



Executive Summary

Country Report Croatia 2009 on measures to combat discrimination

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1. Introduction

The Republic of Croatia is a unitary state. Basic legal principles are set out by the Constitution. Laws must be in accordance with the Constitution, and other rules and regulations must be in accordance with the Constitution and law.

Government is organised on the principle of separation of powers into the legislative, executive and judicial branches.

The Croatian Parliament is vested with legislative power. The Parliament may authorise the Government, for a maximum period of one year, to regulate certain issues within its competence by decrees, except issues relating to the application of constitutionally defined human rights and fundamental freedoms, rights of national minorities, the electoral system, and the organisation, authority and operation of government bodies and local self-government since those issues are in the exclusive competence of the Parliament..

The judicial system has two levels (first instance and appeal), with the possibility of extraordinary remedies (such as review by the Supreme Court). As a rule, judicial review of administrative decisions is available. The role of the Supreme Court, as the highest court, is to ensure uniform application of laws and equal justice for all. Courts' decisions are in principle binding only for the parties to the case and do not set a precedent.

The State Attorney's Office is an autonomous and independent judicial body empowered and obliged to proceed against those who commit criminal and other punishable offences, to undertake legal measures to protect the property of the Republic of Croatia and to provide legal remedies to protect the Constitution and law.

The competences of the Constitutional Court of the Republic of Croatia are, among others, to decide on the conformity of laws with the Constitution; to decide on the conformity of other regulations with the Constitution and laws; to decide on constitutional complaints against the individual decisions of governmental bodies, bodies of local and regional self-government and legal entities with public authority, when these decisions violate human rights and fundamental freedoms as well as the right to local and regional self-government guaranteed by the Constitution of the Republic of Croatia; and to ensure that constitutionality and legality are observed and notify the Croatian Parliament of instances of unconstitutionality and illegality observed.

The People's Ombudsman, as a commissioner of the Croatian Parliament, is to protect the constitutional and legal rights of citizens in their dealings with the state administration and bodies vested with public authority.

Croatia has a population of 4 434 000.

In 1992 Croatia was recognised by the UN as an independent state. From 1991 to 1995 Croatia was in a state of war. During the period 1991 to 1993 Croatia was attacked by the Yugoslav army and Serbian paramilitary forces. As a result of war in Croatia and Bosnia, a large number of refugees and displaced persons were sheltered in unoccupied areas of Croatia, and many Croatian cities and villages along the front lines were destroyed. In 1994 and 1995 Croatia regained a large part of its occupied territories through a series of military offensives, while the majority of Serbs who lived in these territories fled to Serbia and Bosnia as refugees. In the late nineties, Serbian refugees started to return to their homes; according to the latest official data this process is coming to an end, although only about half of the 132 451 registered refugees of Serbian origin permanently reside in Croatia. After a period of rather authoritarian leadership and isolation from the international community, Croatia changed direction in the late nineties and especially after 2000. In 1996 Croatia became a member of the Council of Europe. In 2001 Croatia signed a Stabilisation and Association Agreement (SAA) with the EU. This agreement entered into force on 1 February 2005 while Croatia became an EU candidate country in June 2004. After obtaining a positive *avis* from the EC on 3 October 2005, the Council decided to open accession negotiations. On 12 February 2008 the Council adopted the new Accession Partnership for Croatia. The current status is that accession negotiations have been opened in 30 out of 33 chapters, and 18 chapters have been provisionally closed. The three remaining chapters to be opened are Judiciary and Fundamental Rights, Foreign, Security and Defence Policy, and Competition Policy.

The ethnic structure of the country is as follows: Croats make up the majority of the population with an 89% share. The most numerous minorities are Serbs (201 631 or 4.5%), Bosnians (20 755 or 0.5%), Italians (19 636 or 0.4%), Hungarians (16 595 or 0.4%), Albanians (15 082 or 0.3%), Slovenians (13 173 or 0.3%), and Roma (officially 0.2%, but unofficial estimates suggest up to 40 000 or 0.9%). The official language is Croatian, but the Constitution gives all national minorities the legal right to education in their native language. The religious structure of the population is as follows: 87.8% of citizens declare themselves Catholic; 4.4% Orthodox; 1.3% Muslim; 3.0% agnostic/undeclared; and 2.2% of citizens declare themselves atheist. The percentage of other religions is below 0.2%.

The position of the Government and official bodies towards discrimination has moved from pro-nationalistic in the early nineties to denial in the late nineties and a more egalitarian approach since 2000. Ever since then, independently of elections and changes of government, there has been slow but steady progress, which has been strongly encouraged by human rights organisations as well as by the EU accession process, other international actors and an increasing number of media.



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Other sources of Croatian anti-discrimination legislation are the Constitution, international treaties, and some laws with anti-discrimination provisions, such as the Constitutional Act on the Rights of National Minorities, the Criminal Code, the Employment Act, the Gender Equality Act, the Same-sex Relationships Act and the Civil Servants Act.

In spite of the numerous anti-discrimination acts and provisions, case law is still quite limited and does not follow standards established by European anti-discrimination law.

2. Main legislation

Croatia has ratified all anti-discrimination treaties that are part of international law with the exception of the Revised European Social Charter, which has been signed and is in the process of ratification (European Convention on Human Rights + Protocol 12; International Covenant on Civil and Political Rights; Framework Convention for the Protection of National Minorities; International Convention on Economic, Social and Cultural Rights; Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Elimination of Discrimination Against Women; ILO Convention No. 111 on Discrimination; Convention on the Rights of the Child; and Convention on the Rights of Persons with Disabilities).

The first comprehensive anti-discrimination legislation in Croatia was the Anti-discrimination Act that entered into force on 1 January 2009. It has only 30 articles and covers direct and indirect discrimination; harassment and sexual harassment; encouragement to discriminate; reasonable accommodation; segregation; 17 grounds of discrimination; victimisation; exceptions to the Act; misdemeanour provisions; a ban on discrimination in all areas of social life by all natural and legal persons; the Ombudsman's competences as central equality body; and special procedural provisions for discrimination cases. It leaves many important issues to the courts' interpretation.

The previous Employment Act (in force until 31 December 2009) had anti-discrimination provisions covering discrimination in connection with work and employment, but the new Employment Act (in force since 1 January 2010) has significantly reduced anti-discrimination provisions. It seems that the legislator found them unnecessary due to the existence of a comprehensive anti-discrimination act.

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3. Main principles and definitions

The Anti-discrimination Act prohibits discrimination on the following grounds: race or ethnic affiliation or colour; gender; language; religion; political or other belief; national or social origin; property; trade union membership; education; social status; marital or family status; age; health condition; disability; genetic heritage; gender identity and expression and sexual orientation, but it does not define these grounds.

The Anti-discrimination Act prohibits discrimination based on a misconception of the existence of a prohibited ground of discrimination as well as discrimination based on association with person(s) with particular characteristics.

The Anti-discrimination Act defines direct discrimination as treatment based on any of the prohibited grounds whereby a person is, has been, or could be placed in a less favourable position than other persons in a comparable situation, and indirect discrimination as a situation when an apparently neutral provision, criterion or practice places or could place a person in a less favourable position on the basis of the prohibited ground, in relation to other persons in a comparable situation, unless such a provision, criterion or practice may be objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

Harassment is defined by the Anti-discrimination Act as any unwanted conduct based on any of the prohibited grounds with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading or offensive environment.

The Anti-discrimination Act does not prohibit 'instructions to discriminate' but 'encouragement to discriminate', and that only if it is done intentionally.

The Anti-discrimination Act prohibits failure to provide reasonable accommodation for people with disabilities. It stipulates that a failure to enable disabled persons to use publicly available resources, to participate in public and social life and to have access to a workplace and appropriate working conditions, in line with their specific needs, by adapting infrastructure and premises, by using equipment and other means which do not present an unreasonable burden for the person obliged to provide it, is considered discrimination.

Multiple discrimination is defined as a severe form of discrimination.

One of nine exceptions to the prohibition of discrimination is genuine occupational requirement.

The other eight are: public health and safety; protection of the ethos of religious communities; exceptions concerning insurance services; treatment on the basis of age in employment relations; positive action measures; privileges granted to pregnant women, children, young people, older persons, persons with caring responsibilities and disabled persons; and different treatment when determining rights and obligations arising from family relations with the aim of protecting children.

The Anti-discrimination Act does not distinguish between natural persons and legal persons either for the purposes of protection against discrimination or liability for discrimination.

4. Material scope

The Anti-discrimination Act applies to all areas, in the public and private sector, without any limitation, while it explicitly enumerates ten areas to which special attention is to be paid: (1) work and working conditions; access to self-employment and occupation, including selection, criteria, recruitment and promotion conditions; access to all types of vocational guidance, vocational training, advanced vocational training and retraining; (2) education, science and sports; (3) social security, including social welfare, pensions and health insurance and unemployment insurance; (4) health care; (5) judiciary and administration; (6) housing; (7) public information and the media; (8) access to and provision of goods and services; (9) membership of and participation in trade unions, civil society organisations, political parties or any other organisations and (10) access to participation in culture and art.

5. Enforcing the law

Victims of discrimination can seek protection in judicial proceedings - civil and/or criminal. The Anti-discrimination Act specifies misdemeanour liability in cases of harassment, sexual harassment and victimisation. A victim of discrimination can file a complaint with the Ombudsman as the central body responsible for anti-discrimination. If a person is discriminated against by an administrative act he/she can file a complaint before the Administrative Court of the Republic of Croatia, which is authorised to review the legality of administrative acts.

In civil proceedings a victim of discrimination can file a claim seeking protection of an individual right, claiming that the right has been violated by the discrimination (incidental anti-discrimination protection) or a claim seeking a ruling on the existence of discrimination as the main issue (special individual anti-discrimination action). In the latter case, victims can ask for:

- determination of the existence of discrimination (declaratory anti-discrimination claim) and/or
- prohibition of discrimination (prohibitive anti-discrimination claim) and/or
- elimination of discrimination or its effects (restitutional anti-discrimination claim) and/or

- damages caused by discrimination (reparational anti-discrimination claim) and/or
- publication of the decision determining discrimination (publicational anti-discrimination claim).

The Anti-discrimination Act introduces the possibility for organisations (bodies, organisations, institutions, associations or other persons engaged in protecting the right to equal treatment of the group whose rights are at issue in the proceedings) to participate in civil proceedings as intervenors (*umještači*) on behalf of a plaintiff (an alleged victim of discrimination). The Act does not introduce any other requirement for an organisation to be an intervenor so it is left to courts to decide in each case whether an organisation that wishes to intervene should be allowed to do so, i.e. whether it deals with the right to equal treatment as part of its activities.

The Anti-discrimination Act introduces associational actions (*udružna tužba*) as an instrument for protecting large numbers of people from discrimination. Legally established associations, bodies, institutions or other organisations that have a justified interest in protecting the collective interests of a certain group, or those that deal with protecting the right to equal treatment within the scope of their activities, are entitled to bring a legal action as a plaintiff against a person who has violated the right to equal treatment if it can prove it probable that the defendant's action discriminated or could discriminate against a large number of persons who mostly belong to a group whose rights are protected by the plaintiff.

National law does not explicitly permit the use of situation testing or statistics as evidence in anti-discrimination proceedings; it does not define these nor establish procedural conditions for or limitations to the admissibility of such evidence in court. However, there are no obstacles, in anti-discrimination law or in civil procedural legislation, to the use of testing or statistical evidence.

According to the Anti-discrimination Act a person bringing an anti-discrimination claim has to prove that discrimination has probably occurred. It is then up to the defendant to prove that it did not. The rule on the shift of the burden of proof is to be applied in judicial and administrative proceedings, with the exception of criminal and misdemeanour cases.

Criminal offences of discrimination are prosecuted *ex officio*, so a victim of discrimination could in theory just file a criminal complaint with the State Attorney's Office. If State Attorney's Office decides not to prosecute, the victim is authorised to continue prosecution. The sanction for criminal offences of discrimination is imprisonment for six months to five years.

There are still no statistics available on the number of cases related to discrimination brought to justice.

Because of the lack of case law in the field of discrimination, with the exception of a few employment disputes, the effectiveness of sanctions is still only theoretical.



6. Equality bodies

The Anti-discrimination Act provides that the central body for the elimination of discrimination and promotion of equal treatment is the Ombudsman. The Ombudsman has authority over all grounds of discrimination, but some activities (receiving reports on discrimination; providing necessary information on rights and obligations; investigating reports and undertaking measures necessary for the elimination of discrimination; informing the public of occurrences of discrimination; conducting mediation procedures and filing criminal reports of discrimination) come within the competences of specialised ombudsmen (for gender equality, for disabled persons and for children).

The Constitution establishes the Ombudsman as a commissioner of the Croatian Parliament. The Ombudsman protects the constitutional and legal rights of citizens in their dealings with the state administration and bodies vested with public powers, the Ministry of Defence, including the army and security services, and local and regional self government, as well as protecting the right to local and regional self government.

There has been no additional funding for the Ombudsman's Office to implement the Anti-discrimination Act. The Ombudsman's Office is therefore working on discrimination with the same budget and staff resources as it had before the Act entered into force.

In 2009 Ombudsman received 169 complaints of discrimination, and three cases were initiated by the Ombudsman himself after media reports of discrimination. The complaints concerned discrimination on the following grounds:

race/ethnicity/colour/national origin (53); sex (17); religion (4); political or other belief (3); membership of a trade union (6); education (7); social status/origin (11); marital or family status (3); age (5); health (4); disability (10); and sexual orientation (1). Two complaints were about multiple discrimination (sex + age and sex + membership of a trade union).

The Ombudsman has the following competences with regard to discrimination on the grounds of race or ethnic origin:

1. to receive reports from all natural and legal persons of reasonable suspicions of discrimination;
2. to provide the information necessary to natural and legal persons who have filed a complaint of discrimination with regard to their rights and obligations and on their options for legal and other protection;
3. if court proceedings have not yet been initiated, to examine individual reports and take actions falling within his/her competence required to eliminate discrimination and protect the rights of people facing discrimination;
4. to make the public aware of occurrences of discrimination;



5. to conduct, with the parties' consent, mediation with the possibility of reaching an out-of-court settlement;
6. to file criminal charges relating to discrimination to the competent state attorney's office;
7. to collect and analyse statistical data on discrimination;
8. to inform the Croatian Parliament of the prevalence of discrimination in his/her annual reports and, when required, extraordinary reports;
9. to conduct surveys on discrimination, give opinions and recommendations, and suggest appropriate legal and strategic solutions to the Government.

The Ombudsman is responsible for discrimination on all the grounds prohibited by the Act which are not covered by the specialised ombudsmen. Special ombudsmen exist for gender equality and disability.

The Ombudsman has the power to provide independent assistance to victims, conduct independent surveys and publish independent reports, and issue recommendations on discrimination issues. The Ombudsman is authorised to file criminal charges for discrimination to the competent state attorney's office. Further, Ombudsman can join the proceedings in anti-discrimination cases as an intervenor on the plaintiff's behalf.