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Country report

Non-discrimination

Croatia

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Country report

Non-discrimination

Croatia

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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 %.¹

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

¹ Information about the 2011 census is available at https://www.dzs.hr/Hrv_Eng/publication/2012/SI-1468.pdf and https://www.dzs.hr/Hrv_Eng/publication/2012/SI-1469.pdf, accessed 23 May 2018.

enjoyment of the right to education.² 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. Segregation of Roma students as well as the general isolation of members of Roma community and their statelessness remained widespread during 2017.

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.^{3 4} 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.⁵

In March 2017, in *Škorjanec v. Croatia*, the European Court of Human Rights determined that Croatia had violated Article 3 of the European Convention, which prohibits torture and other forms of ill-treatment, in connection with Article 14 of the convention, which prohibits discrimination, stating that the domestic authorities had failed to examine whether the applicant was a victim of physical assault because she was perceived as Roma and that they had failed to determine whether the applicant had been attacked because of her relationship with a person of Roma origin. The Court had underlined that this, together with the fact that the domestic authorities insisted that it was essential that the applicant herself was Roma for criminal proceedings to be instigated led to deficient investigation and assessment of the applicant's case.⁶

After public consultations on the draft of the new anti-discrimination national plan ended in July 2016, and the postponement until June 2017 of its adoption, despite the criticism by civil society organisations that the plan failed to reflect and adequately address human rights violations faced by Serbs, Roma and sexual minorities, the *National Anti-discrimination Plan for 2017-2022*, together with the action plan for its implementation for 2017-2019 were adopted on 1 December 2017.⁷

Given that in 2017 Croatia remained a transit country for migrants⁸ 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. However, this is not the case in practice. The People's Ombudsperson deals with discrimination against migrants just as with all other issues.

According to an Amnesty International report, during 2017, Croatia continued to return to Serbia refugees and migrants who entered the country irregularly, without granting them access to an effective asylum process. These push-backs by police, sometimes from deep

² European Court of Human Rights (ECtHR), *Oršuš and Others v Croatia* [GC], No.15766/03, 16 March 2010.

³ Official Gazette 92/2014.

⁴ 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.

⁵ Official Gazette 157/2013 and 152/2014.

⁶ European Court of Human Rights, *Škorjanec v. Croatia*, No. 25536, 28 March 2017.

⁷ Government of Croatia, (2017), *National Anti-discrimination Plan for 2017-2022*, available at: <https://pravamanjina.gov.hr/UserDocsImages/dokumenti/Nacionalni%20plan%20za%20borbu%20protiv%20diskriminacije%20za%20razdoblje%20od%202017.%20do%202022..pdf>, accessed 18 March 2018.

⁸ 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.

inside Croatian territory, routinely involved coercion, intimidation, confiscation or destruction of private valuables and the disproportionate use of force by the police.⁹

In July 2017, the Court of Justice of the European Union ruled that Croatia had acted against the rules of the Dublin Regulation (which defines which EU Member State has the obligation to evaluate the asylum claim) by allowing transit for refugees and migrants through the country in 2015 without examining applications for international protection.¹⁰

At the same time, the amendments to the Aliens Act, through which the provision of assistance to foreign nationals irregularly residing in Croatia in accessing basic needs, such as housing, health, sanitation or food, was prohibited, except in cases of medical and humanitarian emergencies or life-threatening situations, entered into force, despite strong criticism by human rights NGOs.¹¹

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'.¹²

The main legislation dealing with discrimination comprises:

- the Anti-discrimination Act,¹³ which 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, gender identity and expression and sexual orientation;
- the Gender Equality Act,¹⁴ which prohibits discrimination based on gender, gender identity and expression, sexual orientation and marital or family status, and the Same-sex Life Partnership Act, which prohibits discrimination based on a 'same-sex partnership' and 'sexual orientation';
- the Labour Act,¹⁵ 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.

⁹ Amnesty International (2018), *Report 2017/18*, <https://www.amnesty.org/en/countries/europe-and-central-asia/croatia/report-croatia/>, accessed 18 March 2018.

¹⁰ European Court of Justice, decisions C-490/16 and C-646/16.

¹¹ Croatia, Aliens Act (*Zakon o strancima*), 28 October 2011, Official Gazette no. 130/11, 74/13, 69/17.

¹² Article 14 of the Croatian Constitution; Official Gazette 56/1990, 135/1997, 113/2000, 28/2001, 76/2010 and 5/2014.

¹³ Official Gazette 85/2008 and 112/2012.

¹⁴ Official Gazette 82/2008, 125/2011, 20/2012 and 138/2012.

¹⁵ Croatia, Labour Act, Official Gazette 93/2014.

3. Main principles and definitions

The Anti-discrimination Act 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, 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.

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 People's 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 Disability Ombudsperson), discrimination against children (dealt with by the Ombudsperson for Children), and gender, gender identity and expression, marital or family status and sexual orientation (dealt with by the Gender Equality Ombudsperson).

The competences of the Ombudsperson are as follows:

1. to receive reports from all natural and legal persons of reasonable suspicions of discrimination;
2. to provide the information necessary to natural and legal persons who have filed a complaint of discrimination with regard to their rights and obligations and on their options for legal and other protection;
3. if court proceedings have not yet been initiated, to examine individual reports and take actions falling within his/her competence required to eliminate discrimination and protect the rights of people facing discrimination;
4. to make the public aware of occurrences of discrimination;
5. to conduct, with the parties' consent, mediation with the possibility of reaching an out-of-court settlement;
6. to file criminal charges relating to discrimination to the competent state attorney's office;
7. to collect and analyse statistical data on discrimination;
8. to inform the Croatian Parliament of the prevalence of discrimination in his/her annual reports and, when required, extraordinary reports;
9. to conduct surveys on discrimination, give opinions and recommendations, and suggest appropriate legal and strategic solutions to the Government.

The Disability Ombudsperson 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 2017 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 2017, 203 anti-discrimination civil proceedings (including labour disputes) were pending before Croatian courts. In 2017, 53 proceedings were closed: seven claims were granted, 14 denied and 22 closed 'in another way, without further explanation'.¹⁶

In misdemeanour cases sanctions imposed by courts are neither effective, nor proportionate nor dissuasive. Misdemeanour judges, as a rule, mitigate sentences set up by law so the usual sentence is between EUR 40 and 400. The severity of the offence, circumstances and consequences are often ignored. Sanctions are mitigated even when the act of discrimination is done publicly (e.g. through a social network or at a public meeting), when there are more victims and when the victim is especially vulnerable.¹⁷

Victims of discrimination are reluctant to use anti-discrimination remedies for several reasons. The chances of success are very low. In 2017, 53 civil anti-discrimination cases were closed and discrimination was found in only seven 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

¹⁶ People's Ombudsperson (2017), *Report for 2017*, available at: <http://ombudsman.hr/hr/izvjesca-2017/izvjesce-pp-2017/send/82-izvjesca-2017/1126-izvjesce-pucke-pravobraniteljice-za-2017-godinu>, accessed 20 May 2018.

¹⁷ People's Ombudsperson (2015), *Ombudsperson's Report for 2015*: <http://ombudsman.hr/hr/component/jdownloads/send/67-2015/745-izvjesce-pp-2015-pdf>.

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. This practice of the Supreme Court continued during 2017.¹⁸

¹⁸ Supreme Court, Revr 1710/16, 5 July 2017.

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 %.¹⁹

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.

¹⁹ Des informations concernant le recensement de 2011 sont disponibles (en croate et en anglais) sur https://www.dzs.hr/Hrv_Eng/publication/2012/SI-1468.pdf et https://www.dzs.hr/Hrv_Eng/publication/2012/SI-1469.pdf, consulté le 23 mai 2018.

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.²⁰ 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 ségrégation des étudiants roms ainsi que la marginalisation des membres de la communauté rom de façon générale, et leur apatridie, restaient des phénomènes largement répandus en 2017.

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.^{21, 22} 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.²³

La Cour européenne des droits de l'homme a établi en mars 2017 dans l'affaire *Škorjanec c. Croatie* que la Croatie avait violé l'article 3 de la Convention européenne, lequel interdit la torture et autres formes de traitements inhumains ou dégradants, en relation avec l'article 14 de la Convention, qui interdit la discrimination, en affirmant que les autorités nationales n'avaient pas examiné si la requérante avait été victime d'une agression physique parce qu'elle était perçue comme Rom et qu'elles n'avaient pas déterminé si la requérante avait été agressée en raison de son lien avec une personne d'origine rom. La Cour a souligné que ces manquements, conjugués au fait que lesdites autorités nationales ont insisté sur la nécessité absolue que la requérante elle-même soit rom pour que des poursuites pénales puissent être engagées, sont à l'origine de lacunes dans l'enquête et dans l'évaluation du dossier de la requérante.²⁴

Après la clôture des consultations publiques sur le projet de nouveau plan national antidiscrimination en juillet 2016, et le report de son adoption jusqu'en juin 2017, et malgré les critiques exprimées par les organisations civiles selon lesquelles ledit plan ne reflète pas et ne prend pas en compte de manière adéquate les violations des droits de l'homme commises envers les Serbes, les Roms et les minorités sexuelles, le *Plan national antidiscrimination 2017-2022*, de même que le plan d'action pour sa mise en œuvre au cours de la période 2017-2019, ont été adoptés le 1^{er} décembre 2017.²⁵

²⁰ Cour européenne des droits de l'homme (CouEDH), *Oršuš et autres c. Croatie* [GC], n° 15766/03, 16 mars 2010.

²¹ Journal officiel 92/2014.

²² 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.

²³ Journal officiel 157/2013 et 152/2014.

²⁴ Cour européenne des droits de l'homme, *Škorjanec c. Croatia*, requête n° 25536, 28 mars 2017.

²⁵ Gouvernement de Croatie, (2017), *Plan national antidiscrimination 2017-2022*, disponible sur: <https://pravamanjina.gov.hr/UserDocsImages/dokumenti/Nacionalni%20plan%20za%20borbu%20protiv%20diskriminacije%20za%20razdoblje%20od%202017.%20do%202022..pdf>, consulté le 18 mars 2018.

Des questions relatives aux droits des migrants²⁶ ont été soulevées du fait que la Croatie est restée en 2017 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. Tel n'est cependant pas le cas dans la pratique. Le Médiateur de la République traite de la discrimination envers les migrants exactement comme de n'importe quelle autre problématique.

Selon un rapport d'Amnesty International, la Croatie a continué de renvoyer en 2017 des réfugiés et migrants en provenance de Serbie entrés irrégulièrement dans le pays, sans leur donner accès à une procédure d'asile efficace. Ces renvois forcés, effectués parfois au départ du cœur du territoire croate, se sont régulièrement accompagnés de contrainte, d'intimidation, de confiscation ou de destruction de biens privés et d'un recours disproportionné à la force de la part de la police.²⁷

En juillet 2017, la Cour de justice de l'Union européenne a dit pour droit que la Croatie avait enfreint les dispositions du règlement de Dublin (qui détermine quel État membre de l'UE est responsable de l'examen d'une demande d'asile) en autorisant le transit de réfugiés et de migrants sur son territoire en 2015 sans procéder à l'examen des demandes de protection internationale.²⁸

Dans le même temps, les amendements à la loi sur les étrangers, qui interdisent d'aider des ressortissants étrangers en séjour illégal en Croatie à trouver réponse à des besoins essentiels tels que le logement, la santé, l'hygiène ou l'alimentation, hormis en cas d'urgence médicale ou humanitaire ou en cas de risque vital, sont entrés en vigueur en dépit des vives critiques exprimées par des ONG de défense des droits de l'homme.²⁹

2. Législation principale

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

La Constitution de la République de Croatie garantit des droits et libertés à quiconque réside sur son territoire, sans distinction de race, de couleur, de genre, de langue, de religion, de convictions politiques ou autres, d'origine nationale ou sociale, de fortune, de naissance, d'éducation, de statut social ou de toute autre caractéristique. D'autres motifs

²⁶ 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.

²⁷ Amnesty International (2018), *Rapport 2017/18*, <https://www.amnesty.org/fr/countries/europe-and-central-asia/croatia/report-croatia/>, consulté le 18 mars 2018.

²⁸ Cour de justice de l'Union européenne, arrêts C-490/16 et C-646/16.

²⁹ Croatie, loi sur les étrangers (*Zakon o strancima*), 28 octobre 2011, Journal officiel 130/11, 74/13 et 69/17.

de discrimination tels que le handicap, l'âge et l'orientation sexuelle sont implicitement couverts par le libellé «toute autre caractéristique».³⁰

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

- la loi antidiscrimination,³¹ 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,³² qui interdit la discrimination fondée sur le genre, l'identité et l'expression de genre, l'orientation sexuelle et l'état civil ou la situation familiale, 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,³³ qui interdit la discrimination en matière d'emploi et de conditions de travail, en ce compris les critères et conditions d'embauche et de promotion, de formation professionnelle, de perfectionnement professionnel et de reconversion professionnelle, mais qui ne cite pas les motifs de discrimination.

3. Principes généraux et définitions

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

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

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

La loi antidiscrimination définit et interdit expressément les rétorsions.

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

³⁰ Article 14 de la Constitution croate; Journal officiel 56/1990, 135/1997, 113/2000, 28/2001, 76/2010 et 5/2014.

³¹ Journal officiel 85/2008 et 112/2012.

³² Journal officiel 82/2008, 125/2011, 20/2012 et 138/2012.

³³ Croatie, loi sur le travail, Journal officiel 93/2014.

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

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

La loi antidiscrimination oblige de prévoir des aménagements raisonnables pour les personnes handicapées. Elle précise que le fait de ne pas prendre les mesures appropriées pour permettre aux personnes handicapées d'accéder à des ressources mises à la disposition du public, de participer à la vie publique et sociale et d'avoir accès au lieu de travail et à des conditions de travail compte tenu de leurs besoins spécifiques, en adaptant l'infrastructure et les locaux ainsi qu'en utilisant des équipements et d'autres 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 genre, l'identité et l'expression de genre, l'état civil ou la situation familiale, et l'orientation sexuelle (lesquels relèvent du Médiateur en charge de l'égalité des genres).

Le Médiateur a les compétences suivantes:

1. recevoir de toute personne physique ou morale le signalement d'une suspicion raisonnable de discrimination;
2. fournir aux personnes physiques ou morales ayant déposé plainte pour discrimination les informations nécessaires quant à leurs droits et obligations et quant aux options dont elles disposent en matière de protection juridique ou autre;
3. si aucune procédure n'a encore été engagée devant les tribunaux, examiner des rapports individuels et prendre, dans les limites de ses compétences, des mesures visant à mettre fin à la discrimination et à protéger les droits des personnes qui en font l'objet;
4. sensibiliser le public aux cas de discrimination;
5. procéder avec l'accord des parties à une médiation pouvant conduire à la conclusion d'un accord extrajudiciaire;
6. engager des poursuites pénales pour faits de discrimination auprès du parquet compétent;

7. recueillir et analyser des données statistiques sur les discriminations;
8. informer le parlement croate de la prévalence des discriminations dans le cadre de ses rapports annuels et, s'il y a lieu, de rapports extraordinaires;
9. réaliser des études sur les discriminations, émettre des avis et des recommandations, et suggérer au gouvernement des solutions juridiques et stratégiques adéquates.

Le Médiateur pour les personnes handicapées et le Médiateur en charge de l'égalité des genres ont l'un et l'autre des compétences pratiquement identiques à celles du Médiateur 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 2017 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 203 procédures civiles pour faits discriminatoires (y compris des conflits du travail) étaient en instance devant des juridictions croates. En 2017 toujours, 53 procédures ont été clôturées: sept recours ont eu une issue positive, quatorze ont été déboutés et vingt-deux ont été «clôturés d'une autre façon», sans autre explication.³⁴

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.³⁵

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 2017, 53 affaires traitées au civil pour discrimination ont été clôturées et il n'y a eu constat de discrimination que dans sept d'entre elles. Les poursuites intentées devant les juridictions croates satisfont rarement aux normes d'équité en termes de délai raisonnable: elles prennent généralement tant de temps que les recours ne peuvent être considérés comme efficaces. Ainsi par exemple, bien que la législation établisse clairement que les conflits du travail doivent être tranchés en première instance dans un délai de six mois, ce type d'action judiciaire dure généralement plusieurs années dans les grandes villes. Les plaignants éprouvent des difficultés à démontrer la discrimination car la règle relative à la charge de la preuve n'est pas toujours appliquée. La jurisprudence des cours municipales et de comtés, qui constitue la source principale d'interprétation judiciaire de dispositions juridiques souvent très larges, n'est pas publiée et ne peut donc être consultée par des plaignants potentiels. La jurisprudence reste peu claire sur la question de l'intention en tant qu'élément de discrimination et les juges sont réticents à établir une discrimination lorsque l'auteur de celle-ci n'a manifesté aucune intention de violer un droit de la victime.

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

³⁴ Médiateur de la République (2017), *Rapport du médiateur concernant 2016*, disponible (en croate) sur: <http://ombudsman.hr/hr/izvjesca-2017/izvjesce-pp-2017/send/82-izvjesca-2017/1126-izvjesce-pucke-pravobraniteljice-za-2017-godinu>, consulté le 20 mai 2018.

³⁵ 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>.

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. La Cour suprême a maintenu cette pratique en 2017.³⁶

³⁶ Cour suprême, Revr 1710/16, 5 juillet 2017.

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 %.³⁷

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 Präcedenzwirkung.

Das Verfassungsgericht der Republik Kroatien hat unter anderem folgende Aufgaben: 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.

³⁷ Informationen zur Volkszählung von 2011 sind abrufbar unter https://www.dzs.hr/Hrv_Eng/publication/2012/SI-1468.pdf und unter https://www.dzs.hr/Hrv_Eng/publication/2012/SI-1469.pdf (letzter Zugriff am 23. Mai 2018).

In einigen Gespanschaften mit großer Roma-Bevölkerung (Međumirska 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.³⁸ 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. Die Segregation von Roma-Studierenden sowie die generelle Ausgrenzung von Angehörigen der Roma-Gemeinschaft und ihre Staatenlosigkeit waren auch im Jahr 2017 weit verbreitet.

Im August 2014 trat das Gesetz über gleichgeschlechtliche Lebenspartnerschaften in Kraft. Das Gesetz regelt den Rechtsstatus von eingetragenen und nicht eingetragenen gleichgeschlechtlichen Partnerschaften.³⁹ ⁴⁰ 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.⁴¹

Im März 2017 erklärte der Europäische Gerichtshof für Menschenrechte in *Škorjanec gg. Kroatien*, dass Kroatien gegen Artikel 3 EMRK (Verbot der Folter und anderer Formen von Misshandlung) in Verbindung mit Artikel 14 EMRK (Verbot von Diskriminierung) verstoßen habe, und stellte fest, dass die nationalen Behörden es versäumt hätten zu untersuchen, ob die Beschwerdeführerin Opfer eines körperlichen Angriffs geworden sei, weil sie als Romni wahrgenommen wurde, und es versäumt hätten zu klären, ob die Beschwerdeführerin aufgrund ihrer Beziehung zu einer Person angegriffen wurde, die der ethnischen Gruppe der Roma angehört. Der Gerichtshof betonte, dass dies, zusammen mit der Tatsache, dass die innerstaatlichen Behörden darauf bestanden, dass es zur Einleitung eines Strafverfahrens unerlässlich sei, dass die Beschwerdeführerin selbst Romni sei, zu einer mangelhaften Untersuchung und Beurteilung des Falls der Beschwerdeführerin geführt habe.⁴²

Nach öffentlichen Konsultationen über den Entwurf des neuen Nationalen Aktionsplans gegen Diskriminierung, die im Juli 2016 zu Ende gingen, und der Zurückstellung seiner Verabschiedung bis Juni 2017 und obwohl zivilgesellschaftliche Organisation kritisierten, dass der Plan Menschenrechtsverletzungen, denen Serben, Roma und sexuelle Minderheiten ausgesetzt sind, weder widerspiegeln noch angemessen angehe, wurde der Nationale Aktionsplan gegen Diskriminierung 2017-2022, zusammen mit dem Aktionsplan für seine Umsetzung im Zeitraum 2017-2019, am 1. Dezember 2017 verabschiedet.⁴³

³⁸ Europäischer Gerichtshof für Menschenrechte (EGMR), *Oršuš et. al. gegen Kroatien* (Große Kammer), Nr. 15766/03, 16. März 2010.

³⁹ Amtsblatt 92/2014.

⁴⁰ 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.

⁴¹ Amtsblatt 157/2013 und 152/2014.

⁴² Europäischer Gerichtshof für Menschenrechte, *Škorjanec gg. Kroatien*, Nr. 25536, 28. März 2017.

⁴³ Kroatische Regierung (2017), Nationaler Aktionsplan gegen Diskriminierung 2017-2022, abrufbar unter: <https://pravamanjina.gov.hr/UserDocsImages/dokumenti/Nacionalni%20plan%20za%20borbu%20protiv%20diskriminacije%20za%20razdoblje%20od%202017.%20do%202022..pdf> (letzter Zugriff am 18. März 2018).

Da Kroatien als Teil der sogenannten Balkanroute auch 2017 Transitland für Migranten⁴⁴ 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. In der Praxis ist dies jedoch nicht der Fall. Die Bürger-Ombudsperson befasst sich mit der Diskriminierung von Migranten wie auch mit allen anderen Fragen.

Einem Bericht von Amnesty International zufolge schickte Kroatien auch 2017 Flüchtlinge und Migranten, die illegal ins Land eingereist waren, nach Serbien zurück, ohne ihnen Zugang zu einem wirksamen Asylverfahren zu gewähren. Dieses Zurückdrängen durch die Polizei, manchmal tief aus dem kroatischen Staatsgebiet heraus, ging regelmäßig mit Nötigung, Einschüchterung, Beschlagnahmung oder Zerstörung von privaten Wertsachen und einem unverhältnismäßigen Einsatz von Gewalt seitens der Polizei einher.⁴⁵

Im Juli 2017 entschied der Gerichtshof der Europäischen Union, dass Kroatien gegen die Vorschriften der Dublin-Verordnung (die festlegt, welcher EU-Mitgliedstaat zur Prüfung des Asylantrags verpflichtet ist) verstoßen hatte, indem es 2015 Flüchtlingen und Migranten die Durchreise durch das Land gestattete, ohne Anträge auf internationalen Schutz zu prüfen.⁴⁶

Gleichzeitig traten – trotz heftiger Kritik von Menschenrechts-NROs – die Änderungen des Ausländergesetzes in Kraft, in deren Zuge es verboten wurde, ausländische Staatsangehörige, die sich unrechtmäßig in Kroatien aufhalten, bei der Befriedigung grundlegender Bedürfnisse wie Wohnen, Gesundheit, Hygiene oder Nahrung zu unterstützen, außer in medizinischen oder humanitären Notfällen bzw. in lebensbedrohlichen Situationen.⁴⁷

2. Wichtigste Rechtsvorschriften

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

⁴⁴ 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.

⁴⁵ Amnesty International (2018), *Report 2017/18*, <https://www.amnesty.org/en/countries/europe-and-central-asia/croatia/report-croatia/> (letzter Zugriff am 18. März 2018).

⁴⁶ Europäischer Gerichtshof, Urteile in den Rechtssachen C-490/16 und C-646/16.

⁴⁷ Kroatien, Ausländergesetz (*Zakon o strancima*), 28. Oktober 2011, Amtsblatt Nr. 130/11, 74/13, 69/17.

Diskriminierungsgründe wie Behinderung, Alter und sexuelle Orientierung fallen demnach unter die Rubrik „sonstige Eigenschaften“.⁴⁸

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

- das Antidiskriminierungsgesetz,⁴⁹ 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 Geschlechtergleichstellungsgesetz,⁵⁰ das Diskriminierung aufgrund des Geschlechts, der Geschlechtsidentität und des Geschlechtsausdrucks, der sexuellen Orientierung und des Ehe- oder Familienstands verbietet, und das Gesetz über gleichgeschlechtliche Lebenspartnerschaften, das Diskriminierung aufgrund einer „gleichgeschlechtlichen Partnerschaft“ und der „sexuellen Orientierung“ verbietet;
- das Arbeitsgesetz,⁵¹ 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 Definition 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

⁴⁸ Artikel 14 der kroatischen Verfassung; Amtsblatt 56/1990, 135/1997, 113/2000, 28/2001, 76/2010 und 5/2014.

⁴⁹ Amtsblatt 85/2008 und 112/2012.

⁵⁰ Amtsblatt 82/2008, 125/2011, 20/2012 und 138/2012.

⁵¹ Kroatien, Arbeitsgesetz, Amtsblatt 93/2014.

diese Vorschriften, Kriterien oder Verfahren sind durch ein rechtmäßiges Ziel sachlich 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 dieser Ausnahmen bezieht sich auf 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 im Hinblick auf den Zweck und das Ziel ausgelegt werden, für den/das sie vorgesehen ist.

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 Testing-Verfahren 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 verleiht der Bürger-Ombudsperson Befugnisse als zentraler Stelle für die Beseitigung von Diskriminierung und die Förderung von Gleichbehandlung, unabhängig von „Rasse“ oder ethnischer Zugehörigkeit. 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 Behinderungsfragen, Diskriminierung von Kindern (Aufgabenbereich der Ombudsperson für Kinder) sowie Geschlecht, Geschlechtsidentität und -ausdruck, Ehe- oder Familienstand und sexuelle Orientierung (Aufgabenbereich der Ombudsperson für Geschlechtergleichstellung).

Die Ombudsperson hat folgende Aufgaben:

1. Beschwerden natürlicher und juristischer Personen entgegennehmen, die einen begründeten Verdacht auf Diskriminierung betreffen;

2. natürliche und juristische Personen, die eine Diskriminierungsbeschwerde eingereicht haben, über ihre Rechte und Pflichten und ihre Möglichkeiten für rechtlichen und sonstigen Schutz informieren;
3. 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;
4. die Öffentlichkeit über das Thema Diskriminierung aufklären;
5. mit Zustimmung der Parteien eine Schlichtung durchführen, um eine außergerichtliche Einigung zu erreichen;
6. die Diskriminierung gegebenenfalls bei der zuständigen Staatsanwaltschaft anzeigen;
7. statistische Daten über Diskriminierung erheben und auswerten;
8. das kroatische Parlament in seinem/ihrem Jahresbericht, und auf Wunsch in Sonderberichten, über die Häufigkeit von Diskriminierung informieren;
9. Erhebungen über Diskriminierung durchführen, Gutachten und Empfehlungen erstellen und der Regierung angemessene rechtliche und strategische Lösungen vorschlagen.

Die Ombudsperson für Behinderungsfragen und die Ombudsperson für Geschlechtergleichstellung haben im Wesentlichen die gleichen Befugnisse wie die Bürger-Ombudsperson.

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

7. Zentrale Punkte

Der Jahresbericht der Ombudsperson für 2017 und die darin enthaltene Analyse der einschlägigen Gerichtsverfahren zeigen – wie schon der vorherige Jahresbericht –, dass der Schutz vor Diskriminierung in der Praxis nicht funktioniert. 2017 waren 203 Zivilverfahren (einschließlich arbeitsrechtliche Verfahren) wegen Diskriminierung bei kroatischen Gerichten anhängig. 2017 wurden 53 Verfahren abgeschlossen: sieben Klagen wurde stattgegeben, 14 wurden abgewiesen und 22 wurden „auf andere Weise“ abgeschlossen, ohne weitere Erklärung.⁵²

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.⁵³

Opfer von Diskriminierung nutzen aus mehreren Gründen nur selten die verfügbaren Rechtsmittel. Die Erfolgchancen sind sehr gering. 2017 wurden 53 Zivilverfahren wegen Diskriminierung abgeschlossen und Diskriminierung wurde nur in sieben 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

⁵² Bürger-Ombudsperson (2017), *Bericht 2017*, abrufbar unter: <http://ombudsman.hr/hr/izvjesca-2017/izvjesce-pp-2017/send/82-izvjesca-2017/1126-izvjesce-pucke-pravobraniteljice-za-2017-godinu> (letzter Zugriff am 20. Mai 2018).

⁵³ Ombudsperson (2015), *Bericht der Ombudsperson für 2015*: <http://ombudsman.hr/hr/component/jdownloads/send/67-2015/745-izvjesce-pp-2015-pdf>.

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.

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. Diese Praxis des Obersten Gerichts hat sich auch 2017 fortgesetzt.⁵⁴

⁵⁴ Oberstes Gericht, Revr 1710/16, 5. Juli 2017.

INTRODUCTION

The national legal system

The Republic of Croatia is a unitary state.⁵⁵ 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.⁵⁶

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.⁵⁷

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.⁵⁸ 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.⁵⁹

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.⁶⁰

⁵⁵ 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).

⁵⁶ Croatia, Constitution of the Republic of Croatia, 22 December 1990, Article 5.

⁵⁷ Croatia, Constitution of the Republic of Croatia, 22 December 1990, Article 4.

⁵⁸ Croatia, Constitution of the Republic of Croatia, 22 December 1990, Article 116.

⁵⁹ Croatia, Constitution of the Republic of Croatia, 22 December 1990, Article 125.

⁶⁰ 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 2012.⁶¹ 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, gender identity, expression or sexual orientation.⁶² The Anti-discrimination Act applies to all areas without any limitation while explicitly enumerating 10 areas to which special attention is to be paid.⁶³

The Labour Act⁶⁴ (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.⁶⁵ The previous Labour Act had the same provision.⁶⁶ The Labour Act does not explicitly mention grounds of discrimination but refers to the Anti-discrimination Act in that respect.⁶⁷

The Same-sex Life Partnership Act (SSLPA), which entered into force on 5 August 2014,⁶⁸ 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.⁶⁹ 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.⁷⁰ 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.⁷¹

⁶¹ Croatia, Anti-discrimination Act, 9 July 2008, Official Gazette 85/2008, 112/2012, *Zakon o suzbijanju diskriminacije*.

⁶² Croatia, Anti-discrimination Act, 9 July 2008, Article 1(1).

⁶³ Croatia, Anti-discrimination Act, 9 July 2008, Article 8.

⁶⁴ Croatia, Labour Act, 15 July 2014, Official Gazette 93/2014, 127/2017 *Zakon o radu*.

⁶⁵ Croatia, Labour Act, 15 July 2014, Article 7(4).

⁶⁶ Croatia, Labour Act, 4 December 2009, Official Gazette 149/2009, 61/2011, 82/2012, 73/2013, Article 5(4).

⁶⁷ Croatia, Labour Act, 15 July 2014, Article 7(4).

⁶⁸ Between August 2014 and 31 December 2015, 108 same-sex partnerships were registered (Gender Ombudsperson's report for 2015).

⁶⁹ Croatia, Same-sex Life Partnership Act, 15 June 2014, Official Gazette 92/2014, *Zakon o životnom partnerstvu osoba istog spola*.

⁷⁰ Croatia, Constitution of the Republic of Croatia, 22 December 1990, Article 62(2).

⁷¹ 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)⁷² 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.⁷³ 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.⁷⁴ Therefore, judicial decisions, including those adopted in disputes between private actors, could be challenged before the Constitutional Court, which applies the Constitution directly.

⁷² In Croatia, 'nationality' (*nacionalnost* or *narodnost* in Croatian) does not refer to 'citizenship', but to the membership of an ethnic group.

⁷³ 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 prescribe education as a discrimination ground, Article 14 of the Constitution, which contains an open list of discrimination grounds, explicitly prescribes education as one of the grounds and is applicable in this particular case.

⁷⁴ 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 condition⁷⁵
- disability
- genetic heritage
- gender identity
- expression⁷⁶
- sexual orientation
- birth⁷⁷
- other characteristics⁷⁸

All of the discrimination grounds listed above, except for 'birth' and 'other characteristics', which are specified in the Constitution, are covered by the Anti-discrimination Act.

2.1.1 Definition of the grounds of unlawful discrimination within the directives

The Anti-discrimination Act only lists discrimination grounds but does not provide definitions, which are to be found either in other laws or in the case law of domestic courts and bodies.

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 2017, as in previous years, most complaints of discrimination are in connection with 'race or ethnic origin' (17 %).⁷⁹ 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.⁸⁰

⁷⁵ 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.

⁷⁶ Given the strict wording of the Anti-discrimination Act, which lists as discrimination grounds, *inter alia* 'gender identity, expression or sexual orientation', there is common confusion as to whether gender identity and expression are separate discrimination grounds. The Ombudsperson interprets this as a single discrimination ground, for which reason throughout the rest of the report the ground will be referred to as 'gender identity and expression'.

⁷⁷ Croatia, Constitution of the Republic of Croatia, 22 December 1990, Article 14(1).

⁷⁸ Croatia, Constitution of the Republic of Croatia, 22 December 1990, Article 14(1).

⁷⁹ People's Ombudsperson (2017), *Ombudsperson's Report for 2017*, p. 13, available at: <http://ombudsman.hr/hr/izvjesca-2017/izvjesce-pp-2017/send/82-izvjesca-2017/1126-izvjesce-pucke-pravobraniteljice-za-2017-godinu>, accessed 20 May 2018.

⁸⁰ People's Ombudsperson (2016), *Ombudsperson's Report for 2016*, p.7, accessed 14 April 2017.

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 characteristics differ from the rest of the population, and who are motivated to preserve these characteristics'.^{81 82}

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.⁸³

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.'⁸⁴

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'.⁸⁵ There are still other definitions of disability in other areas (e.g., education, transport).⁸⁶ The Anti-discrimination Act does not define disability.

⁸¹ 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*.

⁸² 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.

⁸³ 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 20 May 2018.

⁸⁴ 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.

⁸⁵ Croatia, Social Care Act, 13 December 2013, Article 4(1)(9), Official Gazette 157/2013, 152/2014, 99/2015, 52/2016, 16/2017, 130/17, *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, 39/18, *Zakon o profesionalnoj rehabilitaciji i zapošljavanju osoba s invaliditetom*.

⁸⁶ Disability Ombudsperson (2014), *Parallel Report for the UN Committee on the Rights of Persons with Disability*, July 2014.

The Primary and Secondary Education Act⁸⁷ states that primary and secondary education is based on the principle of equal educational opportunities for all students in accordance with their abilities.⁸⁸ The Rules on primary and secondary education of students with developmental difficulties⁸⁹ 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.⁹⁰

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.'⁹¹

National law does not provide a definition of sexual orientation.⁹²

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).⁹³ 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.⁹⁴

In Croatia, the following case law deals with multiple discrimination.

⁸⁷ 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*.

⁸⁸ Croatia, Primary and Secondary Education Act, 15 July 2008, Article 4(2)(2).

⁸⁹ 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*.

⁹⁰ Croatia, Act on the legal status of religious communities, 4 July 2002, Official Gazette 83/2002, 73/2013, *Zakon o pravnom položaju vjerskih zajednica*.

⁹¹ 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 20 May 2018.

⁹² 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. There is also no known case law that would provide the definition of sexual orientation.

⁹³ Croatia, Anti-discrimination Act, 9 July 2008, Article 6(1).

⁹⁴ 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'.

Following the Ombudsperson's recommendation, the Ministry of the Interior amended the Regulations on driving licences and allowed head covers to be worn in driving licence photographs when a person wears such a cover for religious or medical reasons.⁹⁵ The previous regulation allowed such an exception only for elderly people wearing head covers as part of a traditional dress code (folk costume).⁹⁶ 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.⁹⁷ In this case, gender was not considered as a ground of discrimination.

In *L.J.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 L.J.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 L.J.S. compensation in the amount of EUR 1 330 (HRK 10 000).⁹⁸ The County Court in Zagreb confirmed the decision of the first instance court and increased the compensation, awarding L.J.S. an additional EUR 2 660 (HRK 20 000).⁹⁹

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.¹⁰⁰

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.¹⁰¹

There is no relevant case law on this issue.

⁹⁵ Croatia, Regulations on driving licences, 5 April 2013, Article 12(3); Official Gazette 43/2013, 77/2013, 155/2013, 01/15, 33/16, 108/16, 86/17, 46/18, *Pravilnik o vozačkim dozvolama*.

⁹⁶ Croatia, Regulations on driving licences, 23 December 2008, Article 6(3); Official Gazette 155/2008, 8/2009, *Pravilnik o vozačkim dozvolama*.

⁹⁷ 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.

⁹⁸ Decision of Zagreb Municipal Court, no. Pr-205/07, 27 February 2014.

⁹⁹ Decision of Zagreb County Court, no. Gžr-839/2014, 3 June 2014.

¹⁰⁰ Ombudsperson for Children, (2016), *Report for 2016*, p. 109, available at: <http://dijete.hr/en/reports-of-the-ombudsperson-for-children>, accessed 25 May 2018.

¹⁰¹ Croatia, Anti-discrimination Act, 9 July 2008, Article 1(3).

b) Discrimination by association

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

The Anti-discrimination Act prohibits discrimination based on association with person(s) with a particular characteristic. It states that placing any person, or a person related to that person by kinship or other relationship, in a less favourable position on the prohibited grounds is considered discrimination.¹⁰² 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*,¹⁰³ 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.

Furthermore, in its judgment in *Škorjanec v. Croatia* of 28 March 2017, the European Court of Human Rights¹⁰⁴ determined that Croatia had violated Article 3 of the European Convention, which prohibits torture and other forms of ill-treatment, in connection with Article 14 of the Convention, which prohibits discrimination. In this case the applicant and her partner who is Roma, had been physically assaulted and verbally insulted by the attackers on a racial basis, during which attack the applicant had suffered slight bodily injury. During the investigation, the competent authorities determined that only the applicant's partner had been a victim of a hate crime since the applicant herself is not of Roma origin. The European Court found that Croatia failed to examine whether the attackers had perceived the applicant as Roma as well and also that they failed to determine whether the applicant had been attacked because of her relationship with a person of Roma origin. The Court underlined that this, together with the fact that the domestic authorities insisted that for criminal charges to be brought, the applicant had to be Roma, and because she was not, in the view of the authorities, charges for hate crime in regard to the applicant could not be brought, led to deficient investigation and assessment of the applicant's case. The European Court of Human Rights in this case plainly stated that: 'Treating racially motivated violence and brutality on an equal footing with cases lacking any racist overtones would be tantamount to turning a blind eye to the specific nature of acts which are particularly destructive of fundamental human rights.'¹⁰⁵

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.

¹⁰² Croatia, Anti-discrimination Act, 9 July 2008, Article 1(2).

¹⁰³ European Court of Human Rights, *Guberina v. Croatia*, No. 23682/13, 22 March 2016.

¹⁰⁴ European Court of Human Rights, *Škorjanec v. Croatia*, No. 25536, 28 March 2017.

¹⁰⁵ European Court of Human Rights, *Škorjanec v. Croatia*, No. 25536, 28 March 2017, para. 53.

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.¹⁰⁶

The same definition of direct discrimination is used by the Sex Equality Act.¹⁰⁷

The Labour Act and the Same-sex Life Partnership Act prohibit direct discrimination, but do not define it.¹⁰⁸ 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.¹⁰⁹

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.¹¹⁰

b) Justification of direct discrimination

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.¹¹¹

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 article¹¹² when the journalist, together with a

¹⁰⁶ Croatia, Anti-discrimination Act, 9 July 2008, Article 2(1).

¹⁰⁷ Croatia, Sex Equality Act, 15 July 2008, Official Gazette 82/2008, 125/2011, 20/2012, 138/2012, 69/17, *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*)).

¹⁰⁸ Croatia, Labour Act, 15 July 2014, Article 7(4) and Same-sex Life Partnership Act, 15 July 2014, Article 6(3).

¹⁰⁹ Croatia, Labour Act, 15 July 2014, Article 134.

¹¹⁰ 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-istrzivanje-sudske-prakse-u-podrucju-antidiskriminacijske-zastite-2010>, accessed 21 October 2016.

¹¹¹ Croatia, Anti-discrimination Act, 9 July 2008, Article 9(3).

¹¹² Jutarnji Vijesti (2011) 'Kako u Zagrebu unajmiti stan, ili zaposliti se, ako ste romkinja ili muslimanka: Mersiha? Zao mi je. Stan je iznajmljen!', 19 October 2011. Available at: <https://www.jutarnji.hr/vijesti/kako-u-zagrebu-unajmiti-stan-ili-zaposliti-se-ako-ste-romkinja-ili-muslimanka-mersiha-zao-mi-je.-stan-je-iznajmljen/1733565/>, accessed 20 May 2018.

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).¹¹³ In collaboration with the NGOs Censorship Plus¹¹⁴ and Zagreb Pride,¹¹⁵ 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. 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.¹¹⁶

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.¹¹⁷

¹¹³ 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 20 May 2018.

¹¹⁴ Censorship Plus website: <http://www.cenzura.hr/>.

¹¹⁵ Zagreb Pride website: <http://www.zagreb-pride.net/hr/>.

¹¹⁶ http://www.antidiskriminacija.com/wp-content/uploads/2015/07/Activity-2.2.-Situation-testing_report.pdf, accessed 20 May 2018.

¹¹⁷ Croatia, Anti-discrimination Act, 9 July 2008, Article 2(2).

The Labour Act and the Same-sex Life Partnership Act prohibit direct discrimination, but do not define it.¹¹⁸ 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.¹¹⁹

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.¹²⁰

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,¹²¹ noticed a lack of protection against indirect discrimination before courts. The findings of the analysis might explain the absence of such case law: lawyers are still not familiar with the anti-discrimination law and a formalistic approach is still widespread in the proceedings before courts. 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.

The most recent annual reports issued by the Gender Equality Ombudsperson show 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.¹²² During 2017, out of the 426 cases analysed, not one was related to indirect discrimination.¹²³

c) Comparison in relation to age discrimination

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

¹¹⁸ Croatia, Labour Act, 15 July 2014, Article 7(4) and Same-sex Life Partnership Act, 15 July 2014, Article 6(3).

¹¹⁹ Croatia, Anti-discrimination Act, 9 July 2008, Article 2(2).

¹²⁰ Croatia, Constitution of the Republic of Croatia, 22 December 1990, Article 16.

¹²¹ The analysis, published in March 2011, covered case law in the cases of discrimination based on all protected grounds, not just gender.

¹²² 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.

¹²³ Gender Equality Ombudsperson (2017), *Report for 2017*, p. 7. Available at: http://www.prs.hr/attachments/article/2404/IZVJE%C5%A0%C4%86E_O_RADU_ZA_2017.pdf, accessed 15 May 2018.

2.3.1 Statistical evidence

a) Legal framework

In Croatia, there are rules permitting data collection.

Until recently, the main piece of legislation on data collection in Croatia was the Personal Data Protection Act.¹²⁴ However, on 25 May 2018, Regulation 2016/679, of the European Parliament and of the Council of 27 April 2016, on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, (General Data Protection Regulation), entered into force in Croatia.

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.¹²⁵

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.¹²⁶

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. In contrast, in spite of regulations banning data collection on ethnic origin, some institutions have precise information on the ethnicity of particular groups.¹²⁷

¹²⁴ 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.

¹²⁵ Croatia, Official Statistics Act, 13 June 2003, Article 4(1)(2).

¹²⁶ See, Decade of Roma Inclusion (2013), *Progress Report 2013*: <http://www.eurasia.undp.org/content/dam/rbec/docs/DORI%20REPORT.pdf?download>, accessed 20 May 2018, 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 20 May 2018.

¹²⁷ 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.

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

In 2013, the Government Office for Human Rights and National Minorities published a brochure for public bodies and institutions on collecting data on equality. It stresses the need for relevant data in the fight against discrimination and offers various instruments for obtaining such data (i.e. official statistics, research, complaints of discrimination, various administrative bodies' data and polls).¹²⁸

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 Međimurje¹²⁹ (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.¹³⁰ The Constitutional Court ignored the statistical data in its decision¹³¹ 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,¹³² 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.¹³³

¹²⁸ https://pravamanjina.gov.hr/UserDocsImages//dokumenti//definicije_podataka_jednakosti.pdf, accessed 20 May 2018.

¹²⁹ ECtHR, *Oršuš and others v Croatia*, No. 15766/03.

¹³⁰ Ombudsperson (2000), *Report on the activities of the Ombudsperson in 2000* (not available online).

¹³¹ Constitutional Court, No. U-III-3138/2002, 7 February 2007.

¹³² Croatia, Anti-discrimination Act, 9 July 2008, Article 3(1).

¹³³ Croatia, Anti-discrimination Act, 9 July 2008, Article 3(2).

The Labour Act does not define harassment, but refers to the Anti-discrimination Act as *lex specialis*.¹³⁴ 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.^{135 136} The Labour Act protects the employee from harassment, but does not define it. On the other hand, mobbing is not regulated at all. As a result the provision on harassment has been used for protection of victims of mobbing. Therefore, 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 Code¹³⁷ 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.¹³⁸ 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 discrimination¹³⁹ 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.¹⁴⁰

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.¹⁴¹ Regarding the liability of an employer for the actions of third parties against

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

¹³⁵ E.g. Crnić, Ivica (ed.) International Organization for Migration (2009), *Guide to Anti-discrimination Legislation and Case Law*, Zagreb, 2009.

¹³⁶ The term 'mobbing' meaning bullying or psychological violence without discrimination on any ground.

¹³⁷ Croatia, Criminal Code, 21 October 2011.

¹³⁸ Croatia, Criminal Code, 21 October 2011, Article 156.

¹³⁹ Croatia, Anti-discrimination Act, 9 July 2008, Article 3.

¹⁴⁰ Croatia, Labour Act, 15 July 2014, Article 134.

¹⁴¹ Croatia, Civil Obligations Act, 25 February 2005, Official Gazette 35/2005, 41/2008 and 125/2011, *Zakon o obveznim odnosima*.

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.¹⁴²

The individual harasser or discriminator would always be held liable.

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

2.5 Instructions to discriminate (Article 2(4))

a) Prohibition of instructions to discriminate

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

The Anti-discrimination Act prohibits encouragement to discriminate, while the Labour Act and the Same-sex Life Partnership Act do not have that specific provision.¹⁴³ 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.¹⁴⁴

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.¹⁴⁵ 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.¹⁴⁶

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.

¹⁴² Croatia, Labour Act, 15 July 2014, Article 111.

¹⁴³ Croatia, Anti-discrimination Act, 9 July 2008, Article 4(1).

¹⁴⁴ Croatia, Anti-discrimination Act, 9 July 2008, Article 4(1).

¹⁴⁵ Croatia, Civil Obligations Act, 25 February 2005.

¹⁴⁶ Croatia, Labour Act, 15 July 2014, Article 111.

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.'¹⁴⁷

The Act on professional rehabilitation and employment of persons with disability¹⁴⁸ 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.¹⁴⁹

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.¹⁵⁰ All employers are eligible for State funding to help with the costs of reasonable accommodation and for certain incentives if employing a person with disability.¹⁵¹ However, the act however, does not elaborate in more detail how this obligation will be realised in specific cases, nor, whether it is necessary for the person with disability who wants to achieve her right to reasonable accommodation to enclose a formal proof of disability.

The Disability Ombudsperson, in her report for 2014,¹⁵² gave some examples of complaints about reasonable accommodation duties and her opinion about the employer's duty in each case.

¹⁴⁷ Croatia, Anti-discrimination Act, 9 July 2008, Article 4(2).

¹⁴⁸ Croatia, Act on professional rehabilitation and employment of persons with disability, 13 December 2013.

¹⁴⁹ Croatia, Act on professional rehabilitation and employment of persons with disability, 13 December 2013, Article 7(2).

¹⁵⁰ Croatia, Act on professional rehabilitation and employment of persons with disability, 13 December 2013, Article 12(4).

¹⁵¹ Croatia, Act on professional rehabilitation and employment of persons with disability, 13 December 2013, Article 29.

¹⁵² Ombudsperson for Persons with Disabilities (2014) *Report for 2014*, available at: <http://posi.hr/wp-content/uploads/2018/01/IZVJESCE-O-RADU-POSI-2014.pdf>, accessed 20 May 2018.

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.

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 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.¹⁵³ The task of the Institute is to establish the degree of disability in each individual case on the basis of which persons involved can then claim their rights, including the right to reasonable accommodation.

In practice, when dealing with cases, the Disability Ombudsperson requests a formal proof of disability and in cases in which the person does not have any of the necessary documentation, disability in relation to work can be determined by the Institute for Professional Rehabilitation.¹⁵⁴

According to the law, the Institute should have an important role in promoting the employment of people with disabilities through advising employers and interested members of the public regarding the reasonable accommodation duties and through continuous cooperation with employers for the purpose of analysing and determining the employment opportunities for people with disabilities.¹⁵⁵ In order for an employer to exercise their right to certain benefits when employing a person with disability, they have to provide, for each employee with disability, an expert assessment by the Institute for professional rehabilitation and the reasonable accommodation plan is part of such an assessment.

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

¹⁵³ Croatia, Act on the single expert body, 4 July 2014, Official Gazette 85/2014 and 95/2015, *Zakon o jedinstvenom tijelu vještačenja*.

¹⁵⁴ Letter of the Disability Ombudsperson of 28 August 2018.

¹⁵⁵ Croatia, Act on professional rehabilitation and employment of persons with disability, 13 December 2013, Article 37.

lack of understanding of the meaning of reasonable accommodation and universal design in areas such as education, health, employment and the built environment.¹⁵⁶

According to the information available from the Disability Ombudsperson's *Report for 2017*, during 2017 the Institute for expertise received a total of 85 411 requests for expertise and by the end of 2017 the number of unresolved cases was 32 495. The Disability Ombudsperson expressed her concerns regarding the fact that in some regional branch offices of the Institute (Osijek, Varaždin), the disability assessment procedure lasts more than a year due to a lack of experts, as well as the fact that out of 17 regional offices, only three are accessible to people with disabilities. Furthermore, the Ombudsperson was concerned that the original idea of a 'unique expert body competent to establish disability', for the purpose of exercising rights on different grounds within the domestic system, had not been achieved.¹⁵⁷

In the same report, the Disability Ombudsperson stated that the recommendations of the Committee on the Rights of Persons with Disabilities had not been respected since legislative measures that exclude certain groups of persons with disabilities are still being adopted, without mentioning to which exact measures this refers.¹⁵⁸

Also, reflecting on the complaints that she had received throughout 2017, the Ombudsperson concluded that awareness of reasonable accommodation as the employer's duty is still basic and that the duty is rarely applied in practice.¹⁵⁹

The Ombudsperson stressed that the principle of reasonable accommodation is still far from standard and is perceived as privileged treatment at the workplace. Furthermore, the most widespread awareness among employers regarding reasonable accommodation duties is in connection to architectural and physical barriers. However, the level of consciousness is still rather low in regard of work organisation, so that in situations in which, for example, there is a need to work from home or for flexible working hours, people with disabilities face difficulties at the workplace, prejudice and misunderstanding.

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'.¹⁶⁰ 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. The Anti-discrimination Act does not define disability and therefore, for claims of non-discrimination in general, definitions from the Social Care Act and the Act on professional rehabilitation and employment of persons with disability are applied.

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http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fHRV%2fCO%2f1&Lang=en, accessed 20 May 2018.

¹⁵⁷ Disability Ombudsperson (2017), *Report for 2017*, available at: <http://posi.hr/wp-content/uploads/2018/04/Izvje%C5%A1%C4%87e-o-radu-Pravobranitelja-za-osobe-s-invaliditetom-2017..pdf>, accessed 19 May 2018.

¹⁵⁸ Disability Ombudsperson (2017), *Report for 2017*, available at <http://posi.hr/wp-content/uploads/2018/04/Izvje%C5%A1%C4%87e-o-radu-Pravobranitelja-za-osobe-s-invaliditetom-2017..pdf>, accessed 19 May 2018.

¹⁵⁹ Disability Ombudsperson (2017) *Report for 2017*, available at: <http://posi.hr/wp-content/uploads/2018/04/Izvje%C5%A1%C4%87e-o-radu-Pravobranitelja-za-osobe-s-invaliditetom-2017..pdf>, accessed 19 May 2018.

¹⁶⁰ 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).

- 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 failure is considered discrimination.¹⁶¹ 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 Act¹⁶² provides that primary and secondary education is based on the principle of equal educational opportunities for all students in accordance with their abilities.¹⁶³ The Rules on primary and secondary education of students with developmental difficulties¹⁶⁴ define 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).¹⁶⁵ The purpose of the rules is to determine the types of disabilities on the basis of which students have the right to appropriate schooling programmes, professional support and adaptation, as a form of reasonable accommodation. The Science and Higher Education Act¹⁶⁶ obliges higher education institutions to secure equality in opening the enrolment process to all, regardless of disability, but it does not prescribe reasonable accommodation duties in respect of disability (with the exception of the right to transportation from home to school).¹⁶⁷

In connection to this, the Disability Ombudsperson, in her 2017 annual report, expressed concern that the rights of students with disabilities are not regulated by a specific law. The Ombudsperson expressed the need to establish a legal definition of the rights of students with disabilities in order to provide necessary support and reasonable accommodation as well as to eliminate discrimination against them.¹⁶⁸ Although, the relevant authorities are taking no legislative action in this field, university teachers themselves, primarily at the University of Zagreb, have drafted guidelines for the inclusion of students with disabilities, as part of the Tempus project. These guidelines were adopted by Rector's Committee of the university, following which they have become binding for the University of Zagreb.

¹⁶¹ Croatia, Anti-discrimination Act, 9 July 2008, Article 4(2).

¹⁶² 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*.

¹⁶³ Croatia, Primary and Secondary Education Act, 15 July 2008, Article 4(2)(2).

¹⁶⁴ 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*.

¹⁶⁵ 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.).

¹⁶⁶ 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, 131/2017, *Zakon o znanstvenoj djelatnosti i visokom obrazovanju*.

¹⁶⁷ It is not clear why the Science and Higher Education Act established reasonable accommodation only in transportation from home to school.

¹⁶⁸ Disability Ombudsperson (2017) *Report for 2017*, available at: <http://posi.hr/wp-content/uploads/2018/04/Izvje%C5%A1%C4%87e-o-radu-Pravobranitelja-za-osobe-s-invaliditetom-2017..pdf>, accessed 19 May 2018.

However, the universities continue to express the need to regulate this issue through legislation.¹⁶⁹

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.¹⁷⁰

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 accommodation obligations; not allowing a child to take an educational tool (a reader) home but only allowing them to use it in school.¹⁷¹

The failure to meet reasonable accommodation duties in education continued in 2016 and in 2017. According to data for 2017, the most common form of discrimination against people with disabilities was the failure to meet reasonable accommodation duties in the fields of education, employment and work, and access to goods and services.¹⁷²

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.¹⁷³

In *Guberina v. Croatia*, the European Court of Human Rights¹⁷⁴ 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

¹⁶⁹ http://hosting.unizg.hr/uredssi/images/datoteke/nacionalni_dokument.pdf, accessed 16 May 2018.

¹⁷⁰ 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.

¹⁷¹ Disability Ombudsperson (2015) *Report for 2015*, available at: <http://posi.hr/wp-content/uploads/2018/01/IZVJESCE-O-RADU-UREDA-PRAVOBRANITELJICE-ZA-OSOBE-S-INVALIDITETOM-ZA-2015.pdf>, accessed 20 May 2018.

¹⁷² Disability Ombudsperson (2017) *Report for 2017*, available at: <http://posi.hr/wp-content/uploads/2018/04/Izvje%C5%A1%C4%87e-o-radu-Pravobraniteljja-za-osobe-s-invaliditetom-2017..pdf>, accessed 20 May 2018.

¹⁷³ Disability Ombudsperson (2016) *Report for 2016*, available at: <http://posi.hr/wp-content/uploads/2018/01/Izvjesce-o-radu-pravobraniteljice-za-osobe-s-invaliditetom-za-2016.pdf> accessed 20 May 2018.

¹⁷⁴ 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":\["CHAMBER"\],"itemid":\["001-161530"\]](http://hudoc.echr.coe.int/eng#{), accessed 25 April 2017.

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, but refers to unreasonable burden, which can be used as justification for the non-implementation of reasonable accommodation measures. However, there are no known cases in which this issue has been raised. In addition, the Disability Ombudsperson has not noted in any of her reports that this would in any way present an obstacle for reasonable accommodation duties to be fulfilled.

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.¹⁷⁵ 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)).¹⁷⁶

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.¹⁷⁷

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.¹⁷⁸

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.¹⁷⁹

¹⁷⁵ 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.

¹⁷⁶ Croatia, Act on professional rehabilitation and employment of persons with disability, 13 December 2013, Article 41(1)(5).

¹⁷⁷ 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*.

¹⁷⁸ Croatia, Regulations on driving licences, 1 July 2013, Article 12(4), Official Gazette 43/2013, 77/2013, 155/2013, 01/15, 33/16, 108/16, 86/17, 46/18, *Pravilnik o vozačkim dozvolama*.

¹⁷⁹ 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, 131/2017, *Zakon o zdravstvenoj zaštiti*.

Various religious communities have the right to pastoral care in health and social care institutions, prisons and the army.¹⁸⁰

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.¹⁸¹

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.¹⁸² The regulations define several 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 authority buildings, courts, healthcare premises and pharmacies, schools and university buildings, theatres and concert halls with 100 or more seats), respecting all types of disability (including intellectual disability) and providing numerous elements of accessibility (e.g. tactile surfaces, detailed technical requirements for various parts of the building such as stairs, lifts, entrance, toilets, bathrooms, etc.). In theory, a failure to comply with such legislation could be relied upon in a discrimination case.

To make it easier to change existing buildings to be more disability accessible, when a building is owned by more than one owner, the consent of all owners is not needed for such changes.¹⁸³

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.¹⁸⁴ 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.¹⁸⁵ A person in a wheelchair visited the Croatian Pension

¹⁸⁰ 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*.

¹⁸¹ Croatia, Anti-discrimination Act, 9 July 2008, Article 4(2).

¹⁸² 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*.

¹⁸³ 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*.

¹⁸⁴ 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.

¹⁸⁵ 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

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.

During 2016, the Disability Ombudsperson conducted a survey on accessibility of regional public service offices most frequently addressed by people with disabilities. Out of 132 branch offices of the Croatian Health Insurance Institute, 114 regional offices of the Croatian Pension Insurance Institute and 110 social welfare centres, only 17 (less than 5 %) were completely accessible to persons with disabilities. Unfortunately, there are no sanctions for non-compliance with the provisions of the Regulations on accessibility of buildings to persons with disabilities, which obviously has a negative effect on reducing discrimination against persons with disabilities in this area.¹⁸⁶

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, but Pula county court rejected the appeal following which the first instance judgment became final. However, after the decision had been issued, the claimant once again addressed a complaint to the Ombudsperson with the information that just before the expiration of the six-month deadline, the seat of the administrative court in Rijeka was relocated to another building, which, once again, is not accessible to wheelchair users—although according to updated information from the Ministry of Justice, the building is considered to be accessible. The case is not publicly available, but is described in the Disability Ombudsperson's report for 2017.¹⁸⁷

In most cases, services, buildings and infrastructure are still inaccessible to people with disability¹⁸⁸ and this situation persisted in 2017.¹⁸⁹ On that topic, the Disability Ombudsperson in her report for 2017 states that accessibility to buildings is still one of the most common forms of discrimination against people with disabilities. In addition, public authorities often justify non-compliance with the Regulations on accessibility of buildings to persons with disabilities, by claiming that the buildings are protected by cultural heritage or that the authority does not have sufficient financial resources in its budget.¹⁹⁰

PROGRESS Programme. The report is available at http://www.antidiskriminacija.com/wp-content/uploads/2015/07/Activity-2.2.-Situation-testing_report.pdf, accessed 20 May 2018.

¹⁸⁶ Centre for Peace Studies (2017), *One step forward, two steps back: Anti-discrimination policy in Croatia 2011-2016*, available at: https://www.cms.hr/system/publication/pdf/100/Korak_naprijed_nazad_dva.pdf, accessed 20 May 2018.

¹⁸⁷ Rijeka Municipal Court, No. P-102/2015, 30 May 2016. See Disability Ombudsperson (2017) *Report for 2017*, available at: <http://posi.hr/wp-content/uploads/2018/04/Izvje%C5%A1%C4%87e-o-radu-Pravobranitelja-za-osobe-s-invaliditetom-2017..pdf>, accessed 15 May 2018.

¹⁸⁸ Disability Ombudsperson (2015), *Parallel Report for the UN Committee on the Rights of Persons with Disability*, July 2014.

¹⁸⁹ Disability Ombudsperson (2017) *Report for 2017*, available at <http://posi.hr/wp-content/uploads/2018/04/Izvje%C5%A1%C4%87e-o-radu-Pravobranitelja-za-osobe-s-invaliditetom-2017..pdf>, accessed 15 May 2018.

¹⁹⁰ Disability Ombudsperson (2017), *Report for 2017*, available at <http://posi.hr/wp-content/uploads/2018/04/Izvje%C5%A1%C4%87e-o-radu-Pravobranitelja-za-osobe-s-invaliditetom-2017..pdf>, accessed 20 May 2018.

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.¹⁹¹

If a person makes such a request, the Ministry of Interior should issue that person with an identity card with the sign 'OI' (*osobna iskaznica*) in Braille.¹⁹²

The Croatian Radio-television national broadcast company is obliged by law to produce, co-produce and broadcast programmes about persons with disabilities and to promote the translation of its programmes into sign language. 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.¹⁹³

¹⁹¹ Croatia, Administrative Procedure Act, 27 March 2009, Article 11, *Zakon o općem upravnom postupku*.

¹⁹² Croatia, Identity Card Act, of 6 June 2015, Article 6 (3), Official Gazette 62/2015, *Zakon o osobnoj iskaznici*.

¹⁹³ 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 20 May 2018.

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.¹⁹⁴

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.¹⁹⁵

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.¹⁹⁶

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.¹⁹⁷

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.¹⁹⁸

¹⁹⁴ Croatia, Anti-discrimination Act, 9 July 2008, Article 1.

¹⁹⁵ Croatia, Anti-discrimination Act, 9 July 2008, Article 1.

¹⁹⁶ Croatia, Anti-discrimination Act, 9 July 2008, Article 8.

¹⁹⁷ Croatia, Anti-discrimination Act, 9 July 2008, Article 1.

¹⁹⁸ Croatia, Anti-discrimination Act, 9 July 2008, Article 8.

3.2 Material scope

3.2.1 Employment, self-employment and occupation

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

The Anti-discrimination Act applies to all areas without limitation while explicitly enumerating 10 areas to which special attention is to be paid.¹⁹⁹

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.²⁰⁰

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

In Croatia, national legislation prohibits discrimination in connection with conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy for the five grounds in both private and public sectors as described in the directives.²⁰¹

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.²⁰²

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.²⁰³

3.2.3 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.²⁰⁴

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

¹⁹⁹ Croatia, Anti-discrimination Act, 9 July 2008, Article 8.

²⁰⁰ Croatia, Labour Act, 15 July 2014, Article 7(4).

²⁰¹ Croatia, Anti-discrimination Act, 9 July 2008, Article 8.1.

²⁰² Croatia, Anti-discrimination Act, 9 July 2008, Article 8(1).

²⁰³ Croatia, Labour Act, 15 July 2014, Article 7(4).

²⁰⁴ 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.²⁰⁵

During 2017, the NGO Centre for Peace Studies warned that the main problem faced by migrants in Croatia is discrimination in the labour market. Migrants' professional and academic qualifications are often not recognised and they also face difficulties in gaining access to retraining and qualification programmes, which together with language barriers creates a high unemployment rate among migrants in Croatia.

When migrants manage to get a job, it is often poorly paid and not in line with their qualifications. Furthermore, according to Croatian Employment Service Data, in the first half of 2017, 916 foreigners, 124 asylum seekers and three persons under subsidiary protection were registered in the Registry of the Employment Service. Out of that number, in total, 448 foreigners, 36 asylum seekers and one person under subsidiary protection had been successfully employed.²⁰⁶

In her 2017 report, the Ombudsperson stated that numerous problems remain regarding the integration of migrants in the employment market. Although asylum seekers have recognised status in the Republic of Croatia and identification documents, they face difficulties in finding jobs. The Ombudsperson warned that those with a higher degree of education are faced with high costs in order to gain the recognition of professional qualifications on behalf of the professional chambers, which is needed in order for them to practice in Croatia. For example, the Ombudsperson pointed out that validation and recognition of qualifications for dentists, even when they are asylum seekers, costs between approximately EUR 2 500 and 6 000 (HRK 18 000 up to 45 000).

In addition, the Ombudsperson stated that international protection applicants have the right to work while awaiting a decision on their request for international protection, which can take up to nine months, but they are faced with many obstacles that mean they are unable to compete on the labour market. For example, if they do not have identification documents, they cannot be employed since the confirmation of the Ministry of Interior about their status does not count as an identification document. Furthermore, when they do have identification documents, even those are sometimes not enough, since in some cases their identification documents are not accepted by the tax administration or bank as they do not contain a personal identification number, which is another reason that they cannot gain employment.²⁰⁷

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.²⁰⁸

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

In Croatia, national legislation prohibits discrimination in connection with access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience and vocational training outside the

²⁰⁵ Croatia, Anti-discrimination Act, 9 July 2008, Articles 8(1) and 8(3) and Labour Act, 15 July 2014, Article 7(4).

²⁰⁶ <http://hr.n1info.com/a267512/Vijesti/CMS-upozorava-na-probleme-migranata-u-Hrvatskoj.html>, accessed 18 March 2018.

²⁰⁷ People's Ombudsperson (2017) *Report for 2017*, available at: <http://ombudsman.hr/hr/izvjesca-2017/izvjesce-pp-2017/send/82-izvjesca-2017/1126-izvjesce-pucke-pravobraniteljice-za-2017-godinu>, accessed 20 May 2018.

²⁰⁸ Croatia, Anti-discrimination Act, 9 July 2008, Article 8 (1).

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 retraining²⁰⁹ as well as to education and science.²¹⁰ 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 Brankad.o.o., owned by B.J., (the training being an obligatory part of their education), and who filed a discrimination claim against Brankad.o.o. and B.J. before the Varaždin Municipal Court, the court found that the applicants had faced discrimination because they were Roma, forbade Brankad.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.²¹¹

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

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

The Anti-discrimination Act explicitly covers, for each of the grounds covered by the directives, membership of and involvement in workers' organisations, civil society organisations, political parties or any other organisations.²¹² 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 worker's 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 worker's 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 worker's 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 confirmed allegations from the civil suits, their statements are rarely identical, and in such cases play the decisive role in the assessment of the court if the conditions for the shifting

²⁰⁹ Croatia, Anti-discrimination Act, 9 July 2008, Article 8(1).

²¹⁰ Croatia, Anti-discrimination Act, 9 July 2008, Article 8(2).

²¹¹ County Court of Varaždin, *L.I. and Ž.B. v. Brankad.o.o.*, GŽ.3684/12, 2 April 2013.

²¹² Croatia, Anti-discrimination Act, 9 July 2008, Article 8(9).

of burden of proof on to employer are fulfilled. As in previous years, this principle is still inconsistently applied which often results in the rejection of civil suits.²¹³

3.2.6 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.²¹⁴

Regarding healthcare protection, it should be pointed out that, according to law, all migrants²¹⁵ 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 they needed medical treatment.²¹⁶

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.

In her 2017 report, the People's Ombudsperson states that asylum seekers experience difficulty in accessing health care, involving urgent medical help and the necessary treatment of illness and serious mental disorders. In practice, laboratory testing or specialist examinations are possible only in cases in which serious illness had already been established. In addition, the treatments do not include a wide range of primary medical care, child healthcare and pre and post-natal health care, which is particularly worrying.

Furthermore, the Ombudsperson notes that many asylum seekers suffer from headaches, anxiety, insomnia and abdominal pain that is mostly psychosomatic and about 80 % of the applicants in the reception centre in Zagreb are at risk of developing mental disorders, including cases of acute psychosis, postpartum depression and suicide attempts. However, psychological support is still inadequate because of the small numbers of specialists and translators available.²¹⁷

²¹³ 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.

²¹⁴ Croatia, Anti-discrimination Act, 9 July 2008, Articles 8(3) and 8(4).

²¹⁵ The expression 'migrant', used throughout the report denotes, the foreigner, non-EU citizen.

²¹⁶ Croatia, International and Temporary Protection Act, 24 June 2015, Article 57, Official Gazette no. 70/15, *Zakon o međunarodnoj i privremenoj zaštiti*.

²¹⁷ People's Ombudsperson (2017) Report for 2017, available at <http://ombudsman.hr/hr/izvjesca-2017/izvjesce-pp-2017/send/82-izvjesca-2017/1126-izvjesce-pucke-pravobraniteljice-za-2017-godinu>, accessed 20 May 2018.

Amnesty International warned that in Croatia, Roma children and women continued to be disadvantaged in accessing healthcare, and that one fifth of this group lacked access to it altogether.²¹⁸ The lack of access to healthcare is a result of the general position of Roma in the community, primarily their social segregation and isolation, as well as the fact that many of them do not have personal identification cards nor a regulated right to free healthcare.

On 20 June 2016, online consultation on the draft of the Proposal of amendments to the Law on compulsory health insurance and the healthcare of foreigners in the Republic of Croatia started. The law had not been adopted by the end of 2017.²¹⁹

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.

3.2.7 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;²²⁰ 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 receiving social assistance. However, a problem often occurs because it takes a 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.²²¹

In 2017, the People's Ombudsperson noticed positive changes in the social care system, in that in 80 social welfare centres and 38 branches, skilled personnel had been appointed to work with persons under international protection.²²²

²¹⁸ Amnesty International (2018) Report 2017/2018, available at: <https://www.amnesty.org/en/countries/europe-and-central-asia/croatia/report-croatia/>, accessed 18 March 2018.

²¹⁹ <https://zdravlje.gov.hr/UserDocsImages/dokumenti/Tekstovi%20razni/ZAKON%20ID%20ZZ%20STRANCI%202.pdf>, accessed 15 May 2018.

²²⁰ Croatia, Anti-discrimination Act, 9 July 2008, Article 8.

²²¹ 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*.

²²² People's Ombudsperson (2017), *Ombudsperson's Report*, available at: <http://ombudsman.hr/hr/izvjesca-2017/izvjesce-pp-2017/send/82-izvjesca-2017/1126-izvjesce-pucke-pravobraniteljice-za-2017-godinu>, accessed 20 May 2018.

3.2.8 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.²²³

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).²²⁴

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 with Disabilities 2003-2006,²²⁵ the National Strategy for Persons with Disabilities 2007-2015,²²⁶ the National Strategy for Persons with Disabilities 2017-2020²²⁷ and the Parliamentary Declaration on the Rights of People with Disabilities).²²⁸

In spite of the fine aims expressed in these documents, there are still numerous problems: 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 only in school.²²⁹

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 it is never clear whether the students with disabilities will be provided with an assistant or not.^{230 231}

The same practice has continued in 2017. In her report for 2017, the Disability Ombudsperson stated that complaints indicate the problem of children with disabilities not being included in the regular education system only because of their disability, which is

²²³ Croatia, Anti-discrimination Act, 9 July 2008, Article 8(2).

²²⁴ Gender Equality Ombudsperson (2013) *Research on Gender Issues in Primary Schools Textbooks*, 2013.

²²⁵ Official Gazette 13/2003.

²²⁶ Official Gazette 63/2007.

²²⁷ Official Gazette 42/2017.

²²⁸ Official Gazette 47/2005.

²²⁹ Disability Ombudsperson (2015) *Report for 2015*, available at: http://www.posi.hr/index.php?option=com_joomdoc&task=cat_view&gid=55&Itemid=98, accessed 25 April 2017.

²³⁰ Disability Ombudsperson (2014), *Report for 2014*, pp. 82-90: http://www.posi.hr/index.php?option=com_joomdoc&view=docman&gid=55&task=cat_view&Itemid=98, accessed 25 April 2017.

²³¹ Statistics on the number of children with disabilities in mainstream and segregated education in Croatia are not available.

discrimination. It is common practice for kindergartens to condition the child's enrolment on the prior engagement of an assistant. However, the Disability Ombudsperson highlighted a situation in which a child with disabilities was not included in the kindergarten for several years, with the apparent reasoning that the kindergarten did not have the adequate conditions to provide the necessary support for the child.²³²

The Disability Ombudsperson stated that the focus on the support of assistants is also noticeable in primary and secondary education, emphasising that this focus must be shifted to other forms of professional support for pupils with disabilities, so that they do not depend on the availability of assistants.

The Disability Ombudsperson's Office has actively participated in the drafting of the Ordinance on assistants in teaching and professional communication mediators, and suggested that the provisions of the ordinance explicitly define that providing teaching assistants and expert communication mediators is one form of reasonable accommodation.²³³ Although the ordinance has passed public debate, it has not yet been adopted.²³⁴

The provision of personal assistance services has been transferred to civil society organisations. However, CSO funds have been cut during 2016 and 2017, which leads to situations where the right of pupils with disabilities to inclusive education depends on the existence of a civil society organisation that provides such a service in their area of residence and the organisation's financial capabilities.²³⁵

In the area of education, the lack of accessibility of buildings to students with disabilities also stands out. The Disability Ombudsperson found that out of 2 199 elementary school facilities, only 7 % are fully adjusted to pupils with disabilities and only 26 % are partially adjusted to pupils with disabilities.²³⁶

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 minorities²³⁷ and the Act on education in the languages and scripts of national minorities,²³⁸ 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.²³⁹

²³² Disability Ombudsperson, (2017) *Report for 2017*, available at: <http://posi.hr/wp-content/uploads/2018/04/Izvje%C5%A1%C4%87e-o-radu-Pravobraniteljja-za-osobe-s-invaliditetom-2017..pdf>, accessed 14 July 2018.

²³³ The ordinance is introduced by the Ministry of Education, upon the initiative of civil society organisations, Disability Ombudsperson and other institutions that have publicly advocated the importance and need for adoption of the ordinance, since there is no legislative regulation on this area.

²³⁴ Disability Ombudsperson, (2017) *Report for 2017*, available at: <http://posi.hr/wp-content/uploads/2018/04/Izvje%C5%A1%C4%87e-o-radu-Pravobraniteljja-za-osobe-s-invaliditetom-2017..pdf>, accessed 15 May 2018.

²³⁵ Disability Ombudsperson (2017) *Report for 2017*, available at <http://posi.hr/wp-content/uploads/2018/04/Izvje%C5%A1%C4%87e-o-radu-Pravobraniteljja-za-osobe-s-invaliditetom-2017..pdf>, accessed 20 May 2018.

²³⁶ Centre For Peace Studies (2017), *One step forward, two steps back: Anti-discrimination Policy in Croatia 2011-2016*, available at: https://www.cms.hr/system/publication/pdf/100/Korak_naprijed_nazad_dva.pdf, accessed 20 May 2018.

²³⁷ Official Gazette 155/2002, 47/2010, 80/2010, 93/2011, 93/2011.

²³⁸ Official Gazette 51/2000 and 56/2000.

²³⁹ 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).

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 correspondence-consultative classes).²⁴⁰ 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.^{241 242}

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 Međimurska and Varaždinska counties.

In 2008 there were 68 Roma-only classes, and not just in Međimurska county (with 62 Roma-only classes) and Varaždinska county, where the practice had existed before, but also in two other counties.²⁴³

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.²⁴⁴

The Committee on the Elimination of Racial Discrimination has twice expressed its concern at the continued segregation of Roma children within the educational system.²⁴⁵

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.²⁴⁶

²⁴⁰ <https://mzo.hr/hr/rubrike/obrazovanje-nacionalnih-manjina>, accessed 20 May 2018.

²⁴¹ <https://pravamanjina.gov.hr/UserDocsImages/arhiva/Izvjesce%20o%20provedbi%20Akcijskog%20plana%20za%20provedbu%20NSUR%202014.pdf>, accessed 20 May 2018.

²⁴² New data is not available.

²⁴³ Croatia Ministry of Education (2008), *Report on the Implementation of the Decade of Roma Inclusion in the Field of Education for 2007 and 2008*.

²⁴⁴ This had been argued in public debates regarding this issue.

²⁴⁵ CERD Concluding Observations on Croatia of 21 May 2002 and of 5 March 2009.

²⁴⁶ European Court of Human Rights (ECtHR), *Oršuš and Others v Croatia* [GC], No.15766/03, 16 March 2010.

The European Court of Human Rights found that Croatian law did not provide a clear and specific legal basis for placing children lacking adequate command of the Croatian language in separate classes and that the tests used to decide whether to assign pupils to Roma-only classes had not been specifically designed to test their command of that language.²⁴⁷

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.²⁴⁸ In accordance with this legislation, a panel of experts, composed of a physician, a pedagogue²⁴⁹ 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.²⁵⁰

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.²⁵¹

However, the segregation of Roma pupils continued, and the number of Roma-only classes has been growing. The latest data show that despite the judgment of the European Court in the case *Oršuš v. Croatia*, the number of Roma-only classes had increased to 61 in 2014, up from 50 such classes in 2012.

²⁴⁷ See the judgment in ECtHR, *Oršuš and Others v Croatia* [GC], No.15766/03, 16 March 2010, paragraphs 158-160.

²⁴⁸ This procedure is applied to each child entering the educational system.

²⁴⁹ 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.

²⁵⁰ 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 20 May 2018.

²⁵¹ [http://hudoc.exec.coe.int/ENG#{"EXECIdentifier":\["004-10085"\]}](http://hudoc.exec.coe.int/ENG#{), accessed 20 May 2018.

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 report.²⁵² 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 %). In Croatia, 19 % of Roma pupils finish only grades 1–4 of primary school while only 24 % complete primary school.²⁵³

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.

²⁵² Roma Early Childhood Inclusion+, Croatia Report, http://www.romaeducationfund.hu/sites/default/files/publications/reci_croatia_report_eng-final_web.pdf, accessed 20 May 2018.

²⁵³ 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.

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 (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.²⁵⁴

This data confirmed the findings of the Fourth Opinion on Croatia adopted on 18 November 2015 by the Advisory Committee on the Framework Convention for the Protection of National Minorities.²⁵⁵

According to the second European Union minorities and discrimination survey,²⁵⁶ 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 2012/2013.²⁵⁷ 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.²⁵⁸

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.²⁵⁹

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 of

²⁵⁴ 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. There is no information on this issue in the Ombudsperson's Report for 2017.

²⁵⁵ 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.

²⁵⁶ European Union Agency for Fundamental Rights (2016), *Second European Union minorities and discrimination survey, Roma - selected findings*. The survey was conducted between October 2015 and April 2016.

²⁵⁷ New data is not available.

²⁵⁸ <http://www.ffzg.unizg.hr/?p=5441>, accessed 20 May 2018.

²⁵⁹ Šikić-Mičanović, L., Ivatts, A. R., Vojak, D., and Geiger-Zeman, M. (2015), *Roma early childhood inclusion+Croatia report*, London, Open Society Foundations, http://www.romaeducationfund.hu/sites/default/files/publications/reci_croatia_report_eng-final_web.pdf, accessed 20 May 2018.

Roma children in schools was still very present in the country, particularly at primary school.²⁶⁰

In its report for 2017, NGO Human Rights Watch reported that Roma children in Croatia are still effectively segregated in schools.²⁶¹

The 10-year anniversary of the judgment of the European Court of Human Rights in the case *Oršuš v. Croatia* was marked in 2017. On the occasion, the People's Ombudsperson pointed to the need for greater efforts to be made in order that all children be involved in the education process, stating that Roma children still face segregation in education, for which reason it is important to encourage inclusive education through the activities of the relevant institutions.²⁶²

A survey conducted by the Ombudsperson's office regarding the attitude of elementary school students in Varaždin, showed that in schools in which Roma and Croatian students attend classes together, 57.4 % of students expressed that they want a child of Roma origin for their friend, whereas in schools in which there were no students of Roma origin, only 17.3 % of students expressed that they would want friends of Roma origin. Motivated by the findings of this survey, the Ombudsperson's office during 2017 launched a media campaign, 'Differences are no obstacles. For society without discrimination,' with the aim of sending a clear message that racial or ethnic origin as well as other characteristics for which someone is perceived as different, should not be an obstacle to their equal participation in society.²⁶³

- 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.^{264 265}

²⁶⁰ See <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=15750&LangID=E>, accessed 20 May 2018, and Human Rights Committee (2015), *Concluding observations on the third periodic report of Croatia*, 30 April 2015 (CCPR/C/HRV/CO/3).

²⁶¹ Human Rights Watch (2018), 'Croatia' in *European Union: Events of 2017*, available at: <https://www.hrw.org/world-report/2018/country-chapters/european-union#560d4c>, accessed 18 March 2018.

²⁶² People's Ombudsperson (2017) *Ombudsperson Report for 2017*, available at: <http://ombudsman.hr/hr/izvjesca-2017/izvjesce-pp-2017/send/82-izvjesca-2017/1126-izvjesce-pucke-pravobraniteljice-za-2017-godinu>, accessed 20 May 2018.

²⁶³ NGO Human Rights House (2018) *Human Rights in Croatia: Review for 2017*, available at <http://www.kucaljudskihprava.hr/wp-content/uploads/2018/03/Ljudska-prava-u-Hrvatskoj-pregled-stanja-u-2017.-godini.pdf>, accessed 20 May 2018.

²⁶⁴ See Ćorkalo 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 20 May 2018.

²⁶⁵ The relevant treaty bodies in their reports had not expressed negative opinions regarding the separate education of Serbian and Croatian children in the sense that this kind of practice would represent segregation.

- Migrants²⁶⁶

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,²⁶⁷ 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.²⁶⁸

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.²⁶⁹

During 2017, four people with international protection seeker status were included in pre-school, 40 in primary and four in secondary education. In order to attend preparatory classes, which include a 70-hour course on the Croatian language, children often wait up to six months—this course is not enough for them to learn even basic Croatian, as they often come from areas in which Latin script is not used. Another problem is the fact that people with international protection seeker status do not have a personal identification number (OIB), which Croatian citizens and aliens who live or reside in the Republic of Croatia must have, since without the specific identification number they cannot be registered in the state registry, and so cannot be formally enrolled in school.²⁷⁰

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.²⁷¹

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

²⁶⁶ 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.

²⁶⁷ Croatia, International and Temporary Protection Act, 24 June 2015, Official Gazette no. 70/15, *Zakon o međunarodnoj i privremenoj zaštiti*.

²⁶⁸ Croatia, International and Temporary Protection Act, 24 June 2015, Article 58.

²⁶⁹ 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 20 May 2018.

²⁷⁰ People's Ombudsperson (2017), *Report for 2017*, available at <http://ombudsman.hr/hr/izvjesca-2017/izvjesce-pp-2017/send/82-izvjesca-2017/1126-izvjesce-pucke-pravobraniteljice-za-2017-godinu>, accessed 20 May 2018.

²⁷¹ 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 20 May 2018

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.²⁷²

In 2017, two asylees continued their education at the University of Zagreb at the expense of the state, under the same conditions as Croatian citizens, since they had evidence of having completed secondary education. The International and Temporary Protection Act sets out the right of asylum seekers to free primary and secondary education, but not higher education as well, for which reason one civil society organisation had financed the tuition and enrolment of one asylum seeker, to whom asylum had not been granted yet, at the University of Zagreb.²⁷³

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.²⁷⁴

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 Zaprrešić. 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.²⁷⁵

The Croatian language course for persons under international protection did not run after June 2017. The initial 70-hour course, which had been organised in primary and secondary school and in colleges, was no longer available.²⁷⁶

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

²⁷² Croatia, International and Temporary Protection Act, 24 June 2015, Official Gazette no. 70/15, *Zakon o međunarodnoj i privremenoj zaštiti*.

²⁷³ People's Ombudsperson (2017), *Report for 2017*, available at <http://ombudsman.hr/hr/izvjesca-2017/izvjesce-pp-2017/send/82-izvjesca-2017/1126-izvjesce-pucke-pravobraniteljice-za-2017-godinu>, accessed 20 May 2018.

²⁷⁴ Croatia, International and Temporary Protection Act, 24 June 2015, Article 68, Official Gazette no. 70/15.

²⁷⁵ 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.

²⁷⁶ People's Ombudsperson (2017) *Report for 2017*, available at <http://ombudsman.hr/hr/izvjesca-2017/izvjesce-pp-2017/send/82-izvjesca-2017/1126-izvjesce-pucke-pravobraniteljice-za-2017-godinu>, accessed 20 May 2018.

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.

In its report for 2017, the NGO Human Rights Watch reported that asylum seekers and refugees continued to face difficulties in accessing language classes and education in Croatia. It also noted that out of 30 registered unaccompanied children, only one had been enrolled in school for the academic year 2017/2018.²⁷⁷

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

In Croatia, national legislation 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.²⁷⁸

With rare exceptions,²⁷⁹ 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.²⁸⁰

In her 2017 report, the People's Ombudsperson noted that during 2017 she handled complaints by international protection seekers who had encountered difficulties related to their ethnicity in the use of goods and services in the banking system and money transfer services. For example, if they do not have identification documents from their country, but only temporary documents regarding their status issued by the Ministry of Police, they cannot be employed, since that is not considered as valid identification document. On the other hand, if they do have identification documents from their country, they are often not accepted by the Tax Administration office or banks, since such documents do not contain the Croatian personal identification number (OIB). They also cannot open a bank account because banks ask them to present identification documents that they do not yet have. Given all the above, the Ombudsperson has expressed the opinion that work certificates which the international protection seekers receive before their status is resolved, should be recognised as at least temporary identification documents, which would make it easier for the applicants to enter the labour market and enjoy their right to access goods and services.²⁸¹

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).

²⁷⁷ Human Rights Watch (2018) *Report for 2017*, available at <https://www.hrw.org/world-report/2018/country-chapters/european-union#560d4c>, accessed 18 March 2018. The report does not mention the reasons for not enrolling the 29 remaining children in school.

²⁷⁸ Croatia, Anti-discrimination Act, 9 July 2008, Article 8(8).

²⁷⁹ The name of a medicinal product has to be expressed in Braille format on the packaging.

²⁸⁰ Croatia, Same-sex Life Partnership Act, 15 July 2014, Article 71.

²⁸¹ People's Ombudsperson, (2017), *Report for 2017*, available at <http://ombudsman.hr/hr/izvjesca-2017/izvjesce-pp-2017/send/82-izvjesca-2017/1126-izvjesce-pucke-pravobraniteljice-za-2017-godinu>, accessed 20 May 2018.

3.2.10 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.²⁸²

The Same-sex Life Partnership Act prohibits discrimination based on same-sex partnership, in access to housing.²⁸³ LGBT persons often face discrimination in this field.²⁸⁴ 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.²⁸⁵

In its judgment in *Guberina v. Croatia*²⁸⁶ (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.

Members of the Roma and Serbian national minorities encounter the greatest problems in respect of housing. Although the housing segregation of Roma is often talked about, the issues faced by the Serbian national minority are often greatly neglected. In her report for 2017, the People's Ombudsperson noted that members of the Serbian national minority have for a number of years been pointing to problems regarding the supply of electricity and water in areas settled by Serb returnees, especially in rural and underdeveloped regions. The available data show that electricity needs to be (re)-connected to 126 villages and that there are still more than 500 returnee households that do not have electricity (although they did have it before the war). The Ombudsperson states that from the complaints received during 2017, and having toured some of the settlements with a predominately Serb population, it is obvious that there is intentional neglect of the villages by local authorities, since they are mostly inhabited by low number of people.²⁸⁷

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:

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

²⁸³ Croatia, Same-sex Life Partnership Act, 15 July 2014, Articles 71, 72 and 79.

²⁸⁴ Organisation Zagreb Pride, http://www.zagreb-pride.net/new/wp-content/uploads/2016/01/brutalna_stvarnost_hr_web.pdf, accessed 20 May 2018.

²⁸⁵ Gender Equality Ombudsperson (2014) *Report for 2014*, pp. 100-102: http://www.prs.hr/attachments/article/1555/01_IZVJESCE_2014_CJELOVITO.pdf, accessed 20 May 2018. There is no information on whether the case has been concluded in the meantime.

²⁸⁶ 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 20 May 2018.

²⁸⁷ People's Ombudsperson (2017) *Report for 2017*, available at <http://ombudsman.hr/hr/izvjesca-2017/izvjesce-pp-2017/send/82-izvjesca-2017/1126-izvjesce-pucke-pravobraniteljice-za-2017-godinu>, accessed 20 May 2018.

'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.'²⁸⁸

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.²⁸⁹

In 2017, 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 2017, employees of the Ombudsperson's office visited several locations where Roma live. What those locations have in common is that they are isolated from the city/municipality, lack basic infrastructure and the living quarters are extremely dilapidated, without sanitary space and 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 leads to a constant fear of eviction. Additionally, the fact that private individuals own the land is an obstacle to 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. Aside from such drastic examples, many families have problems with the legalisation of their living quarters.²⁹⁰ In 2016, out of 576 requests for legalisation, only 10 % were accepted.²⁹¹ The legislative frame for the legalisation of Roma settlements is set by several documents targeting the improvement of social status of Roma and their integration in the community. More precisely, these documents are the National Strategy for Roma Inclusion for the period 2013-2020 and the Action Plan for the Implementation of the National Strategy for 2013-2015, a document that prescribes goals and measures that have to be taken in order to improve the position of the Roma minority in Croatia, including the legalisation of Roma settlements.

In her 2017 report, the People's Ombudsperson noted that the issue of Roma housing provokes controversy and resistance even at the planning stage. In this regard, she pointed to the City of Zagreb's plan to resettle several Roma families in the newly built city settlement, the reaction to which was that some of the inhabitants of this and surrounding settlements publicly revolted, while even the Roma community was not in favour of such a plan. Roma people do not want a new 'ghetto', and the local residents do not want a

²⁸⁸ The report of the UN Special Rapporteur on adequate housing, A/HRC/16/42/ of 30 December 2010.

²⁸⁹ 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.

²⁹⁰ 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.

²⁹¹ People's Ombudsperson (2016), *Ombudsperson's Report for 2016*. The data on this issue for 2017 are not available. <http://ombudsman.hr/hr/component/jdownloads/send/76-izvjesca-2016/854-izvjesce-pucke-pravobraniteljice-za-2016>, p.41-42, accessed 25 April 2017. There is no exact information for 2017.

'Roma ghetto' in their neighbourhood. The City of Zagreb introduced long-term plans for the construction of settlements for residents with increased social needs, including, in this case, the members of Roma national minority. However, it is unlikely that these plans will be realised in the near future.²⁹²

Nevertheless, the Ombudsperson has welcomed the positive efforts of the Government expressed in the operational programmes for National Minorities as well as the intention of the Government to revise and implement the National Roma Inclusion Strategy, with particular emphasis on specific measures and objectives in the areas of education, social integration, employment and housing. However, the Ombudsperson expressed concern that the likely implementation of such measures is questionable, especially given the deadlines for their execution.²⁹³

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.²⁹⁴ Measures to build relationships with the local community have not been determined, which leads to hostility towards migrants from 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.²⁹⁵

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 centres).

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, as they are 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

²⁹² People's Ombudsperson (2017) *Report for 2017*, available at <http://ombudsman.hr/hr/izvjesca-2017/izvjesce-pp-2017/send/82-izvjesca-2017/1126-izvjesce-pucke-pravobraniteljice-za-2017-godinu>, accessed 20 May 2018.

²⁹³ People's Ombudsperson (2017) *Report for 2017*, available at <http://ombudsman.hr/hr/izvjesca-2017/izvjesce-pp-2017/send/82-izvjesca-2017/1126-izvjesce-pucke-pravobraniteljice-za-2017-godinu>, accessed 20 May 2018.

²⁹⁴ The Croatian International and Temporary Protection Act distinguishes between two categories of seekers of international protection: asylum seekers and persons under subsidiary protection.

²⁹⁵ 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 20 May 2018.

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.²⁹⁶

In its report for 2017, the NGO Human Rights Watch reported that asylum seekers and refugees continue to face social isolation in Croatia. Furthermore, unaccompanied migrant and asylum children continue to be placed in residential institutions for children without adequate arrangements for their care.²⁹⁷

The Ombudsperson in her 2017 report warned that persons with approved international protection also face difficulties in finding an apartment to live in, because they are not provided with accommodation outside the shelter.²⁹⁸

²⁹⁶ 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 20 May 2018.

²⁹⁷ Human Rights Watch (2018) *Report for 2017*, available at: <https://www.hrw.org/world-report/2018/country-chapters/european-union#560d4c>, accessed 18 March 2018.

²⁹⁸ People's Ombudsperson (2017) *Report for 2017*, available at: <http://ombudsman.hr/hr/izvjesca-2017/izvjesce-pp-2017/send/82-izvjesca-2017/1126-izvjesce-pucke-pravobraniteljice-za-2017-godinu>, accessed 20 May 2018.

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.²⁹⁹ This exception has to be interpreted in proportion to the aim and purpose for which it is provided.³⁰⁰

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.³⁰¹

– 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.³⁰² 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.

²⁹⁹ Croatia, Anti-discrimination Act, 9 July 2008, Article 9(2)(4).

³⁰⁰ Croatia, Anti-discrimination Act, 9 July 2008, Article 9(3).

³⁰¹ Croatia, Anti-discrimination Act, 9 July 2008, Articles 9(2)(5) and 9(3).

³⁰² 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,³⁰³ 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).³⁰⁴ 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,³⁰⁵ 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.³⁰⁶ 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 schools 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 Court³⁰⁷ 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 since P.T. knew the consequences of entering into a second marriage, as well as the fact that the

³⁰³ Official Gazette International Agreements 2/1997.

³⁰⁴ 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 school's 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 20 May 2018).

³⁰⁵ 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.

³⁰⁶ Croatia, Act on the legal status of religious communities, 4 July 2002, Official Gazette 83/2002, 73/2013, Article 9.

³⁰⁷ Supreme Court of the Republic of Croatia, *P.T. v. Gimnazija E.K.*, Revr. 499/08, 3 December 2008.

school authorities had tried to secure another teaching position for him.^{308 309} 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 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 discrimination.

Legislation also establishes certain fitness requirements for entering specific professions.

The Act on service in the armed forces,³¹⁰ 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 27.³¹¹ An active soldier can be promoted to lower officer status (*dočasnik*) if not older than 29³¹² and to officer status (*časnik*) if not older than 30.³¹³ 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,³¹⁴ 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,³¹⁵ which regulates employment in the prison services, provides an exception for the judicial police (*pravosudna policija*)³¹⁶ 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).

³⁰⁸ 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 20 May 2018.

³⁰⁹ <http://www.vecernji.hr/hrvatska/echr-otkaz-vjeroucitelju-petru-travas-u-zbog-povrede-kanonskog-prava-je-opravan-1118685>, accessed 20 May 2018.

³¹⁰ Official Gazette 73/13, 75/2015, 50/2016.

³¹¹ Croatia, Act on service in the armed forces, 14 June 2013, *Zakon o službi u Oružanim snagama Republike Hrvatske*, Article 36.

³¹² Croatia, Act on service in the armed forces, 14 June 2013, Article 40.

³¹³ Croatia, Act on service in the armed forces, Article 43.

³¹⁴ Official Gazette 34/2011, 130/2012, 89/2014, 151/2014, 33/2015, 121/2016.

³¹⁵ Official Gazette 28/13, 33/2015, 82/2015, 82/2016.

³¹⁶ 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 (such as which specific regulation or which field), but as any other exception, this one should also have a legitimate aim and be reasonable and necessary.³¹⁷ 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.³¹⁸

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 continuing 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 (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 third country nationals.³¹⁹

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.³²⁰ Obtaining citizenship for Roma people remains an issue today and there is still a significant number of Roma with unresolved citizenship status.³²¹

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 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.

³¹⁷ Croatia, Anti-discrimination Act, 9 July 2008, Article 9(2)(9).

³¹⁸ Official Gazette 53/1991, 70/1991, 28/1992, 113/1993, 4/1994, 130/2011 and 110/2015.

³¹⁹ 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.

³²⁰ 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.

³²¹ 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-godinu>, accessed 20 May 2018.

In 2016, UNCHR registered 2 800 Roma without permanent or temporary residence who were at risk of statelessness.^{322 323}

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.³²⁴

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.³²⁵

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),³²⁶ 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.^{327 328} It further gives partners in same-sex cohabitations (*neformalno životno partnerstvo*) the same rights granted to partners in different-sex cohabitations (*izvanbračna zajednica*).³²⁹

According to the Gender Ombudsperson's 2017 report, there have been no specific problems with the implementation of the Same-sex Life Partnership Act.³³⁰

³²² People's Ombudsperson (2016), *Ombudsperson's Report for 2016*
<http://ombudsman.hr/hr/component/jdownloads/send/76-izvjescja-2016/854-izvjescje-pucke-pravobraniteljice-za-2016>, p.41-42, accessed 25 April 2017.

³²³ UNHCR's intervention as a third party in the ECtHR case of *Hoti v. Croatia* (No. 63311/14).

³²⁴ Croatia, Labour Act, 15 July 2014, Article 86(3).

³²⁵ Constitutional Court of the Republic of Croatia, case no. U-III-4804/2013.

³²⁶ Croatia, Same-sex Partnership Act, 15 July 2014, Article 69.

³²⁷ Croatia, Same-sex Life Partnership Act, 15 July 2014, Articles 37-79.

³²⁸ Between August 2014 and 31 December 2015, 108 same-sex partnerships have been registered (Gender Ombudsperson's report for 2015).

³²⁹ Croatia, Same-sex Life Partnership Act, 15 July 2014, Article 4(2).

³³⁰ Gender Equality Ombudsperson (2017), *Report for 2017*, available at
http://www.prs.hr/attachments/article/2404/IZVJE%C5%A0%C4%86E_O_RADU_ZA_2017.pdf, accessed 20 May 2018.

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.³³¹ 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.³³²

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. All exceptions should be interpreted in a way that is proportionate to the aim and purpose for which they have been set.³³³

a) Justification of direct discrimination on the ground of age

In Croatia, in specified circumstances it is possible 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. 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;³³⁴
- 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;³³⁵
- 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;³³⁶

³³¹ Croatia, Anti-discrimination Act, 9 July 2008, Article 9(2)(1).

³³² Amendments to the Anti-discrimination Act of 5 September 2012, <http://www.sabor.hr/Default.aspx?art=49474>, accessed 20 May 2018.

³³³ Croatia, Anti-discrimination Act, 9 July 2008, Article 9(3).

³³⁴ Croatia, Anti-discrimination Act, 9 July 2008, Article 9(2)(4).

³³⁵ Croatia, Anti-discrimination Act, 9 July 2008, Article 9(2)(6).

³³⁶ Croatia, Anti-discrimination Act, 9 July 2008, Article 9(2)(8).

- 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;³³⁷
- 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 Act³³⁸ (e.g. this exception would justify an age limit for adoptive parents).³³⁹

All exceptions should be interpreted in a way that is proportionate to the aim and purpose for which they have been set.³⁴⁰

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.³⁴¹

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 and 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.³⁴² A minor cannot be employed in work that may harm his or her safety, health, morality or development.³⁴³

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.³⁴⁴

³³⁷ Croatia, Anti-discrimination Act, 9 July 2008, Article 9(2)(8).

³³⁸ Croatia, Anti-discrimination Act, 9 July 2008, Article 9(2) (10).

³³⁹ 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.

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

³⁴¹ Croatia, Anti-discrimination Act, 9 July 2008, Article 9.

³⁴² Croatia, Labour Act, 15 July 2014, Article 19.

³⁴³ Croatia, Labour Act, 15 July 2014, Article 21.

³⁴⁴ Croatia, Labour Act, 15 July 2014, Article 31.

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.³⁴⁵ 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.³⁴⁶ 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.³⁴⁷ 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).

Aside from 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,³⁴⁸ 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.³⁴⁹

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).^{350 351}

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.³⁵² An individual cannot collect a pension and still work as a full-time employee, but he or she can collect a pension and work as a part-time employee³⁵³ or as a self-employed short-term contractor (*ugovor o djelu*).

³⁴⁵ 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.

³⁴⁶ Croatia, Anti-discrimination Act, 9 July 2008, Article 9(2)(7).

³⁴⁷ Croatia, Anti-discrimination Act, 9 July 2008, Article 9(2)(8).

³⁴⁸ Croatia, Fire-Fighting Act, 1 October 1999, Article 21, Official Gazette 106/99 with amendments.

³⁴⁹ For the armed forces, please see section 4.3.

³⁵⁰ Croatia, Labour Act, 15 July 2014, Article 112.

³⁵¹ The Ministry of Labour and Pension Insurance had announced pension insurance reforms by which the state pension age would be extended to the age of 67.

³⁵² Croatia, Labour Act, 15 July 2014, Article 112.

³⁵³ Croatia, Pension Insurance Act, Article 37(6), Official Gazette 157/2013, 151/2014, 33/2015, 93/2015, 120/2016, 18/2018, 62/2018.

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.³⁵⁴

If an individual wish 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,³⁵⁵ 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;³⁵⁶ for civil servants it is 65 and 15 years of pensionable service;³⁵⁷ for public attorneys (and their deputies) it is 70;³⁵⁸ and for army employees it is 65 and 15 years of pensionable service.³⁵⁹

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.³⁶⁰

There is still no case law on this issue.

e) Employment rights applicable to all workers irrespective of age

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

f) Compliance of national law with CJEU case law

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

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

³⁵⁴ Croatia, Voluntary Pension Funds Act, 31 January 2014, *Zakon o dobrovoljnim mirovinskim fondovima*, Article 127.

³⁵⁵ Croatia, Labour Act, 15 July 2014, Article 112.

³⁵⁶ Croatia, Act on State Judiciary Council, 1 October 2010, *Zakon o Državnom sudbenom vijeću*, Article 77(2)(5).

³⁵⁷ Croatia, Civil Servants Act, 15 July 2005, *Zakon o državnim službenicima*, Article 137(1)(3).

³⁵⁸ Croatia, Act on the State Attorney's Office, 30 June 2009, *Zakon o državnom odvjetništvu*, Article 112(1).

³⁵⁹ Croatia, Act on service in the armed forces, Article 205/1/3.

³⁶⁰ Croatia, Labour Act, 15 July 2014, Article 112.

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 %).³⁶¹

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,³⁶² 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.³⁶³

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.³⁶⁴

A similar case was brought before the High Administrative Court of the Republic of Croatia in which the request of S.F., who had a private pharmacy practice, for the extension of her practice after the age of 65, had also been denied.³⁶⁵

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.³⁶⁶

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.³⁶⁷

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.

³⁶¹ <http://www.tradingeconomics.com/croatia/youth-unemployment-rate>, accessed 20 May 2018.

³⁶² They do not have to retire, they just cannot work as doctors or pharmacists.

³⁶³ Croatia, Health Care Act, 15 December 2008, Article 159.

³⁶⁴ Zagreb Administrative Court, no. UsI-4894/13, 20 April 2015.

³⁶⁵ High Administrative Court of the Republic of Croatia, no. UsI-828/15, 23 August 2017.

³⁶⁶ Croatia, Labour Act, 15 July 2014, Article 115.

³⁶⁷ 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.³⁶⁸

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.³⁶⁹

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.

³⁶⁸ Croatia, Labour Act, 15 July 2014, Article 126.

³⁶⁹ 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.³⁷⁰ This exception is to be interpreted in proportion to the aim and purpose for which it is provided.³⁷¹ 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.³⁷² 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 Act³⁷³ 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,³⁷⁴ the Act on State Judiciary Council has the same provision for nominating judges³⁷⁵ and the Civil Servants Act for employing civil servants. The measure is mainly 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).³⁷⁶

³⁷⁰ Croatia, Anti-discrimination Act, 9 July 2008, Article 9(2)(2).

³⁷¹ Croatia, Anti-discrimination Act, 9 July 2008, Article 9(3).

³⁷² 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'.

³⁷³ Official Gazette 28/2013, 33/2015, 82/2015, 82/2016.

³⁷⁴ Croatia, Judiciary Act, 22 February 2013, *Zakon o sudovima*, Article 108(4).

³⁷⁵ Croatia, Act on State Judiciary Council, 1 October 2010, Article 50.

³⁷⁶ *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 20 May 2018.

These provisions were challenged before the Constitutional Court as discriminatory. In its decisions,³⁷⁷ 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.³⁷⁸

Roma

In April 2013, the Croatian Government adopted the Action Plan for 2013-2015 for the implementation of the National Roma Inclusion Strategy (2013-2020), which introduced some measures for positive action in the field of education, employment, health and housing of Roma.

The new action plan has not yet been adopted. Roma representatives continuously state the need for the new action plan to be adopted.

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

The national strategy for equalisation of opportunities for persons with disabilities for 2017-2020 was adopted on 20 April 2017, ensuring the continuation of the implementation of measures for the integration of people with disabilities. However, in her report for 2017, the Disability Ombudsperson noted that by the end of 2017, the realisation of the activities that should have been carried out during 2017 had not even begun.³⁷⁹

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 6 %. If the employer fails to fulfil that obligation, they have to pay fee. 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

³⁷⁷ 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.

³⁷⁸ United Nations (2015), *Concluding observations on the third periodic report of Croatia*, April 2015, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhshjU3LaU2UQcye nDH2qrIZRVN6iNchFwc8v61QxFC61UbIueMSish8EpzYY0mht9yAJzygi9ivWkvPULhwhEVEVptzHW%2FCCDDPcGV8RsX0Jp>, accessed 20 May 2018.

³⁷⁹ Disability Ombudsperson (2017), *Report for 2017*, available at <http://posi.hr/wp-content/uploads/2018/04/Izvje%C5%A1%C4%87e-o-radu-Pravobranitelj-a-za-osobe-s-invaliditetom-2017..pdf>, accessed 20 May 2018.

employment of persons with disabilities. During 2017, a total of 6 497 people with disabilities were registered as unemployed at the Croatian Employment Service which makes 3.5 % of the total number of people registered as unemployed. In comparison, in 2016, there were total of 7 204 and in 2015, 7 303 persons with disabilities registered as unemployed at the Croatian Employment Service.³⁸⁰

All people who have been officially recognised as disabled and are employed have to be registered in a special registry run by the Croatian Pension Insurance Institute

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, but only for those employees with disabilities who are registered in the Register of the Pension Insurance Institute.³⁸¹ Registration of the employee is the employer's obligation. To be eligible for the incentives, the employer has to provide, for each employee with disability, an expert assessment by the Institute for expertise, professional rehabilitation and employment of persons with disabilities— 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.^{382 383}

Although faced with further insistence on implementation of the Dublin Regulation and the principle of solidarity in the allocation of migrants and refugees, the state authorities continue to consider it unnecessary to adopt a new migration policy, the key argument being that national legislation relating to migration is already harmonised with European regulations.³⁸⁴

³⁸⁰ Disability Ombudsperson (2017), *Report for 2017*, available at: <http://posi.hr/wp-content/uploads/2018/04/Izvje%C5%A1%C4%87e-o-radu-Pravobranitelja-za-osobe-s-invaliditetom-2017..pdf>, accessed 20 May 2018.

³⁸¹ Croatia, Ordinance on the content and manner of keeping records on employed persons with disabilities, 1 January 2015, (*Pravilnik o sadržaju i načinu vođenja očevidnika zaposlenih osoba sa invaliditetom*) Official Gazette 44/2014.

³⁸² 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.

³⁸³ *Migration Policy* is the official title of the document that 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. There are currently no plans for the adoption of a new *Migration Policy*.

³⁸⁴ People's Ombudsperson (2017) *Report for 2017*, p. 221, available at <http://ombudsman.hr/hr/izvjesca-2017/izvjesce-pp-2017/send/82-izvjesca-2017/1126-izvjesce-pucke-pravobraniteljice-za-2017-godinu>, accessed 20 May 2018.

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).³⁸⁵

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 (restitution 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.³⁸⁶

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.³⁸⁷ 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 determined his or her rights

³⁸⁵ Misdemeanour courts deal with minor offences; Croatia, Misdemeanours Act, 3 October 2007, *Prekršajni zakon*, (Official Gazette 107/2007, 39/2013, 157/2013, 110/2015).

³⁸⁶ Croatia, Civil Procedure Act, 24 December 1976, *Zakon o parničnom postupku*, Article 186(a).

³⁸⁷ Misdemeanours are minor offences, most often prosecuted ex officio in proceedings similar to criminal proceedings.

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.³⁸⁸

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,³⁸⁹ as a rule such proceedings in courts in bigger cities last several years.³⁹⁰
- Difficulties in proving discrimination: rule on burden of proof is rarely implemented.³⁹¹
- 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.³⁹²
- 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 function³⁹³ (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 on average from 45 to 90 days; competent administrative offices dealing with the

³⁸⁸ Croatia, Anti-discrimination Act, 9 July 2008, Article 12(2)(5).

³⁸⁹ The provision is of mandatory nature; Article 434(4) of the Civil Procedure Act.

³⁹⁰ 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.

³⁹¹ See People's Ombudsperson (2014) *Ombudsperson's Report for 2014*, p.20: <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*, p.21: <http://ombudsman.hr/hr/component/jdownloads/send/67-2015/745-izvjesce-pp-2015-pdf>, accessed 21 October 2016.

³⁹² People's Ombudsperson (2014) *Ombudsperson's Report for 2014*, p.21: <http://ombudsman.hr/hr/component/jdownloads/send/29-2014/562-izvjesce-pucke-pravobranaiteljice-za-2014-godinu>, accessed 21 October 2016.

³⁹³ 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.

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).

Aside from the financial burden and the fear of victimisation, a significant number of victims of discrimination are still reluctant to seek court protection due to the long duration of proceedings and the uncertainty of their outcome. Recent research shows that 68 % of respondents would not take any action to protect their rights in a case of discrimination because they believe that nothing would change and fear that doing so would only worsen their situation. When asked to answer who they would contact if they faced discrimination, only 2.8 % of respondents said that they would contact the court or state attorney's office.³⁹⁴

Finally, it should be pointed out that groups of citizens who are most often affected by discrimination, such as Roma, also find it difficult to exercise their rights since discrimination is often only one of the violations that they are faced with, along with a poor economic situation and social exclusion. Furthermore, such groups often do not know about their rights and ways of protecting themselves. In this regard, it is telling that there are no civil proceedings on discrimination against members of the Roma national minority, although it is a population that continually finds itself the victim of discrimination in different areas of everyday life.³⁹⁵

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.³⁹⁶

Civil proceedings

In 2017, 203 civil proceedings regarding discrimination were pending (only 56 were filed in 2017, while the rest were continued from previous years). Most of the cases are about discrimination in employment filed by employees, mainly because their employment contract had been cancelled or because their rights are violated to such a degree that the fear of victimization has become irrelevant to them.

This is a slight decrease in comparison with the previous year (in 2016, 200 civil proceedings regarding discrimination were pending; 146 filed before 2016 and 53 filed during 2016). The statistics show only the number of special individual anti-discrimination actions and no other proceedings where discrimination is an incidental issue. In 2017, 53 proceedings were closed: seven claims had been granted, 14 denied and 22 closed 'in another way' without further explanation. In 2017, none of the civil discrimination cases was initiated by a joint action (*udruženatuzba*).³⁹⁷

³⁹⁴ Kesonja, D. and Einwalter T.S. (CMS) (2017) *Analysis of case law in Croatia regarding proceedings initiated for discrimination*, Zagreb. Available at:

https://www.cms.hr/system/publication/pdf/104/Analiza_sudske_prakse_u_postupcima_pred_hrvatskim_sudovima_pokrenutima_zbog_diskriminacije.pdf, accessed 20 May 2018.

³⁹⁵ Kesonja, D. and Einwalter T.S. (CMS) (2017) *Analysis of case law in Croatia regarding proceedings initiated for discrimination*, Zagreb. Available at:

https://www.cms.hr/system/publication/pdf/104/Analiza_sudske_prakse_u_postupcima_pred_hrvatskim_sudovima_pokrenutima_zbog_diskriminacije.pdf, accessed 20 May 2018.

³⁹⁶ 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>.

³⁹⁷ 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.

Criminal proceedings

In 2017, 15 criminal proceedings connected with discrimination were pending (11 initiated before 2017 and 4 initiated in 2017).³⁹⁸ In 2017 two cases were closed.

Misdemeanour cases

In 2017, 193 misdemeanour cases connected with discrimination were pending (104 filed before 2016 and 89 filed in 2017); 117 cases were closed and in 55 cases the defendants were found guilty.

Defendants in misdemeanour proceedings are most often prosecuted for harassment. Victims are in most cases members of the Serbian national minority, but also persons of Bosniak origin and Islamic religion. There is still a significant degree of social distance, prejudice and hate in relation to members of the Serbian national minority. They are commonly equated with war-related aggressors and are exposed to insult, public commentary on reducing their recognised minority rights and violent assaults.

In her 2017 report, the People's Ombudsperson points to the case of particular concern from August 2017, when during the fire season, two women were suspected of intentionally setting fire to a village inhabited mostly by Serbs, with the express aim of revenge against the Serbs because of the burning of Croatian houses during the Homeland War. The UNHCR also expressed concern over the increased intolerance of members of the Serbian minority in 2016 and 2017, drawing attention to the hostile mood apparent in the hate speech, media and public use of fascist symbols and the burning of the minority news magazine *Novosti* by members of the radical conservative political party on 2 September 2017 in the centre of Zagreb.³⁹⁹

d) Registration of discrimination cases by national courts

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

The Anti-discrimination Act⁴⁰⁰ states that all judicial bodies should keep statistics on cases related to discrimination with data on the grounds and fields of discrimination and forward them to the Ministry of Justice, and that the Ministry of Justice should forward these statistics to the Ombudsperson no later than 1 February of the year following the year for which these data are collected. The statistics are then included in the Ombudsperson's annual report on discrimination.

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

a) 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.⁴⁰¹

³⁹⁸ In 2016, the number of discrimination criminal cases was 14.

³⁹⁹ People's Ombudsperson (2017) *Report for 2017*, available at: <http://ombudsman.hr/hr/izvjesca-2017/izvjesce-pp-2017/send/82-izvjesca-2017/1126-izvjesce-pucke-pravobraniteljice-za-2017-godinu>, accessed 20 May 2018.

⁴⁰⁰ Croatia, Anti-discrimination Act, 9 July 2008, Article 14.

⁴⁰¹ Croatia, Civil Procedure Act, 24 December 1976, Article 434.a.

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'.⁴⁰²

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.

Civil society organisations are the most common interveners in court proceedings and so far their intervention has been most visible in proceedings on discrimination on the basis of sexual orientation. In addition, civil society organisations as interveners participated in proceedings on discrimination based on national origin, ethnicity, religion and political belief. It is to be assumed that the motive for intervening is the gravity of the discriminatory treatment. However, bearing in mind the number of civil society organisations in Croatia dealing with human rights and the number of court proceedings in which civil society organisations have joined the proceedings as interveners, it can be concluded that this legal instrument is still insufficiently used.⁴⁰³

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, *udružnatužba*), 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.⁴⁰⁴

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.

⁴⁰² Croatia, Anti-discrimination Act, 9 July 2008, Articles 21 and 24.

⁴⁰³ Kesonja, D. and Einwalter T.S. (CMS) (2017) *Analysis of case law in Croatia regarding proceedings initiated for discrimination*, Zagreb. Available at: https://www.cms.hr/system/publication/pdf/104/Analiza_sudske_prakse_u_postupcima_pred_hrvatskim_sudovima_pokrenutima_zbog_diskriminacije.pdf, accessed 20 May 2018.

⁴⁰⁴ Croatia, Anti-discrimination Act, 9 July 2008, Article 24.

By filing a joint legal action (*udružnatužba*),⁴⁰⁵ an association, which has to be registered, 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.

The Anti-discrimination Act does not prescribe whether the associations need to be registered in Croatia to bring a representative claim, but only that they have to be organised in accordance with the law.⁴⁰⁶

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).⁴⁰⁷

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.⁴⁰⁸

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^{409 410} 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*.⁴¹¹ Except for the *Feryn* case, no other CJEU case law was invoked in the Supreme Court's decision.

In 2016, In the Name of the Family, a conservative civic NGO, together with four other organisations, filed a joint anti-discrimination action against Index.hr, one of the most popular news media portals in Croatia. In the article published on Index.hr, 'Living dead: Catholic Necrophilic Orgy is the craziest show on Croatian National Television', the authors commented on the situation regarding an important religious event that was extensively covered by Croatian national television and that was broadcast live as 'breaking news',

⁴⁰⁵ 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.

⁴⁰⁶ Croatia, Anti-discrimination Act, 9 July 2008, Article 24.; Croatia, Civil Procedure Act, 24 July 2014, Article 502a.

⁴⁰⁷ Supreme Court of the Republic of Croatia, no. Pnz-6/10, 24 March 2011.

⁴⁰⁸ Supreme Court of the Republic of Croatia, no. Gž-12/11, 18 April 2012.

⁴⁰⁹ 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.

⁴¹⁰ However, in the judgment it was falsely stated that *Feryn* was a European Court of Human Rights case.

⁴¹¹ Supreme Court of the Republic of Croatia, no. Rev-300/13, 17 June 2015.

disrupting the regular television programming, and mocked the people who were participating in the event. In its complaint, In the Name of the Family claimed that the authors discriminated against people of Catholic confession by calling them necrophiles. Index.hr argued that the article was a satirical comment and that the intention of the article was a social critique of Croatian national television and the behaviour of the Church, not of people of Catholic confession. In its decision of 6 November 2017, Zagreb county court accepted the reasoning of Index.hr, which stated that the target of the article was not people of Catholic confession and that the article's purpose was to outline a satirical critique of the television broadcast of the event in question. The court determined that Index.hr had shown that the article in question did not discriminate directly or indirectly against people of Catholic confession as well as that the intention of the article was not to violate the dignity of people of Catholic confession, or so as to cause them fear, or put them in a hostile, humiliating or offensive environment.⁴¹²

In 2017 there were no joint anti-discrimination actions.

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.⁴¹³

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

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

The official translation of the Article 20 of the Anti-discrimination Act⁴¹⁴ 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 plausible⁴¹⁵ 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,

⁴¹² Information about the proceedings have been gathered through media reports:

<https://narod.hr/hrvatska/prvostupanjski-sud-prihvatio-indexovo-tumacenje-da-nisu-h tjeli-vrijedati-katolike>, <http://www.dnevno.hr/vijesti/hrvatska/u-ime-obitelji-mozete-vrijedati-do-mile-volje-a-onda-se-skrivati-iza-nekakvog-umjetnickog-izrazavanja-1088108/>, accessed 18 March 2018.

⁴¹³ Croatia, Anti-discrimination Act, 9 July 2008, Articles 21 and 24.

⁴¹⁴ An English version of the Anti-discrimination Act is published on the website of the Gender Equality Ombudsperson, <http://www.prs.hr/attachments/article/2127/Croatian%20Anti-discrimination%20Act.pdf>, accessed 20 May 2018.

⁴¹⁵ The phrase used in the official text '*učiniti vjerojatnim*' corresponds to the English phrase 'to render credible'.

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.⁴¹⁶

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, because she was Bosniak and Muslim. B.B. stated that she was unable to advance in her career in spite all her academic qualifications, unlike several other employees who were able to advance despite the fact that they did not have all the formal requirements for promotion. She also complained that she was ignored by her employer as a candidate for a position of librarian because she was not even invited to the interview, unlike other candidates who were competing for the same position. The municipal court dismissed her complaint as unfounded with the explanation that the situations that B.B. described as examples of discrimination could not objectively be considered discriminatory and that B.B. had not managed to prove that she was exposed to any kind of different treatment in comparison with other employees.⁴¹⁷ Zagreb county court confirmed the first instance judgment, stating in its decision that in anti-discrimination proceedings 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.⁴¹⁸

In the case brought in front of Vukovar municipal court by K.B. against her employer, Social Welfare Centre, in which K.B. claimed that she had been discriminated against and harassed by her superiors, the court rejected her complaint, with the explanation that she had failed to prove her claims. In the second instance proceedings, Vukovar county court accepted the appeal of K.B., quashed the first instance decision and ordered a retrial. The county court emphasised that the very fact that K.B. submitted medical documentation to the case file, from which it is evident that she had health problems as a result of the conduct of her employer, made her harassment claims plausible.⁴¹⁹

It should be mentioned at this point that courts sometimes do not distinguish between anti-discrimination cases and harassment cases, which is evident from this case, since a medical examination is regularly conducted in harassment cases in order to determine whether violations of personal rights have occurred.

According to the Ombudsperson, the rule on burden of proof is not adequately implemented by courts.⁴²⁰ The rule is most often ignored by the courts, i.e. the burden of proof is on the complainant who has to provide evidence for every element of his claim, and decisions are explained by the standard formula that 'courts decide which facts to consider as proven according to their conviction on the basis of a conscientious and careful assessment of each piece of evidence and all the evidence as a whole, and on the basis of the results of the proceedings in their entirety'.

⁴¹⁶ Supreme Court of the Republic of Croatia, No.GŽ.25/11, judgment of 28 February 2012.

⁴¹⁷ Zagreb Municipal Court, no. Pr.4290/12, 20 June 2016.

⁴¹⁸ Zagreb County Court, no. GŽR-1494/16, 3 January 2017.

⁴¹⁹ Vukovar County Court, no. GŽ-2333/14, 23 November 2017.

⁴²⁰ People's Ombudsperson (2014), *Ombudsperson's Report for 2014*, <http://ombudsman.hr/hr/component/jdownloads/send/29-2014/562-izvjesce-pucke-pravobraniteljice-za-2014-godinu>, accessed 21 October 2016.

Regarding the implementation of the rule on burden of proof, the European Court in the case *Škorjanec v. Croatia*, stated the following:

'In practice, admittedly, it is often extremely difficult to prove a racist motive. The obligation on the respondent State to investigate possible racist overtones to an act of violence is an obligation of the means employed rather than an obligation to achieve a specific result. The authorities must take all reasonable measures, having regard to the circumstances of the case ... [and] ... do what is reasonable in the circumstances to collect and secure the evidence, explore all practical means of discovering the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of racially induced violence'.⁴²¹

6.4 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.⁴²²

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 27 397.26.⁴²³

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

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

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

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

In some cases, if regulated by special laws, administrative fines are possible (e.g. Act on professional rehabilitation and employment of persons with disabilities).

Civil

The main sanction in civil anti-discrimination cases is compensation (pecuniary and non-pecuniary damages) for a victim of discrimination.⁴²⁴

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.

⁴²¹ European Court of Human Rights, decision in *Škorjanec v. Croatia*, no. 25536/4, Para. 54,55,57.

⁴²² Croatia, Anti-discrimination Act, 9 July 2008, Article 7.

⁴²³ Croatia, Anti-discrimination Act, 9 July 2008, Article 28.

⁴²⁴ Croatia, Anti-discrimination Act, 9 July 2008, Article 17(1)(3).

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.⁴²⁵

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

The rules on compensation are narrower than those established by the directives because, without any frames fixed by the national law other than those of general nature mentioned above, a court does not have to take into consideration whether a particular amount of compensation in a particular case of discrimination would be an effective, proportionate and dissuasive sanction. These rules significantly reduce the scope and nature of the circumstances that the court has to take into account. It is up to the court 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,⁴²⁶ 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.⁴²⁷

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 Code⁴²⁸ 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.⁴²⁹

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.⁴³⁰ 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).⁴³¹

⁴²⁵ Croatia, Civil Obligations Act, 25 February 2005, Article 1100.

⁴²⁶ A natural person entrusted with certain duties in a legal entity or a person authorised to act on behalf of the legal entity.

⁴²⁷ Croatia, Misdemeanour Act, 3 October 2007, Article 6.

⁴²⁸ Official Gazette 125/2011, 144/2012, the law has been in force since 1 January 2013.

⁴²⁹ Croatia, Criminal Code, 21 October 2011, *Kazneni zakon*, Article 87(21).

⁴³⁰ Croatia, Criminal Code, 21 October 2011, Articles 117(2), 118(2) and 119.

⁴³¹ Zagreb Public Attorney Office, case no. Ko-DO-1204/13.

The criminal offence of discrimination (Article 125 of the Criminal Code) — a crime subject to public prosecution⁴³² 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.⁴³³ A criminal offence, prosecuted by the State Attorney's Office, following a victim's application and punishable by up to three years of imprisonment, is also persecution of individuals or organizations because of their pleadings for equality.⁴³⁴

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.⁴³⁵

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.⁴³⁶

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.⁴³⁷

The compensation for damages in discriminatory court proceedings is usually in the range of HRK 20 000 to 30 000 (approximately EUR 3 000 to 4 000), although the claims are often set at a higher amount. The higher amount of compensation is awarded only in rare cases that constitute an exception, not a rule.⁴³⁸

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

⁴³² 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*).

⁴³³ Croatia, Criminal Code, 21 October 2011, Article 125(1).

⁴³⁴ Croatia, Criminal Code, 21 October 2011, Article 125(2).

⁴³⁵ Croatia, Criminal Code, 21 October 2011, Article 133.

⁴³⁶ Supreme Court of the Republic of Croatia, decision of the civil law department, No. Su-1331-VI/02 i 1372-11/02, 29 November 2002.

⁴³⁷ 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?SOP=DDHR20110111N53>.

⁴³⁸ Kesonja, D. and Einwalter T.S. (CMS) (2017) *Analysis of case law in Croatia regarding proceedings initiated for discrimination*, Zagreb. Available at: https://www.cms.hr/system/publication/pdf/104/Analiza_sudske_prakse_u_postupcima_pred_hrvatskim_sudovima_pokrenutima_zbog_diskriminacije.pdf, accessed 20 May 2018.

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.

In her reports for 2017, the Ombudsperson noted that, as in previous years, sanctions in misdemeanour cases do not have a preventive effect. Misdemeanour judges, as a rule, mitigate sentences set up by law so the usual fine is between EUR 40 and EUR 400. The severity of the offence, circumstances and consequences are often ignored. Sanctions are mitigated even when the act of discrimination is carried out publicly (e.g. through a social network or at a public meeting), when there are several victims or when the victim is especially vulnerable.⁴³⁹

⁴³⁹ People's Ombudsperson (2014), *Ombudsperson's Report for 2014*, pp. 23-24, <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*, 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 People's Ombudsperson (hereafter the Ombudsperson) powers as the principal body for the elimination of discrimination and promotion of equal treatment, irrespective of racial or ethnic origin.⁴⁴⁰ The Ombudsperson is the main body for the elimination of discrimination based on other grounds as well, with the exception of disability, which falls within the competence of the Disability Ombudsperson, 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. The latter three ombudspersons have similar powers in connection with discrimination based on the grounds covered by them (they receive individual complaints, issue recommendations, publish annual reports etc.).

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.

The Ombudsperson's scope of action includes activities regarding the conduct of all state bodies, bodies of local and regional self-government units, legal persons vested with public authority, and the conduct of all legal and natural persons, especially in the following fields:

- work and working conditions, access to self-employment and occupation, including selection criteria, recruiting and promotion conditions, access to all types of vocational guidance, vocational training, professional improvement and retraining;
- education, science and sports;
- social security, including social welfare, pension and health insurance and unemployment insurance;
- health protection;
- judiciary and administration;
- housing;
- public information and the media;
- access to goods and services and their provision;
- membership and activity in trade unions, civil society organisations, political parties or any other organisations;
- access to participation in cultural and artistic creation.

- b) Political, economic and social context for the designated body

The Ombudsperson, as a commissioner of the Croatian Parliament, submits regular annual reports on the status of human rights and freedoms in the Republic of Croatia, after which the Parliament conducts a debate and votes on whether to accept the Ombudsperson's report. At a session in May 2016, the Parliament rejected the Ombudsperson's annual report (for 2015) for the second time since the Office of the People's Ombudsperson was established in the Republic of Croatia. Rejection of the report did not have any formal consequences for the Ombudsperson's mandate, although it was mentioned in the media that the procedure for the Ombudsperson's dismissal would be initiated. The fact that the Parliament did not accept the Ombudsperson's report could be interpreted as political pressure on the independence of the Ombudsperson and it certainly diminishes the

⁴⁴⁰ Croatia, Anti-discrimination Act, 9 July 2008, Article 12(1).

importance of the recommendations presented in the report.⁴⁴¹ It should be mentioned that the Ombudsperson for Children's annual report for 2015 was also rejected by the Croatian Parliament in the session held in June 2016.⁴⁴²

There was no specific reason why the Parliament rejected the Ombudsperson's 2015 report. It was possibly a result of the political ideology of the parties that, at that time, had the majority in the Parliament, which objected to the report, claiming that it was biased in favour of opposition parties and their interests and suggesting that the Ombudsperson selectively presented violation of human rights and discrimination cases.

In June 2018, the Parliament accepted the Ombudsperson's Report for 2017.⁴⁴³

Regarding the political pressure on the work of the Ombudsperson's Office, it should be noted that in her 2017 report, the Ombudsperson pointed to the interference of the highest officials of the Ministry of Interior who publicly criticised Ombudsperson's reporting on the conduct of police officers in the case of the tragic death of a six-year-old Afghan girl on the border of Croatia and Serbia.⁴⁴⁴

Funds necessary for the functioning of the Office of the Ombudsperson are apportioned from the annual state budget, which is proposed by the Government and adopted by the Parliament. No significant increases or budget cutbacks have been noticed in the previous period, moreover, a steady slight increase in the budget has been recorded since 2013. The Ombudsperson's total budget for the year 2017 was EUR 1 522 585; the office employs 45 people.⁴⁴⁵

There is no evidence of popular debate that is supportive of equality and diversity and of the designated bodies or of popular debate that is hostile to equality and diversity and to the designated bodies.

c) Institutional architecture

In Croatia, the Ombudsperson, as the designated body for the promotion of equal treatment irrespective of racial or ethnic origin according to Article 13 of the Racial Equality Directive has multiple mandates, which in addition to its position as the main equality body, include duties in connection to its role as the commissioner of the Parliament for the protection of human rights and freedoms, as well as its responsibilities regarding its function as the National Preventive Mechanism for the Protection of Persons Deprived of Freedom.

The Ombudsperson's Office consists of several services (offices): the office for the protection of human rights; office for the protection of persons deprived of freedom and National Preventive Mechanism; the anti-discrimination office; the office for communication, cooperation and promotion of human rights; and the office for general

⁴⁴¹ See People's Ombudsperson (2017), *Report for 2016*, available at <http://ombudsman.hr/hr/component/jdownloads/send/76-izvjesca-2016/849-izvjesce-pucke-pravobraniteljice-za-2016-godinu>, accessed 12 January 2018.

⁴⁴² See Ombudsperson for Children (2017) *Report for 2016*, available at <file:///C:/Users/Ines/Downloads/Izvjesce%20o%20radu%20pravobraniteljice%20za%20djecu%202016.pdf>, accessed 15 February 2018.

⁴⁴³ <http://ombudsman.hr/hr/naslovna/novost/1352-hrvatski-sabor-podrzao-izvjesce-pucke-pravobraniteljice-za-2017>, accessed 15 June 2018.

⁴⁴⁴ People's Ombudsperson (2018), *Report for 2017*, available at: <http://ombudsman.hr/hr/izvjesca-2017/izvjesce-pp-2017/send/82-izvjesca-2017/1126-izvjesce-pucke-pravobraniteljice-za-2017-godinu>, accessed 20 May 2018.

⁴⁴⁵ People's Ombudsperson (2018), *Ombudsperson's Report for 2017* <http://ombudsman.hr/hr/izvjesca-2017/izvjesce-pp-2017/send/82-izvjesca-2017/1126-izvjesce-pucke-pravobraniteljice-za-2017-godinu>, accessed 17 May 2018.

affairs. Therefore, the anti-discrimination office forms one part of the structure of the Ombudsperson's Office and is of equal importance to the other services.⁴⁴⁶

The Ombudsperson has three deputies, one of whom is specifically in charge of discrimination issues. There is no exact information on the percentage of staff and budget dedicated exclusively to the equality mandate.

Given that there are three specialised and independent ombudspersons whose mandates could overlap with the mandate of the People's Ombudsperson, which is the main national equality body, especially in the field of discrimination, data on discrimination from all the ombudspersons are consolidated and published in the Ombudsperson's Report. The ombudspersons forward each other complaints that they receive if they fall under the powers of another ombudsperson or they work together on the same cases.

The Ombudsperson devotes sufficient attention to discrimination issues as evident from its reports and recommendations and therefore successfully fulfils its functions and role as the main Equality Body.

Given the number of complaints addressed to the Ombudsperson regarding specific cases of discrimination, which increases every year, and the fact that the majority of complaints received by the Ombudsperson's Office in 2017 related to discrimination, it can be concluded that the Ombudsperson's equality mandate has been recognised by the public.

d) Status of the designated body/bodies – general independence

i) Status of the body

The Ombudsperson was established by the Constitution of the Republic of Croatia as a commissioner of the Croatian Parliament. Its scope of duties and powers are regulated in detail by the Ombudsperson Act and Anti-Discrimination Act.⁴⁴⁷

The Ombudsperson is elected by the Croatian Parliament for an eight-year term with the possibility of re-election. No later than six months before the expiration of the Ombudsperson's mandate, or no later than 30 days after the termination of the mandate for other reasons, the Croatian Parliament announces a public call for the election of candidates for the Ombudsperson's position. The Committee for the Constitution, Law and Political System of the Croatian Parliament, together with the opinion of the Committee on Human Rights and the Rights of National Minorities of the Croatian Parliament, chooses at least two candidates and presents them to the Parliament. The Ombudsperson has three deputies. The deputies are chosen and dismissed by the Croatian Parliament upon the proposal of the Ombudsperson.

Funds necessary for the functioning of the Office of the Ombudsperson are apportioned from the annual state budget, which is proposed by the Government and adopted by the Parliament.

The Ombudsperson is obliged to adopt the Ordinance of Ombudsperson's Office, which regulates the internal organisation of the Ombudsperson's Office and has to be confirmed by the Parliament. The Ombudsperson has the right to recruit staff through public competition, according to the yearly plan for admission of employees, which is published in the *Official Gazette*.

⁴⁴⁶ According to the People's Ombudsperson's webpage, available at: <http://ombudsman.hr/hr/o-nama>, accessed 20 May 2018.

⁴⁴⁷ Croatia, Act on People's Ombudsperson; Croatia, Anti-discrimination Act, 9 July 2008.

The Ombudsperson is accountable to the Croatian Parliament and must present their annual reports to the Parliament. The Parliament has the authority not to accept the Ombudsperson's report but the formal consequences of that are not set out in law. However, if the legally prescribed requirements are fulfilled, the Parliament has the power to relieve the Ombudsperson of his or her duty.

ii) Independence of the body

The independence of the Ombudsperson is stipulated in the Constitution and the Ombudsperson is considered to be independent by the relevant stakeholders.⁴⁴⁸ Every form of influence on the work of the Ombudsperson is prohibited. In exercising its authority, the Ombudsperson acts in accordance with the constitutional and legal provisions and internal legal acts on the protection of human rights and freedoms adopted by the Republic of Croatia. In practice, the Ombudsperson has independently exercised its competences, according to the constitutional guarantees.

e) Grounds covered by the designated body/bodies

The mandate of the Ombudsperson as the designated body for the elimination of discrimination covers discrimination based on race or ethnic origin or colour, religion, political or other belief, national or social origin, property, trade union membership, education, social status, age, health condition, genetic heritage, gender, identity and expression.

Discrimination on the basis of disability falls under the responsibilities of the Disability Ombudsperson, while discrimination on the basis of gender, sexual orientation and family or marital status is dealt with by the Gender Equality Ombudsperson.⁴⁴⁹

The mandates of the ombudspersons could overlap in some areas. It is left to individuals to decide to which ombudsperson they will address their complaint and the ombudspersons in each individual case decide whether the complaint falls under their remit.

There is no available information on the manner in which the ombudsperson ensures that adequate and appropriate expertise and attention is given to each of the discrimination grounds listed under his/her competence.

The Ombudsperson acts according to his/her knowledge of specific cases of discrimination and individual complaints that are addressed to the Ombudsperson's Office regarding specific grounds of discrimination.

Therefore, the intensity of activities and level of attention dedicated to each of the discrimination grounds is divided according to the number of cases received through the reported period. Commonly, most of the complaints are in connection to discrimination on the basis of race or ethnic origin, therefore greater attention is given to this area, as is evident from the Ombudsperson's annual reports.

The mandate of the Ombudsperson also includes cases regarding discrimination against migrants, which, together with discrimination against the Serbian and Roma national minorities, is emphasised as a priority issue in the most recent Ombudsperson's report. In her report, the Ombudsperson noted that discrimination against migrants often occurs, particularly in relation to education, employment, housing and health protection. She also made a list of recommendations regarding activities that must be conducted by the

⁴⁴⁸ Croatia, Constitution of the Republic of Croatia, 22 December 1990, Article 93.

competent state authorities in order to ensure the integration of migrants in society and eliminate any form of discrimination towards them.

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

i) Independent assistance to victims

In Croatia, the designated body does have the competence to provide independent assistance to victims. The Ombudsperson has the power to provide 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, the Ombudsperson also has the right to examine individual reports and take any action that falls under their remit that is required to eliminate discrimination and protect the rights of people facing discrimination.⁴⁵⁰

- Independence

Competences of the Ombudsperson regarding independent assistance to victims in discrimination cases have been exercised in an independent manner in practice. There have been no known complaints about the Ombudsperson in relation to any kind of difficulties or problems regarding this competence.

- Effectiveness

The Ombudsperson's report contains general information and statistical data on the number of complaints and proceedings that were conducted during the reported period, from which it can be concluded that the Ombudsperson is effective in the implementation of his/her activities under this competence.

- Resources

There is no available information on the level and quality of staff and financial resources available to the designated body in connection to its competence to provide independent assistance to victims.

In her 2017 report for, as in her 2016 report, the Ombudsperson stated that only by strengthening the material and financial capacity of the Ombudsperson's Office would the Ombudsperson be able to respond to the large increase in the number of cases and effectively fulfil all the tasks assigned to it as an independent national institution and the central anti-discrimination body. However, no significant objections were raised by the Ombudsperson regarding a possible lack of funds or staff.⁴⁵¹

ii) Independent surveys and reports

In Croatia, the designated body does have the competence to conduct independent surveys and publish independent reports.

⁴⁵⁰ Croatia, Anti-discrimination Act, 9 July 2008, Article 12.

⁴⁵¹ People's Ombudsperson (2017), *Ombudsperson's Report for 2016*
<http://ombudsman.hr/hr/component/jdownloads/send/76-izvjesca-2016/854-izvjesce-pucke-pravobraniteljice-za-2016>, accessed 12 January 2018.

In connection to his/her competences as the central anti-discrimination body the Ombudsperson has the power to conduct surveys on discrimination. For example, in 2016, the Ombudsperson conducted a survey on visible forms of discrimination and the opinions of people regarding the different forms of discrimination to which they were exposed.⁴⁵²

The Ombudsperson publishes annual reports on the status of human rights and freedoms, which also includes the analysis and assessment of specific forms of discrimination that have been noted in the reporting period and the quality of anti-discrimination protection in Croatia. According to the Anti-discrimination Act, the Ombudsperson has the duty to inform the Croatian Parliament of the prevalence of discrimination in his or her annual reports and also in extraordinary reports, when required.⁴⁵³

- Independence

The remit of the Ombudsperson to conduct independent surveys and publish independent reports has been exercised in practice, in an independent manner. However, to a large degree, the implementation of recommendations issued in the Ombudsperson's annual reports depends on the adoption of its report by the Parliament. Therefore, the rejection of the Ombudsperson's report for 2015 can be interpreted as political pressure on the independence of the Ombudsperson.

- Effectiveness

From the information published on the Ombudsperson's website and its annual reports, it can be concluded that the activities of the Ombudsperson regarding his/her remit to conduct independent surveys and publish independent reports are implemented at a good quality level in practice, and there were no objections by the relevant stakeholders, such as NGOs, to the work of the Ombudsperson in this respect.

- Resources

There is no available information on the level and quality of resources, staff and financial available to the designated body in connection to its competence to conduct independent surveys and publish independent reports.

iii) Independent recommendations

In Croatia, the designated body does have the competence to issue independent recommendations on discrimination issues in individual cases. The Ombudsperson also issues recommendation on a general level in its annual reports, which are addressed to the competent state authorities in order to eliminate certain discrimination practices noted in the reporting period. According to the Anti-discrimination Act, the Ombudsperson has the power to give opinions and recommendations and suggest appropriate legal and strategic solutions to the Government in connection to the Ombudsperson's duties as the main anti-discrimination body.⁴⁵⁴

⁴⁵² People's Ombudsperson (2017), *Ombudsperson's Report for 2016*
<http://ombudsman.hr/hr/component/jdownloads/send/76-izvjesca-2016/854-izvjesce-pucke-pravobraniteljice-za-2016>, accessed 12 January 2018.

⁴⁵³ Croatia, Anti-discrimination Act, 9 July 2008, Article 12.

⁴⁵⁴ Croatia, Anti-discrimination Act, 9 July 2008, Article 12.

In practice, these duties are exercised in connection with individual complaints on discrimination. The Ombudsperson has the authority to examine a complaint if suspicion of discrimination exists and can take any action required to eliminate the discrimination accordingly.

The Ombudsperson, in its annual reports, issues general recommendations to the state authorities on appropriate legal and strategic measures, on the basis of individual complaints and the general status of certain discrimination issues in the country noted by the Ombudsperson during the reporting period.

- Independence

These competences have been exercised in practice in an independent manner. There have been no known complaints about the Ombudsperson on any kind of difficulties or problems regarding its duty to issue independent recommendations.

- Effectiveness

The effectiveness of the Ombudsperson's recommendations is questionable; the Ombudsperson does not have the power to issue mandatory decisions but only provides recommendations that are not legally binding, which significantly reduces their effectiveness. However, by the strength of their reputation, the Ombudsperson has great influence on relevant stakeholders, although there are no sanctions for potential non-adherence to the Ombudsperson's recommendations. Since there is no exact information available on the quality of the implementation of individual recommendations, it remains difficult to assess the level of their effectiveness in practice. The implementation of the general recommendations is monitored by the Government Office for Human Rights and Rights of National Minorities, which is obliged to issue an annual report regarding the measures taken in connection to the Ombudsperson's recommendations. The Ombudsperson herself monitors implementation of the recommendations and in her annual reports points to the positive efforts made by the competent bodies in this area as well as a lack of activity regarding some of the recommendations. However, the Ombudsperson does not have the power to force their implementation by imposing sanctions.

- Resources

There is no available information on the level and quality of staff and financial resources available to the designated body in connection to its competence to issue independent recommendations on discrimination issues.

iv) Other competences

In connection to his/her competences as the main anti-discrimination body, the Ombudsperson has the power to make the public aware of occurrences of discrimination, to conduct mediation (with the parties' consent), with the possibility of reaching an out-of-court settlement and to collect and analyse statistical data on discrimination.

On its website the Ombudsperson regularly publishes its opinions regarding specific political and legal measures, participates in public discussions regarding specific legal acts within its scope of duties that are in the parliamentary

procedure and proposes appropriate legal and strategic solutions to the Government.⁴⁵⁵

The Ombudsperson has the ability to conduct surveys on discrimination, give opinions and recommendations, and suggest appropriate legal and strategic solutions to the Government.

v) Positive duties

The legislation does not include any other specific positive duties of the Ombudsperson in relation to promoting equality and preventing discrimination.

All judicial bodies have the duty to keep records of court cases related to discrimination and submit them to the Ministry of Justice, which is obliged to submit records and statistical information to the Ombudsperson by 1 February for the previous calendar year.⁴⁵⁶

When drawing up regular reports, opinions and recommendations on the occurrence of discrimination, the Ombudsperson has the duty to consult social partners and civil society organisations dealing with the protection and promotion of human rights, organisations dealing with the protection of groups exposed to a high risk of discrimination, churches and religious organisations and the National Minorities Council.⁴⁵⁷

The Labour Act prescribes the duty of employers who have 20 employees or more to adopt and publish regulations in which set out, among other things, the measures for protection against discrimination. Such employers are also obliged to protect the dignity of their employees and to protect them from harassment.⁴⁵⁸ The Ombudsperson does not have any role in monitoring, evaluating or supervising the implementation of those duties.

vi) Further competences/activities

The Ombudsperson does not exercise any other competences or activities in addition to those stipulated in its mandate as described under i) to v) above in connection to its status as the main equality body.

However, aside from its role as the main equality body, the Ombudsperson also exercises duties in relation to its position as the commissioner of the Croatian Parliament for the protection of human rights as well its function as National Preventive Mechanism for Persons Deprived of Freedom.

g) Legal standing of the designated body/bodies

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

The Ombudsperson is authorised to file criminal charges for discrimination to the competent state attorney's office.⁴⁵⁹

⁴⁵⁵ Information available on People's Ombudsperson website <http://ombudsman.hr/hr/>, accessed 12 January 2018.

⁴⁵⁶ Croatia, Anti-discrimination Act, 9 July 2008, Article 14.

⁴⁵⁷ Croatia, Anti-discrimination Act, 9 July 2008, Article 15.

⁴⁵⁸ Croatia, Labour Act, Official Gazette 93/14, 127/17, 7 August 2014, Articles 7, 26, 134.

⁴⁵⁹ Croatia, Anti-discrimination Act, 9 July 2008, Article 12(2)(6).

Further, the Ombudsperson can join the proceedings in anti-discrimination cases as an intervener on the behalf of the claimant.⁴⁶⁰

The cases in which the Ombudsperson decides to join the proceedings as an intervener are carefully selected as strategic cases with the aim of positively influencing the awareness of citizens about the prohibition of discrimination. So far, the Ombudsperson had joined several proceedings, alongside the specialised ombudspersons. The available data shows that court decisions have mostly been adopted in such proceedings, to which the Ombudsperson's expertise in the field of discrimination and protection of human rights in general has surely contributed.⁴⁶¹

For example, the Ombudsperson was involved in proceedings regarding discrimination against Roma students in vocational training, as well as in proceedings in connection with discrimination based on age in employment. The Ombudsperson was also involved in a court case in relation to discrimination based on sexual orientation filed by a joint action of civil society organisations.⁴⁶²

The above-mentioned duties of the Ombudsperson are regulated by Articles 12(2) and 21(1) of the Anti-discrimination Act.

h) Quasi-judicial competences

In Croatia, the body is not a quasi-judicial institution. The Ombudsperson's recommendations are not binding, and the Ombudsperson does not have the power to impose sanctions.

The recommendations issued by the Ombudsperson regarding specific cases of discrimination contain an order of the Ombudsperson for the person or body involved to notify the Ombudsperson within a certain deadline about actions that have been taken in respect of the Ombudsperson's recommendation.⁴⁶³ The Ombudsperson makes recommendations as a result of paper-based investigations. Upon receiving a complaint, the Ombudsperson asks the parties involved to submit their observations and all relevant documentation, after which she issues a recommendation.

Although the Ombudsperson's recommendations are not legally binding, by the power of their authority and reputation it can be concluded that their recommendations are generally respected. However, there are no exact data on the percentage of individual recommendations that are implemented and there is no information available about the effectiveness of the Ombudsperson's interventions in specific cases.

i) Registration by the body of complaints and decisions

In Croatia, the designated body does register the number of inquiries received, complaints of discrimination made, and decisions (by ground, field, type of discrimination, etc.).

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

⁴⁶⁰ Croatia, Anti-discrimination Act, 9 July 2008, Article 21.

⁴⁶¹ Kesonja, D. and Einwalter T.S. (CMS) (2017) *Analysis of case law in Croatia regarding proceedings initiated for discrimination*, Zagreb. Available at: https://www.cms.hr/system/publication/pdf/104/Analiza_sudske_prakse_u_postupcima_pred_hrvatskim_sudovima_pokrenutima_zbog_diskriminacije.pdf, accessed 20 May 2018.

⁴⁶² Kesonja, D. and Einwalter T.S. (CMS) (2017) *Analysis of case law in Croatia regarding proceedings initiated for discrimination*, Zagreb. Available at: https://www.cms.hr/system/publication/pdf/104/Analiza_sudske_prakse_u_postupcima_pred_hrvatskim_sudovima_pokrenutima_zbog_diskriminacije.pdf, accessed 20 May 2018.

⁴⁶³ Croatia, Act on People's Ombudsperson, Article 27.

reports for the period of 2002 to 2017 are available on the website and are easily accessible to everyone.

In 2015, the Ombudsperson received 4 655 complaints, in 2016, 5 433 complaints and in 2017, 5 203 complaints.

All of the information available refers to complaints, whether they were submitted personally or by post and telephone, although there is no information on the exact number of inquiries that are not complaints as such but phone calls and e-mails with questions and so on.

j) Planning

The Ombudsperson has a strategic plan, which is adopted for a period of two years. A strategic plan for 2017-2019 is currently in place.⁴⁶⁴

The Ombudsperson has an annual work plan, which is published on its website.⁴⁶⁵

The Ombudsperson has a duty to publish annual reports, which are considered by the Parliament. The Ombudsperson regularly exercises this duty in practice.

There is no available information on any recent evaluation of the implementation of the Ombudsperson's strategic plan. As there is no information regarding the actual results and implementation of the strategic plan, its quality of implementation cannot be assessed.

k) Stakeholder engagement

Article 15 of the Anti-discrimination Act states that the Ombudsperson must 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 when submitting their annual report to the Croatian Parliament, as well as when drafting his or her opinions and recommendations. Accordingly, the Ombudsperson often holds meetings and consultations on different grounds of discrimination with different NGOs and human rights institutions.

As an example of engagement with civil society organisations, the Ombudsperson concluded an agreement with five civil society organisations on the basis of which direct cooperation between the Ombudsperson and the civil society organisation was established in the fight against discrimination — five civil society organisations have become the Ombudsperson's anti-discrimination contact point at regional level.⁴⁶⁶

There is no information available on the engagement of other stakeholders, such as business/employer service provider networks and organisations, public bodies, local government entities, trade unions or employee associations.

It can be concluded that civil rights organisations are well respected by the Ombudsperson, for which reason they are also involved in the work of the ombudsperson's office through mutual cooperation in anti-discrimination activities.

⁴⁶⁴ People's Ombudsperson *Strategic Plan 2017-2019*, available at: <http://ombudsman.hr/attachments/article/1020/Strate%C5%A1ki%20plan%20pu%C4%8Dkog%20pravobranitelja%20za%20razdoblje%202017.%20%E2%80%93%202019.pdf>, accessed 12 January 2018.

⁴⁶⁵ People's Ombudsperson annual work plan for 2018, available at: <http://www.prs.hr/attachments/article/2127/Croatian%20Anti-discrimination%20Act.pdf>, accessed 16 April 2018.

⁴⁶⁶ See <http://ombudsman.hr/hr/lnk/udruge/145-regionalne-antidiskriminacijske-kontakt-tocke-pucke-pravobraniteljice>, accessed 8 June 2017.

l) Accessibility

The designated bodies do have accessible and publicly visible offices. The most publicly visible is the Ombudsman's office, as the main body for protection against discrimination. Information about discrimination in general and the work of the Ombudsperson's office is brought to the attention of anyone concerned through various media (TV, radio, website, Twitter, Vimeo, etc.). Such means, especially the Ombudsperson's website, could be used to a greater extent in order to disseminate more detailed information on various forms of discrimination and protection mechanisms.

The designated body does have local offices. In the last few years, three branch offices were opened in Osijek, Rijeka and Split to make the Ombudsperson more accessible to citizens.

There is no available information about procedures that are in place to identify and respond to the access needs of specific complaints. However, people can address their complaints to the Ombudsperson personally, via e-mail or post, therefore, it can be concluded that contact with the Ombudsperson can be established without difficulty, even for persons with specific needs.

Given that there were no known complaints by the people involved concerning potential deficiencies in the manner in which the equality body responds to and accommodates access needs, it can be concluded that the Ombudsperson successfully fulfils his/her role in this area.

m) Roma and Travellers

The Ombudsperson's office gives special attention to Roma issues. In the Ombudsperson's report for 2017, a whole chapter is dedicated to the problems faced by the Roma population.⁴⁶⁷ The Ombudsperson also pays special attention to the issue of housing by visiting Roma settlements through the country in order to check the housing conditions. The Ombudsperson made a number of recommendations to the competent state authorities in order to resolve the housing needs of the Roma population, to prevent their segregation and to ensure that they have basic living conditions.

⁴⁶⁷ People's Ombudsperson (2017), *Ombudsperson's Report for 2017*.

8 IMPLEMENTATION ISSUES

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

- a) 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 the central body for protection against discrimination. Information about discrimination in general and the work of the Ombudsperson's office are brought to the attention of persons concerned through various media (TV, radio, internet, Twitter, Vimeo, etc.). Such means, especially the Ombudsperson's website, could be used to a greater extent to disseminate more detailed information on various forms of discrimination and protection mechanisms. In that respect, the websites of the Gender Equality Ombudsperson and the Disability Ombudsman are much more informative and useful for potential victims of discrimination.⁴⁶⁸

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

In spite of all the activities, the Ombudsperson noted in her report for 2017 (as she had in previous reports) that individuals still do not have enough information about their rights and about protection against discrimination.⁴⁶⁹ There is no information about the reasons for the limited success of the Ombudsperson in disseminating such information.

The Government Office for Human Rights and National Minorities has undertaken some measures in this direction. In 2013, it published the brochure 'How to Collect Data on Equality'⁴⁷⁰ and, together with the Ombudsman's office, the brochure 'Guidelines for Identifying Cases of Discrimination'.⁴⁷¹ As a body competent for the implementation of the Constitutional law on the rights of national minorities it has various activities in connection with national minorities and especially Roma.

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

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

A series of meetings/consultations dedicated to different grounds of discrimination were held with different NGOs and human rights institutions. According to Article 15, the

⁴⁶⁸ Gender Equality Ombudsperson, <http://www.prs.hr/>, accessed 25 April 2017.

⁴⁶⁹ People's Ombudsperson, (2014), *Ombudsperson's Report for 2014*, available at: <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*, available at: <http://ombudsman.hr/hr/component/jdownloads/send/67-2015/745-izvjesce-pp-2015-pdf>, accessed 25 April 2017.

⁴⁷⁰ 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.

⁴⁷¹ 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_zaprepoznavanje%20slu%C4%8Dajeva%20diskriminacije.pdf, accessed 21 October 2016.

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.⁴⁷² This cooperation continued during 2016 and organisations selected in 2015 were still listed as anti-discrimination contact points at the regional level.⁴⁷³

The cooperation between the Ombudsperson and civil society organisations had been expanded during 2017 by selecting members of the new anti-discrimination contact point network, which consists of 11 civil society organisations. The network will exchange information and plan joint initiatives aimed at combating inequality and promoting equal treatment.⁴⁷⁴

- c) 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 permanent structure specifically in place for social dialogue.

- d) Addressing the situation of Roma and Travellers

The Government Office for Human Rights and Rights of National Minorities⁴⁷⁵ 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.⁴⁷⁶ In 2013 the National Roma Inclusion Strategy for the period of 2013-2020 had been adopted as well as the Action Plan for its implementation for the period of 2013-2015.

Although the action plan expired three years ago, the new one has not yet been issued and there have been no new developments in this regard during 2017.

⁴⁷² 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.

⁴⁷³ See <http://ombudsman.hr/hr/lnk/udruga/145-regionalne-antidiskriminacijske-kontakt-tocke-pucke-pravobraniteljice>, accessed 8 June 2017.

⁴⁷⁴ People's Ombudsperson (2017), *Report for 2017*, available at <http://ombudsman.hr/hr/izvjesca-2017/izvjesce-pp-2017/send/82-izvjesca-2017/1126-izvjesce-pucke-pravobraniteljice-za-2017-godinu>, accessed 20 May 2018.

⁴⁷⁵ In April 2012, the Government decided to merge the previously existing Office for Human Rights and the Government Office for National Minorities.

⁴⁷⁶ *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-%203.pdf>, accessed 21 October 2016.

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

a) Mechanisms

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

A contract that is contrary to the Constitution, mandatory rules or the morals of society is null and void.⁴⁷⁷ Contracts can be subject to judicial review if the case is brought before court. When a contract, or part of a contract, is in conflict with the principle of equal treatment, a party to that contract is entitled to initiate court proceedings requesting the court to rule the contract or part of the contract null.

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

It is not always clear if a rule would be considered a regulation or not (e.g. the Constitutional Court found itself competent to review the legality of the articles of association of the Architects' Association, but not to review the legality of the code of ethics of the same organisation).⁴⁷⁸ 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;⁴⁷⁹ the Aliens Act does not enable same-sex partners to get a residence permit;⁴⁸⁰ 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

⁴⁷⁷ Croatia, Civil Obligations Act, 25 February 2005, Article 322.

⁴⁷⁸ Constitutional Court of the Republic of Croatia, U-II/544/2001, 1 June 2006.

⁴⁷⁹ 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.

⁴⁸⁰ 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.

implementation and the system was the subject of several cases before the European Court of Human Rights.⁴⁸¹ 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.

⁴⁸¹ 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.⁴⁸²

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').⁴⁸³

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 their adoption had been postponed until June 2017.⁴⁸⁴ Civil society organisations criticised the new Government proposals for a national strategy and action plan to fight discrimination that were presented in March 2017. Finally, the *National Anti-discrimination Plan 2017-2022*, together with the action plan for its implementation for the period of 2017-2019 were adopted on 1 December 2017.⁴⁸⁵

The *National Anti-discrimination Plan 2017-2022* is presented as 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 2017-2022* 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 2017-2022 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.

⁴⁸² Croatia, Act on the Government of the Republic of Croatia, 22 December 2011, Article 27, Official Gazette 150/2011, 119/2014, 93/2016.

⁴⁸³ Croatia (2008), *National Anti-discrimination Plan 2008-2013*.

⁴⁸⁴ 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.

⁴⁸⁵ <https://pravamanjina.gov.hr/UserDocsImages/dokumenti/Nacionalni%20plan%20za%20borbu%20protiv%20diskriminacije%20za%20razdoblje%20od%202017.%20do%202022..pdf>, accessed 18 March 2018.

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

According to an Amnesty International report, the policies adopted by the Government in the national plan failed to reflect and adequately address human rights violations faced by Serbs, Roma and sexual minorities.⁴⁸⁶

In April 2013, the Croatian Government adopted the Action Plan for the Implementation of the National Roma Inclusion Strategy (2013-2020) 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).⁴⁸⁷ 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.⁴⁸⁸

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.

The action plan for the implementation of National Roma Inclusion Strategy expired at the end of 2015 and a new one has not yet been issued. The National Strategy Implementation Monitoring Committee did not hold any sessions between Autumn 2015 and November 2017.

At a session held on 24 August 2017, the Government had adopted the Operational Programmes for National Minorities for the period of 2017-2020, which prescribes specific measures and deadlines for their implementation in connection to the improvement of the social status of members of the national minorities, including the Roma community, regarding their education, employment and housing.⁴⁸⁹

⁴⁸⁶ Amnesty International (2018), *Amnesty International Report 2017/18*, <https://www.amnesty.org/en/countries/europe-and-central-asia/croatia/report-croatia/>, accessed 18 March 2018.

⁴⁸⁷ Government of Croatia, *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.

⁴⁸⁸ For the evaluation report, see: <https://pravamanjina.gov.hr/UserDocsImages/arhiva/Evaluacija%20Nacionalne%20strategije%20za%20u%20kljucivanje%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.

⁴⁸⁹ <https://pravamanjina.gov.hr/vijesti/operativni-programi-za-nacionalne-manjine-za-razdoblje-2017-2020/739>, accessed 20 May 2018.

In March 2018, the results of survey on the effective implementation of the National Roma Inclusion Strategy were presented to the media, although they have not yet been published.⁴⁹⁰

⁴⁹⁰ <https://kckzz.hr/predstavljani-rezultati-istrazivanja-u-sklopu-nacionalne-strategije-za-ukljucivanje-roma/>, accessed 21 September 2018.

10 CURRENT BEST PRACTICES

Disability Ombudsperson

The Croatian Ombudsperson for Persons with Disabilities (Disability Ombudsperson) 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 Disability Ombudsperson 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.⁴⁹¹ 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*. After the re-election, the Office of Disability Ombudsperson continued with its regular work, receiving 1 827 complaints in total during 2017.

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.

Legalisation of Roma settlements

An example of positive efforts by the state in the area of housing was the Ministry of Construction adopting measures with the aim of helping Roma to legalise their houses by co-financing the costs of the procedure.⁴⁹²

In addition, the Government Office for Human Rights and National Minorities conducted a 'Project of Support to Roma', with the aim of improving the housing and environmental conditions of Roma by constructing communal infrastructure, roads, electricity networks and public water supply systems in several Roma settlements.⁴⁹³

The legislative framework for those measures is set by several documents targeting the improvement of the social status of Roma and their integration in the community. More precisely, these documents are the *National Strategy for Roma Inclusion 2013-2020*, and the *Action plan for the implementation of the national strategy 2013-2015*. They prescribe goals and measures that have to be taken in order to improve the position of the Roma

⁴⁹¹ The Government lost the support of the Parliament, which led to a new general election.

⁴⁹² Government of Croatia, *Report on the Implementation of the Action Plan for the implementation of the National Strategy for Roma Inclusion, for the period 2013-2015, in 2014*, available at <https://pravamanjina.gov.hr/UserDocsImages/arhiva/Izvjesce%20o%20provedbi%20Akcijskog%20plana%20za%20provedbu%20NSUR%202014.pdf>, accessed 21 May 2018.

⁴⁹³ Government of Croatia, *Report on the Implementation of the Action Plan for the implementation of the National Strategy for Roma Inclusion, for the period 2013-2015, in 2014*, available at <https://pravamanjina.gov.hr/UserDocsImages/arhiva/Izvjesce%20o%20provedbi%20Akcijskog%20plana%20za%20provedbu%20NSUR%202014.pdf>, accessed 21 May 2018.

minority in Croatia, including the legalisation of Roma settlements. Results of their implementation can be monitored through yearly reports on their implementation, which are issued by the Government.⁴⁹⁴

During 2017, the Government of the Republic of Croatia issued a decision to co-finance the costs of legalisation of homes in Roma settlements in Međimurje County to the amount of HRK 1 881 821.28 (approximately EUR 250 000).

⁴⁹⁴ Government of Croatia, *Report on the Implementation of the Action Plan for the implementation of the National Strategy for Roma Inclusion, for the period 2013-2015, in 2014*, available at: <https://pravamanjina.gov.hr/UserDocsImages/arhiva/Izvjesce%20o%20provedbi%20Akcijskog%20plana%20za%20provedbu%20NSUR%202014.pdf>, accessed 21 May 2018.

11 SENSITIVE OR CONTROVERSIAL ISSUES

11.1 Potential breaches of the directives (if any)

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 cases⁴⁹⁵ (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.⁴⁹⁶ 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.⁴⁹⁷ 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, approximately EUR 70 000.

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.⁴⁹⁸ 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.⁴⁹⁹ In 2017, the Supreme Court confirmed its earlier practice regarding anti-discrimination and in one case published on its website, ruled that appeal on points of law was inadmissible because the condition regarding the value of the case had not been fulfilled, although the Anti-discrimination Act, as *lex specialis*, states that appeal on points of law prescribed by the Civil Procedure Act in anti-discrimination cases is always admissible.⁵⁰⁰

Appeal on points of law is regulated by the Civil Procedure Act, which differentiates between appeal on points of law (*revizija*) and the extraordinary appeal on points of law (*izvanrednarevizija*), 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,

⁴⁹⁵ 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.

⁴⁹⁶ See: <https://sudskapraksa.csp.vsrh.hr/search>, accessed 21 October 2016.

⁴⁹⁷ 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).

⁴⁹⁸ Supreme Court of the Republic of Croatia: Revr.1407/14, 1 September 2015 and Revr.57/15, 12 May 2015.

⁴⁹⁹ Supreme Court, Decisions Nos. Revr-638/14, Revr-762/15.

⁵⁰⁰ Supreme Court, Revr 1710/16, 5 July 2017.

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-discrimination civil proceedings were pending before Croatian courts and in only one case was a judgment made in favour of the victim. In 2017, 203 civil proceedings were pending before the courts, of which 43 were closed. In seven cases judgment was in favour of the claimant, the claim was rejected in 14 cases and 22 cases ended 'in another way'.

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 400.⁵⁰¹

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.⁵⁰²

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. Research data indicate that social intolerance towards Roma in Croatian society is almost 50 %.⁵⁰³ The same research also shows that approximately a quarter of citizens think that employing Roma in the service industry would reflect negatively on business profits. Hence, the employment of Roma is reduced to employment in public work, as a measure implemented by the Croatian Employment

⁵⁰¹ 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.

⁵⁰² 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.

⁵⁰³ People's Ombudsperson in collaboration with Centre for Peace Studies (2016), 'Research on attitudes and level of awareness of discrimination and forms of discrimination 2016', available at: <http://ombudsman.hr/attachments/article/1147/Istra%C5%BEivanje%20-%20diskriminacija%202016.pdf>, accessed 20 May 2018.

Service, which presents a short-term solution, as only eight % of Roma in Croatia have permanent employment.⁵⁰⁴

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).⁵⁰⁵ In 2016, the UNCHR registered 2 800 Roma without permanent or temporary residence who were at risk of statelessness.⁵⁰⁶ In its report for 2017, the NGO Human Rights Watch reported that thousands of Roma remain stateless in Croatia.⁵⁰⁷

Roma people have also experienced difficulties in obtaining identity documents, which has limited their access to public services.⁵⁰⁸ In her report for 2017, the People's Ombudsperson warned that there were 2 873 people in Croatia without or in danger of losing their citizenship, 60 % of whom were Roma. She stated that many of them do not have personal documents because they have never requested them, or they were issued in the former state and are no longer valid. Also, since the Aliens Act requires foreigners to have valid biometric travel documents for the purpose of regulating their status in the Republic of Croatia, and given that many Roma come from Serbia, Kosovo and Macedonia, they are faced with administrative barriers and financial costs that they have no capacity to overcome. In addition, the cooperation of the competent authorities in south east Europe in identifying and documenting people coming from this area is not particularly effective and lacks the appropriate and timely cooperation that would facilitate obtaining evidence of birth, residence and citizenship.⁵⁰⁹

In Croatia, 56 % of Roma think that discrimination on the ground of ethnic origin is widespread.⁵¹⁰

c) Migrants⁵¹¹

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.⁵¹² During the legislative process some of the key legal institutions were significantly changed. Human rights NGOs particularly criticised provisions criminalising social and humanitarian

⁵⁰⁴ Centre for Peace Studies (2017), *One step forward, two steps back: Anti-discrimination policy in Croatia 2011-2016*, available at https://www.cms.hr/system/publication/pdf/100/Korak_naprijed_nazad_dva.pdf, accessed 20 May 2018.

⁵⁰⁵ UNHCR's intervention as a third party in the EctHR case of *Hoti v. Croatia* (No. 63311/14).

⁵⁰⁶ 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.

⁵⁰⁷ Human Rights Watch (2018), *Report for 2017*, available at <https://www.hrw.org/world-report/2018/country-chapters/european-union#560d4c>, accessed 18 March 2018.

⁵⁰⁸ Amnesty International (2017), *Amnesty International Report 2016/17*, available at <https://www.amnesty.org/en/documents/pol10/4800/2017/en/>, accessed 25 April 2017.

⁵⁰⁹ People's Ombudsperson (2017), *Report for 2017*, available at: <http://ombudsman.hr/hr/izvjesca-2017/izvjesce-pp-2017/send/82-izvjesca-2017/1126-izvjesce-pucke-pravobraniteljice-za-2017-godinu>, accessed 20 May 2018.

⁵¹⁰ 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.

⁵¹¹ 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.

⁵¹² See <https://esavjetovanja.gov.hr/ECon/MainScreen?entityId=2962>, accessed 25 April 2017.

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.⁵¹³

Despite that, amendments that entered into force in July 2017 prohibited the provision of assistance in accessing basic needs, such as housing, health, sanitation or food, to foreign nationals irregularly residing in Croatia, except in cases of medical and humanitarian emergencies or life-threatening situations.⁵¹⁴

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.

According to an Amnesty International report, during 2017, Croatia continued to return to Serbia refugees and migrants who entered the country irregularly, without granting them access to an effective asylum process. These push-backs by police, sometimes from deep inside Croatian territory, routinely involved coercion, intimidation, confiscation or destruction of private valuables and the disproportionate use of force by the police.⁵¹⁵

In July, the Court of Justice of the European Union ruled that Croatia had acted against the rules of the Dublin Regulation (which defines which EU Member State has the obligation to evaluate the asylum claims) by allowing transit for refugees and migrants through the country in 2015 without examining applications for international protection.⁵¹⁶

In November 2017, the media reported on the tragic death of six-year-old Afghan girl on the border of Croatia and Serbia, who was hit by a train in the middle of the night. The girl's family accused the Croatian police of inhuman treatment that resulted in the death of their daughter, stating that once they reached the territory of Croatia, the police ordered them to go back to Serbia, despite the fact that they were obliged to take them to a police station and allow them to formally claim asylum. The family claims that the police drove them to the railway line and ordered them to walk back towards Serbia in cold weather with small children without even warning them there might still be trains running. As reported in the media, the girl's family filed a criminal complaint against police officers claiming that they abused their position and caused the death of their daughter.⁵¹⁷

The People's Ombudsperson pointed out this case to the public, asking for adequate investigation to be made, because of which she was publicly criticised by the highest officials of the Ministry of Interior, who stated that such problems should not be communicated to the public bearing in mind the political priorities of the Republic of

⁵¹³ Amnesty International (2017), *Amnesty International Report 2016/17*, available at <https://www.amnesty.org/en/documents/pol10/4800/2017/en/>, accessed 25 April 2017.

⁵¹⁴ Croatia, Aliens Act (*Zakon o strancima*), 28 October 2011, Official Gazette no. 130/11, 74/13, 69/17.

⁵¹⁵ Amnesty International (2018), *Amnesty International Report 2017/18*, <https://www.amnesty.org/en/countries/europe-and-central-asia/croatia/report-croatia/>, accessed 18 March 2018.

⁵¹⁶ Decisions of the European Court of Justice, nos. C-490/16 and C-646/16.

⁵¹⁷ <https://www.cms.hr/hr/azil-i-integracijske-politike/obitelj-poginule-djevojčice-podnijela-kaznenu-prijavu-policija-nije-smjela-vratiti-u-srbiju-obitelj-koja-trazi-azil>, accessed 18 March 2018.

Croatia. This Ombudsperson interpreted this kind of behaviour on the part of the Ministry of Interior as direct pressure of executive power on the work of the Ombudsperson as the independent national human rights institution.⁵¹⁸

The People's Ombudsperson in her report for 2017 states that a series of allegations was made by civil society organisations and the media regarding the return of migrants to Serbia without the implementation of the procedure prescribed for in the Aliens Act. Many migrants testified that they were not allowed to seek international protection, even though they wanted to do so and that their return did not follow the procedures provided by law. Moreover, the documented allegations contained claims that Croatian police beat them with bats, forced them to take off their shoes in the snow, insulted them and took their money and mobile phones. The Ombudsperson states that despite several requests, the Ministry of Police failed to submit more detailed information on the investigations carried out regarding these cases and their results.

In 2017, 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.

In May 2017, the Government adopted the *Action plan for the integration of persons approved for international protection for the period of 2017 to 2019*.⁵¹⁹ Although the plan contains specific, useful and measurable tools that can improve their integration, it is targeted at a very small group of people, given that in 2017, only 208 requests for international protection were granted. Apart from ignoring a large number of vulnerable people awaiting a decision on a request for international protection, the integration framework even ignores those whose request has been rejected and who remain in the Republic of Croatia with the status of undocumented migrants.

Furthermore, the action plan is almost entirely focused on social rights, although refugees should not be treated as social problems and realisation of their social rights should only represent short-term support in the path to their inclusion in society.

⁵¹⁸ People's Ombudsperson, (2017), *Ombudsperson's Report for 2017*, p. 230, available at: <http://ombudsman.hr/hr/izvjesca-2017/izvjesce-pp-2017/send/82-izvjesca-2017/1126-izvjesce-pucke-pravobraniteljice-za-2017-godinu>, accessed 20 May 2018.

⁵¹⁹ Government of Croatia (2017), *Action plan for the integration of persons approved for international protection for the period of 2017 to 2019*, available at: <https://pravamanjina.gov.hr/UserDocsImages/dokumenti/AKCIJSKI%20PLAN%20ZA%20INTEGRACIJU%202017-2019.pdf>, accessed 20 May 2018.

12 LATEST DEVELOPMENTS IN 2017

12.1 Legislative amendments

In 2017, there have been no relevant legislative amendments.

12.2 Case law

Race/ethnicity

Name of the court: European Court of Human Rights

Date of decision: 28 March 2017

Name of the parties: *Škorjanec v. Croatia*

Reference number: *Application no. 25536/14*

Address of the webpage: [https://hudoc.echr.coe.int/eng#{\"itemid\":\[\"001-145908\"\]}](https://hudoc.echr.coe.int/eng#{\)

Brief summary: In this case the applicant and her partner, who is Roma, had been physically assaulted and verbally insulted on a racial basis and during the attack the applicant had suffered a slight bodily injury. During the investigation, the competent authorities determined that only the applicant's partner had been a victim of a hate crime since the applicant herself is not of Roma origin. The European Court of Human Rights found that Croatia had failed to examine whether the attackers had perceived the applicant as a Romani as well and also that it had failed to determine whether the applicant had been attacked because of her relationship with a person of Roma origin. The Court underlined that this, together with the fact that the domestic authorities insisted that it was essential for the criminal proceedings that the applicant herself was Romani, led to deficient investigation of the applicant's case, which constitutes a violation of Article 3 in connection with Article 14 of the European Convention. There is no information on whether the investigation has been reopened following the judgment.

Name of the court: Varaždin County Court

Date of decision: 27 December 2017

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

Reference number: *not available*

Address of the webpage: *not available*⁵²⁰

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 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', (in reference to 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 that it creates a hostile environment towards other persons of Serbian nationality, since it implies that Croatian citizens of Serbian nationality should not obtain ministry positions. Zdravko Mamić filed an appeal against the first instance judgment, however Varaždin County Court rejected his appeal as unfounded and confirmed the judgment of Zagreb Municipal Court, which is now final.⁵²¹ The court ordered that the judgment be made public on the radio

⁵²⁰ Information about the proceedings have been gathered through media reports:

<http://www.index.hr/mobile/clanak.aspx?category=vijesti&id=1016059>;
<https://www.tportal.hr/vijesti/clanak/jovanovic-dobio-spor-protiv-zdravka-mamica-koji-ga-je-brutalno-izvrijedao-foto-20171227>; <https://www.vecernji.hr/vijesti/zalba-zdravko-mamic-diskriminacija-zeljko-jovanovic-1216471>; <https://net.hr/danas/hrvatska/zdravko-mamic-kriv-sto-brojao-krvna-zrnca-stigla-presuda-za-uzasno-vrijedanje-zeljka-jovanovica/>.

⁵²¹ For his statement Z.M. was also 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 did 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

show on the expense of Z.M. while he was also ordered to compensate Ž.J's court costs in the amount of HRK 11 000, approximately EUR 1 500.

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

Date of decision: 22 February 2017

Name of the parties: *S.F. v. Croatian Health Insurance Fund*

Reference number: Usž-3990/16

Address of the webpage:

<https://sudskapraksa.csp.vsrh.hr/decisionText?id=090216ba8076def3&q=diskriminacija>

Brief summary: S.F. who is a Croatian and German citizen, filed a complaint against the decision of the Health Insurance Fund by which her request to maternity leave had been denied with the explanation that she does not fulfil the conditions because she had not had permanent residence in Croatia for at least five years. The Administrative Court in Rijeka accepted S.F.'s complaint and quashed the first instance decision with the argumentation that coordination of the social security system requires that the residence period in other EU Member States must also be taken into consideration when deciding whether the residence period condition has been met. Since S.F., prior to her residence in Croatia, had legal residence in Germany, the Court concluded that she fulfils the five-year condition for maternity leave in Croatia. The Croatian Health Insurance Fund then filed an appeal arguing that this kind of reasoning leads to discrimination of Croatian citizens, since for them the five-year term of residence in Croatia represents a mandatory requirement. The High Administrative Court rejected the appeal as unfounded and confirmed the decision of the Administrative Court in Rijeka.

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

Date of decision: 31 January 2017

Name of the parties: G.Ž.

Reference number: Jž-423/15

Address of the webpage:

<https://sudskapraksa.csp.vsrh.hr/decisionText?id=090216ba8075b6a6&q=diskriminacija>

Brief summary: G.Ž. had been found guilty for an offence under article 25(1) of the Anti-discrimination Act because of his discriminatory conduct against Italian nationals during disciplinary proceedings in which he stated the following: "What do these Italians want, they don't pay taxes in Croatia, they hate Croatia, it would be better for them to sell all of their properties and move to their own country...". Against this decision, G.Ž. filed an appeal claiming that the first instance judgment does not contain adequate reasoning, and that the Court did not provide a sufficient explanation as to why it considers this statement discriminatory towards Italian nationals. The second instance court confirmed the first instance judgment, stating that according to the Anti-discrimination Act, harassment presents one form of discrimination and that the first instance court correctly determined that the statement in question presents harassment on the basis of nationality.

Age

Name of the court: Rijeka County Court

Date of decision: 31 August 2017

Name of the parties: *B.R. v. I.N.A d.d.*

Reference number: GžR-699/2016

Address of the webpage:

<https://sudskapraksa.csp.vsrh.hr/decisionText?id=090216ba8079ec35&q=diskriminacija>

internet. Information about the proceedings is available only through media reports. See: <http://dnevnik.hr/vijesti/hrvatska/zdravko-mamic-oslobodzen-tuzbe-za-govor-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>. The case is not reported in official publications.

Brief summary: After the period of 15 years in which B.R. had been employed as a director of merchandise, his employer informed him that it was time for him to quit, stating that he had been the director for too long and that if that continued "he will be dragged from the firm in the wheelchair right to the cemetery", referring to his age. Also, B.R.'s employer tried to force B.R. to take his severance pay and leave the firm in other ways. B.R. refused to do so and his employer then insisted he sign a contract for another work position with a lower salary than the one that he had before. At the same time, a younger person, who didn't meet the requirements in terms of professional qualifications, had been appointed to his previous position. B.R. filed an anti-discrimination suit stating that he had been discriminated against on the basis of his age. The Osijek Municipal Court accepted his complaint and found that B.R. had been discriminated against. Rijeka County Court rejected the appeal of B.R.'s employer as unfounded and confirmed the first instance judgment.

Name of the court: Rijeka County Court

Date of decision: 20 September 2017

Name of the parties: *V.L. v. D.Z. d.o.o.*

Reference number: GŽR-345/2017

Address of the webpage:

<https://sudskapraksa.csp.vsrh.hr/decisionText?id=090216ba807a5ab0&q=diskriminacija>

Brief summary: V.L. filed a complaint claiming that he was discriminated against on the basis of his age during the selection process in which he was not chosen as the best candidate for the position of sports salesman because of his age, despite the fact that he was the most qualified for the position. The employer claimed that difference in treatment of V.L. in comparison to a younger candidate who was chosen for the job could be objectively and reasonably justified by the legitimate aim of the employment policy of the firm and the discretion of the employer in deciding who to hire. However, the Court found that V.L.'s right to equal treatment had been violated since the opposite party failed to prove the justification of the different treatment of V.L. Rijeka County Court confirmed the first instance decision.

Name of the court: Rijeka Administrative Court

Date of decision: 1 June 2017

Name of the parties: *I.J. v. Ministry of interior*

Reference number: UsI-828/15

Address of the webpage:

<https://sudskapraksa.csp.vsrh.hr/decisionText?id=090216ba80764761&q=diskriminacija>

Brief summary: I.J., who was police officer, filed a complaint against the first instance decision of the Ministry of Interior, by which his request for pension had been rejected. In his complaint I.J. stated that his rights have been violated and that he was discriminated against on the basis of his age, claiming that at the same time as his request was denied, requests for pension by several younger colleagues had been accepted, such that he had been put in a less favourable position in comparison to his colleagues. The Court found that, irrespective of the fact that the right to pension does not constitute a subjective right of a police officer, bearing in mind the fact that the requests for termination of service with the right to pension had been approved for three other police officers, during the same period when I.J.'s request had been denied, I.J. had proved it probable that age-based discrimination had occurred and quashed the first instance decision.

Occupation

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

Date of decision: 21 September 2017

Name of the parties: *M.M. v. Police Administration for Ličko-senjska County, Gospić Police Station*

Reference number: JŽ-1394/2016

Address of the webpage:

<https://sudskapraksa.csp.vsrh.hr/decisionText?id=090216ba807b7b63&q=diskriminacija>

Brief summary: In the misdemeanour proceedings before the Misdemeanour Court in Gospić, M.M. had been acquitted of the accusation that he committed an offence under Article 25(1) of the Anti-discrimination Act against police officers of Gospić Police Station by statements published on his blog, with the explanation that there is no discrimination ground. Gospić Police Station filed a complaint against the first instance judgment claiming that the misdemeanour court incorrectly concluded that the police profession does not constitute a discrimination ground. The second instance court accepted the reasoning of the claimant and quashed the first instance decision, stating in its judgment that the position of police officer presents a sufficient basis for different treatment and that the police officers represent a social group that can be identified in public by certain features that differ from others. Therefore, the behaviour of the defendant could represent harassment in the sense of the Anti-discrimination Act, with the consequence of forming an unfriendly, humiliating and insulting environment for police officers. This judgment is final.

Religion

Name of the court: Zagreb County Court

Date of decision: 6 November 2017

Name of the parties: *U ime obitelji v. Index.hr*

Reference number: Not available

Address of the webpage: The decision is not available on the internet⁵²²

Brief summary: In the Name of the Family (*U ime obitelji*), a conservative civic NGO, filed an anti-discrimination complaint against Index.hr, one of the most popular news media portals in Croatia. In the article published on Index.hr, 'Living dead: Catholic Necrophilic Orgy is the craziest show on Croatian National Television', the authors commented on the situation regarding an important religious event that was extensively covered by Croatian national television and that was broadcast live as 'breaking news', disrupting the regular television programming, and mocked the people who were participating in the event. In its complaint, In the Name of the Family claimed that the authors discriminated against people of Catholic confession by calling them necrophiles. Index.hr argued that the article was a satirical comment and that the intention of the article was a social critique of Croatian national television and the behaviour of the Church, not of people of Catholic confession. In its decision of 6 November 2017, Zagreb county court accepted the reasoning of Index.hr, which stated that the target of the article was not people of Catholic confession and that the article's purpose was to outline a satirical critique of the television broadcast of the event in question. The court determined that Index.hr had shown that the article in question did not discriminate directly or indirectly against people of Catholic confession as well as that the intention of the article was not to violate the dignity of people of Catholic confession, or so as to cause them fear, or put them in a hostile, humiliating or offensive environment. In its public statement, In the Name of the Family announced that it will file an appeal on points of law to the Supreme Court of the Republic of Croatia.

Disability

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

Date of decision: 23 May 2017

Name of the parties: *O.M. v. Republic of Croatia (State Attorney Office)*

Reference number: Revr-707/15

Address of the webpage: not available

Brief summary: O.M. filed a discrimination complaint to the municipal court, claiming that because of his disability he had been unable to perform in full his duties as an investigative

⁵²² Information about the proceedings have been gathered through media reports:

<https://narod.hr/hrvatska/prvostupajnski-sud-prihvatio-indexovo-tumacenje-da-nisu-h tjeli-vrijedati-katolike>, <http://www.dnevno.hr/vijesti/hrvatska/u-ime-obitelji-mozete-vrijedati-do-mile-volje-a-onda-se-skrivati-iza-nekakvog-umjetnickog-izrazavanja-1088108/>, accessed 18 March 2018.

judge of the Zagreb County Court, which represents discrimination on the basis of disability. O.M. sought compensation for damages, stating that due to his disability (visual impairment), his powers as an investigative judge had been reduced by the president of the county court, as although he formally had the function of an investigative judge, he did not have the same authority as his colleagues. O.M. had the authority only to conduct certain investigative actions which are usually in the competence of court advisers, and was not allowed to perform other duties, such as ordering or suspending custody, decisions on which he was obliged to submit to the president of the court for approval. The municipal court in Zagreb accepted O.M.'s complaint and awarded him damages. However, the State Attorney's Office filed an appeal against the decision of the municipal court following which the county court in Zagreb reversed the first instance decision and rejected O.M.'s complaint as unfounded. O.M. then filed an appeal on points of law to the Supreme Court of the Republic of Croatia, which found that his appeal was admissible, but that his claim was unfounded with the explanation that the county court in Zagreb correctly interpreted relevant material law and that there were no procedural violations. The court consequently rejected O.M.'s appeal. The Supreme Court determined that O.M. had not been placed in a less favourable position because, as an investigative judge, he had been appointed to perform activities in accordance with the needs of the court and his professional capacity.

Other

Name of the court: Vukovar County Court

Date of decision: 23 November 2017

Name of the parties: *K.B. v. Vukovar Social Welfare Centre and A.H.*

Reference number: GŽ-2333/14

Address of the webpage: The decision is not available on the internet

Brief summary: The case was brought before Vukovar Municipal Court by K.B. claiming that she was discriminated against and harassed by her employer. Vukovar Municipal Court rejected her complaint, stating that K.B. failed to prove her claims. In the second instance proceedings, Vukovar County Court accepted the appeal of K.B., quashed the first instance decision and ordered a retrial. The county court emphasised that the very fact that K.B. submitted to the case file medical documentation that indicated that she suffered health problems as a result of the conduct of her employer, made her harassment claims plausible enough. This case reflects the current situation in Croatia regarding anti-discrimination cases, in which the courts sometimes do not differentiate between discrimination cases and harassment cases. Medical examination is regularly conducted in harassment cases in order to determine whether violation of personal rights has occurred.

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

Date of decision: 21. November 2017

Name of the parties: *N.Z.*

Reference number: U-III-361/2014

Address of the webpage:

[https://sljeme.usud.hr/usud/praksaw.nsf/7114c25caa361e3ac1257f340032f11e/c12570d30061ce54c12581e200377476/\\$FILE/U-III-361-2014.pdf](https://sljeme.usud.hr/usud/praksaw.nsf/7114c25caa361e3ac1257f340032f11e/c12570d30061ce54c12581e200377476/$FILE/U-III-361-2014.pdf)

Brief summary: N.Z. is a transsexual person who was born as a male and after permanent and irreversible change of sex to female, changed her name and sex in public records and got new personal documents. After that, N.Z. filed a request to the faculty from where she graduated before her sex change, to issue a new diploma in which the information about her sex and name would be altered. However, her request was denied with the explanation that the faculty has no legal authority to change information in a diploma that had already been issued, since it does not keep records of changes of the personal status of people who have completed education in the faculty. Against this decision N.Z. filed an administrative complaint to the administrative court, which rejected her complaint, accepting the reasoning of the faculty and confirming its decision. N.Z. then filed a constitutional complaint claiming that her rights under Articles 29 (right to a fair trial) and 35 (right to respect of personal and family life) of the Constitution had been violated, as

well as claiming that she had been discriminated against on the basis of her gender identity. The Constitutional Court determined that the first and second instance decisions were excessively formalistic and contrary to the principles of the domestic legal system. Having found a violation of Articles 29 and 35 of the Constitution, the Constitutional Court did not specifically address N.Z.'s complaints concerning discrimination. The Constitutional Court ordered that the case should be returned to the faculty for another decision as the first instance body.

Roma

There are no court cases regarding discrimination against members of the Roma community, although they represent a group of citizens who are most often affected by discrimination. This is due to their economic status and social exclusion as well as the fact that they are not familiar with their rights and the ways to achieve legal protection. They are reluctant to file discrimination complaints because they do not have the financial resources to afford professional assistance. The Ombudsperson continuously points to the problems of the Roma community and to the position of Roma in Croatia. In her annual reports, she raises public awareness of their problems.

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 2018

Title of legislation (including amending legislation)	Title of the law: Anti-discrimination Act Abbreviation: ADA Date of adoption: 09 July 2008 Entry into force: 01 January 2009 Latest amendments: 19 October 2012 Web link: http://www.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
	Civil/administrative/misdemeanour law
	Material scope: All fields
	Principal content: Prohibition of direct and indirect discrimination, harassment, sexual harassment; reasonable accommodation; exceptions; segregation; encouragement to discriminate; victimisation; anti-discrimination proceedings; specialised body; misdemeanours
Title of legislation (including amending legislation)	Title of the law: Same-sex Life Partnership Act Abbreviation: SSLPA Date of adoption: 15 July 2014 Entry into force: 05 August 2014 Latest amendments: - Web link: http://www.zakon.hr/z/732/Zakon-o-%C5%BEivotnom-partnerstvu-osoba-istog-spola Grounds covered: same-sex life partnership, sexual orientation and gender identity
	Civil law
	Material scope: All fields
	Principal content: Prohibition of direct and indirect discrimination, definitions and legal consequences of formal and informal same-sex partnerships
Title of legislation (including amending legislation)	Title of the law: Labour Act Abbreviation: LA Date of adoption: 15 July 2014 Entry into force: 07 August 2014 Latest amendments: 28 December 2017 Web link: http://www.zakon.hr/z/307/Zakon-o-radu Grounds covered: race or ethnic origin or colour, gender, language, religion, political or other belief, national or social origin, property, trade union membership, education, social status, marital or family status, age, health condition, disability, genetic heritage, gender identity and expression, sexual orientation (it refers to ADA)
	Civil
	Material scope: employment
	Principal content: general act on employment
Title of legislation	Title of the law: Act on Professional Rehabilitation and Employment of Persons with Disability

(including amending legislation)	Abbreviation: APREPD
	Date of adoption: 13 December 2013
	Entry into force: 01 January 2014
	Latest amendments: 5 May 2018
	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 2018

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	succession	9.9.1992	no	yes no	yes

Instrumen t	Date of signature (if not signed please indicate) Dd/mm/ yyyy	Date of ratificatio n (if not ratified please indicate) Dd/mm/ yyyy	Derogations / reservations relevant to equality and non- discriminatio n	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
tion Against Women					
ILO Convention No. 111 on Discriminati on	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	30.03.2007	15.8.2007	no	yes	yes

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