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Country report

Non-discrimination

Croatia

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Country report

Non-discrimination

Croatia

Lovorka Kušan

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EXECUTIVE SUMMARY

1. Introduction

In 1992 Croatia was recognised by the UN as an independent state. From 1991 to 1995 Croatia was in a state of war. After a period of rather authoritarian leadership and isolation from the international community, Croatia changed direction in the late nineties. Croatia has been a Member State of the European Union since 1 July 2013.

Croatia has a population of 4 284 889. The ethnic structure of the country is as follows: Croats make up the majority of the population with a 90 % share. The most numerous minorities are Serbs (4.36 %), Bosniaks (0.73 %), Italians (0.42 %), Hungarians (0.33%), Albanians (0.41 %), Slovenians (0.25 %), and Roma (officially 0.4 %, 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: 86.28 % of citizens declare themselves Catholic; 4.44 % Orthodox; 1.47 % Muslim; 2.93 % agnostic/undeclared; and 3.81 % 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 and other international actors.

The Republic of Croatia is a unitary state. Government is organised on the principle of separation of powers into the legislative, executive and judicial branches. The judicial system has two levels (first instance and appeal), with the possibility of extraordinary remedies (such as review by the Supreme Court). 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 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; to ensure that constitutionality and legality are observed; and to notify the Croatian Parliament when instances of unconstitutionality and illegality are 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 specialised body for the promotion of equal treatment.

In some counties with a significant Roma population (Međumirska and Varaždinska), Roma children are put in separate Roma-only classes in regular schools. In March 2010 the Grand Chamber of the European Court of Human Rights, in the case initiated by Roma students, issued a judgment finding a violation of their right not to be

discriminated against in the enjoyment of the right to education.¹ The existence (and increased number) of Roma-only classes is wide-spread practice. Most Roma children do not participate in any preschool education or program and their command of Croatian language is not good enough to follow lectures. Schools' staff finds it easier to work with Roma children separately. Education in classes with many Roma children is considered of an inferior level.

In August 2014, the Same-sex Life Partnership Act, entered into force. The Act regulates legal status of both registered and unregistered same-sex relationships.²

The Act on the Vocational Rehabilitation and Employment of Disabled Persons, as amended in 2014, introduced obligation for all employers with more than 20 employees, in both public and private sectors, to employ a certain number of persons with disabilities.³

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 (long) 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). All the treaties are directly applicable.

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'.⁴

The main legislation dealing with discrimination comprises:

- the Anti-discrimination Act⁵ 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 Gender Equality Act⁶ that prohibits discrimination based on gender, while the Same-sex Life Partnership Act prohibits discrimination based on a 'same-sex partnership' and 'sexual orientation';
- the Labour Act⁷ that prohibits discrimination in the field of work and working conditions, including criteria and conditions for recruitment and promotion, vocational training, advanced vocational training and retraining, but does not mention grounds of discrimination.

¹ *Oršuš and Others v Croatia* [GC], application no.15766/03, judgment of 16 March 2010.

² Official Gazette 92/2014.

³ Official Gazette 157/2013 and 152/2014.

⁴ Article 14 of the Croatian Constitution; Official Gazette 56/1990, 135/1997, 113/2000, 28/2001, 76/2010 and 5/2014.

⁵ Official Gazette 85/2008 and 112/2012.

⁶ Official Gazette 82/2008, 125/2011, 20/2012 and 138/2012.

⁷ Official Gazette 93/2014.

3. Main principles and definitions

The Anti-discrimination Act (further: the ADA) 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 these grounds.

The 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. It is a circumstance that the court has to take into consideration when determining the amount of compensation or the sanction for a misdemeanour.

The 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.

The ADA explicitly defines and prohibits victimisation.

The 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 a 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.

The 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 encouragement to discriminate, but it does not define encouragement nor 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.

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

The 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 organisation if this is required by the religious doctrine, beliefs or objectives; on the grounds 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 employment or retirement; nationality; and 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 a very wide scope of application – it applies to both the public and private sectors and to all areas without any limitation while explicitly enumerating 10 areas to which special attention is to be paid: 1) work and working conditions; access to self-employment and occupation, including selection criteria, conditions of recruitment and promotion; access to all types of vocational guidance, vocational training, professional development and retraining; 2) education, science and sports; 3) social security, including social welfare, pension and health insurance and unemployment insurance; 4) health care; 5) judiciary and administration; 6) housing; 7) public information and the media; 8) access to goods and services and their provision; 9) membership of and activities in trade unions, civil society organisations, political parties or any other organisations; and 10) access to participation in 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.

Criminal offences of discrimination are prosecuted *ex officio*. If the State Attorney's Office decides not to prosecute, a victim is authorised to take over the prosecution of the case as a subsidiary prosecutor. The sanction is imprisonment for up to three years.

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

An organisation, 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, is 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 or 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.

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, discrimination against

children, dealt with by the Ombudsperson for Children, and sex and sexual orientation, which are dealt with by the Gender Equality Ombudsperson.

The competences of the Ombudsman are as follows:

- to receive reports from all natural and legal persons of reasonable suspicions of discrimination;
- 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;
- 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;
- to make the public aware of occurrences of discrimination;
- to conduct, with the parties' consent, mediation with the possibility of reaching an out-of-court settlement;
- to file criminal charges relating to discrimination to the competent state attorney's office;
- to collect and analyse statistical data on discrimination;
- to inform the Croatian Parliament of the prevalence of discrimination in his/her annual reports and, when required, extraordinary reports;
- to conduct surveys on discrimination, give opinions and recommendations, and suggest appropriate legal and strategic solutions to the Government.

The Ombudsman for Persons with Disabilities and Gender Equality Ombudsperson, both have almost the same competences as the People's Ombudsman.

The Ombudspersons are not quasi-judicial bodies: they cannot issue binding decisions or impose sanctions.

7. Key issues

The Ombudsman's report for 2014 and its analysis of cases before the courts show that anti-discrimination protection does not work in practice. In 2014, 148 anti-discrimination civil proceedings (including labour disputes) were pending before Croatian courts. In the same period not a single judgment was brought in favour of a victim of discrimination.

In misdemeanour cases sanctions imposed by courts are neither effective nor proportionate nor dissuasive. Misdemeanour judges, as a rule, mitigate sentences set up by law so the usual sentence is between EUR 40 and 400. The severity of the offence, circumstances and consequences are often ignored. Sanctions are mitigated even when the act of discrimination is done publicly (e.g. through a social network or at a public meeting), when there are more victims and when the victim is especially vulnerable.⁸

Victims of discrimination are reluctant to use anti-discrimination remedies for several reasons. The chances of success are very low. In 2014, 22 civil anti-discrimination cases were closed and in none of them discrimination was found. Proceedings before the Croatian courts rarely satisfy the standards of fairness in respect of reasonable time. The proceedings usually last so long that remedies cannot be considered effective. For example, although the law clearly states that employment disputes should be decided in the first instance in six months, as a rule such proceedings in courts in bigger cities last several years. Claimants face difficulties in proving discrimination since the rule on

⁸ Pages 18 – 26 of the Ombudsman's Report for 2014:
<http://www.ombudsman.hr/index.php/hr/izvjesca/2014/finish/41-2014/562-izvjesce-pucke-pravobranaiteljice-za-2014-godinu>.

burden of proof is not always implemented. Case law of municipal and county courts, the main source of judicial interpretation of often very wide legal provisions, is not published and therefore unavailable to potential claimants. The case law is still not clear regarding the issue of intent as an element of discrimination and judges are reluctant to find discrimination if the discriminator did not show any intention to violate a victim's right.⁹

In spite of the provision of the Anti-discrimination Act that in anti-discrimination cases appeal on points of law (*revizija*) is always admissible, the Supreme Court has in 2014 decided in six cases (and the total number of anti-discrimination cases in that period before that court was seven) in which the appeals on points of law were filed, that appeals on points of law were inadmissible because they did not fulfil criteria for extraordinary appeal on points of law (*izvanredna revizija*), the remedy being admissible rarely and only in exceptional situations, and, according to the Supreme Court, the only appeal to the Supreme Court admissible in anti-discrimination cases is when the value of the case is above the statutory threshold for lodging an appeal on points of law.

⁹ Page 21 of the Ombudsman Report for 2014:
<http://www.ombudsman.hr/index.php/hr/izvjesca/2014/finish/41-2014/562-izvjesce-pucke-pravobranaiteljice-za-2014-godinu>.

RÉSUMÉ

1. Introduction

Reconnue en 1992 comme État indépendant par les Nations unies, la Croatie a été un pays en état de guerre de 1991 à 1995. Après une période de pouvoir autoritaire et d'isolement par rapport à la communauté internationale, la Croatie a changé de cap à la fin des années 1990. Elle est membre de l'Union européenne depuis le 1^{er} juillet 2013.

La Croatie a une population de 4 284 889 habitants. La structure ethnique du pays s'est établie comme suit: les Croates représentent la majorité de la population (90 %). Les minorités les plus nombreuses sont formées par les Serbes (4,36 %), les Bosniaques (0,73 %), les Italiens (0,42 %), les Hongrois (0,33 %), les Albanais (0,41 %), les Slovènes (0,25 %) et les Roms (officiellement 0,4 %, mais selon des estimations officieuses, ils pourraient être 40 000, soit 0,9 %). La langue officielle est le croate, mais la Constitution donne à toutes les minorités nationales le droit d'organiser l'instruction en langue maternelle. La structure religieuse de la population se présente comme suit: 86,28 % de la population se déclare catholique; il y a 4,44 % d'orthodoxes; 1,47 % de musulmans; 2,83 % d'agnostiques (ou sans religion précisée); et 3,81 % des citoyens se disent athées. Le pourcentage des autres religions est inférieur à 0,2 %.

La position du gouvernement et des instances officielles à l'égard des discriminations a évolué d'une approche pro-nationaliste au début des années 1990 à une approche plus égalitaire depuis 2000 en passant par une phase de déni à la fin des années 1990. On constate depuis lors, indépendamment des élections et des changements de gouvernement, des progrès lents mais constants, lesquels ont été largement encouragés par les organisations de défense des droits de l'homme de même que par le processus d'adhésion à l'UE et par d'autres acteurs internationaux.

La République de Croatie est un État unitaire, organisé selon le principe de la séparation entre le pouvoir législatif, le pouvoir exécutif et le pouvoir judiciaire. Le système judiciaire comporte deux niveaux de juridiction (première instance et appel) auxquels peuvent s'ajouter des voies de recours extraordinaires (réexamen par la Cour suprême notamment). Les décisions administratives peuvent faire l'objet d'un contrôle juridictionnel. En sa qualité de plus haute juridiction du pays, la Cour suprême a pour rôle de veiller à l'application uniforme des lois et à l'égalité de tous devant la justice. Les fonctions juridictionnelles sont permanentes. Les décisions des cours et tribunaux ne sont en principe exécutoires que pour les parties en cause et n'établissent pas de précédent.

La Cour constitutionnelle de la République de Croatie a notamment pour compétence de statuer sur la constitutionnalité des lois; de se prononcer sur la conformité des autres réglementations avec la Constitution et la législation; de statuer sur les recours constitutionnels à l'encontre de décisions particulières prises par des organismes gouvernementaux, des collectivités autonomes locales et régionales ou des entités juridiques investies d'une autorité publique, lorsque ces décisions violent les droits humains et les libertés fondamentales ou le droit à l'autonomie locale et régionale, lesquels sont garantis par la Constitution de la République de Croatie; de veiller au respect de la constitutionnalité et de la légalité; et de notifier au parlement croate les cas d'inconstitutionnalité et d'illégalité constatés.

Le médiateur de la République est chargé en sa qualité de commissaire du parlement croate de protéger les droits constitutionnels et légaux des citoyens dans leurs rapports avec l'administration et les organes investis de l'autorité publique. La loi antidiscrimination lui a conféré le rôle d'organe spécialisé pour la promotion de l'égalité de traitement.

Dans certains comtés où la population rom est importante (Međumirska et Varaždinska), les enfants roms sont placés, au sein d'écoles ordinaires, dans des classes séparées des autres enfants. En mars 2010, la Grande Chambre de la Cour européenne des droits de l'homme a rendu, dans une affaire introduite par des élèves roms, un arrêt constatant un non-respect de leur droit à la non-discrimination dans la jouissance du droit à l'instruction.¹⁰ L'existence (et le nombre croissant) de classes réservées aux Roms est une pratique courante. La plupart des enfants roms ne participent à aucun enseignement maternel ni programme préscolaire, et ils ne maîtrisent pas suffisamment la langue croate pour suivre les cours. Le corps enseignant estime plus facile de travailler séparément avec ces enfants. L'enseignement dans les classes comptant de nombreux enfants roms est considéré comme moins avancé.

La loi sur le partenariat de vie de personnes de même sexe est entrée en vigueur en août 2014. Elle régit le statut juridique des relations enregistrées ou non entre personnes de même sexe.¹¹

La loi sur l'insertion professionnelle et l'emploi des personnes handicapées, telle que modifiée en 2014, instaure l'obligation pour tous les employeurs occupant plus de vingt personnes, à la fois dans le secteur public et dans le secteur privé, d'engager un certain nombre de personnes handicapées.¹²

2. Législation principale

La Croatie a ratifié tous les traités antidiscrimination faisant partie du droit international à l'exception de la Charte sociale européenne révisée, qui a été signée et dont la (longue) procédure de ratification est en cours (Convention de sauvegarde des droits de l'homme et des libertés fondamentales, y compris son Protocole n° 12; Pacte international relatif aux droits civils et politiques; Convention-cadre pour la protection des minorités nationales; Pacte international relatif aux droits économiques, sociaux et culturels; Convention internationale sur l'élimination de toutes formes de discrimination raciale; Convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes; Convention de l'OIT concernant la discrimination (n° 111); Convention relative aux droits de l'enfant; et Convention relative aux droits des personnes handicapées). Tous les traités sont directement applicables.

La Constitution de la République de Croatie garantit des droits et libertés à quiconque réside sur son territoire, sans distinction de race, de couleur, de genre, de langue, de religion, de convictions politiques ou autres, d'origine nationale ou sociale, de fortune, de naissance, d'éducation, de statut social ou de toute autre caractéristique. D'autres motifs de discrimination tels que le handicap, l'âge et l'orientation sexuelle sont implicitement couverts par le libellé «toute autre caractéristique».¹³

Les principaux actes législatifs en matière de lutte contre la discrimination sont les suivants:

- la loi antidiscrimination,¹⁴ qui interdit toute forme de discrimination fondée sur la race, l'origine ethnique, la couleur, le genre, la langue, la religion, les convictions politiques ou autres, l'origine nationale ou sociale, la fortune, l'appartenance à un syndicat, l'éducation, le statut social, l'état matrimonial ou la situation familiale, l'âge, l'état de santé, le handicap, l'hérédité, l'identité sexuelle et son expression, et l'orientation sexuelle;

¹⁰ *Oršuš et autres c. Croatie* [GC], requête n° 15766/03, arrêt du 16 mars 2010.

¹¹ Journal officiel 92/2014.

¹² Journal officiel 157/2013 et 152/2014.

¹³ Article 14 de la Constitution croate; Journal officiel 56/1990, 135/1997, 113/2000, 28/2001, 76/2010 et 5/2014.

¹⁴ Journal officiel 85/2008 et 112/2012.

- la loi sur l'égalité des genres,¹⁵ qui interdit la discrimination fondée sur le genre, et la loi sur le partenariat de vie de personnes de même sexe, qui interdit la discrimination fondée sur le partenariat homosexuel et l'orientation sexuelle;
- la loi sur le travail,¹⁶ qui interdit la discrimination en matière d'emploi et de conditions de travail, en ce compris les critères et conditions d'embauche et de promotion, de formation professionnelle, de perfectionnement professionnel et de reconversion professionnelle, mais qui ne cite pas les motifs de discrimination.

3. Principes généraux et définitions

La loi antidiscrimination interdit toute forme de discrimination fondée sur la race, l'origine ethnique ou la couleur de peau, le genre, la langue, la religion, les convictions politiques ou autres, l'origine nationale ou sociale, la fortune, l'appartenance à un syndicat, l'éducation, le statut social, l'état matrimonial ou la situation familiale, l'âge, l'état de santé, le handicap, l'hérédité, l'identité sexuelle et son expression, ainsi que l'orientation sexuelle, sans définir pour autant, de quelque manière que ce soit, aucun de ces motifs.

La loi antidiscrimination définit la discrimination multiple comme le fait de réserver à une personne un traitement différent fondé sur plusieurs motifs de discrimination interdits, et considère qu'il s'agit d'une forme grave de discrimination dont le juge doit tenir compte au moment de fixer le montant de l'indemnisation ou de sanctionner le délit.

La loi antidiscrimination interdit toute discrimination fondée sur une idée fausse quant à l'existence d'un motif de discrimination interdit (à savoir une présomption qui s'avère erronée). Elle interdit également toute discrimination fondée sur l'association avec une ou plusieurs personnes présentant une caractéristique particulière.

La loi antidiscrimination définit et interdit expressément les rétorsions.

La loi antidiscrimination définit la discrimination directe comme le fait de traiter en raison de l'un des motifs frappés d'interdiction une personne de manière moins favorable qu'une autre ne l'est, ne l'a été ou ne le serait dans une situation comparable; et la discrimination indirecte comme le fait qu'une disposition, un critère ou une pratique apparemment neutre entraîne ou est susceptible d'entraîner un désavantage particulier pour les personnes auxquelles s'applique l'un des motifs frappés d'interdiction, à moins que cette disposition, ce critère ou cette pratique soit objectivement justifié par un objectif légitime et que les moyens de réaliser cet objectif soient appropriés et nécessaires.

La loi antidiscrimination définit le harcèlement comme tout comportement indésirable lié à l'un des motifs interdits, qui a pour objet ou pour effet de porter atteinte à la dignité d'une personne et de créer un environnement intimidant, hostile, dégradant, humiliant ou offensant.

La loi antidiscrimination interdit toute incitation à la discrimination; elle ne définit cependant pas l'incitation et ne traite pas spécifiquement de «l'injonction de discriminer».

La loi antidiscrimination oblige de prévoir des aménagements raisonnables pour les personnes handicapées. Elle précise que le fait de ne pas prendre les mesures appropriées pour permettre aux personnes handicapées d'accéder à des ressources mises à la disposition du public, de participer à la vie publique et sociale et d'avoir accès au lieu de travail et à des conditions de travail compte tenu de leurs besoins spécifiques, en adaptant l'infrastructure et les locaux ainsi qu'en utilisant des équipements et d'autres

¹⁵ Journal officiel 82/2008, 125/2011, 20/2012 et 138/2012.

¹⁶ Journal officiel 93/2014.

moyens qui n'imposent pas une charge déraisonnable à la personne tenue de les fournir, est constitutif de discrimination.

La loi antidiscrimination ne fait pas de distinction entre les ressortissants et les non-ressortissants et assure donc à tous une protection contre la discrimination. Elle n'établit pas davantage de distinction entre les personnes physiques et les personnes morales, que ce soit en termes de protection contre les discriminations ou en termes de responsabilité juridique de la discrimination.

La loi anti-discrimination prévoit un nombre relativement important d'exceptions à l'interdiction de discriminer.

Ainsi prévoit-elle une exception en ce qui concerne les exigences professionnelles essentielles et déterminantes. Elle dispose que le fait de placer une personne dans une situation moins favorable n'est pas constitutif de discrimination dans le cadre d'un emploi déterminé lorsque la nature du travail ou le contexte dans lequel il s'effectue est tel(le) que des caractéristiques liées à l'un des motifs de discrimination prohibés constituent une condition réelle et décisive pour l'exécution du travail en question, à condition que l'objectif à atteindre soit justifié et que la condition soit appropriée.

Les autres exceptions concernent la santé et l'ordre public; les actions positives; l'octroi de privilèges aux femmes enceintes, aux enfants, aux jeunes, aux personnes âgées, aux personnes ayant des responsabilités de garde et de soins et aux personnes handicapées; les activités professionnelles; l'adhésion et une pratique conforme au canon et à la mission d'une église ou d'une congrégation religieuse ou de toute autre organisation publique ou privée si la doctrine, les croyances ou les objectifs religieux le requièrent; la prise en compte de l'âge et du sexe pour le calcul des primes et autres conditions d'assurance; la fixation d'une limite minimum d'âge, d'expérience ou de niveau de formation pour accéder à certains emplois ou pour acquérir certains droits liés à l'emploi; la fixation d'un âge maximum pour la résiliation du contrat de travail ou le départ à la retraite; la nationalité; et la réglementation des droits et obligations découlant des relations.

Chaque exception doit être appréciée par rapport à l'objectif et la finalité qui la sous-tendent.

4. Champ d'application matériel

Si la loi antidiscrimination a un champ d'application très vaste – étant applicable tant au secteur public qu'au secteur privé et dans tous les domaines sans restriction – elle énumère toutefois explicitement dix domaines qui méritent une attention particulière: 1) le travail et les conditions de travail; l'accès à une activité non salariée et à l'emploi, y compris les critères de sélection, les conditions d'embauche et de promotion; l'accès à tous les types d'orientation professionnelle, de formation professionnelle, de perfectionnement professionnel et de reconversion professionnelle; 2) l'éducation, les sciences et les sports; 3) la sécurité sociale, y compris l'aide sociale, les pensions ainsi que l'assurance maladie et l'assurance chômage; 4) les soins de santé; 5) la justice et l'administration; 6) le logement; 7) l'information publique et les médias; 8) l'accès aux biens et services et la fourniture de biens et services; 9) l'adhésion et la participation active à des organisations syndicales, des organisations de la société civile, des partis politiques ou toute autre organisation; et 10) l'accès à la participation à la création culturelle et artistique.

5. Mise en application de la loi

Une victime de discrimination peut demander protection en engageant une procédure judiciaire – au civil ou au pénal (dans les deux cas, l'affaire sera jugée par une juridiction ordinaire) et/ou au correctionnel (pour les délits de moindre importance jugés par les tribunaux correctionnels).

Dans une procédure civile, la victime de discrimination peut introduire un recours demandant la protection de ses droits individuels en invoquant le fait qu'un droit a été violé par une discrimination (protection accessoire contre les discriminations) ou un recours demandant qu'il soit statué au principal sur l'existence d'une discrimination (action antidiscrimination spéciale et individuelle). Dans ce dernier cas, la victime peut demander:

- à faire constater l'existence de la discrimination (action en constatation); et/ou
- à faire interdire la discrimination (action en interdiction); et/ou
- à faire cesser la discrimination ou ses effets (action en cessation); et/ou
- à obtenir réparation pour le préjudice causé par la discrimination (action en réparation); et/ou
- à faire publier la décision constatant l'existence de la discrimination (action en publication).

La loi antidiscrimination ne contient aucune règle en matière d'indemnisation et ce sont les règles générales de la loi relative aux obligations civiles et ses dispositions relatives à la responsabilité civile délictuelle (autrement dit ses dispositions sur le préjudice et la réparation) qui s'appliquent. En vertu de ces règles, lorsqu'une juridiction constate une violation des droits de la personnalité, elle octroie une indemnisation équitable si elle estime que la gravité de ce non-respect et des circonstances le justifie. Lorsqu'elle fixe le montant de la réparation pécuniaire, la juridiction saisie tient compte de l'intensité et de la durée de la détresse psychique et physique et de la peur provoquées par l'infraction, de l'objectif de l'indemnisation et du fait qu'elle ne doit pas susciter des attentes incompatibles avec sa nature même et sa finalité sociale.

La réglementation ne fait aucune distinction entre l'emploi public ou privé et les domaines en dehors de l'emploi.

Les infractions pénales relevant d'une discrimination donnent lieu à des poursuites d'office. Si le parquet décide de ne pas engager de poursuites, la victime peut reprendre l'action pénale à son compte en qualité de «procureur subsidiaire». La sanction est une peine d'emprisonnement pouvant aller jusqu'à trois ans.

La loi antidiscrimination spécifie que les actes de harcèlement, de harcèlement sexuel et de rétorsion relèvent du délit correctionnel et sont passibles d'une amende pouvant être infligée aux personnes physiques, aux personnes responsables d'entités juridiques, aux artisans et aux travailleurs indépendants ainsi qu'aux personnes morales. La loi fixe les niveaux d'amende en fonction des catégories d'infractions (de 684,93 à 41 095,89 euros pour les faits de harcèlement et de 684,93 à 47 945,20 euros pour les faits de harcèlement sexuel).

Une victime d'une discrimination peut déposer plainte auprès du médiateur, qui est l'organe central chargé de la lutte contre les discriminations.

Lorsqu'une personne estime qu'un acte administratif est discriminatoire à son égard, elle peut porter plainte devant le tribunal administratif de la République de Croatie, qui est compétent pour contrôler la légalité des actes administratifs.

Une organisation, institution, association ou autre personne exerçant une activité en rapport avec la protection du droit à l'égalité de traitement de groupes dont les droits

sont en cause dans le cadre d'une action en justice est habilitée à agir au nom ou à l'appui des victimes de discrimination.

Selon la loi antidiscrimination, l'auteur d'un recours (devant une juridiction administrative ou civile) doit prouver la probabilité des faits discriminatoires. Il incombe ensuite à la partie défenderesse de démontrer qu'aucune discrimination n'a été commise. La loi ne prévoit pas d'exception à cette règle pour ce qui concerne les affaires de harcèlement et de rétorsions.

La législation nationale reste muette à propos du recours aux tests de situation: elle n'autorise pas explicitement le recours à ce type de test, et elle ne définit ni n'établit aucune condition procédurale ou limitation à l'admissibilité de ces moyens de preuve en justice. Rien cependant dans la loi antidiscrimination ni dans la législation régissant la procédure civile ne fait obstacle à l'utilisation de tests de situation.

La législation nationale n'autorise pas explicitement le recours aux statistiques comme moyen de preuve: elle ne définit ni n'établit par conséquent aucune condition procédurale ou limitation à l'admissibilité de ces moyens de preuve en justice. Rien cependant dans la loi antidiscrimination ni dans la législation régissant la procédure civile ne fait obstacle à l'utilisation de preuves statistiques.

6. Organismes de promotion de l'égalité de traitement

La loi antidiscrimination confère au médiateur la qualité d'organe central chargé d'éliminer les discriminations et de promouvoir l'égalité de traitement sans distinction d'origine raciale ou ethnique. Il est également compétent pour ce qui concerne les discriminations fondées sur d'autres motifs, hormis le handicap, qui relève de la compétence du médiateur pour les personnes handicapées; la discrimination à l'égard des enfants, qui relève du médiateur pour les enfants; et le sexe et l'orientation sexuelle, qui relèvent du médiateur en charge de l'égalité des genres.

Le médiateur a les compétences suivantes:

1. recevoir de toute personne physique ou morale des rapports concernant une suspicion raisonnable de discrimination;
2. fournir aux personnes physiques ou morales ayant déposé plainte pour discrimination les informations nécessaires quant à leurs droits et obligations et quant aux options dont elles disposent en matière de protection juridique ou autre;
3. si aucune procédure n'a encore été engagée devant les tribunaux, examiner des rapports individuels et prendre, dans les limites de ses compétences, des mesures visant à mettre fin à la discrimination et à protéger les droits des personnes qui en font l'objet;
4. sensibiliser le public aux cas de discrimination;
5. procéder avec l'accord des parties à une médiation pouvant conduire à la conclusion d'un accord extrajudiciaire;
6. engager des poursuites pénales pour faits de discrimination auprès du parquet compétent;
7. recueillir et analyser des données statistiques sur les discriminations;
8. informer le parlement croate de la prévalence des discriminations dans le cadre de ses rapports annuels et, s'il y a lieu, de rapports extraordinaires;
9. réaliser des études sur les discriminations, émettre des avis et des recommandations, et suggérer au gouvernement des solutions juridiques et stratégiques adéquates.

Le médiateur pour les personnes handicapées et le médiateur en charge de l'égalité des genres ont l'un et l'autre des compétences pratiquement identiques à celles du médiateur général.

Le médiateur n'est pas un organe quasi-judiciaire: il ne peut rendre de décisions juridiquement contraignantes ni imposer de sanctions.

7. Points essentiels

Le rapport du médiateur concernant l'année 2014 et son analyse des affaires portées en justice montrent que la protection antidiscrimination ne fonctionne pas en pratique. Pas moins de 148 procédures civiles pour faits discriminatoires (y compris des conflits du travail) étaient en instance devant des juridictions croates en 2014. Et pas un seul arrêt n'a été prononcé en faveur d'une victime de discrimination au cours de cette même année.

Les sanctions imposées par les tribunaux correctionnels ne sont ni efficaces, ni proportionnées, ni dissuasives. En règle générale, les juges siégeant dans ces tribunaux atténuent les condamnations fixées par la loi, de sorte que leur montant se situe habituellement entre 40 et 400 euros. La gravité du délit, de même que ses circonstances et conséquences, sont souvent ignorées. Les sanctions sont atténuées même lorsque l'acte discriminatoire est commis publiquement (via un réseau social ou lors d'une assemblée publique, par exemple), lorsqu'il y a plusieurs victimes ou lorsque la victime est particulièrement vulnérable.¹⁷

Plusieurs raisons font que les victimes de discrimination hésitent à faire usage des voies de recours antidiscrimination. Les chances de succès sont très minces. En 2014, 22 affaires traitées au civil pour discrimination ont été clôturées et il n'y a eu constat de discrimination dans aucune d'entre elles. Les poursuites intentées devant les juridictions croates satisfont rarement aux normes d'équité en termes de délai raisonnable: elles prennent généralement tant de temps que les recours ne peuvent être considérés comme efficaces. Ainsi par exemple, bien que la législation établisse clairement que les conflits du travail doivent être tranchés en première instance dans un délai de six mois, ce type d'action judiciaire dure généralement plusieurs années dans les grandes villes. Les plaignants éprouvent des difficultés à démontrer la discrimination car la règle relative à la charge de la preuve n'est pas toujours appliquée. La jurisprudence des cours municipales et de comtés, qui constitue la source principale d'interprétation judiciaire de dispositions juridiques souvent très larges, n'est pas publiée et ne peut donc être consultée par des plaignants potentiels. La jurisprudence reste peu claire sur la question de l'intention en tant qu'élément de discrimination et les juges sont réticents à établir une discrimination lorsque l'auteur de celle-ci n'a manifesté aucune intention de violer un droit de la victime.¹⁸

En dépit de la disposition de la loi antidiscrimination stipulant que, lorsqu'il s'agit d'une affaire de discrimination, un appel sur un point de droit (*revizija*) est toujours recevable, en 2014 la Cour suprême a dit pour droit à propos de six affaires de discrimination (le nombre total d'affaires de discrimination en instance devant ladite Cour étant à l'époque de sept) dans lesquelles des appels avaient été introduits sur des points de droit, que lesdits appels n'étaient pas recevables. Selon elle en effet, un appel sur point de droit est uniquement recevable dans une affaire de discrimination lorsque la valeur litigieuse dépasse le seuil requis, comme pour les autres affaires.

¹⁷ Pages 18 à 26 du rapport du médiateur concernant l'année 2014:
<http://www.ombudsman.hr/index.php/hr/izvjesca/2014/finish/41-2014/562-izvjesce-pucke-pravobranaiteljice-za-2014-godinu>.

¹⁸ Page 21 du rapport du médiateur concernant l'année 2014:
<http://www.ombudsman.hr/index.php/hr/izvjesca/2014/finish/41-2014/562-izvjesce-pucke-pravobranaiteljice-za-2014-godinu>.

ZUSAMMENFASSUNG

1. Einleitung

Im Jahr 1992 wurde Kroatien von den Vereinten Nationen als unabhängiger Staat anerkannt. Von 1991 bis 1995 befand sich das Land im Krieg. Nach einer Phase ziemlich autoritärer politischer Führung und internationaler Isolation schlug Kroatien Ende der neunziger Jahre einen neuen Weg ein. Seit dem 1. Juli 2013 ist Kroatien Mitglied der Europäischen Union.

Kroatien hat 4.284.889 Einwohner. Die Bevölkerung gliedert sich in folgende ethnische Gruppen: Die Kroaten stellen mit 90 % die Bevölkerungsmehrheit. Zu den größten Minderheiten gehören die Serben (4,36 %), Bosniaken (0,73 %), Italiener (0,42 %), Ungarn (0,33 %), Albaner (0,41 %), Slowenen (0,25 %) und Roma (offiziell 0,4 %, inoffizielle Schätzungen gehen jedoch von bis zu 40.000 Personen bzw. 0,9 % aus). Die offizielle Landessprache ist Kroatisch, alle Minderheiten haben aber das verfassungsmäßige Recht auf Bildung in ihrer Muttersprache. Die religiöse Struktur der Bevölkerung ist wie folgt: 86,28 % der Bürger sind nach eigenen Angaben Katholiken, 4,44 % orthodoxe Christen, 1,47 % Muslime, 2,93 % sind Agnostiker oder wollen sich nicht festlegen und 3,81 % der Bürger bezeichnen sich selbst als Atheisten. Andere Religionsgemeinschaften kommen gemeinsam auf unter 0,2 %.

Die Einstellung von Regierung und Behörden zum Thema Diskriminierung hat sich von einem pro-nationalistischen Ansatz in den frühen Neunzigern über Verleugnung in den späten Neunzigern zu einem eher egalitären Ansatz seit dem Jahr 2000 gewandelt. Seitdem gab es, unabhängig von Wahlergebnis und Regierungswechseln, einen langsamen aber unaufhaltsamen Fortschritt, der von Menschenrechtsorganisationen, dem Beitrittsverfahren der EU und anderen internationalen Akteuren deutlich gefördert wurde.

Die Republik Kroatien ist ein Zentralstaat. Die Regierungsgewalt gliedert sich nach dem Prinzip der Gewaltenteilung in Legislative, Exekutive und Judikative. Das Rechtssystem besitzt zwei Ebenen (erste Instanz und Berufungsinstanz), wobei außerordentliche Rechtsmittel zur Verfügung stehen (z. B. eine Revision vor dem Obersten Gericht). Es gibt eine richterliche Kontrolle behördlicher Entscheidungen. Aufgabe des Obersten Gerichts ist es, die einheitliche Anwendung der Gesetze und die gleichen Rechte für alle Bürger zu gewährleisten. Das Richteramt ist unbefristet. Urteile sind nur für die betroffenen Parteien bindend und haben keine Präzedenzwirkung.

Das Verfassungsgericht der Republik Kroatien hat unter anderem die folgenden Kompetenzen: die Vereinbarkeit von Gesetzen mit der Verfassung prüfen, die Vereinbarkeit sonstiger Rechtsvorschriften mit der Verfassung und Gesetzen prüfen, Verfassungsbeschwerden gegen einzelne Entscheidungen von staatlichen, regionalen und kommunalen Stellen und Rechtspersonen mit staatlichen Befugnissen prüfen, sofern diese Entscheidungen die Menschenrechte, Grundfreiheiten oder die verfassungsmäßig garantierten Selbstverwaltungsrechte der Kommunen und Regionen verletzen, die Grundsätze der Verfassungsmäßigkeit und Rechtmäßigkeit überwachen und das kroatische Parlament auf Verfassungs- und Rechtsverstöße aufmerksam machen.

Der Bürger-Ombudsmann hat als Beauftragter des kroatischen Parlaments die Pflicht, die verfassungsmäßigen und sonstigen Rechte der Bürger bei Kontakten mit der staatlichen Verwaltung und mit Stellen mit staatlichen Befugnissen zu schützen. Durch das Anti-Diskriminierungsgesetz ist der Ombudsmann inzwischen auch für die Förderung der Gleichstellung zuständig.

In einigen Bezirken mit einer großen Roma-Bevölkerung (Međimirska und Varaždinska), gehen Roma-Kinder in den Regelschulen in spezielle Roma-Klassen. Im März 2010 entschied die Große Kammer des Europäischen Gerichtshofes für Menschenrechte

anlässlich einer Klage von Roma-Schülern, dass diese Regelung eine Diskriminierung darstellt und das Recht der Schüler auf Bildung verletzt.¹⁹ In der Praxis sind Klassen ausschließlich für Roma-Kinder weit verbreitet (und werden sogar verstärkt eingesetzt). Die meisten Roma-Kinder besuchen keinerlei Kinderbetreuung oder Vorschule und beherrschen die kroatische Sprache nicht gut genug, um dem Unterricht zu folgen. Die Lehrkräfte finden es einfacher, die Roma-Kinder gesondert zu unterrichten. Man glaubt, dass der Unterricht in Klassen mit vielen Roma schlechter ist als in anderen.

Im August 2014 trat das Gesetz über gleichgeschlechtliche Lebenspartnerschaften in Kraft. Das Gesetz regelt den Status von eingetragenen und nicht eingetragenen gleichgeschlechtlichen Partnerschaften.²⁰

Das Gesetz über die berufliche Rehabilitation und Beschäftigung behinderter Menschen in der Neufassung von 2014 verpflichtet alle Arbeitgeber mit über 20 Angestellten, sowohl in der Privatwirtschaft, als auch bei der öffentlichen Hand, eine bestimmte Anzahl von Menschen mit Behinderungen zu beschäftigen.²¹

2. Wichtigste Gesetze

Kroatien hat alle Anti-Diskriminierungsabkommen ratifiziert, die Teil des internationalen Rechts sind, mit Ausnahme der geänderten Europäischen Sozialcharta, die zwar unterzeichnet wurde, aber noch im (langsamen) Ratifizierungsverfahren steckt (Europäische Menschenrechtskonvention sowie deren 12. Protokoll, Internationaler Pakt über bürgerliche und politische Rechte, Rahmenübereinkommen zum Schutz nationaler Minderheiten, Internationaler Pakt über wirtschaftliche, soziale und kulturelle Rechte, Übereinkommen zur Beseitigung jeder Form von Rassendiskriminierung, Übereinkommen zur Beseitigung der Diskriminierung von Frauen, ILO-Übereinkommen Nr. 111 über die Diskriminierung, Übereinkommen über die Rechte des Kindes und Übereinkommen über die Rechte von Menschen mit Behinderungen). Alle Übereinkommen können direkt angewendet werden.

Die Verfassung der Republik Kroatien garantiert jedem Bewohner der Republik dieselben Rechte und Freiheiten, unabhängig von Rasse, Farbe, Geschlecht, Sprache, Religion, politischer oder sonstiger Überzeugung, nationaler oder sozialer Herkunft, Vermögen, Geburt, Bildung, sozialem Status oder sonstiger Eigenschaften. Andere Diskriminierungsgründe wie Behinderung, Alter und sexuelle Ausrichtung fallen demnach unter die Rubrik „sonstige Eigenschaften“.²²

Den Rechtsrahmen für die Bekämpfung von Diskriminierung bilden folgende Gesetze:

- das Anti-Diskriminierungsgesetz²³, das Diskriminierung aufgrund von Rasse oder ethnischer Zugehörigkeit, Farbe, Geschlecht, Sprache, Religion, politischer oder sonstiger Überzeugung, nationaler oder sozialer Herkunft, Vermögen, Gewerkschaftsmitgliedschaft, Bildung, sozialem Status, Ehe- oder Familienstand, Alter, Gesundheitszustand, Behinderung, genetischem Erbe, Geschlechteridentität und Ausdruck von Geschlechtlichkeit sowie sexueller Ausrichtung verbietet,
- das Geschlechtergleichstellungsgesetz²⁴, das Diskriminierung aufgrund des Geschlechts verbietet (das Gesetz über gleichgeschlechtliche Lebenspartnerschaften

¹⁹ *Oršuš and Others v Croatia* [GC], Beschwerde Nr. 15766/03, Urteil vom 16. März 2010.

²⁰ Amtsblatt 92/2014.

²¹ Amtsblatt 157/2013 und 152/2014.

²² Artikel 14 der kroatischen Verfassung; Amtsblatt 56/1990, 135/1997, 113/2000, 28/2001, 76/2010 und 5/2014.

²³ Amtsblatt 85/2008 und 112/2012.

²⁴ Amtsblatt 82/2008, 125/2011, 20/2012 und 138/2012.

- verbietet Diskriminierung aufgrund einer „gleichgeschlechtlichen Partnerschaft“ oder „sexuellen Ausrichtung“),
- das Arbeitsgesetz²⁵, das Diskriminierung auf dem Arbeitsmarkt und bei den Arbeitsbedingungen verbietet, beispielsweise bei Kriterien und Bedingungen für Einstellung und Beförderung und bei der beruflichen Bildung, Weiterbildung und Umschulung. Das Gesetz nennt jedoch keine Diskriminierungsgründe.

3. Wichtigste Grundsätze und Begriffe

Das Anti-Diskriminierungsgesetz (im Folgenden ADG) verbietet Diskriminierung aufgrund von Rasse oder ethnischer Zugehörigkeit, Farbe, Geschlecht, Sprache, Religion, politischer oder sonstiger Überzeugung, nationaler oder sozialer Herkunft, Vermögen, Gewerkschaftsmitgliedschaft, Bildung, sozialem Status, Ehe- oder Familienstand, Alter, Gesundheitszustand, Behinderung, genetischem Erbe, Geschlechteridentität und Ausdruck von Geschlechtlichkeit sowie sexueller Ausrichtung, enthält aber keine nähere Definition dieser Diskriminierungsgründe.

Das ADG definiert Mehrfachdiskriminierung als Diskriminierung einer Person wegen mehr als einem verbotenen Diskriminierungsgrund und behandelt sie als schwere Form der Diskriminierung. Diesen Umstand muss das Gericht bei der Festlegung der Schadensersatzsumme bzw. Strafe für ein Vergehen berücksichtigen.

Das ADG verbietet auch Diskriminierung, die auf der irrtümlichen Annahme eines verbotenen Diskriminierungsgrunds beruht (d. h. einer Annahme, die sich später als falsch herausstellt). Außerdem verbietet es Diskriminierung aufgrund der Assoziierung mit einer anderen Person bzw. anderen Personen, mit bestimmten Eigenschaften.

Das ADG enthält eine Begriffsbestimmung und ein ausdrückliches Verbot von Viktimisierung.

Das ADG definiert unmittelbare Diskriminierung als eine Handlung aufgrund verbotener Diskriminierungsgründe, bei der eine Person in einer vergleichbaren Situation eine weniger günstige Behandlung erfährt, erfahren hat oder erfahren würde als eine andere Person. Mittelbare Diskriminierung wird definiert als eine Situation, bei der scheinbar neutrale Vorschriften, Kriterien oder Verfahren Personen aufgrund eines verbotenen Grundes gegenüber anderen Personen benachteiligen können, es sei denn diese Vorschriften, Kriterien oder Verfahren sind durch ein rechtmäßiges Ziel sachlich gerechtfertigt, und die Mittel sind zur Erreichung dieses Ziels angemessen und erforderlich.

Das ADG definiert unerwünschte Verhaltensweisen als Handlungen, die durch einen verbotenen Diskriminierungsgrund veranlasst werden und bezwecken oder bewirken, dass die Würde der betreffenden Person verletzt und ein von Einschüchterungen, Anfeindungen, Erniedrigungen, Entwürdigungen oder Beleidigungen gekennzeichnetes Umfeld geschaffen wird.

Das Anti-Diskriminierungsgesetz verbietet die Aufforderung zur Diskriminierung, definiert jedoch den Begriff Aufforderung nicht und behandelt auch nicht ausdrücklich Anweisungen zur Diskriminierung.

Das ADG beinhaltet eine Pflicht zu angemessenen Vorkehrungen für Menschen mit Behinderungen. Im Sinne des Gesetzes gilt es als Diskriminierung, wenn die zuständige Person behinderten Menschen die Nutzung öffentlicher Ressourcen, die Teilhabe am öffentlichen und sozialen Leben und den Zugang zu einem Arbeitsplatz und angemessenen Arbeitsbedingungen nicht durch die Anpassung von Infrastruktur und

²⁵ Amtsblatt 93/2014.

Räumen an deren speziellen Bedürfnisse sowie durch die Bereitstellung von Hilfsmitteln und sonstigen Maßnahmen ermöglicht, sofern diese Maßnahmen keine unverhältnismäßige Belastung darstellen.

Das ADG unterscheidet nicht zwischen Bürgern und Nicht-Bürgern und gewährt jedem Menschen Schutz vor Diskriminierung. Außerdem unterscheidet es weder beim Schutz vor Diskriminierung noch bei der Haftung für Diskriminierung zwischen natürlichen und juristischen Personen.

Das ADG sieht relativ viele Ausnahmen vom Diskriminierungsverbot vor.

Eine davon gilt für wesentliche und entscheidende berufliche Anforderungen. Nach dem Gesetz gilt Benachteiligung in Bezug auf eine bestimmte Stelle nicht als Diskriminierung, wenn aufgrund der Art der Arbeit oder der Bedingungen für deren Ausführung Merkmale, die sich auf verbotene Diskriminierungsgründe beziehen, wesentliche und entscheidende Anforderungen für den Beruf darstellen und mit angemessenen Anforderungen ein legitimes Ziel erreicht werden soll.

Weitere Ausnahmen sind: Gesundheit und öffentliche Ordnung, Fördermaßnahmen, Vergünstigungen für Schwangere, Kinder, junge Menschen, Senioren, Menschen, die andere betreuen, und behinderte Menschen, im Bereich Beschäftigung die Mitgliedschaft in und Beachtung der Regeln und Mission einer Kirche oder Ordensgemeinschaft oder anderen öffentlichen oder privaten Organisation, wenn dies aufgrund der religiösen Lehre, Überzeugung oder deren Ziele notwendig ist, Ungleichbehandlung aufgrund von Alter und Geschlecht bei der Festlegung von Versicherungsprämien und sonstigen Versicherungsbedingungen, Kriterien wie Alter, Erfahrung, Bildungsabschluss für die Besetzung bestimmter Stellen oder sonstiger, mit der Beschäftigung verbundener Vergünstigungen, Festlegung eines Höchstalters für das Ende eines Beschäftigungsverhältnisses oder die Pensionierung, Nationalität und Regelungen und Verpflichtungen, die sich aus familiären Beziehungen ergeben.

Jede Ausnahme muss durch ein legitimes Ziel gerechtfertigt sein.

4. Sachlicher Anwendungsbereich

Der Geltungsbereich des Anti-Diskriminierungsgesetzes ist sehr weit gefasst. Er gilt für die Privatwirtschaft und den öffentlichen Sektor und sämtliche Lebensbereiche, wobei ausdrücklich zehn Bereiche aufgezählt werden, in denen das Diskriminierungsverbot besonders zu beachten ist: 1) Arbeitsleben und Arbeitsbedingungen, Zugang zu selbständiger und abhängiger Beschäftigung einschließlich der Auswahlkriterien für Einstellung und Beförderung, Zugang zu allen Formen der Berufsberatung, beruflichen Aus- und Weiterbildung und Umschulung, 2) Bildung, Wissenschaft und Sport, 3) soziale Sicherheit, Sozialfürsorge, Renten-, Kranken- und Arbeitslosenversicherung, 4) Gesundheitswesen, 5) Rechtssystem und Verwaltung, 6) Wohnraum, 7) öffentliche Informationen und Medien, 8) Zugang zu Gütern und Dienstleistungen, 9) Mitgliedschaft in und Tätigkeit von Gewerkschaften, Nichtregierungsorganisationen, politischen Parteien oder anderen Organisationen und 10) Zugang zu und Teilnahme an kulturellen und künstlerischen Prozessen.

5. Rechtsdurchsetzung

Opfer von Diskriminierung können sich durch Gerichtsverfahren wehren – in zivil- oder strafrechtlichen Verfahren vor ordentlichen Gerichten – und/oder die Tat als Ordnungswidrigkeit anzeigen (weniger schwere Verstöße werden vor Ordnungsgerichten verhandelt).

In Zivilverfahren können Opfer von Diskriminierung Klage einreichen, weil durch die Diskriminierung ihre Rechte verletzt wurden (Anti-Diskriminierungsschutz als Nebenprodukt) oder weil die diskriminierende Praxis überhaupt besteht (spezielle einzelne Anti-Diskriminierungsmaßnahme). In letzterem Fall können die Opfer auf Folgendes klagen:

- Prüfung, ob eine Diskriminierung vorliegt (feststellende Anti-Diskriminierungsklage) und/oder
- Verbot der Diskriminierung (prohibitive Anti-Diskriminierungsklage) und/oder
- Aufhebung der Diskriminierung oder ihrer Folgen (Restitutionsklage wegen Diskriminierung) und/oder
- Schadensersatz für den durch die Diskriminierung entstandenen Schaden (Entschädigungsklage wegen Diskriminierung) und/oder
- Veröffentlichung des Urteils, in dem das Bestehen der Diskriminierung festgestellt wird (Veröffentlichungsklage).

Das Anti-Diskriminierungsgesetz enthält keine Schadensersatzregeln, sodass die allgemeinen Regeln des Zivilhaftungsgesetzes und dessen Bestimmungen gelten (d. h. die Bestimmungen zu Schäden und Schadensersatz). Gemäß diesen Regeln muss das Gericht dem Opfer, dessen Persönlichkeitsrechte verletzt wurden, eine Schadensersatzsumme zusprechen, die der Schwere der Verletzung und den Umständen angemessen ist. Bei der Bestimmung der Höhe der finanziellen Entschädigung muss das Gericht die Schwere und Dauer der körperlichen und psychischen Beeinträchtigung und Angst, die durch die Verletzung verursacht wurde, das Ziel der Entschädigung und die Tatsache berücksichtigen, dass die Entschädigung keine Erwartungen wecken sollte, die ihrer Art und dem sozialen Zweck widersprechen.

Diese Regel unterscheidet nicht zwischen privaten und staatlichen Beschäftigungsverhältnissen und anderen Lebensbereichen.

Bei Fällen von Diskriminierung, die strafrechtlich verboten sind, wird *von Amts wegen* ermittelt. Sofern die Staatsanwaltschaft das Verfahren einstellt, kann das Opfer die Strafverfolgung als Nebenkläger übernehmen. Das Strafmaß ist eine Freiheitsstrafe von bis zu drei Jahren.

Unerwünschte Verhaltensweisen, sexuelle Belästigung und Viktimisierung sind nach dem ADG Ordnungswidrigkeiten, für die der Täter haftbar ist. Natürliche Personen, zuständige Mitarbeiter juristischer Personen, Handwerker, Selbständige und juristische Personen können mit Geldstrafen belegt werden, deren Höhe sich nach dem Vergehen richtet (zwischen 684,93 EUR und 41.095,89 für unerwünschtes Verhalten und 684,93 EUR und 47.945,20 EUR für sexuelle Belästigung).

Opfer von Diskriminierung können eine Klage beim Ombudsmann einreichen, er ist die zentrale Anlaufstelle für Diskriminierungsfälle.

Wird jemand durch eine Behörde diskriminiert, kann er/sie eine Beschwerde beim Verwaltungsgericht der Republik Kroatien einreichen, das die Rechtmäßigkeit behördlicher Entscheidungen überprüft.

Organisationen, Institutionen, Verbände oder Personen, die sich im Rahmen ihrer Tätigkeit für die Gleichbehandlung der Gruppe einsetzen, zu welcher die Person gehört, über deren Rechte entschieden wird, sind berechtigt, sich im Namen oder zur Unterstützung des Opfers am Verfahren zu beteiligen.

Nach dem Anti-Diskriminierungsgesetz muss der Kläger bei einer Anti-Diskriminierungsklage (sowohl in Zivil- als auch in Strafverfahren) beweisen, dass vermutlich eine Diskriminierung stattgefunden hat. Dann muss der Beklagte beweisen,

dass dies nicht der Fall ist. Das Gesetz sieht diese Regel allerdings nicht in Fällen von unerwünschtem Verhalten und von Viktimisierung vor.

Das kroatische Recht schweigt sich zum Thema Situationstests aus. Es erlaubt nicht ausdrücklich deren Verwendung, enthält keine Begriffsbestimmung und legt keine Verfahrensregeln fest, die ihre Verwendung einschränken oder sie als Beweise vor Gericht zulassen. Allerdings enthält weder das Anti-Diskriminierungsrecht, noch die Zivilverfahrensordnung Bestimmungen, die die Verwendung von Situationstests ausschließen.

Das kroatische Recht erlaubt die Verwendung statistischer Beweise nicht ausdrücklich; dementsprechend bietet es auch keine Definition des Begriffs und legt keine Verfahrensregeln oder Einschränkungen für ihre Zulässigkeit als Beweismittel vor Gericht fest. Allerdings enthält weder das Anti-Diskriminierungsrecht noch die Zivilverfahrensordnung Bestimmungen, die die Verwendung von statistischen Beweisen ausschließen.

6. Gleichbehandlungsstellen

Das Anti-Diskriminierungsgesetz macht den Ombudsmann zur zentralen Stelle im Kampf gegen Diskriminierung und bei der Förderung von Gleichbehandlung unabhängig von Rasse oder ethnischer Herkunft. Außerdem ist der Ombudsmann die zentrale Anlaufstelle für Beschwerden wegen Diskriminierung aus anderen Diskriminierungsgründen. Ausnahmen sind Diskriminierungen aufgrund von Behinderung, für die der Ombudsmann für Menschen mit Behinderungen zuständig ist, Diskriminierungen von Kindern, die die Ombudsstelle für Kinder überprüft, und Diskriminierungen aufgrund des Geschlechts oder der sexuellen Ausrichtung, die vom Gleichstellungs-Ombud verfolgt werden.

Der Ombudsmann hat folgende Aufgaben:

- Beschwerden natürlicher und juristischer Personen entgegen nehmen, die einen begründeten Verdacht auf Diskriminierung betreffen,
- natürliche und juristische Personen, die eine Diskriminierungsbeschwerde eingereicht haben, über ihre Rechte und Pflichten und ihre Möglichkeiten für rechtlichen und sonstigen Schutz informieren,
- sofern noch keine Klage eingereicht wurde, die jeweiligen Berichte prüfen und innerhalb seiner Zuständigkeit Maßnahmen ergreifen, mit denen die Diskriminierung beendet und die Recht der diskriminierten Personen geschützt werden können,
- die Öffentlichkeit über das Thema Diskriminierung aufklären,
- mit Zustimmung der Parteien eine Schlichtung durchführen, um eine außergerichtliche Einigung zu erreichen,
- die Diskriminierung gegebenenfalls bei der zuständigen Staatsanwaltschaft anzeigen,
- statistische Daten über Diskriminierung erheben und auswerten,
- das kroatische Parlament in seinem/ihrem Jahresbericht, und auf Wunsch in Sonderberichten, über die Häufigkeit von Diskriminierung informieren,
- Erhebungen über Diskriminierung durchführen, Gutachten und Empfehlungen erstellen und der Regierung angemessene rechtliche und strategische Lösungen vorschlagen.

Der Ombudsmann für Menschen mit Behinderungen und der Gleichstellungs-Ombud haben im Wesentlichen die gleichen Kompetenzen wie der Bürger-Ombudsmann.

Die Ombudsstellen sind keine quasi-gerichtlichen Stellen und können weder rechtswirksame Urteile fällen, noch Strafen verhängen.

7. Wichtige Punkte

Der Jahresbericht 2014 des Ombudsmanns und seine Analyse der relevanten Gerichtsverfahren zeigen, dass der Schutz vor Diskriminierung in der Praxis nicht funktioniert. 2014 waren 148 Zivilverfahren wegen Diskriminierung (einschließlich Arbeitsverfahren) bei kroatischen Gerichten anhängig. Im selben Zeitraum erging kein einziges Urteil zugunsten eines Diskriminierungsopfers.

In Ordnungsverfahren sind die vom Gericht verhängten Strafen weder wirksam, noch verhältnismäßig oder abschreckend. Ordnungsrichter senken in der Regel das gesetzliche Strafmaß, sodass die mittlere Strafhöhe zwischen 40 und 400 EUR liegt. Die Schwere des Verstoßes, dessen Umstände und Folgen werden häufig ignoriert. Die Strafen werden sogar dann gemildert, wenn die Diskriminierung öffentlich stattgefunden hat (z. B. in einem sozialen Netzwerk oder einer öffentlichen Versammlung), wenn es mehr als ein Opfer gab oder wenn das Opfer besonders schutzbedürftig ist.²⁶

Opfer von Diskriminierung nutzen aus mehreren Gründen nur selten die verfügbaren Rechtsmittel. Die Erfolgchancen sind sehr gering. Im Jahr 2014 wurde über 22 Anti-Diskriminierungsklagen entschieden, keiner wurde stattgegeben. Verfahren vor kroatischen Gerichten entsprechen in Bezug auf die Dauer nur selten dem Standard. Sie dauern in der Regel so lange, dass sie als Rechtsmittel nicht wirksam sind. Obwohl das Gesetz beispielsweise klar festlegt, dass Arbeitsverfahren in der ersten Instanz innerhalb von sechs Monaten entschieden werden sollten, dauern sie in größeren Städten durchschnittlich mehrere Jahre. Die Kläger können die Diskriminierung nur schwer beweisen, weil die umgekehrte Beweislast nicht immer umgesetzt wird. Die Urteile von Amts- und Bezirksgerichten, die wichtigste Quelle für die rechtliche Auslegung der häufig recht allgemein formulierten Bestimmungen, werden nicht veröffentlicht und sind dafür möglichen Klägern nicht zugänglich. In der Rechtsprechung ist der Aspekt des Vorsatzes bei der Bestimmung einer Diskriminierung noch nicht abschließend geklärt und Richter stellen nur äußerst selten eine Diskriminierung fest, wenn kein Vorsatz zur Verletzung der Rechte des Opfers vorlag.²⁷

Obwohl nach dem Anti-Diskriminierungsgesetz in Diskriminierungsfällen eine Revision (*revizija*) immer zulässig ist, hat das Oberste Gericht 2014 in sechs Fällen (von insgesamt sieben anhängigen Diskriminierungsklagen), bei denen Berufungen zu Rechtsfragen ergangen sind, eine Revision nicht zugelassen, weil die Fälle die Kriterien für eine außerordentliche Rechtsbeschwerde zu Rechtsfragen (*izvanredna revizija*) nicht erfüllen. Nach Ansicht des Obersten Gerichts ist eine Revision nur selten und unter außergewöhnlichen Umständen zulässig und bei Anti-Diskriminierungsfällen nur dann, wenn der Wert des Falls über dem gesetzlichen Höchstwert für eine Revision zu Rechtsfragen liegt.

²⁶ Seiten 18-26 des Jahresberichts 2014 des Ombudsmanns:
<http://www.ombudsman.hr/index.php/hr/izvjesca/2014/finish/41-2014/562-izvjesce-pucke-pravobranaiteljice-za-2014-godinu>.

²⁷ Seite 21 des Jahresberichts 2014 des Ombudsmanns:
<http://www.ombudsman.hr/index.php/hr/izvjesca/2014/finish/41-2014/562-izvjesce-pucke-pravobranaiteljice-za-2014-godinu>.

INTRODUCTION

The national legal system

The Republic of Croatia is a unitary state.²⁸ 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.²⁹

Government is organised on the principle of separation of powers into the legislative, executive and judicial branches, but limited by the right to local and regional self-government guaranteed by the Constitution.³⁰

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.³¹ 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 to notify the Croatian Parliament when instances of unconstitutionality and illegality are observed.³²

The duty of the People's Ombudsperson, 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 became a Member State of the European Union on 1 July 2013.

International treaties that have been concluded and ratified in accordance with the Constitution and, have been promulgated and have entered into force are part of the domestic legal system and have legal force superior to law.³³

List of main legislation transposing and implementing the directives

The first piece of comprehensive anti-discrimination legislation in Croatia was the Anti-discrimination Act (ADA) that entered into force on 1 January 2009 and amended in

²⁸ Article 1 of the Constitution of the Republic of Croatia, Official Gazette 56/1990, 135/1997, 113/2000, 28/2001, 76/2010, 5/2014.

²⁹ Article 5 of the Constitution of the Republic of Croatia.

³⁰ Article 4 of the Constitution of the Republic of Croatia.

³¹ Article 118 of the Constitution of the Republic of Croatia.

³² Article 128 of the Constitution of the Republic of Croatia.

³³ Article 140 of the Constitution of the Republic of Croatia.

October 2012.³⁴ This law covers all grounds of discrimination dealt with by the directives as well as some other grounds and prohibits discrimination based on race or ethnic origin 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, native identity, expression or sexual orientation.³⁵ The Anti-discrimination Act applies to all areas without any limitation while explicitly enumerating 10 areas to which special attention is to be paid.³⁶

The Labour Act³⁷ (LA), which entered into force on 7 August 2014, prohibits discrimination in the field of work and working conditions, including selection criteria and recruitment conditions, promotions, vocational guidance, vocational training, advanced vocational training and retraining.³⁸ The previous Labour Act had the same provision.³⁹ The Labour Act does not explicitly mention grounds of discrimination but refers to the Anti-discrimination Act in that respect.⁴⁰

The Same-sex Life Partnership Act (SSLPA), which entered into force on 5 August 2014, and which regulates both registered and unregistered same-sex relationships, prohibits in general discrimination based on same-sex life partnership, sexual orientation and gender identity.⁴¹ It further specifically prohibits discrimination against same-sex partners in giving consent to medical treatments, in the field of employment/work and in access to goods and services.

³⁴ Official Gazette 85/2008, 112/2012.

³⁵ Article 1(1) of the Anti-discrimination Act.

³⁶ Article 8 of the Anti-discrimination Act.

³⁷ Official Gazette 93/2014.

³⁸ Article 7(4) of the Labour Act.

³⁹ Article 5(4) of the Labour Act, Official Gazette 149/2009, 61/2011, 82/2012, 73/2013.

⁴⁰ Article 7(4) of the Labour Act.

⁴¹ The Same-sex Life Partnership Act, Official Gazette 92/2014.

1 GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

The Croatian Constitution includes the following articles dealing with non-discrimination:

- Article 3 of the Constitution of the Republic of Croatia places equality, ethnic equality and gender equality among the highest values of the constitutional order and the bases for the interpretation of the Constitution;
- Article 14 provides for a general protection against discrimination of all rights and freedoms regardless of race, colour, gender, language, religion, political or other belief, national or social origin, property, birth, education, social status or other characteristic. It further embodies the principle of equality before the law.

These provisions apply to all areas covered by the directives. Their material scope is broader than those of the directives.

The constitutional anti-discrimination provisions are not directly applicable by ordinary courts. For instance, ordinary courts can provide protection against discrimination based on grounds listed in the Anti-discrimination Act, but not on any other characteristic, although the list of prohibited grounds of discrimination in the Constitution is non-exhaustive.

The constitutional equality clauses can be enforced against private actors (not just against the State). Anyone may file a constitutional complaint to the Constitutional Court if s/he considers that an act of judicial or administrative power has violated one of the freedoms or rights guaranteed by the Constitution.⁴² Therefore, judicial decisions, including those adopted in disputes between private actors, could be challenged before the Constitutional Court, which applies the Constitution directly.

⁴² Article 62(1) of the Constitutional Law on the Constitutional Court, Official Gazette 49/2002.

2 THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination explicitly covered

The following grounds of discrimination are explicitly prohibited in national law:

- race or ethnic origin 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,⁴³
- disability,
- genetic heritage,
- gender identity and expression,
- sexual orientation.

2.1.1 Definition of the grounds of unlawful discrimination within the directives

National law does not provide a definition of race or ethnic origin. The Constitutional Act on Rights of National Minorities defines a national minority as 'a group of Croatian citizens whose members have traditionally inhabited the territory of the Republic of Croatia and whose ethnic, linguistic, cultural and/or religious characteristics differ from the rest of the population, and who are motivated to preserve these characteristics'.⁴⁴⁴⁵

Most complaints of discrimination are in connection with race/ethnic origin.⁴⁶

Definition of ethnic origin (*narodnost*), used by the Croatian Bureau of Statistics is 'characteristic denoting a person's affiliation to a particular ethnic group'. Ethnicity is also interpreted as a sense of belonging to a community (nation), distinguished by ethnic, linguistic and cultural affinity of its members as well as awareness of the integrity of their own community and its special qualities in relation to other such communities.⁴⁷

Disability is defined both by the Social Care Act and the Act on Professional Rehabilitation and Employment of Persons with Disability as 'a long-term physical, mental, intellectual or sensory impairment which in interaction with various barriers may hinder a person's full and effective participation in society on an equal basis with others'.⁴⁸ There are still

⁴³ The ADA introduced the health condition as a separate prohibited ground for discrimination with the aim to protect persons with certain health conditions (e.g. persons infected with HIV) that do not constitute disability.

⁴⁴ Article 5 of the Constitutional Act on the Rights of National Minorities, Official Gazette 155/2002, 47/2010, 80/2010, 93/2011.

⁴⁵ According to Articles 15 and 83 of the Constitution, equality and protection of the rights of national minorities are regulated by a constitutional act that requires two-thirds of all members of the Parliament.

⁴⁶ Ombudsperson's report for 2014.

⁴⁷ Office for Human Rights and Rights of National Minorities, Definitions of indicators for the data base on equality data, June 2013: http://www.uljppnm.vlada.hr/images/definicije_podataka_jednakosti.pdf (accessed 19 August 2015).

⁴⁸ Article 4(1)(9) of the Social Care Act (Official Gazette 157/2013, 152/2014) and Article 3(1) of the Act on Professional Rehabilitation and Employment of Persons with Disability (Official Gazette 157/2013, 152/2014).

other definitions of disability in other areas (e.g., education, transport).⁴⁹ The Anti-discrimination Act does not define disability.

National law does not provide a definition of religion or belief, but the Act on the Legal Status of Religious Communities, which regulates the rights and duties of religious communities and their members, defines religious communities as communities of natural persons, believers, who realise their freedom of religion through public religious services and other expressions of their faith.⁵⁰

The definition of religion used by the Croatian Bureau of Statistics is a 'characteristic denoting a person's affiliation to a particular religious system, irrespective of whether the person is a registered member of a particular church or religious community or not, or whether he/she practises religion or not'.⁵¹

National law does not provide a definition of sexual orientation or age.

2.1.2 Multiple discrimination

In Croatia prohibition of multiple discrimination is included in the law. The Anti-discrimination Act 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 (along with repeated discrimination, continued discrimination and discrimination whose consequences are particularly harmful to the victim).⁵² Multiple discrimination is a circumstance that the court has to take into consideration when determining the amount of compensation or the sanction for a misdemeanour, presumably as an aggravating circumstance.⁵³

In Croatia the following case law deals with multiple discrimination.

Following the Ombudsperson's recommendation, the Ministry of the Interior amended the Regulations on Driving Licences and allowed head covers to be worn in the driving license photographs when a person wears such a cover for religious or medical reasons.⁵⁴ The previous regulation allowed such an exception only for elderly persons wearing head covers as part of a traditional dress code (folk costume).⁵⁵ The Ombudsperson, after receiving complaints from three young women belonging to a Muslim minority, found previous regulation to be multiple discrimination, i.e. discrimination based on religion and age, because it allowed head covers to be worn in photographs only by elderly persons who wore head covers as part of a traditional dress code and not to young persons and/or to persons who wore head covers as part of religious dress code.⁵⁶

2.1.3 Assumed and associated discrimination

a) Discrimination by assumption

⁴⁹ Ombudspersons for Persons with Disability, Parallel Report for the UN Committee on the Rights of Persons with Disability, July 2014.

⁵⁰ Official Gazette 83/2002, 73/2013.

⁵¹ Office for Human Rights and Rights of National Minorities, Definitions of indicators for the data base on equality data, June 2013: http://www.uljppnm.vlada.hr/images/definicije_podataka_jednakosti.pdf.

⁵² Article 6(1) of the Anti-discrimination Act.

⁵³ Article 6(2) of the Anti-discrimination Act stipulates: 'The court shall take into consideration the circumstances referred to in paragraph 1 of this Article when determining the amount of the compensation for non-pecuniary damage and when deciding about the fine for misdemeanours defined by this Act'.

⁵⁴ Article 12(4) of the Regulations on Driving Licences, Official Gazette 43/2013, 77/2013, 155/2013.

⁵⁵ Article 6(3) of the Regulations on Driving Licences, Official Gazette 155/2008, 8/2009.

⁵⁶ Ombudsperson report for 2013, page 116: <http://www.ombudsman.hr/index.php/hr/izvjesca/izvjesce-pucke-pravobraniteljice/finish/20-2013/55-izvjesce-pucke-pravobraniteljice-za-2013>.

In Croatia the following national law prohibits discrimination based on perception or assumption of what a person is.

The Anti-discrimination Act prohibits discrimination based on a misconception (i.e. a perception that turns out to be wrong) of the existence of a prohibited ground of discrimination.⁵⁷

There is no relevant case law on this issue.

b) Discrimination by association

In Croatia the following national law prohibits discrimination based on association with persons with particular characteristics.

The Anti-discrimination Act prohibits discrimination based on association with person(s) with a particular characteristic. It states that placing any person, or a person related to that person by kinship or other relationship, in a less favourable position on the prohibited grounds is considered discrimination.⁵⁸ National law is in line with the judgment in Case C-303/06 *Coleman v Attridge Law and Steve Law*.

2.2 Direct discrimination (Article 2(2)(a))

a) Prohibition and definition of direct discrimination

In Croatia, direct discrimination is prohibited in national law. It is defined as follows.

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.⁵⁹

The same definition of direct discrimination is used by the Sex Equality Act.⁶⁰

The Labour Act and the Same-sex Life Partnership Act prohibit direct discrimination, but do not define it.⁶¹ For the purpose of the cases concerning those two acts, definition of the direct discrimination from the Anti-discrimination Act should be used. Since both acts have recently entered into force, there is no case law on that issue.

The case law is still not clear regarding the issue of intent as an element of discrimination. Although the Anti-discrimination Act is clear in that respect, it seems that the courts found intention to discriminate as a significant element of discrimination.⁶²

b) Justification of direct discrimination

⁵⁷ Article 1(3) of the Anti-discrimination Act.

⁵⁸ Article 1(2) of the Anti-discrimination Act.

⁵⁹ Article 2(1) of the Anti-discrimination Act.

⁶⁰ Official Gazette 82/2008, 125/2011, 20/2012, 138/2012 (although widely accepted English translation of the title of this act is Gender Equality Act, the Croatian legislation uses the term which is equivalent of the term "sex" (*spol*) and not "gender" (*rod*)).

⁶¹ Article 7(3) of the Labour Act, Official Gazette 93/2014 and Article 6(3) of the Same-sex Life Partnership Act, Official Gazette 92/2014).

⁶² Page 21 of the Ombudsperson's Report for 2014:

<http://www.ombudsman.hr/index.php/hr/izvjesca/2014/finish/41-2014/562-izvjesce-pucke-pravobraniteljice-za-2014-godinu> and the Gender Equality Ombudsperson's Analysis of the case law in the field of anti-discrimination law: <http://www.prs.hr/index.php/analize-i-istrazivanja/obrazovanje-4/181-istrazivanje-sudske-prakse-u-podrucju-antidiskriminacijske-zastite-2010>.

The Anti-discrimination Act does not permit any justification of direct discrimination except in specific situations regulated as the exceptions to the prohibition of discrimination explicitly enlisted by the same act. In other words, any different treatment based directly on any of the prohibited grounds of discrimination that is not expressly regulated as an exception by Article 9 of the Anti-discrimination Act would be considered discriminatory. Therefore, the only justifications of direct discrimination could be the situations regulated and enlisted as exceptions to the prohibition of discrimination by the Anti-discrimination Act.

Regarding race and ethnic origin, the only justifications/exceptions could be positive action as well as genuine and determining occupational requirements.

2.2.1 Situation testing

a) Legal framework

In Croatia situation testing is not clearly permitted in national law.

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 or 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, therefore situation testing should be accepted as evidence.

There is no case law on that issue.

b) Practice

In Croatia situation testing is (rarely) used in practice.

Situation testing has not been used in practice by the courts yet. However, testing was used once for the purpose of a journalist's article⁶³ when the journalist, together with a Roma and a Muslim woman, tried to rent an apartment. Around 40 % of owners rejected either the Muslim or Roma woman as a potential tenant, while they all accepted the journalist, a woman of Croatian ethnicity.

2.3 Indirect discrimination (Article 2(2)(b))

a) Prohibition and definition of indirect discrimination

In Croatia, indirect discrimination is prohibited in national law. It is defined as follows.

The Anti-discrimination Act defines 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.⁶⁴

The Labour Act and the Same-sex Life Partnership Act prohibit direct discrimination, but do not define it.⁶⁵ For the purpose of the cases concerning those two acts, the definition of the indirect discrimination from the Anti-discrimination Act should be used. Since both acts have recently entered into force, there is no case law on that issue.

⁶³ <http://www.balkaninsight.com/en/article/croats-hold-roma-and-muslims-at-arm-s-length>.

⁶⁴ Article 2(2) of the Anti-discrimination Act.

⁶⁵ Article 7(3) of the Labour Act, Official Gazette 93/2014 and Article 6(3) of the Same-sex Life Partnership Act, Official Gazette 92/2014).

b) Justification test for indirect discrimination

Indirect discrimination is justified if there is a legitimate aim and the means of achieving that aim are appropriate and necessary.⁶⁶

The Constitution itself defines legitimate aims for restrictions on constitutional rights and freedoms as being the freedom and rights of others, legal order, and public morals and health. The same provision limits such restrictions by the principle of proportionality: every restriction on a right or freedom has to be proportionate to the nature of the need for such a restriction.⁶⁷

There is still no ordinary court case law on indirect discrimination and the justification test.

The Gender Equality Ombudsperson, in her analysis of the case law in the field of anti-discrimination law,⁶⁸ noticed a lack of protection against indirect discrimination before courts. The findings of the analysis might explain the absence of such case law: lawyers are still not familiar with the anti-discrimination law and a formalistic approach is still widespread in the proceedings before courts. First of all, the analysis noted a relatively small number of anti-discrimination cases before courts compared to the number of complaints received by the Gender Equality Ombudsperson. Further, the analysis showed that the courts found intention to discriminate as a significant element of discrimination. The courts are very reluctant to find discrimination and do so only in cases when violations of a claimant's rights or interests are obvious. As a result, the level of anti-discrimination control is rather low. The courts take a very formalistic approach. For instance, if a female employee is paid less for the same work than a male employee, the court would not find discrimination if their salary is in accordance with the sum stipulated by their employment contracts. Further, the courts tend to justify different treatments by (irrelevant) formalities, i.e. they give priority to the form and ignore the effect/result. For instance, if certain different treatment is in accordance with an employer's internal rules or decisions, the courts would not consider it discriminatory and would ignore discriminatory results or effects of such a treatment. The rule on burden of proof is most often not applied and therefore does not influence the protection against discrimination. There is no case law on indirect discrimination. In the period covered by the analysis there was not a single decision dealing with indirect discrimination.⁶⁹

c) Comparison in relation to age discrimination

In relation to age discrimination the law does not specify how a comparison is to be made.

2.3.1 Statistical evidence

a) Legal framework

In Croatia there are national rules permitting data collection.

⁶⁶ Article 2(2) of the Anti-discrimination Act.

⁶⁷ Article 16 of the Constitution of the Republic of Croatia.

⁶⁸ The analysis, published in March 2011, covered case law in the cases of discrimination based on all protected grounds, not just gender.

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<http://www.prs.hr/attachments/article/181/Istrazivanje%20sudske%20prakse%20u%20području%20antidiskriminacijske%20zaštite.pdf>.

The main piece of legislation on data collection is regulated by the Act on Personal Data Protection.⁷⁰ It allows data collection only when the person questioned is informed of the purpose of data collection. Collected data can be further processed only for the same purpose for which they were collected, but statistical processing is considered admissible when adequate protection measures are undertaken.

The Act on Personal Data Protection does not allow collection and processing of data on race/ethnicity, political belief, religious and other belief, or sexual orientation, as they are considered as sensitive data. An exception is presented by situations where the data collection and processing are carried out with the consent of the person questioned and within the scope of the legal activity of an institution, association or any other non-profit body with a political, religious or other aim, provided that such processing relates solely to the members of the body and that the data obtained are not disclosed to a third party without the prior consent of the data subject.⁷¹

According to the Official Statistics Act, the Croatian Bureau of Statistics is the main holder, disseminator and coordinator of the official statistics, but official statistics are also collected by other administrative bodies such as the City of Zagreb's official statistics office, the Croatian National Bank and other bodies defined by the Statistic Activities Programme, which is the Parliament's act establishing long-term statistics activities.⁷²

The lack of data disaggregated by ethnicity is the obstacle to the design and implementation of positive action measures in relation to Roma as well as programmes and strategies aimed to improve their situation. For example, there is a considerable mismatch between the official census data on the number of Croatian Roma in the Republic of Croatia and the unofficial estimates made by competent authorities and international organisations. The measuring of the impacts of relevant policies for Roma is difficult, if not impossible, without disaggregated data.⁷³

For instance, some research data indicates significantly above-average levels of infant mortality for Croatian Roma, particularly related to sudden infant death syndrome and respiratory diseases. At the same time, the lack of accurate official data about the health status of Roma is evidenced within the Republic of Croatia's National Roma Inclusion Strategy, from 2013 to 2020, and without accurate data it is difficult to design necessary measures and later evaluate their results. There are no official data on success rates at each level of education, including attainment and attendance, with regard to Roma pupils and there are no data on Roma children that are included in preschool education. Therefore it is difficult to evaluate results of the measures implemented in the field of education as part of the National Strategy for Roma. Further, the highest number of registered children with disabilities is in the County of Medjmurje. At the same time, this county has the largest Roma population in the Republic of Croatia. Although there are some indications that there is a connection between those two numbers, without data disaggregated by ethnicity it is impossible to tackle the problem.

⁷⁰ Official Gazette 103/2003, 118/2006, 41/2008 and 130/2011. Other pieces of legislation on data collection are not relevant for this question, e.g. Law on Official Statistics (Official Gazette 103/2003, 75/2009, 59/2012) regulates methodological and organisational issues of official statistics.

⁷¹ Article 8 of the Act on Personal Data Protection.

⁷² Article 4(1)(2) of the Official Statistics Act, Official Gazette 103/2003, 75/2009, 59/2012.

⁷³ See, Decade of Roma Inclusion, Progress Report 2013: http://www.uljppnm.vlada.hr/images/decade_progress_report_2013.pdf and Office for Human Rights and National Minorities, Report on Implementation of Action Plan for Implementation of the National Strategy for Roma Inclusion for 2013: http://www.uljppnm.vlada.hr/images/fin_izvjesce_ap_nsusur_za_2013.pdf.

Estimations and unofficial data were therefore often used.⁷⁴ On the other hand, in spite of regulations banning data collection on ethnic origin, some institutions have precise information on the ethnicity of particular groups.⁷⁵

A third party can be given the data collected only if this is necessary for carrying out tasks encompassed within its legal activity as defined by law. Most often the data are given to a third party for statistical or scientific purposes. For example, Croatian Bureau of Statistics can be given employers' data on employees for the purpose of the activities of the Bureau regulated by the Official Statistics Act, but the data holder has to be informed of the legal basis of the research, purpose of the research, responsible person conducting the research and the measures used for data protection.

In 2013, the Government Office for Human Rights and National Minorities published a brochure for public bodies and institutions on collecting data on equality. It stresses the need for relevant data in the fight against discrimination and offers various instruments for obtaining such data (i.e. official statistics, researches, complaints of discrimination, various administrative bodies' data and polls).⁷⁶

In Croatia the use of statistical evidence in order to establish indirect discrimination is not regulated by national law.

There are no obstacles, in anti-discrimination law or in civil procedural legislation, to the use of statistical evidence. There is still no case law on this issue.

b) Practice

In Croatia statistical evidence in order to establish indirect discrimination is very rarely used in practice.

The use of statistical evidence is not widespread in anti-discrimination cases.

One of the reasons for this might be the lack of statistical or reliable statistical data. For example, although the authorities recognise that there are more than 30 000 Roma in Croatia, according to the most recent official statistics the Roma population numbers only 16 975 or 0.40 % (according to 2001 census there were 9 463 Roma in Croatia).⁷⁷ The Government recognise that this difference results from the reluctance of Roma to declare themselves as Roma in the census. Therefore, when defining public policies in connection with the Roma, authorities estimate the number of Roma according to sources other than the public census, such as various researches, local authorities' data or statistics of various state agencies. Most of those data are based on a person's "name, address and personal contact" and not on his or her ethnic self-identification.⁷⁸ Such a practice is not only discrimination per se, but also makes implementation and evaluation of public policies very difficult tasks, as proved by the most recent evaluation of the National Strategy for Roma.

⁷⁴ National Programme for Roma:

http://www.uljppnm.vlada.hr/index.php?option=com_content&view=category&id=10&Itemid=89.

⁷⁵ E.g. some primary schools have precise data on numbers of Roma pupils in each class, although it is not clear how they established pupils' ethnic origin and whether there was parental consent. In 2000, when the Ombudsperson's office started investigation into discrimination of Roma children in primary schools in Međimurje county, the county's authorities provided him with the exact number of Roma and non-Roma children in each class in each school (numbers disaggregated by ethnicity). NGO's research and interviews with the pupils and their parents, and later the court proceedings (*Orsus and others v. Croatia*) confirmed that those data were accurate.

⁷⁶ http://www.uljppnm.vlada.hr/images/kako_prikupljati.pdf.

⁷⁷ 2011 Census; National Programme for the Roma:

http://www.uljppnm.vlada.hr/index.php?option=com_content&view=article&id=263:obiljezja-roma-u-rh-&catid=10:nacionalni-program-za-rome&Itemid=89.

⁷⁸ Page 64 of the Evaluation of the National Strategy for Roma, 2015;
http://www.uljppnm.vlada.hr/images/hr_evaluacijsko_izvjesce_web.pdf.

Evolution in other countries in respect of the use of statistical data as evidence in court might influence Croatian national law. As good practice it may encourage both NGOs and the courts to use it in discrimination cases.

In the case concerning racial discrimination against Roma students in primary schools in Međimurje⁷⁹ (placing Roma children in separate Roma-only classes), the statistical data on the number of Roma and non-Roma children in each class in four schools obtained by the Ombudsperson Office was an important piece of evidence⁸⁰. The Constitutional Court ignored the statistical data in its decision⁸¹ and just concluded that statistical data on the number of Roma children in separate classes 'are not in themselves sufficient to indicate that the defendants' practice was discriminatory'. Nevertheless, without those data, claimants would have had significant problems in proving the existence of Roma-only classes, the drop-out rate and other issues significant for the case.

2.4 Harassment (Article 2(3))

a) Prohibition and definition of harassment

In Croatia, harassment is prohibited in national law. It is defined as follows.

The Anti-discrimination Act 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,⁸² while sexual harassment is defined as any verbal, non-verbal or physical unwanted conduct of a sexual nature with the purpose or effect of violating the dignity of a person especially when it creates an intimidating, hostile, degrading or offensive environment.⁸³

The Labour Act does not define harassment, but refers to Anti-discrimination as *lex specialis*.⁸⁴

Some legal authors, whose opinions often greatly influence case law, use the term 'harassment' as a synonym for mobbing.^{85 86} The Labour Act protects the employee from harassment, but does not define it. On the other hand, mobbing is not regulated at all. As a result the provision on harassment has been used for protection of victims of mobbing. Therefore, courts' statistics on harassment give wrong information on cases of discrimination in employment, because almost all cases are about mobbing. On the one hand, such an interpretation gives legal protection to the victims of mobbing, who otherwise do not have a legal remedy available. However, in the long run it weakens the position of victims of discrimination because anti-harassment provisions will be used in cases of mobbing and their aim of preventing and sanctioning harassment as a form of discrimination will be neglected.

The Criminal Code⁸⁷ defines sexual harassment as any verbal, non-verbal or physical unwanted conduct of a sexual nature with the purpose or effect of violating the dignity of a person and that creates an intimidating, hostile, degrading or offensive environment.⁸⁸ The Criminal Code also forbids 'humiliation, abuse and other forms of harassment' at a

⁷⁹ The case of *Oršuš and others v Croatia*.

⁸⁰ Report on the activities of the Ombudsperson in 2000 (not available online).

⁸¹ Constitutional Court decision number U-III-3138/2002, 7 February 2007.

⁸² Article 3(1) of the Anti-discrimination Act.

⁸³ Article 3(2) of the Anti-discrimination Act.

⁸⁴ Article 134 of the Labour Act.

⁸⁵ E.g. Ivica Crnić in *Guide to Anti-discrimination Legislation and Case Law*, International Organization for Migration et al., Zagreb, 2009.

⁸⁶ The term 'mobbing' meaning bullying or psychological violence without discrimination on any ground.

⁸⁷ Official Gazette 125/2011 and 144/2012.

⁸⁸ Article 156 of the Criminal Code.

workplace if it damages the victim's health, without defining humiliation, abuse or harassment.

In Croatia harassment explicitly constitutes a form of discrimination as the Anti-discrimination Act enlists harassment and sexual harassment, together with direct and indirect discrimination, encouragement to discrimination, failure to provide reasonable accommodation and segregation, as forms of discrimination.⁸⁹

b) Scope of liability for harassment

Where harassment is perpetrated by an employee in Croatia the employer and the employee are liable.

The Labour Act regulates an employer's obligations in respect of protection of an employee against harassment. An employer who employs at least 20 employees has to appoint a person who is to receive and decide on complaints of harassment. The complaint should be dealt with and adequate measures should be undertaken in no more than eight days. If an employer fails to do so, the employee has the right to stop working until protection is provided, without losing his or her right to salary, but must seek protection before the court in a maximum of eight days. Harassment is considered to be a violation of employment duties. Acting against harassment cannot be considered as violation of employment duties.⁹⁰

The Civil Obligations Act regulates the liability of employers for the actions of employees. In general, an employer would be held liable for the discriminatory actions of his employee.⁹¹ Regarding the liability of an employer for the actions of third parties against her employee, the employer is in general liable for the damages her employee suffers at work or in connection with work, but it still remains to be seen how this provision will be applied in connection with discriminatory actions of the third parties against the employee.⁹²

The individual harasser or discriminator would always be held liable.

Trade unions or professional associations could not be held liable for the actions of their members, but it is their obligation to implement codes of ethics and undertake disciplinary proceedings.

2.5 Instructions to discriminate (Article 2(4))

a) Prohibition of instructions to discriminate

In Croatia, instructions to discriminate are prohibited in national law. Instructions are not defined.

The Anti-discrimination Act prohibits encouragement to discriminate.⁹³ The term 'encouragement' should include instructions and incitement, but there is still no case law. In Croatia instructions explicitly constitute a form of discrimination as the Anti-discrimination Act enlists encouragement to discrimination, together with direct and indirect discrimination, harassment and sexual harassment, failure to provide reasonable accommodation and segregation, as forms of discrimination.⁹⁴

⁸⁹ Article 3 of the Anti-discrimination Act.

⁹⁰ Article 134 of the Labour Act.

⁹¹ Official Gazette 35/2005, 41/2008 and 125/2011.

⁹² Article 111 of the Labour Act.

⁹³ Article 4(1) of the Anti-discrimination Act.

⁹⁴ Article 4(1) of the Anti-discrimination Act.

b) Scope of liability for instructions to discriminate

In Croatia the instructor and the discriminator are liable.

The law does not contain any specific provisions regarding the liability of legal persons for such actions, but as these actions are considered discrimination, the general provision on the liability of all legal and natural persons should apply.

The Civil Obligations Act regulates the liability of employers for the actions of employees. In general, an employer would be held liable for the discriminatory actions of his employee.⁹⁵ Regarding the liability of an employer for the actions of third parties against her employee, the employer is in general liable for the damages her employee suffers at work or in connection with work, but it still remains to be seen how this provision will be applied in connection with discriminatory actions of the third parties against the employee.⁹⁶

2.6 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78)

a) Implementation of the duty to provide reasonable accommodation in the field of employment

In Croatia the duty to provide reasonable accommodation is included in the law. It is defined as follows.

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'.⁹⁷

The Act on Professional Rehabilitation and Employment of Persons with Disability⁹⁸ defines a reasonable accommodation of a workplace as a necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities employment and work on an equal basis with others.⁹⁹

b) Practice

The Anti-discrimination Act does not set criteria for assessing the extent of the duty to provide reasonable accommodation nor does it define in any way what a reasonable or unreasonable burden would be. There is no definition of 'disproportionate burden'. It is up to the courts to determine what factors are to be considered in deciding if a burden is proportionate or disproportionate. There is still no case law on reasonable accommodation duties.

⁹⁵ Official Gazette 35/2005, 41/2008 and 125/2011.

⁹⁶ Article 111 of the Labour Act.

⁹⁷ Article 4(2) of the Anti-discrimination Act.

⁹⁸ (*Zakon o profesionalnoj rehabilitaciji i zapošljavanju osoba s invaliditetom*) Official Gazette 157/2013, 152/2014.

⁹⁹ Article 7(2) of the Act on Professional Rehabilitation and Employment of Persons with Disability.

The availability of financial assistance from the State is not considered in any sense in the text of the act nor does the act make any distinction between the duties of private companies and State bodies and institutions.

According to the Act on Professional Rehabilitation and Employment of Persons with Disability, the employers are obliged to implement adequate measures regarding workplace adjusting, working hours, monitoring of accommodation, supervision and working ability evaluation in accordance with the individual needs of employers with disability.¹⁰⁰

c) Definition of disability and non-discrimination protection

Disability is defined both by the Social Care Act and Act on Professional Rehabilitation and Employment of Persons with Disability as 'a long-term physical, mental, intellectual or sensory impairment which in interaction with various barriers may hinder a person's full and effective participation in society on an equal basis with others'.¹⁰¹

d) Duties to provide reasonable accommodation outside the field of employment

In Croatia, there is a duty to provide reasonable accommodation for people with disabilities outside the employment field.

The Anti-discrimination Act prohibits failure to provide reasonable accommodation for people with disabilities and defines it as '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'. Such a failure is considered discrimination.¹⁰² What falls under the scope of use of publicly available resources and participation in public and social life is left to the courts to interpret.

There is no definition of 'disproportionate burden'. It is up to the courts to determine what factors are to be considered in deciding if a burden is proportionate or disproportionate.

The act makes no distinction between the duties of private and State bodies and institutions.

There is still no case law on reasonable accommodation duties.

e) Failure to meet the duty of reasonable accommodation

In Croatia, failure to meet the duty of reasonable accommodation counts as discrimination.

The law does not specify if it is considered direct, indirect or *sui generis* discrimination. The Anti-discrimination Act does not provide a justification defence.

A victim could initiate a civil case and ask for compensation and/or activities that eliminate discrimination or its consequences to be carried out. Failure to provide reasonable accommodation is not among misdemeanours regulated by the Anti-

¹⁰⁰ Article 12(4) of the Act on Professional Rehabilitation and Employment of Persons with Disability.

¹⁰¹ Article 4(1)(9) of the Social Care Act (Official Gazette 157/2013, 152/2014) and Article 3(1) of the Act on Professional Rehabilitation and Employment of Persons with Disability (Official Gazette 157/2013, 152/2014).

¹⁰² Article 4(2) of the Anti-discrimination Act.

discrimination Act.¹⁰³ But failure of an employer to provide reasonable accommodation for an employee with disability is a misdemeanour regulated by the Act on Professional Rehabilitation and Employment of Persons with Disability. A fine is imposed on legal entities, natural persons and responsible persons in legal entities, while different levels of fine are set for different categories (from EUR 133 (HRK 1 000) to EUR 4 000 (HRK 30 000)).¹⁰⁴

The burden of proof should be shifted when claiming the right to reasonable accommodation as in other cases of discrimination.

f) Duties to provide reasonable accommodation in respect of other grounds

In Croatia, there is a duty to provide reasonable accommodation in respect of other grounds in the public and the private sectors.

There are some duties to provide reasonable accommodation in respect of religion.

While Catholic religious holidays are national holidays, members of the three biggest religious minorities (Orthodox Christians, Muslims and Jews) have a right to a day off on the days of their main religious holidays.¹⁰⁵

In 2013, the Ministry of Interior amended the Regulations on Driving Licences and allowed head covers to be worn in the driving license photographs when a person wears such a cover for religious reasons.¹⁰⁶

The Health Care Act provides, in healthcare premises, the right to have food served in accordance with religious customs, religious ceremonies and special ceremonies in the event of a patient's death.¹⁰⁷

Various religious communities have the right to pastoral care in health and social care institutions, prisons and the army.¹⁰⁸

g) Accessibility of services, buildings and infrastructure

In Croatia national law requires services available to the public, buildings and infrastructure to be designed and built in a disability-accessible way.

The Anti-discrimination Act specifies that reasonable accommodation duties exist whenever they are needed to enable disabled persons, according to their specific needs, to use publicly available resources and to participate in public and social life, but it does not define those terms and it is left to the courts to interpret them.¹⁰⁹

The obligation to design and build buildings and infrastructure in a disability-accessible way is regulated by the Regulations on Accessibility of Buildings to Persons with Disabilities.¹¹⁰ The Regulations define a number of types of buildings that have to be disability-accessible (e.g. shopping malls, supermarkets with an area of more than 400

¹⁰³ For remedies and procedures see section 6.1.a). Misdemeanours regulated by the Anti-discrimination Act are harassment, sexual harassment, victimisation and failure to submit declarations, data and documents related to discrimination at the request of the Ombudsperson or a special ombudsperson.

¹⁰⁴ Article 41(1)(5) of the Act on Professional Rehabilitation and Employment of Persons with Disability.

¹⁰⁵ Act on Holidays, Remembrance Days and Non-working Days; Official Gazette 33/1996 with amendments.

¹⁰⁶ Article 12(4) of the Regulations on Driving Licences, Official Gazette 43/2013, 77/2013, 155/2013.

¹⁰⁷ Article 22 of the Health Care Act.

¹⁰⁸ Articles 14, 15 and 16 of the Act on the Legal Status of Religious Communities.

¹⁰⁹ Article 4(2) of the Anti-discrimination Act.

¹¹⁰ (*Pravilnik o osiguranju pristupačnosti građevina osobama s invaliditetom i smanjene pokretljivosti*) Official Gazette 78/2013, 153/2013.

m², restaurants with 80 or more seats, tourist agencies with an area of more than 200 m², post offices, banks, the Parliament, government and local authorities buildings, courts; healthcare premises and pharmacies; schools and university buildings; theatres and concert halls with 100 or more seats), respecting all types of disability (including intellectual disability) and providing numerous elements of accessibility (e.g. tactile surfaces, detailed technical requirements for various parts of the building such as stairs, lifts, entrance, toilets, bathrooms, etc.). In theory, a failure to comply with such legislation could be relied upon in a discrimination case.

To make it easier to change existing buildings to be more disability accessible, when a building is owned by more than one owner, for such changes the consent of all owners is not needed.¹¹¹

In Croatia national law does not contain a general duty to provide accessibility by anticipation for people with disabilities.

There are over 270 laws and regulations concerning people with disabilities.¹¹² The existence of so many regulations is a problem in itself because the system is not transparent and persons with disabilities face problems in finding out what their rights are in certain fields.

In most cases services, buildings and infrastructure are still inaccessible to persons with disability.¹¹³

h) Accessibility of public documents

There is no general duty for public services to translate some or all of their documents into Braille, but there is a general principle of access to data, forms, advice and information in administrative proceedings.¹¹⁴

If a person makes such a request, the Ministry of Interior should issue to that person an identity card with the sign 'OI' (*osobna iskaznica*) in Braille.¹¹⁵

The Croatian Radio-television national broadcast company is obliged by law to accommodate, produce, co-produce and broadcast programmes about persons with disabilities and to promote translation of its programmes into sign language.¹¹⁶ The Croatian Radio-television national broadcast company's failure to fulfil this obligation adequately was one of the reasons the Government gave a negative opinion in its report for 2013 to the Parliament. In 2014 it started to provide subtitles for its programmes in Croatian. Further, it made a radio version of a popular Croatian TV series.

¹¹¹ Article 87(3) Act on Ownership and other Rights *in Rem*.

¹¹² These are acts regarding general issues (e.g. Act on the Croatian Registry of the Persons with Disabilities, Act on Ombudsman for Persons with Disabilities; Act on Government's Commission for the Persons with Disabilities); various strategies at national and local level; employment (e.g. Act on Professional Rehabilitation and Employment of Persons with Disabilities); movement and reasonable accommodation (e.g. various acts on construction and urban planning, Act on Sign of Accessibility, Act on Movement of the Blind Persons with a Help of a Guide Dog); as well as the acts regarding social care and health.

¹¹³ Ombudsperson for Persons with Disability, Parallel Report for the UN Committee on the Rights of Persons with Disability, July 2014.

¹¹⁴ Article 11 of the Administrative Procedure Act.

¹¹⁵ Article 2(4) of the Regulations on forms and records of identity cards (Official Gazette 148/2002, 155/2008, 69/2013, 118/2013).

¹¹⁶ http://www.hrt.hr/media/uploads/cjelovito_izvjesce_o_radu_programskog_viieca_2013.pdf.

3 PERSONAL AND MATERIAL SCOPE

3.1 Personal scope

3.1.1 EU and non-EU nationals (Recital 13 and Article 3(2) Directive 2000/43 and Recital 12 and Article 3(2) Directive 2000/78)

In Croatia, there are no residence or citizenship/nationality requirements for protection under the relevant national laws transposing the directives.

The Anti-discrimination Act does not distinguish between citizens and non-citizens and guarantees protection from discrimination to any person.¹¹⁷

3.1.2 Protection against discrimination (Recital 16 Directive 2000/43)

a) Natural and legal persons

In Croatia the personal scope of anti-discrimination law covers natural and legal persons for the purpose of protection against discrimination.¹¹⁸

The Anti-discrimination Act does not distinguish between natural persons and legal persons for the purpose of protection against discrimination; the term used is 'any person'.

In Croatia the personal scope of anti-discrimination law covers natural and legal persons for the purpose of liability for discrimination.¹¹⁹

b) Private and public sector including public bodies

In Croatia the personal scope of national law covers private and public sector for the purpose of protection against discrimination.¹²⁰

The Anti-discrimination Act does not distinguish between persons belonging to the private or public sectors for the purpose of protection against discrimination; the term used is 'any person'.

The national provisions comply with the directives.

In Croatia the personal scope of anti-discrimination law covers the private and public sectors including public bodies for the purpose of liability for discrimination.¹²¹

3.2 Material scope

3.2.1 Employment, self-employment and occupation

In Croatia, national legislation applies to all sectors of private and public employment, self-employment and occupation, including contract work, self-employment, military service, holding statutory office, in respect of the five grounds of unlawful discrimination.

The Anti-discrimination Act applies to all areas without limitation while explicitly enumerating 10 areas to which special attention is to be paid.¹²²

¹¹⁷ Article 1 of the Anti-discrimination Act.

¹¹⁸ Article 1 of the Anti-discrimination Act.

¹¹⁹ Article 8 of the Anti-discrimination Act.

¹²⁰ Article 1 of the Anti-discrimination Act.

¹²¹ Article 8 of the Anti-discrimination Act.

The Labour Act prohibits direct and indirect discrimination in the field of employment and working conditions, including selection criteria and recruitment conditions, promotion, vocational training, advanced vocational training and retraining.¹²³

3.2.2 Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1)(a))

In Croatia, national legislation prohibits discrimination in connection with conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy for the five grounds in both private and public sectors as described in the directives.

The Anti-discrimination Act explicitly covers, for all of the grounds covered by the directives, each of the following areas: access to self-employment and employment, including selection criteria, recruitment and promotion conditions, which implicitly covers all areas, and activities and levels of professional hierarchy because it does not limit material scope in any way.

The public sector is not dealt with differently to the private sector.¹²⁴

The Labour Act prohibits direct and indirect discrimination in the field of employment and working conditions, including selection criteria and recruitment conditions, promotion, vocational training, advanced vocational training and retraining.¹²⁵

3.2.3 Employment and working conditions, including pay and dismissals (Article 3(1)(c))

In Croatia, national legislation includes working conditions including pay and dismissals, for all five grounds and for both private and public employment.

Most complaints of discrimination, both to the Ombudsperson and to courts, are in the field of general employment.¹²⁶

The Anti-discrimination Act explicitly covers, for all of the grounds covered by the directives, the area of work and working conditions; retirement insurance; and unemployment insurance. Issues of pay and dismissals are covered implicitly by the Anti-discrimination Act, but explicitly by the Labour Act.¹²⁷

- Occupational pensions constituting part of pay

The Anti-discrimination Act covers, for all of the grounds covered by the directives, all areas, and some of them, including pensions, are mentioned explicitly.¹²⁸

¹²² Article 8 of the Anti-discrimination Act.

¹²³ Article 7(4) of the Labour Act.

¹²⁴ Article 8(1) of the Anti-discrimination Act.

¹²⁵ Article 7(4) of the Labour Act.

¹²⁶ Ombudsperson's Report for 2014.

¹²⁷ Articles 8(1) and 8(3) of the Anti-discrimination Act and Article 7(4) of the Labour Act.

¹²⁸ Article 8 of the Anti-discrimination Act.

3.2.4 Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1)(b))

In Croatia, national legislation prohibits discrimination in connection with access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience and vocational training outside the employment relationship, such as that provided by technical schools or universities, or such as adult lifelong learning courses.

The Anti-discrimination Act explicitly covers, for each of the grounds covered by the directives, access to all types of vocational guidance, vocational training, advanced vocational training and retraining¹²⁹ as well as to education and science.¹³⁰ It further implicitly covers all other areas, activities and situations, because it does not limit material scope in any way. The definition of education and science is left to the courts' interpretation. Practical work experience is covered implicitly.

In the case of L.I. and Ž.B., both Roma students at the Varaždin Business School, who were denied access to training at the company Branka d.o.o., owned by B.J., (the training being an obligatory part of their education), and who filed a discrimination claim against Branka d.o.o. and B.J. before the Varaždin Municipal Court, the court found that the applicants had faced discrimination because they were Roma, forbade Branka d.o.o. and B.J. to undertake any further discriminatory actions and awarded compensation of HRK 8 000 (EUR 1 066) to each applicant. Following the appeal of both defendants, the County Court in Varaždin, as the appellate court, confirmed the first instance judgment in respect of finding a discrimination and forbidding defendants to undertake any further discriminatory actions but reduced the awarded compensation to HRK 5 000 (EUR 666) to each applicant. The court said that, having regard to all the circumstances of the case, lack of any serious consequences, the gravity of violation and the purpose of compensation, the awarded sum was reasonable.¹³¹

3.2.5 Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations (Article 3(1)(d))

In Croatia, national legislation includes membership of, and involvement in workers or employers' organisations as formulated in the directives for all five grounds and for both private and public employment.

The Anti-discrimination Act explicitly covers, for each of the grounds covered by the directives, membership of and involvement in workers' organisations, civil society organisations, political parties or any other organisations.¹³² Benefits provided for by such organisations are covered implicitly. Membership of and involvement in employers' organisations is not specifically mentioned.

3.2.6 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43)

In Croatia, national legislation includes social protection, including social security and healthcare as formulated in the Racial Equality Directive.

¹²⁹ Article 8(1) of the Anti-discrimination Act.

¹³⁰ Article 8(2) of the Anti-discrimination Act.

¹³¹ County Court of Varaždin, judgment no. Gž.3684/12 of 2 April 2013.

¹³² Article 8(9) of the Anti-discrimination Act.

The Anti-discrimination Act prohibits discrimination based on racial or ethnic origin in the area of social protection, including social security, retirement, health and unemployment insurance, and healthcare. Age, disability, religion or belief and sexual orientation are also covered.¹³³

– Article 3.3 exception

The anti-discrimination Act prohibits discrimination based on religion or belief, age, disability and sexual orientation in these areas, therefore national legislation does not seek to rely on the exception in Article 3(3), Directive 2000/78.

3.2.7 Social advantages (Article 3(1)(f) Directive 2000/43)

In Croatia, national legislation includes social advantages as formulated in the Racial Equality Directive.

The Anti-discrimination Act applies to all areas, without any limitation;¹³⁴ it therefore covers implicitly social advantages of all kinds.

In Croatia, the lack of definition of social advantages does not raise problems.

3.2.8 Education (Article 3(1)(g) Directive 2000/43)

In Croatia, national legislation includes education as formulated in the Racial Equality Directive.

The Anti-discrimination Act (Article 8(2)) prohibits discrimination in education based on, among other grounds, racial or ethnic origin, religion or belief, age, disability and sexual orientation.¹³⁵

In the field of education, there are still several unresolved issues, from integration of children with disabilities in mainstream education system to Catholic religious classes in public schools to discriminatory content of textbooks (e.g. gender stereotypes, presenting only a two-parent family as a complete family, and stigmatisation of gay persons).¹³⁶

– Pupils with disabilities

In Croatia the general approach to education for pupils with disabilities raises problems.

In all relevant documents the authorities recognise the need to integrate people with disabilities into the mainstream education system (e.g. the National Strategy for Persons with Disabilities 2003-2006,¹³⁷ the National Strategy for Persons with Disabilities 2007-2015,¹³⁸ and the Parliamentary Declaration on the Rights of People with Disabilities).¹³⁹

In spite of the fine aims expressed in these documents, problems are still numerous: lack of educational programmes adjusted to people with disabilities; lack of adequate

¹³³ Articles 8(3) and 8(4) of the Anti-discrimination Act.

¹³⁴ Article 8 of the Anti-discrimination Act.

¹³⁵ Article 8(2) of the Anti-discrimination Act.

¹³⁶ See Gender Equality Ombudsperson's Research on Gender Issues in Primary Schools Textbooks (2013): <http://www.prs.hr/attachments/article/1558/Izvješće%20za%202013%20-%20Istraživanje%20Rodni%20aspekt%20u%20udžbenicima%20prirode%20i%20društva.pdf>.

¹³⁷ Official Gazette 13/2003.

¹³⁸ Official Gazette 63/2007.

¹³⁹ Official Gazette 47/2005.

textbooks and teaching tools; lack of teachers trained to work with students with special needs; and architectural and transport barriers.

The work of assistants for students with disabilities (employment, qualifications, pay, responsibilities, etc.) has not yet been adequately regulated. As a result, although the problem is usually solved by ad hoc measures, at the beginning of a school year (e.g. school years 2013/2014 and 2014/2015) it is never clear whether the students with disabilities would be provided with the assistance or not.¹⁴⁰

– Trends and patterns regarding Roma pupils

In Croatia, there are specific patterns regarding Roma pupils in education, such as segregation.

According to the Constitutional Act on the Rights of National Minorities¹⁴¹ and the Act on Education in the Languages and Scripts of National Minorities,¹⁴² the Roma and other national minorities have the right to education in their languages and scripts, but the Roma do not exercise that right because such a request has not been made by the Roma minority.¹⁴³

Members of national minorities can effectuate their constitutional right to education in their mother tongue and script using one of the following basic models and educational frameworks: 1. Model A – classes in the language and script of the national minority; 2. Model B – bilingual classes; 3. Model C – nurturing language and culture; 4. class framework in which the language of the national minority is taught as the language of the social environment; 5. special classes (summer school, winter classes and/or correspondence-consultative classes).¹⁴⁴ The models are proposed and chosen by the members of the national minorities for each location/administrative unit where they live.

The authorities recognise the problems faced by the Roma in the field of education – not all Roma children participate in compulsory primary education, there is a high drop-out rate and a high level of illiteracy among Roma, etc. As a result of the measures undertaken as part of the Decade for Roma Inclusion, the number of Roma students involved in primary education has been rising. In the school year 2006/2007, 3 010 Roma students were involved in primary education, and in the school year 2012/2013 their number was 5 173.

In some counties with a significant Roma population (Međimirska and Varaždinska), Roma children are put in separate Roma-only classes. The school authorities justify this practice, which has existed for as long as Roma have attended these schools, by Roma children's poor grasp of the Croatian language and by the high number of Roma pupils in schools close to Roma settlements.

The latest reports show a dramatic increase of Roma-only classes in spite of the authorities' commitment to reduce the number of classes with only Roma pupils. In 2004 there were 27 Roma-only classes in the whole of Croatia, all of them in Međimirska and Varaždinska counties.

¹⁴⁰ Ombudsperson for Persons with Disabilities, Report for 2014, pages 82-90:

http://www.posi.hr/index.php?option=com_joomdoc&view=docman&gid=55&task=cat_view&Itemid=98.

¹⁴¹ Official Gazette 155/2002, 47/2010, 80/2010, 93/2011, 93/2011.

¹⁴² Official Gazette 51/2000 and 56/2000.

¹⁴³ Some other minorities do exercise this right (e.g. members of the Czech, Hungarian, Serbian and Italian minorities are taught either in their own language (Model A) or both in their own and Croatian language (Model B) in about 40 primary schools.

¹⁴⁴ <http://public.mzos.hr/Default.aspx?sec=3154>.

In 2008 there were 68 Roma-only classes, and not just in Međimurska county (with 62 Roma-only classes) and Varaždinska county, where the practice had existed before, but also in two other counties.¹⁴⁵

The Committee on the Elimination of Racial Discrimination has twice expressed its concern at the continued segregation of Roma children within the educational system.¹⁴⁶

In 2003, 57 Roma students initiated judicial proceedings claiming to be victims of discrimination/segregation in primary education. After all domestic remedies had been unsuccessfully exhausted, the students filed an application before the European Court of Human Rights. In March 2010 the Grand Chamber of the Court issued a judgment finding a violation of their right not to be discriminated against in the enjoyment of the right to education.¹⁴⁷ There have been some positive changes in the process of the implementation of the judgment, although the number of Roma-only classes has increased.

The European Court of Human Rights found that Croatian law did not provide a clear and specific legal basis for placing children lacking adequate command of the Croatian language in separate classes and that the tests used to decide whether to assign pupils to Roma-only classes had not been specifically designed to test their command of that language.¹⁴⁸

The Primary and Secondary School Education Act was amended in July 2010 so that schools are under an obligation to provide special assistance to children with insufficient command of the Croatian language. Further, new secondary legislation was adopted in May 2011 regulating the procedure for a child's initial placement in a class.¹⁴⁹ In accordance with this legislation, a panel of experts, composed of a physician, a pedagogue¹⁵⁰ or a psychologist and a teacher, is responsible for the preliminary assessment of the aptitude of each child prior to his or her enrolment in school. For children with insufficient knowledge of the Croatian language, a panel is joined by a Croatian-language teacher and/or language/communication expert who verifies the command of the Croatian language by way of standard tests specifically designed for this purpose. Two independent bodies (the National Centre for External Evaluation of Education and Upbringing and the Education Agency) will supervise the testing procedure. The panel should indicate the form of any assistance required and provide a curriculum tailored to the child's specific needs. The regional education authority makes a final decision on the child's placement as well as on the assistance to be given and the curriculum to be followed in each individual case. The decision of the regional authority may be appealed to the second-instance commission of the Ministry of Science, Education and Sport. This decision can also be challenged in administrative proceedings.¹⁵¹

The authorities also recruited 25 teaching assistants of Roma origin in a number of primary schools in order to ensure special assistance to Roma children. Special measures were taken to provide education and training to these assistants, who are responsible for assisting Roma children to overcome difficulties in following the school curriculum.

¹⁴⁵ Report on the Implementation of the Decade of Roma Inclusion in the Field of Education for 2007 and 2008, prepared by the Ministry of Education.

¹⁴⁶ CERD Concluding Observations on Croatia of 21 May 2002 and of 5 March 2009.

¹⁴⁷ *Oršuš and Others v Croatia* [GC], no.15766/03, 16 March 2010.

¹⁴⁸ Paragraphs 158-160 of the judgment *Oršuš and Others v Croatia* [GC], no.15766/03, 16 March 2010.

¹⁴⁹ This procedure is applied to each child entering the educational system.

¹⁵⁰ Unlike teachers who can have degrees from various fields (e.g. mathematics, chemistry, English language), a pedagogue is a person with the degree in pedagogy.

¹⁵¹

<https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Inf/DH%282011%2946&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=FDB021&BackColorLogged=F5D383>.

Since the court noted that the applicants' insufficient command of the Croatian language was not adequately addressed in the first two years of their schooling, the state undertook measures to include Roma children in pre-school activities. Now the number of Roma children participating in those activities is quite significant and the activities have been prolonged from three months to one year before enrolment in primary school.

In spite of all these measures, the number of Roma-only classes has increased. The authorities claim that this is because many more Roma children are included in primary education than before and that non-Roma parents move their children from schools where Roma children are in the majority. Although both arguments sound valid they do not justify the failure to eliminate separate education.

Besides, the basic problems have not been solved: only 27 % of Roma students finish elementary school. As a result of a number of general drawbacks in the education system, the achievement of Roma pupils is generally low. The average grade among Roma pupils is 2.49, while it is 4.0 among the majority pupil population. Although the number of Roma pupils who repeated a primary school year decreased between 2010/2011 and 2013/2014, the number is still significantly higher compared to the majority pupil population.¹⁵²

In March 2012 the Committee of Ministers decided to continue their supervision of this case under the standard procedure with a view to assessing the impact of the measures that have been taken by the authorities, including the concrete results obtained in abolishing 'Roma-only' classes.

Serbian and Croatian community in Eastern Slavonia

According to the Constitutional Act on the Rights of National Minorities and the Act on Education in the Languages and Scripts of National Minorities, the Serbian minority in the Vukovar post-war region receive separate education in Serbian language and culture. Children of Croatian origin go to mainstream schools, learning very little or nothing of Serbian language and culture. Although the education of both communities complies with the legislation in force, in practice the result is the almost completely separate education of Croatian and Serbian children from kindergarten to high school. The structure of education therefore does not contribute to intercultural dialogue between the two communities, but just the opposite. There has been the debate on whether such an education is discriminatory and necessitates segregation.¹⁵³

3.2.9 Access to and supply of goods and services which are available to the public (Article 3(1)(h) Directive 2000/43)

In Croatia, national legislation includes access to and supply of goods and services as formulated in the Racial Equality Directive.

The Anti-discrimination Act prohibits discrimination based on racial or ethnic origin, religion or belief, age, disability and sexual orientation, in access to and supply of goods and services.¹⁵⁴

The Same-sex Life Partnership Act prohibits discrimination based on same-sex partnership, in access to and supply of goods and services.¹⁵⁵

¹⁵² http://www.romaeducationfund.hu/sites/default/files/publications/reci_croatia_report_eng-final_web.pdf.

¹⁵³ See research 'Separate schools – a divided community: The role of the school in post-war social reconstruction': <http://mjesec.ffzg.hr/revija.psi/vol%2014%20no%202%202007/Corkalo%20ajdukovic.pdf>.

¹⁵⁴ Article 8(8) of the Anti-discrimination Act.

¹⁵⁵ Article 71 of the Same-sex Life Partnership Act.

Distinction between goods and services available publicly or privately

In Croatia, national law does not distinguish between goods and services available to the public (e.g. in shops, restaurants, banks) and those available only privately (e.g. limited to members of a private association).

3.2.10 Housing (Article 3(1)(h) Directive 2000/43)

In Croatia, national legislation includes housing as formulated in the Racial Equality Directive.

The Anti-discrimination Act applies to housing in general without any exceptions. The prohibition of discrimination in this area covers racial or ethnic origin, religion or belief, age, disability and sexual orientation.¹⁵⁶

The Same-sex Life Partnership Act prohibits discrimination based on same-sex partnership, in access to housing.¹⁵⁷ LGBT persons often face discrimination in this field.¹⁵⁸ The Gender Equality Ombudsperson reports that discrimination of LGBT persons in this field is widespread but unreported. Victims are reluctant to initiate any legal proceedings due to their fear of publicity, which could lead to further discrimination. In 2014 there was one court case of discrimination in housing based on sexual orientation (the owner of an apartment refused to let it to a gay person), but it has not concluded yet.¹⁵⁹

Trends and patterns regarding housing segregation for Roma

In Croatia, there are patterns of housing segregation and discrimination against the Roma.

The Roma are still segregated to a great extent in the area of housing. Most of them still live in areas on the outskirts of big cities, in settlements that lack the most basic facilities. For example, in Međimurje county, which has a significant Roma population, the Roma live in 13 Roma-only settlements where most houses do not have electricity, running water and other necessities.

The UN Special Rapporteur on adequate housing found the housing situation of Roma to be a particular issue of concern:

'Roma families in Croatia live mainly in urban areas, often in informal settlements without ownership titles or permits for building their houses. Many Roma settlements are not recognized by the municipal authorities, as houses built on socially owned land are considered to be illegal. Without formal legal protection, the informal settlements of Roma are excluded from essential social services and infrastructure, and are an easy target for criminal attacks. (...) Despite the adoption of national programmes addressed to Roma people, it remains to be seen to what extent they can help improve the housing conditions of this community as a whole. While some improvements have been shown in certain formal Roma settlements, the Special Rapporteur is particularly concerned about the degrading

¹⁵⁶ Article 8 of the Anti-discrimination Act.

¹⁵⁷ Articles 71, 72 and 79 of the Same-sex Life Partnership Act.

¹⁵⁸ http://www.zagreb-pride.net/web/index.php?option=com_content&view=article&id=522%3Arezultati-naeg-istraivanja-vie-nasilja-i-velika-potreba-za-zakonskom-regulacijom-obiteljskog-ivota&catid=39%3Apropijenja&Itemid=71&lang=hr.

¹⁵⁹ Gender Equality Ombudsperson's Report for 2014, p.100-102 : http://www.prs.hr/attachments/article/1555/01_IZVJESCE_2014_CJFLOVITO.pdf.

housing and living conditions witnessed in settlements which receive no recognition or support from the Government and where families are living in unhealthy and degrading conditions, without electricity, running water, roads or sewerage systems.¹⁶⁰

There have not been anti-discrimination cases in this field involving Roma.

¹⁶⁰ <http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-42-Add2.pdf>.

4 EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4)

In Croatia national legislation provides for an exception for genuine and determining occupational requirements.

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.¹⁶¹ This exception has to be interpreted in proportion to the aim and purpose for which it is provided.¹⁶²

There has been no case law on this issue.

4.2 Employers with an ethos based on religion or belief (Article 4(2) Directive 2000/78)

Exception for employers with an ethos based on religion or belief

In Croatia national law provides for an exception for employers with an ethos based on religion or belief.

The Anti-discrimination Act provides an exception for employers with an ethos based on religion or belief. Different treatment in relation to occupational activities and employment, entering into membership and acting in conformity with the canon and mission of a church and religious congregation entered into the Register of Religious Congregations of the Republic of Croatia, and any other public or private organisation which acts in conformity with the Constitution and laws, is not discriminatory, if this is required by the religious doctrine or beliefs, when due to the nature of those activities or circumstances under which they are performed, considering a value system of the organisation, religion or belief of a person presents genuine, legitimate and justified occupational requirement. The exception should have a legitimate aim and be reasonable and necessary. The act conforms with Article 4(2) of the Employment Equality Directive in that respect.¹⁶³

Religious institutions affecting employment in state-funded entities

In Croatia some religious institutions are permitted to select people on the basis of their religion to hire or dismiss from certain jobs when that job is in certain state entities, or in certain entities financed by the State. This possibility is neither provided for nor regulated by national law, but only by the agreements with the Holy See, which causes significant problems in practice.¹⁶⁴ Croatia signed four agreements with the Holy See: on legal issues (regulating, *inter alia*, foundations, educational and charitable institutions and other legal entities founded by the Catholic church); on religious assistance to the members of the armed forces and the police (founding, *inter alia*, military chancery, that is funded by the state, but run by the Church in accordance with the canon law; on

¹⁶¹ Article 9(2)(4) of the Anti-discrimination Act.

¹⁶² Article 9(3) of the Anti-discrimination Act.

¹⁶³ Articles 9(2)(5) and 9(3) of the Anti-discrimination Act.

¹⁶⁴ See dissenting opinion of the President of the Croatian Constitutional Court, Ms. Jasna Omejec, to the Constitutional Court's decision no. U-III - 702 / 2009 of 22 May 2013.

cooperation in the educational and cultural field (establishing religious education in schools) and on economic issues.

By signing the Agreement between the Holy See and the Republic of Croatia on Cooperation in the Field of Education and Culture¹⁶⁵ Croatia undertook the obligation to provide Catholic religious education in all public primary and secondary schools as well as in pre-school institutions as a regular subject for all students who make a choice to take those classes (with exams and grades as for any other subject and without the possibility to give it up during a school year). According to the Agreement, these classes can be taught only by qualified teachers with a certificate of canonical mandate issued by competent church authorities. A teacher's right to teach Catholic religious education ceases if his or her certificate of canonical mandate is withdrawn.

P.T. was a teacher of Catholic religious education in two secondary schools. His employers were two schools, both schools established, funded and governed by public authorities. When he divorced, his certificate of canonical mandate was withdrawn by the church authorities and the school consequently terminated his employment. P.T. challenged the termination before a court, but the court decided that the termination was legal. The second-instance court as well as the Supreme Court¹⁶⁶ confirmed the first-instance decision. P.T. filed a constitutional complaint claiming that these decisions violated his right to work, right to personal and family life and the prohibition of discrimination. The Constitutional Court dismissed the complaint. The case is now pending before the European Court of Human Rights.¹⁶⁷

4.3 Armed forces and other specific occupations (Article 3(4) and Recital 18 Directive 2000/78)

In Croatia national legislation provides for an exception for the armed forces in relation to age or disability discrimination (Article 3(4), Directive 2000/78).

There is no provision in the Anti-discrimination Act specifying an exception for the armed forces in relation to age or disability discrimination.

The Act on Service in the Armed Forces,¹⁶⁸ as *lex specialis*, provides an exception for the armed forces in relation to age, health and physical abilities. Regarding the minimum age, the Act on Service in the Armed Forces specifies that a person can be admitted into active military service as an active soldier if he or she is not older than 27.¹⁶⁹ An active soldier can be promoted to lower officer status (*dočasnik*) if not older than 29¹⁷⁰ and to officer status (*časnik*) if not older than 30.¹⁷¹ The act does not have special provisions on age and termination of service, but refers to the laws on pensions.

There is no provision in the Anti-discrimination Act specifying an exception relating to employment in the police, prison or emergency services.

The Police Act,¹⁷² as *lex specialis*, provides an exception for recruitment to the police in relation to age (maximum 30 years of age) and mental and physical abilities.

¹⁶⁵ Official Gazette International Agreements 2/1997.

¹⁶⁶ Decision number Revr.499/08, 3 December 2008.

¹⁶⁷ Application no.75581/13.

¹⁶⁸ Official Gazette 73/13.

¹⁶⁹ Article 36 of the Act on Service in the Armed Forces.

¹⁷⁰ Article 40 of the Act on Service in the Armed Forces.

¹⁷¹ Article 43 of the Act on Service in the Armed Forces.

¹⁷² Official Gazette 34/2011, 130/2012, 89/2014 and 151/2014.

The Judiciary Act,¹⁷³ which regulates employment in the prison services, provides an exception for the judicial police (*pravosudna policija*)¹⁷⁴ in relation to health. The ability is to be established by the health committee founded by the Justice Minister's decision.

4.4 Nationality discrimination (Article 3(2))

a) Discrimination on the ground of nationality

In Croatia national law includes exceptions relating to difference of treatment based on nationality (citizenship in Croatian law).

The Anti-discrimination Act regulates that placing a person in a less favourable position on the grounds of nationality (citizenship) in accordance with specific regulations is not discrimination. It does not specify anything further (which specific regulation or which field), but as any other exception, this one should also have a legitimate aim and be reasonable and necessary.¹⁷⁵ The act does not mention statelessness in any way.

In Croatia, nationality (citizenship in Croatian law), is not mentioned as a protected ground in national anti-discrimination law.

b) Relationship between nationality and 'race or ethnic origin'

There is no definition in Anti-discrimination Act of nationality and race or ethnic origin as grounds of discrimination. The Anti-discrimination Act lists as prohibited grounds of discrimination race and ethnic origin as well as national (i.e. ethnic) or social origin. Citizenship is regulated by the Croatian Citizenship Act.¹⁷⁶

It remains to be seen how the courts would deal with a conflict between these provisions and where the issue of citizenship overlaps with the issue of race or ethnic origin.

The still existing problem of citizenship on the one hand and race or ethnic origin on the other, is the result of the dissolution of the Socialist Federative Republic of Yugoslavia (SFRY), which consisted of six republics. The Croatian legislation regarding citizenship, following the independence in 1991, had adverse consequences for persons of non-Croatian ethnic origin living in Croatia (most of them Serbs and Roma).

In the (federal) Yugoslavia, its citizens had both federal citizenship and republican citizenship. Since the latter was of almost no legal consequence in the federal state, people were often unaware of their republican citizenship and did not care if they had a citizenship of the republic where they lived. After Croatia's independence, persons who did not have the Croatian republican citizenship became aliens in Croatia. While ethnic Croats in the same situation were granted citizenship (Croatian Citizenship Act provides that any member of the Croatian People (ethnic Croats) will be considered to be a Croatian citizen), no automatic or facilitated grant of Croatian citizenship was provided for other ex-SFRY citizens who were permanent residents in Croatia; they had to fulfil all the numerous requirements for citizenship as real foreigners.¹⁷⁷

That legislation had a special negative effect on Roma since they faced a problem of fulfilling the residence requirement (minimum five years of uninterrupted permanent residence) and/or "proficiency in the Croatian language and Latin script" requirement

¹⁷³ Official Gazette 28/13.

¹⁷⁴ The judicial police is a police force under the competence of the Ministry of Justice and its task is to protect and safeguard people and property in the courts and prisons.

¹⁷⁵ Article 9(2)(9) of the Anti-discrimination Act.

¹⁷⁶ Official Gazette 53/1991, 70/1991, 28/1992, 113/1993, 4/1994 and 130/2011.

¹⁷⁷ <http://www.unhcr.org/46e660582.pdf>.

and/or “attachment to the Croatian culture” requirement and/or “respect for the legal system” requirement.¹⁷⁸

Additionally, the persons, who could not fulfil all the requirements to obtain temporary or permanent residence in the new State of Croatia, were erased from the register of domicile; among them were persons who did not acquire a nationality of another successor State of the SFRY and were thus stateless. Most of them were Roma.

According to UNHCR, in 2011 there were (still) 2,886 stateless or persons of undetermined citizenship in Croatia, the majority of whom are Roma, and the problem of those persons “remains largely unaddressed” by the Croatian authorities.¹⁷⁹

That is the reason why this exception could be especially problematic for Roma due to a significant number of Roma with unresolved citizenship status.¹⁸⁰

There is no case law on different treatment based on nationality that would lead to indirect discrimination based on race/ethnic origin.

4.5 Work-related family benefits (Recital 22 Directive 2000/78)

a) Benefits for married employees

In Croatia it would constitute unlawful discrimination in national law if an employer only provided benefits to those employees who are married.

Compared to marriage, cohabitation (*izvanbračna zajednica*) has limited legal consequences regulated by specific laws that are not consistent (the Family Act, the Act on Statutory Pension Insurance, the Health Care Act, etc.), although most laws recognise equal rights to married persons and those living in cohabitation.

The Labour Act, in connection with paid leave, explicitly considers a cohabitation partner as a member of the close family.¹⁸¹

Still, some laws, especially those dealing with taxes, do not recognize or give any rights to cohabitation partners, but that issue is the subject of a pending case before the Constitutional Court.¹⁸²

b) Benefits for employees with opposite-sex partners

In Croatia it would constitute unlawful discrimination in national law if an employer only provided benefits to those employees with opposite-sex partners.

The Croatian legal system recognizes both registered same-sex partnership and unregistered informal same-sex cohabitation. The Same-sex Life Partnership Act gives to partners in same-sex registered partnerships access to labour rights, pension, health insurance and health care, social benefits, tax benefits, equal access to goods and services and family privileges already granted to married different-sex couples.¹⁸³ It

¹⁷⁸ See Report on obstacles facing the Roma minority of Croatia in acquiring citizenship and accessing citizenship, housing, health and social assistance, by Ina Zoon, Council of Europe/OSCE-ODIHR/European Commission Project “Roma under the Stability Pact”, September 2002.

¹⁷⁹ UNHCR’s intervention as a third party in the EctHR case of Hoti v. Croatia (application number 63311/14).

¹⁸⁰ Ombudsperson Report for 2014, page 33:
<http://www.ombudsman.hr/attachments/article/517/Izvj%C5%A1%C4%87e%20pu%C4%8Dke%20pravo%20braniteljice%20za%202014.%20godinu.pdf>.

¹⁸¹ Article 86(3) of the Labour Act.

¹⁸² Constitutional Court case no. U-III-4804/2013.

¹⁸³ Articles 37-79 of the Same-sex Life Partnership Act.

further gives to partners in same-sex cohabitations (*neformalno životno partnerstvo*) the same rights granted to partners in different-sex cohabitations (*izvanbračna zajednica*).¹⁸⁴

4.6 Health and safety (Article 7(2) Directive 2000/78)

a) Exceptions in relation to disability and health/safety

In Croatia there are exceptions in relation to disability and health and safety (Article 7(2), Directive 2000/78).

According to the Anti-discrimination Act, placement in a less favourable position is not discrimination when such conduct is carried out with the aim of preserving health and preventing criminal acts and misdemeanours, when the means used are appropriate and necessary for the aim to be achieved and when such conduct does not lead to direct or indirect discrimination based on race and ethnicity, skin colour, religion, gender, ethnic and social origin, sexual orientation or disability.¹⁸⁵ The last requirement has been added by the amendments of 2012. The Government document claims that it has been done as a result of the comments of the European Commission.¹⁸⁶

Whether a different treatment of a person with disability, when motivated by health and safety reasons, would pass the proportionality test is left to judicial interpretation.

4.7 Exceptions related to discrimination on the ground of age (Article 6 Directive 2000/78)

4.7.1 Direct discrimination

In Croatia national law provides an exception for direct discrimination on age.

According to the Anti-discrimination Act direct discrimination is justified only in situations designated as exceptions to discrimination. In relation to age these are:

- in relation to a particular job, when the nature of the job is such or the job is performed under such conditions that characteristics relating 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;¹⁸⁷
- on the grounds of age in the course of determining insurance premiums, insurance pay-outs and other insurance conditions in line with relevant and accurate statistical data and rules of actuarial calculations;¹⁸⁸
- fixing minimum conditions of age for access to a certain employment or for acquiring other advantages linked to employment when this is provided for in separate regulations;¹⁸⁹
- fixing a suitable and appropriate maximum age as a reason for the termination of employment and prescribing a certain age as a condition for acquiring the right to retirement;¹⁹⁰
- placement in a less favourable position by a determination of rights and obligations arising from family relations where this [placement] is provided for by law, particularly with the aim of protecting the rights and interests of children, which

¹⁸⁴ Article 4(2) of the Same-sex Life Partnership Act.

¹⁸⁵ Article 9(2)(1) of the Anti-discrimination Act.

¹⁸⁶ <http://www.sabor.hr/Default.aspx?art=49474>.

¹⁸⁷ Article 9(2)(4) of the Anti-discrimination Act.

¹⁸⁸ Article 9(2)(6) of the Anti-discrimination Act.

¹⁸⁹ Article 9(2)(7) of the Anti-discrimination Act.

¹⁹⁰ Article 9(2)(8) of the Anti-discrimination Act.

must be justified by a legitimate aim, protection of public morality and the favouring of marriage in line with the provisions of the Family Act¹⁹¹ (e.g. this exception would justify an age limit for adoptive parents).¹⁹²

All exceptions should be interpreted in a way that is proportionate to the aim and purpose for which they have been set.¹⁹³

– Justification of direct discrimination on the ground of age

In Croatia it is possible in specified circumstances, to justify direct discrimination on the ground of age.

According to the Anti-discrimination Act direct discrimination is justified only in situations designated as exceptions to discrimination. All exceptions should be interpreted in a way that is proportionate to the aim and purpose for which they have been set.¹⁹⁴

The test is compliant with the test in Article 6, Directive 2000/78.

a) Permitted differences of treatment based on age

In Croatia national law does not permit differences of treatment based on age for any activities within the material scope of Directive 2000/78.

Differences of treatment based on age are permitted only in situations designated as exceptions to discrimination that should be interpreted in a way that is proportionate to the aim and purpose for which they have been set.¹⁹⁵

b) Occupational pension schemes' fixed ages for admission or entitlements

In Croatia national law allows occupational pension schemes to fix ages for admission to the scheme or entitlement to benefits, taking up the possibility provided for in Article 6(2).

The Anti-discrimination Act allows a suitable and appropriate maximum age to be fixed as a reason for the termination of employment and a certain age to be prescribed as a condition for acquiring the right to retirement.

4.7.2 Special conditions for young people, older workers and persons with caring responsibilities

In Croatia conditions are set by law for older or younger workers to promote their vocational integration, or for persons with caring responsibilities to ensure their protection.

The Labour Act stipulates the minimum age for employment – 15 years of age. A minor older than 15 cannot be employed until the end of his or her compulsory primary education.¹⁹⁶ A minor cannot be employed in work that may harm his or her safety, health, morality or development.¹⁹⁷

¹⁹¹ Article 9(2)(10) of the Anti-discrimination Act.

¹⁹² Article 126 of the Family Law Act: minimum age of adoptive parent is 21 and minimum 18 years older than adopted child.

¹⁹³ Article 9(3) of the Anti-discrimination Act.

¹⁹⁴ Article 9 of the Anti-discrimination Act.

¹⁹⁵ Article 9 of the Anti-discrimination Act.

¹⁹⁶ Article 19 of the Labour Act.

¹⁹⁷ Article 21 of the Labour Act.

The Labour Act provides protection for pregnant and breastfeeding women – such workers should be offered a temporary transfer to another safer job. If that is not possible, pregnant or breastfeeding women are entitled to paid leave.¹⁹⁸

An employer is not allowed to terminate the employment of an employee during maternity leave or paid leave due to breastfeeding, or when an employee is working part time due to her or his caring responsibilities.¹⁹⁹ The protected period ends with the end of maternity leave.

4.7.3 Minimum and maximum age requirements

In Croatia there are exceptions permitting minimum and maximum age requirements in relation to access to employment (notably in the public sector) and training.

The Anti-discrimination Act provides exceptions permitting minimum age requirements in relation to access to employment or to acquiring other benefits based on employment when such requirements are covered by special regulations.²⁰⁰ Although the provision is general it obviously covers regulations dealing with the minimum age for employment (Labour Act), and the minimum age for work under special conditions (Rules on Work under Special Conditions), etc.

The Anti-discrimination Act provides exceptions permitting maximum age requirements in relation to access to employment/termination of employment.²⁰¹ The provision is general and its aim is to enable an employee's employment to be terminated at a specific age laid down by particular legislation (e.g. according to the Labour Act, employment terminates when an employee turns 65 years of age and has 15 years of service, unless employer and employee agree otherwise).

Besides that general rule, provisions on minimum and maximum age requirements are very rare and limited to only certain professions. A person older than 30 cannot be employed for the first time as a firefighter,²⁰² but there is no special rule on age and termination of this employment. For some professions there are requirements in terms of a minimum period of professional experience (judges, Constitutional Court judges) or good health (pilots), but not age.²⁰³

4.7.4 Retirement

a) State pension age

In Croatia there is state pension age at which individuals must begin to collect their state pensions (65 years of age for men and 61 years of age for women).

The law prescribes a state pension age at which an individual must begin to collect his or her state pension. If an individual wishes to work longer, he or she is allowed to do so: he or she can work on a short-term contract (in that case he or she can collect a pension and still work) or prolong employment if both he or she and the employer wish to do so.

¹⁹⁸ Article 31 of the Labour Act.

¹⁹⁹ Article 34 of the Labour Act.

²⁰⁰ Article 9(2)(7) of the Anti-discrimination Act.

²⁰¹ Article 9(2)(8) of the Anti-discrimination Act.

²⁰² Article 21 of the Act on Fire Fighting, Official Gazette 106/99 with amendments.

²⁰³ For armed forces, please see section 4.3.

The prescribed state pension ages are different for women and men. The Constitutional Court found this difference to be discrimination based on sex, but prolonged the validity of the law until 2018.²⁰⁴

b) Occupational pension schemes

In connection with the age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements, the law sets a minimum age (50) when people can begin to receive payments from voluntary pension schemes, but not the maximum age.²⁰⁵

c) State imposed mandatory retirement ages

In Croatia there are state-imposed mandatory retirement ages.

According to the Labour Act,²⁰⁶ employment ends when an employee is 65 years of age and has 15 years of pensionable service, but the employer and employee can prolong employment if they wish to do so. The rule is equally applied to women and men.

However, the Labour Act does not regulate all types of job. The employment of civil servants, judges, public attorneys, military, police and so on is regulated by special laws. The mandatory retirement age for judges is 70;²⁰⁷ for civil servants it is 65 and 15 years of pensionable service;²⁰⁸ for public attorneys (and their deputies) it is 70;²⁰⁹ and for army employees it is 65 and 15 years of pensionable service.²¹⁰

d) Retirement ages imposed by employers

In Croatia national law permits employers to set retirement ages, or ages at which the termination of an employment contract is possible, by contract and collective bargaining.

The employer and employees can contractually (including by collective bargaining) set only higher retirement ages than those provided for by the law.²¹¹

There is still no case law on this issue.

e) Employment rights applicable to all workers irrespective of age

The law on protection against dismissal and other laws protecting employment rights apply to all workers irrespective of age.

f) Compliance of national law with CJEU case law

In Croatia national legislation is not in line with the CJEU case law on age regarding compulsory retirement.

General compulsory retirement at the age of 65 (plus 15 years of pensionable service) might be problematic. The only exception, provided for by the Labour Act, is made if both employer and employee wish to prolong the employment. There is no exception of any

²⁰⁴ Constitutional Court decision U-I-1152/2000 of 18 April 2007.

²⁰⁵ Article 127 of the Act on Voluntary Pension Funds, Official Gazette 19/2014.

²⁰⁶ Article 112 of the Labour Act.

²⁰⁷ Article 77(2)(5) of the Act on State Judiciary Council.

²⁰⁸ Article 137(1)(3) of the Civil Servants Act.

²⁰⁹ Article 112(1) of the Act on the State Attorney's Office.

²¹⁰ Article 205/1/3 of the Act on Service in the Armed Forces.

²¹¹ Article 112 of the Labour Act.

kind in the Civil Servants Act and the Act on Service in the Armed Forces. A legitimate aim might be freeing up posts for younger workers as Croatia has a very high rate of youth unemployment (43 %).²¹²

But there are cases where a legitimate aim does not exist, as in the case of compulsory retirement of medical doctors at the same time as there is lack of medical doctors in Croatia.

The right to practice²¹³ of pharmacists and medical doctors, even when they own private practices that are part of the public healthcare system, also ends when they turn 65 and have 20 years of pensionable service, unless the Ministry of Health exceptionally decides to prolong the practice in individual cases.²¹⁴

4.7.5 Redundancy

a) Age and seniority taken into account for redundancy selection

In Croatia national law permits age or seniority to be taken into account in selecting workers for redundancy.

National law obliges an employer to take into account an employee's age when selecting workers for redundancy, but it does not specify in what way age should influence its decision.²¹⁵

In a situation where an employer terminates employment for business reasons (*poslovno uvjetovani otkaz*) or because an employee is not able to perform duties due to his or her permanent abilities or characteristics (*osobno uvjetovani otkaz*), the employer has to take into consideration the length of the employee's service, his or her age, disability and care responsibilities. The law does not specify in what way age should influence the employer's decision.²¹⁶

b) Age taken into account for redundancy compensation

In Croatia national law provides compensation for redundancy. This is not affected by the age of the worker.

The amount of compensation for redundancy is not affected by the age of the worker but by the length of his or her employment with the same employer.²¹⁷

4.8 Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5), Directive 2000/78)

In Croatia national law includes exceptions that seek to rely on Article 2(5) of the Employment Equality Directive.

According to the Anti-discrimination Act placement in a less favourable position is not discrimination when such conduct is carried out with the aim of preserving health and preventing criminal acts and misdemeanours, when the means used are appropriate and

²¹² http://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment_statistics#Youth_unemployment_trends.

²¹³ They do not have to retire, they just cannot work as doctors or pharmacists.

²¹⁴ Article 159 of the Health Care Act.

²¹⁵ Article 115 of the Labour Act.

²¹⁶ Article 115 of the Labour Act.

²¹⁷ Article 126 of the Labour Act.

necessary for the aim to be achieved and when such conduct does not lead to direct or indirect discrimination based on race and ethnicity, skin colour, religion, gender, ethnic and social origin, sexual orientation or disability.²¹⁸

4.9 Any other exceptions

In Croatia, the other exception to the prohibition of discrimination provided in national law is as follows.

An exception to the prohibition of discrimination specific to the Anti-discrimination Act (and the most controversial exception) is the exception provided by Article 9(2)(10) of the act:

‘placement in a less favourable position by a determination of rights and obligations arising from family relations where this [placement] is provided for by law, particularly with the aim of protecting the rights and interests of children, which must be justified by a legitimate aim, protection of public morality and the favouring of marriage in line with the provisions of the Family Act’.

The obvious aim of this exception was to prevent gay and lesbian persons from seeking protection against discrimination when family-related issues such as registered partnership or marriage, child adoption or medically assisted reproduction are at stake, the obstacle being solved later by the *lex specialis* – Same-Sex Life Partnership Act.

In Croatia, there are no other exceptions to the prohibition of discrimination (on any ground) provided in national law.

²¹⁸ Article 9(2)(1) of the Anti-discrimination Act.

5 POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78)

a) Scope for positive action measures

In Croatia positive action in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation is provided for in national law.

According to the Anti-discrimination Act, placement in a less favourable position shall not be deemed to be discrimination in the case of positive actions, i.e. special measures of a temporary nature, which are necessary and appropriate to achieve real equality of social groups that are in an unfavourable position, when such conduct is based on provisions of laws, subordinate regulations, programmes, measures or decisions with the aim of improving the status of ethnic, religious, language or other minorities or other groups of citizens or persons facing discrimination on the prohibited grounds of discrimination.²¹⁹ This exception is to be interpreted in proportion to the aim and purpose for which it is provided. This exception is applicable to any grounds covered by the ADA and not just to positive action in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation.

The most important case law and legal discussion was in connection with the positive action measure in respect of ethnic origin provided for by the Judiciary Act, the Act on State Judiciary Council and the Act on Civil Servants as described below. Those acts provide a positive action measure in respect of ethnic origin, i.e. representation of ethnic minorities must be taken into account when employing civil servants and judges. These provisions were challenged before the Constitutional Court as discriminatory. In its decisions, the Constitutional Court established that such an advantage is a special positive action measure, i.e. the intentional favouring of a certain group with the aim of eliminating factual inequality and differentiation of such persons based on their characteristics; it is a method of preventing various forms of open (direct) or hidden (indirect) discrimination when the legislator finds that such persons face discrimination.²²⁰

b) Main positive action measures in place on national level

Race/ethnicity

The Constitutional Law on the Rights of Ethnic Minorities provides for the positive action of proportionate representation of members of ethnic minorities in the state administration, judiciary and bodies and administration of local authorities. The law defines a national minority as 'a group of Croatian citizens whose members have traditionally inhabited the territory of the Republic of Croatia and whose ethnic, linguistic, cultural and/or religious characteristics differ from the rest of the population, and who are motivated to preserve these characteristics'. The reports on implementation of the law list numerous national minorities that benefit from it (more than 19, including the Roma, who have their own representative in the Parliament).

The Judiciary Act²²¹ provides a positive action measure in respect of ethnic origin, i.e. representation of ethnic minorities must be taken into account when employing court clerks,²²² the Act on State Judiciary Council has the same provision for nominating judges²²³ and the Act on Civil Servants for employing civil servants. The measure is

²¹⁹ Article 9(2)(2) of the Anti-discrimination Act.

²²⁰ Constitutional Court decisions U-I-2767/07 of 31 March 2009; U-I-402/03 of 30 April 2008.

²²¹ Official Gazette 28/2013.

²²² Article 108 of the Judiciary Act.

²²³ Article 50 of the Act on State Judiciary Council, Official Gazette 116/2010 with amendments.

mainly theoretical (e.g. in the whole state administration only two Roma persons are employed, and the members of all national minorities make 3.38 % of all civil servants).²²⁴

These provisions were challenged before the Constitutional Court as discriminatory. In its decisions,²²⁵ the Constitutional Court established that such an advantage is a special positive action measure, i.e. the intentional favouring of a certain group with the aim of eliminating factual inequality and differentiation of such persons based on their characteristics; it is a method of preventing various forms of open (direct) or hidden (indirect) discrimination when the legislator finds that such persons face discrimination.

Further, the Constitutional Court stated that such an advantage in employment of members of national minorities is not automatic and unconditional; it is implemented only when legal requirements are fulfilled; it ensures the proportional participation of ethnic minorities in judicial bodies and their equality with other citizens.

Such a measure falls within the margin of appreciation of the legislator and is considered justified and allowable as long as the reasons for which it was introduced continue to exist and the principle of proportionality is not violated. The Constitutional Court concluded that such a measure is not discriminatory as long as it is justified, allowable and proportionate. It stated: 'Provision of the above positive measure in the employment of the members of national minorities falls within the legislator's scope for discretion and is to be considered justified and allowed as long as the reasons for which it was introduced persist, which is in the first place decided by the legislator, i.e. until it starts to violate the principle of proportionality laid down in Article 16 of the Constitution, which is in the first place the subject of Constitutional Court control'.

Roma

In May 2005 the Croatian Government adopted the Action Plan for the Decade of Roma Inclusion 2005-2015, which introduced some measures for positive action in following fields:

- inclusion of the Roma in social and political life, such as encouraging the establishment of Roma minority councils at local and regional levels and ensuring that the Roma are represented in representative bodies at those levels; implementation of the right to elect a Roma representative to the Croatian Parliament; training of Roma representatives, especially women and young people, to participate in decision-making processes; exercise of their rights and greater involvement in social life;
- preservation of Romani traditional culture, such as finance for Roma associations' amateur cultural programmes, cultural events, publishing and information; training and educating the Roma for involvement and employment in the media;
- status-related issues, such as the formation of mobile teams composed of representatives of relevant ministries, state administration offices, social welfare centres, Roma non-governmental organisations and Roma representatives, which work to determine the situation in each individual case in areas inhabited by Roma and advise inhabitants of the area on how to resolve their status issues, especially as regards registration of their residence and acquisition of Croatian citizenship; prescribing methods for acquiring Croatian citizenship with a view to the difficulties pointed out by members of the Roma population in resolving their status in the

²²⁴ Report on the Implementation of the Constitutional Law on Rights of National Minorities for 2012, page 47, <http://www.uljppnm.vlada.hr/images/26072013/izvjesce%20o%20provedbi%20ap-a%20za%20provedbu%20uzpnm-a%20-%20za%202012.pdf>.

²²⁵ Constitutional Court decisions U-I-2767/07 of 31 March 2009; U-I-402/03 of 30 April 2008.

- Republic of Croatia; education of officials in charge of regulating the status issues of Roma about Roma laws and customs in order to prevent any form of discrimination;
- legal aid, such as free legal aid for Roma in proceedings where they are exercising their rights guaranteed by the Constitution and the law, through an attorney based in the county in which they live;
- education, such as measures to enrol Roma children in mainstream kindergartens where they will mix with non-Roma children; testing the phonetic, linguistic, psychological and physiological abilities of Roma children prior to their involvement in pre-school programmes; one free meal a day for Roma children involved in pre-school programmes and primary education; additional training for teachers to work with children from socially and economically deprived environments, and for Roma teaching assistants who have completed secondary school and who will assist teachers to better understand the Romani language; motivating and reintegrating in schools Roma children who have dropped out of primary school and inclusion of Roma who are above 15 years of age and have not completed primary school or are illiterate; scholarships for Roma students; granting additional points to Roma students on the basis of the socio-economic conditions in which they live to enable them to obtain a place in student residences;
- healthcare, such as health education and awareness raising among the Roma, especially Roma women, and health surveys;
- employment, such as employment in public works; employment of six Roma counsellors for mediation in field of Roma employment in the Croatian Employment Service;
- social welfare, such as training for the staff of social welfare centres to encourage consistent application of measures under the Family Act aiming to protect Roma children;
- protection of the family, mothers and young people, such as educational materials in Romani languages to inform Roma about their rights in the field of family protection and how to exercise them;
- urban planning, such as county action programmes and measures for the improvement of the environment and surroundings of Roma settlements; according to the Decade of Roma Inclusion Progress Report 2013, the authorities initiated and have continued activities related to the legalisation of Roma settlements and number of Roma settlements has been legalised or partially legalised.²²⁶

Disability

In June 2007 the Croatian Government adopted the National Strategy on the Equalisation of Opportunities for Persons with Disabilities (2007-2015).²²⁷ One of its measures is incentives for employers of people with disabilities.

According to the Act on the Vocational Rehabilitation and Employment of Disabled Persons²²⁸ all employers with more than 20 employees, in both public and private sectors, are obliged to employ a certain number of persons with disabilities. If they fail to fulfil that obligation, they have to pay compensation. Further, administrative bodies, judicial bodies, local authorities, public services and legal persons owned by the state or local authorities are obliged to give priority in employment to persons with disability.

²²⁶ http://www.uljppnm.vlada.hr/index.php?option=com_content&view=article&id=23&Itemid=5.

²²⁷ <http://narodne-novine.nn.hr/clanci/sluzbeni/298398.html>.

²²⁸ Official Gazette 157/2013.

6 REMEDIES AND ENFORCEMENT

6.1 Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)

- a) Available procedures for enforcing the principle of equal treatment

In Croatia the following procedures exist for enforcing the principle of equal treatment.

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).²²⁹

In civil proceedings a victim of discrimination can file a claim seeking protection of his or 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 civil procedure is the same for employment in the private and public sectors, except that a claimant who wants to file a claim against the state is obliged to send a request to the State Attorney's Office for an amicable settlement. If the State Attorney's Office declines the request or does not respond for 90 days, the claim can be filed with the court.²³⁰

Criminal offences of discrimination (see section 6.5) are crimes subject to public prosecution, so a victim of discrimination could in theory just file a criminal complaint with the State Attorney's Office. If the State Attorney's Office decides not to prosecute (e.g. if it considers that the act in question is not a criminal offence), the victim is authorised to take over the prosecution of the case as a subsidiary prosecutor, within eight days from the notification of the decision by the State Attorney's Office.

The Anti-discrimination Act specifies misdemeanour liability for harassment, sexual harassment and victimisation, but not for other forms of discrimination.²³¹ A victim of discrimination can file a complaint with the Ombudsperson as the central body responsible for anti-discrimination. If a person faces discrimination by an administrative act he or she can file a complaint with the Administrative Court of the Republic of Croatia, which is authorised to review the legality of administrative acts.

Finally, a victim of discrimination can file a constitutional complaint with the Constitutional Court if he or she deems that an individual act of a state body, a body of local and regional self-government or a legal person with public authority that

²²⁹ Courts dealing with minor offences; Act on Misdemeanors (Official Gazette 107/2007, 39/2013, 157/2013.

²³⁰ Article 186(a) of the Civil Procedure Act.

²³¹ Misdemeanors are minor offences, most often prosecuted ex officio in the proceedings similar to criminal proceedings.

determined his or her rights and obligations, has violated his or her human rights or fundamental freedoms guaranteed by the Constitution.

The Anti-discrimination Act grants the Ombudsperson the authority to carry out a mediation procedure, with the consent of the parties, with the possibility of an out-of-court settlement.²³²

All procedures are the same for employment in the private and public sectors.

Various administrative proceedings can provide protection against discrimination as well, such as labour inspection, police complaint mechanisms, inspection in the field of education, etc.

Decisions in all proceedings mentioned above are binding.

b) Barriers and other deterrents faced by litigants seeking redress

Possible barriers to litigation are as follows:

- Length of proceedings: proceedings before the Croatian courts rarely satisfy the standards of fairness in respect of reasonable time; the proceedings usually last so long that remedies cannot be considered effective. For example, although the law clearly states that employment disputes must be decided in the first instance in six months,²³³ as a rule such proceedings in courts in bigger cities last several years.
- Difficulties in proving discrimination: rule on burden of proof is not always implemented.²³⁴
- Case law of municipal and county courts, the main source of judicial interpretation of often very wide legal provisions, is not published and therefore unavailable to potential claimants.
- The case law in civil proceedings is still not clear regarding the issue of intent as an element of discrimination.²³⁵
- Costs:
 - If a claimant loses a case or wins only in part, he or she risks paying costs to the other party (e.g. if a claimant asks for compensation of EUR 10 000 and the court awards him only EUR 5 000, he or she has to pay the respondent party 50 % of the latter's costs);
 - The litigant is not obliged to instruct a lawyer, but due to the complexity of legislation and procedures and the fact that judges are inexperienced in this field, the help of the lawyer is de facto necessary. A system of free legal aid exists, but does not fulfil its function (the procedure to obtain free legal aid is too complicated; the lawyers' fee paid by the state is symbolic).

c) Number of discrimination cases brought to justice

In Croatia there are available statistics on the number of cases related to discrimination brought to justice.²³⁶

Civil proceedings

²³² Article 12(2)(5) of the Anti-discrimination Act.

²³³ The provision is of mandatory nature; Article 434(4) of the Civil Procedure Act.

²³⁴ See page 20 of the Ombudsperson's Report for 2014:

<http://www.ombudsman.hr/index.php/hr/izvjesca/2014/finish/41-2014/562-izvjesce-pucke-pravobraniteljice-za-2014-godinu>.

²³⁵ Page 21 of the Ombudsperson Report for 2014:

<http://www.ombudsman.hr/index.php/hr/izvjesca/2014/finish/41-2014/562-izvjesce-pucke-pravobraniteljice-za-2014-godinu>.

²³⁶ Ombudsperson's Report for 2014: <http://www.ombudsman.hr/index.php/hr/izvjesca/2014/finish/41-2014/562-izvjesce-pucke-pravobraniteljice-za-2014-godinu>.

In 2014, 148 civil proceedings regarding discrimination were pending (117 filed before 2014 and 31 filed during 2014). The statistics show only the number of special individual anti-discrimination actions and not other proceedings where discrimination is an incidental issue. In 2014, 22 proceedings were closed (none of the claims granted, 13 claims denied and nine closed 'in another way' without further detail). There were no cases about indirect discrimination.

Criminal proceedings

In 2014, 19 criminal proceedings that were connected with discrimination were pending (16 initiated before 2014 and 3 initiated in 2014). In 2014 one case was closed.

Misdemeanour cases

In 2014, 207 misdemeanour cases connected with discrimination were pending (70 filed before 2014 and 137 filed in 2014). Some 94 judgments were brought by which 71 persons were found guilty.

Race/ethnicity/skin colour was the ground of discrimination in 60 out of 374 cases, ethnic origin in 70, religion in six, age in seven, sexual orientation in 13 and disability in three.²³⁷

d) Registration of discrimination cases by national courts

In Croatia discrimination cases are registered as such by national courts.

The Anti-discrimination Act²³⁸ states that all judicial bodies should keep statistics on cases related to discrimination with data on the grounds and fields of discrimination and forward them to the Ministry of Justice, and that the Ministry of Justice should forward these statistics to the Ombudsperson no later than 1 February of the year following the year for which these data are collected. The statistics are then included in the Ombudsperson's Annual Report on Discrimination.

6.2 Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78)

a) Standing to act on behalf of victims of discrimination (representing them)

In Croatia associations and organisations are not entitled to act on behalf of victims of discrimination, with the exception of trade unions.

As a rule, associations cannot represent an individual victim in court, with the exception of lawyers employed by the trade unions, who can represent workers in labour disputes.

b) Standing to act in support of victims of discrimination

In Croatia associations, organisations and trade unions are entitled to act in support of victims of discrimination.

As an intervenor, an association (i.e. a body, organisation, institution, association or another person, which, 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

²³⁷ In other cases grounds of discrimination were gender, political belief, social position, marital status, education, health condition and trade union membership.

²³⁸ Article 14 of the Anti-discrimination Act.

proceedings) can join a claimant. The court must allow participation of the intervenor only with the claimant's consent.

Entities that are entitled under national law to act in support of victims of discrimination are defined by Anti-discrimination Act as 'a body, organization, institution, association or another person, which, 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'.²³⁹

These associations (bodies, organisations, institutions, associations or other persons) should be registered ('set up in line with the law'), but once they are registered they do not need to fulfil any other requirements in terms of membership or permanency to be able to engage in proceedings.

c) Actio popularis

In Croatia national law allows associations, organisations and trade unions to act in the public interest on their own behalf, without a specific victim to support or represent (actio popularis).

An association may bring a joint legal action (association action, *udružna tužba*), as described above, if it demonstrates plausibly that the defendant's conduct has violated the right to equal treatment of a larger number of persons who predominantly belong to the group whose rights the association defends, and the association may file this action without a specific victim to support or represent. Such an action can be brought in the public interest on an association's own behalf. The law is not clear as to whether such an action may be brought in the interest of a larger number of individual victims.²⁴⁰

An association acts in its own name. Before courts, it is represented either by a person who is authorised to represent it in general in accordance with its internal acts or by an attorney who is given power of attorney.

By filing a joint legal action (*udružna tužba*),²⁴¹ an association may bring the following claims before the court: a) to establish that the defendant's conduct has violated the right to equal treatment in relation to members of the group; b) to prohibit the undertaking of activities that violate or may violate the right to equal treatment; c) to carry out activities that eliminate discrimination or its consequences in relation to members of the group; or d) to publish in the media a ruling establishing violation of the right to equal treatment.

Those are the same claims that may be brought by a victim, but a victim may claim compensation and an association may not.

d) Class action

In Croatia national law does not allow associations and organisations to act in the interest of more than one individual victim (class action) for claims arising from the same event.

The ADA does not authorise an association to file a claim in the interest of more than one individual victim. An association can be either an intervenor in the case initiated by a

²³⁹ Articles 21 and 24 of the Anti-discrimination Act.

²⁴⁰ Article 24 of the Anti-discrimination Act.

²⁴¹ The most accurate translation of '*udružna tužba*' is 'joint legal action', although it is in fact a public interest action and not a joint action filed by two or more individuals.

victim as a claimant or file its own claim as a claimant without a specific victim as described above.²⁴²

6.3 Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)

In Croatia national law provides for a shift of the burden of proof from the complainant to the respondent.

The official translation of the Article 20 of the Anti-discrimination Act²⁴³ reads as follows:

'(1) If a party in court or other proceedings claims that his/her right to equal treatment pursuant to provisions of this Act has been violated, he/she shall make it plausible²⁴⁴ that discrimination has taken place. In this case, it shall be for the respondent to prove that there has been no discrimination. (2) The provision of paragraph 1 of this Article shall not apply to misdemeanour and criminal proceedings.'

From the pure wording of the provision, it may seem that the standard in the Croatian law is tougher for the victim than the one provided for by Article 10 of Directive 2000/78 and Article 8 of Directive 2000/43. Since the concept itself is new in the Croatian legal system and exists only in the anti-discrimination legislation, the judicial interpretation would be very important.

A case was initiated by four human rights organisations against V.M., president of the Croatian Football Association, because of his public statement that gay people will not play in the national football team as long as he is president of the CFA and that only healthy people play football. Zagreb County Court concluded that the statement of V.M. did not constitute harassment, since there was no evidence of any negative consequences such as fear or a hostile or intimidating atmosphere. The Supreme Court annulled the first instance judgment and ruled that by his statements V.M. had discriminated against homosexual persons and ordered him to publicly apologise. The Supreme Court held that the burden of proof had shifted to V.M. and that he had to prove that the statement did not constitute discrimination, i.e. that he failed to prove that his statement did not cause an intimidating, hostile, degrading or offensive environment.²⁴⁵

According to the Ombudsperson, the rule on burden of proof is not adequately implemented by courts.²⁴⁶ The rule is most often ignored by the courts, i.e. the burden of proof is on the complainant who has to provide evidence for every element of his claim, and decisions are explained by the standard formula that 'courts decide which facts to consider as proven according to their conviction on the basis of a conscientious and careful assessment of each piece of evidence and all the evidence as a whole, and on the basis of the results of the proceedings in their entirety'.

6.4 Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78)

In Croatia there are legal measures of protection against victimisation.

²⁴² Articles 21 and 24 of the Anti-discrimination Act.

²⁴³ English version of the Anti-discrimination Act published on the Ombudsperson's website: <http://www.ombudsman.hr/index.php/en/documents-3/legislation/finish/16-legislation/40-the-anti-discrimination-act>.

²⁴⁴ The phrase used in the official text '*učiniti vjerojatnim*' corresponds to the English phrase 'to render credible'.

²⁴⁵ Supreme Court of the Republic of Croatia, judgment no. Gž.25/11 of 28 February 2012.

²⁴⁶ <http://www.ombudsman.hr/index.php/hr/izvjesca/2014/finish/41-2014/562-izvjesce-pucke-pravobraniteljice-za-2014-godinu>.

The Anti-discrimination Act prohibits placement in a less favourable position of a person who has reported discrimination in good faith; witnessed discrimination; refused to obey an instruction to discriminate; or participated in any manner in proceedings relating to discrimination in accordance with the act.²⁴⁷

Such actions lead to misdemeanour liability. Those people who are, under special laws, entrusted with certain duties in a legal entity or authorised to act on behalf of the legal entity, may be punished with a fine ranging from EUR 136.98 to EUR 2 739.72; a person performing independent business activities could be punished with a fine ranging between EUR 684.93 and EUR 20 547.94; and a legal person could be punished with a fine ranging between EUR 2 739.72 and EUR 27 397.26.²⁴⁸

In civil cases on victimisation, a rule on a shift of the burden of proof should be implemented.

6.5 Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78)

a) Applicable sanctions in cases of discrimination – in law and in practice

Sanctions applicable where unlawful discrimination has occurred can be civil, misdemeanour or criminal.

In some cases, if regulated by special laws, administrative fines are possible (e.g. Act on Professional Rehabilitation and Employment of Persons with Disabilities).

Civil

The main sanction in civil anti-discrimination cases is compensation (pecuniary and non-pecuniary damages) for a victim of discrimination.²⁴⁹

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.²⁵⁰

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

The rules on compensation are narrower than those established by the directives because, without any frames fixed by the national law other than those of general nature mentioned above, a court does not have to take into consideration whether a particular amount of compensation in a particular case of discrimination would be an effective, proportionate and dissuasive sanction. These rules significantly reduce the scope and nature of the circumstances that the court has to take into account. It is up to the court

²⁴⁷ Article 7 of the Anti-discrimination Act.

²⁴⁸ Article 28 of the Anti-discrimination Act.

²⁴⁹ Article 17(1)(3) of the Anti-discrimination Act.

²⁵⁰ Article 1100 of the Civil Obligations Act.

whether it interprets 'objective of compensation' in accordance with the established standards of effective, proportionate and dissuasive sanctions.

Misdemeanour

The Anti-discrimination Act specifies misdemeanour liability and sanctions in cases of harassment and sexual harassment. A fine is imposed on natural persons, responsible persons in legal entities,²⁵¹ craftsmen and persons performing independent business activities, and legal persons, while different levels of fine are set for different categories – from EUR 684.93 to EUR 41 095.89 for harassment and from EUR 684.93 to EUR 47 945.20 for sexual harassment.

When deciding sanctions for misdemeanours, the courts should take into consideration the principles of general and individual prevention.²⁵²

In practice, misdemeanour judges, as a rule, mitigate sentences set up by law so the usual sentence is between EUR 40 and EUR 400.

Criminal

The Criminal Code²⁵³ defines hate crime as any criminal offence committed because of another person's race, colour, religion, national or ethnic origin, disability, gender, sexual orientation or gender identity. Such conduct is to be considered as an aggravating circumstance.²⁵⁴

When a criminal offence of physical injury is committed as a hate crime it is always prosecuted ex officio and the sanction is more severe.²⁵⁵ But it is not a hate crime when a victim is attacked because of her association to a person with certain characteristics (e.g. the non-Roma wife of a Roma person would not be considered a victim of a hate crime although her association with her Roma husband is the only motive for an attack).²⁵⁶

The criminal offence of discrimination, a crime subject to public prosecution²⁵⁷ and punishable by up to three years of imprisonment, is defined as denying, limiting or setting conditions to the right to acquisition of goods or services, employment and promotion, or giving benefits, because of one's race, ethnic belonging, colour, gender, language, religion, national (ethnic) origin (...) age, disability and sexual orientation.²⁵⁸ A criminal offence, prosecuted by the State Attorney's Office, following a victim's application and punishable by up to three years of imprisonment, is also persecution of individuals or organizations because of their pleadings for equality.²⁵⁹

Harassment in employment (insulting, humiliating, abusing or harassing someone in any other way) is a criminal offence, punishable by up to two years of imprisonment, when it impairs the health of a victim.²⁶⁰

²⁵¹ A natural person entrusted with certain duties in a legal entity or a person authorised to act on behalf of the legal entity.

²⁵² Article 6 of the Misdemeanour Act, Official Gazette 107/2007.

²⁵³ Official Gazette 125/2011, 144/2012, the law has been in force since 1 January 2013.

²⁵⁴ Article 87(21) of the Criminal Code.

²⁵⁵ Articles 117(2), 118(2) and 119(29) of the Criminal Code.

²⁵⁶ Public Attorney Office in Zagreb, case no. Ko-DO-1204/13.

²⁵⁷ In the Croatian legal system, criminal offences are in general subject to public prosecution. Exceptionally, for certain criminal offences, it may be prescribed by statute that criminal proceedings shall be instituted by a private charge (*privatna tužba*), or that the State Attorney's Office shall institute criminal proceedings following a victim's application (*prijedlog za progon*).

²⁵⁸ Article 125(1) of the Criminal Code.

²⁵⁹ Article 125(2) of the Criminal Code.

²⁶⁰ Article 133. of the Criminal Code.

b) Ceiling and amount of compensation

There is no ceiling in the legislation on the maximum amount of compensation that can be awarded. However, in 2002 the Supreme Court of the Republic of Croatia adopted guiding criteria for non-pecuniary damage (physical and mental pain, fear, mental pain caused by the death of a spouse or child, etc.) and the courts use them as guidelines in all cases when they are deciding on non-pecuniary damage. The law and the Supreme Court's criteria do not provide for the rule that compensation awarded should be effective, proportionate and dissuasive.

For example, in a case where a local hospital refused to send an ambulance to a Roma settlement for a Roma mother who needed medical assistance in giving birth and the baby died as a result of a lack of medical help, the mother was awarded the amount of HRK 200 000 (EUR 26 666) as non-pecuniary damages, which is the maximum amount established by the Supreme Court's guiding criteria.²⁶¹

c) Assessment of the sanctions

The rules on compensation are narrower than those established by the directives because, without any frames fixed by the national law other than those of general nature (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), courts do not take into consideration whether a particular amount of compensation in a particular case of discrimination would be an effective, proportionate and dissuasive sanction. These rules significantly reduce the scope and nature of circumstances that the court has to take into account. It is up to the court whether it interprets 'objective of compensation' in accordance with the established standards of effective, proportionate and dissuasive sanctions.

The Ombudsperson, in her report for 2014, noticed that sanctions in misdemeanour cases do not have a preventive effect. Misdemeanour judges, as a rule, mitigate sentences set up by law so the usual sentence is between EUR 40 and EUR 400. The severity of the offence, circumstances and consequences are often ignored. Sanctions are mitigated even when the act of discrimination is done publicly (e.g. through a social network or at a public meeting), when there are more victims and when the victim is especially vulnerable.²⁶²

²⁶¹ Supreme Court decision no. Rev 1261/08-2 of 16 February 2010 and Supreme Court guiding criteria for non-pecuniary damage: <http://www.iusinfo.hr/UsefulDocs/Content.aspx?SOPI=DDHR20110111N53>.

²⁶² Ombudsperson's Report for 2014, pages 23-24, <http://www.ombudsman.hr/index.php/hr/izvjesca/2014/finish/41-2014/562-izvjesce-pucke-pravobraniteljice-za-2014-godinu>.

7 BODIES FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43)

- a) Body/bodies designated for the promotion of equal treatment irrespective of racial/ethnic origin according to Article 13 of the Racial Equality Directive.

The Anti-discrimination Act grants the Ombudsperson powers as the central body for the elimination of discrimination and promotion of equal treatment irrespective of racial or ethnic origin.²⁶³ The Ombudsperson 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 Ombudsperson for Persons with Disabilities, and gender and sexual orientation, which is dealt with by the Gender Equality Ombudsperson.

The Ombudsperson's office deals with complaints of discrimination, gives information to persons who complain of discrimination about their rights and remedies, conducts surveys and gives opinions and recommendations. It collects and analyses data on discrimination. In its work it cooperates with non-governmental organisations. The Ombudsperson has the right, often used in practice, to join proceedings before courts in anti-discrimination cases as an intervenor on the behalf of the claimant.

- b) Status of the designated body/bodies – general independence

The Ombudsperson is established by the Constitution of the Republic of Croatia as a commissioner of the Croatian Parliament.

The independence of the Ombudsperson is stipulated in the Constitution²⁶⁴ and it is considered as independent by relevant stakeholders.

The Ombudsperson protects the constitutional and legal rights of citizens in their dealings with the state administration and bodies vested with public authority, with the Ministry of Defence, including the army and security services, and with local and regional self government, as well as protecting the right to local and regional self government.

By virtue of the entry into force of the Anti-discrimination Act on 1 January 2009, the Ombudsperson became the central equality body. In order to liaise and cooperate with similar bodies within the European Union, the Ombudsperson's Office was accepted as a member of EQUINET on 1 January 2009.

Professional and administrative services for the Ombudsperson are provided by the Office of the Ombudsperson.

Funds necessary for the functioning of the Office of the Ombudsperson are apportioned from the annual state budget. Its total budget for the year 2014 was EUR 1 187 697 and it employs 33 persons.

The Ombudsperson has three deputies. The Ombudsperson and his deputies are elected by the Croatian Parliament for a term of eight years with the possibility of reappointment.²⁶⁵ One of the deputies is in charge of discrimination issues.

The specialist body for the promotion of rights of persons with disabilities is the Disability Ombudsperson, established in 2008 as an independent state institution reporting to the Parliament.²⁶⁶ Its activities in fighting discrimination on the grounds of disability are:

²⁶³ Article 12(1) of the Anti-discrimination Act.

²⁶⁴ Article 93 of the Constitution of the Republic of Croatia.

²⁶⁵ <http://www.ombudsman.hr/index.php/en/about-us/about-the-ombudsman-2>.

²⁶⁶ Disability Ombudsman Act (Official Gazette 107/2007, 125/2011, 20/2012).

receiving complaints; advising complainants on their rights and obligations and possibilities of court and other protection, unless court proceedings have been initiated; investigating individual complaints and undertaking measures (issuing warnings, recommendations and requesting reports); warning the public on discriminatory practices; conducting mediation proceedings with the possibility of concluding out-of-court settlement; and submitting complaints on discrimination to the State Attorney's Office.²⁶⁷ The lack of sufficient funding prevents the Disability Ombudsperson from fully carrying out her mission, especially in terms of presence in different parts of Croatia, and raising awareness on anti-discrimination law and the UN Convention on the rights of persons with disabilities.²⁶⁸

The Gender Equality Ombudsperson,²⁶⁹ established in 2003, is an independent body in charge of combating discrimination in the field of gender equality and on the ground of sexual orientation. Her responsibilities are: receiving complaints regarding discrimination in the area of gender equality; providing assistance to persons who filed a complaint of sexual discrimination when instituting legal proceedings; investigation of individual complaints prior to the legal proceedings; conducting, with the consent of the parties involved, a mediation process with a possibility to reach an out-of court settlement; collecting and analysing statistical data on cases of sexual discrimination; conducting independent surveys concerning discrimination; publishing independent reports; and exchanging available information with corresponding European bodies. The Gender Equality Ombudsperson acts in an independent manner, monitors the enforcement of the Gender Equality Law and other regulations on gender equality and reports to the Croatian Parliament at least once a year.²⁷⁰

Since there are three specialised and independent ombudspersons (Disability Ombudsperson, Gender Equality Ombudsperson and Ombudsperson for Children), whose mandate could overlap with the mandate of the general Ombudsperson, which is the central national equality body, especially in the field of discrimination, data on discrimination from all ombudspersons are consolidated and published in the Ombudspersons' report. Ombudspersons forward each other received complaints if they fall into the mandate of other persons, or work together on the same cases.²⁷¹

c) Grounds covered by the designated body/bodies

Disability is covered by the Disability Ombudsperson, gender and sexual orientation by the Gender Equality Ombudsperson, and all other grounds (race or ethnic origin or colour, language, religion, political or other belief, national or social origin, property, trade union membership, education, social status, marital or family status, age, health condition, genetic heritage) are covered by the Ombudsperson.

d) Competences of the designated body/bodies – and their independent exercise

In connection with discrimination based on grounds covered by the Ombudsperson, her competences are as follows:

1. to receive reports from all natural and legal persons of reasonable suspicions of discrimination;

²⁶⁷ http://www.posi.hr/index.php?option=com_joomdoc&view=docman&gid=131&task=cat_view&Itemid=194.

²⁶⁸ http://www.posi.hr/index.php?option=com_joomdoc&view=docman&gid=132&task=cat_view&Itemid=192.

²⁶⁹ Gender Equality Act (Official Gazette 82/2008, 125/2011, 20/2012, 138/2012).

²⁷⁰ <http://www.prs.hr/index.php/english/basic-info>.

²⁷¹ Ombudsperson Report for 2014, page 168:

<http://www.ombudsman.hr/index.php/hr/izvjesca/2014/finish/41-2014/562-izvjesce-pucke-pravobranaiteljice-za-2014-godinu>.

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 or 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 or 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 Ombudsperson has the power to provide independent assistance to victims, conduct independent surveys and publish independent reports, and issue recommendations on discrimination issues.²⁷² It is a unique institution, together with specialised ombudspersons, respected by the general and professional public for its independence and competence.

The other three ombudspersons (for disability, for children and for gender equality) have similar competences in connection with discrimination based on grounds covered by them.

These competences are effectively exercised by all three ombudsperson in an independent manner.

e) Legal standing of the designated body/bodies

In Croatia the designated bodies have legal standing to bring discrimination complaints (on behalf of identified victim(s)) and to intervene in legal cases concerning discrimination.

The ombudspersons are authorised to file criminal charges for discrimination to the competent state attorney's office.²⁷³

Further, the ombudspersons can join the proceedings in anti-discrimination cases as an intervenor on the behalf of the claimant²⁷⁴ and they have done so in several cases.

f) Quasi-judicial competences

In Croatia the bodies are not quasi-judicial institutions. Their decisions are not binding nor do they have the power to impose sanctions.

g) Registration by the bodies of complaints and decisions

In Croatia the bodies register the number of complaints and decisions (by ground, field, type of discrimination, etc.). These data are available to the public.

²⁷² Article 12(2) of the Anti-discrimination Act.

²⁷³ Article 12(2)(6) of the Anti-discrimination Act; Article 13 of the Disability Ombudsman and Article 23 of Gender Equality Ombudsman.

²⁷⁴ Article 21 of the Anti-discrimination Act.

Those data are available to the public through the Ombudsperson's annual reports published on its website: ombudsman.hr.

h) Roma and Travellers

The Ombudsperson's office gives special attention to Roma issues. In the Ombudsperson's report for 2014²⁷⁵ a whole chapter in the report is dedicated to problems faced by the Roma population.

According to the Ombudsperson's report for 2014, Roma face discrimination in the field of employment, education, healthcare, housing, access to goods and services; and social security. Obstacles to their integration are language, segregation in housing as well as lack of statistical data. Further, Roma very often face a problem of unsolved citizenship status, which is a precondition for health insurance, legalisation of their houses, etc. Almost all Roma live in relative poverty and 9 % of Roma live in absolute poverty. Especially problematic issues are education (most of them have no education sufficient for employment) and housing (e.g. 46.5 % of Romani households do not have drinkable water in their home, 18.7 % do not have kitchen and 12.4 % of Romani households do not have electricity).

²⁷⁵ <http://www.ombudsman.hr/index.php/hr/izvjesca/2014/finish/41-2014/562-izvjesce-pucke-pravobranaiteljice-za-2014-godinu>.

8 IMPLEMENTATION ISSUES

8.1 Dissemination of information, dialogue with NGOs and between social partners

Dissemination of information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)

All four Ombudspersons are very active in this field.

The most publicly visible is the Ombudsman's office as a central body for protection against discrimination. Information about discrimination in general and work of the Ombudsperson's office are brought to the attention of the persons concerned through media (TV, radio, internet site, Twitter, Vimeo, etc.). Those means, especially the Ombudsperson's internet site, could be used more to disseminate more detailed information on various forms of discrimination and protection mechanisms. In that respect, internet sites of the Gender Equality Ombudsperson and Disability Ombudsman are much more informative and useful for potential victims of discrimination.²⁷⁶

Further, all ombudspersons were active in organising seminars, roundtables and training (e.g. a seminar on discrimination for national minorities' youth; law students; non-governmental organisations, etc.).

In spite of all the activities, the Ombudsperson noted in her report for 2014 (as in previous reports) that individuals still do not have enough information about their rights and protection against discrimination.²⁷⁷

The Government Office for Human Rights and National Minorities has undertaken some measures in this direction. In 2013, they published the brochure "How to Collect Data on Equality"²⁷⁸ and together with the Ombudsman's office, the brochure 'Guidelines for Identifying Cases of Discrimination'.²⁷⁹ As a body competent for the implementation of the Constitutional Law on Rights of National Minorities it has various activities in connection with national minorities and especially Roma.

Measures to encourage dialogue with NGOs with a view to promoting the principle of equal treatment (Article 12 Directive 2000/43 and Article 14 Directive 2000/78)

Article 15 of the Anti-discrimination Act states that the Ombudsperson has to consult social partners, civil society organisations dealing with human rights, organisations dealing with the protection of the rights of various marginalised and minority groups, churches and religious organisations as well as the National Council for National Minorities.

A series of meetings/consultations dedicated to different grounds of discrimination were held with different NGOs and human rights institutions. According to Article 15, the Ombudsperson has to consult the stakeholders mentioned when submitting his or her Annual Report to the Croatian Parliament, as well as when drafting his or her opinions and recommendations.

In 2014, the Ombudsperson continued its activities according to the cooperation agreements with five civil society organisations on the basis of which direct cooperation

²⁷⁶ <http://www.prs.hr/>.

²⁷⁷ <http://www.ombudsman.hr/index.php/hr/top-stories/rad-ureda/517-izvjesce-pucke-pravobraniteljice-za-2014-godinu>.

²⁷⁸ http://www.uljppnm.vlada.hr/images/kako_prikupljati.pdf.

²⁷⁹ http://www.uljppnm.vlada.hr/images/smjernice_za_prepoznavanje.pdf.

between the Ombudsperson and civil society organisations was established in the fight against discrimination, and five civil society organisations have become the Ombudsperson's contact point at the regional level.²⁸⁰

Measures to promote dialogue between social partners to give effect to the principle of equal treatment within workplace practices, codes of practice, workforce monitoring (Article 11 Directive 2000/43 and Article 13 Directive 2000/78)

There is no any permanent structure specifically put in place for social dialogue.

Addressing the situation of Roma and Travellers

The Government Office for Human Rights and Rights of National Minorities²⁸¹ is a specific body appointed on the national level to address the issues facing national minorities. The head of that office is also the head of the Working Group for Monitoring the Action Plan for the Decade of Roma Inclusion 2005 to 2015. In 2012 the office began the process of reviewing the National Programme for Roma (from 2003) for compliance with the relevant EU strategic documents. The main problem in the process of evaluation of the implementation of the programme has been the lack of data needed for establishing the results of the implemented measures. The other obstacle to implementation of the programme has been indifference of local government bodies competent to implement numerous important measures.²⁸²

8.2 Compliance (Article 14 Directive 2000/43, Article 16 Directive 2000/78)

a) Mechanisms

The Croatian legal system is based on the general principles '*lex specialis derogate legi generali*' and '*lex posterior derogate legi priori*'.

A contract that is contrary to the Constitution, mandatory rules or the morals of society is null and void.²⁸³ Contracts can be subject to judicial review if the case is brought before court. When a contract, or part of a contract, is in conflict with the principle of equal treatment, a party to that contract is entitled to initiate court proceedings requesting the court to rule the contract or part of the contract null.

Internal rules of undertakings and the rules governing independent occupations, professions, workers' associations or employers' associations that conflict with the principle of equal treatment can be subject to a review of constitutionality and legality before the Constitutional Court if they can be considered regulations, i.e. if they are of a general nature and adopted by a competent body of state or local authority or a legal person with public authority.

It is not always clear if a rule would be considered a regulation or not (e.g. the Constitutional Court found itself competent to review the legality of the articles of association of the Architects' Association, but not to review the legality of the code of ethics of the same organisation).²⁸⁴ If internal rules or rules governing various

²⁸⁰ After a public call to all human rights organisations dealing with discrimination issues, five organisations from different parts of Croatia were selected. They are well-known independent human rights organisations with years of experience in defending human rights.

²⁸¹ In April 2012, the Government decided to merge the previously existing Office for Human Rights and the Government Office for National Minorities.

²⁸² Report on the Implementation of the Action Plan for the Implementation of the National Programme for Roma for 2013: http://www.uljppnm.vlada.hr/images/fin_izvjesce_ap_nsusur_za_2013.pdf.

²⁸³ Article 322 of the Civil Obligations Act.

²⁸⁴ Constitutional Court decision number U-II/544/2001 of 1 June 2006.

associations are not considered regulations, they may be subject to judicial review as contracts.

b) Rules contrary to the principle of equality

The general Constitutional anti-discrimination clause has an open list of grounds of discrimination and if there are any laws contrary to the principle of equality, it is primarily for the Constitutional Court to declare their non-conformity with the Constitution.

In most cases laws, regulations and rules seem to be non-discriminatory and neutral, but their interpretation and implementation may result in discriminatory treatment (e.g. whether definition of the hate crime in the Criminal Code covers discrimination by association). Sometimes the lack of regulation can lead to discrimination (e.g. lack of regulation on education of children with disabilities). Still, some laws are at least problematic from the anti-discrimination perspective (e.g. provisions of the Family Act regulating the divesting of legal capacity of persons with disabilities;²⁸⁵ the Act on Aliens does not enable same-sex partners to get residence permit; the Asylum Act does not extend protection of an asylum seeker to his or her same-sex partner; provisions of the Health Insurance Act in connection with the reimbursement of transportation costs and their unfavourable impact on persons with disabilities). Provisions of the Family Act regulating the divesting of persons with disabilities' legal capacity proved to be problematic in implementation and the system was object of several cases before the European Court of Human Rights.²⁸⁶ The Family Act allows the partial or total deprivation of a person's legal capacity "on account of mental illness or for other reasons" and it refers to any person who "is unable to look after his or her own needs, rights and interests, or presents a risk to the rights and interests of others". Total deprivation of a legal capacity is much higher (89%)²⁸⁷ than the use of partial deprivation. In practice, persons with mental or intellectual disabilities are most often totally deprived of their legal capacity without taking into account specific circumstances of an individual case. Decisions are based on psychiatric opinions, often made after only one short visit to the person concerned, and without consideration of possible alternatives or other, less restrictive measure.

²⁸⁵ Family Act (Official Gazette 116/03., 17/04., 136/04., 107/07., 57/11., 61/11. i 25/13) was in force till September 2014, when new Family Act (Official Gazette 75/14) entered into force. In January 2015, the latter was found unconstitutional by the Constitutional Court, and the previous (re)entered into force.

²⁸⁶ *Ivinović v. Croatia*, application no. 13006/13, judgment of 18 September 2014; *X and Y v. Croatia*, application no. 5193/09, judgment of 3 November 2011; *M.S. v. Croatia*, application no. 36337/10, judgment of 25 April 2013.

²⁸⁷ Mental Disability Advocacy Center, *Legal Capacity in Europe*, October 2013.
http://mdac.info/sites/mdac.info/files/legal_capacity_in_europe.pdf

9 COORDINATION AT NATIONAL LEVEL

The Government Office for Human Rights and Rights of National Minorities has been responsible for the practical coordination of anti-discrimination activities and communication with experts and civil society stakeholders. The office is a governmental office, responsible directly to the Government of the Republic of Croatia.²⁸⁸

In 2008, the Croatian Government adopted the Anti-discrimination National Plan for 2008-2013. It has not brought the expected results. It detected six main areas of concern: family and social care; education; employment; health; national minorities (with the special accent on Serbian returnees and Roma); and foreigners. It proposes measures for each of them. In addition it dealt with necessary anti-discrimination legislation measures, measures in the field of legal aid and promoting tolerance and awareness raising. The weakest part of the document was the analysis of the existing situation because of the lack of information and indicators required for defining measures and goals as well as for monitoring implementation. The choice of priorities was not clear (e.g. lots of space is devoted to the rights of children as victims of domestic violence or their rights in the welfare system as well as to the rights of prisoners without giving any reason why they are a targeted group in the context of discrimination). The measures were often too wide and unclear (e.g. 'equalisation of the status and rights of person with disabilities in various systems').²⁸⁹

In September 2014, the working group for the Anti-discrimination National Plan for 2014-2018 held its first meeting.²⁹⁰

In April 2013 the Croatian Government adopted the Action Plan for the Implementation of the National Roma Inclusion Strategy for the period 2013-2015 with measures in the fields of education (e.g. 'training of teachers and expert associates in primary schools with the aim of increasing the quality and efficiency of the education of Roma children), health (e.g. 'to continuously implement visits of attending services in Roma settlements, and to increase the standard of the attending service), employment (e.g. 'to empower and motivate Roma capable of work for inclusion in the labour market and continuously point to the need to acquire and maintain working habits; 'to explore the professional plans of pupils in the final grade of primary school) and housing (e.g. 'creation, updating and implementation of county programmes consisting of activities and measures for the improvement of the space and environment on locations inhabited by Roma people).²⁹¹

²⁸⁸ Article 27 of the Act on the Government of the Republic of Croatia, Official Gazette 150/2011 and 119/2014.

²⁸⁹ http://www.uljppnm.vlada.hr/index.php?option=com_content&view=article&id=113&Itemid=83.

²⁹⁰ http://www.uljppnm.vlada.hr/index.php?option=com_content&view=article&id=385:sastanak-radne-skupine-za-izradu-nacionalnog-plana-za-borbu-protiv-diskriminacije-&catid=2:novosti.

²⁹¹ <http://www.uljppnm.vlada.hr/images/23102013/action%20plan%20for%20the%20implementation%20of%20nris%202013-2015.pdf>.

10 CURRENT BEST PRACTICES

Disability Ombudsperson

The Croatian Disability Ombudsperson is a good example of national equality body. Her office is very active in every task designated to that office, from effective and timely assistance to victims of discrimination to participation in legislative procedures by giving detailed, objective and well-reasoned opinions, recommendations, proposals and reports to organising relevant and useful roundtables and public discussions (e.g. roundtable on hate crime against persons with disability).

Gender Equality Ombudsperson

The work of the Gender Equality Ombudsperson's office, especially of her deputy, through their analysis of the courts' case law and their own documents (decisions, recommendations, etc.) and active participation in public discussions (seminars, roundtables, conferences), contributed significantly to the general understanding of various forms of discrimination, protection mechanisms and EU anti-discrimination legislation.

11 SENSITIVE OR CONTROVERSIAL ISSUES

11.1 Potential breaches of the directives (if any)

The Ombudsperson's report for 2014 and its analysis of cases before the courts show that anti-discrimination protection does not work in practice. In 2014, 148 anti-discrimination civil proceedings (including labour disputes) were pending before Croatian courts. In the same period not a single judgment was brought in favour of a victim of discrimination.

In misdemeanour cases sanctions imposed by courts are neither effective nor proportionate nor dissuasive, since misdemeanour judges, as a rule, mitigate sentences set up by law (from EUR 684.93 to EUR 41 095.89) so the usual sentence is between EUR 40 and EUR 400.²⁹²

Victims of discrimination are reluctant to use anti-discrimination remedies for several reasons. As the ombudspersons' report and the case law show, the chances for success are very low. Proceedings before the Croatian courts rarely satisfy the standards of fairness in respect of reasonable time – the proceedings usually last so long that remedies cannot be considered effective. For example, although the law clearly states that employment disputes should be decided in the first instance in six months, as a rule such proceedings in courts in bigger cities last several years.

Claimants face difficulties in proving discrimination since the rule on burden of proof is not always implemented.

Case law of municipal and county courts, the main source of judicial interpretation of often very wide legal provisions, is not published and therefore unavailable to potential claimants.

The case law is still not clear regarding the issue of intent as an element of discrimination and judges are reluctant to find discrimination if the discriminator did not show any intention to violate a victim's rights.²⁹³

The Anti-discrimination Act regulates that in anti-discrimination civil cases, appeal on points of law (*revizija*), appeal to the Supreme Court, is always admissible. The aim of that provision is to provide for protection of the Supreme Court in anti-discrimination cases due to the importance of equality and the need to provide consistent judicial interpretation of the anti-discrimination provisions. In spite of that provision, the Supreme Court has in 2014 decided in six anti-discrimination cases (and the total number of anti-discrimination cases in that period before that court was seven), in which the appeals on points of law were filed, that appeals on points of law were inadmissible. According to the Supreme Court, appeal on points of law is admissible in anti-discrimination cases only when the value of the case is above the statutory threshold, as in other cases.²⁹⁴

11.2 Other issues of concern

The situation of the Roma is still very problematic in spite of programmes and strategies aimed to improve their situation. The lack of data disaggregated by ethnicity is the

²⁹² Pages 18 to 26 of the Ombudsperson's Report for 2014.

²⁹³ Page 21 of the Ombudsperson's Report for 2014:
<http://www.ombudsman.hr/index.php/hr/izvjesca/2014/finish/41-2014/562-izvjesce-pucke-pravobranaiteljice-za-2014-godinu>.

²⁹⁴ The appeal on points of law is always admissible in cases where the value of the claim is over 200,000 kunas (EUR 26,666).

obstacle for design and implementation of positive action and other measures for the Roma.

In the field of education, the drop-out rate and illiteracy rate are still rather high, there is still a significant number of Roma-only classes (as a matter of fact, the number of Roma-only classes has increased), and the measures to help children improve their grasp of the Croatian language do not have satisfying results. The existence (and increased number) of Roma-only classes is wide-spread practice caused by several factors. Unlike non-Roma children, only 20% of all Roma children aged between 0–6 years are accessing any kind of preschool education or preschool program, including preparatory pre-primary programs. Even when they do participate in such a program, it is usually in a segregated Roma-only group. This further leads to poor levels of progress and attainment, grade failures and repeats at crucial age stages, poor pupil motivation and low teacher expectations. After-school programs for Roma children, funded by the Ministry of Education, are often unavailable due to a lack of classroom space and available teaching staff. There is a lack of teacher encouragement as well as a lack of challenging curricula. Teachers rarely have intercultural competences and racist bullying remains unaddressed. There is a lack of monitoring and evaluation of the quality and equality aspects of education. The premature drop-out rate from the education system remains very high in respect of Roma children.

Due to such a situation, schools' staff find it easier to work with Roma children separately. Education in classes with many Roma children is considered of inferior level ("good enough for Roma but not good enough for non-Roma children").

The Roma are still segregated to a great extent in the area of housing. Most of them still live in areas on the outskirts of big cities, in settlements that lack the most basic facilities. Great numbers of Romani households do not have drinkable water in their home, 18.7 % do not have a kitchen and 12.4 % Romani households do not have electricity.²⁹⁵

A significant number of Roma people are still unable to solve their citizenship status. The still existing problem of citizenship on the one hand and race or ethnic origin on the other, is the result of the dissolution of the Socialist Federative Republic of Yugoslavia (SFRY), which consisted of six republics. The Croatian legislation regarding citizenship, following the independence in 1991, had adverse consequences for persons of non-Croatian ethnic origin living in Croatia (most of them Serbs and Roma).

In the (federal) Yugoslavia, its citizens had both federal citizenship and republican citizenship. Since the latter was of almost no legal consequence in the federal state, people were often unaware of their republican citizenship and did not care if they had a citizenship of the republic where they lived. After Croatia's independence, persons who did not have the Croatian republican citizenship became aliens in Croatia. While ethnic Croats in the same situation were granted citizenship (Croatian Citizenship Act provides that any member of the Croatian People (ethnic Croats) will be considered to be a Croatian citizen), no automatic or facilitated grant of Croatian citizenship was provided for other ex-SFRY citizens who were permanent residents in Croatia; they had to fulfil all the numerous requirements for citizenship as real foreigners.²⁹⁶

That legislation had a special negative effect on Roma since they faced a problem of fulfilling the residence requirement (minimum five years of uninterrupted permanent residence) and/or "proficiency in the Croatian language and Latin script" requirement

²⁹⁵ Page 34 of the Ombudsman Report for the Year 2014;
<http://www.ombudsman.hr/index.php/hr/izvjesca/2014/finish/41-2014/562-izvjesce-pucke-pravobraniteljice-za-2014-godinu>.

²⁹⁶ <http://www.unhcr.org/46e660582.pdf>.

and/or “attachment to the Croatian culture” requirement and/or “respect for the legal system” requirement.²⁹⁷

Additionally, the persons, who could not fulfil all the requirements to obtain temporary or permanent residence in the new State of Croatia, were erased from the register of domicile; among them were persons who did not acquire a nationality of another successor State of the SFRY and were thus stateless. Most of them were Roma.

According to UNHCR, in 2011 there were (still) 2,886 stateless or persons of undetermined citizenship in Croatia, the majority of whom are Roma, and the problem of those persons “remains largely unaddressed” by the Croatian authorities.²⁹⁸

²⁹⁷ See Report on obstacles facing the Roma minority of Croatia in acquiring citizenship and accessing citizenship, housing, health and social assistance, by Ina Zoon, Council of Europe/OSCE-ODIHR/European Commission Project “Roma under the Stability Pact”, September 2002.

²⁹⁸ UNHCR’s intervention as a third party in the EctHR case of Hoti v. Croatia (application number 63311/14).

12 LATEST DEVELOPMENTS

12.1 Legislative amendments

In August 2014, the Same-sex Life Partnership Act (SSLPA), entered into force. The act regulates the legal status of both registered and unregistered same-sex relationships.²⁹⁹

The Act on the Vocational Rehabilitation and Employment of Disabled Persons, as amended in 2014, introduced an obligation for all employers with more than 20 employees, in both public and private sectors, to employ a certain number of persons with disabilities.³⁰⁰

12.2 Case law

Municipal and county courts do not publish their case law and even the Ombudsperson's office has access to only a limited number of their decisions.³⁰¹ In 2014, the Supreme Court of the Republic of Croatia brought only eight decisions in anti-discrimination cases:³⁰² in seven cases it dismissed an appeal on points of law as inadmissible and in one case it rejected an appeal on points of law as unfounded and confirmed lower courts' judgments establishing that the claimant had not been discriminated against.³⁰³

Name of the court: Supreme Court of the Republic of Croatia

Date of decision: 15 November 2014

Name of the parties: *N.S. v. D. B. and Zavod za hitnu medicinu B.*

Reference number: Revr.1334/12-2

Address of the webpage:

http://www.iusinfo.hr/CaseLaws/Content.aspx?SOPI=VSRH2012RevrB1334A2&Doc=VRH_SUD_HR

Brief summary: Claimants' appeals on points of law were found inadmissible because of lack of the arguments on the importance of the question for the uniform application of law and equality before the law.

The Anti-discrimination Act regulates that in anti-discrimination civil cases, appeals on points of law (*revizija*), and appeal to the Supreme Court, are always admissible. The aim of that provision is to provide for the protection of the Supreme Court in anti-discrimination cases due to the importance of equality.

Appeal on points of law is regulated by the Civil Procedure Act that makes a difference between appeal on points of law (*revizija*) and the extraordinary appeal on points of law (*izvanredna revizija*), the latter being admissible very rarely and only in very exceptional situations (different case law on the same legal issue; second-instance decision not following existing Supreme court case law; when it is necessary to challenge existing Supreme court case law due to the ECtHR or ECJ decision) and limited by complicated rules on formality (the exact question should be formulated together with the arguments on the importance of that question for the uniform application of law and equality before the law). Since in anti-discrimination cases the right to appeal on points of law is regulated by *lex specialis* and not the Civil Procedure Act, the Supreme Court considers those appeals on points of law to be extraordinary appeals on points of law. Such a

²⁹⁹ Official Gazette 92/2014; see Sections 0.2 and 4.5.

³⁰⁰ Official Gazette 157/2013, 152/2014; see Section 5.

³⁰¹ Ombudsperson's Report for 2014, page 18.

³⁰² <http://sudskapraksa.vsrh.hr/supra/SearchResultsPublic.asp>.

³⁰³ In this case the appeal on points of law was admissible because the claimant had asked for damages in the amount of 546,800 kunas; the appeal on points of law is always admissible in cases where the value of the claim is over 200,000 kunas (EUR 26,666).

practice is, in view of the author, contrary to the purpose and meaning of Article 23 of the Anti-discrimination Act and prevents the development of anti-discrimination case law.

The Supreme Court brought the same decisions in six other anti-discrimination cases: Revr.1273/2012 of 04 November 2014; Revr.284/2014 of 15 October 2014; Revr.1109/2013 of 14 October 2014; Revr.1369/2013 of 30 September 2014; Revr.1330/2013 of 20 August 2014; and Revr.715/13 of 15 October 2014, while the total number of the Supreme Court decisions in anti-discrimination cases in the same period was eight.

Name of the court: Zagreb Municipal Criminal Court

Date of decision: 13 October 2014

Name of the parties: Š.Š. v. S.K. and I.M.

Reference number: Ko.470/14

Address of the webpage: n/a

Brief summary: On 9 June 2013 in Zagreb, Š.Š., who is Roma and his non-Roma wife M.Š., were verbally and physically attacked on street by S.K. and I.M. The attack was obviously racially motivated. The Public Attorney Office in Zagreb indicted perpetrators for the crime against Š.Š. (but not for the crime against M.Š.)³⁰⁴ The court found S.K. and I.M. guilty for the crimes of threat and bodily injury, motivated by hatred, against Š.Š., and sentenced them to 18 months' imprisonment. Decision is not final.

Anti-discrimination cases brought by Roma are still so rare that no pattern or trend can be observed. Rare cases have been brought before the courts with the help of NGOs (e.g. the Centre for Peace Studies and the European Roma Rights Centre). These concerned discrimination in education, discrimination in access to healthcare and discrimination by the police. The reason for such a small number of cases of discrimination against the Roma brought before courts may be the inefficiency of the free legal aid system and the inability of NGOs to finance such cases.

³⁰⁴ According to the Public Attorney's interpretation of criminal law, discrimination by association is not covered by it and M.Š. as a non-Roma person cannot be a victim of a hate crime.

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

Please list below the **main transposition and anti-discrimination legislation** at both federal and federated/provincial level.

Country: Croatia

Date: 1 January 2015

Title of legislation (including amending legislation)	Title of the law: Anti-discrimination Act Abbreviation: ADA Date of adoption: 09 July 2008 Entry into force: 01 January 2009 Latest amendments: 19 October 2012 Web link: http://www.ombudsman.hr/index.php/hr/propisi Grounds covered: race or ethnic origin 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, sexual orientation
	Civil/administrative/misdemeanour law
	Material scope: All fields
	Principal content: Prohibition of direct and indirect discrimination, harassment, sexual harassment; reasonable accommodation; exceptions; segregation; encouragement to discriminate; victimisation; anti-discrimination proceedings; specialised body; misdemeanours
Title of legislation (including amending legislation)	Title of the law: Same-sex Life Partnership Act Abbreviation: SSLPA Date of adoption: 15 July 2014 Entry into force: 05 August 2014 Latest amendments: - Web link: http://www.zakon.hr/z/732/Zakon-o-%C5%BEivotnom-partnerstvu-osoba-istog-spola Grounds covered: same-sex life partnership, sexual orientation and gender identity
	Civil
	Material scope: All fields
	Principal content: Prohibition of direct and indirect discrimination, definitions and legal consequences of formal and informal same-sex partnerships
Title of legislation (including amending legislation)	Title of the law: Labour Act Abbreviation: LA Date of adoption: 15 July 2014 Entry into force: 07 August 2014 Latest amendments: - Web link: http://www.zakon.hr/z/307/Zakon-o-radu Grounds covered: race or ethnic origin 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, sexual orientation (it refers to ADA)
	Civil
	Material scope: employment
	Principal content: general act on employment
Title of legislation	Title of the law: Act on Professional Rehabilitation and Employment of Persons with Disability

(including amending legislation)	Abbreviation: APREPD
	Date of adoption: 13 December 2013
	Entry into force: 01 January 2014
	Latest amendments: 22 December 2014
	Web link: http://www.posi.hr/index.php?option=com_content&view=article&id=269:zapoljavanje-i-rad&catid=112:zakonodavstvo-rh&Itemid=186
	Grounds covered: disability
	Civil and administrative
	Material scope: employment
	Principal content: professional rehabilitation, employment and work of persons with disability

ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Country: Croatia

Date: 1 January 2015

Instrument	Date of signature (if not signed please indicate)	Date of ratification (if not ratified please indicate)	Derogations. reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
European Convention on Human Rights (ECHR)	6.11.1996	5.11.1997	no	yes	yes
Protocol 12, ECHR	6.3.2002	3.2.2003	no	yes	yes
Revised European Social Charter	6.11.2009	-	N.A	N.A	N.A
International Covenant on Civil and Political Rights	succession	12.10.1992	no	yes	yes
Framework Convention for the Protection of National Minorities	6.11.1996	11.10.1997	no	N.A	yes
International Covenant on Economic, Social and Cultural Rights	succession	12.10.1992	no	N.A	yes
Convention on the Elimination of All Forms of Racial Discrimination	succession	12.10.1992	no	no	yes
Convention on the Elimination of Discrimination Against Women	succession	9.9.1992	no	no	yes
ILO Convention No. 111 on Discrimination	succession	8.10.1991	no	N.A	yes
Convention on the Rights of the	succession	12.10.1992	no	N.A	yes

Instrument	Date of signature (if not signed please indicate)	Date of ratification (if not ratified please indicate)	Derogations. reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
Child					
Convention on the Rights of Persons with Disabilities	30.3.2007	15.8.2007	no	no	yes

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