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Non-discrimination

Croatia

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EUROPEAN COMMISSION

Directorate-General for Justice and Consumers
Directorate D — Non-discrimination and Roma coordination
Unit JUST/D1

*European Commission
B-1049 Brussels*

Country report

Non-discrimination

Croatia

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Reporting period 1 January 2016 – 31 December 2016

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Luxembourg: Publications Office of the European Union, 2017

PDF ISBN 978-92-79-68957-4

doi:10.2838/547

DS-02-17-565-3A-N

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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.

According to the 2011 census, 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 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. 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 (Međimirska 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 still widespread. Education in classes with many Roma children is considered of an inferior level. Some progress has been made regarding the position of the Roma in Croatia, however, members of the Roma minority still face discrimination on an everyday basis in all areas, but particularly education, employment, housing and healthcare. Another widespread problem is that a significant number of Roma people are still unable to resolve their citizenship status.

In August 2014, the Same-sex Life Partnership Act, entered into force. The Act regulates the legal status of both registered and unregistered same-sex relationships.^{2,3} The Act on professional rehabilitation and employment of persons with disability, 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 people with disabilities.⁴

Given that in 2016 Croatia remained a transit country for migrants⁵ heading to Western Europe, as a part of the so-called Balkan route, questions on the rights of migrants have been raised. However, no known cases of discrimination have been brought to the courts as yet. Migrants are not treated differently under anti-discrimination legislation and should benefit equally with nationals from anti-discrimination law enforcement and implementation, including in the field of education. The People's Ombudsperson deals with discrimination against migrants just as with all other issues.

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'.⁶

The main legislation dealing with discrimination comprises:

- the Anti-discrimination Act,⁷ which 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

¹ European Court of Human Rights (ECtHR), *Oršuš and Others v Croatia* [GC], No.15766/03, 16 March 2010.

² Official Gazette 92/2014.

³ In February 2016 the European Court of Human Rights issued a decision in *D.P. v. Croatia*, in which it determined that D.P. had been discriminated against on the basis of her sexual orientation in obtaining residence permit in Croatia; European Court of Human Rights, *D.P. v. Croatia*, no. 68453/13, 23 February 2016.

⁴ Official Gazette 157/2013 and 152/2014.

⁵ For the purpose of the report the term migrants refer to non-EU citizens and stateless persons who are currently residing in the host country, including seekers of international protection and those who have been granted temporary international protection.

⁶ Article 14 of the Croatian Constitution; Official Gazette 56/1990, 135/1997, 113/2000, 28/2001, 76/2010 and 5/2014.

⁷ Official Gazette 85/2008 and 112/2012.

- family status, age, health condition, disability, genetic heritage, gender identity and expression and sexual orientation;
- the Gender Equality Act,⁸ which prohibits discrimination based on gender and the Same-sex Life Partnership Act, which prohibits discrimination based on a 'same-sex partnership' and 'sexual orientation';
 - the Labour Act,⁹ which 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.

3. Main principles and definitions

The Anti-discrimination Act 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 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. 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 Anti-discrimination Act 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 Anti-discrimination Act explicitly defines and prohibits victimisation.

The Anti-discrimination Act defines direct discrimination as treatment based on any of the prohibited grounds whereby a person is, has been, or could be placed in a less favourable position than other persons in a comparable situation, and indirect discrimination as a situation 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 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.

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.

⁸ Official Gazette 82/2008, 125/2011, 20/2012 and 138/2012.

⁹ Official Gazette 93/2014.

The Anti-discrimination Act 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 Anti-discrimination Act 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 will, 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 must 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 rules make 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 Anti-discrimination Act 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 Ombudsperson 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 Anti-discrimination 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 Ombudsperson powers as the central body for the elimination of discrimination and promotion of equal treatment irrespective of racial or ethnic origin. 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 remit of the Ombudsperson for Persons with Disabilities), discrimination against children (dealt with by the Ombudsperson for Children), and sex and sexual orientation (dealt with by the Gender Equality Ombudsperson).

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

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

7. Key issues

The Ombudsperson's report for 2016 and its analysis of cases before the courts show — just as the previous report did — that anti-discrimination protection does not work in practice. In 2016, 200 anti-discrimination civil proceedings (including labour disputes) were pending before Croatian courts. In the same period only one judgment found in favour of a victim of discrimination.¹⁰

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,

¹⁰ People's Ombudsperson (2016), *Ombudsperson's Report for 2016*: <http://ombudsman.hr/hr/component/jdownloads/send/76-izvjesca-2016/849-izvjesce-pucke-pravobraniteljice>.

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.¹¹

Victims of discrimination are reluctant to use anti-discrimination remedies for several reasons. The chances of success are very low. In 2016, 44 civil anti-discrimination cases were closed and discrimination was found in only one of them. 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 right.

In spite of the provision of the Anti-discrimination Act that in anti-discrimination cases appeal on points of law (*revizija*) is always admissible, most of the Supreme Court's decisions in discrimination cases are decisions to dismiss appeal on points of law as 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.

¹¹ People's Ombudsperson (2015), *Ombudsperson's Report for 2015*:
<http://ombudsman.hr/hr/component/jdownloads/send/67-2015/745-izvjesce-pp-2015-pdf>.

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.

Selon le recensement de 2011, la Croatie a une population de 4 284 889 habitants. La structure ethnique du pays s'établit 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.¹² L'existence (et le nombre croissant) de classes réservées aux Roms reste un phénomène courant. L'enseignement dans les classes comptant de nombreux enfants roms est considéré comme moins avancé. Si certaines avancées sont observées en ce qui concerne la situation des Roms en Croatie, il n'en reste pas moins que les membres de cette minorité restent confrontés au quotidien à une discrimination dans tous les domaines, et plus particulièrement dans ceux de l'enseignement, de l'emploi, du logement et des soins de santé. Le nombre considérable de personnes roms ne parvenant toujours pas à régler leur statut de citoyenneté pose également un problème d'envergure.

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.^{13,14} 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 travailleurs handicapés.¹⁵

Des questions relatives aux droits des migrants¹⁶ ont été soulevées du fait que la Croatie est restée en 2016 un pays de transit pour ceux qui veulent se rendre en Europe occidentale en empruntant la route dite des Balkans. Les juridictions n'ont toutefois été saisies à ce jour d'aucun cas connu de discrimination. En vertu de la législation antidiscrimination, les migrants ne font pas l'objet d'un traitement différent et devraient bénéficier sur pied d'égalité avec les ressortissants nationaux de l'application et de l'exécution de la loi antidiscrimination, y compris dans le domaine de l'enseignement. Le Médiateur de la République traite de la discrimination envers les migrants exactement comme de n'importe quelle autre problématique.

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.

¹² Cour européenne des droits de l'homme (CouEDH), *Oršuš et autres c. Croatie* [GC], n° 15766/03, 16 mars 2010.

¹³ Journal officiel 92/2014.

¹⁴ En février 2016, la Cour européenne des droits de l'homme a rendu dans l'affaire *D.P. c. Croatie* un arrêt dans lequel elle établit que D.P. a fait l'objet d'une discrimination fondée sur son orientation sexuelle dans le cadre de l'obtention d'un permis de séjour en Croatie; Cour européenne des droits de l'homme, *D.P. c. Croatie*, requête n° 68453/13, 23 février 2016.

¹⁵ Journal officiel 157/2013 et 152/2014.

¹⁶ Aux fins du présent rapport, le terme «migrants» désigne les citoyens de pays non membres de l'UE et les personnes apatrides séjournant actuellement dans le pays d'accueil, y compris les demandeurs d'une protection internationale et les bénéficiaires d'une protection internationale temporaire.

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».¹⁷

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

- la loi antidiscrimination,¹⁸ 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;
- la loi sur l'égalité des genres,¹⁹ 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,²⁰ 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

¹⁷ Article 14 de la Constitution croate; Journal officiel 56/1990, 135/1997, 113/2000, 28/2001, 76/2010 et 5/2014.

¹⁸ Journal officiel 85/2008 et 112/2012.

¹⁹ Journal officiel 82/2008, 125/2011, 20/2012 et 138/2012.

²⁰ Journal officiel 93/2014.

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'incitation à 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 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 familiales.

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 antidiscrimination 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 de la République 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 (lequel relève du mandat du Médiateur pour les personnes handicapées), la discrimination à l'égard des enfants (laquelle relève du Médiateur pour les enfants) et le sexe et l'orientation sexuelle (lesquels relèvent du Médiateur en charge de l'égalité des genres).

Le Médiateur a les compétences suivantes:

- recevoir de toute personne physique ou morale le signalement d'une suspicion raisonnable de discrimination;
- 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;
- 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;
- sensibiliser le public aux cas de discrimination;

- procéder avec l'accord des parties à une médiation pouvant conduire à la conclusion d'un accord extrajudiciaire;
- engager des poursuites pénales pour faits de discrimination auprès du parquet compétent;
- recueillir et analyser des données statistiques sur les discriminations;
- 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;
- 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 de la République.

Les Médiateurs ne sont pas des organes quasi-judiciaires: ils ne peuvent rendre de décisions juridiquement contraignantes ni imposer de sanctions.

7. Points essentiels

Le rapport du Médiateur concernant l'année 2016 et son analyse des affaires portées en justice montrent – tout comme le rapport précédent – que la protection antidiscrimination ne fonctionne pas en pratique. Pas moins de 200 procédures civiles pour faits discriminatoires (y compris des conflits du travail) étaient en instance devant des juridictions croates en 2016. Et un seul arrêt en faveur d'une victime de discrimination a été prononcé au cours de cette même année.²¹

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.²²

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 2016, 44 affaires traitées au civil pour discrimination ont été clôturées et il n'y a eu constat de discrimination que dans une seule 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

²¹ Médiateur de la République (2016), *Rapport du médiateur concernant 2016 (en croate)*: <http://ombudsman.hr/hr/component/jdownloads/send/76-izvjesca-2016/849-izvjesce-pucke-pravobraniteljice>.

²² Médiateur de la République (2015), *Rapport du Médiateur concernant 2015 (en croate)*: <http://ombudsman.hr/hr/component/jdownloads/send/67-2015/745-izvjesce-pp-2015-pdf>.

établir une discrimination lorsque l’auteur de celle-ci n’a manifesté aucune intention de violer un droit de la victime.

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, la plupart des arrêts rendus par la Cour suprême dans des affaires de discrimination consistent à déclarer irrecevables des appels introduits sur des points de droit parce qu’ils ne remplissent pas les critères relatifs aux recours extraordinaires (*izvanredna revizija*). 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.

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.

Laut der Volkszählung von 2011 hat Kroatien 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 zusammen auf weniger als 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.

Die Ombudsperson 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 Antidiskriminierungsgesetz ist die Ombudsperson 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 Gerichtshofs für Menschenrechte anlässlich einer Klage von Roma-Schülern, dass diese Regelung eine Diskriminierung darstellt und das Recht der Schüler auf Bildung verletzt.²³ Klassen, die ausschließlich von Roma-Kindern besucht werden, sind nach wie vor weit verbreitet (und werden sogar verstärkt eingesetzt). Der Unterricht in Klassen mit vielen Roma-Kindern gilt als minderwertig. Gewisse Fortschritte wurden im Hinblick auf die Stellung der Roma in Kroatien erzielt. Dennoch werden die Angehörigen der Roma-Minderheit tagtäglich in allen Bereichen, insbesondere jedoch in den Bereichen Bildung, Beschäftigung, Wohnraum- und Gesundheitsversorgung, nach wie vor diskriminiert. Ein weiteres weit verbreitetes Problem ist, dass eine beträchtliche Anzahl von Roma noch immer außerstande ist, ihren staatsbürgerschaftlichen Status zu klären.

Im August 2014 trat das Gesetz über gleichgeschlechtliche Lebenspartnerschaften in Kraft. Das Gesetz regelt den Rechtsstatus von eingetragenen und nicht eingetragenen gleichgeschlechtlichen Partnerschaften.^{24,25} Das Gesetz über die berufliche Rehabilitation und Beschäftigung von Menschen mit Behinderungen in der Neufassung von 2014 verpflichtet alle Arbeitgeber mit mehr als 20 Angestellten, sowohl im privaten als auch im öffentlichen Sektor, eine bestimmte Anzahl von Menschen mit Behinderungen zu beschäftigen.²⁶

Da Kroatien als Teil der sogenannten Balkanroute auch 2016 Transitland für Migranten²⁷ auf ihrem Weg nach Westeuropa war, wurden Fragen bezüglich der Rechte von Migranten laut. Allerdings wurde bislang noch nicht bekannt, dass irgendwelche Fälle von Diskriminierung vor Gericht gebracht worden wären. Migranten werden nach der Antidiskriminierungsgesetzgebung nicht anders behandelt als Inländer und sollten ebenso wie diese von der Durchsetzung und Anwendung der Antidiskriminierungsvorschriften, auch im Bildungsbereich, profitieren. Die Ombudsperson befasst sich mit der Diskriminierung von Migranten genauso wie auch mit allen anderen Fragen.

2. Wichtigste Gesetze

Kroatien hat alle Antidiskriminierungsabkommen 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

²³ Europäischer Gerichtshof für Menschenrechte (EGMR), *Oršuš et. al. gegen Kroatien* (GC), Nr. 15766/03, 16. März 2010.

²⁴ Amtsblatt 92/2014.

²⁵ Im Februar 2016 erging eine Entscheidung des Europäischen Gerichtshofs für Menschenrechte in der Rechtssache *D.P. / Kroatien*, in der festgestellt wurde, dass D.P. bei der Erlangung einer Aufenthaltserlaubnis in Kroatien aufgrund ihrer sexuellen Orientierung diskriminiert worden war; Europäischer Gerichtshof für Menschenrechte, *D.P. / Kroatien*, Nr. 68453/13, 23. Februar 2016.

²⁶ Amtsblatt 157/2013 und 152/2014.

²⁷ Für den Zweck dieses Berichts bezieht sich der Begriff „Migranten“ auf Nicht-EU-Bürger und Staatenlose, die derzeit im Aufnahmeland leben, einschließlich Personen, die internationalen Schutz suchen, und Personen, denen vorübergehender internationaler Schutz gewährt wurde.

Diskriminierungsgründe wie Behinderung, Alter und sexuelle Orientierung fallen demnach unter die Rubrik „sonstige Eigenschaften“.²⁸

Die wichtigsten Gesetze, die sich mit Diskriminierung beschäftigen, sind folgende:

- das Antidiskriminierungsgesetz²⁹, 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 Orientierung verbietet,
- das Geschlechtergleichstellungsgesetz³⁰, das Diskriminierung aufgrund des Geschlechts verbietet, und das Gesetz über gleichgeschlechtliche Lebenspartnerschaften, das Diskriminierung aufgrund einer „gleichgeschlechtlichen Partnerschaft“ und der „sexuellen Orientierung“ verbietet,
- das Arbeitsgesetz³¹, 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 Antidiskriminierungsgesetz 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 Orientierung, enthält aber keine nähere Definition dieser Diskriminierungsgründe.

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

Das Antidiskriminierungsgesetz 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

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

²⁹ Amtsblatt 85/2008 und 112/2012.

³⁰ Amtsblatt 82/2008, 125/2011, 20/2012 und 138/2012.

³¹ Amtsblatt 93/2014.

gerechtfertigt, und die Mittel sind zur Erreichung dieses Ziels angemessen und erforderlich.

Das Antidiskriminierungsgesetz definiert Belästigung als unerwünschte Verhaltensweisen, die auf einem verbotenen Diskriminierungsgrund beruhen und die bezwecken oder bewirken, dass die Würde der betreffenden Person verletzt und ein von Einschüchterungen, Anfeindungen, Erniedrigungen, Entwürdigungen oder Beleidigungen gekennzeichnetes Umfeld geschaffen wird.

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

Das Antidiskriminierungsgesetz beinhaltet eine Pflicht, angemessene Vorkehrungen für Menschen mit Behinderungen zu treffen. 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 Räumen an deren speziellen Bedürfnisse sowie durch die Bereitstellung von Hilfsmitteln und sonstigen Maßnahmen ermöglicht, sofern diese Maßnahmen keine unverhältnismäßige Belastung darstellen.

Das Antidiskriminierungsgesetz 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 Antidiskriminierungsgesetz 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 Geltungsbereich

Der Geltungsbereich des Antidiskriminierungsgesetzes 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 (Antidiskriminierungsschutz als Nebenprodukt) oder weil die diskriminierende Praxis überhaupt besteht (spezielle einzelne Antidiskriminierungsmaßnahme). In letzterem Fall können die Opfer auf Folgendes klagen:

- Prüfung, ob eine Diskriminierung vorliegt (feststellende Antidiskriminierungsklage) und/oder
- Verbot der Diskriminierung (prohibitive Antidiskriminierungsklage) 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 Antidiskriminierungsgesetz 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 Regeln unterscheiden nicht zwischen privaten und staatlichen Beschäftigungsverhältnissen und anderen Lebensbereichen.

Bei Fällen von Diskriminierung, die unter das Strafrecht fallen, 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.

Belästigung, sexuelle Belästigung und Viktimisierung sind nach dem Antidiskriminierungsgesetz 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 (684,93 bis 41 095,89 Euro für Belästigung und 684,93 bis 47 945,20 Euro für sexuelle Belästigung).

Opfer von Diskriminierung können bei der Ombudsperson als zentraler Stelle für Diskriminierungsbekämpfung Beschwerde einreichen.

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 Antidiskriminierungsgesetz muss der Kläger bei einer Antidiskriminierungsklage (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 Antidiskriminierungsgesetz sieht diese Regel allerdings nicht in Fällen von Belästigung und 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 Antidiskriminierungsrecht, 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 Antidiskriminierungsrecht noch die Zivilverfahrensordnung Bestimmungen, die die Verwendung von statistischen Beweisen ausschließen.

6. Gleichbehandlungsstellen

Das Antidiskriminierungsgesetz stattet die Ombudsperson mit den Befugnissen aus, um als zentrale Stelle Diskriminierung zu beseitigen und Gleichbehandlung, unabhängig von Rasse oder ethnischer Herkunft, zu fördern. Die Ombudsperson ist auch die zentrale Stelle für die Beseitigung von Diskriminierung aus anderen Gründen, mit Ausnahme von Behinderung (zuständig ist hier die Ombudsperson für Menschen mit Behinderungen), Diskriminierung von Kindern (Aufgabenbereich der Ombudsperson für Kinder) sowie Geschlecht und sexuelle Orientierung (Aufgabenbereich der Ombudsperson für Gleichstellung).

Die Ombudsperson hat folgende Aufgaben:

- Beschwerden natürlicher und juristischer Personen entgegennehmen, 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.

Die Ombudsperson für Menschen mit Behinderungen und die Ombudsperson für Gleichstellung haben im Wesentlichen die gleichen Befugnisse wie die Ombudsperson.

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

7. Schlüsselprobleme

Der Jahresbericht der Ombudsperson für 2016 und die darin enthaltene Analyse der einschlägigen Gerichtsverfahren zeigen – wie schon der vorherige Jahresbericht –, dass der Schutz vor Diskriminierung in der Praxis nicht funktioniert. 2016 waren 200 Zivilverfahren (einschließlich arbeitsrechtliche Verfahren) wegen Diskriminierung bei kroatischen Gerichten anhängig. Im selben Zeitraum erging lediglich ein Urteil zugunsten eines Diskriminierungsopfers.³²

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 Euro 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.³³

Opfer von Diskriminierung nutzen aus mehreren Gründen nur selten die verfügbaren Rechtsmittel. Die Erfolgchancen sind sehr gering. 2016 wurden 44 Zivilverfahren wegen Diskriminierung abgeschlossen und Diskriminierung wurde nur in einem von ihnen festgestellt. 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.

³² Ombudsperson (2016), *Bericht der Ombudsperson für 2016*:
<http://ombudsman.hr/hr/component/jdownloads/send/76-izvjesca-2016/849-izvjesce-pucke-pravobraniteljice>.

³³ Ombudsperson (2015), *Bericht der Ombudsperson für 2015*:
<http://ombudsman.hr/hr/component/jdownloads/send/67-2015/745-izvjesce-pp-2015-pdf>.

Obwohl nach dem Antidiskriminierungsgesetz eine Revision (*revizija*) in Diskriminierungsverfahren immer zulässig ist, lässt das Oberste Gericht in den meisten Diskriminierungsverfahren eine Revision nicht zu, weil diese die Kriterien für eine außerordentliche Revision (*izvanredna revizija*) nicht erfüllen. Nach Ansicht des Obersten Gerichts ist eine Revision nur selten und nur unter außergewöhnlichen Umständen zulässig, bei Antidiskriminierungsfällen nur dann, wenn der Streitwert den gesetzlichen Schwellenwert für eine Revision übersteigt.

INTRODUCTION

The national legal system

The Republic of Croatia is a unitary state.³⁴ 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 laws.³⁵

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.³⁶

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.³⁷ 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.³⁸

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.³⁹

³⁴ Croatia, Constitution of the Republic of Croatia (*Ustav Republike Hrvatske*), 22 December 1990, Article 1. Official Gazette 56/1990, 135/1997, 113/2000, 28/2001, 76/2010, 5/2014, <http://www.usud.hr/en/theconstitution> (According to the Constitutional Court of the Republic of Croatia, the Croatian Parliament, when making the consolidated text of the Constitution, failed to correctly number the articles. That is the reason why the same articles of the Constitution are often enumerated differently depending on the source and time of a creation of a document. In this document, the numbering corrected by the Constitutional Court will be used).

³⁵ Croatia, Constitution of the Republic of Croatia, 22 December 1990, Article 5.

³⁶ Croatia, Constitution of the Republic of Croatia, 22 December 1990, Article 4.

³⁷ Croatia, Constitution of the Republic of Croatia, 22 December 1990, Article 116.

³⁸ Croatia, Constitution of the Republic of Croatia, 22 December 1990, Article 125.

³⁹ Croatia, Constitution of the Republic of Croatia, 22 December 1990, Article 134.

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 was amended in October 2012.⁴⁰ 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.⁴¹ The Anti-discrimination Act applies to all areas without any limitation while explicitly enumerating 10 areas to which special attention is to be paid.⁴²

The Labour Act⁴³ (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.⁴⁴ The previous Labour Act had the same provision.⁴⁵ The Labour Act does not explicitly mention grounds of discrimination but refers to the Anti-discrimination Act in that respect.⁴⁶

The Same-sex Life Partnership Act (SSLPA), which entered into force on 5 August 2014,⁴⁷ 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.⁴⁸ The act itself does not contain a definition of discrimination but 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. Unfavourable treatment in the above three areas is explicitly declared to be discrimination.

In the context of the 2013 referendum on the definition of marriage held on 1 December 2013, there were vigorous debates at the national level regarding the possibility for same sex couples to marry. The referendum question put to citizens was: 'Do you support the provision defining marriage as a union of man and woman to be included in the text of the Constitution of the Republic of Croatia?' The majority of citizens who voted in the referendum supported such a definition (65.87 %). Following the outcome of the referendum the Constitution was amended by adding the definition of marriage as a union of man and woman.⁴⁹ Before the referendum there were numerous public round tables and other forms of public discussion on the topic of granting the right to marriage to same sex couples. This continued in 2014 in the context of the drafting of the Same-sex Life Partnership Act.⁵⁰

⁴⁰ Croatia, Anti-discrimination Act, 9 July 2008, Official Gazette 85/2008, 112/2012, *Zakon o suzbijanju diskriminacije*.

⁴¹ Croatia, Anti-discrimination Act, 9 July 2008, Article 1(1).

⁴² Croatia, Anti-discrimination Act, 9 July 2008, Article 8.

⁴³ Croatia, Labour Act, 15 July 2014, Official Gazette 93/2014, *Zakon o radu*.

⁴⁴ Croatia, Labour Act, 15 July 2014, Article 7(4).

⁴⁵ Croatia, Labour Act, 4 December 2009, Official Gazette 149/2009, 61/2011, 82/2012, 73/2013, Article 5(4).

⁴⁶ Croatia, Labour Act, 15 July 2014, Article 7(4).

⁴⁷ Between August 2014 and 31 December 2015, 108 same-sex partnerships were registered (Gender Ombudsperson's report for 2015).

⁴⁸ Croatia, Same-sex Life Partnership Act, 15 June 2014, Official Gazette 92/2014, *Zakon o životnom partnerstvu osoba istog spola*.

⁴⁹ Croatia, Constitution of the Republic of Croatia, 22 December 1990, Article 62(2).

⁵⁰ Croatia, Same-sex Life Partnership Act, 15 June 2014, Official Gazette 92/2014, *Zakon o životnom partnerstvu osoba istog spola*.

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 (ethnic)⁵¹ 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.

These provisions are not directly applicable by ordinary courts.⁵² 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.⁵³ Therefore, judicial decisions, including those adopted in disputes between private actors, could be challenged before the Constitutional Court, which applies the Constitution directly.

⁵¹ In Croatia, 'nationality' (*nacionalnost* or *narodnost* in Croatian) does not refer to 'citizenship', but to the membership of an ethnic group.

⁵² However, a different view is apparent in the existing case law. For instance in decision No. GŽ-2166/13, of 9 December 2013, Varaždin County Court quashed the decision of Zagreb Municipal Court No. Pr-6450/05-23, of 27 November 2012, in which the municipal court dismissed the anti-discrimination complaint with the explanation that it could not be considered that the claimant had been discriminated against on the basis of education, since the Labour Act contained a closed list of discrimination grounds and education was not one of them. The county court stated that despite the fact that the Labour Act does not proscribe education as a discrimination ground, article 14 of the Constitution, which contains an open list of discrimination grounds, explicitly proscribes education as one of the grounds and is applicable in this particular case.

⁵³ Croatia, Constitutional Law on the Constitutional Court of the Republic of Croatia, 24 September 1999, Article 62(1), Official Gazette 99/1999 and 29/2002, *Ustavni zakon o Ustavnom sudu Republike Hrvatske*.

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 condition⁵⁴
- disability
- genetic heritage
- gender identity and expression
- sexual orientation⁵⁵
- birth⁵⁶
- other characteristics⁵⁷

2.1.1 Definition of the grounds of unlawful discrimination within the directives

National law does not provide a definition of race. In legislation and case law, the term race is never used alone but together with the term ethnic origin ('race or ethnic origin' or 'race and ethnic origin').

According to the Ombudsperson's report for 2015, most complaints of discrimination are in connection with 'race or ethnic origin' and the same trend continued in 2016 (30.2 %).⁵⁸ Since the Anti-discrimination Act explicitly prohibits discrimination based not only on race and ethnic origin, but also on colour and national origin, the four grounds are covered jointly in the Ombudsperson's report.⁵⁹

National law does not provide a definition of ethnic origin.

The Constitutional Act on the 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

⁵⁴ The ADA introduced health condition as a separate prohibited ground for discrimination with the aim of protecting people with certain health conditions (e.g. those infected with HIV) that do not constitute disability.

⁵⁵ Croatia, Anti-discrimination Act, 9 July 2008, Article 1(1).

⁵⁶ Croatia, Constitution of the Republic of Croatia, 22 December 1990, Article 14(1).

⁵⁷ Croatia, Constitution of the Republic of Croatia, 22 December 1990, Article 14(1).

⁵⁸ People's Ombudsperson (2015), *Ombudsperson's Report for 2015*, p. 37, <http://ombudsman.hr/hr/component/jdownloads/send/67-2015/745-izvjesce-pp-2015-pdf>, accessed 21 October 2016. and People's Ombudsperson (2016) *Ombudsperson's Report for 2016*, p.7, <http://ombudsman.hr/hr/component/jdownloads/send/76-izvjesca-2016/854-izvjesce-pucke-pravobraniteljice-za-2016>, accessed 14 April 2017.

⁵⁹ People's Ombudsperson (2016), *Ombudsperson's Report for 2016*, p.7, accessed 14 April 2017.

characteristics differ from the rest of the population, and who are motivated to preserve these characteristics'.^{60 61}

The 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 the ethnic, linguistic and cultural affinity of its members as well as the awareness of the integrity of their own community and its special qualities in relation to other such communities.⁶²

The definition of ethnic origin was an important legal issue in the numerous citizenship cases in the 1990s. In (federal) Yugoslavia, citizens had both federal citizenship and republican citizenship. After Croatia's independence, people who did not have Croatian republican citizenship became aliens in Croatia. While ethnic Croats in the same situation were granted citizenship –the 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. Therefore, the main issue in many cases was whether a person was of Croatian ethnic origin or not. In practice, a person had to prove that s/he declared her/himself as a Croat before independence.

According to case law:

'belonging to a certain ethnicity is primarily subjective category, the feeling of common culture, language and social tradition that connects members of that community to one unit, but it is necessary that such belonging is expressed in certain behaviour of a person claiming to be of Croatian ethnic origin, especially by declaring that ethnic origin in public documents'.⁶³

Disability is defined both by the Social Care Act and the Act on the 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'.⁶⁴ There are still other definitions of disability in other areas (e.g., education, transport).⁶⁵ The Anti-discrimination Act does not define disability.

The Primary and Secondary Education Act⁶⁶ states that primary and secondary education is based on the principle of equal educational opportunities for all students in accordance

⁶⁰ Croatia, Constitutional Act on the rights of national minorities, 13 December 2002, Article 5, Official Gazette 155/2002, 47/2010, 80/2010, 93/2011, *Ustavni zakon o pravima nacionalnih manjina*.

⁶¹ According to Articles 15 and 83 of the Constitution, equality and the protection of the rights of national minorities are regulated by a constitutional act that requires two-thirds of all members of the Parliament.

⁶² Office for Human Rights and Rights of National Minorities (2013), 'Definitions of indicators for the data base on equality data', June 2013, https://ljudskaprava.gov.hr/UserDocsImages//dokumenti//definicije_podataka_jednakosti.pdf, accessed 21 October 2016.

⁶³ See, for example, decisions of the High Administrative Court of the Republic of Croatia Nos. Us-10396/2009-4 and Us-10396/2009-4 of 15 February 2012.

⁶⁴ Croatia, Social Care Act, 13 December 2013, Article 4(1)(9), Official Gazette 157/2013, 152/2014, 99/2015, 52/2016, 16/2017, *Zakon o socijalnoj skrbi*; and Croatia, Act on professional rehabilitation and employment of persons with disability, 13 December 2013, Article 3(1), Official Gazette 157/2013, 152/2014, *Zakon o profesionalnoj rehabilitaciji i zapošljavanju osoba s invaliditetom*.

⁶⁵ Ombudsperson for Persons with Disability (2014), *Parallel Report for the UN Committee on the Rights of Persons with Disability*, July 2014.

⁶⁶ Croatia, Primary and Secondary Education Act, 15 July 2008, Official Gazette 87/2008, 86/2009, 92/2010, 105/2010, 90/2011, 5/2012, 16/2012, 86/2012, 94/2013, 152/2014, 07/2017, *Zakon o odgoju i obrazovanju u osnovnoj i srednjoj školi*.

with their abilities.⁶⁷ The Rules on primary and secondary education of students with developmental difficulties⁶⁸ defines a student with difficulties as

‘a student whose abilities, in interaction with factors from the environment, limit his/her full and effective participation in education on an equal basis with others and are the result of physical, mental, intellectual or tactile impairments or dysfunctions or the combination of such impairments and dysfunctions.’

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.⁶⁹

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.’⁷⁰

National law does not provide a definition of sexual orientation.⁷¹

National law does not provide a definition of 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).⁷² 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.⁷³

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 licence photographs when a person wears such a cover for religious or medical reasons.⁷⁴ The

⁶⁷ Croatia, Primary and Secondary Education Act, 15 July 2008, Article 4(2)(2).

⁶⁸ Croatia, Rules on primary and secondary education of students with developmental difficulties, 23 February 2015, Official Gazette 24/2015, *Pravilnik o osnovnoškolskom i srednjoškolskom odgoju i obrazovanju učenika s teškoćama u razvoju*.

⁶⁹ Croatia, Act on the legal status of religious communities, 4 July 2002, Official Gazette 83/2002, 73/2013, *Zakon o pravnom položaju vjerskih zajednica*.

⁷⁰ Office for Human Rights and Rights of National Minorities (2013), 'Definitions of indicators for the data base on equality data', June 2013: https://ljudskaprava.gov.hr/UserDocsImages//dokumenti//definicije_podataka_jednakosti.pdf, accessed 21 October 2016.

⁷¹ The public interest consultation contains no indication that there were any attempts to introduce a definition of sexual orientation into the text of the Same-sex Life Partnership Act. Consultation document available at: https://uprava.gov.hr/UserDocsImages/Savjetovanja%20sa%20zainteresiranom%20javno%C5%A1%C4%87u/2013/zivotno_partnerstvo/111213-1Tablica%20Zakon%20o%20%C5%BEivotnom%20partnerstvu.pdf.

⁷² Croatia, Anti-discrimination Act, 9 July 2008, Article 6(1).

⁷³ 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'.

⁷⁴ Croatia, Regulations on driving licences, 5 April 2013, Article 12(4); Official Gazette 43/2013, 77/2013, 155/2013, *Pravilnik o vozačkim dozvolama*.

previous regulation allowed such an exception only for elderly people wearing head covers as part of a traditional dress code (folk costume).⁷⁵ The Ombudsperson, after receiving complaints from three young women belonging to a Muslim minority, found the previous regulation to result in multiple discrimination, i.e. discrimination based on religion and age, because it allowed head covers to be worn in photographs only by elderly people who wore head covers as part of a traditional dress code and not to young people and/or to people who wore head covers as part of religious dress code.⁷⁶ In this case, gender was not considered as a ground of discrimination.

In *LJ.S. v. G.L. d.o.o.*, the Municipal Court in Zagreb determined that the claimant had been discriminated against by her employer on the basis of gender and age, stating that the director of G.L. d.o.o., who was her superior, harassed LJ.S. by calling her names, including 'old timer', cursing, commenting on her physical appearance and prohibiting other employees from communicating with her. The court awarded LJ.S. compensation in the amount of EUR 1 330 (HRK 10 000).⁷⁷ The County Court in Zagreb confirmed the decision of the first instance court and increased the compensation, awarding LJ.S. an additional EUR 2 660 (HRK 20 000).⁷⁸

In 2016, the Ombudsperson for Children reported on a complaint of multiple discrimination on the grounds of disability and national origin committed by the Secretary of State for Science and Education who made a public statement that the poor results achieved by Croatian pupils in the OECD international tests (PISA - programme for international student assessment) are linked to the fact that children with difficulties and members of national minorities were included. The Ombudsperson for Children issued a warning and publicly condemned the making of such a statement.⁷⁹

2.1.3 Assumed and associated discrimination

a) Discrimination by assumption

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

The Anti-discrimination Act provides that placing a person in an unfavourable position based on a misconception of the existence of a prohibited ground of discrimination is discrimination.⁸⁰

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

⁷⁵ Croatia, Regulations on driving licences, 23 December 2008, Article 6(3); Official Gazette 155/2008, 8/2009, *Pravilnik o vozačkim dozvolama*.

⁷⁶ People's Ombudsperson (2013), *Report for 2013*, p.116, available at: <http://ombudsman.hr/hr/component/jdownloads/send/12-2013/55-izvjesce-pucke-pravobraniteljice-za-2013-po-prvi-puta-objedinjeno-izvjesce-o-stanju-ljudskih-prava-u-hrvatskoj-i-radu-ureda>, accessed 21 October 2016.

⁷⁷ Decision of Zagreb Municipal Court, no. Pr-205/07, 27 February 2014.

⁷⁸ Decision of Zagreb County Court, no. Gžr-839/2014, 3 June 2014.

⁷⁹ Ombudsperson for Children, (2016), *Report for 2016*, p. 109, available at: <http://www.dijete.hr/websites/dijete.hr/index.php/hr/izvjemainmenu-93/izvjeo-radu-pravobranitelja-za-djecu-mainmenu-94.html>, accessed 8 June 2017.

⁸⁰ Croatia, Anti-discrimination Act, 9 July 2008, Article 1(3).

that person by kinship or other relationship, in a less favourable position on the prohibited grounds is considered discrimination.⁸¹ National law is in line with the judgment in Case C-303/06 *Coleman v Attridge Law and Steve Law*.

In Croatia, the following case law deals with discrimination by association:

In its judgment in the case of *Guberina v. Croatia*,⁸² the European Court of Human Rights found a violation of Article 14 (prohibition of discrimination) of the European Convention on Human Rights in conjunction with Article 1 of Protocol No. 1 (protection of property) to the convention. In this case, a father was refused the tax exemption to which he was entitled because of his link with his disabled child. The ECtHR determined that, when applying the relevant tax legislation, the authorities failed to recognise the difference between the circumstances of the applicant – a father of a disabled child who asked for a tax exemption on the basis of meeting the housing needs of his family with regard to basic infrastructure requirements – in comparison with other people seeking a tax exemption. The Court found that the domestic authorities had taken too restrictive an approach and had disregarded other provisions of domestic law, which address the question of accessibility of buildings for persons with disabilities, as well as Croatia's obligations under the UN Convention on the Rights of Persons with Disabilities.

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.⁸³

The same definition of direct discrimination is used by the Sex Equality Act.⁸⁴

The Labour Act and the Same-sex Life Partnership Act prohibit direct discrimination, but do not define it.⁸⁵ For the purpose of cases that concern those two acts, the definition of direct discrimination from the Anti-discrimination Act should be used. The Labour Act directly refers to the Anti-discrimination Act.⁸⁶ Since both acts have entered into force relatively recently, there is no case law on the 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.⁸⁷

b) Justification of direct discrimination

⁸¹ Croatia, Anti-discrimination Act, 9 July 2008, Article 1(2).

⁸² European Court of Human Rights, *Guberina v. Croatia*, No. 23682/13, 22 March 2016.

⁸³ Croatia, Anti-discrimination Act, 9 July 2008, Article 2(1).

⁸⁴ Croatia, Sex Equality Act, 15 July 2008, Official Gazette 82/2008, 125/2011, 20/2012, 138/2012, *Zakon o ravnopravnosti spolova* (although the widely accepted English translation of the title of this act is the Gender Equality Act, Croatian legislation uses the term equivalent to 'sex' (*spol*) and not 'gender' (*rod*)).

⁸⁵ Croatia, Labour Act, 15 July 2014, Article 7(4) and Same-sex Life Partnership Act, 15 July 2014, Article 6(3).

⁸⁶ Croatia, Labour Act, 15 July 2014, Article 134.

⁸⁷ People's Ombudsperson (2014), *Ombudsperson's Report for 2014*, p. 21 <http://ombudsman.hr/hr/component/jdownloads/send/29-2014/562-izvjesce-pucke-pravobraniteljice-za-2014-godinu> and the Gender Equality Ombudsperson's 'Analysis of 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>, accessed 21 October 2016.

The Anti-discrimination Act does not permit any justification of direct discrimination, except for the specific exceptions listed under Article 9 (analysed in section 4 of this report). All exceptions need to be in line with the legitimate aim they are determined for, and must be appropriate and necessary for the fulfilment of that aim.⁸⁸

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 (regulated by the Civil Procedure Act), 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 article⁸⁹ 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.

Situation testing was also used in research conducted by a non-governmental organisation, the Centre for Peace Studies (CPS).⁹⁰ In collaboration with the NGOs Censorship Plus⁹¹ and Zagreb Pride,⁹² the Centre for Peace Studies conducted situation testing in five different fields: access to public institutions for persons with disabilities, discrimination against same sex couples in the field of providing services, discrimination against transgender persons when applying for change of gender in personal documentation, discrimination against persons of colour in access to goods and services and discrimination on the ground of gender in seasonal jobs.

It has been noted that people with disabilities are discriminated against on the basis of disability in access to goods and services in Split due to the architectural barriers that make it impossible to access the services of public institutions, specifically the Croatian Institute for Health Insurance Split and the Croatian Pension Insurance Institute Split. The situation test was conducted by a person in a wheelchair who went to the Croatian Pension Insurance Office (HZMO) requesting certain documentation necessary to receive employment benefits. The office that is authorised to issue such documentation is located on the second floor and the HZMO employees explained to the person with disability that the building has no elevator and that it was not possible for her to get to the second floor as the stairway is very narrow and there is no space for a wheelchair to get through.

⁸⁸ Croatia, Anti-discrimination Act, 9 July 2008, Article 9(3).

⁸⁹ <http://www.balkaninsight.com/en/article/croats-hold-roma-and-muslims-at-arm-s-length>.

⁹⁰ The research was conducted as a part of the project 'In the name of equality', carried out by the Centre for Peace Studies, Censorship Plus and Croatian Youth Network, and is funded through the European Union PROGRESS Programme, report is available at http://www.antidiskriminacija.com/wp-content/uploads/2015/07/Activity-2.2.-Situation-testing_report.pdf, accessed 25 April 2017.

⁹¹ Censorship Plus website: <http://www.cenzura.hr/>.

⁹² Zagreb Pride website: <http://www.zagreb-pride.net/hr/>.

Even more surprisingly, the office that deals with the determination of the degree of a person's disability is located on the third floor and so a person in a wheelchair needs an assistant who can carry her/him to the office because there is no other option.

Through the analysis of secondary data, it was concluded that in Split more than 80 % of public institutions are not adapted for people with disabilities (architectural barriers and a lack of human resources), while others are only partially accessible. There are no public institutions or private buildings that are completely adjusted to people with disabilities.

The report, among other tests, describes situation testing in respect of potential discrimination against same-sex couples. The situation test involved two virtual same-sex couples (one male and one female couple) writing an email to 10 different cake shops to order a wedding cake. The results of the situation test showed that there was no discrimination against same-sex partners in the providing of bakery services.⁹³

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.⁹⁴

The Labour Act and the Same-sex Life Partnership Act prohibit direct discrimination, but do not define it.⁹⁵ For the purpose of cases concerning those two acts, the definition of indirect discrimination from the Anti-discrimination Act should be used. The Labour Act directly refers to the Anti-discrimination Act while the Same-sex Life Partnership Act does not.

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.⁹⁶

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.⁹⁷

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,⁹⁸ noticed a lack of protection against indirect discrimination before

⁹³ http://www.antidiskriminacija.com/wp-content/uploads/2015/07/Activity-2.2.-Situation-testing_report.pdf, accessed 25 April 2017.

⁹⁴ Croatia, Anti-discrimination Act, 9 July 2008, Article 2(2).

⁹⁵ Croatia, Labour Act, 15 July 2014, Article 7(4) and Same-sex Life Partnership Act, 15 July 2014, Article 6(3).

⁹⁶ Croatia, Anti-discrimination Act, 9 July 2008, Article 2(2).

⁹⁷ Croatia, Constitution of the Republic of Croatia, 22 December 1990, Article 16.

⁹⁸ The analysis, published in March 2011, covered case law in the cases of discrimination based on all protected grounds, not just gender.

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. 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. In the period covered by the Gender Equality Ombudsperson's analysis there was not a single decision dealing with indirect discrimination.⁹⁹

The most recent annual report issued by the Gender Equality Ombudsperson shows that the situation described in the analysis has not significantly changed despite the fact that the Anti-discrimination Act entered into force eight years ago. During 2016 the Gender Equality Ombudsperson analysed only one case of indirect discrimination and concluded that the prohibition of indirect discrimination has not still not been implemented in practice and that citizens do not sufficiently understand it.¹⁰⁰

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.

The main piece of legislation on data collection is regulated by the Personal Data Protection Act.¹⁰¹ 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 Personal Data Protection Act does not allow the collection and processing of data on race or 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.¹⁰²

The collection, processing and use of data on race, ethnicity, religious or other belief against the provisions of the Personal Data Protection Act is a criminal offence.¹⁰³

⁹⁹ <http://www.prs.hr/attachments/article/181/Istrazivanje%20sudske%20prakse%20u%20području%20antidiskriminacijske%20zaštite.pdf>.

¹⁰⁰ Gender Equality Ombudsperson (2016) *Report for 2016*, p.14. Available at: http://www.prs.hr/attachments/article/2188/IZVJESCE_2016_Pravobraniteljica_za_ravnopravnost_spolova_CJELOVITO.pdf, accessed 25 April 2017.

¹⁰¹ Croatia, Personal Data Protection Act, 12 June 2003, Official Gazette 103/2003, 118/2006, 41/2008 and 130/2011, 106/2012, *Zakon o zaštiti osobnih podataka*. Other pieces of legislation on data collection are not relevant for this question, e.g. the Official Statistics Act, 13 June 2003, Official Gazette 103/2003, 75/2009, 59/2012, *Zakon o službenoj statistici*, which regulates methodological and organisational issues of official statistics.

¹⁰² Croatia, Personal Data Protection Act, 12 June 2003, Article 8.

¹⁰³ Croatia, Criminal Code, 21 October 2011, Article 146(3) and (4), Official Gazette 125/2011, 144/2012, 56/2015, 61/2015, *Kazneni zakon*.

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.¹⁰⁴

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.¹⁰⁵

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. 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 in preschool education. Furthermore, the highest number of registered children with disabilities is in the County of Međimurje, which is the county with the largest Roma population in the Republic of Croatia. Although there are some indications that there is a connection between the facts, without data disaggregated by ethnicity it is impossible to tackle the problem.

Therefore, estimates and unofficial data have often been used for general purposes.¹⁰⁶ In contrast, in spite of regulations banning data collection on ethnic origin, some institutions have precise information on the ethnicity of particular groups.¹⁰⁷

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

¹⁰⁴ Croatia, Official Statistics Act, 13 June 2003, Article 4(1)(2).

¹⁰⁵ See, Decade of Roma Inclusion (2013), *Progress Report 2013*: <http://www.eurasia.undp.org/content/dam/rbec/docs/DORI%20REPORT.pdf?download>, accessed 21 October 2016, and Office for Human Rights and National Minorities (2013), *Report on Implementation of Action Plan for Implementation of the National Strategy for Roma Inclusion for 2013*: <https://vlada.gov.hr/UserDocsImages//Sjednice/2014/186%20sjednica//186%20-%203.pdf>, accessed 21 October 2016.

¹⁰⁶ National Programme for Roma: <http://www.umrh.hr/Nacionalni%20program%20za%20Rome.pdf>, accessed 21 October 2016.

¹⁰⁷ E.g. some primary schools have precise data on the numbers of Roma pupils in each class, although it is not clear how they established the pupils' ethnic origin and whether there was parental consent. In 2000, when the Ombudsperson's office started an investigation into discrimination against 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 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.

for obtaining such data (i.e. official statistics, research, complaints of discrimination, various administrative bodies' data and polls).¹⁰⁸

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 or in anti-discrimination cases at all.

The evolution of the use of statistical data as evidence in court in other countries 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 Međimurje¹⁰⁹ (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 evidence.¹¹⁰ The Constitutional Court ignored the statistical data in its decision¹¹¹ and simply 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, the 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. 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,¹¹² 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.¹¹³

The Labour Act does not define harassment, but refers to the Anti-discrimination Act as *lex specialis*.¹¹⁴ The Same-sex Life Partnership Act (SSLPA) does not define harassment and does not specifically refer to the Anti-discrimination Act. For the purpose of cases concerning the two acts, the definition of harassment from the Anti-discrimination Act should be used, which means that personal and material scope is adequately covered.

Some legal authors, whose opinions often greatly influence case law, use the term 'harassment' as a synonym for mobbing.^{115 116} The Labour Act protects the employee

¹⁰⁸ https://ljudskaprava.gov.hr/UserDocsImages//dokumenti//definicije_podataka_jednakosti.pdf, accessed 21 October 2016.

¹⁰⁹ ECtHR, *Oršuš and others v Croatia*, No. 15766/03.

¹¹⁰ Ombudsperson (2000), *Report on the activities of the Ombudsperson in 2000* (not available online).

¹¹¹ Constitutional Court, No. U-III-3138/2002, 7 February 2007.

¹¹² Croatia, Anti-discrimination Act, 9 July 2008, Article 3(1).

¹¹³ Croatia, Anti-discrimination Act, 9 July 2008, Article 3(2).

¹¹⁴ Croatia, Labour Act, 15 July 2014, Article 134.

¹¹⁵ E.g. Crnić, Ivica (ed.) International Organization for Migration (2009), *Guide to Anti-discrimination Legislation and Case Law*, Zagreb, 2009.

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, court 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 Code¹¹⁷ 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.¹¹⁸ The Criminal Code also forbids 'humiliation, abuse and other forms of harassment' at a workplace if it damages the victim's health, without defining humiliation, abuse or harassment.

In Croatia, harassment explicitly constitutes a form of discrimination¹¹⁹ as the Anti-discrimination Act lists harassment and sexual harassment, together with direct and indirect discrimination, encouragement to discriminate, failure to provide reasonable accommodation and segregation, as forms of discrimination.

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.¹²⁰

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.¹²¹ 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.¹²²

The individual harasser or discriminator would always be held liable.

¹¹⁶ The term 'mobbing' meaning bullying or psychological violence without discrimination on any ground.

¹¹⁷ Croatia, Criminal Code, 21 October 2011.

¹¹⁸ Croatia, Criminal Code, 21 October 2011, Article 156.

¹¹⁹ Croatia, Anti-discrimination Act, 9 July 2008, Article 3.

¹²⁰ Croatia, Labour Act, 15 July 2014, Article 134.

¹²¹ Croatia, Civil Obligations Act, 25 February 2005, Official Gazette 35/2005, 41/2008 and 125/2011, *Zakon o obveznim odnosima*.

¹²² Croatia, Labour Act, 15 July 2014, Article 111.

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, while the Labour Law and the Same-sex Life Partnership Act do not have that specific provision.¹²³ 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 lists encouragement to discriminate, together with direct and indirect discrimination, harassment and sexual harassment, failure to provide reasonable accommodation and segregation, as forms of discrimination.¹²⁴

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.¹²⁵ 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.¹²⁶

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 for people with disabilities in the area 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

¹²³ Croatia, Anti-discrimination Act, 9 July 2008, Article 4(1).

¹²⁴ Croatia, Anti-discrimination Act, 9 July 2008, Article 4(1).

¹²⁵ Croatia, Civil Obligations Act, 25 February 2005.

¹²⁶ Croatia, Labour Act, 15 July 2014, Article 111.

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'.¹²⁷

The Act on professional rehabilitation and employment of persons with disability¹²⁸ 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.¹²⁹

The reasonable accommodation duty is imposed on both public and private employers of any size.

The Labour Act stipulates that when an employee's disability has occurred during their employment, the employer has to accommodate the employee with disability in accordance with the expert recommendation of the body that established that disability (the employee's reduced working capacity).

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. The availability of financial assistance from the State is not considered in any sense in the text of the Anti-discrimination 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, employers are obliged to implement adequate measures regarding workplace adjustments, working hours, monitoring of accommodation, supervision and working ability evaluation in accordance with the individual needs of employees with disability.¹³⁰ All employers are eligible for State funding to help with the costs of reasonable accommodation and to certain incentives if employing a person with disability.¹³¹

The Ombudsperson for Persons with Disabilities, in her report for 2014,¹³² gave some examples of complaints about reasonable accommodation duties and her opinion about the employer's duty in each case.

The first example was about the problem of access to a workplace, where during winter and rain, the area in front of the building was dangerous for a person in a wheelchair. The Ombudsperson recommended that the employer adapt the premises (for which he could request financing from the Fund for Professional Rehabilitation and Employment of Persons with Disability) and in the meantime allow the employee to work from home, since that was something allowed to other employees.

¹²⁷ Croatia, Anti-discrimination Act, 9 July 2008, Article 4(2).

¹²⁸ Croatia, Act on professional rehabilitation and employment of persons with disability, 13 December 2013.

¹²⁹ Croatia, Act on professional rehabilitation and employment of persons with disability, 13 December 2013, Article 7(2).

¹³⁰ Croatia, Act on professional rehabilitation and employment of persons with disability, 13 December 2013, Article 12(4).

¹³¹ Croatia, Act on professional rehabilitation and employment of persons with disability, 13 December 2013, Article 29.

¹³² Ombudsperson for Persons with Disabilities (2014) *Report for 2014*, available at: http://www.posi.hr/index.php?option=com_joomdoc&task=cat_view&gid=55&Itemid=98, accessed 25 April 2017.

The second example was an employee with MS who used to work from home. After status changes in her employer, the new management had planned to discontinue that practice. The employee, assisted by the Disability Ombudsperson, insisted on the employer's reasonable accommodation duties, and following this, the employer allowed the employee to continue to work from home.

The third example was about a woman who cares for her uncle, who is a person with disability and for whom she is the sole care giver. The employer accommodates her by organising shifts in a way that she can work in the afternoons (which suits her better). The Disability Ombudsman concluded that reasonable accommodation extends to persons associated with persons with disability. Further, in this case, the employer has a sufficient number of employees and a business of such a nature that this solution would not present an unreasonable burden.

In 2014, with the aim of simplifying the procedures and to standardise the practice of various bodies competent to establish disability (in the pension, health insurance, employment and labour, and social care systems etc.), Croatia passed legislation to create a single expert body competent to establish disability – the Institute for expertise, professional rehabilitation and employment of people with disability.¹³³ The task of the Institute, among other things, is to establish the employer's reasonable accommodation duties in individual cases. The Institute formally started work on 1 January 2015, but it took several months to employ the experts and to form the teams and field offices.

In April 2015, the Committee on the Rights of Persons with Disabilities published its concluding observations on the initial report of Croatia, and expressed its concern about a lack of understanding of the meaning of reasonable accommodation and universal design in areas such as education, health, employment and the built environment.¹³⁴

In her report for 2016, the Ombudsperson for Persons with Disabilities reflected on the complaints that she had received throughout 2015 and concluded that the awareness of reasonable accommodation as the employer's duty is still underdeveloped and rarely applied in practice.¹³⁵

c) Definition of disability and non-discrimination protection

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'.¹³⁶ The definition of a disability for the purposes of claiming reasonable accommodation is not different from the one for claiming protection from non-discrimination in general.

d) Duties to provide reasonable accommodation in areas other than employment for people with disabilities

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 outside the area of employment and defines it (for the exact wording see section 2.6.a above). Such a

¹³³ Croatia, Act on the single expert body, 4 July 2014, Official Gazette 85/2014 and 95/2015, *Zakon o jedinstvenom tijelu vještačenja*.

¹³⁴ http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fHRV%2fCO%2f1&Lang=en, accessed 25 April 2017.

¹³⁵ Ombudsperson for Persons with Disabilities (2016) *Report for 2016*, <http://posi.hr/joomdocs/Izvjescje-o-radu-pravobraniteljice-za-osobe-s-invaliditetom-za-2016.pdf>, accessed 25 April 2017.

¹³⁶ Croatia, Social Care Act, 13 December 2013, Article 4(1)(9) and Act on professional rehabilitation and employment of persons with disability, 13 December 2013, Article 3(1).

failure is considered discrimination.¹³⁷ It is left to the courts to interpret the scope of the use of 'publicly available resources' and participation in 'public and social life'.

The Primary and Secondary Education Act¹³⁸ provides that primary and secondary education is based on the principle of equal educational opportunities for all students in accordance with their abilities.¹³⁹ The Rules on primary and secondary education of students with developmental difficulties¹⁴⁰ defines a student with difficulties as

'a student whose abilities, in interaction with factors from the environment, limit his/her full and effective participation in education on an equal basis with others and are the result of physical, mental, intellectual or tactile impairments or dysfunctions or the combination of such impairments and dysfunctions.'

The Rules on primary and secondary education of students with developmental difficulties regulate various types of support and the integration of students with disabilities in the mainstream education system (although there are significant problems in implementation). The Rules do not have a specific provision on reasonable accommodation.¹⁴¹

The Science and Higher Education Act¹⁴² obliges higher education institutions to secure equality in opening the enrolment process to all, regardless of disability, but it does not provide regulations in respect of disability, the rights of students with disability or reasonable accommodation (with the exception of the right to transport).

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

The acts make no distinction between the duties of private and State bodies and institutions.¹⁴³

There is still no domestic court case law on reasonable accommodation duties. In her report for 2015, the Disability Ombudsperson described the problems faced by students in connection with reasonable accommodation in education: technical barriers, inflexible implementation of the rules on placement (inability to be placed in a school more convenient for a child with disability instead of placement by residence); resistance of school authorities to enrol a student with disability because of the reasonable

¹³⁷ Croatia, Anti-discrimination Act, 9 July 2008, Article 4(2).

¹³⁸ Croatia, Primary and Secondary Education Act, 15 July 2008, Official Gazette 87/2008, 86/2009, 92/2010, 105/2010, 90/2011, 5/2012, 16/2012, 86/2012, 94/2013, 152/2014, 07/2017, *Zakon o odgoju i obrazovanju u osnovnoj i srednjoj školi*.

¹³⁹ Croatia, Primary and Secondary Education Act, 15 July 2008, Article 4(2)(2).

¹⁴⁰ Croatia, Rules on primary and secondary education of students with developmental difficulties, 23 February 2015, Official Gazette 24/2015, *Pravilnik o osnovnoškolskom i srednjoškolskom odgoju i obrazovanju učenika s teškoćama u razvoju*.

¹⁴¹ There is a lack of educational programmes adjusted to people with disabilities, a lack of adequate textbooks and teaching tools, a lack of teachers trained to work with students with special needs, architectural and transport barriers and a lack of regulation in connection with the work of assistants (in relation to employment, qualifications, pay, responsibilities etc).

¹⁴² Croatia, Science and Higher Education Act, 17 July 2003, Official Gazette 123/2003, 198/2003, 105/2004, 174/2004, 2/2007, 46/2007, 45/2009, 63/2011, 94/2013, 139/2013, 101/2014, 60/2015, *Zakon o znanstvenoj djelatnosti i visokom obrazovanju*.

¹⁴³ Article 8 of the Anti-discrimination Act provides that the act is applicable to the conduct of all State bodies, regional and local self government units and legal persons in public authorities as well as to the conduct of all legal and natural persons, which begs the conclusion that it makes no distinction between the duties of private and State bodies and institutions.

accommodation obligations; not allowing a child to take an educational tool (a reader) home but only allowing them to use it in school.¹⁴⁴

The failure to meet reasonable accommodation duties in education continues in 2016. In her report for 2016, the Disability Ombudsperson describes several cases that raise problems of compliance with reasonable accommodation duties. In one situation, a failure to accept a student's difficulties resulted in them being subject to pedagogical sanction, instead of the child being helped to enjoy fully the right to equal access to education. In this specific case the Agency for Education found numerous omissions on the part of the school and issued a warning for a violation of the child's right to access to education and reasonable accommodation. Other problems identified in practice were the failure to accommodate the teaching process, transportation issues and architectural barriers.¹⁴⁵

In *Guberina v. Croatia*, the European Court of Human Rights¹⁴⁶ found a violation of Article 14 (prohibition of discrimination) of the European Convention on Human Rights in conjunction with Article 1 of Protocol No. 1 (protection of property) to the convention. In this case, the authorities failed to recognise the difference between the circumstances of the applicant – a father of a disabled child who asked for a tax exemption on the basis of meeting the housing needs of his family with regard to basic infrastructure requirements – in comparison with other people seeking a tax exemption. The ECtHR found that the domestic authorities had taken too restrictive an approach and had disregarded other provisions of domestic law, which address the question of accessibility of buildings for persons with disabilities, as well as Croatia's obligations under the UN Convention on the Rights of Persons with Disabilities and had thus failed to comply with the duty of reasonable accommodation by allowing the father to benefit from the tax exemption when purchasing accessible housing.

e) Failure to meet the duty of reasonable accommodation for people with disabilities

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-discrimination Act.¹⁴⁷ 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)).¹⁴⁸

¹⁴⁴ Ombudsperson for Persons with Disabilities (2015) *Report for 2015*, Report, http://www.posi.hr/index.php?option=com_joomdoc&task=cat_view&qid=55&Itemid=98. accessed 25 April 2017.

¹⁴⁵ Ombudsperson for Persons with Disabilities (2016) *Report for 2016*, available at: <http://posi.hr/joomdocs/Izvjescje-o-radu-pravobraniteljice-za-osobe-s-invaliditetom-za-2016.pdf>, accessed 25 April 2017.

¹⁴⁶ European Court of Human Rights, *Guberina v. Croatia*, No. 23682/13, 22 March 2016. [http://hudoc.echr.coe.int/eng#{"fulltext":\["guberina"\],"documentcollectionid2":\["GRANDCHAMBER"\],"CHAMBER":\["BER"\],"itemid":\["001-161530"\]](http://hudoc.echr.coe.int/eng#{), accessed 25 April 2017.

¹⁴⁷ For remedies and procedures see section 6.1.a below. 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.

¹⁴⁸ Croatia, Act on professional rehabilitation and employment of persons with disability, 13 December 2013, Article 41(1)(5).

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.¹⁴⁹

In 2013, the Ministry of Interior amended the Regulations on driving licences and allowed head covers to be worn in the driving licence photographs when a person wears such a cover for religious reasons.¹⁵⁰

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.¹⁵¹

Various religious communities have the right to pastoral care in health and social care institutions, prisons and the army.¹⁵²

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.¹⁵³

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.¹⁵⁴ 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 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,

¹⁴⁹ Croatia, Act on holidays, remembrance days and non-working days, 19 April 1996, Official Gazette 33/1996 with amendments, *Zakon o blagdanima, Spomendanu i neradnim danima u Republici Hrvatskoj*.

¹⁵⁰ Croatia, Regulations on driving licences, 1 July 2013, Article 12(4), Official Gazette 43/2013, 77/2013, 155/2013, *Pravilnik o vozačkim dozvolama*.

¹⁵¹ Croatia, Health Care Act, 15 December 2008, Article 22, Official Gazette 150/2008, 155/2009, 71/2010, 139/2010, 22/2011, 84/2011, 154/2011, 12/2012, 35/2012, 70/2012, 144/2012, 82/2013, 159/2013, 22/2014, 154/2014, 70/2016, *Zakon o zdravstvenoj zaštiti*.

¹⁵² Croatia, Act on the legal status of religious communities, 4 July 2002, Articles 14, 15 and 16; Official Gazette 83/2002, 73/2013, *Zakon o pravnom položaju vjerskih zajednica*.

¹⁵³ Croatia, Anti-discrimination Act, 9 July 2008, Article 4(2).

¹⁵⁴ Croatia, Regulations on accessibility of buildings to persons with disabilities, 17 June 2013, Official Gazette 78/2013, 153/2013, *Pravilnik o osiguranju pristupačnosti građevina osobama s invaliditetom i smanjene pokretljivosti*.

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, the consent of all owners is not needed for such changes.¹⁵⁵

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.¹⁵⁶ The existence of so many regulations is a problem in itself because the system is not transparent and people with disabilities face problems in finding out what their rights are in certain fields.

The NGO Centre for Peace Studies in collaboration with the NGO Censorship Plus conducted situation testing to determine whether people with disabilities are discriminated against on the basis of their disability in access to goods and services in the city of Split due to the existing architectural barriers.¹⁵⁷ A person in a wheelchair visited the Croatian Pension Insurance Office (HZMO) requesting certain documentation necessary to claim employment benefits. The office authorised to issue such documentation was located on the second floor and the employees of the HZMO explained to disabled person that the building has no elevator and that it would not be possible for her to get to the second floor since the stairway is very narrow and there is no space for the wheelchair to get through. It was even bigger surprise to learn that the office that deals with the determination of the degree of a person's disability is located on the third floor.

A lawyer who uses a wheelchair filed a civil suit against the Republic of Croatia before the Rijeka municipal court seeking compensation for damages due to the inaccessibility of the Rijeka administrative court. The court ordered the defendant to remove architectural barriers inside the administrative court building and in front of the building in the shortest period possible, but no longer than six months and to pay compensation for non-pecuniary damage to the claimant. The Republic of Croatia appealed against the judgment, which is therefore not yet final. The case is not publicly available, but it is described in the Disability Ombudsperson's report for 2016.¹⁵⁸

In most cases services, buildings and infrastructure are still inaccessible to persons with disability¹⁵⁹ and this situation persisted in 2016.¹⁶⁰

¹⁵⁵ Croatia, Act on ownership and other property rights, 2 October 2006, Article 87(3); Official Gazette 91/1996, 68/1998, 137/1999, 22/2000, 73/2000, 114/2001, 79/2006, 141/2006, 146/2008, 38/2009, 153/2009, 90/2010, 143/2012, 152/2014, *Zakon o vlasništvu i drugim stvarnim pravima*.

¹⁵⁶ 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 the Government Commission for 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 accessibility signs, Act on the movement of blind persons with a help of a guide dog); as well as the acts regarding social care and health.

¹⁵⁷ The research was conducted as a part of the project 'In the name of equality', carried out by the Centre for Peace Studies, Censorship Plus and Croatian Youth Network, and is funded through the European Union PROGRESS Programme. The report is available at http://www.antidiskriminacija.com/wp-content/uploads/2015/07/Activity-2.2.-Situation-testing_report.pdf, accessed 25 April 2017.

¹⁵⁸ Rijeka Municipal Court, No. P-102/2015, 30 May 2016. See Ombudsperson for Persons with Disabilities (2016), *Report for 2016* <http://posi.hr/joomdocs/Izvjesce-o-radu-pravobraniteljice-za-osobe-s-invaliditetom-za-2016.pdf>, accessed 25 April 2017.

¹⁵⁹ Ombudsperson for Persons with Disabilities (2015), *Parallel Report for the UN Committee on the Rights of Persons with Disability*, July 2014.

¹⁶⁰ Ombudsperson for Persons with Disabilities (2016) *Report for 2016*, <http://posi.hr/joomdocs/Izvjesce-o-radu-pravobraniteljice-za-osobe-s-invaliditetom-za-2016.pdf>, pp.17-18, 181-193, accessed 25 April 2017.

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.¹⁶¹

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.¹⁶²

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 the translation of its programmes into sign language.¹⁶³ The Croatian Radio-television national broadcast company's failure to fulfil this obligation adequately was one of the reasons that 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.

The research conducted by the NGOs the Centre for Peace Studies and Censorship Plus showed that persons with disabilities are discriminated against in access to public documents and services in the city of Split. A person with a hearing impairment went to the Croatian Health Insurance Office in Split (HZZO) and, using sign language, explained to the official employee that she needed a new health insurance card. The official clerk started to complain that she does not speak sign language and was shocked that the person with a hearing impairment came unaccompanied, stating that she (the clerk) 'doesn't have to know sign language because of 10 deaf people in town'. The situation was resolved by the clerk giving the person with a hearing impairment pen and paper and asking her to write down exactly what she needed. However, the clerk made constant negative comments on the situation, regardless of the fact that she was not even sure if the person with a hearing impairment understood her or not.¹⁶⁴

¹⁶¹ Croatia, Administrative Procedure Act, 27 March 2009, Article 11, *Zakon o općem upravnom postupku*.

¹⁶² Croatia, Identity Card Act, of 6 June 2015, Article 6 (3), Official Gazette 62/2015, *Zakon o osobnoj iskaznici*.

¹⁶³ http://www.hrt.hr/fileadmin/video/Izvjesce_o_radu_Programskog_vijeca_2013.pdf, accessed 25 April 2017.

¹⁶⁴ The research was conducted as a part of the project 'In the name of equality', carried out by the Centre for Peace Studies, Censorship Plus and Croatian Youth Network, and is funded through the European Union PROGRESS Programme. The report is available at http://www.antidiskriminacija.com/wp-content/uploads/2015/07/Activity-2.2.-Situation-testing_report.pdf, accessed 25 April 2017.

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.¹⁶⁵

3.1.2 Natural and legal persons (Recital 16 Directive 2000/43)

a) Protection against discrimination

In Croatia, the personal scope of anti-discrimination law covers natural and legal persons for the purpose of protection against discrimination.¹⁶⁶

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'.

b) Liability for discrimination

In Croatia, the personal scope of anti-discrimination law covers natural and legal persons for the purpose of liability for discrimination.¹⁶⁷

3.1.3 Private and public sector including public bodies (Article 3(1))

a) Protection against discrimination

In Croatia, the personal scope of national law covers private and public sector for the purpose of protection against discrimination.¹⁶⁸

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.

b) Liability for discrimination

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.¹⁶⁹

¹⁶⁵ Croatia, Anti-discrimination Act, 9 July 2008, Article 1.

¹⁶⁶ Croatia, Anti-discrimination Act, 9 July 2008, Article 1.

¹⁶⁷ Croatia, Anti-discrimination Act, 9 July 2008, Article 8.

¹⁶⁸ Croatia, Anti-discrimination Act, 9 July 2008, Article 1.

¹⁶⁹ Croatia, Anti-discrimination Act, 9 July 2008, Article 8.

3.3 Material scope

3.3.1 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.¹⁷⁰

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.¹⁷¹

3.3.2 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.¹⁷²

The Anti-discrimination Act explicitly covers access to employment and self-employment, for all of the grounds covered by the directives.

The public sector is not dealt with differently to the private sector.¹⁷³

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.¹⁷⁴

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

In Croatia, national legislation prohibits discrimination in the following areas: 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.¹⁷⁵

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

¹⁷⁰ Croatia, Anti-discrimination Act, 9 July 2008, Article 8.

¹⁷¹ Croatia, Labour Act, 15 July 2014, Article 7(4).

¹⁷² Croatia, Anti-discrimination Act, 9 July 2008, Article 8.1.

¹⁷³ Croatia, Anti-discrimination Act, 9 July 2008, Article 8(1).

¹⁷⁴ Croatia, Labour Act, 15 July 2014, Article 7(4).

¹⁷⁵ People's Ombudsperson (2016), *Ombudsperson's Report for 2016*, p. 6, <http://ombudsman.hr/hr/component/jdownloads/send/76-izvjesca-2016/854-izvjesce-pucke-pravobraniteljice-za-2016>, accessed 25 April 2017.

unemployment insurance. Issues of pay and dismissals are covered implicitly by the Anti-discrimination Act and explicitly by the Labour Act.¹⁷⁶

3.2.3.1 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.¹⁷⁷

3.3.4 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 retraining¹⁷⁸ as well as to education and science.¹⁷⁹ 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 discrimination and forbidding defendants to undertake any further discriminatory actions but reduced the awarded compensation to HRK 5000 (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.¹⁸⁰

3.3.5 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

¹⁷⁶ Croatia, Anti-discrimination Act, 9 July 2008, Articles 8(1) and 8(3) and Labour Act, 15 July 2014, Article 7(4).

¹⁷⁷ Croatia, Anti-discrimination Act, 9 July 2008, Article 8 (1).

¹⁷⁸ Croatia, Anti-discrimination Act, 9 July 2008, Article 8(1).

¹⁷⁹ Croatia, Anti-discrimination Act, 9 July 2008, Article 8(2).

¹⁸⁰ County Court of Varaždin, *L.I. and Ž.B. v. Branka d.o.o.*, Gž.3684/12, 2 April 2013.

organisations, political parties or any other organisations.¹⁸¹ Benefits provided for by such organisations are covered implicitly. Membership of and involvement in employers' organisations is not specifically mentioned.

During 2016, membership of a workers organisation was more frequently raised as a discrimination ground before the Ombudsperson and before the courts. In such situations the special challenge for the claimants is to prove that the unfavourable treatment by the employer is caused by the claimant's membership of a workers organisation, rather than by other justified reasons. Specifically, every unfavourable action by an employer towards a worker may be justified by the organisation of the work process, savings or a new systematisation of posts. The most common witnesses of unfavourable treatment in labour disputes, including in cases of discrimination on the ground of membership of a workers organisation, are co-workers, who, due to fear of their employer, often elide or deny circumstances with which they are familiar. Even in the cases where some of the witnesses confirm allegations from the civil suits, their statements are rarely identical, and in such cases the decisive role plays the assessment of the court if the conditions for the shifting of burden of proof on employer are fulfilled. As in previous years, this principle is still inconsistently applied which often results in the rejection of civil suits.¹⁸²

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

In Croatia, national legislation prohibits discrimination in the following area: social protection, including social security and healthcare as formulated in the Racial Equality Directive.

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.¹⁸³

Regarding healthcare protection, it should be pointed out that, according to law, all migrants¹⁸⁴ have the right to emergency medical care and necessary medical treatment. However, in practice, difficulties arise in situations in which medical personnel have to determine which medical conditions need to be medically treated under the terms of the International and Temporary Protection Act, because of which there have been situations in which doctors have refused to provide assistance to people, although it was clear that the people involved needed medical treatment.¹⁸⁵

Migrants are forced to pay the costs of medicines and medical examinations that are not considered as necessary. People who have been granted international protection are entitled to full medical insurance, under the same conditions as Croatian citizens, the costs of which are covered by the Ministry of Health. However, given that such people do not get a health insurance card, the realisation of the right to full health protection is very difficult, because a large number of doctors are not familiar with the relevant legislation and do not want to provide medical treatment solely on the basis of a residence permit. Furthermore, misunderstandings often occur during medical examinations, because migrants do not speak Croatian or doctors do not speak English, and the law does not provide for the use of translators in such situations.

¹⁸¹ Croatia, Anti-discrimination Act, 9 July 2008, Article 8(9).

¹⁸² People's Ombudsperson (2016), *Ombudsperson's Report for 2016*, p. 24. Available at: <http://ombudsman.hr/hr/component/jdownloads/send/76-izvjesca-2016/854-izvjesce-pucke-pravobraniteljice-za-2016>, accessed 25 April 2017.

¹⁸³ Croatia, Anti-discrimination Act, 9 July 2008, Articles 8(3) and 8(4).

¹⁸⁴ The expression 'migrant', used throughout the report denotes, the foreigner, non-EU citizen.

¹⁸⁵ Croatia, International and Temporary Protection Act, 24 June 2015, Article 57, Official Gazette no. 70/15, *Zakon o međunarodnoj i privremenoj zaštiti*.

On 20 June 2016, online consultation on the draft of the Proposal of Amendments to the Law on Compulsory Health Insurance and the Health Care of Foreigners in the Republic of Croatia started. The law had not been adopted by the end of 2016.¹⁸⁶

3.2.6.1 Article 3.3 exception (Directive 2000/78)

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.

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

In Croatia, national legislation prohibits discrimination in the following area: social advantages as formulated in the Racial Equality Directive.

The Anti-discrimination Act applies to all areas, without any limitation;¹⁸⁷ it therefore covers implicitly social advantages of all kinds.

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

Regarding the social welfare rights of migrants, people who are in the process of seeking international protection receive financial help in the amount of HRK 100 (EUR 15) per month, while people who have been granted international protection are entitled to financial help in the amount of HRK 800 per month (EUR 115), the same as Croatian citizens. However, a problem often occurs because it takes long time for the competent authorities to secure accommodation for those who have been granted international protection. During this period the person is forced to stay at the shelter and is not entitled to financial aid, since it is considered that all of their basic social needs are covered by the institution in which she or he resides.¹⁸⁸

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

In Croatia, national legislation prohibits discrimination in the following area: education as formulated in the Racial Equality Directive.

The Anti-discrimination Act prohibits discrimination in education based on, among other grounds, racial or ethnic origin, religion or belief, age, disability and sexual orientation.¹⁸⁹

In the field of education, there are still several unresolved issues, from integration of children with disabilities in the mainstream education system to Catholic religious classes in public schools to discriminatory content of textbooks (e.g. gender stereotypes, presenting only two-parent families as a complete family, and stigmatisation of gay people).¹⁹⁰

a) 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

¹⁸⁶ <https://esavjetovanja.gov.hr/ECon/MainScreen?entityId=3534>, accessed 25 April 2017.

¹⁸⁷ Croatia, Anti-discrimination Act, 9 July 2008, Article 8.

¹⁸⁸ Croatia, Social Care Act, 13 December 2013, Article 4(1)(9), Official Gazette 157/2013, 152/2014, 99/2015, 52/16, 16/17 *Zakon o socijalnoj skrbi*.

¹⁸⁹ Croatia, Anti-discrimination Act, 9 July 2008, Article 8(2).

¹⁹⁰ Gender Equality Ombudsperson (2013) *Research on Gender Issues in Primary Schools Textbooks*, 2013.

with Disabilities 2003-2006,¹⁹¹ the National Strategy for Persons with Disabilities 2007-2015,¹⁹² the National Strategy for Persons with Disabilities 2017-2020¹⁹³ and the Parliamentary Declaration on the Rights of People with Disabilities).¹⁹⁴

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

In her report for 2015, the Disability Ombudsperson described the problems faced by students in connection with reasonable accommodation in education: technical barriers, inflexible implementation of the rules on placement (inability to be placed in a school more convenient for a child with disability instead of placement by residence); the resistance of school authorities to enrolling a student with disability because of the reasonable accommodation obligations; not allowing a child to take an educational tool (a reader) home but allowing them to use it in only school.¹⁹⁵

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 will be provided with the assistance or not.^{196 197}

b) 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 minorities¹⁹⁸ and the Act on education in the languages and scripts of national minorities,¹⁹⁹ 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.²⁰⁰

Members of national minorities can realise 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

¹⁹¹ Official Gazette 13/2003.

¹⁹² Official Gazette 63/2007.

¹⁹³ Official Gazette 42/2017.

¹⁹⁴ Official Gazette 47/2005.

¹⁹⁵ Ombudsperson for Persons with Disabilities (2015) *Report for 2015*, available at: http://www.posi.hr/index.php?option=com_joomdoc&task=cat_view&qid=55&Itemid=98, accessed 25 April 2017.

¹⁹⁶ Ombudsperson for Persons with Disabilities (2014), *Report for 2014*, pp. 82-90: http://www.posi.hr/index.php?option=com_joomdoc&view=docman&qid=55&task=cat_view&Itemid=98. Accessed 25 April 2017.

¹⁹⁷ Statistics on the number of children with disabilities in mainstream and segregated education in Croatia are not available.

¹⁹⁸ Official Gazette 155/2002, 47/2010, 80/2010, 93/2011, 93/2011.

¹⁹⁹ Official Gazette 51/2000 and 56/2000.

²⁰⁰ 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.

correspondence-consultative classes).²⁰¹ 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 2013/2014 their number was 5 470. However this number slightly decreased to 5 411 in the school year 2014/2015.^{202 203}

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.

In 2008 there were 68 Roma-only classes, and not just in Međimirska county (with 62 Roma-only classes) and Varaždinska county, where the practice had existed before, but also in two other counties.²⁰⁴

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.²⁰⁵

The Committee on the Elimination of Racial Discrimination has twice expressed its concern at the continued segregation of Roma children within the educational system.²⁰⁶

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.²⁰⁷

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

²⁰¹ <http://public.mzos.hr/Default.aspx?sec=3154>, accessed 25 April 2017.

²⁰² <https://pravamanijina.gov.hr/UserDocsImages/arhiva/Izvjesce%20o%20provedbi%20Akcijskog%20plana%20za%20provedbu%20NSUR%202014.pdf>, accessed 8 June 2017.

²⁰³ New data is not available.

²⁰⁴ Croatia Ministry of Education (2008), *Report on the Implementation of the Decade of Roma Inclusion in the Field of Education for 2007 and 2008*.

²⁰⁵ This had been argued in public debates regarding this issue.

²⁰⁶ CERD Concluding Observations on Croatia of 21 May 2002 and of 5 March 2009.

²⁰⁷ European Court of Human Rights (ECtHR), *Oršuš and Others v Croatia* [GC], No.15766/03, 16 March 2010.

to Roma-only classes had not been specifically designed to test their command of that language.²⁰⁸

There have been some positive changes in the process of the implementation of the judgment.

For example, 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.²⁰⁹ In accordance with this legislation, a panel of experts, composed of a physician, a pedagogue²¹⁰ 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.²¹¹

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.

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 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 specific results obtained in abolishing 'Roma-only' classes. There are no available data on supervision developments since then.²¹²

In April 2015, Roma Early Childhood Inclusion (RECI), a joint initiative of the Open Society Foundations, the Roma Education Fund and UNICEF, published its Croatia

²⁰⁸ See the judgment in ECtHR, *Oršuš and Others v Croatia* [GC], No.15766/03, 16 March 2010, paragraphs 158-160.

²⁰⁹ This procedure is applied to each child entering the educational system.

²¹⁰ Unlike teachers who can have degrees from various fields (e.g. mathematics, chemistry, English language), a pedagogue is a person with a degree in pedagogy.

²¹¹ Ad hoc Committee of Experts on Roma Issues, (CAHROM), *Thematic Report*, CAHROM/2012)18, <https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Inf/DH%282011%2946&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>, accessed 25 April 2017.

²¹² [http://hudoc.exec.coe.int/ENG#{"EXECIdentifier":\["004-10085"\]}](http://hudoc.exec.coe.int/ENG#{), accessed 25 April 2017.

report.²¹³ It confirmed that 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.

In connection with preschool education, the report shows that only 20 % of all Roma children aged between 0–6 years in Roma households included in the study are accessing any kind of preschool education or preschool programme, including preparatory pre-primary programmes, which has serious negative impact on their further education. Participation is usually only in a segregated Roma kindergarten or a Roma playgroup (because of either location and/or sponsorship). Even in existing preschool settings, there is exclusion and segregation of some Roma children, as well as anti-Roma attitudes amongst parents and sometimes teachers. Many Roma parents either did not know about existing local preschool facilities and support or were unable to enrol their children due to various obstacles such as the absence of Roma teachers or teaching assistants, a shortage of kindergarten child places, rural isolation and the financial burdens associated with formal schooling.

The report notes limited participation and poor levels of progress and attainment as well as poor pupil motivation, which is causally mirrored by low teacher expectations. The grade failure and repeats at crucial age stages are still significant. There is a real lack of teachers' intercultural competences. Racist bullying of Roma pupils remains unaddressed. Pupils feel insecure and inferior on account of negative teacher attitudes towards Roma. The consequent pattern of premature dropout from the education system is still very high among Roma students.

The report confirmed that there is ethnic segregation by class or pupil grouping within classes (segregation within classrooms).

Although Roma secondary school enrolments have been on the increase, a substantial decrease in each academic year can be noted compared to primary school enrolments, which seems to indicate a high drop-out rate towards the end of upper primary school. The number of Roma pupils who left school increased between 2008/2009 and 2011/2012. At the same time Croatia has a significantly lower drop-out rate among the general population than many European countries and significantly lower than the EU 27 Member States' average (15.3 %). Of the Roma in the study, 19 % finished only grades 1–4 of primary school while only 24 % completed primary school.²¹⁴

After-school programmes for Roma children, funded by the Ministry of Education, are often unavailable due to a lack of classroom space and available teaching staff.

Although schools are under a legal obligation to provide special assistance to enrolled children who do not know or who have an insufficient command of the Croatian language, almost a third (29.8 %) of Roma pupils in upper primary grades (between 5th–8th grade) have trouble understanding Croatian.

Only around 10 % of all Roma children go on to finish a four-year secondary education. The number of students in each secondary education year decreases drastically: 267

²¹³ Roma Early Childhood Inclusion+, Croatia Report, http://www.romaeducationfund.hu/sites/default/files/publications/reci_croatia_report_eng-final_web.pdf, accessed 25 April 2017.

²¹⁴ Šikić-Mičanović, L., Ivatts, A. R., Vojak, D., and Geiger-Zeman, M. (2015), *Roma early childhood inclusion+Croatia report*, London, Open Society Foundations, p.56.

(45.5 %) in year one; 177 (30.2 %) in year two; 120 (20.4 %) in year three; and 22 (3.7 %) in year four.

In the register of unemployed Roma for 2016, 66 % are registered as not even having finished elementary school, and 25 % as having finished only elementary school.²¹⁵

Such findings are confirmed by the Fourth Opinion on Croatia adopted on 18 November 2015 by the Advisory Committee on the Framework Convention for the Protection of National Minorities.²¹⁶

According to the second European Union minorities and discrimination survey,²¹⁷ the proportion of Roma children attending schools in which all their schoolmates are Roma in Croatia is 8 % while 28 % of Roma between the age of 25 and 44 have not completed any level of education.

The number of Roma students in tertiary education has fluctuated from 25 students in 2009/2010 to 23 students in 2012/2013.²¹⁸ A very small number continue with studies after secondary school even though scholarships from the Roma Education Fund and other donors, including city authorities, are available to Roma students.

As for postgraduate education, it is worth mentioning that in the academic year 2016/2017, the academic programme of the philosophy faculty of the University of Zagreb included, allegedly for the first time in Europe, four semesters of postgraduate Roma courses. The courses cover subjects such as Roma language, culture, literature and history.²¹⁹ The philosophy faculty web page does not, as yet, contain more detailed information about the academic programme.

There is a lack of monitoring and evaluation of the quality and equality aspects of education. The chronic lack of reliable, uniform and accurate ethnically disaggregated data prevents any real measurement of the success – or lack of success – of the policies and planned initiatives. Success rates at each level of education, as well as gender differences in progress and achievement, are not available with regard to Roma pupils in Croatian schools. The database of the Ministry of Education does not indicate when Roma pupils leave school (age or grade) or the percentage of Roma pupils who do not finish primary school. In addition, the number of missed classes per year, data about progress and achievement, economic status and amount of support (financial, food, books) and participation rates in extracurricular activities were not obtainable.²²⁰

In March 2015, the Human Rights Committee concluded its consideration of the third periodic report of Croatia on its implementation of the provisions of the International Covenant on Civil and Political Rights. It noted that the problem of de facto segregation

²¹⁵ People's Ombudsperson (2016), *Ombudsperson's Report for 2016*, <http://ombudsman.hr/hr/component/jdownloads/send/76-izvjesca-2016/854-izvjesce-pucke-pravobraniteljice-za-2016>, p.41, accessed 25 April 2017.

²¹⁶ Council of Europe, Advisory Committee On The Framework Convention For The Protection Of National Minorities, (2016), *Fourth Opinion on Croatia adopted on 18 November 2015*, Strasbourg, 29 November 2016, ACFC/OP/IV(2015)005rev, pp.25-26.

²¹⁷ European Union Agency for Fundamental Rights (2016), *Second European Union minorities and discrimination survey, Roma - selected findings*, available at http://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-eu-minorities-survey-roma-selected-findings_en.pdf. Accessed 25 April 2017. The survey was conducted between October 2015 and April 2016.

²¹⁸ New data is not available.

²¹⁹ <http://www.ffzg.unizg.hr/?p=5441>, accessed 8 June 2017.

²²⁰ Roma Early Childhood Inclusion+ Croatia Report, http://www.romaeducationfund.hu/sites/default/files/publications/reci_croatia_report_eng-final_web.pdf, accessed 25 April 2017.

of Roma children in schools was still very present in the country, particularly at primary school.²²¹

- 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 debate on whether such education is discriminatory and necessitates segregation.²²²

- Migrants²²³

Migrants are not treated differently under anti-discrimination legislation and should benefit equally with nationals from anti-discrimination law enforcement and implementation in the field of education.

According to the International and Temporary Protection Act,²²⁴ migrant children have the right to primary and secondary education under the same conditions as Croatian citizens. The state has an obligation to ensure their right to education by 30 days after they have made such a request. The act provides for the potential to include children in preparatory classes and additional Croatian language classes, as well as additional classes in other subjects, if they lack the Croatian language skills and such need exists.²²⁵

However, those provisions have not been implemented consistently. Frequently, children spend a whole year in Croatia without being included in the educational system. Also, schools that are willing to enrol migrant children are rare, since the teachers are not adequately trained nor educated for the specific needs of these children and often do not have enough understanding of them, while the law does not provide for the possibility of engaging teaching assistants who would provide help to those children.

At the beginning of the school year 2016/2017, only two of fifteen children that were placed at the Zagreb asylum seeker shelter were enrolled in primary school, while for others, including some that had been in Croatia for more than half a year, enrolment in primary school had been delayed.²²⁶

²²¹ See <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=15750&LangID=E>, accessed 25 April 2017, and Human Rights Committee (2015), *Concluding observations on the third periodic report of Croatia*, 30 April 2015 (CCPR/C/HRV/CO/3).

²²² See Čorkalo Biruški, D. and Ajduković, D. (2007), 'Separate schools – a divided community: The role of the school in post-war social reconstruction', *Review of Psychology*, 2007, Vol. 14, No. 2, pp. 93-108. <http://mjesecc.ffzg.hr/revija.psi/vol%2014%20no%202%202007/Corkalo%20ajdukovic.pdf>, accessed 25 April 2017.

²²³ For the purpose of this report the term migrants refer to non-EU citizens and stateless persons who are currently residing in the host country, including seekers of international protection and those who have been granted temporary international protection.

²²⁴ Croatia, International and Temporary Protection Act, 24 June 2015, Official Gazette no. 70/15, *Zakon o međunarodnoj i privremenoj zaštiti*.

²²⁵ Croatia, International and Temporary Protection Act, 24 June 2015, Article 58.

²²⁶ Welcome website (2016), 'School still unreachable for refugee children', 28 September 2016, <http://welcome.cms.hr/index.php/hr/2016/09/03/djeci-izbjeglicama-skola-ipak-nedostupna/>, accessed 25 April 2017.

Obstacles also exist in the secondary education system. For example, when a 15-year-old boy from Iraq wanted to enrol in high school, the Agency for Science and Higher Education demanded as a condition of entry his certificate of completion of the lower grades – a certificate, which of course, the boy does not have.²²⁷

Similar problems also occur with the recognition of educational and professional qualifications, given that such a system is not yet developed in Croatia. Furthermore, the law does not explicitly mention the right of migrant children to pre-school education even though this particular model of education is crucial for enabling children to integrate into society from an early age and to facilitate their later inclusion in the system of primary education. Even though the initiatives for the inclusion of migrant children in pre-schools have been accepted, they have not yet been implemented.

The law also does not provide for the inclusion of migrant children into the higher education system.²²⁸ The law does not provide for adult migrants to learn the Croatian language, so in that respect they completely depend on NGOs and volunteers. The law provides for a Croatian language course for people who have been granted international protection, however, in 2016, the institutions that would provide this kind of education have not yet been selected and so those who have been granted international protection in 2016 still depend on the support of volunteers. At the same time, although the state does not implement its own commitments, the law states that people who have been granted international protection have to cover the costs of the course if they do not attend regularly. The right to education is offered only to those adults who have been granted some form of international protection, while migrants and asylum seekers, do not have such a right.²²⁹

During 2016, MZOS concluded agreements on the teaching of Croatian language for asylum seekers and foreigners under subsidiary protection in Pula, Poreč, Kutina, Split, Zagreb and Velika Gorica, and interest had also been expressed in Rijeka, Sisak and Zaprešić. However, after one 70-hour course, (which had been anticipated to last 200 hours), the agreements were suspended until further notice as no money had been secured for the rest of the programme.²³⁰

The Ombudsperson's recommendation to the Government of the Republic of Croatia is to introduce an integration policy aimed at all migrants, not just people under international protection, in cooperation with all competent authorities and migrants themselves. There is no major anti-discrimination case law in the field of education involving migrants. There are no major policies that aim to address discrimination against migrants in education.

In practice, the inclusion of refugees and migrants in the education system is difficult and leads to further economic and social marginalisation. For example, although asylum-seekers should be allowed to enrol in high school, this is very rare, since for their enrolment schools require the submission of earlier certificates, which most of them do not have as they did not manage to carry them when they left their countries of origin.

²²⁷ MAZ (Anti-Fascist Network Zagreb) (2016), 'Refugees have the right to education and healthcare', <http://www.maz.hr/2017/01/14/izbjeglice-imaju-pravo-na-obrazovanje-i-zdravlje/>, accessed 25 April 2017.

²²⁸ Croatia, International and Temporary Protection Act, 24 June 2015, Official Gazette no. 70/15, *Zakon o međunarodnoj i privremenoj zaštiti*.

²²⁹ Croatia, International and Temporary Protection Act, 24 June 2015, Article 68, Official Gazette no. 70/15.

²³⁰ People's Ombudsperson (2016), *Ombudsperson's Report for 2016*, <http://ombudsman.hr/hr/component/jdownloads/send/76-izvjesca-2016/854-izvjesce-pucke-pravobraniteljice-za-2016>, pp.44-45, accessed 25 April 2017.

3.3.10 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 prohibits discrimination in the following areas: 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.²³¹

With rare exceptions,²³² there are no special regulations on access to and supply of goods and services for persons with disabilities.

The Same-sex Life Partnership Act prohibits discrimination based on same-sex partnership, in access to and supply of goods and services.²³³

3.2.9.1 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).

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

In Croatia, national legislation prohibits discrimination in the following area: 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.²³⁴

The Same-sex Life Partnership Act prohibits discrimination based on same-sex partnership, in access to housing.²³⁵ LGBT persons often face discrimination in this field.²³⁶ The Gender Equality Ombudsperson reports that discrimination against 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.²³⁷

In its judgment in *Guberina v. Croatia*²³⁸ (described in detail in section 2.6 above), the ECtHR found that the Croatian authorities were under a duty to provide a reasonable accommodation to the father by allowing him a tax exemption when purchasing a house to meet the basic needs of his family, including his disabled child.

²³¹ Croatia, Anti-discrimination Act, 9 July 2008, Article 8(8).

²³² The name of a medicinal product has to be expressed in Braille format on the packaging.

²³³ Croatia, Same-sex Life Partnership Act, 15 July 2014, Article 71.

²³⁴ Croatia, Anti-discrimination Act 9 July 2008, Article 8.

²³⁵ Croatia, Same-sex Life Partnership Act, 15 July 2014, Articles 71, 72 and 79.

²³⁶ Organisation Zagreb Pride, http://www.zagreb-pride.net/new/wp-content/uploads/2016/01/brutalna_stvarnost_hr_web.pdf, accessed 21 October 2016.

²³⁷ Gender Equality Ombudsperson (2014) *Report for 2014*, pp. 100-102: http://www.prs.hr/attachments/article/1555/01_IZVJESCE_2014_CJELOVITO.pdf, accessed 21 October 2016.

²³⁸ European Court of Human Rights, *Guberina v. Croatia*, No. 23682/13, 22 March 2016 [http://hudoc.echr.coe.int/eng#{"fulltext":\["guberina"\],"documentcollectionid2":\["GRANDCHAMBER"\],"CHAMBER":\["itemid":\["001-161530"\]}\]](http://hudoc.echr.coe.int/eng#{), accessed June 12 2017.

3.2.10.1 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 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.'²³⁹

In 2015, the Ombudsperson's office paid special attention to the issue of housing and visited some 20 Roma settlements in several counties. It confirmed the existence of segregation in housing and the numerous problems Roma faced due to their exclusion and poverty.²⁴⁰

In 2016, the Ombudsperson's office reported that as a consequence of poverty and unemployment, the majority of Roma have exceedingly bad living conditions, which in certain cases display extreme characteristics. During 2016, employees of the Ombudsperson's office visited numerous locations where Roma live. What those locations have in common is isolation from the city/municipality, lack of basic infrastructure, extremely dilapidated living quarters, without sanitary space, which are usually too small for the number of people who live in them. In many locations, Roma are settled on land owned by local government or private persons, which causes constant fear of eviction. Additionally, the issue of the land being owned by other people is an obstacle for securing a connection to the power grid, even when it is technically possible. As a consequence, an excessively high number of houses/shelters are connected to the same power meter, which presents a clear danger. In one settlement situated in a forest, the inhabitants consume non-drinking water, live in a small number of containers and until recently were not connected to the power grid. Beside such drastic examples, many

²³⁹ The report of the UN Special Rapporteur on adequate housing, A/HRC/16/42/ of 30 December 2010.

²⁴⁰ People's Ombudsperson (2015), *Ombudsperson's Report for 2015*, pp. 34-36, <http://ombudsman.hr/hr/component/jdownloads/send/67-2015/745-izvjesce-pp-2015-pdf>, accessed 21 October 2016.

families have problems with the legalisation of their living quarters.²⁴¹ In 2016, out of 576 requests for legalisation, only 10 % were accepted.²⁴²

There have been no anti-discrimination cases in relation to housing involving Roma.

- Migrants

Migrants are not treated differently under anti-discrimination legislation in Croatia.

However, Croatia has failed to secure adequate housing solutions for migrants and to establish a system of accommodation for people seeking international protection. Seekers of international protection are placed in shelters that are located on the outskirts of the city, often isolated from the local population.²⁴³ Measures to build relationship with the local community have not been determined, which leads to hostility towards migrants by local residents. The state does not have a structured plan for the accommodation of migrants and places them in existing shelters and detention centres that do not have sufficient capacity to accommodate so many people. Younger unaccompanied children are placed in institutions for abandoned children, while older children are placed in youth detention centres, which is particularly problematic since they are automatically treated as troubled and do not get adequate care.²⁴⁴

So far there have been no anti-discrimination cases in relation to housing involving migrants.

So far there are no major policies that aim to address discrimination against migrants in housing (in detention centers).

The Commissioner for Human Rights of the Council of Europe, in his report following his visit to Croatia, noted that Croatia currently has 700 places in two open reception centres, in Zagreb and Kutina. The Porin reception centre in Zagreb, which was visited by the commissioner, is a former hotel that has been given to the border directorate of the Ministry of the Interior for temporary use. It has the capacity to accommodate 600 people, primarily asylum seekers. At the time of the Commissioner's visit, 195 asylum seekers and 47 migrants subject to deportation resided there. These included Syrians, Iraqis, Afghans and Moroccans. The irregular migrants were accommodated in the closed section of the reception centre and their freedom of movement was limited, with them being obliged to return to the centre by 10pm. The Commissioner noted that the living conditions in the Porin reception centre were good overall. The reception centre in Kutina, with a capacity of 100 people, hosts members of vulnerable groups, including families with children, unaccompanied and separated children, single mothers and people with disabilities. As of March 2016, 77 asylum seekers were accommodated there. Some 30 asylum seekers who have sufficient funds, have found private accommodation in Croatia.²⁴⁵

²⁴¹ In previous decades, many houses in Croatia were built without the necessary permits from the relevant authorities. In 2013, the Ministry of Construction started a project of legalisation where the owners of such 'illegally built objects' were allowed to legalise their houses without having to pay a fine.

²⁴² People's Ombudsperson (2016), *Ombudsperson's Report for 2016*
<http://ombudsman.hr/hr/component/jdownloads/send/76-izvjesca-2016/854-izvjesce-pucke-pravobraniteljice-za-2016>, p.41-42, accessed 25 April 2017.

²⁴³ The Croatian International and Temporary Protection Act distinguishes between two categories of seekers of international protection: asylum seekers and persons under subsidiary protection.

²⁴⁴ MAZ (Anti-Fascist Network Zagreb) (2016), 'Refugees have the right to education and healthcare',
<http://www.maz.hr/2017/01/14/izbjeglice-imaju-pravo-na-obrazovanje-i-zdravlje/>, accessed 25 April 2017.

²⁴⁵ Council of Europe (2016), *Report by Nils Muižnieks Commissioner for Human Rights of the Council of Europe following his visit to Croatia from 25 to 29 April 2016*,
[https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?coeReference=CommDH\(2016\)31](https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?coeReference=CommDH(2016)31), accessed 25 April 2017.

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.²⁴⁶ This exception has to be interpreted in proportion to the aim and purpose for which it is provided.²⁴⁷

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)

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.²⁴⁸

- 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.²⁴⁹ 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 cooperation in the educational and cultural field (establishing religious education in schools) and on economic issues.

²⁴⁶ Croatia, Anti-discrimination Act, 9 July 2008, Article 9(2)(4).

²⁴⁷ Croatia, Anti-discrimination Act, 9 July 2008, Article 9(3).

²⁴⁸ Croatia, Anti-discrimination Act, 9 July 2008, Articles 9(2)(5) and 9(3).

²⁴⁹ Constitutional Court of the Republic of Croatia, P.T., U-III - 702 / 2009, 22 May 2013, see dissenting opinion of the President of the Croatian Constitutional Court, Ms. Jasna Omejec.

By signing the Agreement between the Holy See and the Republic of Croatia on Cooperation in the Field of Education and Culture,²⁵⁰ 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).²⁵¹ 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.

According to the Act on the legal status of religious communities,²⁵² issues of common interest for the Republic of Croatia and one or more religious communities may be regulated by an agreement made between the Government and the religious community.²⁵³ Among other things, such agreements regulate the subject of religious education, which may be performed in pre-school institutions or schools as an optional subject under the same conditions as classes for obligatory subjects. However, in practice, religious education is most commonly delivered in the premises of religious communities. Such classes are subject to the same pedagogical obligations as classes held at schools in respect of education planning, handling pedagogical documentation, evaluating the achievements of students and monitoring the quality of education.

The Republic of Croatia has signed eight agreements on the common interest, thus regulating its relations with 21 religious communities in total. Religion classes for members of 12 religious communities (in addition to the Catholic majority) are currently given as school subjects in schools in Croatia. Classes for Orthodox, Islamic and Catholic religious education are performed on school premises (but not in every school), while other religion classes are performed in the premises of the religious communities.

Catholic, or any other religious education is not obligatory, but when chosen as a subject, it is graded as any other school subject.

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 Court²⁵⁴ 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 after which P.T. filed an application to the European Court of Human Rights complaining that his dismissal from his job as a religious education teacher had constituted an unjustified interference with the exercise of his right to private and family life. The European Court of Human Rights found no breaches of P.T.'s rights under the convention, stating that his dismissal was justifiable

²⁵⁰ Official Gazette International Agreements 2/1997.

²⁵¹ According to some reports, 93.57 % children chose to take Catholic religious education in public schools. Religious classes are usually organised at the beginning or the end of the school day, but there are reports that in some schools children who chose not to take those classes have to wait for the next class and do not have other organised activities. (Forum for Freedom in Education (2011), <http://www.fso.hr/wp-content/uploads/2015/06/Ancic-Puhovski-Vjera-u-obrazovanje-i-obrazovanje-u-vjeri.pdf>, accessed 25 April 2017).

²⁵² Croatia, Act on the legal status of religious communities, 4 July 2002, Official Gazette 83/2002, 73/2013, *Zakon o pravnom položaju vjerskih zajednica*, Article 9.

²⁵³ Croatia, Act on the legal status of religious communities, 4 July 2002, Official Gazette 83/2002, 73/2013, Article 9.

²⁵⁴ Supreme Court of the Republic of Croatia, *P.T. v. Gimnazija E.K.*, Revr. 499/08, 3 December 2008.

since P.T. knew the consequences of entering into a second marriage, as well as the fact that the school authorities had tried to secure another teaching position for him.^{255 256} The claimant relied on Article 8 and on Article 8 in conjunction with Article 14 of the convention. However, the European Court of Human Rights, referring to *Fernández Martínez v. Spain* (no. 56030/07), among other cases, found no violation of Article 8 and concluded that given its finding under Article 8, it was not necessary to examine the complaint under Article 8 taken together with Article 14 separately.

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,²⁵⁷ 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 27.²⁵⁸ An active soldier can be promoted to lower officer status (*dočasnik*) if not older than 29²⁵⁹ and to officer status (*časnik*) if not older than 30.²⁶⁰ 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,²⁶¹ 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.

The Judiciary Act,²⁶² which regulates employment in the prison services, provides an exception for the judicial police (*pravosudna policija*)²⁶³ 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).

²⁵⁵ European Court of Human Rights (ECtHR), *Travaš v. Croatia*, no. 75581/13, 4 October 2016, final on 30 January 2017, available at: [http://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%22trava%C5%A1%22\],%22documentcollectionid%22:\[%22GRANDCHAMBER%22,%22CHAMBER%22\],%22itemid%22:\[%22001-166942%22\]}](http://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22trava%C5%A1%22],%22documentcollectionid%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-166942%22]}), accessed 25 April 2017.

²⁵⁶ <http://www.vecernji.hr/hrvatska/echr-otkaz-vjeroucitelju-petru-travas-u-zbog-povrede-kanonskog-prava-je-opravan-1118685>, accessed 25 April 2017.

²⁵⁷ Official Gazette 73/13, 75/2015, 50/2016.

²⁵⁸ Croatia, Act on service in the armed forces, 14 June 2013, *Zakon o službi u Oružanim snagama Republike Hrvatske*, Article 36.

²⁵⁹ Croatia, Act on service in the armed forces, 14 June 2013, Article 40.

²⁶⁰ Croatia, Act on service in the armed forces, Article 43.

²⁶¹ Official Gazette 34/2011, 130/2012, 89/2014, 151/2014, 33/2015, 121/2016.

²⁶² Official Gazette 28/13, 33/2015, 82/2015, 82/2016.

²⁶³ The judicial police is a police force under the jurisdiction of the Ministry of Justice and its task is to protect and safeguard people and property in the courts and prisons.

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.²⁶⁴ 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.²⁶⁵

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 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, 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 third country nationals.²⁶⁶

That legislation had a particularly negative effect on Roma since they faced the problem of fulfilling the residence requirement (a minimum of five years of uninterrupted permanent residence) and/or 'proficiency in the Croatian language and Latin script' requirement and/or 'attachment to the Croatian culture' requirement and/or 'respect for the legal system' requirement.²⁶⁷ Obtaining citizenship for Roma people remains an issue today and there is still a significant number of Roma with unresolved citizenship status.²⁶⁸

Furthermore, people 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

²⁶⁴ Croatia, Anti-discrimination Act, 9 July 2008, Article 9(2)(9).

²⁶⁵ Official Gazette 53/1991, 70/1991, 28/1992, 113/1993, 4/1994, 130/2011 and 110/2015.

²⁶⁶ UNCHR, Regional Bureau for Europe (1997), *Citizenship and Prevention of Statelessness Linked to Disintegration of the Socialist Federal Republic of Yugoslavia*, European series, Volume 3, No 1, June 1997, <http://www.unhcr.org/46e660582.pdf>, accessed 25 April 2017.

²⁶⁷ See: Zoon, I. (2002), *Report on obstacles facing the Roma minority of Croatia in acquiring citizenship and accessing citizenship, housing, health and social assistance*, Council of Europe/OSCE-ODIHR/European Commission Project 'Roma under the Stability Pact', September 2002.

²⁶⁸ People's Ombudsperson (2014), *Ombudsperson's Report for 2014*, p.33, available at: <http://ombudsman.hr/hr/component/jdownloads/send/29-2014/562-izvjesce-pucke-pravobraniteljice-za-2014-qodinu>, accessed 21 October 2016.

domicile; among them were persons who did not acquire nationality of another successor state of the SFRY and were thus stateless. Most of them were Roma.

According to UNHCR, in 2011 in Croatia, there were (still) 2 886 people who were stateless or of undetermined citizenship, the majority of whom are Roma, and the problem of those persons 'remains largely unaddressed' by the Croatian authorities.²⁶⁹

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.²⁷⁰

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.²⁷¹

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 recognises both registered same-sex partnership and unregistered informal same-sex cohabitation. The Same-sex Life Partnership Act (entered into force in August 2014) gives partners in same-sex registered partnerships access to labour rights (in the field of employment, work conditions and participation in the labour market, opposite-sex partners should have the same rights as married employees),²⁷² 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.^{273 274} It further gives partners in same-sex cohabitations (*neformalno životno partnerstvo*) the same rights granted to partners in different-sex cohabitations (*izvanbračna zajednica*).²⁷⁵

According to the Gender Ombudsperson's Report for 2016, there have been no specific problems with the implementation of the Same-sex Life Partnership Act.²⁷⁶

²⁶⁹ UNHCR's intervention as a third party in the ECtHR case of *Hoti v. Croatia* (No. 63311/14).

²⁷⁰ Croatia, Labour Act, 15 July 2014, Article 86(3).

²⁷¹ Constitutional Court of the Republic of Croatia, case no.U-III-4804/2013.

²⁷² Croatia, Same-sex Partnership Act, 15 July 2014, Article 69.

²⁷³ Croatia, Same-sex Life Partnership Act, 15 July 2014, Articles 37-79.

²⁷⁴ Between August 2014 and 31 December 2015, 108 same-sex partnerships have been registered (Gender Ombudsperson's report for 2015).

²⁷⁵ Croatia, Same-sex Life Partnership Act, 15 July 2014, Article 4(2).

²⁷⁶ Gender Equality Ombudsperson (2016), *Report for 2016*, available at:

http://www.prs.hr/attachments/article/2188/IZVJESCE_2016_Pravobraniteljica_za_ravnopravnost_spolova_CJELOVITO.pdf p.329, accessed 25 April 2017.

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

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

a) Exceptions in relation to disability and health/safety

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.²⁷⁷ 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.²⁷⁸

Whether different treatment of a person with disability that is 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;²⁷⁹
- 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;²⁸⁰
- 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;²⁸¹
- 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;²⁸²
- 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

²⁷⁷ Croatia, Anti-discrimination Act, 9 July 2008, Article 9(2)(1).

²⁷⁸ Amendments to the Anti-discrimination Act of 5 September 2012, <http://www.sabor.hr/Default.aspx?art=49474>, accessed 25 April 2017.

²⁷⁹ Croatia, Anti-discrimination Act, 9 July 2008, Article 9(2)(4).

²⁸⁰ Croatia, Anti-discrimination Act, 9 July 2008, Article 9(2)(6).

²⁸¹ Croatia, Anti-discrimination Act, 9 July 2008, Article 9(2)(8).

²⁸² Croatia, Anti-discrimination Act, 9 July 2008, Article 9(2)(8).

favouring of marriage in line with the provisions of the Family Act²⁸³ (e.g. this exception would justify an age limit for adoptive parents).²⁸⁴

All exceptions should be interpreted in a way that is proportionate to the aim and purpose for which they have been set.²⁸⁵

a) 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.²⁸⁶

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

b) 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.²⁸⁷

c) Fixing of ages for admission or entitlements to benefits of occupational pension schemes

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.²⁸⁸ A minor cannot be employed in work that may harm his or her safety, health, morality or development.²⁸⁹

²⁸³ Croatia, Anti-discrimination Act, 9 July 2008, Article 9(2)(10).

²⁸⁴ Croatia, Family Act, 18 September 2015, 2015, Article 184, Official Gazette 103/15: minimum age of adoptive parent is 21 and minimum 18 years older than adopted child.

²⁸⁵ Croatia, Anti-discrimination Act, 9 July 2008, Article 9(3).

²⁸⁶ Croatia, Anti-discrimination Act, 9 July 2008, Article 9.

²⁸⁷ Croatia, Anti-discrimination Act, 9 July 2008, Article 9.

²⁸⁸ Croatia, Labour Act, 15 July 2014, Article 19.

²⁸⁹ Croatia, Labour Act, 15 July 2014, Article 21.

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.²⁹⁰

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 parental responsibilities.²⁹¹ 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.²⁹² 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.²⁹³ 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,²⁹⁴ 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.²⁹⁵

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).²⁹⁶

If an individual wishes to work longer, the pension cannot be deferred but individual can work on a short-term contract (in that case he or she can collect a pension and still work) or the employment can be prolonged, but in both cases the employer's consent is needed.²⁹⁷ An individual cannot collect a pension and still work as a full-time employee,

²⁹⁰ Croatia, Labour Act, 15 July 2014, Article 31.

²⁹¹ Croatia, Labour Act, 15 July 2014, Article 34. The Labour Act does not provide benefits for other workers who are carers, only for the workers who are parents and are caring for their children.

²⁹² Croatia, Anti-discrimination Act, 9 July 2008, Article 9(2)(7).

²⁹³ Croatia, Anti-discrimination Act, 9 July 2008, Article 9(2)(8).

²⁹⁴ Croatia, Fire-Fighting Act, 1 October 1999, Article 21, Official Gazette 106/99 with amendments.

²⁹⁵ For the armed forces, please see section 4.3.

²⁹⁶ Croatia, Labour Act, 15 July 2014, Article 112.

²⁹⁷ Croatia, Labour Act, 15 July 2014, Article 112.

but he or she can collect a pension and work as a part-time employee²⁹⁸ or a short-term contractor (*ugovor o djelu*).

b) Occupational pension schemes

In Croatia, there is normal 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.²⁹⁹

If an individual wishes to work longer, payments from such occupational pension schemes can be deferred.

An individual can collect a pension and still work.

c) State imposed mandatory retirement ages

In Croatia, there are state-imposed mandatory retirement ages.

According to the Labour Act,³⁰⁰ 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;³⁰¹ for civil servants it is 65 and 15 years of pensionable service;³⁰² for public attorneys (and their deputies) it is 70;³⁰³ and for army employees it is 65 and 15 years of pensionable service.³⁰⁴

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.³⁰⁵

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

²⁹⁸ Croatia, Pension Insurance Act, Article 37(6), Official Gazette 157/2013, 151/2014, 33/2015, 93/2015, 120/2016.

²⁹⁹ Croatia, Voluntary Pension Funds Act, 31 January 2014, *Zakon o dobrovoljnim mirovinskim fondovima*, Article 127.

³⁰⁰ Croatia, Labour Act, 15 July 2014, Article 112.

³⁰¹ Croatia, Act on State Judiciary Council, 1 October 2010, *Zakon o Državnom sudbenom vijeću*, Article 77(2)(5).

³⁰² Croatia, Civil Servants Act, 15 July 2005, *Zakon o državnim službenicima*, Article 137(1)(3).

³⁰³ Croatia, Act on the State Attorney's Office, 30 June 2009, *Zakon o državnom odvjetništvu*, Article 112(1).

³⁰⁴ Croatia, Act on service in the armed forces, Article 205/1/3.

³⁰⁵ Croatia, Labour Act, 15 July 2014, Article 112.

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 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 high rate of youth unemployment (28.8 %).³⁰⁶

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 a lack of medical doctors in Croatia.

The right of pharmacists and medical doctors to practice,³⁰⁷ 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.³⁰⁸

In a case brought before the Zagreb administrative court, B.H.T., who had a private medical practice had been denied her request to prolong her practice when she turned 65, although in the area where her practice was located there was an evident shortage of doctors of her specialty. B.H.T. claimed that she had been placed in a less favourable position in comparison with her colleagues whose licence had been extended. The administrative court dismissed her complaint as unfounded with the argumentation that the licence can be extended after the age of 65 in situations in which Ministry of Health assesses that it is necessary for ensuring healthcare and refused B.H.T.'s offer to obtain information regarding other doctors in the area whose licence had been extended.³⁰⁹

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.³¹⁰

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.³¹¹

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.

³⁰⁶ <http://www.tradingeconomics.com/croatia/youth-unemployment-rate>, accessed 23 April 2017.

³⁰⁷ They do not have to retire, they just cannot work as doctors or pharmacists.

³⁰⁸ Croatia, Health Care Act, 15 December 2008, Article 159.

³⁰⁹ Zagreb Administrative Court, no. UsI-4894/13, 20 April 2015.

³¹⁰ Croatia, Labour Act, 15 July 2014, Article 115.

³¹¹ Croatia, Labour Act, 15 July 2014, Article 115.

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.³¹²

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 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.³¹³

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.

³¹² Croatia, Labour Act, 15 July 2014, Article 126.

³¹³ Croatia, Anti-discrimination Act, 9 July 2008, Article 9(2)(1).

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.³¹⁴ This exception is to be interpreted in proportion to the aim and purpose for which it is provided.³¹⁵ 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 Civil Servants Act (as described under section 5.b of this report). 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.

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.³¹⁶ 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 Act³¹⁷ 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,³¹⁸ the Act on State Judiciary Council has the same provision for nominating judges³¹⁹ and the Civil Servants Act for employing civil servants. The measure is mainly

³¹⁴ Croatia, Anti-discrimination Act, 9 July 2008, Article 9(2)(2).

³¹⁵ Croatia, Anti-discrimination Act, 9 July 2008, Article 9(3).

³¹⁶ Croatia is defined by its Constitution as 'the nation state of the Croatian nation and the state of the members of its national minorities: Serbs, Czechs, Slovaks, Italians, Hungarians, Jews, Germans, Austrians, Ukrainians, Rusyns, Bosniaks, Slovenians, Montenegrins, Macedonians, Russians, Bulgarians, Poles, Roma, Romanians, Turks, Vlachs, Albanians and others who are its citizens'.

³¹⁷ Official Gazette 28/2013, 33/2015, 82/2015, 82/2016.

³¹⁸ Croatia, Judiciary Act, 22 February 2013, *Zakon o sudovima*, Article 108(4).

³¹⁹ Croatia, Act on State Judiciary Council, 1 October 2010, Article 50.

theoretical (e.g. in the whole state administration only two Roma persons are employed, and the members of all national minorities make up 3.38 % of all civil servants).³²⁰

These provisions were challenged before the Constitutional Court as discriminatory. In its decisions,³²¹ 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.

In March 2015, the UN Human Rights Committee concluded its consideration of the third periodic report of Croatia on its implementation of the provisions of the International Covenant on Civil and Political Rights. It noted the lack of participation of minorities, including Roma and Serbs, in political life and at all levels of decision making in Croatia. One of the committee's recommendations for the State of Croatia was to undertake positive measures to promote inter-ethnic tolerance and fully implement the right to equal usage of minority languages and scripts in accordance with its constitutional and legal framework. The recommendation indicates that there is still much room for improvement in positive action in Croatia in the areas mentioned.³²²

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

³²⁰ *Report on the Implementation of the Constitutional Law on Rights of National Minorities for 2012*, p.47, <https://pravamanjina.gov.hr/UserDocsImages/arhiva/26072013/Izvje%C5%A1%C4%87e%20o%20provedbi%20UZPNM%20za%202012.pdf>, accessed 21 October 2016.

³²¹ Constitutional Court of the Republic of Croatia, decisions U-I-2767/07 of 31 March 2009 and U-I-402/03 of 30 April 2008.

³²² United Nations, Concluding observations on the third periodic report of Croatia, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhshjU3LaU2UQcye nDH2qrIZRVN6iNchFWc8v61QxFC61UbIueMSish8EpzYY0mht9yAJzygi9ivWkvPULhwhEVEVptzHW%2FCCDDPcGV8RsX0Jp>, accessed 25 April 2017.

- 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.³²³ The new action plan has not yet been adopted and there are currently no discussions at the national level regarding the adoption of the action plan for the next period. However, the national strategy for Roma inclusion for the period 2013-2020 is still in force and measures for its implementation, set out by the former action plan are in progress.

Disability

In June 2007, the Croatian Government adopted the National Strategy on the Equalisation of Opportunities for Persons with Disabilities (2007-2015).³²⁴ One of its measures is incentives for employers of people with disabilities. The new national strategy for the period 2017-2020 was adopted on 20 April 2017, ensuring the continuation of the implementation of measures for the integration of people with disabilities.

The Act on professional rehabilitation and employment of persons with disabilities introduced a quota system for all employers (in both private and public sectors) who employ at least 20 workers, with the quota of disabled employees set between 2 % and

³²³ The Decade of Roma Inclusion Progress Report 2013, <https://vlada.gov.hr/UserDocsImages//Sjednice/2014/186%20sjednica//186%20-%203.pdf>, accessed 21 October 2016.

³²⁴ The National Strategy on the Equalisation of Opportunities for Persons with Disabilities (2007-2015) <http://narodne-novine.nn.hr/clanci/sluzbeni/298398.html>, accessed 25 April 2017.

6 %. If the employer fails to fulfil that obligation, they have to pay compensation. A positive trend regarding the employment of people with disabilities has been noticed, with the largest recorded increase since the implementation of the Act on professional rehabilitation and employment of persons with disabilities. During 2015, a total of 2 613 people with disabilities registered at the Croatian Employment Service were employed, which is 39.2 % more than in 2014.³²⁵

All employed persons with disability are registered in a special registry run by the Croatian Pension Insurance Institute. Further, all employers are eligible for State funding to help with the costs of reasonable accommodation and to certain incentives if they employ a person with disability. To be eligible for the incentives, the employer has to provide, for each employee with disability, an expert assessment by the centre for professional rehabilitation — the reasonable accommodation plan is part of such an assessment.

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.

Migrants

There are no major positive action measures related to migrants that are designed to promote their integration in employment. Although the committee compound of representatives of competent state bodies was founded, the *Migration Policy for 2016–2018* has not been adopted yet.^{326 327}

³²⁵ The National Strategy on the Equalisation of Opportunities for Persons with Disabilities (2017-2020) http://narodne-novine.nn.hr/clanci/sluzbeni/2017_04_42_967.html, accessed 8 June 2017.

³²⁶ People's Ombudsperson (2016), *Ombudsperson's Report for 2016*, p.197, available at: <http://ombudsman.hr/hr/component/jdownloads/send/76-izvjesca-2016/854-izvjesce-pucke-pravobraniteljice-za-2016>, accessed 25 April 2017.

³²⁷ *Migration Policy* is the official title of the document which regulates goals and measures related to migration policy and the integration of foreigners in Croatia. The previous *Migration Policy* was adopted on 22 February 2013 for the period of 2013-2015. Available at: http://narodne-novine.nn.hr/clanci/sluzbeni/2013_03_27_456.html, accessed 8 June 2017. There are currently no plans for the adoption of a new *Migration Policy*.

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).³²⁸

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.³²⁹

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.³³⁰ 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

³²⁸ Misdemeanour courts deal with minor offences; Croatia, Misdemeanors Act, 3 October 2007, *Prekršajni zakon*, (Official Gazette 107/2007, 39/2013, 157/2013, 110/2015).

³²⁹ Croatia, Civil Procedure Act, 24 December 1976, *Zakon o parničnom postupku*, Article 186(a).

³³⁰ Misdemeanors are minor offences, most often prosecuted ex officio in 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.³³¹

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,³³² as a rule such proceedings in courts in bigger cities last several years.³³³
- Difficulties in proving discrimination: rule on burden of proof is rarely implemented.³³⁴
- 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.³³⁵
- 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 function³³⁶ (the procedure to obtain free legal aid is too complicated; the lawyers' fee paid by the state is symbolic; although people often need legal aid as soon as possible due to short deadlines for filing a legal remedy, the administrative procedure to get free legal aid lasts

³³¹ Croatia, Anti-discrimination Act, 9 July 2008, Article 12(2)(5).

³³² The provision is of mandatory nature; Article 434(4) of the Civil Procedure Act.

³³³ See also People's Ombudsperson (2015), *Ombudsperson's Report for 2015*, p. 28:

<http://ombudsman.hr/hr/component/jdownloads/send/67-2015/745-izvjesce-pp-2015-pdf>, accessed 21 October 2016.

³³⁴ See People's Ombudsperson (2014) *Ombudsperson's Report for 2014*, p.20:

<http://ombudsman.hr/hr/component/jdownloads/send/29-2014/562-izvjesce-pucke-pravobraniteljice-za-2014-godinu>; and People's Ombudsperson (2015), *Ombudsperson's Report for 2015*, p.21: <http://ombudsman.hr/hr/component/jdownloads/send/67-2015/745-izvjesce-pp-2015-pdf>, accessed 21 October 2016.

³³⁵ People's Ombudsperson (2014) *Ombudsperson's Report for 2014*, p.21:

<http://ombudsman.hr/hr/component/jdownloads/send/29-2014/562-izvjesce-pucke-pravobraniteljice-za-2014-godinu>, accessed 21 October 2016.

³³⁶ People's Ombudsperson (2015), *Ombudsperson's Report for 2015*, p.20:

<http://ombudsman.hr/hr/component/jdownloads/send/67-2015/745-izvjesce-pp-2015-pdf>, accessed 21 October 2016.

on average from 45 to 90 days; competent administrative offices dealing with the requests for free legal aid are understaffed; people are not aware of the availability of free legal aid; when a request is denied a person has to pay an administrative fee for the request).

c) Number of discrimination cases brought to justice

In Croatia, statistics are available on the number of cases related to discrimination brought to justice. As a rule, the statistics form part of the Ombudsperson's annual report.³³⁷

Civil proceedings

In 2016, 200 civil proceedings regarding discrimination were pending (147 filed before 2016 and 53 filed during 2015). Most of the cases are about discrimination in employment. This is a slight decrease in comparison with the previous year (in 2015, 219 civil proceedings regarding discrimination were pending; 126 filed before 2015 and 53 filed during 2015). The statistics show only the number of special individual anti-discrimination actions and no other proceedings where discrimination is an incidental issue. In 2016, 44 proceedings were closed: only one claim had been granted, 23 claims denied and 21 closed 'in another way' without further detail.

In 2016, none of the civil discrimination cases was initiated by a joint action (*udružna tužba*).³³⁸

Criminal proceedings

In 2016, 14 criminal proceedings connected with discrimination were pending (eight initiated before 2015 and six initiated in 2016).³³⁹ In 2016 three cases were closed.

Misdemeanour cases

In 2016, 206 misdemeanour cases connected with discrimination were pending (74 filed before 2016 and 132 filed in 2016); 103 cases were closed and in 56 cases the defendants were found guilty.

d) Registration of discrimination cases by national courts

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

The Anti-discrimination Act³⁴⁰ 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.

³³⁷ People's Ombudsperson (2016), *Ombudsperson's Report for 2016*: <http://ombudsman.hr/hr/component/jdownloads/send/76-izvjesca-2016/849-izvjesce-pucke-pravobraniteljice-za-2016-godinu>.

³³⁸ In Croatia, an association may bring a joint legal action (association action, *udružna tužba*), 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.

³³⁹ In 2014, the number of discrimination criminal cases was 19.

³⁴⁰ Croatia, Anti-discrimination Act, 9 July 2008, Article 14.

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

a) Engaging 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.³⁴¹

b) Engaging 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 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'.³⁴²

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.³⁴³

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.

³⁴¹ Croatia, Civil Procedure Act, 24 December 1976, Article 434.a.

³⁴² Croatia, Anti-discrimination Act, 9 July 2008, Articles 21 and 24.

³⁴³ Croatia, Anti-discrimination Act, 9 July 2008, Article 24.

By filing a joint legal action (*udružna tužba*),³⁴⁴ 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.

In 2010, four human rights organisations filed a joint action against Z.M., the former executive manager of the most popular football club in Croatia and vice president of the Croatian Football Association, because of his public statement that gay people could not play in his national football team. Zagreb County Court, as a first instance court, ruled that such a statement does not constitute discrimination because it does not place any person in a less favourable position but is a hypothetical statement and not a decision or conduct that did place or could have placed any person of homosexual orientation in a less favourable position since Z.M., as an official of a football club and not a national selector, is not in a position to decide who will play in the national team. Further, the Court said that Z.M. had the right to publicly express his opinion even if he was wrong and that granting the claim would constitute a violation of Z.M.'s right guaranteed by Article 10 of the European Convention on Human Rights (freedom of expression).

The Supreme Court, as an appellate court, upheld that judgment and said that Z.M.'s statement could not prevent any homosexual from playing in the national team since the national football selector chose the best players according to their sporting abilities and not on someone else's wrongful perception of their psycho-physical abilities. According to the Supreme Court, the statements could not lead to an intimidating, hostile, degrading or offensive environment.

In June 2015, following the claimants' appeal on points of law (*revizija*), the Supreme Court, this time as a third instance court, referring to the *Feryn* case^{345 346} made a new decision, finding the statement discriminatory. The court further prohibited Z.M. from making any similar public statement in the future and ordered him to apologise publicly and to publish the decision in the daily newspaper *Jutarnji List*.³⁴⁷ Except for the *Feryn* case, no other CJEU case law was invoked in the Supreme Court's decision.

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 Anti-discrimination Act 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 victim as a claimant or file its own claim as a claimant without a specific victim as described above.³⁴⁸

³⁴⁴ 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.

³⁴⁵ European Court of Justice, *CGKR v Firma Feryn NV*, Case C-54/07, 2008, available at <http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d0f130d588045304dc2b483da268988c8c86a6a.e34Kaxilc3eQc40LaxqMbN4PaxiOe0?text=&docid=67586&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=638361>, accessed 8 June 2017.

³⁴⁶ However, in the judgment it was falsely stated that *Feryn* was a European Court of Human Rights case.

³⁴⁷ Supreme Court of the Republic of Croatia, no. Rev-300/13, 17 June 2015.

³⁴⁸ Croatia, Anti-discrimination Act, 9 July 2008, Articles 21 and 24.

6.4 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 Act³⁴⁹ 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 plausible³⁵⁰ 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.

In the case mentioned above initiated by four human rights organisations against V.M., president of the Croatian Football Association (described in detail in section 6.2 above), 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.³⁵¹

In the case brought in front of Zagreb Municipal Court by B.B. against her employer, the Croatian Library for the Blind, claiming that she had been discriminated against on the grounds of nationality and religion, the Municipal Court dismissed her complaint as unfounded. The court's decision stated that the situations that B.B. described as examples of discrimination could not objectively be considered discriminative and that B.B. had not managed to prove that she was exposed to any kind of different treatment in comparison with other employees.³⁵² Zagreb County Court confirmed the first instance judgment, stating in its decision that in anti-discrimination proceeding the claimant is not deprived of her obligation to substantiate her complaint with specific factual allegations, stating further that in the specific case, the claimant's obligation to prove discrimination is all the more important, given the fact that she had filed a complaint after 17 years of alleged continuous harassment and discrimination.³⁵³

According to the Ombudsperson, the rule on burden of proof is not adequately implemented by courts.³⁵⁴ 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

³⁴⁹ An English version of the Anti-discrimination Act is published on the website of Gender Equality Ombudsperson, <http://www.prs.hr/attachments/article/2127/Croatian%20Anti-discrimination%20Act.pdf>, accessed 9 June 2017.

³⁵⁰ The phrase used in the official text '*učiniti vjerojatnim*' corresponds to the English phrase 'to render credible'.

³⁵¹ Supreme Court of the Republic of Croatia, No.Gž.25/11, judgment of 28 February 2012.

³⁵² Zagreb Municipal Court, no. Pr.4290/12, 20 June 2016.

³⁵³ Zagreb County Court, no. GžR-1494/16, 3 January 2017.

³⁵⁴ People's Ombudsperson (2014), *Ombudsperson's Report for 2014*, <http://ombudsman.hr/hr/component/jdownloads/send/29-2014/562-izvjesce-pucke-pravobranaiteljice-za-2014-godinu>, accessed 21 October 2016.

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’.

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

In Croatia, there are legal measures of protection against victimisation.

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.³⁵⁵

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 27 397.26.³⁵⁶

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

6.6 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.³⁵⁷

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.³⁵⁸

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

³⁵⁵ Croatia, Anti-discrimination Act, 9 July 2008, Article 7.

³⁵⁶ Croatia, Anti-discrimination Act, 9 July 2008, Article 28.

³⁵⁷ Croatia, Anti-discrimination Act, 9 July 2008, Article 17(1)(3).

³⁵⁸ Croatia, Civil Obligations Act, 25 February 2005, Article 1100.

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 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,³⁵⁹ 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.³⁶⁰

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 Code³⁶¹ 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.³⁶²

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.³⁶³ 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).³⁶⁴

The criminal offence of discrimination (Article 125 of the Criminal Code) — a crime subject to public prosecution³⁶⁵ 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.³⁶⁶ A criminal offence, prosecuted by the State Attorney's Office,

³⁵⁹ A natural person entrusted with certain duties in a legal entity or a person authorised to act on behalf of the legal entity.

³⁶⁰ Croatia, Misdemeanour Act, 3 October 2007, Article 6.

³⁶¹ Official Gazette 125/2011, 144/2012, the law has been in force since 1 January 2013.

³⁶² Croatia, Criminal Code, 21 October 2011, *Kazneni zakon*, Article 87(21).

³⁶³ Croatia, Criminal Code, 21 October 2011, Articles 117(2), 118(2) and 119.

³⁶⁴ Zagreb Public Attorney Office, case no. Ko-DO-1204/13.

³⁶⁵ 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*).

³⁶⁶ Croatia, Criminal Code, 21 October 2011, Article 125(1).

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.³⁶⁷

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.³⁶⁸

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 guidelines specify the amounts to be awarded for various types of non-pecuniary damage with the maximum award of HRK 220 000 (approximately EUR 29 000), for the most serious damage e.g. death of a spouse or child.

The law and the Supreme Court's criteria do not provide for the rule that the 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 (approximately EUR 26 666) as non-pecuniary damages, which is the maximum amount established by the Supreme Court's guiding criteria.³⁶⁹

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 reports for 2014 and 2015, 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.

³⁶⁷ Croatia, Criminal Code, 21 October 2011, Article 125(2).

³⁶⁸ Croatia, Criminal Code, 21 October 2011, Article 133.

³⁶⁹ Supreme Court of the Republic of Croatia, Rev 1261/08-2, 16 February 2010 and Supreme Court guiding criteria for non-pecuniary damage:
<http://www.iusinfo.hr/UsefulDocs/Content.aspx?SOPi=DDHR20110111N53>.

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.³⁷⁰

³⁷⁰ People's Ombudsperson (2014), *Ombudsperson's Report for 2014*, pp. 23-24, <http://ombudsman.hr/hr/component/jdownloads/send/29-2014/562-izvjesce-pucke-pravobranaiteljice-za-2014-godinu> and People's Ombudsperson (2015), *Ombudsperson's Report for 2015*, pp. 22-23, <http://ombudsman.hr/hr/component/jdownloads/send/67-2015/745-izvjesce-pp-2015-pdf>, accessed 21 October 2016.

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.³⁷¹ 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. Further, when the victim of discrimination is a child, it falls within the competence of the Ombudsperson for Children.

- 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 Constitution³⁷² 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 2016 was EUR 1 444 104 and it employs 42 persons.³⁷³

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.³⁷⁴ One of the deputies is in charge of discrimination issues.

In its concluding observations on the third periodic report of Croatia of 30 April 2015, the Human Rights Committee noted with regret the limited follow-up to, and implementation of, the Ombudsman's recommendations. The Human Rights Committee expressed its concern about the limited human and financial resources allocated to the Office of the Ombudsman despite the recent increase in funding. It concluded that Croatia should: provide the Office of the Ombudsman with the financial and human resources necessary to ensure that it can effectively and independently implement its mandate in line with the

³⁷¹ Croatia, Anti-discrimination Act, 9 July 2008, Article 12(1).

³⁷² Croatia, Constitution of the Republic of Croatia, 22 December 1990, Article 93.

³⁷³ People's Ombudsperson (2016), *Ombudsperson's Report for 2016* <http://ombudsman.hr/hr/component/jdownloads/send/76-izvjesca-2016/854-izvjesce-pucke-pravobraniteljice-za-2016>, p.207, accessed 25 April 2017.

³⁷⁴ About the Office of People's Ombudsperson, <http://ombudsman.hr/hr/o-nama>, accessed 21 October 2016.

principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) (General Assembly Resolution 48/134, annex); continue its efforts to guarantee coordination between the different ombudsmen offices so as to avoid the duplication of tasks; and step up its efforts in responding diligently and promptly to the Ombudsman's recommendations.³⁷⁵

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.³⁷⁶ The Gender Equality Ombudsperson,³⁷⁷ established in 2003, is an independent body in charge of combating discrimination in gender equality and on the ground of sexual orientation.

The Ombudsperson for Children, established in 2003 by the Ombudsperson for Children Act is independent and autonomous body in charge of protection, monitoring and promoting rights and interests of children on the grounds of Croatian Constitution, international treaties and laws. It should be noted that on 7 March 2017,³⁷⁸ the Constitutional Court quashed the above-mentioned act but declared that it will remain in force until 1 August 2017, obviously leaving the Croatian Parliament enough time to adopt the new one. The Constitutional Court found that the act had not been adopted in accordance with the provisions of the Constitution, stipulating that laws regulating the organisation, responsibilities and modalities of work of State bodies should be adopted by the majority of all representatives in the Croatian Parliament (Sabor), which was not the case when the Ombudsperson for Children Act was adopted in 2003.

Given that there are three specialised and independent ombudspersons (the Ombudsperson for Persons with Disabilities, the Gender Equality Ombudsperson and the Ombudsperson for Children), whose mandates 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 complaints that they receive if they fall under the powers of another Ombudsperson, or work together on the same cases.³⁷⁹

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 People's Ombudsperson. The People's Ombudsperson deals with discrimination against migrants as with all other issues.

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;

³⁷⁵ Human Rights Committee (2015), *Concluding observations on the third periodic report of Croatia*, 30 April 2015(CCPR/C/HRV/CO/3).

³⁷⁶ Croatia, Ombudsperson for Persons with disabilities Act, 3 October 2007, Official Gazette 107/2007, 125/2011, 20/2012, *Zakon o pravobraniteljju za osobe s invaliditetom*.

³⁷⁷ Croatia, Gender Equality Act, 15 July 2008.

³⁷⁸ Constitutional Court of the Republic of Croatia, U-I/4301/2005, 7 March 2017.

³⁷⁹ People's Ombudsperson (2014) Ombudsperson's Report for 2014, p.168: <http://ombudsman.hr/hr/component/jdownloads/send/29-2014/562-izvjesce-pucke-pravobraniteljice-za-2014-godinu>, accessed 21 October 2016.

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's office deals with complaints of discrimination and has the power to provide independent assistance to victims, conduct independent surveys, publish independent reports, and issue recommendations on discrimination issues.³⁸⁰ It is a unique institution, together with specialised ombudspersons, respected by the general and professional public for its independence and competence. It cooperates with non-governmental organisations in its work.

The other three ombudspersons (for disability,³⁸¹ children³⁸² and gender equality)³⁸³ have similar powers in connection with discrimination based on the grounds covered by them.

These powers are effectively exercised by all four ombudspersons in an independent manner.

The activities of the Disability Ombudsperson in fighting discrimination on the grounds of disability are: 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.³⁸⁴ The lack of sufficient funding prevents the Ombudsperson for Persons with Disabilities 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.³⁸⁵

The responsibilities of the Gender Equality Ombudsperson 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

³⁸⁰ Croatia, Anti-discrimination Act, 9 July 2008, Article 12(2).

³⁸¹ Croatia, Ombudsperson for Persons with Disabilities Act, 3 October 2007.

³⁸² Croatia, Ombudsperson for Children Act, 29 May 2003.

³⁸³ Croatia, Gender Equality Act, 15 July 2008.

³⁸⁴ Annual and Special Reports of Ombudsperson for Persons with Disabilities, http://www.posi.hr/index.php?option=com_joomdoc&view=docman&gid=131&task=cat_view&Itemid=194, accessed 25 April 2017.

³⁸⁵ Annual and Special Reports of Ombudsperson for Persons with Disabilities, http://www.posi.hr/index.php?option=com_joomdoc&view=docman&gid=132&task=cat_view&Itemid=192, accessed 25 April 2017.

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 Act and other regulations on gender equality and reports to the Croatian Parliament at least once a year.³⁸⁶

The responsibilities of the Ombudsperson for Children are monitoring the coordination of the laws concerned with the protection of the rights and interests of children and the provisions of the Constitution; monitoring the fulfilment of the obligations of the Republic of Croatia arising from the Convention on the Rights of the Child and other international treaties concerned with the protection of the rights and interests of children; monitoring the violation of individual rights of children and studying general occurrences and types of violation of the rights and interests of children; the protection and promotion of the rights and interests of disabled children; proposing measures intended for the creation of a coherent system of protection; promoting the rights and interests of children; and informing the public on the state of children's rights.

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.³⁸⁷

Further, the ombudspersons can join the proceedings in anti-discrimination cases as an intervenor on the behalf of the claimant³⁸⁸ 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.

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

h) Roma and Travellers

The Ombudsperson's office gives special attention to Roma issues. In the Ombudsperson's report for 2014,³⁸⁹ a whole chapter in the report is dedicated to problems faced by the Roma population.

³⁸⁶ The Gender Equality Ombudsperson, <http://www.prs.hr/index.php/english/basic-info>, accessed 25 April 2017.

³⁸⁷ Croatia, Anti-discrimination Act, 9 July 2008, Article 12(2)(6); Disability Ombudsman Act, 3 October 2007, Article 13 and Gender Equality Act, 15 July 2008, Article 23.

³⁸⁸ Croatia, Anti-discrimination Act, 9 July 2008, Article 21.

³⁸⁹ People's Ombudsman (2014), *Ombudsperson's Report for 2014*, <http://ombudsman.hr/hr/component/jdownloads/send/29-2014-izvjesce-pucke-pravobraniteljice-za-2014-godinu>, accessed 21 October 2016.

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).

In 2016, as in previous years, the Ombudsperson's office paid special attention to the issue of housing and visited Roma settlements in several counties. It confirmed the existence of segregation in housing and the numerous problems Roma face due to their exclusion and poverty.³⁹⁰

³⁹⁰ People's Ombudsperson (2016), *Ombudsperson's Report for 2016*, pp. 41-42, <http://ombudsman.hr/hr/component/jdownloads/send/76-izvjesca-2016/854-izvjesce-pucke-pravobraniteljice-za-2016>, accessed 25 April 2017.

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 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.³⁹¹

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 reports for 2014 and 2015 (as in previous reports) that individuals still do not have enough information about their rights and protection against discrimination.³⁹² There is no information about the reasons for the limited success of the Ombudsperson in disseminating information.

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'³⁹³ and, together with the Ombudsman's office, the brochure 'Guidelines for Identifying Cases of Discrimination'.³⁹⁴ 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.

³⁹¹ Gender Equality Ombudsperson, <http://www.prs.hr/>, accessed 25 April 2017.

³⁹² People's Ombudsperson, (2014), *Ombudsperson's Report for 2014* <http://www.ombudsman.hr/index.php/hr/top-stories/rad-ureda/517-izvjesce-pucke-pravobraniteljice-za-2014-godinu> and People's Ombudsperson, (2015), *Ombudsperson's Report for 2015* <http://ombudsman.hr/hr/component/tdownload/send/67-2015/745-izvjesce-pp-2015-pdf>, accessed 25 April 2017.

³⁹³ Government Office for Human Rights and National Minorities (2013), 'How to Collect Data on Equality', <https://pravamanjina.gov.hr/UserDocsImages/dokumenti/Kako%20prikupljati%20podatke%20o%20jedna%20kosti.pdf>, accessed 21 October 2016.

³⁹⁴ Government Office for Human Rights and National Minorities and the People's Ombudsperson (2013), 'Guidelines for Identifying Cases of Discrimination', https://pravamanjina.gov.hr/UserDocsImages/dokumenti/smjernice_za_prepoznavanje%20slu%C4%8Dajeva%20diskriminacije.pdf, accessed 21 October 2016.

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 2015, the Ombudsperson continued its activities according to the cooperation agreements with five civil society organisations on the basis of which direct cooperation 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.³⁹⁵ This cooperation continued during 2016 as well, and organisations selected in 2015 are still listed as anti-discrimination contact points at the regional level.³⁹⁶

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 Minorities³⁹⁷ 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.³⁹⁸ During 2016 there have been no new developments in this regard.

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 derogat legi priori*'.

A contract that is contrary to the Constitution, mandatory rules or the morals of society is null and void.³⁹⁹ 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.

³⁹⁵ 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.

³⁹⁶ See <http://ombudsman.hr/hr/lnk/udruga/145-regionalne-antidiskriminacijske-kontakt-tocke-pucke-pravobraniteljice>, accessed 8 June 2017.

³⁹⁷ In April 2012, the Government decided to merge the previously existing Office for Human Rights and the Government Office for National Minorities.

³⁹⁸ *Report on the Implementation of the Action Plan for the Implementation of the National Programme for Roma for 2013*: <https://vlada.gov.hr/UserDocsImages//Sjednice/2014/186%20sjednica//186%20-%20203.pdf>, accessed 21 October 2016.

³⁹⁹ Croatia, Civil Obligations Act, 25 February 2005, Article 322.

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).⁴⁰⁰ If internal rules or rules governing various 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;⁴⁰¹ the Aliens Act does not enable same-sex partners to get residence permit;⁴⁰² 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.⁴⁰³ The Family Act allows partial 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'. 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.

⁴⁰⁰ Constitutional Court of the Republic of Croatia, U-II/544/2001, 1 June 2006.

⁴⁰¹ The Family Act (Official Gazette 116/03., 17/04., 136/04., 107/07., 57/11., 61/11. and 25/13) was in force until September 2014, when the new Family Act (Official Gazette 75/14) entered into force. That law enabled only partial and not complete deprivation of legal capacity as well as the revision of existing decisions on legal capacity. In January 2015, the latter act was found unconstitutional by the Constitutional Court, and the previous act (re)entered into force. In November 2015, the latest Family Act (Official Gazette 103/2015) entered into force but the new Government announced that it was drafting a new Family Act. Hence there is great legal uncertainty in such an important legal field.

⁴⁰² European Court of Human Rights, *Paić v. Croatia*, No. 68453/13, judgment of 23 February 2016; the ECtHR held that there had been a violation of Article 14 (prohibition of discrimination) taken in conjunction with Article 8 (right to respect for private and family life) of the European Convention on Human Rights because of the impossibility for a partner in a same-sex relationship to obtain a residence permit for family reunification. Since the ECtHR judgment there have been no new developments in this regard and this part of the Aliens Act remains unchanged.

⁴⁰³ European Court of Human Rights: *Ivinović v. Croatia*, No.13006/13, judgment of 18 September 2014; *X and Y v. Croatia*, No. 5193/09, judgment of 3 November 2011; *M.S. v. Croatia*, No. 36337/10, judgment of 25 April 2013. There have been no new developments in national law regarding this issue, except one mentioned in relation to the new Family Act which enables only partial deprivation of legal capacity.

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.⁴⁰⁴

In 2008, the Croatian Government adopted the national anti-discrimination 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 proposed 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').⁴⁰⁵

In July 2016, public consultation was concluded on the draft national anti-discrimination plan for 2016-2021 and the action plan for the implementation of the national anti-discrimination plan for 2016-2018, but these documents have not yet been formally adopted.⁴⁰⁶ The adoption of the National Anti-Discrimination Plan was postponed until June 2017 so currently Croatia does not have a national anti-discrimination plan or strategy.

The *National Anti-discrimination Plan 2016-2021* is a strategic document that sets out the priorities of the Government of the Republic of Croatia, proposes goals and directs its efforts to build a comprehensive system of protection against discrimination in the country. The objectives of the national plan are to protect, promote and enhance the right to non-discrimination and equal treatment in the Republic of Croatia and to raise public awareness of the importance of exercising this right.

The *National Anti-discrimination Plan 2016-2021* follows the provisions of the first national anti-discrimination action plan for 2008-2013. To support the first national anti-discrimination plan, the Government adopted action plans for 2008-2009 and 2011-2013, which specified where responsibility for the implementation of the measures lay, the deadlines for their execution and the amounts and sources of funding secured for the implementation of particular measures.

Since the first national plan, the priority areas have been modified so that the new plan for 2016-2021 contains the following priority areas: labour and employment; education; science and sport; social welfare; health; justice and administration; access to housing; public information and media; access to goods and services; and anti-discrimination and European funds.

The priority areas reflect the areas defined by Article 8 of the Anti-discrimination Act.

⁴⁰⁴ Croatia, Act on the Government of the Republic of Croatia, 22 December 2011, Article 27, Official Gazette 150/2011,119/2014, 93/2016.

⁴⁰⁵ Croatia (2008), *National Anti-discrimination Plan 2008-2013*.

⁴⁰⁶ For the 2016-2021 plan, see: <https://esavjetovanja.gov.hr/ECon/MainScreen?entityId=3503>, for the implementation plan for 2016-18, see <https://esavjetovanja.gov.hr/ECon/MainScreen?entityId=3504>, (both in Croatian), accessed 25 April 2017.

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).⁴⁰⁷ In April 2015, an evaluation report regarding the implementation of the National Roma Inclusion Strategy had been issued and in August 2015, the *Report on the implementation of the action plan for the implementation of National Roma Inclusion Strategy* was published.⁴⁰⁸

The conclusion of both reports state that the implementation of the National Roma Inclusion Strategy can be evaluated as satisfactory since progress on almost all areas has been achieved, however they also identify several key areas for improvement. The main problems are related to the lack of an efficient system of data collection disaggregated by ethnicity, for which reason it is difficult to monitor the implementation of measures and achievements on the level of the special goals set out by the strategy. Another problem that was noted was the general lack of clarity regarding the specific time frame in which the measures should be implemented.

⁴⁰⁷ Action Plan for the Implementation of the National Roma Inclusion Strategy for the period 2013-2015: <https://pravamanjina.gov.hr/UserDocsImages/arhiva/15012016/Akcijski%20plan%20za%20provedbu%20NSUR%20za%20razdoblje%202013-2015.pdf>, accessed 21 October 2016.

⁴⁰⁸ For the evaluation report, see: <https://pravamanjina.gov.hr/UserDocsImages/arhiva/Evaluacija%20Nacionalne%20strategije%20za%20ukljucivanje%20Roma%20u%20RH.pdf>; for the implementation report, see: <https://pravamanjina.gov.hr/UserDocsImages/arhiva/Izvjesce%20o%20provedbi%20Akciskog%20plana%20za%20provedbu%20NSUR%202014.pdf>, both accessed 25 April 2017.

10 CURRENT BEST PRACTICES

Disability Ombudsperson

The Croatian Ombudsperson for Persons with Disabilities is a good example of a 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).

Between 30 May and 17 October 2016, the Republic of Croatia did not have a Ombudsperson for Persons with Disabilities because its eight-year mandate expired on that date and the procedure for appointing an ombudsman for the next eight years was not completed before there was a vote of no confidence in the Government and the Parliament was dismissed.⁴⁰⁹ By mid-October 2016 the office was being run by deputy ombudsmen. The non-appointment of the Ombudsperson is reflected in the decrease in complaints addressed to the Ombudsperson, so that in 2016, the number of complaints dropped by 20 % in comparison with 2015. Given the situation, there were no changes regarding the rights of persons with disability presented in the *Ombudspersons' Annual Report for 2016*.

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.

⁴⁰⁹ The Government lost the support of the Parliament, which led to a new general election.

11 SENSITIVE OR CONTROVERSIAL ISSUES

11.1 Potential breaches of the directives

The Anti-discrimination Act provides that in anti-discrimination civil cases, appeal on points of law (*revizija*) (an appeal to the Supreme Court), is always admissible. The aim of that provision is to provide for Supreme Court protection 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 cases⁴¹⁰ (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.⁴¹¹ 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.⁴¹² Therefore, in 2014, the Supreme Court found the appeal on points of law admissible in only one case and that was because the claimant had asked for damages of HRK 546 800.

In 2015, the Supreme Court published on its website only two decisions in connection with the Anti-discrimination Act – both were decisions that the appeals on points of law were inadmissible.⁴¹³ In 2016 the practice of the Supreme Court in cases concerning discrimination continued, and it found the appeal on points of law inadmissible in several cases.⁴¹⁴

Appeal on points of law is regulated by the Civil Procedure Act, which 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 an 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 practice is, in the 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 and is therefore a breach of the directives.

11.2 Other issues of concern

a) Anti-discrimination protection in practice

The Ombudsperson's reports for 2014, 2015 and 2016 and its analysis of cases before the courts show that anti-discrimination protection often 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 2015, 219 anti-discrimination civil cases were pending and in only 7 cases were judgments brought in favour of a victim. In 2016, 200 anti-

⁴¹⁰ Supreme Court decisions: 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 and Revr.1334/12 of 15 November 2014.

⁴¹¹ See: <https://sudskapraksa.csp.vsrh.hr/search>, accessed 21 October 2016.

⁴¹² The appeal on points of law is always admissible in cases where the value of the claim is over HRK 200 000 (EUR 26 666).

⁴¹³ Supreme Court of the Republic of Croatia: Revr.1407/14, 1 September 2015 and Revr.57/15, 12 May 2015.

⁴¹⁴ Supreme Court Decisions, No. Revr-638/14, Revr-762/15.

discrimination civil proceedings were pending before Croatian courts and in only one case was a judgment made in favour of the victim.

In misdemeanour cases sanctions imposed by courts are neither effective, proportionate nor dissuasive, since misdemeanour judges, as a rule, mitigate fines set by law (from EUR 684.93 to EUR 41 095.89) so the usual fine is between EUR 40 and EUR 400.⁴¹⁵

Victims of discrimination are reluctant to use anti-discrimination remedies for several reasons. As the ombudspersons' reports 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 often not 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.⁴¹⁶

b) Roma community

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 obstacle for design and implementation of positive action and other measures for the Roma. Although progress has been made in general regarding the position of the Roma minority in Croatia, Roma still face discrimination on an everyday basis in all areas, but particularly in education, employment, housing and healthcare. There are still serious problems regarding their integration in society. Roma people also face the problem of resolving their citizenship status (described in more detail in the sections of this report on education and housing).⁴¹⁷ In 2016 UNCHR registered 2 800 Roma without permanent or temporary residence who were at risk of statelessness. Roma people have also experienced difficulties obtaining identity documents, which has limited their access to public services.⁴¹⁸

In Croatia, 56 % of Roma think that discrimination on the ground of ethnic origin is widespread.⁴¹⁹

⁴¹⁵ People's Ombudsperson (2014), *Ombudsperson's Report for 2014*, pp. 18-26, <http://ombudsman.hr/attachments/article/517/Izvje%C5%A1%C4%87e%20pu%C4%8Dke%20pravobraniteljice%20za%202014.%20godinu.pdf>, accessed 25 April 2017.

⁴¹⁶ People's Ombudsperson (2014), *Ombudsperson's Report for 2014*, p. 21: <http://ombudsman.hr/hr/component/jdownloads/send/29-2014/562-izvjesce-pucke-pravobraniteljice-za-2014-godinu>, accessed 8 June 2017.

⁴¹⁷ UNHCR's intervention as a third party in the EctHR case of *Hoti v. Croatia* (No. 63311/14).

⁴¹⁸ Amnesty International (2017), *Amnesty International Report 2016/17*, available at <https://www.amnesty.org/en/documents/pol10/4800/2017/en/>, accessed 25 April 2017.

⁴¹⁹ FRA (2016), *Second European Union Minorities and Discrimination Survey, Roma - Selected findings*, available at http://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-eu-minorities-survey-roma-selected-findings_en.pdf. The survey was conducted between October 2015 and April 2016.

c) Migrants⁴²⁰

Given that in 2016 Croatia remained a transit country for migrants heading to Western Europe, as part of the so-called Balkan route, questions on the rights of the migrants have been raised and significant disadvantages have been noted, especially in social rights, education, healthcare and employment.

In March 2016, the legislative procedure for amendment of the Aliens Act was initiated.⁴²¹ During the legislative process some of the key legal institutions were significantly changed. Human rights NGOs particularly criticised provisions criminalising social and humanitarian assistance to irregular migrants and the retention of measures requiring migrants subject to deportation to pay the cost of their accommodation and removal from the country.⁴²² Although the final text of the draft was finished in March 2016, by the end of 2016 the Croatian Parliament had not yet adopted the changes.

The interpretation of the part of the Rules of procedure on foreigners that stipulates that in the process of return of a foreigner who does not understand Croatian, if there is no interpreter in Croatia for the language that the person understands, communication can be conducted by means of technical support, if it can be concluded that the person has given consent for that form of communication, is particularly worrying.

However, police officers have used this option regularly in situations where the interpreter from the list was unable to reach the police station, frequently using a Google translator in order to communicate. In addition, although the police have a list of authorised interpreters, in some cases police officers have conducted proceedings in English using one person from a group as interpreter, despite their minimal understanding of the English language, who then translates it to others in the group. In addition to many other questions around not using translation services, the lack of understanding of the legal remedy is further underlined.

In 2016, Croatia failed to adopt a new action plan for the integration of foreigners in Croatian society. The previous one was adopted for the period from the beginning of 2013 until the end of 2015. In 2016, the Office for Human Rights and National Minorities established a working group for the preparation of the action plan. It had been decided that the new action plan would no longer focus on all foreigners residing in Croatia, but only on people who have been granted international protection.

⁴²⁰ For the purpose of this report the term migrants refer to non-EU citizens and stateless persons who are currently residing in the host country, including seekers of international protection and those who have been granted temporary international protection.

⁴²¹ See <https://esavjetovanja.gov.hr/ECon/MainScreen?entityId=2962>, accessed 25 April 2017.

⁴²² Amnesty International (2017), *Amnesty International Report 2016/17*, available at <https://www.amnesty.org/en/documents/pol10/4800/2017/en/>, accessed 25 April 2017.

12 LATEST DEVELOPMENTS IN 2016

12.1 Legislative amendments

In 2016, there have been no relevant legislative amendments.

12.2 Case law

Race/ethnic origin

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

Date of decision: 13 July 2016

Name of the parties: Rajko Kovačević

Reference number: U-III-3273/2014

Address of the webpage:

[https://sljeme.usud.hr/usud/praksaw.nsf/7114c25caa361e3ac1257f340032f11e/c12570d30061ce54c1257ff0002fecf7/\\$FILE/U-III-3273-2014.pdf](https://sljeme.usud.hr/usud/praksaw.nsf/7114c25caa361e3ac1257f340032f11e/c12570d30061ce54c1257ff0002fecf7/$FILE/U-III-3273-2014.pdf)

Brief summary: R.K. had filed a constitutional complaint against the decision of the Administrative Court that dismissed his appeal against the decision of the Ministry of Interior (MUP). R.K. was a police officer from 1 June 1987 until 3 February 2010, when a disciplinary measure of termination of state service was imposed on him. One month prior to the termination of his employment, R.K. had filed a request for pension approval to the Ministry of Interior, referring to Article 6 of the Act on pension insurance rights of active military personnel, police officers and authorised officials.⁴²³ Since the Ministry of Interior had not decided on his request in the specified time limit, R.K. filed an administrative complaint, following which the Administrative Court ordered the Ministry of Interior to decide on his request within 30 days. Four years after that the Ministry of Interior gave a decision in which R.K.'s request for pension was rejected. R.K. had complained to the Administrative Court, claiming that he fulfils all of the requirements for age pension set out by the Act on pension insurance rights of active military personnel, police officers and authorised officials, stating that the request for pension was granted to his colleagues under the same circumstances and that his request was rejected because of his Serbian nationality. The Administrative Court dismissed R.K.'s complaint, without collecting data relating to R.K.'s colleagues whose pensions were granted, according to the allegation of R.K. In its decision the Constitutional Court determined that the Administrative Court had ignored Article 16(3) of the Anti-discrimination Act, which sets out the obligation of the competent bodies to question and examine allegations of discrimination, when it refused R.K.'s proposal to obtain data to prove his discrimination allegations. The Constitutional Court determined that R.K.'s right to a fair trial had been breached by the decision of the Administrative Court and ordered a retrial.

Name of the court: Municipal Civil Court in Zagreb

Date of decision: 5 December 2016

Name of the parties: *Željko Jovanović v. Zdravko Mamić*

Reference number: Pn-1726/13

Address of the webpage: not available on the internet⁴²⁴

Brief summary: Željko Jovanović, the former Croatian Minister of Education, Science and Sport, instituted a proceeding before the Municipal Court in Zagreb against Zdravko Mamić, the former executive manager of the most famous Croatian football club, and

⁴²³ Croatia, Act on pension insurance rights of active military personnel, police officers and authorised officials, 26 October 2012, Official Gazette no. 128/99, 16/01, 22/02, 41/08, 97/12, 118/12, *Zakon o pravima iz mirovinskog osiguranja djelatnih vojnih osoba, policijskih službenika i ovlaštenih službenih osoba*.

⁴²⁴ Information about the proceedings have been gathered through media reports: <http://www.vecernji.hr/nogomet/donesena-nepravomocna-presuda-zdravku-mamicu-tuzio-ga-zeljko-jovanovic-evo-sto-je-sud-utvrdio-1133486>; <http://www.index.hr/vijesti/clanak/mamic-izgubio-na-sudu-od-jovanovica-nazvao-ga-srbinom-krvavih-ocnjaka/936178.aspx>; <http://net.hr/danas/zdravko-mamic-je-osuden-sud-ga-kaznio-zbog-uznemiravanja-zeljka-jovanovica-evo-sto-mu-je-sve-izgovorio/>.

former vice president of Croatian Football Association, claiming that he was discriminated against on the basis of his nationality. During his appearance in a popular radio show Z.M. said that Ž.J. 'has blood cells which extend to one that hate everything Croatian', implying here on his Serbian nationality. The court accepted Ž.J.'s complaint and determined that the statement was discriminatory and offensive to the dignity of Ž.J. and creates a hostile environment towards other persons of Serbian nationality, since it implies that Croatian citizens of Serbian nationality should not obtain ministry positions. The judgment is not yet final.⁴²⁵

Name of the court: High Misdemeanour Court of the Republic of Croatia

Date of decision: 27 January 2016

Name of the parties: *Josip Šimunić v. Zagreb Municipal State Attorney's Office*

Reference number: JŽ-188/2016

Address of the webpage: not available

Brief summary: The Municipal State Attorney's Office in Zagreb instituted a misdemeanour proceeding against Josip Šimunić, a famous Croatian football player and a member of the Croatian national football team, for the misdemeanour proscribed by the Act on the prevention of violence at sporting events.⁴²⁶ After the football match between Croatia and Iceland on 19 November 2013 in Zagreb, while the fans were still in the stadium, J.Š. stood in front of the field and started yelling through the microphone 'Za dom' (For Homeland), to which the fans replied 'Spremni' (Ready). He repeated it three more times, aware that it represents a controversial salute used during World War II by the totalitarian regime of the Independent State of Croatia (NDH) and as such represents a manifestation of racist ideology, contempt towards people of different religion and ethnicity and trivialises victims of crimes against humanity. The Zagreb Misdemeanour Court⁴²⁷ determined that J.Š. 'shouted to viewers messages whose content incites hatred on the basis of race, religion and nationality', and fined him with HRK 5 000 (EUR 666). The High Misdemeanour Court confirmed the decision of the first instance court, and increased the fine to HRK 15 000 (EUR 2 000).⁴²⁸

Disability

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

Date of decision: 30 March 2016

Name of the parties: Igor Buruš

Reference number: U-III-2538/2014

Address of the webpage:

[https://sljeme.usud.hr/usud/praksaw.nsf/94b579567876f9fcc1256965002d1bf4/c12570d30061ce54c1257f86003912b1/\\$FILE/U-III-2538-2014.pdf](https://sljeme.usud.hr/usud/praksaw.nsf/94b579567876f9fcc1256965002d1bf4/c12570d30061ce54c1257f86003912b1/$FILE/U-III-2538-2014.pdf)

⁴²⁵ For his statement Z.M. was also criminally prosecuted for the criminal offence of hate crime but was acquitted of all charges. The Municipal Criminal Court in Zagreb concluded that the conduct of Z.M. in the specific case does not constitute the criminal offence of incitement to hatred with the argumentation that 'Z.M. is not the Dalai Lama to be followed blindly', implying that Z.M. does not enjoy such a reputation in the society and that no one will feel compelled to hate Ž.J. because of Z.M.'s statement. The decision is not available on the internet. Information about proceedings are available only through media reports. See: <http://dnevnik.hr/vijesti/hrvatska/zdravko-mamic-oslobodzen-tuzbe-za-qovor-mrznje-koju-je-protiv-njega-podnio-zeljko-jovanovic---313724.html>; <http://www.24sata.hr/kolumne/sud-je-presudio-da-mamic-smije-mrziti-srbina-jovanovica-343749>; and <http://www.slobodnadalmacija.hr/sport/domaci-nogomet/clanak/id/219566/zdravko-mamic-osloboen-optuzbi-za-vrijeanje-ministra-jovanovica-nije-on-dalaj-lama-da-bi-ga-se-slijepo-slijedilo>.

⁴²⁶ Act on prevention of violence at sporting events, 23 March 2011, Official Gazette no. 117/03, 71/06, 43/09, 34/11, *Zakon o sprječavanju nereda na sportskim natjecanjima*.

⁴²⁷ Zagreb Misdemeanour Court, no. PpJ-4877/13, 27 January 2016.

⁴²⁸ J.Š. filed a constitutional complaint against the decision of the High Misdemeanour Court claiming that his right to equality and his right to freedom of expression were violated in the misdemeanour proceedings. The Constitutional Court determined that there was no breach of the constitutional rights of J.Š. and rejected his complaint as unfounded. Constitutional Court, no. U-III-2588/16, 8 November 2016, available at: [https://sljeme.usud.hr/usud/praksaw.nsf/7114c25caa361e3ac1257f340032f11e/c12570d30061ce54c125806b0038ae48/\\$FILE/U-III-2588-2016.pdf](https://sljeme.usud.hr/usud/praksaw.nsf/7114c25caa361e3ac1257f340032f11e/c12570d30061ce54c125806b0038ae48/$FILE/U-III-2588-2016.pdf).

Brief summary: I.B. is a person with a determined 100% disability since birth. He instituted a civil proceeding against Croatia claiming that he was discriminated against in the area of tax regulation, since he was obliged to pay income taxes while persons with the same percentage of disability, who have the status of Croatian War Veteran from the Homeland War (*Domovinski rat*), are exempted from paying income taxes. I.B. claimed that he was put in a less favourable position because his disability occurred as a result of illness, in comparison with persons whose disability occurred as a result of participation in the Homeland War. The first instance court partially accepted I.B.'s complaint and awarded him compensation of HRK 13 413.58 (EUR 1 788.47). However, the county court reversed the decision of the municipal court and dismissed the claim in total, stating in its decision that I.B. had not been discriminated against since there is an objective and reasonable justification for assigning tax privileges to Croatian War Veterans, which is manifested in their contribution in the Homeland War. The Constitutional Court confirmed the reasoning of the county court and determined that I.B. had not been discriminated against on the basis of disability, since the different treatment in the area of tax regulation in a specific situation is justifiable due to the veterans' contribution in the Homeland War, and as such it does not constitute a form of discrimination.

Name of the court: Municipal Civil Court in Rijeka

Date of decision: 30 May 2016

Name of the parties: unknown

Reference number: No. P-102/2015

Address of the webpage: not available on the internet

Brief summary: A lawyer who uses a wheelchair filed a civil suit against the Republic of Croatia before the Rijeka Municipal Court seeking compensation of damages on the ground of the inaccessibility of the Rijeka administrative court. The municipal court ordered the defendant to remove architectural barriers inside the administrative court building and in front of the building in the shortest period possible, but no longer than six months and to pay compensation of non-pecuniary damage to the claimant.⁴²⁹ The Republic of Croatia appealed against the judgment, which is therefore not yet final. The case is not publicly available, but it is described in the Ombudsperson for Persons with Disabilities' Report for 2016.

Religion/belief

Name of the court: European Court of Human Rights

Date of decision: 4 October 2016⁴³⁰

Name of the parties: *Travaš v. Croatia*

Reference number: 75581/13

Address of the webpage:

[http://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%22trava%C5%A1%22\],\[%22documentcollectionid%22:\[%22GRANDCHAMBER%22,%22CHAMBER%22\],\[%22itemid%22:\[%22001-166942%22\]\]}](http://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22trava%C5%A1%22],[%22documentcollectionid%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],[%22itemid%22:[%22001-166942%22]]})

Brief summary: P.T. was a theology teacher. He had a canonical mandate authorising him to teach Catholic religious education and was employed as a Catholic religious education teacher in two State high schools. After he divorced his wife with whom he was in a religious and civil marriage, and entered in a civil marriage with another woman, the Rijeka Archdiocese informed him that civil marriage with another woman, while still bound, in the eyes of the Church, by the religious marriage to his previous wife, was contrary to Christian doctrine. He was disqualified from teaching religious education and his canonical mandate was withdrawn, after which P.T. was fired from his job. P.T. challenged the decision on his dismissal from his job in front of municipal and county court but his claims were rejected. P.T. then filed a constitutional complaint claiming,

⁴²⁹ Information regarding the amount of compensation is not available.

⁴³⁰ The judgment became final on 30 January 2017.

inter alia, that his dismissal had been of a discriminatory nature. The Constitutional Court dismissed his complaint finding that there had been no violation of his right to respect of his private and family life or any discrimination against him. P.T. filed an application to the European Court of Human Rights claiming that his dismissal from his job as a religious education teacher had constituted an unjustified interference with the exercise of his right to private and family life. In its decision, the European Court found no breaches of P.T.'s rights under the convention, stating that his dismissal was justifiable since P.T. knew what would be the consequences of him entering into a second marriage, as well as the fact that the school authorities had tried to secure him another teaching position.

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

Date of decision: 13 April 2016

Name of the parties: Indira Biščević

Reference number: U-III-7490/2014

Address of the webpage:

[https://sljeme.usud.hr/usud/praksaw.nsf/94b579567876f9fcc1256965002d1bf4/c12570d30061ce54c1257f94003c2c24/\\$FILE/U-III-7490-2014.pdf](https://sljeme.usud.hr/usud/praksaw.nsf/94b579567876f9fcc1256965002d1bf4/c12570d30061ce54c1257f94003c2c24/$FILE/U-III-7490-2014.pdf)

Brief summary: I.B. instituted a civil proceeding against her employer, Croatian Radio Television (HRT), claiming that she had been discriminated against on the basis of her political belief, family relations and nationality, because of a reorganisation of jobs due to which she was unable to advance in her career. In her complaint, I.B. stated that some of her colleagues had been promoted although they did not have the necessary qualifications. It is to be noted that during the proceedings the applicant revoked her claims about discrimination on the grounds mentioned above simply stating that she was discriminated against because she was not part of any of the existing 'clans' at Croatian Radio Television. Zagreb Municipal Court dismissed her complaint stating in its decision that she had not proved her allegations of discrimination.⁴³¹ The county court confirmed the decision of the first instance court after which I.B. filed a constitutional complaint.⁴³² The Constitutional Court's decision stated that promotion is not a right and that during the court proceedings I.B. presented unfounded claims, which had not been determined during the trial, stating that she had the obligation to prove that she had been discriminated against. The Constitutional Court also determined that the subjective opinion of I.B. that she deserves promotion is not sufficient for determination of unequal treatment in a specific case.

Name of the court: Municipal Civil Court in Zagreb

Date of decision: 20 June 2016

Name of the parties: *Besima Bajramović v. Croatian Library for the Blind*

Reference number: Pr-4290/12

Address of the webpage: not available

Brief summary: B.B., a Croatian Citizen of Muslim religion and Bosniak national origin, instituted anti-discrimination proceedings against her employer, the Croatian Library for the Blind. She stated that she was discriminated against on the ground of her Muslim religion and Bosniak nationality by her employer and work colleagues and was unable to advance in her career from the time when she started to work for her employer until today, despite all her academic qualifications, unlike several other employees who were able to advance regardless of the fact that they did not have all the formal requirements for progressing in their workplace. The claimant also complained about the fact that in one situation she was ignored by her employer as a candidate for a post of in that she was not even invited to have an interview with her employer, unlike other candidates who were competing for the same post. During the proceedings the claimant was unable to prove that, during the process of choosing the most suitable candidate for the post of librarian, the manager of the Library informally said to the claimant that she will never

⁴³¹ Decision of Zagreb Municipal Court, no. Pr-8076/13, of 27 December 2013.

⁴³² Decision of Zagreb County Court, no. Gžr-330/14, of 6 October 2014.

get a chance to progress at her workplace. Zagreb Municipal Court rejected her complaint, stating in its decision that the situations that B.B. describes as examples of discrimination could not objectively be considered discriminative and that B.B. did not manage to prove that she was exposed to any kind of different treatment in comparison with other employees. Zagreb County Court confirmed the first instance judgment, stating in its decision that in anti-discrimination proceeding the claimant is not deprived of her obligation to substantiate her complaint with specific factual allegations, stating further that in the specific case, her obligation is all the more important given the fact that she had filed a complaint after 17 years of alleged continuous harassment and discrimination. Therefore, the county court considered that the municipal court justifiably rejected her proposal for the court to obtain from the defendant documentation that refers to other employees, stating that it is not the purpose of the presentation of evidence during the court proceeding to supplement the deficient claims of the claimant.⁴³³

Sexual orientation

Name of the court: European Court of Human Rights

Date of decision: 23 February 2016⁴³⁴

Name of the parties: *D.P v. Croatia*

Reference number: 68453/13

Address of the webpage:

[http://hudoc.echr.coe.int/eng#{"fulltext":\["pajiÄ+"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-161061"\]}](http://hudoc.echr.coe.int/eng#{)

Brief summary: The applicant was a national of Bosnia and Herzegovina who lodged a request for a residence permit in Croatia on the grounds of family reunification with her partner D.B. who lived in Sisak, Croatia. She claimed that she was educated in Croatia, had lived in Zagreb, Croatia, for several years, that she had been in a relationship with D.B. for two years and that she wanted to establish a household with D.B. and start a business. The Sisak Police Department dismissed her request with a summary reasoning that all the relevant requirements under the Aliens Act had not been met. D.P. appealed to the Ministry of Interior arguing that her request had been dismissed because the Aliens Act did not allow family reunification for same-sex couples. She considered that there had been no grounds for a different treatment based on sexual orientation and that the relevant law should not be construed in a manner that allowed for such a possibility. She relied, *inter alia*, on the Constitution and Anti-discrimination Act. The Ministry of Interior dismissed her appeal and upheld the decision of the Sisak Police Department, stating that there are no legal grounds for granting her request since the Same-Sex Union Act does not define a same-sex union as a family, while the Family Act does not cover same-sex unions. Also the provisions of the Aliens Act concerning family reunification do not provide the possibility of the regularisation of the status of an alien on the grounds of the existence of a same-sex union, nor does such a union fall within the scope of the term 'immediate family member'. D.P. then lodged an administrative complaint with the Zagreb Administrative Court, arguing that she had been discriminated against in comparison to different-sex couples, who had an opportunity to seek family reunification under the Aliens Act. The Zagreb Administrative Court dismissed her action. After that D.P. lodged a constitutional complaint claiming that she had been discriminated against on the basis of her sexual orientation but her complaint was rejected. Finally, D.P. filed an application to the European Court of Human Rights under Articles 8 and 14 of the European Convention, complaining that she was discriminated on the grounds of her sexual orientation in obtaining a residence permit in Croatia. The European Court of Human Rights found a breach of Articles 14 and 8 of the convention, stating in its decision that the Croatian Aliens Act is discriminatory since it allows different treatment of same-sex and different-sex couples regarding the possibility of

⁴³³ Zagreb County Court, no. GŽR-1494/16, 3 January 2017.

⁴³⁴ The judgment became final on 23 May 2016.

obtaining a residence permit on the grounds of family reunification, given that the right is exclusively reserved for different-sex couples.

Age

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

Date of decision: 15 September 2016

Name of the parties: Mila Mrkša

Reference number: U-III-1711/2015

Address of the webpage:

[https://sljeme.usud.hr/usud/praksaw.nsf/94b579567876f9fcc1256965002d1bf4/c12570d30061ce54c12580300035b9bc/\\$FILE/U-III-1711-2015.pdf](https://sljeme.usud.hr/usud/praksaw.nsf/94b579567876f9fcc1256965002d1bf4/c12570d30061ce54c12580300035b9bc/$FILE/U-III-1711-2015.pdf)

Brief summary: M.M. instituted a civil proceeding, asking the court to determine unequal treatment by her employer towards her in comparison with her younger, male colleague who received a higher salary for the same work tasks, claiming that she had been discriminated against on the grounds of her sex and age. Zagreb Municipal Civil Court dismissed her complaint with the explanation that M.M. and her colleague had different contracts, specifically that her colleague's contract contained work tasks that were not set out in the contract of M.M., following which he justifiably received a higher salary.⁴³⁵ Zagreb County Court confirmed the first instance decision, after which M.M. filed a constitutional complaint.⁴³⁶ The Constitutional Court determined that M.M. had not been discriminated against on the basis of her age and gender, since her male colleague performed additional work tasks, therefore that the difference in their salary had been justifiable.

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

Date of decision: 13 January 2016

Name of the parties: *Andrea Helbet v. Croatia*

Reference number: not available

Address of the webpage: -

Brief summary: A.H. instituted a civil proceeding for damages against the Republic of Croatia stating that she was discriminated against on the ground of her age by the provisions of the Road Traffic Safety Act,⁴³⁷ according to which young drivers (under the age of 24) were forbidden to drive vehicles of certain categories. Because of this, A.H. got fired from a well-paid job, since she was not able to use her employer's vehicles that were necessary in order for her to perform her work tasks. The municipal court in Zagreb held that the provisions of the Road Traffic Safety Act are not discriminatory since according to the Anti-discrimination Act there is no discrimination in cases in which different treatment is proscribed by the law with the aim of preserving health and to prevent criminal and misdemeanour offences, and when the means are appropriate and necessary for the achievement of the prescribed aim.⁴³⁸ Zagreb County Court confirmed the first instance judgment stating that determination of the age limit, which implies a certain degree of maturity and capability to safely drive vehicles of a certain category, is objectively and reasonably justified by the aim of the protection of the safety of drivers and prevention of criminal and misdemeanour offences.⁴³⁹ A.H. submitted an appeal on points of law to the Supreme Court, against the decision of the county court, claiming that the municipal and county courts failed to explain in what way the provisions of the Road Traffic Safety Act aim to preserve health and prevent criminal and misdemeanour offences. The Supreme Court accepted the reasoning of the municipal court and dismissed A.H.'s appeal on points of law as unfounded. Municipal and county courts do

⁴³⁵ Zagreb Municipal Court, no. Pr-1433/12, 15 September 2014.

⁴³⁶ Zagreb County Court, no. Gžr-2213/14, 24 February 2015.

⁴³⁷ Croatia, Road Traffic Safety Act, 10 June 2015, Official Gazette, no. [67/08](#), [48/10](#), [74/11](#), [80/13](#), [158/13](#), [92/14](#), [64/15](#), *Zakon o sigurnosti prometa na cestama*.

⁴³⁸ Zagreb Municipal Court, no. P-6926/10, 20 December 2010.

⁴³⁹ Zagreb County Court, no. Gž-7533/11, 20 December 2011.

not publish their case law and even the Ombudsperson's office has access to only a limited number of their decisions.⁴⁴⁰

⁴⁴⁰ People's Ombudsperson (2014), *Ombudsperson's Report for 2014*, p. 18. For the purpose of this report, the author asked the Ministry of Justice, the county court in Zagreb, the county court in Rijeka and the county court in Osijek, to allow her access to their practice regarding anti-discrimination proceedings in 2016. At the date of submission of this report, the county court in Osijek, the county court in Rijeka and the county court in Zagreb notified the author that there were no anti-discrimination proceedings in 2016, while the Ministry of Justice did not respond.

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

The main transposition and anti-discrimination legislation at both federal and federated/provincial level.

Country: Croatia
Date: 1 January 2017

Title of legislation (including amending legislation)	<p>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.zakon.hr/z/490/Zakon-o-suzbijanju-diskriminacije 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</p> <p>Civil/administrative/misdemeanour law</p> <p>Material scope: All fields</p> <p>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</p>
Title of legislation (including amending legislation)	<p>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</p> <p>Civil</p> <p>Material scope: All fields</p> <p>Principal content: Prohibition of direct and indirect discrimination, definitions and legal consequences of formal and informal same-sex partnerships</p>
Title of legislation (including amending legislation)	<p>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)</p> <p>Civil</p> <p>Material scope: employment</p> <p>Principal content: general act on employment</p>
Title of	Title of the law: Act on Professional Rehabilitation and Employment of

legislation (including amending legislation)	Persons with Disability 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 2017

Instrument	Date of signature (if not signed please indicate) Dd/mm/Yyyy	Date of ratification (if not ratified please indicate) Dd/mm/yyyy	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	not ratified	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	succession	9.9.1992	no	yes no	yes

Women					
ILO Convention No. 111 on Discrimination	succession	8.10.1991	no	N/A	yes
Convention on the Rights of the Child	succession	12.10.1992	no	N/A	yes
Convention on the Rights of Persons with Disabilities	30.3.2007	15.8.2007	no	yes no	yes

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