents, but also with a worrisome decrease in birth rate” that made “...the demographic revival one of the crucial tasks for the future of the Croatian people” (Tuđman in Đurin 2012:37)

Here, it is visible how the idea of demographic decrease is directly identified with the state’s interest and, what’s more important, its very existence. As a consequence, the existence of Croatia is put in direct correlation with population’s number setting a responsibility directly into hands of Croatians. Hence, projects that dwelled into this revival were one of the crucial elements of the party’s politics. As such, they resulted in a few programs connected to demographic issues throughout the decade. Here, I will show a sample of such program from 1996 - National program for demographic development:

„We are about to embark on one of the most responsible, actually, crucial tasks for Croatian state and Croatian nation... The fact it is a long-term job should not dishearten us, because, if we do not start with it, a drastic number of Croats and citizens of Croatia would pine...which would result in massive immigration to Croatia of citizens of demographically stronger nations which would lead to Croats being a minority in Croatia by the end of the 21st century (National program 1996:49)

As visible from the sample, the wellbeing of the Croatian state was inherently connected to the idea of demographic growth that, in the end, was explicitly directed towards Croats as being the main group that is endangered. Not only was the ethnic lineage put in focus as problem begging for solution, but the whole construction of nation state was built on the idea that only an ethnic Croat can be a proper Croatian. This kind of discourse was present in the programs that dealt with the demographic problem all through the 1990s until Tuđman died.

Upon his death, HDZ underwent transformation and a change in office happened as the coalition from the left won at the national elections. With the newly elected president, Ivo Sanader, HDZ now started positioning itself as a pro-European party, with accession to EU being the most significant focus of their policies and image. An example of this can be seen during the election campaign promos in 2003 where Sanader stated:

“European Union, united Europe, dear friends, this is one old dream in which the Croatian nation, as one of the oldest nations in Europe, wants to take a part in” (Lalić 2004:65)

Hence, HDZ’s win at the elections in 2003, signified a return to the office as the leading party whose main focus was Croatia’s successful joining of European Union. The idea of return to the faithful Europe in which Croatia deserves a part in due to its long history goes along the idea of the historical memories that were frequently used during the 1990s. In terms of “the demographic problem”, HDZ continued with the different perspective that was first implemented by the coalition of parties when they won the office in 2000. This meant that now the demographic problem was dealt with through strategies that were based in the systematic improvement of living conditions and certain concessions for women entering motherhood in the National family policy (2003) and National population policy (2006).

This is visible in the Program of the Croatian government 2003-2007:

“Family in Croatia needs a new place, role and support. The government will put rejuvenation of Croatia and strengthening of the place and role of family in society into the very focus of national politics’ interest. There will be an increase of fees during the parental leave, an extension of the parental leave to three years to mothers

with three and more children and a special program will be prepared to those families with more children”<sup>16</sup>

Here it is visible how a family got a central role in state’s politics and how the programs dwelling on it refocused to causes of problems that keep Croatian families from having more children. Hence, the obligation and the responsibility are now put on the state and its bodies, reliving the Croatians from the “duty of saving their own country” by reproducing.

It is also clear from here how, with the demographic problem still recognized, the discourse changed from the “death of nation’s wellbeing”. Programs such as the National population policy (2006) had its focus in economic development and growth through which the problem of demographic “troubles” was to be solved. This is visible through a list of goals this policy had, from housing issues (especially among the youth and family with children), inclusion of citizens into the workforce, favorable loans for small businesses, to accessible education among other<sup>17</sup>. Overall, an obvious switch has happened in terms of policies regarding population’s growth as opposed to 90s as HDZ transformed.

Later in 2004, Croatia officially became a candidate for membership and, in October 2005, finally opened the negotiations for the accession to EU. HDZ with Ivo Sanader won another term in 2007 and in 2011 Croatia finally “got a date” (July 1<sup>st</sup>, 2013) when it will become a full member of EU upon finishing the negotiations under HDZ. In 2009, the Prime Minister Sanader decided to leave the office. Subsequently, the empty space was now offered to Jadranka Kosor, one of his closest colleagues in HDZ, who became a prime minister.

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<sup>16</sup> Program of Government of Rep. of Croatia (In Croatian), December 23, 2003. Retrived from [http://www.min-kulture.hr/userdocsimages/dokumenti/ministarstvo/program\\_rada/Program\\_vlade\\_RH.pdf](http://www.min-kulture.hr/userdocsimages/dokumenti/ministarstvo/program_rada/Program_vlade_RH.pdf) (Accessed on May 10th, 2013)

<sup>17</sup> Croatian Government, “National Population policy” (in Croatian), Narodne novine, November 24, 2006. Retrieved from <http://narodne-novine.nn.hr/clanci/sluzbeni/128700.html> (Accessed on May 10th 2013)

Since I am analyzing the law from 2009 it is important to mention a member from HDZ crucial to this law. The main agitator for the law in 2009 was, at the time, Minister of Health and Social Welfare, a gynecologist by profession, Darko Milinovic. He was the head of the Ministry from 2005 to 2011 succeeding Andrija Hebrang who held that position from 2003 to 2005. Due to the wide area of policies his Ministry was covering, he was one of the most exposed and visible Ministers during the era of Sanader's (and consequently Kosor's) governments. The colorful persona of the Minister himself was another strong factor in his popularity. I will get back at Minister's crucial role in creating and passing these laws later in this chapter. Now, I turn to other significant actors in the policy process of these laws.

### **2.3.2 SDP**

Social Democratic Party, SDP, is the second biggest party in Croatia. It is a successor to League of Communists of Croatia and as such was formed upon Croatia's proclamation of sovereignty from Yugoslavia. Based on their Statute, they define the party "...as autonomous democratic party of free, equal and responsible members"<sup>18</sup>. The values the party cherishes and aims at preserving includes respect for human being – its dignity, rights and freedom regardless of sexual orientation, religious views, ethnicity, political standing or social status. They also strive at preserving the rights of workers, respect for antifascism as civilizational attainment of the modern world, for affirmation of the rights and freedoms of the neglected and disempowered individuals, groups and classes, for affirmation of gender equality and warranted rights on health care, education etc. Overall, SDP is clearly a party that positions itself on the political spectrum on the centre to left based on the insistence on human rights and equality while also keeping in focus worker's rights. During the 90s and after 2003, when HDZ won another mandate, SDP was always positioned as the strongest oppositional force in Parliament to HDZ as it indeed has the second biggest number of (party) members in Croatia

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<sup>18</sup>Official site of SDP, Statue of SDP, in Croatian. Retrieved from <http://www.sdp.hr/media/303876/statut-sdp.pdf> (Accessed on May 10th 2013)

which gave them the power in terms of representing specific interests in and outside the Parliament.

SDP, along with other smaller parties from the left with whom it made a coalition, won office in 2000 led by Ivica Račan. A coalition's enter in the office at the time was perceived as strong turn in Croatian's politics as the preparatory documents and discussions (signing the pre-membership agreement) on Croatia becoming a candidate for European Union started with SDP's coalition in office. It is also during the period of the coalition (2000-2003) that strong concessions in different fields of daily politics and, most importantly, in area of war crimes and the cooperation with ICTY, were made in order for Croatia to become a candidate for EU despite of the nationalist agitations coming from different groups on the right. Even after losing the office to HDZ in 2003, members of SDP remained at important positions in different bodies that were leading the negotiations with EU (for example – Ivica Račan was the president of the National committee following the negotiations on the accession to EU during he period of Sanader being the prime minister). By the end of 2011, again in coalition with other smaller parties from the left, SDP won the office. The coalition, “Cock a doodle doo”(Kukuriku in Croatian), named European Union as one of their three main objectives:

“We guarantee that Croatia's being in European family will make it economically developed and competitive. This is the best way of securing an equal and proportionate influence of Croatia in institutions of European Union, while simultaneously preserving the fundamental determinants of Croatian national identity, tradition, culture, language and natural and societal values on which the Croatian society has autonomy throughout history”<sup>19</sup>

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<sup>19</sup>Official programme of the coalition „Cock a doodle do“, in Croatian. Retrived from <http://www.kukuriku.org/o-koaliciji/o-koaliciji/> (Accessed on March 12th 2013)

It is clear that the SDP continues to position the party along the values and priorities one can call European, while preserving “a national lens” in a somewhat different manner to one of HDZ. As some authors see it, social democratic parties in general have turned in the 90s to a version of social democracy that removed the focus from the nation-state and positioned it towards the supra-national level, in this case European Union, believing that it will result in the regulation of the market (Bailey 2005). Here, the specificity of Croatia’s identity and tradition are positioned as a promise that is going to be kept through Croatia’s participation in institutions of the EU. It is clear then to what extent the economic discourse built around the notions of European Union is crucial. As such, it positions tradition and identity of Croatia as secondary, but not in any danger to the processes connected to accession and membership in the EU.

### **2.3.3. The Catholic Church**

In Croatia’s case, another actor that should be added to this list as able to exert influence is the Catholic Church. Fink (2009:82) argues that Catholic Churches tend to be “societal veto players” during the policy making process due to their power stemming from the mobilization potential that tends to be activated on “issues that contradict generally held moral notions”. Additionally, the coherence of the Church tends to be exemplified even more due to the hierarchy (top-down) and the ideas that are homogenous and in line with doctrines (Fink, 2009). In Croatia, the Church is the biggest congregation in terms of number of people who identify themselves as religious Catholics (86.28% of the total population or 3 697 143 people as of 2011)<sup>20</sup>, which gives the Church power as a non-governmental actor in its own right.

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<sup>20</sup> Croatian Bureau of Statistics, Census 2011 . Retrieved from [http://www.dzs.hr/Hrv\\_Eng/publication/2012/SI-1469.pdf](http://www.dzs.hr/Hrv_Eng/publication/2012/SI-1469.pdf) (Accessed on March 12th, 2013)

The strength of the Church in Croatia has to do with deep political ties it has with HDZ from the very beginning of the party. Đurin (2012:38) argues that "...the Catholic Church in Croatia has kept the national consciousness even in the period of communist atheism". This is clear reading a comment Tuđman made in the 90s:

"...because the Church in this half-century long totalitarianism, and the other five years before that communist one-mind-ness should be added to that, played a very important positive role in preservation, I would dare to say, of national consciousness and the survival of the Croatian national being" (Tuđman in Đurin 2012:38)

This resulted in a contract between the then government of Croatia and the Holy See that signified cooperation in the field of education and culture. As one of the consequences, catechism is now an elective course in elementary and high schools. This tight knit relationship between the Catholic Church and HDZ continued all through Sanader's era. Sanader himself declared, in the previously mentioned Program of the Croatian government 2003-2007 (pg.4)

„The voice of the Church, with its longstanding capability of reading the internal pulse of the nation's being, has an irreplaceable and, today especially, actual role“<sup>21</sup>

Here, it is visible how the church gains public recognition that enables it to act in certain fields of policy making whilst having strong institutional tie to the state which gives them the status of „parapublic institutions“ (Katzenstein and Minkenberg in Fink 2009:80). Also, as mentioned earlier, HDZ lists the importance of Christian civilization as one of its core values

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<sup>21</sup>Program of Government of Rep. of Croatia (In Croatian), December 23, 2003. Retrived from [http://www.min-kulture.hr/userdocsimages/dokumenti/ministarstvo/program\\_rada/Program\\_vlade\\_RH.pdf](http://www.min-kulture.hr/userdocsimages/dokumenti/ministarstvo/program_rada/Program_vlade_RH.pdf) (Accessed on May 10th, 2013)

till today. Hence, HDZ and the Catholic Church in Croatia remain strong allies when it comes to support and influence in policy making.

### **2.3.4 Non-governmental groups**

When it comes to movements or more specifically groups from the non-governmental sector that can be perceived as actors in the 2009 and 2012 process', a couple of them can be listed due to their involvement with these laws. Iskorak and Kontra, RODA (Parents in Action) and Women's Network Croatia were one of the most prominent actors outside the institutional area. Iskorak and Kontra are LGBT groups. Iskorak is the Center for rights of the sexual and gender minorities, while Kontra defines itself as a Lesbian group. Both groups hold a special place in terms of advocating the rights of LGBT minorities and are crucial, among other similar groups, for organizing Gay Prides in Zagreb which are postulated as monumental in terms of raising awareness and tolerance in Croatia. As such, they are also perceived as representatives insisting on the actual implementation of the anti-discriminatory directives from European Union as their visibility has immensely grew along with Croatia's advancement in the EU accession.

RODA or Roditelji u Akciji (Parents in Action) is "a group of interested citizens which advocates for dignified pregnancy, parenthood and childhood in Croatia"<sup>22</sup>. One of their particular focuses of action is through a program Medically assisted reproduction that aims at "...making the public sensible to about the problem of medically assisted reproduction, informing and education of the couples with a problem of infertility, pressuring the authoritative institutions in order for them to expand the rights of the patients faced with the problem of infertility, pressuring the legislative in order to change the Law on medically

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<sup>22</sup> Official site of RODA, in Croatian. Retrieved from <http://www.roda.hr/article/category/o-udruzi> (Accessed on May 10th 2013)



assisted reproduction, and solving other problems that are connected to infertility”<sup>23</sup>. The unofficial numbers of people struggling with infertility in Croatia ranges from 50 000<sup>24</sup> minimally to 80 000<sup>25</sup> to 515 000<sup>26</sup>. As the projections go, every either fifth or sixth couple in Croatia has these problems which makes it is clear what the mobilizing strength of this NGO group is.

Women’s Network Croatia is an “umbrella” organization that “...unites organizations, groups and initiatives that recognized discrimination against women who are often economically and politically marginalized; it opposes all sorts of gender discrimination”<sup>27</sup>. As such, it united 39 women oriented groups all over Croatia. Their goal is to pressure for “measures” that would aim at “complete and realistic displaying of women in public, abetment and sanctioning of sexism, prejudices and stereotypes” and for “easily accessible sterilization and artificial insemination”<sup>28</sup>. Considering the wide area they cover in terms of “female questions” and the fact that they present a cohesive movement of multiple women organizations all over Croatia, their position can be signified as powerful in terms providing a structured and coherent perspective when it comes to policy making process.

Having done the presenting and contextualizing the actors I found crucial to the policy making process in 2009 and 2012, I now turn to the actual policy making process of these laws and the dialogue between the previously described groups as actors.

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<sup>23</sup>Ibid.

<sup>24</sup>Ibid.

<sup>25</sup>Policlinic for gynecology, obstetrician and reproductive medicine, in Croatian. Retrieved from <http://www.poliklinika-ivf.hr/index.php/hr/neplodnost-i-ivf/85-plodnostineplodnostcovjeka> (Accessed on May 10th 2013)

<sup>26</sup>Official site of RODA, in Croatian. Retrieved from [http://www.roda.hr/uploads/neplodnost/medicinski%20potpomognuta%20oplodnja\\_ISTINE%20i%20LA%C5%BDI\\_2012.pdf](http://www.roda.hr/uploads/neplodnost/medicinski%20potpomognuta%20oplodnja_ISTINE%20i%20LA%C5%BDI_2012.pdf) (Accessed on May 10th 2013)

<sup>27</sup>Official site of Women’s Network Croatia, in Croatian. Retrieved from [http://www.zenska-mreza.hr/platform\\_eng.htm](http://www.zenska-mreza.hr/platform_eng.htm) (Accessed on May 10th 2013)

<sup>28</sup>Ibid.

## 2.4. The policy making process

In this section, I will show how HDZ made limited references to the process of negotiation with the European Union whilst putting the policy on medically assisted reproduction on the agenda. At the same time, HDZ used European Commission's report from 2008 in order to speed up the whole policy making process that resulted in the exclusion of the of the actors who hold interest in this (oppositional parties, non-governmental groups and experts in the field of human reproduction). As a consequence, HDZ basically had monopoly on the content of the law.

### 2.4.1 The Law on medical reproduction

As mentioned earlier, European Commission's report on Croatia from 2008 noted that, in order to close the chapter on Consumer and Health Protection, a legal alignment needs to be made that deals with the reproductive cells.<sup>29</sup> The majority of the "Law on medical reproduction" in 2009 was actually dealing with alignments for the donations of reproductive cells, the criteria and standards that needed to be upheld during the process of donations, the donor's obligations and rights and the regulation of reproductive cells when it comes to their preservation. Hence, it is clear that a regulation in the area of reproductive cells became a part of the law within a year after Commission's complaint in the report. Going by Kingdon's (1995:3) theory, this is a point of what he calls "a problem stream"<sup>30</sup> where an actual problem is now set as a part of an agenda and is being recognized due to the process of Europeanization. To be more specific, the European Commission was the one that located

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<sup>29</sup>"Limited progress can be reported in the field of tissues and cells. Legal alignment in the field of reproductive cells is still outstanding. This is a key element for the accession negotiations on this chapter. Administrative capacity is not yet sufficiently developed, especially in the Ministry of Health and in inspection departments. A serious adverse events and reactions reporting system is not in place. Facilities for handling tissues and cells have not yet been upgraded, restructured and licensed according to the EU technical requirements. Preparations in this field are underway." EC, Report on Progress of Croatia. Retrived from [http://ec.europa.eu/enlargement/pdf/press\\_corner/key-documents/reports\\_nov\\_2008/croatia\\_progress\\_report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/press_corner/key-documents/reports_nov_2008/croatia_progress_report_en.pdf) (Accessed on April 25th, 2013, pg.64)

<sup>30</sup> "lists of subjects or problems to which governmental officials, and people outside of government closely associated with those officials, are paying some serious attention at any given time" (Kingdon 1995:3)

and formulated it as a problem in need for a solution for Croatian government. The Reports that the Commission sent on an annual base were obliging and, as such, proposed a wide range of issues not previously recognized on the national level that needed to be dealt through policy making process.

After the first draft was presented to the public it came under a strong attack from various NGO groups, professional organizations of doctors and the patients themselves who were treated for infertility<sup>31</sup>. In parliament, SDP was in strong opposition along with the rest of the parties of left<sup>32</sup>. In Croatia, the proposed law was labeled in public as one of the most conservative in Europe in regard to its ban on the freezing of embryos and the initial regulation by which only married couples were eligible for the treatments.<sup>33</sup> It is worth repeating that, to date, the only other country that had a law similar to this is Italy, where the law on medically assisted reproduction was declared unconstitutional not long before the parliamentary sessions in Croatia on this law started.

Interestingly enough, most of the complaints coming from different institutional and non-institutional bodies focused on the previously mentioned parts of the law that were deemed controversial. At the same time, parts on the preservation of the reproductive cells remained generally untouched by the statements of different interest groups or official reports by the Committees. The policy making process itself on this law was very much confined to the Ministry of Health and Social Welfare. The expert group consisted of those working in the Ministry, and no other actors from either civil society or specialists in human reproduction

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<sup>31</sup>Vesna Roller and Ljerka Bratonja Martinović, "Doctors against the backward law on IVF"(In Croatian) , Monitor, June 15, 2009.Retrieved from <http://www.monitor.hr/clanci/lijevnici-protiv-nazadnog-zakona-o-umjetnoj-oplodnji/22122/> (Accessed on Mar.23<sup>rd</sup> 2013)

<sup>32</sup>Social-democratic party also refused to physically be in the Parliament during the voting on this new law. Krnetic, Snjezana. "Milinovicu jos nije prosao zakon o umjetnoj oplodnji". 24 sata. July 10<sup>th</sup> 2012. Retrieved from <http://www.24sata.hr/politika/milinovicu-jos-nije-prosao-zakon-o-umjetnoj-oplodnji-125435>, (Accessed on Mar.24<sup>th</sup> 2013)

<sup>33</sup>Orhidea Gaura, "A law against parenthood", Nacional, July 14<sup>th</sup>, 2009. Retrieved from <http://www.nacional.hr/en/clanak/50360/a-law-against-parenthood> (Accessed on Mar 27th 2013)

were granted a position in the group. The wider public was ignorant of the specific elements to the law itself as previous drafts on medically assisted reproduction from the beginning of 2000s were put aside. Despite of the fact that earlier drafts on these laws were indeed made in the early 2000s, due to “nature” of the law and ideological notions that are inherent to it, parties in office never decided to go forward with it until 2009. Consequently, the regulation of medically assisted reproduction was never fully formed as a social problem to the wider public. What is important to take into account is that the legislative process was fast tracked by the Ministry meaning only one reading in the Parliament was in place. Only when the draft became available to certain parliamentary bodies did the official reactions of other actors started coming about<sup>34</sup>. In the next chapter I will explain what the fast tracked legislative process is and I will thoroughly present the complaints made by the both parliamentary committees and the oppositional party, SDP.

#### **2.4.2. Interaction between the governmental bodies, SDP and HDZ**

The implications of the fast tracked legislative process here are crucial due to the fact that, by the Rules of Conduct of Croatian Parliament, the fast tracked laws undergo the urgent procedure only in cases of immediate national security threats, in case of the prevention or deflection of a significant disruption to the national economy and in case of laws that are being adjusted to the legislation of European Union if the applicant requests for such<sup>35</sup>. It becomes clear then that the law was indeed presented as means of the continuous Europeanization of laws (in order to become harmonized with the *aquis communautaire*) if not

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<sup>34</sup> It is worth noting when the procedures of infertility treatment can begin in this law: The terms under which the procedures for medically assisted reproduction can start are defined in the article 6 of the law. According to that article, the procedure is only possible after the curing of infertility is seen as not successful or hopeless, or when there is an inevitable chance of a serious genetic disease transfer through the natural conception between the partners.

<sup>35</sup> Such request can be disregarded if the competent body, Committee for Constitution, Rules of Conduct and policial system or Committee for legislature suggest a Parliamentary session meaning first reading of the law, due to inconsistency with the Croatian Constitution or rule of law. Official site of Croatian Parliament, Statue Retrived from <http://www.sabor.hr/Default.aspx?art=1566> (Accessed on April 29th, 2013)

for anything else then for the deliberative procedure of this law specifically. Despite of the fact that, in the very beginning of the law, it does say that the law is made in correspondence to the European *aquis communautaire*, Committee for European integrations<sup>36</sup> announced through their evaluation that it does not correspond to it and that it goes against the Convention for the protection of Human rights and Dignity of the Human being and that the law discriminates on the basis of marital status. Despite of this opinion the Committee could not take a standpoint on the correspondence of the law with *aquis communautaire* as the voting on this matter ended in a tie. The Committee for the equality of the sexes<sup>37</sup> had a similar complaint in terms of discrimination on the basis of a marital status with a separate opinion on the matter of the procedures that were harmful to the woman's health. The Committee concluded that the content of the law was breaching the right of women to have those procedures available to them that are least harmful to their health. Despite of it the Committee, based on the majority vote decided to back the law.

The usage of the European context that is crucial to Radaelli's previously mentioned argument becomes even clearer when the chief of the Committee for Health and Social Welfare<sup>38</sup>, also a member of HDZ, labeled the law as "...one of the most advanced laws in Europe"<sup>39</sup> during a parliamentary session on the law in 2009. This goes in line with projecting European concepts and ideas as a framework for deliberation and communication in policy processes, while safely opening the window for the synchronization of those same policies in their content with what they (local actors in power positions during the policy making process) perceive as going in line with the national culture, interests or values.

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<sup>36</sup> Complete list of opinions of Committees can be retrived from:  
[https://infodok.sabor.hr/Reports/KarticaAktaFrm.aspx?zak\\_id=21342](https://infodok.sabor.hr/Reports/KarticaAktaFrm.aspx?zak_id=21342)(Accessed on April 29th, 2013)

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> Libela, Column of Shame (In Croatian), June 2009. Retrieved from <http://www.libela.org/stup-srama/p/8/>  
 (Accessed on April 29<sup>th</sup>, 2013)

Oppositional parties and the Committees giving the (ignored) notes on the laws were examples of criticism of this law. Active usage of “Europe” was practiced by the oppositional SDP and certain parliamentary and non parliamentary groups in order to “discipline” HDZ and “return” Croatia to “Europe” where it supposedly belongs and will finally get back to “rightfully” in the near future. This way, the oppositional groups that are not in the office position themselves through discourse as the “forward ones” as they actively connect ideas of “modernity” to the accession to EU. In doing so, SDP presents itself as crucial in building this “...west European identity” using the law from 2009 as a tool to position Croatia in the European landscape (Böröcz 2000:870). This means that the law from 2009 “misrepresented Croatia” as whole as it was portrayed, by SDP, as the Other being “...weaker, ignored, belittled, scientifically and officially apprehended and described-hence-objectified” (Böröcz 2000:870). SDP then discursively presented a switch to Croatia’s “rightful identity” by promoting the changes to the law in 2012 as “...dynamic, inspiring, lively, and...characterized by a complex subjectivity” (Böröcz 2000:870). This is what Melegh (2006:29) refers to as “coloniality” as it is, among other processes, also a “colonization of consciousness” that he sees as “an energy and a machinery to transform differences into values”. This results in a very specific “dialogue” between HDZ and SDP which is constructed as “upward-looking liberals and modernizations’ socialists blame(ing) the local “Eastern” corrupt nationalists” (Melegh 2006:195).

Having shown the implications of the interaction between the governmental bodies and oppositional parties with HDZ, I now turn to non-governmental bodies and their interaction with HDZ.

#### **2.4.3. The role of non-governmental actors**

Policy making in the field of reproduction involves three main actors in terms of their influence that tends to prevail in this process – women’s movement and medical community,

institutions and parties (Bleklie, Goggin, and Rothmayr in Engeli 2012). In terms of application of earlier mentioned Kingdon's (1995:17) theory to this, this part of the policy making process came in as the policy stream that signifies "gradual accumulation of knowledge and perspectives among the specialists in a given policy area". Institutional access, cohesive women movements, the authority of medical community, and the ideological stances of parties all play a significant role in taking positions during the policy making in field of reproduction. It is important to add that the policies that embed certain moral values tend to go in the direction of defining right from wrong with reproductive policies being the exception to this rule (Green-Pedersen, 2007). Next, I will show the "interaction" of actors when it comes to different parts of the law from 2009.

#### **2.4.4 Interaction of the non-governmental actors and HDZ**

One of the crucial elements to the 2009 law from was regulation by which only married women are eligible for the infertility treatments. In terms of restriction based on the marital status of women who were supposed to undergo these treatments, Minister Milinovic was clear:

"I've told her how, if her companion isn't ready to say the final yes in front of the registrar and, what's even more important for me, in front of God, than he isn't ready to take care of a child either."<sup>40 41</sup>

This becomes even clearer in the next quote that came up during the debates from one of the more prominent HDZ's MP Andrija Hebrang, the ex-Minister of Health and Social Welfare and now the chairman of the Committee of Health and Social Welfare:

"Women without partners cannot undergo IVF treatment because that child would be denied of a parent" and "When the time comes, that child would demand explanation

<sup>40</sup>Libela, Column of Shame (In Croatian), June 2009. Retrieved from <http://www.libela.org/stup-srama/p/6/> (Accessed on April 29<sup>th</sup>, 2013)

<sup>41</sup>Also, according to the article 8, both partners need to undergo psychological or psychotherapeutic and legal counseling before undergoing the procedure.

of who his(!) father is and that's a problem - it means that only married women should be granted a right for an IVF treatment".<sup>42</sup>

LGBT movements Iskorak and Kontra together with the women's movement Women's network Croatia, expressed deep concern over this article saying it is

"...a direct attack on the Constitution and intrusion of the constitutional norms of secularity and the sex equality. The Croatian government has the duty to protect the rights of all citizens no matter of their sex or religious affiliation.

The equality between sexes is one the highest values in the Constitution of Republic of Croatia and is a ground for interpretation of the Constitution. A law that limits the rights of women to freely disposition their own bodies depending on their marital status presents a crude breach of human rights that are granted by the articles 3 and 14, and also article 62 of the Constitution of Republic of Croatia that specifically guarantees and protects motherhood"<sup>43</sup>

It is clear from the Minister's and Hebrang's statements how women, by this law, were only recognized as legitimate "contenders" for these treatments if they are married. This falls in line with the previously mentioned idea on women's citizenship being exclusively mediated through her marital status. The notion of women securing their recognition in the public sphere only through their spouses falls within the patriarchal underlining of society and specific families in particular.

Part of the complaints also came from RODA (Parents in Action) as they also vocalized issues with being ignorant to the elements of the law. It is worth noting that, Minister's claim how the groups of civil society, such as RODA, were a part of the consultation process during the policy making, was quickly disclaimed through the official statement of RODA saying

<sup>42</sup>"Hebrang: IVF is not for women without a husband", (in Croatian) Jutarnji list, February 14<sup>th</sup>, 2009. Retrieved from <http://www.jutarnji.hr/hebrang---umjetna-oplodnja-nije-za-zene-bez-muza-/287011/> (Accessed on Nov.24<sup>th</sup> 2012)

<sup>43</sup> "That's how Milinovic blathered" (In Croatian) H-Alter, July 9<sup>th</sup>, 2009. Retrieved from <http://www.h-alter.org/vijesti/politika/tako-je-lupetao-milinovic> (Accessed on May 2nd, 2013)



how the Minister lied about their involvement in the policy making process<sup>44</sup>. A couple of months after the initial law was passed (in September, 2009), the Ministry decided to add an amendment to the law by which the eligibility for treatments of infertility through medically assisted reproduction was now expanded to those in common marriage. Minister said that he expects for these amendments to influence the increase the number of marriages<sup>45</sup>. This is the point where it is clear that the pressure from non institutional actors had an impact as majority of the complaints about the new law rounded around the issue of marital status of women undergoing the treatments.

Another crucial element to the 2009 law was the ban on freezing of the embryos. This is a part of the law where the actual influence exerted by the Catholic Church can be located, as the Minister himself declared that, for his party (HDZ), life begins with conception positioning himself close the Catholic Church whose stance on this can be see in the following note.

Catholic Church in Croatia expresses their opinion through the official document from the Croatian Bishop's Conference and Minister Milinovic acknowledged it as important.<sup>46</sup> These are the extracts from the note in 2009:

“Basic principles of the Catholic Church when it comes to IVF need to be taken into an account when delivering this law ...acknowledgment of dignity of a person in each human being from the conception till death”

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<sup>44</sup>“NGO RODA: Minister lies when he says he consulted with us on the law on medical reproduction” (In Croatian), Index, July 10<sup>th</sup>, 2009 Retrieved from <http://www.index.hr/vijesti/clanak/udruga-roda-milinovic-laze-kada-tvrdi-da-nas-je-konzultirao-okozakona-omedicinskoj-oplodnji/441161.aspx> (Accessed on May 2nd, 2013)

<sup>45</sup>“Medical reproduction for those in common marriage too”, Dnevnik.hr, July 17<sup>th</sup>, 2009. Retrieved from <http://dnevnik.hr/vijesti/hrvatska/milinovicev-zakon-o-umjetnoj-oplodnji-bez-potpore-u-saboru.html> (Accessed on May 2nd 2013)

<sup>46</sup>Minister Milinovic: “When it comes to Church's opinion on the law, the government cares deeply about it” (In Croatian) Retrieved from: <http://www.libela.org/stup-srama/p/9/> (Accessed December 1, 2012)

Here, it is visible how a moral stance in terms of recognition of life form conception is brought up. Having the actual content of the law in mind, the influence and the opinion of the Church was indeed taken into account by HDZ's positioning as "pro-life" when making it.

The note continued:

"...unity of marriage, which carries the mutual respect of spouse's rights to only become a father and a mother one with another..the gift of life should be achieved in marriage through a practice which specifically and only belongs to the spouses...because love and birth go together and cannot be violently separated...there shouldn't be any violation of marriage dignity, transfer of life within the marriage"

Again, the importance of the marital status in the matter of medically assisted reproduction is being equaled to the normative existence of "love" and "birth" only in marriage on one hand, but also as crucial notions to marriage (procreation). In terms of the law, this was clearly taken into account in the "original" law from 2009 and MAR was exclusive to married couples. Bishops' note continued:

"...procedures of eugenics...the procedure of the IVF are not cures because they do not cure the source of the infertility as a complicated health issue... it is not in the best interest of children before or after because, not only does it deny the right to live of embryos, but it purposely takes away fatherly love and care which is in direct opposition to Convention on the rights of the child".<sup>47</sup>

Here, Church sets its position towards In Vitro Fertilization as questionable method in a medical sense and, for them, infringes on the rights of child in relation to the "fatherly love". This part in particular is unclear, but it might be interpreted as equation between the genetic and parental connection one had to a child which exemplifies the importance of the genetic relationship for Church when it comes to progeny. Rothman's (in Callahan, 1995:20) argument comes to mind as it posits genetic connection as "the basis for men's control over

<sup>47</sup>Croatian Bishop's Conference, "Contribution to discussion on medical reproduction" (in Croatian), July 2009. Retrived from [http://obitelj.hbk.hr/index.php?option=com\\_content&task=view&id=99&Itemid=50](http://obitelj.hbk.hr/index.php?option=com_content&task=view&id=99&Itemid=50) (Accessed on Nov.24<sup>th</sup> 2012)

the children of women. The contemporary modification of traditional patriarchy has been to recognize the genetic parenthood of women as being equivalent to the genetic parenthood of men, genetic parenthood replaces paternity in determining who a child is, who it belongs to. I believe it is time to move beyond the patriarchal concern with genetic relationships”. Part that refers to freezing of the embryos goes in line with the explanation on the first part of the Bishops’ note.

Most of the critiques going against the 2009 law were rooted in the fact that the “preservation of reproductive cells” was perceived as “an alternative” procedure in the modern technologies of medically assisted reproduction that, as a result, was harmful and painful to women who undergo those same procedures. As visible from the note itself, Church expresses doubt in the processes of medically assisted reproduction as it connects it to the ideas of eugenics. On the other hand, the note from the Croatian bishops positions it exclusively, and not surprisingly, as pro-life group for whom the life begins with the conception. Considering the ban within the actual law on the freezing of the embryos, it seems that the Ministry found a compromise with the Catholic bishops in order to keep the alliance. An alliance that was previously mentioned as crucial to HDZ’s government all through its history in Croatia’s politics, remained intact and in line with HDZ’s core values. The fact that the note also exclusively mentions married couple, a conclusion may be that this is another part of the actual law where influence of the Church can be detected.

On the other hand, due to the Church’s strong ties to the state<sup>48</sup> (through financial support and contracts covering issues such as religious course in schools amongst other), it is clear how the Church’s own institutional interests may point to why, despite of their ambiguous position towards the procedure of IVF itself, they decided not to push their agenda in its fullest. It

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<sup>48</sup>The treaty between the Holy See and Republic of Croatia on economic questions. The detailed content of the contract can be read here (in Croatian): <http://zakon.poslovna.hr/public/ugovor-izmedu-svete-stolice-i-republike-hrvatske-o-gospodarskim-pitanjima/242635/zakoni.aspx> (Accessed on May 13th 2013)

seems that indeed, the stronger the connection of the Church to the state the lesser the ability to act fully as an interest group (Minkenberg in Fink, 2009).

Overall, it seems that, while there was a clear and expressed recognition from the Minister of the importance of the Church while making these laws, the content of the laws in relation to marital status and freezing of the embryos was presented as a matter of HDZ's core values during the debates and in the final version of the law in 2009. Kingdon (1995) claims that the third stream – politics stream – once the solutions (policy proposition) to the constructed and recognized problems (policy problem) are connected (in a policy) with the “help” of institutional actors. As a result “the greatest policy changes grow out of that coupling of problems, policy proposals and policies” (Kingdon; 1995:17). The policy problem was recognized, in part, by the European Commission. Europeanization as a constant process appeared to be crucial to this stream as it acted as catalyst that provided a technical framework for the deliberation of the law. On the other hand, policy solution was highly influenced in its content by the Catholic Church. Alliance between the Church and HDZ gave this non-institutional actor power as its opinion was obviously taken into account by HDZ while making the law.

Another group of actors needs to be mentioned when talking about this law - doctors, as it is clear that a certain influence of medical community was also exerted through different channels and not necessarily during the actual policy making process. On one hand, the direct involvement during the policy making process came from the Committee of Health and Social Welfare. The specificity with which these laws were supported by the majority of the vote of the Committee of Health and Social Welfare show a level of definite autonomy within the makings of this law and possibly the exertion of influence over the status doctors, have in

Croatian society as almost half of this Committee (9 out of 19 members) were doctors<sup>49</sup>. As a consequence, the issue of age of the women was resolved through the article that leaves it up to doctor's personal judgment on women's competence to undergo the procedures. Here, the autonomy that is given to the doctor's own practice is clearly labeling him/her as a powerful player once the implementation of the laws begins.

It is also important to mention that in September 2009 there was a Conference on human reproduction that had (doctors) sub-specialists (in human reproduction) in attendance. The Minister announced that most of them showed support for "his" law and as such the wider public was presented with a policy that now also had the support of the specialists next to the already shown support from the Committee that had Andrija Hebrang as its chairman<sup>50</sup>. Hence, it can be concluded that, while the medical community was not directly involved with the making of the law, the law itself, in part, and the latter plead to them for support by the Minister repositioned these sub-specialists as important actors which will become obvious with the policy making process in 2012.

The specificity with which the law was made and the fact that it is positioned in an area of human reproduction that, in terms of garnering knowledge is restricted to a small of people due with expertise in this field of medicine insists on for practicing, points to the exclusionary notions this policy making process had for other actors. This was especially visible during the presentation of statistics in terms of the success of the 2009 law measured by the number successful pregnancies as a result of the treatments regulated by the law. During a conference in 2010, which Minister Milinovic also attended, that attracted almost exclusively specialists

<sup>49</sup> Complete list of Committee members can be found on the official page of Croatian Parliament. Retrieved from: <http://www.sabor.hr/Default.aspx?sec=2607> (Accessed on May 10th 2013)

<sup>50</sup> It is also worth noting that Hebrang said that it is „...not in woman's interest for her child to be freezed“ when talking about the ban on freezing the embryos. The quote can be found in the article „We got five questions for HTV quiz in advance“, T-Portal, October 15th, 2009. Retrieved from: <http://izbori.tportal.hr/arhiva/izbori/39410/Unaprijed-smo-dobili-5-pitanja-za-kviz-HTV-a.html> (Accessed on May 1st, 2013)

in human reproduction, it was announced that there was an increase in pregnancies compared to the period before the law came into power. The numbers were presented by the doctors themselves. Soon after, a response from RODA (Parents in Action) and from academia came that not only denied such claims, but also showed the willfully “wrong reading” of the numbers that actually hide the fact that the new law did not show success<sup>51</sup>. Here, it is clear how the positioning of the doctors as specific in terms of their status in society was used in presenting the data that can be perceived as supporting Minister’s law.

Utilization of the medical community came into place once the law was being implemented, not only in terms of the actual treatments, but also for political aims. This was possible due to the fact that no concrete opinion of the public majority was presented during the makings of the law. Hence, whatever the reaction might arise from the wider public, for Kingdon (1995:66) the “public opinion may set limits on the possibilities and may affect an agenda of subjects in a general way, but the general public opinion is rarely well enough formed to directly affect an involved debate among the policy specialists over which alternatives should be seriously considered”. This proved to be true in Croatia’s case in 2009, but since the reaction of NGO sector continued to be strong even after the implementation of the law started, a wider public started to be more exposed to the opinions on it. This resulted in a construction of a social problem on a wider scale and, as such, proved to be a strong advantage for the oppositional party, SDP for the national elections at the end of 2011.

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<sup>51</sup>“Analysis of three versions of the same ppt presentation - Reaction from NGO RODA”, RODA, May 19<sup>th</sup> 2010. Retrived from: [http://web.potpomognutaoplodnja.info/index.php?option=com\\_content&view=article&id=336:analysis-of-three-versions-of-the-same-ppt-presentation-reaction-from-ngo-roda&catid=98:statistike&Itemid=115](http://web.potpomognutaoplodnja.info/index.php?option=com_content&view=article&id=336:analysis-of-three-versions-of-the-same-ppt-presentation-reaction-from-ngo-roda&catid=98:statistike&Itemid=115) (Accessed on May 10th 2013)

## 2.5. Changing the law in 2012 and getting “back to Europe”

In early 2012 a coalition of left parties, “Cock a doodle doo”, led by Social-democratic Party (SDP), entered the office. One of their main goals<sup>52</sup> during the election campaign was to change the existing law from 2009 regarding infertility treatment. Hence, the law on the regulation of IVF, now called “Law on medically assisted reproduction” can be perceived as reactionary to the 2009 law. This is visible through the reinstatement of a discourse around “Europe” and ideas that connected “forwardness” to the changes in the law. It also signified a mobilization of the electorate that fights with infertility. It is important to note that the new Minister of Health Rajko Ostojic, a doctor, actively used opinion polls in order to garner even wider support for this law. These polls showed that 69.1%<sup>53</sup> of examinees in the sample fully supported the changes to the law on medically assisted reproduction in 2012. The official position of Minister Ostojic, when it comes to the 2009 law was filled with notions of “backwardness” as they labeled the law as

“...the one that threw Croatia back to the 19<sup>th</sup> century..I will insist on respecting the standards of medically assisted reproduction the way they are defined by the European association for human reproduction...the “golden standard” that is practiced in the huge (!) majority of European countries...”<sup>54</sup>

While presenting the law, the Minister’s discourse was built around the notion of European-ness of the new law. An example of this can be seen in the next statement:

“...I am proud of the draft of the law...it is “European”...because, with it, Croatia enters the circle of European countries that have built in the most modern methods

<sup>52</sup>“Cock a doodle do” official program Plan 21, Cock a doodle do September 14<sup>th</sup>, 2011. Retrieved from <http://www.kukuriku.org/plan21/programski-okvir/> (Accessed on Mar.24<sup>th</sup> 2013)

<sup>53</sup>Drazen Ciglenecki: „IVF: 69% citizens behind Government, 20% behind the Bishops and HDZ“ (in Croatian), Novi List, August 4<sup>th</sup>, 2012. Retrived from: <http://www.novolist.hr/Vijesti/Hrvatska/Umjetna-oplodnja-Uz-Vladu-69-gradana-20-uz-biskupe-i-HDZ> (Accessed on May 10<sup>th</sup> 2013)

<sup>54</sup>Ljerka Bratonja Martinović and Vesna Roller, “Ostojic is demolishing Milinovic’s law and is introducing European standards.”, Novi list, January 3<sup>rd</sup>, 2012. Retrived from: <http://www.novolist.hr/Vijesti/Hrvatska/Ostojic-rusi-Milinovicev-zakon-o-umjetnoj-oplodnji-i-uvodi-europske-standarde> (Accessed on May 10<sup>th</sup> 2013)

of infertility treatments into their legislature...This law is based on six principles. First one being the principle of the optimal treatment which guarantees medically assisted reproduction that is in accordance with the best European practice...”<sup>55</sup>

Finally, upon presenting the new law in May, 2012 in the Croatian Parliament, Minister proclaimed that

“...this (law) might be the most beautiful gift Croatia can offer to Europe...on Europe Day”<sup>56</sup>

In all of these quotes it is clear how the point of orientation for SDP, when constructing a discourse, is the notion of “Europe” that seems to be, for them at least, inherent to “forwardness” and “modernity”. Melegh (2006) argues that the East Europe socialist elites reinstated Eurocentrism by the end of the communist era. This turn was grounded in securing power positions in the “new system” by groups of professionals and intellectuals who were only in the middle of the social and political hierarchies during the communist period. Consequentially, as capitalism established itself in Eastern Europe, these groups started creating a discourse embedded in “...ideas of “Europeanization”, “Westernization, “return to Europe” and “true Europe”” in order to create basis for exclusion of those groups who are not acting accordingly to this civilizational discourse (Melegh 2006:191). This goes in line with the earlier analysis of criticism from the oppositional groups (mainly SDP) and the discourse they used against HDZ in relation to the law in 2009. Now being in the office, SDP continued using this discourse while presenting and passing the law.

The idea of Croatia’s return to its rightful place implies that the existing place where it has been put by the law from 2009 signifies something “backward”, not existent, on the

<sup>55</sup> HINA, “Ostojic proud of the Law on medically assisted reproduction: HDZ considers the law discriminatory”, Novi list, May 9<sup>th</sup>, 2012. Retrived from : <http://www.novolist.hr/Vijesti/Hrvatska/Ostojic-ponosan-na-Zakon-o-medicinski-potpomognutoj-oplodnji-HDZ-ga-smatra-diskriminatornim> (Accessed on May 10th 2013)

<sup>56</sup> Media Servis, „Turbulent discussion on IVF: HDZ worried about the methods on establishing infertility, Ostojic gives them one (the lowest grade in Croatian schooling system)“ (in Croatian), Index, May 9th, 2012. “Retrived from : <http://www.index.hr/vijesti/clanak/burna-rasprava-o-umjetnoj-oplodnji-hdz-brinu-metode-utvrdjivanja-neploдности-ostojic-im-podijelio-jedinice/614056.aspx> (Accessed on May 10th 2013)



“European spectrum of values” and also “as part of the past” in SDP’s discourse. As such, the national interest gets discursively leveled with the “European” interest (defined in a very abstract and instrumental manner) and thus “the national interest becomes irrelevant where a step upward or closer to the West can be taken” in order to be “a successful nation in Europe” (Melegh 2006:119). Europeanization became crucial in building the discursive barrier that, in a normative manner, positions SDP and limits the discursive possibilities for other political parties. In the process of doing so, SDP’s positioning was presented as Croatia’s too.

This shows to what extent SDP utilized a very specific imaginary when communicating the policy making process to the public. This can be understood as building up “...a European community” while necessarily positioning the party (in this case SDP) against other actors in the political system. This is done with applying the earlier mentioned Eastern values in order to “silence” them and to “...deny membership of that “universally valid community” (Melegh 2006:30). Hence, the discourse SDP used is one that is seemingly communicated between them and the European Union itself. As such, it represented Croatia in a somewhat paradoxical manner - as a rather active actor in the process of Europeanization on one hand, but also in a passive manner insisting that Croatia was already a member of a “that Europe”, with or without the Europeanization of policies.

What makes this interesting is also the fact that parliamentary debate on this could have easily escaped such legitimization as SDP’s coalition had majority in the Parliament and there were no doubts on it passing. The fact they continued to construct a strong discourse revolving around the European Union despite of EU’s non existent interest in it, proves how SDP actively uses deliberation on this law to continue positioning itself both as opposition to something not “truly European” (HDZ) and in order to legitimize the aim of the very legislative on medically assisted reproduction.

### 2.5.1. Interaction of the Committees and HDZ with SDP

As mentioned in the earlier section where I described and compared the laws, the 2012 law, unlike the law from 2009, had an explicit proclamation of the accordance of this law to a number of European Union acts. When it comes to the compliance of the law with the European *aquis communautaire*, the Committee for European integrations<sup>57</sup> expressed certain doubts whether the law is in compliance with the Laws on the legal protection of biotechnological inventions while pointing out a verdict of the European Court from 2011 that defined the beginning of life as one starting from the embryonic stage. Hence, it is clear from there that, unlike in the 2009 law, the observations of the Committee turned their focus to a somewhat ideological stance using a particular verdict of the European Court of Justice from 2011 that stated how “...any human ovum must, as soon as fertilized, be regarded as a ‘human embryo’ if that fertilization is such as to commence the process of development of a human being”<sup>58</sup>(European Court of Justice 2011). Despite of these objections, the Committee decided to back the law by a majority of the votes.

On the other hand, now oppositional, HDZ criticized the law heavily. Predictably, opposition led by the Croatian Democratic Union was strongly opposing the new law in regards to the single women being able to undergo the treatment. Former Minister Darko Milinovic was intent in the Parliament:

“My party is not against IVF, but it is against the possibility that a woman without a male partner has the right on IVF treatment, because it allows for a woman who changes her sex to do the same which also means that there is a breach of the

<sup>57</sup> Complete list of opinions of Committees can be retrieved from: [https://infodok.sabor.hr/Reports/KarticaAktaFrm.aspx?zak\\_id=24015](https://infodok.sabor.hr/Reports/KarticaAktaFrm.aspx?zak_id=24015) (Accessed on April 29th, 2013)

<sup>58</sup> Court of Justice of the European Union, Press release No 112/11, 18 October, 2011. Retrieved from: <http://curia.europa.eu/jcms/upload/docs/application/pdf/2011-10/cp110112en.pdf> (Accessed May 13th 2013)

Convention on the rights of a child which inscribes the right of the child to live and grow up with a father.” He continued by saying:” I think we owe the Vatican that much to hear the opinion of the Pope who might have wanted to say the same thing as Cicero:”let your desires be led by mind”. I hope that your desire is not letting human beings die”.<sup>59</sup>

Following this notion, Milinovic was explicit on the significant role of men in the next quote:

“You are denying the dignity of paternity and gender equality, so when you were giving this opportunity to women, why didn’t you give the same to fathers? When a child says: “Daddy!”, you say: “No, no, enny, meeny, miny, moe, no daddy!”.<sup>60</sup>

Both of these statements show almost identical ideas to ones expressed by the Catholic Church in 2009 on the marital status and paternity as crucial elements to these laws. If the alliance between HDZ and the Church was not that explicit in 2009, there was no denying of it in 2012 as it was used as a point of reference when mentioning Vatican. The implications of these quotes are clearly in the area of heteronormative concept surrounded around the idea of father as crucial in terms of child’s needs and rights while implicitly not recognizing women by the state without her male partner. On one hand, the connotations embedded within the infertility treatments as a product of modern times that is strictly connected to the father figure take a central position in these comments. On the other hand, they also imply

<sup>59</sup> HINA, “Law on medically assisted reproduction passed in the Parliament” ( in Croatian), Glas Istre, July 13<sup>th</sup>, 2012. Retrieved from <http://www.glasistre.hr/vijesti/arhiva/sabor-donio-zakon-o-potpomognutoj-oplodnji-355509> (Accessed on Nov.24th 2012)

<sup>60</sup> Media Servis, “New law on medically assisted reproduction passes with 88 votes” (in Croatian), Index, July 13<sup>th</sup>, 2012. Retrieved from: <http://www.index.hr/vijesti/clanak/izglasani-novi-zakon-o-medicinskoj-potpomognutoj-oplodnji-sa-88-glasova-za/625678.aspx> (Accessed on Nov.24th 2012)

that the family itself was private and removed from a possibility of being a changing and evolving model or subordinated to societal dynamics. The confirmation of power is then something that is searched outside the very lines of masculine, by subordination of women and minority groups (as visible in the part on transgender people and the possibility of having a child through this treatment despite the fact it remains unclear how a trans woman would be in a position for undergoing these treatments from a purely physical perspective or the ex Minister was not sure about the terminology and was actually thinking about trans men)(Peterson, 1999).

The second part of the quote is particularly interesting as it implicitly touches upon single man's possibility of having a child, meaning through surrogacy, which was banned both in 2009 and 2012 laws. Interestingly, Milinovic did not refer to these men as single men, but already as fathers in this quote. On one hand, this is an interesting turn to the prevailing reference to women as mothers of the nation that Yuval-Davis and Anthias (1989) observed. Again, this continues to go along the line of the extreme importance given to the patrilineal descent shown during the debates in 2009. On the other hand, a paradox is obvious as HDZ warns about how single woman's eligibility for infertility treatments goes straight against gender equality because it does not include single men too. Interestingly, the possibility of surrogacy, hence a solution to this "problem", was explicitly banned by HDZ in 2009. HDZ soon continued with their criticism outside the Parliament with peculiar conferences. One of the members of HDZ, Damir Jelic, assembled a conference to speak about the new law. He claimed that:

"The new law on the IVF is the biggest tragedy in the history of Croatian people after Jasenovac and Bleiburg. This law can be leveled with the biggest Croatian tragedies, but it is more vile because we will never know how many human lives have been destroyed". He added, "...beatified Aloysius Stepinac said that the Jasenovac is the

most shameful act in the history of Croatian nation. Same goes with Bleiburg....Let's put a stop to it".<sup>61</sup>

Another member of HDZ, a gynecologist, Ante Corusic, continued by saying:

"This law supports eugenics, science of the race enhancement that has been practiced by the Nazis and as such it irritates the big majority of Croatian citizens. It allows the killing of the innocent. To get one child, ten of his (!) brothers and sisters must be sacrificed, and 30% don't even survive the freezing....my colleagues too easily decide for the IVF treatment without trying other methods of the infertility curing...the law is against nature and against paternity...we are the only species on this planet to whom the God said "don't kill", and it is exactly this law that allows for the killing of the innocent and innocent, killing of those who cannot defend themselves. A child born through IVF treatment is also a God's gift, but the way of doing it is questionable".<sup>62</sup>

For the first time HDZ used a discourse revolving around Croatia as nation-state. The idea of imagining community in terms of myths and events was clear with the mentions of Bleiburg and Jasenovac. Both of the events have a special place in terms of Croatian nationalist discourses. Jasenovac was a concentration camp in Croatia during the period of the Independent State of Croatia in WWII where Serbs, Jews, Roma people and Croats were tortured and killed. Bleiburg, on the other hand, signifies the crimes of the communist regime at the end of WWII when families whose members were perceived as connected to the fascist government during the Independent State of Croatia were killed.

At the same time, pointing out the numbers of "destroyed human lives" in correlation to Jasenovac and Bleiburg is surprising due to the fact that the different numbers of those killed in Jasenovac and Bleiburg are used regularly used by the parties themselves depending on their position in the political spectrum. Interestingly, the usage of Jasenovac in discourse of the right wing parties is not expected. HDZ was party in power during the war in the 1990s

<sup>61</sup> Tea Romic, "Jelic: Law on IVF is like Bleiburg and Jasenovac" (in Croatian), Vecernji list, July 10<sup>th</sup>, 2012. Retrieved from <http://www.vecernji.hr/vijesti/jelic-zakon-umjetnoj-oplodnji-je-poput-jasenovca-bleiburga-clanak-429021> (Accessed on Nov.24th 2012)

<sup>62</sup> Ibid.

when Independent State of Croatia was regularly mentioned in the nationalist speeches of the leading members of HDZ as means for agitation. This nationalist discourse embedded within the policies on reproduction is similar to one Gal (1994) mentions for another post-socialist country, Hungary, in debates on women's bodies and their rights. In Hungary, following WWI, the Treaty of Trianon was used as an event which signifies the loss of the nation in demographic terms. This resulted in a construction of narratives of the events that are put in causal relations and framed as "a tradition" (Gal 1994:272-3). Hence, discourse used by the HDZ in 2012 falls within the same lines as it did in Hungary with one difference. The discourse in Hungary was used in the private sphere as it is crucial for the concept of "anti-politics" due to the period when it was created – communist era, while in Croatia it was used in the public sphere as a part of the official standing of the oppositional party in a democratic system. It is clear then, how the specific ideas of nation's unity depends on the current system it is reproduced in, but the very discourse is constructed on the similar grounds depending on the selectiveness of historical events specific to the nation.

### **2.5.2. Interaction of the medical community and SDP**

The mobilization of medical community resulted in that they positioned themselves as powerful actors during policy making in 2012. The social prestige and professional authority when it comes to medically assisted reproduction that Montpetit et al. (in Engeli 2012) observed gained them an infallible status when it came to policy making. As bigger institutional access was created with the change of the government, this time the policy making process involved more actors or, at least, the consideration of the particular interest of more groups.

In contrast to the policy making process in 2009, this time medical community was not only positioned as supporting or opposing the law, but was actually a powerful actor during the very construction of those policies. The area of expertise was widened also to the policy

stream of the whole process where alternative solutions were brought by doctors who were now granted positions in the law making groups. When it comes to the new law, the policy process was openly granted to multiple actors with the National committee for medical reproduction leading the discussion. The members of the Committee ranged from specialists in the area of human reproduction, experts in family law to experts on the bioethics and human rights. As opposed to 2009, not only was the medical community involved throughout the whole policy making process this time, but the main actors in forming the content of the law were doctors<sup>63</sup>. Hence, the autonomy of the doctors in terms of their specialty in the area was preserved.

### **2.5.3. Interaction of the non-governmental actors and SDP**

The pressure from various non-governmental groups was strong and was constant throughout the period of three years since the original law was passed in the Parliament. Once the coalition took power, the preparations for the changes on the law started and the revised law was presented in April 2012. Having the majority in the Parliament it was clear that, despite strong criticism by the oppositional parties led by Croatian Democratic Union, the left wing coalition was going to pass the law (which indeed happened in July 2012). All of the amendments proposed by the opposition and one proposed amendment from a party in the governing coalition regarding lesbians being able to undergo In-Vitro fertilization financed by the state were overthrown. While overthrowing the latter amendment it was suggested that a special law would be made regarding lesbians and their right for In Vitro fertilization<sup>64</sup>. On the other hand, the article from the 2009 law that explicitly banned the persons undergoing

<sup>63</sup> Ana Pejicic, "Storm is not calming down:"Croatia is a paradise for reproduction"(in Croatian), Dnevnik, July 15<sup>th</sup>, 2012. Retrieved from: <http://dnevnik.hr/vijesti/hrvatska/bura-se-ne-smiruje-hrvatska-raj-za-razmnozavanje.html> (Accessed on April 22nd)

<sup>64</sup> Dina J, "Lesbophobic law on MAR passes", Queer.hr, July 13<sup>th</sup>, 2012. Retrieved from :<http://queer.hr/23985/izglasani-lezbofobni-zakon-o-mpo/> (Accessed on Mar. 24<sup>th</sup> 2013)

the sex change from being eligible for medically assisted reproduction was now removed as it was considered going against the human rights<sup>65</sup>.

LGBT community reacted to this saying how the final version of the law is not humane or modern as it aimed being at first<sup>66</sup>. Not only lesbian women, but also trans men were completely ignored continuing the practice from 2009 in regards to exclusion of those individuals and relations that do not fall under categories of heterosexual identities or practices. Despite of the fact that there is no mention of the any other union then a heterosexual one in the law from 2009, the law from 2012 is implicit in stating that no person who is a part of the same sex union is eligible for state financed procedures for medically assisted reproduction. This clearly points to a very specific form of a family that is confined to heterosexual framework if it wants to be acknowledged (by the law from 2009) or to a specific form of a family that does not need to consist of two partners, but if it does, they cannot be of same sex (by the law from 2012). Distinctive forms of families are constantly being reinstated through these laws, be that by insisting on heteronormative formations of such or by excluding specifically same sex unions as eligible for state financed procedures of medically assisted reproduction. On the other hand, considering the non existence of laws on same sex unions in Croatia at this time, it remains unclear how the state is going “to control” the infertile lesbian women who do undergo the procedures as “single women”.

At the same time, these formations also point to a position of a woman in terms of recognition of her as a rightful citizen with certain needs and rights. Not only does the heteronormative practice tend to provide an exclusive channel for woman’s entrance to the public sphere (as it did with the 2009 law), it also submerges her to do so while being in a

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<sup>65</sup> “IVF for trans men in Croatia? Hardly”, Queer.hr, July 5<sup>th</sup>, 2012. Retrieved from <http://queer.hr/23645/umjetna-oplodnja-za-transmuskarce-u-hrvatskoj-tesko/> (Accessed on Mar. 24<sup>th</sup> 2013)

<sup>66</sup>“Center for LGBT equality : The draft of the new law is discriminating”, Queer.hr. July 10<sup>th</sup> 2012. Retrieved from: <http://queer.hr/23867/centar-za-lgbt-ravnopravnost-prijedlog-zakona-o-mpo-diskriminira/> (Accessed on Mar. 24<sup>th</sup> 2013)



matrimonial relation to a man. This shows how the new law too did not manage to avoid the heteronormative connotations.

Overall, the constant agitation for changes to the 2009 law by different movements (such as Parents in action, RODA and some LGBT groups) was successful as it resulted in them finding a coalition partner in SDP to an extent. Fink (2009) and Minkenberg (2002) point out that in general, Social democrats tend to be potentially powerful partners in alliance with women's movements when it comes to the policy making process. The substantial policy gains this coherence and constant within those non-governmental groups produces is something Stetson (2001) observed. Due to the constant improvement Croatia shows, by the reports from European Commission, in the field of human rights to which the anti-discriminatory measures relate as crucial, it can be concluded that the civil society, with women and LGBT movement in particular, shows stability with time and, especially, during the periods of the government of social democrats. As such, the status of non-governmental groups gains certain power that allows them to be important actors in the processes of policy making.

In this subchapter I aimed to show to what extent the notions of „European values“ were used through the discourse when changes to the law from 2009 took place. Specific notions such as medical advancement, modernity, anti-discrimination, recognition of multiplicity of identities stemming from the accession to EU and the universal right on medical treatment were all used as signifying “European values”. The positioning of SDP as the European party, who aims at “European standard“, was utilized in order to get the law passed in 2012. On the other hand, the involvement of the medical community and the limited support from NGOs played a significant role in the recognition of this issue as an actual social problem in need of solving by the wider public. From that perspective, SDP uses the discourse veiled in „European-ness“ and „forward-ness“ to distinct itself from HDZ and, in a way, project an

image of that same HDZ as having diametrically different values that do not fall in what they consider as „modern“ and „belonging to Europe“.

Overall, in this chapter I showed in what way has HDZ excluded the other actors from the policy making process leaving them the exclusive position to form the content in such way that it was aligned with what is perceived as traditional, Catholic ideas. The very process, from a technical perspective of deliberating laws in Croatia's Parliament, was one used explicitly for laws in accordance with *aquis communautaire* of European Union. I have shown how HDZ used this framework in order to pass the law in such manner it removed the possibility for a wider debate or the implementation of suggestions made by different bodies. In addition, I have shown the discursive formations SDP used, as opposition and later party in power, that were soaked in the notions of “Europe”. As such, this discourse was used to discipline HDZ in 2009 and to legitimize the change of the law on medically assisted reproduction in 2012 by SDP. I now turn to my final conclusions.

## CONCLUSIONS

Policies on reproduction have multiple layers to them that not only include regulation of the actual bodies of women and men, but also often impose certain values that are in direct correlation to concepts of nationalism, families and gender. Additionally, influences coming from outside the national borders are another factor in the search for the policy solutions on this matter. This research aimed to show how a country, such as Croatia in the process of accession to the European Union, was influenced by that factor in terms of the agenda setting of problems recognized by the European Commission. On the other hand, it also aimed to show how the previously mentioned issues resolved in regard to constructions of gender roles, nationalism and normative family whilst making the laws on medically assisted reproduction (MAR) in 2009 and 2012.

I presented certain answers to these questions in order to reveal the policy making process, the actors and discourses these actors used whilst regulating the medically assisted reproduction. I have shown how HDZ (Croatian Democratic Union) used a very particular framework that was implemented as a tool for Europeanization in order to, not only put the issue of regulating medically assisted reproduction in Croatia on the agenda, but also claim a monopoly on the content of that regulation. I have argued that HDZ used a specific demand from the 2008 report by the European Commission asking for the regulation in the preservation of reproductive cells to have a fast-tracked procedure for the law on MAR in 2009. I have shown how the law, in its content, was in line with the values and opinions of the Catholic Church in Croatia with which HDZ has a long history of dialogue and cooperation. On the other hand, I demonstrated how the oppositional groups, both parliamentary and those of civil society acted during both of the policy making processes. I also put a special focus on SDP (Social Democratic Party) and their role in this period. I have shown how SDP actively used the discourse of “European-ness” in order both to discipline

HDZ in the Parliament and to legitimize a change of the law on medically assisted reproduction in 2012. SDP's construction of discourse, as I argued, lay in the connection between notions of "Europe" and "forwardness" that labeled HDZ and the law from 2009 as "backward".

The changes that happened in the law on medically assisted reproduction indeed positioned Croatia in the line of European countries with more liberal regulations whether in the area of citizen eligibility for the MAR treatment or in the area of donations as opposed to the law from 2009 that was almost unique in its content. This research showed how this happened as research on the policy making process in the field of reproduction of ex-Yugoslav countries is still missing. On the other hand, "side effects" of Europeanization as a process in Croatia and in the area remain unclear. Overall, this research provides an understanding of technical and discursive use of Europeanization in the Croatian law making process in the area of medically assisted reproduction. It also shows to what extent the utilization of notions of "Europe" provided space for these laws to be made and implemented in Croatia.

The limitations to this study are evident as the analyzed data is just one part of the available material in the public which, for obvious reasons, could not be covered. On the other hand, a more specific reasoning from the actors themselves that I included in my research would definitely provide even more elaborate answers to the questions posited here in regards to Croatia and laws on reproduction. Negotiating processes between different actors in this policy making is also something that presents a limitation to this research and, as such, presents a possibly fruitful area for future research in the field of reproductive policies.

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