



## Executive Summary

### Country Report Croatia 2010 on measures to combat discrimination

By Lovorka Kušan

#### 1. Introduction

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.

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 Governmental decrees cannot deal with the issues relating to the application of constitutionally defined human rights and fundamental freedoms, the rights of national minorities, the electoral system, and the organisation, powers 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. Judicial office is permanent. Courts' decisions are in principle binding only on 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 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 or 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 duty of 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. The Anti-discrimination Act has given it the role of the specialized body for the promotion of equal treatment.



The first detailed anti-discrimination provisions (definition of direct and indirect discrimination, harassment and sexual harassment, shift of the burden of proof etc.) were introduced into Croatian legislation by amendments to the Employment Act in July 2003, with the aim of harmonising the Employment Act with EU law, but the first piece of comprehensive anti-discrimination legislation in Croatia was the Anti-discrimination Act that entered into force on 1 January 2009.

## **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 Constitution of the Republic of Croatia guarantees rights and freedoms to everyone in the Republic of Croatia regardless of race, colour, gender, language, religion, political or other belief, national or social origin, property, birth, education, social status or other characteristics. Other grounds, such as disability, age and sexual orientation, are covered implicitly as 'other characteristics' but have yet to be interpreted.

The main legislation dealing with discrimination are: The Anti-discrimination Act that prohibits discrimination based on 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.

The Sex Equality Act prohibits discrimination based on gender, while the Same-sex Relationships Act prohibits discrimination based on 'same-sex relationship' and 'homosexual orientation'.

The Employment Act prohibits discrimination in the field of work and working conditions; criteria and conditions for recruitment, promotion, vocational training, advanced vocational training and retraining, but does not mention grounds of discrimination.



### 3. Main principles and definitions

The Anti-discrimination Act (further: ADA) that prohibits discrimination based on 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 without defining in any way any of the grounds.

ADA defines multiple discrimination as discrimination against a certain person on more than one of the prohibited grounds and considers it a severe form of discrimination and it is a circumstance that the court has to take into consideration when determining the amount of compensation or the sanction for a misdemeanour.

ADA prohibits discrimination based on a misconception of the existence of a prohibited ground of discrimination (i.e. a presumption that turns out to be wrong). Further, it prohibits discrimination based on association with person(s) with a particular characteristic.

ADA 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 where an apparently neutral provision, criterion or practice places or could place a person in a less favourable position on 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.

ADA defines harassment as any unwanted conduct caused by 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 prohibits intentional encouragement to discriminate, but it does not specifically address instructions to discriminate.

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

ADA does not distinguish between citizens and non-citizens and guarantees protection from discrimination to any person and it does not distinguish between natural persons and legal persons either for purposes of protection against discrimination or liability for discrimination.

ADA provides a relatively large number of exceptions to the prohibition of discrimination.

The Anti-discrimination Act provides an exception for genuine and determining occupational requirements. It states that placement in a less favourable position shall not be deemed to be discrimination in relation to a particular job when the nature of the job is such or the job is performed under such conditions that characteristics related to any of the prohibited grounds of discrimination present an actual and decisive condition for performing that job, provided that the purpose to be achieved is justified and the condition appropriate.

Other exceptions are: health and public order; positive actions; granting privileges to pregnant women, children, young people, older persons, persons with caring responsibilities and disabled persons; in relation to occupational activities, entering into membership and acting in conformity with the canon and mission of a church and religious congregation and any other public or private organization if this is required by the religious doctrine, beliefs or objectives; on the ground of age and sex in the course of determining insurance premiums and other insurance conditions; fixing the minimum age/experience/level of education for access to a certain employment or for acquiring other advantages linked to employment; fixing a maximum age for the termination of an employment or retirement; nationality; regulating the rights and obligations arising from family relations.

Every exception has to be interpreted in proportion to the aim and purpose for which it is provided.

#### **4. Material scope**

The Anti-discrimination Act has very wide scope of application – it applies to both public and private sector and to all areas without any limitation while explicitly enumerating ten areas to which special attention is to be paid: 1) work and working conditions; access to self-employment and occupation, including selection criteria, recruiting and promotion conditions; access to all types of vocational guidance, vocational training, professional improvement and retraining; 2) education, science and sports; 3) social security, including social welfare, pension and health insurance and unemployment insurance; 4) health protection; 5) judiciary and administration; 6) housing; 7) public informing and the media; 8) access to goods and services and their providing; 9) membership and activities in trade unions, civil society organisations, political parties or any other organisations; 10) access to participation in the cultural and artistic creation.

#### **5. Enforcing the law**

A victim of discrimination can seek protection through judicial proceedings - civil and/or criminal (both adjudicated by ordinary courts) and/or misdemeanour (for less serious offences adjudicated by misdemeanour courts).

In civil proceedings a victim of discrimination can file a claim seeking protection of his/her individual rights claiming that a right has been violated on account of 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 for the harm caused by discrimination (reparational anti-discrimination claim) and/or
- publication of the decision determining the existence of discrimination (publicational anti-discrimination claim).

The Anti-discrimination Act does not provide any rules on compensation and the general rules of the Civil Obligations Act and its tort provisions (i.e. its provisions on damage and compensation) are to be applied. Under these rules, in the event of a violation of personality rights the court shall, when it finds that this is justified by the seriousness of the violation and circumstances, award fair compensation. When deciding on the amount of fair pecuniary compensation, the court shall take into account the degree and duration of the physical and mental distress and fear caused by the violation, the objective of this compensation and the fact that it should not encourage expectations that are not compatible with its nature and social purpose.

The rule makes no difference between private or public employment and fields outside employment.

Both criminal offences of discrimination are prosecuted *ex officio*. The sanction for both offences is imprisonment for six months to five years.

ADA specifies misdemeanour liability for harassment, sexual harassment and victimisation. A fine is imposed on natural persons, people who under special laws are responsible for the legal actions of legal entities, craftsmen and persons performing independent business activities and legal persons, while different levels of fine are set for different categories (from 684.93 EUR to 41 095.89 EUR for harassment and from 684.93 EUR to 47 945.20 EUR for sexual harassment).

A victim of discrimination can file a complaint with the Ombudsman as the central body responsible for anti-discrimination.

If a person faces discrimination by an administrative act he/she can file a complaint with the Administrative Court of the Republic of Croatia, which is authorised to review the legality of administrative acts.



Organization, institution, association or another person that, within its scope of activities deals with the protection of the right to equal treatment in relation to groups whose rights are decided upon in the proceedings are entitled to act on behalf or in support of victims of discrimination.

According to the Anti-discrimination Act a person bringing an anti-discrimination claim (in civil and administrative proceedings,) has to prove that discrimination has probably occurred. It is then up to the defendant to prove that it did not. The Act does not exclude this rule in cases of harassment and victimisation.

National law is silent in respect of the use of situation testing. It does not explicitly permit the use of situation testing; it does not define it 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, for the use of testing.

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

## 6. Equality bodies

The Anti-discrimination Act grants the Ombudsman powers as the central body for the elimination of discrimination and promotion of equal treatment irrespective of racial or ethnic origin. The Ombudsman is the central body for the elimination of discrimination based on other grounds as well, with the exception of disability, which falls within the competence of the Ombudsman for Persons with Disabilities, and sex, which is dealt with by the Gender Equality Ombudsperson.

*In connection with discrimination based on racial or ethnic origin, the competences of the Ombudsman are as follows:*

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.