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# Country report

## Non-discrimination

Croatia

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including summary



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# **Country report**

## **Non-discrimination**

Transposition and implementation at national level of  
Council Directives 2000/43 and 2000/78

## **Croatia**

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Reporting period 1 January 2019 – 31 December 2019

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\* The author has gratefully built on the reports written until 2016 by the previous expert Lovorka Kušan.

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## EXECUTIVE SUMMARY

### 1. Introduction

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

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 people 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 %.<sup>1</sup>

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 bodies.

The Republic of Croatia is a unitary state. Government is organised on the principle of the 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). Administrative decisions can be subject to judicial review. 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. In principle, the courts' decisions are binding only on the parties to the case and do not set a precedent.

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. Under the Anti-discrimination Act, it is recognised as the specialised body for the promotion of equal treatment.

In 2013, a referendum on the definition of marriage was held, with the question put to citizens: '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 (65.8 %). Following the referendum result, the Croatian Constitution was amended by adding the definition of marriage as a union of man and woman.<sup>2</sup> Before and after the referendum there were vigorous public debates, round tables and other forms of public discussion on the topic of granting the right to marriage to same-sex couples.<sup>3</sup>

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<sup>1</sup> Information about the 2011 census is available at: [https://www.dzs.hr/Hrv\\_Eng/publication/2012/SI-1468.pdf](https://www.dzs.hr/Hrv_Eng/publication/2012/SI-1468.pdf) and [https://www.dzs.hr/Hrv\\_Eng/publication/2012/SI-1469.pdf](https://www.dzs.hr/Hrv_Eng/publication/2012/SI-1469.pdf).

<sup>2</sup> Constitution of the Republic of Croatia, 22 December 1990, Article 62(2).

<sup>3</sup> Since then there has been no debate on the question, even though some areas are not regulated. For example, adoption by same-sex couples is still not allowed.

The following year, the Same-sex Life Partnership Act<sup>4</sup> entered into force, regulating the rights of registered and unregistered same-sex relationships.

As in previous years the most visible form of discrimination in Croatia is based on ethnicity and national origin towards members of the Roma and Serbian national minorities, as well as migrants.

Although Croatia has a well-developed legislative framework for the protection of the rights of national minorities, adequate implementation is still lacking.

There is consistent problem of segregation of Roma children in education. In some counties with a significant Roma population (Međimurje and Varaždin), 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 a case initiated by Roma students, issued a judgment finding a violation of their right not to be discriminated against in the enjoyment of the right to education.<sup>5</sup> The existence of Roma-only classes is still widespread. Education in classes with many Roma children is considered to be 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 in education, employment, housing and healthcare. Another widespread problem is that a significant number of Roma people are still unable to resolve their citizenship status. Problems such as the segregation of Roma students as well as the general isolation of members of Roma community and their statelessness remained widespread in 2019.

Members of the Serbian minority are also more exposed to discrimination based on ethnicity or national origin and there is a long-standing trend of deteriorating relations between the majority of the public and some political and public actors in Serb community.

It is of particular concern that 2019 was marked by incidents of ethnically motivated violence toward Serbs, which represents a radical form of discrimination.

The incidents included violent organised attacks by multi-member groups, including children, as a result of which some victims had to be hospitalised. In all of the most serious incidents, police conduct was timely and appropriate, but at the same time there has been a lack of clear condemnation of such violence from the highest levels of Government.

Serb returnees to their pre-war residences are particularly affected by discrimination. They face discrimination based on national origin, age and property status since most of them are elderly people with exceptionally low incomes, living in underdeveloped rural areas, where basic services, even water and electricity, are often not available.

Current models of minority education regarding children of the Serbian minority are generally not subject to criticism, with the exception of some general public objections regarding the application of education Model A, by which classes are held entirely in the language and script of the national minority. This means that separate Croatian and Serb classes are held mostly in Vukovar region, which was most affected by the war.

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<sup>4</sup> Same-sex Life Partnership Act, 15 June 2014, Official Gazette 92/2014, *Zakon o životnom partnerstvu osoba istog spola*.

<sup>5</sup> European Court of Human Rights (ECtHR), *Oršuš and Others v Croatia* [GC], No.15766/03, 16 March 2010.



Given that in 2019 Croatia remained a transit country for migrants<sup>6</sup> heading to Western Europe, as a part of the so-called Balkan route, questions on the rights of migrants have been raised. 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.

## 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<sup>7</sup> and sexual orientation are not directly mentioned in the Constitution, but these grounds are covered implicitly as 'other characteristics'.<sup>8</sup>

The main legislation dealing with discrimination comprises:

- the Anti-discrimination Act,<sup>9</sup> 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,<sup>10</sup> which prohibits discrimination based on gender, 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,<sup>11</sup> which prohibits discrimination in the field of work and working conditions, including criteria and conditions for recruitment and promotion, vocational training, advanced vocational training and retraining, but does not mention grounds of discrimination.

## 3. Main principles and definitions

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<sup>6</sup> For the purposes of the report, the term 'migrants' refers 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.

<sup>7</sup> For example, in case no. U-I-1092/2017 (discrimination on the ground of age) the Constitutional Court decided on the constitutionality of the Employment Incentives Act, which had been challenged regarding the provision that guarantees certain employment rights and benefits only to persons under the age of 30. The Constitutional Court did not question in any way whether the Constitution prohibits age-based discrimination although the Constitution does not explicitly mention age as a discrimination ground.

<sup>8</sup> Article 14 of the Croatian Constitution; Official Gazette 56/1990, 135/1997, 113/2000, 28/2001, 76/2010 and 5/2014.

<sup>9</sup> Anti-discrimination Act, *Zakon o suzbijanju diskriminacije*, Official Gazette 85/2008 and 112/2012.

<sup>10</sup> Gender Equality Act, 15 July 2008, *Zakon o ravnopravnosti spolova*, Official Gazette 82/2008, 125/2011, 20/2012 and 138/2012.

<sup>11</sup> Labour Act, 15 July 2014, *Zakon o radu*, Official Gazette [93/2014](#), [127/2017](#) and [98/2019](#).

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. The court has to take multiple discrimination 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 that 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.<sup>12</sup> It does not distinguish between natural persons and legal persons either for the purposes of protection against discrimination or liability for discrimination.

The exceptions to discrimination provided by the Anti-discrimination Act are in line with the directives. The only exception for direct ethnic/racial discrimination is a genuine and determining occupational requirement, as set out by the Racial Equality Directive, while the exceptions for direct discrimination on the other grounds correspond to those provided by the Employment Equality Directive.

The Anti-discrimination Act provides an exception for genuine and determining occupational requirements. It states that placement in a less favourable position shall not

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<sup>12</sup> The Anti-discrimination Act provides protection from discrimination to any person without exception, which would include undocumented migrants.

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 children, young people, older persons 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 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 (publishing 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 distinction between private or public employment and fields outside employment.

Criminal offences of discrimination (violations of equality as stipulated by the Criminal Code) 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.<sup>13</sup>

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 to EUR 41 095 for harassment and from EUR 684 to EUR 47 945 for sexual harassment).<sup>14</sup>

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 in civil and administrative proceedings.

According to the wording of the Anti-discrimination Act a person bringing an anti-discrimination claim (in civil and administrative proceedings) has to make it plausible that discrimination has taken place by providing facts from which it can be assumed that discrimination occurred. It is then up to the defendant to prove that it did not.

The shift of burden of proof applies to all discrimination cases, including harassment and victimisation, except in misdemeanour and criminal proceedings.

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

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<sup>13</sup> Criminal Code, Article 125.

<sup>14</sup> Anti-discrimination Act, Articles 25-28.

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 duties 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 action falling within his/her power required to eliminate the 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 relevant 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 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 reports in previous years and its analysis of cases before the courts show that anti-discrimination protection does not work in practice.

Victims of discrimination are reluctant to use anti-discrimination remedies for several reasons, but particularly because the chances of success are very low. However, the current trend is positive as an increase in the number of anti-discrimination proceedings has been recorded.

In 2019, 48 civil anti-discrimination cases were closed, and discrimination was determined in 6 of them, while anti-discrimination claims were rejected in 26 cases and 16 cases were resolved in another way.<sup>15</sup>

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 because the rule on burden of proof is not always implemented. The case law of municipal and county courts, which is the main source of judicial interpretation of legal provisions that are often very wide, is not published and therefore unavailable to potential claimants.

The amendments to the Civil Procedure Act introduced new rules on the admissibility of an appeal on points of law, prescribing that such an appeal is always admissible in anti-discrimination cases,<sup>16</sup> meaning that the Civil Procedure Act is now in compliance with the Anti-discrimination Act.<sup>17</sup> This should eliminate the position held in disputable case law, which was that an appeal on points of law in anti-discrimination proceedings was not admissible, despite the provisions of Anti-discrimination Act. It is yet to be seen how this change will be reflected in the quality and effectiveness of anti-discrimination protection in practice.

In 2019 there were several court decisions that are important for the further development of case law in the area of discrimination.

An important decision was given by the Zagreb Administrative Court in proceedings concerning a same-sex couple who were denied the opportunity to foster a child. The court took the position that the Foster Care Act does not lay down any requirements regarding the sexual orientation of the future foster parents and that it is not in accordance with the purpose of the Foster Care Act that a single homosexual person could become a foster parent, but that same-sex couples would not be given the same opportunity, simply because they are in a life partnership.<sup>18</sup>

This decision initiated heated public debate over the rights of same-sex life partners to foster children and it remains to be seen how this will be interpreted in individual cases.

In 2019, there was an important case resulting in a judgment in favour of the claimant – a boy with a medical condition that prevented him from physically attending classes, whose school had failed to enable him to follow a distance learning course through the use of electronic communication. Consequently, the claimant was unable to take exams and get the necessary grades to pass classes, following which he had to move to a different school. The court decided that such treatment constitutes discrimination on the basis of health status and awarded financial compensation to the claimant.<sup>19</sup>

Although in this case discrimination was based on health status, rather than disability, it indirectly confirms the standpoint of the Disability Ombudsperson, who in their annual reports has repeatedly pointed to the problem of misinterpretation as well as a lack of knowledge and will on behalf of employers, schools and kindergartens in relation to reasonable accommodation duties.

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<sup>15</sup> People's Ombudsperson (2020), *Report for 2019*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/#1556196748399-8e18fee7-b3c6>.

<sup>16</sup> Civil Procedure Act, Article 382a.

<sup>17</sup> Anti-discrimination Act, Article 23.

<sup>18</sup> Zagreb Administrative Court, decision no. UsI-1699/18, 19 December 2019.

<sup>19</sup> Varaždin County Court, Koprivnica Permanent Service, decision no. GŽ-647/2019, 16 May 2019.

## INTRODUCTION

### The national legal system

The Republic of Croatia is a unitary state.<sup>20</sup> 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.<sup>21</sup>

Government is organised on the principle of the 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.<sup>22</sup>

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, administrative decisions can be subject to judicial review. The role of the Supreme Court, as the highest court, is to ensure the uniform application of laws and equal justice for all.<sup>23</sup> Judicial office is permanent. In principle, the courts' decisions are 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 duties of the Constitutional Court of the Republic of Croatia include: deciding on the conformity of laws with the Constitution; deciding on the conformity of other regulations with the Constitution and laws; deciding on constitutional complaints against individual decisions of Government 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 ensuring that constitutionality and legality are observed and notifying the Croatian Parliament when instances of unconstitutionality and illegality are observed.<sup>24</sup>

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.<sup>25</sup>

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<sup>20</sup> 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).

<sup>21</sup> Constitution of the Republic of Croatia, 22 December 1990, Article 5.

<sup>22</sup> Constitution of the Republic of Croatia, 22 December 1990, Article 4.

<sup>23</sup> Constitution of the Republic of Croatia, 22 December 1990, Article 116.

<sup>24</sup> Constitution of the Republic of Croatia, 22 December 1990, Article 125.

<sup>25</sup> 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), which entered into force on 1 January 2009 and was amended in October 2012.<sup>26</sup> 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 and expression or sexual orientation.<sup>27</sup> The Anti-discrimination Act applies to all areas without any limitation while explicitly enumerating 10 areas to which special attention is to be paid.<sup>28</sup>

The Labour Act (LA),<sup>29</sup> 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.<sup>30</sup> The previous Labour Act included the same provision.<sup>31</sup> The Labour Act does not explicitly mention grounds of discrimination but refers to the Anti-discrimination Act in that respect.<sup>32</sup>

The Same-sex Life Partnership Act (SSLPA), which entered into force on 5 August 2014,<sup>33</sup> 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.<sup>34</sup> 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.

The Gender Equality Act, which entered into force on 15 July 2008, also prohibits discrimination on the ground of sexual orientation. However, the main purpose of the Gender Equality Act is to lay down a general framework for the protection and promotion of gender equality as a fundamental value of the constitutional order of the Republic of Croatia, to define and regulate the method of protection from discrimination on the grounds of gender and to establish equal opportunities for women and men.<sup>35</sup> Thus, the Gender Equality Act is more focused on discrimination on the basis of gender (sex). Nevertheless, bearing in mind that the act also explicitly forbids discrimination on the basis of sexual orientation,<sup>36</sup> it can be considered that its provisions are also applicable to the discrimination ground of sexual orientation.

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<sup>26</sup> Anti-discrimination Act, 9 July 2008, Official Gazette 85/2008, 112/2012, *Zakon o suzbijanju diskriminacije*.

<sup>27</sup> Anti-discrimination Act, 9 July 2008, Article 1(1).

<sup>28</sup> Anti-discrimination Act, 9 July 2008, Article 8.

<sup>29</sup> Labour Act, 15 July 2014, Official Gazette 93/2014, 127/2017, 98/19, *Zakon o radu*.

<sup>30</sup> Labour Act, 15 July 2014, Article 7(4).

<sup>31</sup> Labour Act, 4 December 2009, Official Gazette 149/2009, 61/2011, 82/2012, 73/2013, Article 5(4).

<sup>32</sup> Labour Act, 15 July 2014, Article 7(4).

<sup>33</sup> Between August 2014 and 31 December 2015, 108 same-sex partnerships were registered (Gender Ombudsperson (2016), *Report for 2015*).

<sup>34</sup> Same-sex Life Partnership Act, 15 June 2014, Official Gazette 92/2014, *Zakon o životnom partnerstvu osoba istog spola*.

<sup>35</sup> Gender Equality Act, 15 July 2008, Official Gazette 82/08, 69/17, Article 1.

<sup>36</sup> Gender Equality Act, 15 July 2008, Article 6(3).



## 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)<sup>37</sup> or social origin, property, birth, education, social status or other characteristic.<sup>38</sup> 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.<sup>39</sup> 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 cannot be directly enforced against private actors. However, 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, including equality before the law, meaning that judicial decisions, including those adopted in disputes between private actors, could be challenged before the Constitutional Court.<sup>40</sup>

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<sup>37</sup> In Croatia, 'nationality' (*nacionalnost* or *narodnost* in Croatian) does not refer to 'citizenship', but to the membership of an ethnic group.

<sup>38</sup> Other discrimination grounds as age, disability, sexual orientation are implicitly covered by 'other characteristics'. The fact that these discrimination grounds are not explicitly mentioned in the Constitution is of no relevance and the Constitutional Court has never called into question whether disability, age, sexual orientation and other discrimination grounds that are explicitly mentioned in the Anti-discrimination Act are covered by the Constitution as well. In its decisions, the Constitutional Court never questioned this issue and under Article 14 of the Constitution, the Constitutional Court regularly decides on discrimination on the ground of disability (for example in the case No. U-III-4748/2017), age (case No. U-III-280/15) and sexual orientation (case No. U-IIIBi-2349/2013).

<sup>39</sup> 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.

<sup>40</sup> Constitutional Law on the Constitutional Court of the Republic of Croatia, 24 September 1999, Article 62(1), Official Gazette 99/1999, 29/2002, 49/2002, *Ustavni zakon o Ustavnom sudu Republike Hrvatske*.

## 2 THE DEFINITION OF DISCRIMINATION

### 2.1 Grounds of unlawful discrimination explicitly covered

The grounds of discrimination explicitly prohibited in the main legislation transposing the two EU anti-discrimination directives (as listed in the Introduction, above), are:

- 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<sup>41</sup>
- disability
- genetic heritage
- gender identity
- (gender) expression<sup>42</sup>
- sexual orientation

#### 2.1.1 Definition of the grounds of unlawful discrimination within the directives

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

##### a) Racial or ethnic origin

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

According to the latest available Ombudsperson's report, as in previous years, most complaints of discrimination relate to 'race or ethnic origin' (15.6 %).<sup>43</sup> 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.<sup>44</sup>

National law does not provide a definition of 'ethnic origin'.

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<sup>41</sup> 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.

<sup>42</sup> 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'.

<sup>43</sup> People's Ombudsperson (2020), *Report for 2019*, available at <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

<sup>44</sup> People's Ombudsperson (2020) *Report for 2019*.

The Constitutional Act on the rights of national minorities<sup>45</sup> 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'.<sup>46</sup>

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.<sup>47</sup>

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.'<sup>48</sup>

#### b) Religion and belief

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.<sup>49</sup>

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.'<sup>50</sup>

<sup>45</sup> 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*.

<sup>46</sup> 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.

<sup>47</sup> Office for Human Rights and Rights of National Minorities (2013), 'Definitions of indicators for the database on equality data', June 2013, [https://ljudskaprava.gov.hr/UserDocsImages//dokumenti//definicije\\_podataka\\_jednakosti.pdf](https://ljudskaprava.gov.hr/UserDocsImages//dokumenti//definicije_podataka_jednakosti.pdf).

<sup>48</sup> 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.

<sup>49</sup> Act on the legal status of religious communities, 4 July 2002, Official Gazette 83/2002, 73/2013, *Zakon o pravnom položaju vjerskih zajednica*.

<sup>50</sup> Office for Human Rights and Rights of National Minorities (2013), 'Definitions of indicators for the database on equality data', June 2013: [https://ljudskaprava.gov.hr/UserDocsImages//dokumenti//definicije\\_podataka\\_jednakosti.pdf](https://ljudskaprava.gov.hr/UserDocsImages//dokumenti//definicije_podataka_jednakosti.pdf).

### c) Disability

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'.<sup>51</sup> The definition of disability contained in the Social Care Act and the Act on the professional rehabilitation and employment of persons with disabilities is based on Article 1 of the Convention on the Rights of Persons with Disabilities.<sup>52</sup>

Disability is also defined by the Act on the Croatian register of persons with disabilities, according to which disability is a permanent limitation, reduction or loss of ability (resulting from impairment of health) of a physical activity or mental function appropriate to a person's age and refers to abilities in the form of complex activities and behaviours that are generally accepted as essential components of everyday life.<sup>53</sup>

In other areas (such as education and transport) there are still no definitions of disability.

The Anti-discrimination Act does not define disability.

According to Croatian legislation, disability must be formally established in order to realise certain rights prescribed by law. For instance, the Ordinance on the content and manner of keeping the register of employed persons with disabilities prescribes that persons with disabilities entered in the register are included in the quota of employed persons with disabilities under the Act on the professional rehabilitation and employment of persons with disability.<sup>54</sup> The Ordinance prescribes that persons with disabilities may enter the register if they have acquired disability status by the decision of the competent body and according to various regulations in relation to social care, pension insurance etc. Furthermore, the Ordinance on the incentives for the employment of persons with disabilities states that incentives can be provided only for the employment of persons who are entered in the register of employed persons with disabilities.<sup>55</sup>

There is no single document by which a person could prove their disability status, so various documents and certificates can be used for this purpose. Recently, the opinion of the Institute for Medical Assessment and Professional Rehabilitation has come to be used as the most common and reliable evidence.

It is not necessary for every person claiming disability to provide a document in which it is explicitly stated that he/ she is a person with disability, since disability has a broader meaning. However, it is necessary to have documentation from which it is evident that a health impairment (illness) exists (medical documentation, opinion of the Institute, decision of the Social Welfare Centre, decision of the Pension Insurance Institute etc).

The need for formal recognition of disability has not been perceived as particularly problematic by the Disability Ombudsperson, and the Ombudsperson herself does not have a clear standpoint on this issue. However, she constantly warns of shortcomings in

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<sup>51</sup> Social Care Act, 13 December 2013, Article 4(1)(9), Official Gazette 157/2013, 152/2014, 99/2015, 52/2016, 16/2017, 130/17, 98/19, *Zakon o socijalnoj skrbi*; and 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*.

<sup>52</sup> Disability Ombudsperson (2014), *Parallel Report for the UN Committee on the Rights of Persons with Disability*, July 2014.

<sup>53</sup> Act on the Croatian register of persons with disabilities, 24 July 2001, Article 2(1), Official Gazette 64/01, *Zakon o Hrvatskom registru o osobama s invaliditetom*,

<sup>54</sup> Ordinance on the content and manner of keeping the register of employed persons with disabilities, 22 August 2018, Official Gazette, 75/2018, *Pravilnik o sadržaju i načinu vođenja očevidnika zaposlenih osoba s invaliditetom*.

<sup>55</sup> Ordinance on the Incentives for employment of persons with disabilities, 22 August 2018, Official Gazette 75/2018, *Pravilnik o poticajima pri zapošljavanju osoba sa invaliditetom*.

the implementation of assessment procedures, which affect the realisation of rights of persons with disabilities and the greater functionality of the Institute for Medical Assessment, Professional Rehabilitation and Employment of People with Disabilities.<sup>56</sup>

In relation to the need for a formal recognition of disability for the purpose of achieving reasonable accommodation rights in employment, the Ombudsperson has expressed the opinion that the Act on the professional rehabilitation and employment of persons with disability does not provide sufficient detail on whether or not it is necessary for a person claiming reasonable accommodation rights to present formal proof of disability (as for example, when claiming priority right in employment, when it is necessary to present a proof of disability as a condition for exercising that right). The Ombudsperson also stated that from the practice of competent bodies it follows that a formal proof of disability is required to gain rights on the basis of disability, that various public documents are recognised as a proof of disability and that if a person does not have any of the documents, disability in relation to employment can be determined by the Institute for Medical Assessment and Professional Rehabilitation. The Ombudsperson sought to emphasise the point, because it means that persons who do not have the degree of disability that is established under other regulations or who do not have the appropriate document to provide the basis for disability rights in the field of employment, can still secure that status. The Ombudsperson also notes that an employer cannot receive financial support to help with the cost of making accommodations without the opinion of the Institute, and therefore, in such cases, disability needs to be established formally.

The Ombudsperson concluded that this does not in any way prevent the employer from making necessary adjustments in agreement with the employee in any specific case, even without proof of disability.<sup>57</sup>

The Primary and Secondary Education Act<sup>58</sup> states that primary and secondary education is based on the principle of equal educational opportunities for all students in accordance with their abilities.<sup>59</sup> The Rules on primary and secondary education of students with developmental difficulties<sup>60</sup> 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.’

d) Age

National law does not provide a definition of age.

The Anti-discrimination Act does not provide a definition of age and there is no available case law that would give an indication of the scope of age. In each individual case it is decided on whether discrimination on the ground of age exists, with no reference by the courts to the definition of age.

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<sup>56</sup> European Semester 2018/2019 country fiche on disability, available at: <https://www.disability-europe.net/country/croatia>.

<sup>57</sup> Letter of the Disability Ombudsperson of 28 August 2018.

<sup>58</sup> 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, 68/18, 98/19, *Zakon o odgoju i obrazovanju u osnovnoj i srednjoj školi*.

<sup>59</sup> Primary and Secondary Education Act, 15 July 2008, Article 4(2)(2).

<sup>60</sup> 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*.

The Social Welfare Act defines 'elderly person' as a person aged 65 and over.<sup>61</sup> In several provisions of the Healthcare Act, persons of the age of 65 and over are singled out as a special group in the context of the application of special healthcare measures for the population of that age.<sup>62</sup>

e) Sexual orientation

National law does not provide a definition of sexual orientation.<sup>63</sup>

### 2.1.2 Multiple discrimination

In Croatia, multiple discrimination is prohibited by 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 that has consequences that are particularly harmful to the victim).<sup>64</sup> Multiple discrimination is a factor that the court has to take into consideration when determining the amount of compensation or the sanction for a misdemeanour, presumably as an aggravating factor.<sup>65</sup>

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

In 2011, the Ombudsperson's Office received complaints from three young women belonging to a Muslim minority, about discriminatory provisions of the Regulations on driving licences, which allowed in photographs head covers to be worn only by elderly people who wore head covers as part of a traditional dress code and not by young people and/or people who wore head covers as part of a religious dress code.<sup>66</sup>

In her report, the Ombudsperson stated that this complaint points to problems of a practical and normative nature, that is to the inconsistent practice of police administrations when issuing the same document (a driver's licence), which leads to unacceptable legal uncertainty. Also, that the problem is the effect that this kind of regulation has on a certain group of young people who wear a head covering for religious and traditional reasons, that is, young Muslim women. The complaint was considered primarily on suspicion of discrimination on the grounds of age (direct) and religion (indirect), although the Ombudsperson emphasised that the issue of the violation of the rights to freedom of religion and free public expression of religion or other belief cannot be ignored.

The Ministry of Interior, upon the request of the Ombudsperson, stated that the Ordinance had been created in an earlier period of time and, as such, the regulations reflect of the recognition of the tradition of the elderly population in Dalmatian Zagora, Lika, etc.

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<sup>61</sup> Social Welfare Act, Official Gazette [152/2014](#), [99/2015](#), [52/2016](#), [16/2017](#), [130/2017](#), [98/2019](#), *Zakon o socijalnoj skrbi*, Article 4(11).

<sup>62</sup> Healthcare Act, 1 January 2009, Official Gazette 125/19, *Zakon o zdravstvenoj zaštiti*, Articles 21, 30 and 31.

<sup>63</sup> 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. The consultation document is 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](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 available case law that would provide the definition of sexual orientation.

<sup>64</sup> Anti-discrimination Act, 9 July 2008, Article 6(1).

<sup>65</sup> 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.'

<sup>66</sup> Regulations on driving licences, 23 December 2008, Article 6(3); Official Gazette 155/2008, 8/2009, *Pravilnik o vozačkim dozvolama*.

The Ombudsperson found that the regulation in question resulted in multiple discrimination on the basis of age and religion.<sup>67</sup> In this case, gender was not considered as a ground of discrimination.

Following the Ombudsperson's recommendation, the Ministry of the Interior amended the Regulations on driving licences and allowed head covers to be worn in driving licence photographs when a person wears such a covering for religious or medical reasons.<sup>68</sup>

In *LJ.S. v G.L. d.o.o.*, the Zagreb Municipal Court determined that the claimant had been discriminated against by her employer on the basis of gender and age, stating that the director of G.L. d.o.o., who was her superior, harassed LJ.S. by calling her names, including 'old timer', cursing, commenting on her physical appearance and prohibiting other employees from communicating with her. The court awarded LJ.S. compensation in the amount of EUR 1 330 (HRK 10 000).<sup>69</sup> The Zagreb County Court confirmed the decision of the first instance court and increased the compensation, awarding LJ.S. an additional EUR 2 660 (HRK 20 000).<sup>70</sup>

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.<sup>71</sup>

In 2018, the Zagreb Municipal Labour Court issued a decision in *M.S. v. Emergency Medicine Institute Zagreb and City of Zagreb*, in which the court determined that the claimant had been discriminated against and harassed in the workplace on the basis of his nationality, ethnicity and religion.<sup>72</sup> The claimant M.H. who is of Arabic origin, is employed as a medical technician at the Emergency Medicine Institute Zagreb. On several occasions during 2011 he found threatening messages at his workplace (at his desk and locker), in which it was written: 'smelly Arab', 'you are taking bread out of our children's mouth', 'you have to go from this firm' and one note with a picture of gallows and a knife with the message 'you choose'. The court determined that the defendant did not take the necessary action to protect M.H. from discrimination, awarded M.H. compensation in the amount of EUR 6 660 (HRK 50 000) and salary compensation in the amount of EUR 18 226 (HRK 136 699). The court also ordered the defendants to protect the dignity of M.H. in his workplace by providing working conditions in which he will not be subject to harassment and also to take preventive measures to secure adequate working conditions.<sup>73</sup> The decision was reached in July 2018, although the proceedings were commenced in 2012.

The annual report of the People's Ombudsperson repeatedly points out the problem of Serbs who have returned to their pre-war places of residence and regions, who are often exposed to multiple discrimination on the basis of their age, economic status and nationality. They are mostly elderly people on low incomes who live in rural areas and

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<sup>67</sup> People's Ombudsperson (2012), *Report on occurrence of discrimination for 2011*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/#1556196759007-36eed5fe-764d>.

<sup>68</sup> Regulations on driving licences, 11 December 2019, Article 17(4) Official Gazette 2/2019, *Pravilnik o vozačkim dozvolama*.

<sup>69</sup> Zagreb Municipal Court, Decision No. Pr-205/07, 27 February 2014.

<sup>70</sup> Zagreb County Court, Decision No. Gžr-839/2014, 3 June 2014.

<sup>71</sup> Ombudsperson for Children, (2017), *Report for 2016*, p. 109, available at: <http://dijete.hr/en/reports-of-the-ombudsperson-for-children>.

<sup>72</sup> Zagreb Municipal Labour Court, Decision No. Pr-636/17, of 18 July 2018.

<sup>73</sup> In 2019, Zagreb County Court confirmed the decision of the Zagreb Municipal Labour Court, No. GžR-1415/18, 12 February 2019.

often have not secured basic living conditions, such as water and electricity and are also exposed to the negative sentiments of the majority population.

### **2.1.3 Assumed and associated discrimination**

#### **a) Discrimination by assumption**

In Croatia, discrimination based on a perception or assumption of a person's characteristics, is prohibited in national law.

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.<sup>74</sup>

There is no relevant case law on this issue.

#### **b) Discrimination by association**

In Croatia, discrimination based on association with persons with particular characteristics is prohibited in national law.

The Anti-discrimination Act states that placing any person, or a person related to that person by kinship or other relationship,<sup>75</sup> in a less favourable position on the prohibited grounds is considered discrimination.<sup>76</sup> National law is in line with the judgment in Case C-303/06 *Coleman v Attridge Law and Steve Law*.<sup>77</sup> However, lack of adequate implementation of legal provisions in practice could be explained by the inadequate knowledge of the anti-discrimination legislation by the authorities dealing with specific cases.

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

In its judgment in the case of *Guberina v. Croatia*,<sup>78</sup> 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 entitled to the tax benefit because he had a disabled child who required accessible housing but was wrongly refused the benefit when his claim was rejected by the tax authorities. 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 Rights<sup>79</sup> 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

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<sup>74</sup> Anti-discrimination Act, 9 July 2008, Article 1(3).

<sup>75</sup> This would include same-sex relationships.

<sup>76</sup> Anti-discrimination Act, 9 July 2008, Article 1(2).

<sup>77</sup> CJEU, judgment of 17 July 2008, *Coleman v Attridge Law and Steve Law*, C-303/06, EU:C:2008:415.

<sup>78</sup> European Court of Human Rights, *Guberina v. Croatia*, No. 23682/13, 22 March 2016.

<sup>79</sup> European Court of Human Rights, *Škorjanec v. Croatia*, No. 25536, 28 March 2017.



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 ECtHR found that Croatia had 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 a deficient investigation and assessment of the applicant's case. The European Court of Human Rights stated plainly: '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.'<sup>80</sup>

## **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.

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.<sup>81</sup>

The same definition of direct discrimination is used by the Gender Equality Act.<sup>82</sup>

The Labour Act and the Same-sex Life Partnership Act prohibit direct discrimination, but do not define it.<sup>83</sup> 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.<sup>84</sup>

### **b) Justification for 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).<sup>85</sup>

## **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

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<sup>80</sup> European Court of Human Rights, *Škorjanec v. Croatia*, No. 25536, 28 March 2017, para. 53.

<sup>81</sup> Anti-discrimination Act, 9 July 2008, Article 2(1).

<sup>82</sup> Gender 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*) so that exact translation from Croatian would be Sex Equality Act. However, since it is widely accepted, the term Gender Equality Act is used throughout the Report).

<sup>83</sup> Labour Act, 15 July 2014, Article 7(4) and Same-sex Life Partnership Act, 15 July 2014, Article 6(3).

<sup>84</sup> Labour Act, 15 July 2014, Article 134.

<sup>85</sup> Anti-discrimination Act, 9 July 2008, Article 9(3).

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.<sup>86</sup>

The Labour Act and the Same-sex Life Partnership Act prohibit indirect discrimination, but do not define it.<sup>87</sup> 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, however this is not an obstacle for the application of the definition contained in the Anti-discrimination Act, as the ADA is general law that is applicable in every situation in which there are no different provisions in special laws regulating particular areas.

#### 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.<sup>88</sup>

The Constitution 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.<sup>89</sup>

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

The most recent annual reports of the three relevant Ombudspersons also do not mention a single case of indirect discrimination.<sup>90</sup>

Although there is no recent research or analysis regarding indirect discrimination, the fact that there is no available case law nor special observations of the relevant Ombudspersons on this issue suggests that indirect discrimination is still not sufficiently recognised.

As in previous years, the People's Ombudsperson's *Report for 2019* pointed to the fact that discrimination continues to be significantly greater than the number of formal complaints to the relevant authorities shows.<sup>91</sup> Only the most severe and the most visible cases of discrimination are reported, which might also be one of the reasons why there is no available case law on indirect discrimination.<sup>92</sup>

### 2.3.1 Statistical evidence

#### a) Legal framework

In Croatia, there is legislation regulating the collection of personal data.

Until recently, the main piece of legislation on data collection in Croatia was the Personal Data Protection Act.<sup>93</sup> However, on 25 May 2018, Regulation 2016/679, of the European

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<sup>86</sup> Anti-discrimination Act, 9 July 2008, Article 2(2).

<sup>87</sup> Labour Act, 15 July 2014, Article 7(4) and Same-sex Life Partnership Act, 15 July 2014, Article 6(3).

<sup>88</sup> Anti-discrimination Act, 9 July 2008, Article 2(2).

<sup>89</sup> Constitution of the Republic of Croatia, 22 December 1990, Article 16.

<sup>90</sup> The annual reports for 2019 had not been published by the cut-off date of this report.

<sup>91</sup> People's Ombudsperson (2019) *Report for 2018*, available at <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

<sup>92</sup> People's Ombudsperson (2020), *Report for 2019*, available at <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

<sup>93</sup> 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

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, (the 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 defined by the Official Statistics Act as an Parliament's act establishing long-term statistics activities.<sup>94</sup>

The lack of data disaggregated by ethnicity is an 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 the relevant authorities and international organisations. The measuring of the impacts of relevant policies for Roma is difficult, if not impossible, without disaggregated data. Therefore, estimates and unofficial data have often been used for general purposes. In contrast, in spite of regulations banning the collection of data on ethnic origin, some institutions have precise information on the ethnicity of particular groups. For example, 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.<sup>95</sup>

The Croatian Employment service also has data and statistics on the number of unemployed Roma, although there are no official statistics, which leaves the sources of this data and how the data is collected unclear.

During 2017, within the project 'Fundraising for Effective Implementation of the National Roma Inclusion Strategy', funded under the IPA 2012 programme, which was carried out by the Government Office for Human Rights and Rights of National Minorities and the NGO Centre for Peace Studies, a comprehensive scientific research on the Roma population in Croatia was carried out. Research findings were published in August 2018 in the publication *Inclusion of Roma in Croatian Society: Database Research*.<sup>96</sup>

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, the 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, the purpose of the research, the name of the person responsible for conducting the research and the measures used for data protection.

In the annual report for 2019, the People's Ombudsperson pointed out that race, ethnicity, skin colour and national origin are particularly sensitive personal data, but

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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.

<sup>94</sup> Official Statistics Act, 13 June 2003, Article 4(1)(2).

<sup>95</sup> 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 it 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.

<sup>96</sup> Kunac, S., Klasnić, K. and Lalić, S. (2018) *Inclusion of Roma in Croatian Society: Database Research*, Centre for Peace Studies, August 2018, available at <https://pravamanijina.gov.hr/UserDocsImages/dokumenti/Uklju%C4%8Divanje%20Roma%20u%20hrvatsk%20dru%C5%A1tvo%20-%20istra%C5%BEivanje%20baznih%20podataka-list%202018.pdf>.

nevertheless, the collection of such data is very important for the effective suppression of discrimination. The Ombudsperson therefore reiterated its instructions to the relevant state administration and public authorities, particularly those dealing with health, social welfare, labour, pension insurance and education, to start collecting and processing such data by applying appropriate safeguards.

The Ombudsperson also noted that some bodies still believe that there is no legal basis and that they do not have the authority to collect special categories of personal data, such as data on ethnicity, religion and other personal characteristics. The Ombudsperson pointed out that the General Data Protection Regulation, although prohibiting the collection of personal data that reveal characteristics such as, for example, ethnic origin, political opinion or trade union membership, provides for exceptions including the collection of statistical data for the purpose of an overriding public interest, in addition to data collected with the direct consent of the person.

The Ombudsperson expressed the view that since equality and anti-discrimination are constitutionally guaranteed rights and are of important public interest, collection and storage of statistical, anonymised and pseudonymous data on national origin or ethnicity is in line with the GDPR.<sup>97</sup>

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).<sup>98</sup>

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 is very rarely used in practice in order to establish indirect discrimination.

In general, statistical evidence is very rarely used in anti-discrimination cases in order to establish any form of discrimination.

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 Međimurje<sup>99</sup> (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.<sup>100</sup> The Constitutional Court ignored the statistical data in its decision<sup>101</sup> and simply concluded that statistical data on the number of Roma children in separate classes 'are not in themselves sufficient to

<sup>97</sup> People's Ombudsperson (2020), *Report for 2019*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/#1556196748399-8e18fee7-b3c6>.

<sup>98</sup> Mayrhofer, M. (2013), 'Definitions of indicators for the database on equality data of the Office for Human Rights and Rights of National Minorities' [https://pravamanjina.gov.hr/UserDocsImages//dokumenti//definicije\\_podataka\\_jednakosti.pdf](https://pravamanjina.gov.hr/UserDocsImages//dokumenti//definicije_podataka_jednakosti.pdf).

<sup>99</sup> ECtHR, *Oršuš and others v Croatia*, [GC] No. 15766/03, 16 March 2010.

<sup>100</sup> Public Ombudsperson (2001), *Report on the activities of the Ombudsperson in 2000* (not available online).

<sup>101</sup> Constitutional Court, No. U-III-3138/2002, 7 February 2007.

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 against any of the grounds prescribed in the Anti-discrimination Act, with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading or offensive environment.<sup>102</sup> Sexual harassment is defined in the Anti-discrimination Act 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.<sup>103</sup>

The Labour Act does not define harassment, but refers to the Anti-discrimination Act as *lex specialis*.<sup>104</sup> 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 the personal and material scope is adequately covered.

In 2018, Zagreb Municipal Labour Court issued a decision in *M.S. v. Emergency Medicine Institute Zagreb and City of Zagreb*, in which the court determined that the claimant had been discriminated against and harassed in the workplace on the basis of his nationality, ethnicity and religion (for more on the judgment, see section 2.1.2 above).<sup>105</sup>

Some legal authors, whose opinions often greatly influence case law, use the term 'harassment' as a synonym for mobbing.<sup>106 107</sup> 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.

A decision of the Constitutional Court of the Republic of Croatia on this issue is relevant on that point. The claimant filed a constitutional complaint against the decision of the Split County Court of 3 July 2014 that stated that, in the specific case it could not be argued that harassment in the workplace occurred, in spite of clear evidence, since the claimant did not prove that harassment was based on any of the discrimination grounds prescribed by the Anti-discrimination Act. The Constitutional Court stated that the argumentation of the county court was unfounded, since harassment (mobbing) includes every form of psycho-physical abuse in the workplace, regardless of whether it is caused by some of the prohibited grounds of discrimination under the Anti-discrimination Act. In

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<sup>102</sup> Anti-discrimination Act, 9 July 2008, Article 3(1).

<sup>103</sup> Anti-discrimination Act, 9 July 2008, Article 3(2).

<sup>104</sup> Labour Act, 15 July 2014, Article 134.

<sup>105</sup> Zagreb Municipal Labour Court, Decision No. Pr-636/17, of 18 July 2018.

<sup>106</sup> E.g. Crnić, Ivica (ed.) International Organization for Migration (2009), *Guide to Anti-discrimination Legislation and Case Law*, Zagreb, 2009.

<sup>107</sup> The term 'mobbing' meaning bullying or psychological violence without discrimination on any ground.

this way, the Constitutional Court made a clear distinction between harassment in the sense of the Labour Act and harassment regulated by the Anti-discrimination Act.<sup>108</sup>

In connection to this, a 2019 decision of the Supreme Court of the Republic of Croatia is relevant. In this case, an employee, MR, filed a claim against her employer, alleging that she was discriminated against at her workplace on the basis of education. Specifically, MR claimed that the chief nurse of one of the hospital's departments in which the claimant worked, had been persistently harassing her by insulting her in public and in private, as well as yelling at her in front of the hospital staff about her not being educated enough to do her job. The court of first instance concluded that the claimant had been harassed and discriminated against on the basis of education, which is prohibited by the Constitution, and that the harassment had violated the claimant's dignity. The court of second instance (Varaždin County Court) upheld the first instance judgment, but the Supreme Court of the Republic of Croatia, upon reviewing the case, concluded that the Labour Act does not specify education as one of the discrimination grounds and that consequently, it would have been impossible for the claimant to be discriminated against on that basis. Moreover, the Supreme Court stated for discrimination to exist under the Labour Act, required that the person had been put at a disadvantage compared to others in a comparable situation, and the court concluded that that requirement had not been met in this case. However, the Supreme Court concluded that, even though the claimant had not been discriminated against, she had indeed been harassed at work and that the harassment constituted mobbing. Eventually, MR was awarded compensation of HRK 10 000 (EUR 1 350) for the emotional pain that she had endured and the same amount for the violation of her honour and dignity.<sup>109</sup>

The Criminal Code<sup>110</sup> 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.<sup>111</sup> 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 discrimination<sup>112</sup> 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

<sup>108</sup> Constitutional Court of the Republic of Croatia, Decision No. U-III-6791/2014, 30 May 2018, available at: [https://sljeme.usud.hr/Usud/praksaw.nsf/C12570D30061CE54C125829D00352755/\\$FILE/U-III-6791-2014.pdf](https://sljeme.usud.hr/Usud/praksaw.nsf/C12570D30061CE54C125829D00352755/$FILE/U-III-6791-2014.pdf).

<sup>109</sup> Supreme Court of the Republic of Croatia, Decision No. GŽ-4/2019, 11 June 2019, available at: <https://sudskapraksa.csp.vsrh.hr/decisionPdf?id=090216ba8099dbe7>.

<sup>110</sup> Criminal Code, 21 October 2011, *Kazneni zakon*, Official Gazette [125/2011](#), [144/2012](#), [56/2015](#), [61/2015](#), [101/2017](#), [118/2018](#), [126/2019](#).

<sup>111</sup> Criminal Code, 21 October 2011, Article 156.

<sup>112</sup> Anti-discrimination Act, 9 July 2008, Article 3.

a violation of employment duties. Acting against harassment cannot be considered as a violation of employment duties.<sup>113</sup>

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.<sup>114</sup> 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, although it remains to be seen how this provision will be applied in connection to any discriminatory actions of third parties against the employee.<sup>115</sup>

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, although general provisions of the Anti-discrimination Act are applicable.<sup>116</sup> 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.<sup>117</sup>

### **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.<sup>118</sup> 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 to discriminatory actions against the employee by third parties.<sup>119</sup>

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<sup>113</sup> Labour Act, 15 July 2014, Article 134.

<sup>114</sup> Civil Obligations Act, 25 February 2005, Official Gazette 35/2005, 41/2008 and 125/2011, *Zakon o obveznim odnosima*.

<sup>115</sup> Labour Act, 15 July 2014, Article 111.

<sup>116</sup> Anti-discrimination Act, 9 July 2008, Article 4(1).

<sup>117</sup> Anti-discrimination Act, 9 July 2008, Article 4(1).

<sup>118</sup> Civil Obligations Act, 25 February 2005.

<sup>119</sup> Labour Act, 15 July 2014, Article 111.

## **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 on employers to provide reasonable accommodation for people with disabilities is included in the law. It is defined.

The Anti-discrimination Act prohibits the 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.’<sup>120</sup>

The Act on professional rehabilitation and employment of persons with disability<sup>121</sup> 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 employment and work for persons with disabilities on an equal basis with others.<sup>122</sup>

The strict wording of the Anti-discrimination Act means that only changes to the physical environment are required as reasonable accommodation duties under the Anti-discrimination Act, although the Act on professional rehabilitation and employment of persons with disabilities provides a broader definition of reasonable accommodation.

Since the Anti-discrimination Act presents general law applicable in all areas of life, while the application of the Act on professional rehabilitation and employment of persons with disability is restricted to employment, a person claiming their rights under reasonable accommodation duties in employment can rely on the provisions of the Act on professional rehabilitation and employment of persons with disability, which interprets in more detail the general provisions of the Anti-discrimination Act regarding the reasonable accommodation duties. 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 and case law

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 whether 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

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<sup>120</sup> Anti-discrimination Act, 9 July 2008, Article 4(2).

<sup>121</sup> Act on professional rehabilitation and employment of persons with disability, 13 December 2013.

<sup>122</sup> Act on professional rehabilitation and employment of persons with disability, 13 December 2013, Article 7(2).



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.<sup>123</sup> All employers are eligible for state funding to help with the costs of reasonable accommodation and for certain incentives if employing a worker who has been officially recognised as disabled.<sup>124</sup> However, the act does not elaborate in more detail how this obligation will be realised in specific cases.

The Disability Ombudsperson in her annual reports repeatedly presents complaints received during the reported period regarding reasonable accommodation duties. In her most recent available report, the Disability Ombudsperson stated that the most common form of discrimination against people with disabilities in the area of employment was the lack of reasonable accommodation and stressed the importance of finding solutions for reasonable accommodation duties in all areas.<sup>125</sup>

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 Medical Assessment, Professional Rehabilitation and Employment of People with Disabilities.<sup>126</sup> The task of the institute is to establish the degree of disability in each individual case as well as the needs and capabilities of the person regarding their ability to perform professional duties etc., on the basis of which the individual can then claim their rights, including the right to reasonable accommodation. The medical assessment is conducted by a panel of experts: medical doctors, social workers, psychologists, educational rehabilitation professionals and pedagogues. The degree of disability is established according to the Ordinance on the assessment methodology, which regulates proceedings and criteria for the determination of disability.<sup>127</sup>

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.<sup>128</sup> 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 Medical Assessment, Professional Rehabilitation and employment of Persons with disabilities 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.

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<sup>123</sup> Act on professional rehabilitation and employment of persons with disability, 13 December 2013, Article 12(4).

<sup>124</sup> Act on professional rehabilitation and employment of persons with disability, 13 December 2013, Article 29.

<sup>125</sup> Ombudsperson for Persons with Disabilities (2020) *Report for 2019*, available at <https://posi.hr/wp-content/uploads/2020/04/Izvjee%20A1%20C4%87e-o-radu-POSI-za-2019.pdf>.

<sup>126</sup> Act on the single expert body, 4 July 2014, Official Gazette 85/2014 and 95/2015, *Zakon o jedinstvenom tijelu vještačenja*. There is no official translation of the name of the Institute. The direct translation from Croatian would be 'Institute for Expertise, professional Rehabilitation and Employment of Persons with Disabilities', however, for greater clarity, the name 'Institute for Medical Assessment, Professional Rehabilitation and Employment of Persons with Disabilities' is used throughout the report.

<sup>127</sup> Ordinance on the assessment methodology, 6 July 2017, Official Gazette NN 67/17, *Uredba o metodologijama vještačenja*.

<sup>128</sup> Act on professional rehabilitation and employment of persons with disability, 13 December 2013, Article 37.

In April 2015, the Committee on the Rights of Persons with Disabilities published its concluding observations on the initial report of Croatia and expressed its concern about a lack of understanding of the meaning of reasonable accommodation and universal design in areas such as education, health, employment and the built environment.<sup>129</sup>

According to the information available from the Disability Ombudsperson's Report for 2019, during 2019, the Institute for Medical Assessment, Professional Rehabilitation and Employment of Persons with Disabilities, received a total of 118 080 requests for assessment and at the end of 2019, the number of unresolved cases was 25 533.<sup>130</sup> During 2019, a total of 115 312 requests were resolved.

Although the average time of assessment was shortened, during 2018 the Ombudsperson still received complaints regarding lengthy assessment proceedings, which directly lead to the prolongation of time necessary for the person to achieve individual rights on the basis of disability. The longest assessments were those carried out for the purpose of exercising rights to pension insurance and social welfare rights. The reason given was the greater complexity of these proceedings and the need for a multidisciplinary approach.

Despite the initial idea of 'one expert opinion' for the needs of all proceedings in which assessment is evidence of disability for the recognition of certain rights in the pension, health insurance, employment and labour, social care systems etc., in practice this purpose has not been fulfilled and the person is still obliged to go through the expert assessment several times, depending on the right they wish to exercise. Therefore, there is a need to harmonise regulations that set out disability rights in order to simplify the administrative proceedings and shorten the time necessary for the achievement of rights based on disability.<sup>131</sup>

The Ombudsperson has 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.

Case law in this field is still rather undeveloped with only one known case dealing with reasonable accommodation duties by the employer in connection to harassment regulated by the Anti-discrimination Act. In its decision, Zagreb County Court quashed the decision of the Zagreb Municipal Labour Court and returned the case for re-trial, expressing the opinion that a breach of the guarantee of reasonable accommodation cannot be interpreted only as a separate violation of the principle of non-discrimination, but could also be relevant for the assessment of the violation of discriminatory harassment. The fact that the employer did not meet its obligation to reasonably adapt the conditions of a particular workplace to the needs of a disabled employee is also relevant in assessing the existence of a hostile work environment. Moreover, a violation of the obligation to make reasonable adjustments is sufficient for the court to presume that the adverse conduct in terms of the emergence of a hostile work environment may have been contingent on the ground of disability.<sup>132</sup>

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<sup>129</sup> UNCRPD (2015) *Concluding observations on the initial report of Croatia*, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fHRV%2fCO%2f1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fHRV%2fCO%2f1&Lang=en).

<sup>130</sup> Disability Ombudsperson (2020) *Report for 2019*, available at: <https://posi.hr/wp-content/uploads/2020/04>.

<sup>131</sup> Disability Ombudsperson (2019) *Report for 2018*.

<sup>132</sup> Decision of the Zagreb County Court, No. Gžr-1708/16, 20 December 2016.

In December 2018, the Institute for Medical Assessment, Professional Rehabilitation and Employment of Persons with Disabilities published a booklet with recommendations on making reasonable accommodation in the workplace. It is based on past experiences in working with employers and the need to ensure systematic and continuous support in planning the adaptation of the workplace according to the needs of people with disabilities. The booklet contains practical, simple and easy-to-use instructions and it is intended for employers, managers and colleagues, as well as for people with disabilities. The booklet provides specific reasonable accommodation duties for 10 different target groups of people with disabilities, depending on their type of injury, disorder and illness.<sup>133</sup>

In her *Annual Report for 2019* the Disability Ombudsperson stated that reasonable accommodation in the workplace is still difficult to achieve since the meaning of reasonable accommodation in Croatia is not correctly interpreted by employers, especially in cases of hidden disability.

Enabling reasonable accommodation often depends on the will of the employer. The labour inspectorate does not interpret the failure of the employer to ensure reasonable accommodation as a violation of labour regulations, which means that people with disabilities are left to seek their right to reasonable accommodation through court proceedings. In cases in which the employer complies with the reasonable accommodation duty, it is perceived that the employee should show gratitude, ignoring the point that reasonable accommodation is the employer's legal obligation and the right of the person with disability.<sup>134</sup>

#### 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'.<sup>135</sup>

Disability is also defined by the Act on the Croatian register of persons with disabilities, according to which disability is a permanent limitation, reduction or loss of ability (resulting from impairment of health) of a physical activity or mental function appropriate to a person's age and refers to abilities in the form of complex activities and behaviours that are generally accepted as essential components of everyday life.

The Anti-discrimination Act does not define disability.

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.

When claiming reasonable accommodation, a person must provide evidence of disability in order to prove his/her status (medical documentation, decision of the Pension Insurance Fund, Opinion of the Institute for Medical Assessment etc). In addition to visible health impairments, many people have a hidden disability that is not immediately noticeable and can include various chronic diseases or a mental health condition. Difficulties arising from hidden disability can also be the basis for a reasonable accommodation of the workplace. This kind of disability also requires formal proof in the

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<sup>133</sup> Booklet is available at:

[https://www.zosi.hr/docs/prirucnik\\_s\\_preporukama\\_za\\_razumnu\\_prilagodbu\\_radnog\\_mjesta.pdf](https://www.zosi.hr/docs/prirucnik_s_preporukama_za_razumnu_prilagodbu_radnog_mjesta.pdf).

<sup>134</sup> Disability Ombudsperson (2020), *Report for 2019*, available at: <https://posi.hr/wp-content/uploads/2020/04/Izvje%C5%A1%C4%87e-o-radu-POSI-za-2019.pdf>.

<sup>135</sup> 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).

form of relevant documentation by which the illness or condition is determined. Thus, it is commonly understood that disability needs to be formally established in some way.

However, in the Republic of Croatia there is no single document by which a person could prove their disability status; various documents and certificates can be used to prove disability status, although lately the opinions of the Institute for Medical Assessment, Professional Rehabilitation and Employment of Persons with Disabilities are commonly used as the most reliable evidence.

The purpose of setting up the Institute was to create a single body for medical assessment, the opinions of which would be relevant for achieving different types of disability rights under different procedures. However, this purpose has not yet been achieved since, in practice, persons with disabilities are still repeatedly referred for assessments and a new assessment is usually required for claiming each right and for any proceedings.<sup>136</sup>

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

In Croatia, failure to meet the duty of reasonable accommodation in employment for people with disabilities counts as discrimination under the Anti-discrimination Act.

The Anti-discrimination Act stipulates that failure to provide reasonable accommodation to persons with disabilities constitutes discrimination, not only in the area of employment, but also in the area of use of publicly available resources and participation in public and social life.<sup>137</sup>

The Act on the professional rehabilitation and employment of persons with disability does not explicitly recognise failure to provide reasonable accommodation as discrimination. It states in general that reasonable accommodation means 'necessary and appropriate adjustment, which does not represent a disproportionate or inappropriate burden, in order to ensure employment and work of persons with disabilities on an equal basis with others'.<sup>138</sup> In annual reports, the Disability Ombudsperson always notes that the failure to meet the duty of reasonable accommodation counts as discrimination.<sup>139</sup>

The law does not specify whether failure to meet the reasonable accommodation duty 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.<sup>140</sup> However, failure of an employer to provide reasonable accommodation for an employee with disability is a misdemeanour regulated by the Act

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<sup>136</sup> Disability Ombudsperson (2020), *Report for 2019*. Available at: <https://posi.hr/wp-content/uploads/2020/04/Izvje%C5%A1%C4%87e-o-radu-POSI-za-2019.pdf>.

<sup>137</sup> Anti-discrimination Act, Article 4(2).

<sup>138</sup> Act on professional rehabilitation and employment of persons with disability, 13 December 2013, Article 7(2).

<sup>139</sup> Disability Ombudsperson (2020), *Report for 2019*, available at: <https://posi.hr/wp-content/uploads/2020/04/Izvje%C5%A1%C4%87e-o-radu-POSI-za-2019.pdf>.

<sup>140</sup> 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.

on professional rehabilitation and employment of persons with disability.<sup>141</sup> 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)).<sup>142</sup>

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

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

In Croatia, there is a legal duty to provide reasonable accommodation for people with disabilities outside the area of employment. 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.<sup>143</sup> 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 Act<sup>144</sup> provides that primary and secondary education is based on the principle of equal educational opportunities for all students in accordance with their abilities.<sup>145</sup> The Rules on primary and secondary education of students with developmental difficulties<sup>146</sup> 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 inclusion of students with disabilities in the mainstream education system (although there are significant problems in implementation).<sup>147</sup> 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.

In her annual reports, the Disability Ombudsperson repeatedly points out 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

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<sup>141</sup> Act on professional rehabilitation and employment of persons with disability, 13 December 2013, Article 41(1)(5).

<sup>142</sup> The obligation to make reasonable accommodation is not strictly prescribed, however, if the employer does not make reasonable accommodation new misdemeanour proceedings can be initiated against him. The obligation to make reasonable accommodation may be ordered only by the civil court.

<sup>143</sup> Anti-discrimination Act, 9 July 2008, Article 4(2).

<sup>144</sup> 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, 68/18, 98/19, *Zakon o odgoju i obrazovanju u osnovnoj i srednjoj školi*.

<sup>145</sup> Primary and Secondary Education Act, 15 July 2008, Article 4(2)(2).

<sup>146</sup> 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*.

<sup>147</sup> 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).

There are no rules on the national level that would regulate reasonable accommodation duties in the field of higher education.

The Science and Higher Education Act<sup>148</sup> 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) nor does it contain a definition of a student with disability.<sup>149</sup>

The rules on the organisation and operation of the Office for Students with Disabilities of the University of Zagreb, state that students with disabilities are all students who, due to illness or health disorders, regardless of the decision on the established percentage of physical impairment, have constant, intermittent or temporary difficulties in realising their daily academic activities (students with visual and hearing impairment, motor disorders, chronic illnesses, mental illness and disorders and specific learning disabilities such as dyslexia, dysgraphia and ADHD, and other medical conditions and difficulties that may affect the course of study).<sup>150</sup>

Although records are kept of students with disabilities receiving some forms of support from individual higher education institutions, there is no reliable data on the number of students with disabilities at Croatian higher education institutions. According to the records of institutional support services for students with disabilities in seven Croatian universities, a total of 571 students with disabilities have been registered as receiving some form of support in the higher education system.<sup>151</sup> At 34 colleges for which data are available, 110 students with disabilities are enrolled. Therefore, it is possible to talk about 700 registered students with disabilities in higher education in the Republic of Croatia.<sup>152</sup>

Reliable data on the exact number of students with disabilities is not available. The Disability Ombudsperson reports on 176 full-time students with disabilities in the academic year 2018/2019.<sup>153</sup> According to information provided by the Department of Research and Development of the Croatian register of persons with disabilities there are between 400 and 500 (projection made with regard to the frequency of highly educated persons with disabilities in the total population of highly educated citizens) and as many as 6 400 students with disabilities (projection according to the frequency of disability in the age group 18 to 25 in relation to the total number of students in the Republic of Croatia).<sup>154</sup> Such large differences in the data and projections of the number of students with disabilities suggests the need for systematic collection of this type of data.

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<sup>148</sup> Science and Higher Education Act, 17 July 2003, Official Gazette 123/2003, 198/2003, 105/2004, 174/2004, 2/2007, 46/2007, 45/2009, 45/2009, 63/2011, 94/2013, 139/2013, 101/2014, 60/2015, 131/2017, *Zakon o znanstvenoj djelatnosti i visokom obrazovanju*.

<sup>149</sup> It is not clear why the Science and Higher Education Act established reasonable accommodation only in transportation from home to school.

<sup>150</sup> Rules on the organisation and operation of the Office for Students with Disabilities at the University of Zagreb:  
[http://www.unizg.hr/fileadmin/rektorat/O\\_Sveucilistu/Dokumenti\\_javnost/Propisi/Pravilnici/USSI\\_Pravilnik\\_o\\_izmjenama\\_i\\_dopunama\\_Pravilnika\\_Ovjereno.pdf](http://www.unizg.hr/fileadmin/rektorat/O_Sveucilistu/Dokumenti_javnost/Propisi/Pravilnici/USSI_Pravilnik_o_izmjenama_i_dopunama_Pravilnika_Ovjereno.pdf).

<sup>151</sup> National Plan for improving the Social Dimension of Higher Education in the Republic of Croatia 2019-2021, available at:  
<https://mzo.gov.hr/UserDocsImages/dokumenti/Obrazovanje/VisokoObrazovanje/RazvojVisokogObrazovanja/SIDERAL/Nacionalni%20plan%20za%20unaprje%20%91enje%20socijalne%20dimenzije%20visokog%20obrazovanja%20u%20Republici%20Hrvatskoj%202019.%20-%202021..pdf>.

<sup>152</sup> Guidelines for improvement of the support system for students with disabilities in higher education in the Republic of Croatia, available at:  
[http://www.unizg.hr/fileadmin/rektorat/Studiji\\_studiranje/Podrska/SSI/Smjernice\\_LKG\\_2016.pdf](http://www.unizg.hr/fileadmin/rektorat/Studiji_studiranje/Podrska/SSI/Smjernice_LKG_2016.pdf).

<sup>153</sup> Disability Ombudsperson (2020), *Report for 2019*, available at: <https://posi.hr/wp-content/uploads/2020/04/Izvj%C5%A1%C4%87e-o-radu-POSI-za-2019.pdf>.

<sup>154</sup> Guidelines for improvement of the support system for students with disabilities in higher education in the Republic of Croatia, available at:  
[http://www.unizg.hr/fileadmin/rektorat/Studiji\\_studiranje/Podrska/SSI/Smjernice\\_LKG\\_2016.pdf](http://www.unizg.hr/fileadmin/rektorat/Studiji_studiranje/Podrska/SSI/Smjernice_LKG_2016.pdf).



The Disability Ombudsperson has expressed concern that the rights of students with disabilities are not regulated by a specific law. The Ombudsperson stated the need to establish a legal definition of the rights of students with disabilities in order to provide the necessary support and reasonable accommodation as well as to eliminate discrimination against them.<sup>155</sup> However, 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 the Rector's Committee of the university, following which they have become binding for the University of Zagreb. However, the universities continue to state the need to regulate this issue through legislation.<sup>156</sup> In addition, University of Zagreb has established the Office for Students with Disabilities, which is responsible for the promotion of the rights and needs of students with disabilities within the university.<sup>157</sup>

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 law makes no distinction between the duties of private and state bodies and institutions.<sup>158</sup>

In 2019, the Ministry of Education and Science adopted the National Plan for Improving the Social Dimension of Higher Education in the Republic of Croatia from 2019 to 2021, which should contribute to improving the position of students with disabilities.<sup>159</sup> Guidelines for improving the support system for students with disabilities in higher education in the Republic of Croatia are an integral part of the National Plan.

The National Plan and Guidelines recognise students with disabilities as a vulnerable group and set goals for improving access to higher education for students with disabilities, providing equal opportunities during their studies, including through improving the system of reasonable accommodation, greater flexibility of study programmes, using tools for distance learning, subsidising the costs of studies, giving scholarships and giving students with disabilities an advantage in admission under a quota system. The ministry is also planning amendments to the Science and Higher Education Act. The Disability Ombudsperson suggested that one of the amendments should be the introduction of a provision that defines a student with disability, their rights, and the duty of reasonable accommodation with the purpose of providing the necessary support and reasonable adaptation and elimination of discrimination on the basis of disability.<sup>160</sup>

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<sup>155</sup> Disability Ombudsperson (2018) *Report for 2017*, available at: <http://posi.hr/wp-content/uploads/2018/04/Izvj%C5%A1%C4%87e-o-radu-Pravobranitelja-za-osobe-s-invaliditetom-2017..pdf>.

<sup>156</sup> University of Zagreb (2013) 'Minimum accessibility standards for students with disability in the Republic of Croatia' [http://www.unizg.hr/fileadmin/rektorat/Studiji\\_studiranje/Podrska/SSI/nacionalni\\_dokument.pdf](http://www.unizg.hr/fileadmin/rektorat/Studiji_studiranje/Podrska/SSI/nacionalni_dokument.pdf).

<sup>157</sup> University of Zagreb (2007) [http://www.unizg.hr/fileadmin/rektorat/O\\_Sveucilistu/Dokumenti\\_javnost/Propisi/Pravilnici/Pravilnik\\_Ured\\_za\\_studente\\_s\\_invaliditetom.pdf](http://www.unizg.hr/fileadmin/rektorat/O_Sveucilistu/Dokumenti_javnost/Propisi/Pravilnici/Pravilnik_Ured_za_studente_s_invaliditetom.pdf).

<sup>158</sup> 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.

<sup>159</sup> National Plan for improving the Social Dimension of Higher Education in the Republic of Croatia 2019-2021, available at: <https://mzo.gov.hr/UserDocsImages/dokumenti/Obrazovanje/VisokoObrazovanje/RazvojVisokogObrazovanja/SIDERAL/Nacionalni%20plan%20za%20unaprje%C4%91enje%20socijalne%20dimenzije%20visokog%20obrazovanja%20u%20Republici%20Hrvatskoj%202019.%20-%202021..pdf>.

<sup>160</sup> Disability Ombudsperson (2019), *Report for 2018*, available at: <http://posi.hr/wp-content/uploads/2019/04/Sa%C5%BEetak-Izvj%C5%A1%C4%87e-o-radu-Pravobranitelja-za-osobe-s-invaliditetom-za-2018.-godinu.pdf>.

The Disability Ombudsperson recommended that students with disabilities should be defined as those who, because of their illness and/or health impairment have difficulties in realising academic activities because of which there is a need to provide them with appropriate adjustments and support.<sup>161</sup>

In her annual report for 2019, the Disability Ombudsperson once again reported on the complaints of students with disabilities, stating that this points to the lack of regulations and procedures in higher education that would regulate their position and rights, including the right to reasonable accommodation. The Disability Ombudsperson expressed dissatisfaction with the fact that the law still does not provide the right to support and reasonable accommodation, which means that students are left to rely on the autonomous decisions of faculties and universities in each individual case.<sup>162</sup>

Moreover, students with a physical disability of at least 60 % are still allowed to enrol in study programmes outside the regular quota, regardless of their position on the ranking list. The stated percentage of physical impairment is the most common criterion for exercising the rights of students with disabilities. The Ombudsperson pointed out that this discriminates against and excludes many groups of students who face numerous barriers to higher education caused by their impairments, diseases or disorders, which are not physical impairments.

In *Guberina v. Croatia*, the European Court of Human Rights<sup>163</sup> found a violation of Article 14 (prohibition of discrimination) of the European Convention on Human Rights in conjunction with Article 1 of Protocol No. 1 (protection of property) to the convention. In this case, the authorities failed to recognise the difference between the circumstances of the applicant – a father of a disabled child who asked for a tax exemption on the basis of meeting the housing needs of his family with regard to basic infrastructure requirements – in comparison with other people seeking a tax exemption. The ECtHR found that the domestic authorities had taken too restrictive an approach and had disregarded other provisions of domestic law, which address the question of accessibility of buildings for persons with disabilities, as well as Croatia's obligations under the UN Convention on the Rights of Persons with Disabilities and had thus failed to comply with the duty of reasonable accommodation by allowing the father to benefit from the tax exemption when purchasing accessible housing.

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.<sup>164</sup>

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

In Croatia, there is no legal duty to provide reasonable accommodation in respect of other grounds in the public and the private sectors.

However, there are some individual measures to accommodate the needs of a specific person on the ground of his/her religious beliefs.

While Catholic religious holidays are regulated by law as non-working days and, as such, are not limited only to members of the Catholic church, members of the three biggest

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<sup>161</sup> Disability Ombudsperson (2019), *Report for 2018*.

<sup>162</sup> Disability Ombudsperson (2020), *Report for 2019*, available at: <https://posi.hr/wp-content/uploads/2020/04/Izvje%C5%A1%C4%87e-o-radu-POSI-za-2019.pdf>.

<sup>163</sup> European Court of Human Rights, *Guberina v. Croatia*, [GC] No. 23682/13, 22 March 2016. Available at: [http://hudoc.echr.coe.int/eng#{"fulltext":\["guberina"\],"documentcollectionid2":\["GRANDCHAMBER"\],"CHAMBER":\["itemid":\["001-161530"\]}\]](http://hudoc.echr.coe.int/eng#{).

<sup>164</sup> Anti-discrimination Act, 9 July 2008, Article 4(2).



religious minorities only (Orthodox Christians, Muslims and Jews) have a right to an additional day off<sup>165</sup> on the days of their main religious holidays.<sup>166</sup> In this regard, it is possible that Croatian law is not in line with CJEU case law.<sup>167</sup>

The Regulations on driving licences allow head coverings to be worn in driving licence photographs when a person wears such a covering for religious reasons.<sup>168</sup>

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.<sup>169</sup>

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

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<sup>165</sup> This is a supplementary day off and it is not included in the individual annual holidays.

<sup>166</sup> Act on holidays, remembrance days and non-working days, 15 November 2019, Official Gazette 110/19 *Zakon o blagdanima, spomendanima i neradnim danima u Republici Hrvatskoj*. Article 3.

<sup>167</sup> CJEU (C-193/17), *Cresco Investigation GmbH v Markus Achatzi*, Grand Chamber judgment of 22 January 2019, ECLI:EU:C:2019:43.

<sup>168</sup> Regulations on driving licences, 4 November 2019, Article 17(4), Official Gazette 2/19, *Pravilnik o vozačkim dozvolama*.

<sup>169</sup> Health Care Act, 21 December 2018, Article 26, Official Gazette 100/18, 125/19, *Zakon o zdravstvenoj zaštiti*.

### **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.<sup>170</sup>

The Anti-discrimination Act provides protection from discrimination to any person without exception, which would also include undocumented migrants.

##### **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.<sup>171</sup>

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.<sup>172</sup>

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

###### **a) Protection against discrimination**

In Croatia, the personal scope of national anti-discrimination law covers private and public sectors, including public bodies, for the purpose of protection against discrimination.<sup>173</sup>

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 private and public sectors including public bodies for the purpose of liability for discrimination.<sup>174</sup>

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<sup>170</sup> Anti-discrimination Act, 9 July 2008, Article 1.

<sup>171</sup> Anti-discrimination Act, 9 July 2008, Article 1.

<sup>172</sup> Anti-discrimination Act, 9 July 2008, Article 8.

<sup>173</sup> Anti-discrimination Act, 9 July 2008, Article 1.

<sup>174</sup> 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, military service and 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.<sup>175</sup>

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.<sup>176</sup>

### **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 relation to 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.<sup>177</sup>

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.<sup>178</sup>

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.<sup>179</sup>

The People's Ombudsperson's Report for 2018 points to the continuous discriminatory practice of the Catholic Theological Faculty in Zagreb in the process of recruitment of administrative and technical staff. In order to apply for a job at the faculty, a person is required to present a confirmation of baptism, irrespective of the job position. On several occasions the Ombudsperson has issued warnings and recommendations stating that this kind of practice represents direct discrimination since the exception from the Anti-discrimination Act relating to the religious ethos of religious communities referred to in Article 9 is not applicable to the employment of administrative and technical personnel. Nevertheless, the faculty continued this discriminatory practice.<sup>180</sup>

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

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

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<sup>175</sup> Anti-discrimination Act, 9 July 2008, Article 8.

<sup>176</sup> Labour Act, 15 July 2014, Article 7(4).

<sup>177</sup> Anti-discrimination Act, 9 July 2008, Article 8.1.

<sup>178</sup> Anti-discrimination Act, 9 July 2008, Article 8(1).

<sup>179</sup> Labour Act, 15 July 2014, Article 7(4).

<sup>180</sup> People's Ombudsperson (2019), *Report for 2018*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

Most complaints of discrimination, both to the Ombudsperson and to courts, are in the field of general employment.<sup>181</sup>

The Anti-discrimination Act explicitly covers, for all of the grounds covered by the directives, the area of work and working conditions; retirement insurance; and unemployment insurance. Issues of pay and dismissals are covered implicitly by the Anti-discrimination Act and explicitly by the Labour Act.<sup>182</sup>

The main problem in this area continues to relate to the employment of members of the Roma community as well as migrants, who are often subjected to discriminatory treatment by employers, because of which they do not have a realistic possibility of obtaining permanent employment. When they manage to get a job, in most cases it is for short-term public work.<sup>183</sup> For example, according to the experiences of some Roma members expressed through the media, when applying for a job, based on their written CV, employers at the start show interest in them as potential employees, but when they reach the face-to-face interview, the attitude of the employers often changes. On the basis of their physical appearance, employers conclude that they are Roma and because of the widespread prejudices about Roma as problematic and violent, their applications get rejected. In some situations, employers do not even try to hide this reaction, but openly express their views and state that they won't hire a Roma person, regardless of their professional qualifications. Some Roma applicants do not even get the chance of an interview because of their Roma surnames.

#### **3.2.4 Access to all types and 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 vocational training outside the employment relationship, such as adult lifelong learning courses or vocational training provided by technical schools or universities.

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 retraining<sup>184</sup> as well as to education and science.<sup>185</sup> It further implicitly covers all other areas, activities and situations, because it does not limit the material scope in any way. The definition of education and science is left to the courts' interpretation. Practical work experience is covered implicitly.

In 2013, L.I. and Ž.B., both Roma students at the Varaždin Business School, were denied access to training at the company B., owned by B.J., (the training being an obligatory part of their education), and filed a discrimination claim against B. and B.J. before the Varaždin Municipal Court. The court found that the applicants had faced discrimination because they were Roma, forbade B. 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 Varaždin County Court, as the appellate court, confirmed the first instance judgment in respect of finding discrimination and forbidding the defendants to undertake any further discriminatory actions, but reduced the compensation awarded to HRK 5 000 (EUR 666) to each applicant. The court said that, having regard to all the circumstances of the case, the lack of any serious

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<sup>181</sup> People's Ombudsperson (2017), *Ombudsperson's Report for 2016*, p. 6, <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

<sup>182</sup> Anti-discrimination Act, 9 July 2008, Article 8(1) and 8(3) and Labour Act, 15 July 2014, Article 7(4).

<sup>183</sup> People's Ombudsperson (2019), *Report for 2018*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

<sup>184</sup> Anti-discrimination Act, 9 July 2008, Article 8(1).

<sup>185</sup> Anti-discrimination Act, 9 July 2008, Article 8(2).

consequences, the gravity of violation and the purpose of compensation, the sum awarded was reasonable.<sup>186</sup>

### **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 prohibits discrimination in relation to 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.<sup>187</sup> Benefits provided for by such organisations are covered implicitly. Membership of and involvement in employers' organisations is not specifically mentioned but are covered implicitly under 'any other organisations'.

The Labour Act stipulates that no one can be placed in a disadvantageous position due to membership of an association, or participation or non-participation in the activities of an association since the contrary would constitute discrimination.<sup>188</sup>

During recent years, discrimination in relation to this area has been raised mostly in cases of employees who find themselves discriminated against by their employers because they are members of a workers' organisation.

On this topic, in 2019, the Zagreb County Court made an important decision in a case in which an employee lodged a complaint claiming that the employer had decided not to offer him a new contract because of his participation in the workers' union. During the proceedings, the municipal court established that the employer had indeed failed to offer new contracts to those employees who were involved with the union, while contracts had been offered to those who had not participated in the union. Consequently, it was concluded that the claimant had been discriminated against and the court ordered the defendant to eliminate such discrimination by concluding a consecutive fixed-term employment contract with the claimant. However, following the employer's appeal, the Zagreb County Court acting as a second instance court reversed the judgment of the municipal court and rejected the claim. The county court determined that the claimant in his original claim had sought that the court find that he had been discriminated against by his employer by not offering him a new employment contract and to order the employer to conclude a new contract with the claimant. However, bearing in mind that the claimant had had a fixed-term employment contract that had expired, the court found that the contract had not been terminated by a decision of the employer as such, but simply by the expiration of the term for which it had been concluded. The county court took the view that this cannot be interpreted as discrimination, since it would be contrary to the principle of freedom of contract guaranteed by the law.<sup>189</sup>

### **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.

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<sup>186</sup> Varaždin County Court, *L.I. and Ž.B. v. Brankad.o.o.*, Gž.3684/12, 2 April 2013.

<sup>187</sup> Anti-discrimination Act, 9 July 2008, Article 8(9).

<sup>188</sup> Labour Act, Article 166.

<sup>189</sup> Zagreb County Court, decision no. Gžr-627/19, 7 May 2019.

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.<sup>190</sup>

Regarding healthcare protection, members of the Roma community and migrants face obstacles in accessing healthcare.

Although according to law all migrants have the right to access emergency medical care, in practice difficulties arise regarding the understanding of which medical situations can be interpreted as urgent, since other medical services which are not considered to be necessary, need to be paid for. There are also obstacles in obtaining adequate health care because of language barriers.

According to the most recent available data, the main problem faced by the Roma population in the area of access to healthcare is the insufficient coverage of members of Roma community by health insurance. According to the survey results, as many as 54.6 % of households in the year preceding the survey were found to be unable to pay for a medicine or medical service that was required by a household member, which suggests insufficient availability of healthcare. Also, according to research findings, as many as 27 % of respondents had not contacted a doctor in the past 12 months, although they needed medical attention. This is partly related to a lack of financial means and partly due to the location of Roma settlements, which are often far away from health institutions.<sup>191</sup> Also, low levels of hygiene and hygiene standards of housing are commonly referred to as the major health problem among the Roma population. The data from the research clearly state that households still lack basic hygiene prerequisites, such obtaining water through the water supply, drainage and functional bathrooms inside the housing units, which directly affects the health of the household.<sup>192</sup>

Considering everything mentioned above, the quality of healthcare provided to Roma is lower than the quality of healthcare provided to the rest of population, However, vaccination rates of pre-school Roma children in Croatia have reached the rates of vaccination coverage of pre-school children in the rest of population. All children in Croatia, including Roma children, have the right to free healthcare until the age of 18.<sup>193</sup>

Except for the lower health status of the Roma compared to the rest of the population, differences have also been noted between the quality of healthcare within the Roma community, with Roma women and children having a lower health status than Roma men.

Accordingly, the action plan for the implementation of the National Roma Inclusion Strategy introduced measures to improve the position of Roma community in this area. Objectives predicted to be achieved by 2020 are: 1, creating a system of reporting on the health status of the Roma in Croatia, specifically on their morbidity, mortality and

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<sup>190</sup> Anti-discrimination Act, 9 July 2008, Articles 8(3) and 8(4).

<sup>191</sup> Kunac, S., Klasnić, K. and Lalić, S. (2018) *Inclusion of Roma in Croatian Society: Database Research*, Centre for Peace Studies, August 2018, available at: <https://pravamanjina.gov.hr/UserDocsImages/dokumenti/Uklju%C4%8Divanje%20Roma%20u%20hrvatsko%20dru%C5%A1tvo%20-%20istra%C5%BEivanje%20baznih%20podataka-list%202018.pdf>.

<sup>192</sup> Kunac, S., Klasnić, K. and Lalić, S. (2018) *Inclusion of Roma in Croatian Society: Database Research*, Centre for Peace Studies, August 2018.

<sup>193</sup> Action plan for the Implementation of the 2013-2020 National Roma Inclusion Strategy for 2019 and 2020, July 2019, available at <https://pravamanjina.gov.hr/UserDocsImages//dokumenti/Akcijiski%20plan%20za%20provedbu%20Nacionalne%20strategije%20za%20uklju%C4%8Divanje%20Roma%20za%20razdoblje%20od%202013.%20do%202020.%20godine,%20za%202019.%20i%202020.%20godinu.pdf>.

socio-demographic characteristics; and 2, improving preventive action with the aim of the reduction of the prevalence of addiction within the Roma community.<sup>194</sup>

a) 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 social advantages as formulated in the Racial Equality Directive.

The Anti-discrimination Act applies to all areas, without any limitation;<sup>195</sup> it therefore covers implicitly social advantages of all kinds.

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

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

In Croatia, national legislation prohibits discrimination in: 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.<sup>196</sup>

In the field of education, there are still several unresolved issues, from the 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).<sup>197</sup>

a) Pupils with disabilities

In Croatia, the general approach to education for pupils with disabilities gives rise to problems.

In all relevant documents, the authorities recognise the need to include people with disabilities in the mainstream education system (e.g. the National Strategy for Persons with Disabilities 2003-2006,<sup>198</sup> the National Strategy for Persons with Disabilities 2007-2015,<sup>199</sup> the National Strategy for Persons with Disabilities 2017-2020<sup>200</sup> and the Parliamentary Declaration on the Rights of People with Disabilities).<sup>201</sup>

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.

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<sup>194</sup> Action Plan for the Implementation of the 2013-2020 National Roma Inclusion Strategy for 2019 and 2020, July 2019.

<sup>195</sup> Anti-discrimination Act, 9 July 2008, Article 8.

<sup>196</sup> Anti-discrimination Act, 9 July 2008, Article 8(2).

<sup>197</sup> Gender Equality Ombudsperson (2013) *Research on Gender Issues in Primary Schools Textbooks*.

<sup>198</sup> Official Gazette 13/2003.

<sup>199</sup> Official Gazette 63/2007.

<sup>200</sup> Official Gazette 42/2017.

<sup>201</sup> Official Gazette 47/2005.

In its annual reports, the Disability Ombudsperson repeatedly points out 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); and the resistance of school authorities to enrolling a student with disability because of the reasonable accommodation obligations.

The People's Ombudsperson has also expressed the opinion that educational policy formally promotes inclusive education, but its implementation is accompanied by difficulties: the lack of competence of educators in dealing with the inclusion of children with disabilities, the failure to make reasonable adjustments in educational inclusion, the failure to comply with appropriate school schemes, the insufficient spatial accessibility and equipment in schools and the unavailability of teaching assistants and helpers in kindergartens for children with disabilities. The Ombudsperson concluded that a certain number of children with disabilities are not included in mainstream education but are in special institutions and that despite a statutory requirement to include children with disabilities in kindergartens, due to difficulties in implementation, many children with disabilities still remain outside the preschool education system.<sup>202</sup>

The main problem is that children with disabilities are not included in the regular education system only because of their disability, which presents 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 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.

In 2019, there were 20 199 pupils with developmental difficulties enrolled in the regular educational programme or regular programmes with individualised procedures. Further, 847 pupils followed a special educational programme in regular schools, while 2 628 pupils were enrolled in specialised institutions for the education of pupils with developmental disabilities.<sup>203</sup>

In the *Annual Report for 2019* the Disability Ombudsperson once again pointed out that children with disabilities in preschool education still do not receive adequate inclusive support, most often they cannot enrol in preschool education, or are enabled to enrol for only a few days a week for a couple of hours a day. According to the Disability Ombudsperson's report there are currently a total of 2,601 children with disabilities in the system of early and preschool education.<sup>204</sup>

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.<sup>205</sup> In 2018, the Ordinance was finally adopted, formalising support that was in previous years secured thorough projects of various NGOs and local self-government units. By adopting the ordinance, uniform and clear criteria have been defined for providing teaching assistants and as such it is a good starting point for a

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<sup>202</sup> People's Ombudsperson (2019), *Written contribution to the 3rd Review of Croatia under the Universal Periodic Review (UPR) on the situation of human rights of the UN Human Rights Council*, available at: <https://www.ombudsman.hr/wp-content/uploads/2019/10/UPR-REPORT-Croatian-Ombudsman.pdf>.

<sup>203</sup> Disability Ombudsperson (2020), *Report for 2019*, available at: <https://posi.hr/wp-content/uploads/2020/04/Izvje%C5%A1%C4%87e-o-radu-POSI-za-2019.pdf>.

<sup>204</sup> Disability Ombudsperson (2020), *Report for 2019*, available at: <https://posi.hr/wp-content/uploads/2020/04/Izvje%C5%A1%C4%87e-o-radu-POSI-za-2019.pdf>.

<sup>205</sup> The ordinance was introduced by the Ministry of Education, upon the initiative of civil society organisations, the Disability Ombudsperson and other institutions that have publicly advocated the importance and need for the adoption of the ordinance, since there is no legislative regulation on this area.



better understanding of the meaning, role and purpose of such support for students. The Disability Ombudsperson has pointed out that assistants are a form of reasonable accommodation in accordance to the individual needs of a particular student (meaning that students with the same type of disability do not necessarily need the same type of support in the education process).<sup>206</sup>

However, assistant support is still not regulated for preschool education although there is a growing need for this kind of assistance for children in preschool education. The Disability Ombudsperson has warned that lack of adequate professional support for children with disabilities with the aim of early inclusion is contrary to the provisions of the Convention on the Rights of Persons with Disabilities and represents discrimination.<sup>207</sup> The total number of children in kindergartens in 2018 was 153 933, while the number of children with disabilities in kindergartens was 2 192, out of which 628 were included in the special educational groups. In addition, 356 preschool children were in programmes at the special centres for the education of children with disabilities.<sup>208</sup>

In 2019, a significant judgment was made in relation to the education of pupils with disabilities. The claimant was a boy with a medical condition that prevents him from being able to physically attend classes because of which, he needed distance learning courses to be provided to him via electronic means of communication. Since the high school that he had initially enrolled in had failed to provide courses in the described way, the boy could not participate in class and eventually did not have enough grades to pass any of the classes, which led to him being kept back a year. The court determined that the claimant was discriminated against based on his health status and awarded him compensation of HRK 70 000 (EUR 9 400). Given that at the time of proceedings the boy had already transferred to a private high school, the compensation was the most adequate measure for the situation at issue.<sup>209</sup>

A case of interest was brought before the Disability Ombudsperson by a student with hearing impairment, voice, speech and language disorders and total impairment of functional capacity. After graduating elementary school, he was enrolled in the high school for computer technicians, according to the recommendation of Employment Institute. However, from the beginning of the school year the boy was faced with integration difficulties, but not by peers who have accepted him, but by several teachers who expressed misunderstanding, a complete lack of sensitivity for the boy's difficulties and openly doubted his ability to attend the programme. The school failed to take appropriate measures for reasonable accommodation, or to make minimum efforts that would significantly facilitate the situation for the boy, such as making available educational materials in writing, occasionally repeating a lesson, and possibly hiring a teaching assistant or an expert to overcome communication difficulties. The boy's mother addressed a complaint to one of the civil society organisations for the protection of people with disabilities, which then filed a complaint to the Disability Ombudsperson. The Disability Ombudsperson requested a statement from the school about the case and further proceedings are still pending.<sup>210</sup>

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 primary school

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<sup>206</sup> Ordinance on assistants in teaching and professional communication mediators, Official Gazette 102/2018, 6 November 2018, available at: [https://narodne-novine.nn.hr/clanci/sluzbeni/2018\\_11\\_102\\_1992.html](https://narodne-novine.nn.hr/clanci/sluzbeni/2018_11_102_1992.html).

<sup>207</sup> Disability Ombudsperson (2019), *Report for 2018*.

<sup>208</sup> Disability Ombudsperson (2019), *Report for 2018*. Information for 2019 is not yet available since the annual report of the Disability Ombudsperson for 2019 will be published after the cut-off date for this report.

<sup>209</sup> Varaždin County Court, Koprivnica Permanent Service, decision no. GŽ-647/2019, 16 May 2019.

<sup>210</sup> Information about the case was obtained from the civil society organisation to which the mother turned for help.

facilities, only 7 % are fully adjusted to pupils with disabilities and only 26 % are partially adjusted to pupils with disabilities.<sup>211</sup>

In the report for 2019, the Disability Ombudsperson concluded that the equality of pupils with disabilities had not been achieved, as the education of children with disabilities in special social welfare institutions is still maintained. Despite the commitment of the Republic of Croatia to inclusive education for children with disabilities, the regular education system does not include all children with disabilities. A significant number of children continue to be directed to special educational institutions due to a lack of reasonable accommodation (inaccessibility of schools, insufficient number of teaching assistants, lack of professional educators in secondary education, etc). The Ombudsperson also pointed out that the education of children with disabilities in specialised educational institutions at the state level is acceptable and is not considered segregation.<sup>212</sup>

Furthermore, the Ombudsperson stressed that this kind of segregated schooling has to be abandoned and that resources invested in special educational institutions should be transferred within the regular education system (teachers from the special education system should be used as professional support to the regular education system). In 2019, 2 628 children with disabilities were enrolled in specialised educational institutions.<sup>213</sup>

#### b) Trends and patterns regarding Roma pupils

In Croatia, there are specific patterns regarding Roma pupils in education, such as segregation, which manifests in such a way that Roma children are put in separate Roma-only classes in some counties with a significant Roma population (Međimurje and Varaždin). 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.

In 2003, a group of 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.<sup>214</sup>

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.<sup>215</sup>

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

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<sup>211</sup> 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](https://www.cms.hr/system/publication/pdf/100/Korak_naprijed_nazad_dva.pdf).

<sup>212</sup> Disability Ombudsperson (2020), Report for 2019, available at: <https://posi.hr/wp-content/uploads/2020/04/Izvje%C5%A1%C4%87e-o-radu-POSI-za-2019.pdf>.

<sup>213</sup> Disability Ombudsperson (2020), Report for 2019, available at: <https://posi.hr/wp-content/uploads/2020/04/Izvje%C5%A1%C4%87e-o-radu-POSI-za-2019.pdf>.

<sup>214</sup> European Court of Human Rights (ECtHR), *Oršuš and Others v Croatia* [GC], No. 15766/03, 16 March 2010.

<sup>215</sup> See the judgment in ECtHR, *Oršuš and Others v Croatia* [GC], No. 15766/03, 16 March 2010, paragraphs 158-160.

placement in a class.<sup>216</sup> In accordance with this legislation, a panel of experts, composed of a physician, a pedagogue<sup>217</sup> 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.

The authorities also recruited 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.

However, despite the judgment of the European Court of Human Rights in *Oršuš and Others v. Croatia* and some positive legislative measures adopted afterward, the number of Roma-only classes is continuously increasing with five more of them organised at the beginning of the 2018/2019 school year. The number of classes in which only students belonging to the Roma national minority were included at the beginning of 2018/2019 was 65, with a total of 924 students. In 2019/2020, there are 70 such classes with a total of 1 066 students.<sup>218</sup>

Out of the total number of students belonging to the Roma national minority in primary schools in 2018/2019 (4 983), 1 600 (33 %) were enrolled in schools located in Međimurje County. In 2018/2019 in Međimurje County, there were 266 classes attended by children of Roma national minority, of which 211 were mixed and 55 were Roma-only classes. Also, in 2019/2020, there are 262 classes attended by children of Roma origin in Međimurje County, of which 205 are mixed and 57 are Roma-only classes.<sup>219</sup>

It should be noted that Roma-only classes in the Međimurje county prevail in the areas with a high percentage of Roma population where Roma pupils consequently make a high proportion of the total number of pupils in schools. For example, in the Kuršanec primary school, 71.6 % of the pupils are Roma, in the Mačinec primary school that number is even higher (80.4 %), while in the Džimorec Strelec district primary school all pupils are Roma.<sup>220</sup>

Those numbers are also indicative of a different problem – the continued existence of Roma-only settlements where Roma people live segregated from the rest of the population, often lacking basic necessities such as electricity and running water. Moreover, the fact that many Roma-only classes are in schools where the percentage of Roma pupils is already high is not an 'excuse' for the existence of Roma-only classes, but another indicator of the segregation of Roma children in education. In other words, Roma pupils are not discriminated against only by being put in separated classes within schools where they represent a minority, but also by attending schools apparently organised exclusively for them, making them even more segregated from the rest of the

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<sup>216</sup> This procedure is applied to each child entering the educational system.

<sup>217</sup> 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.

<sup>218</sup> Information obtained from the Ministry of Education, June 2020.

<sup>219</sup> Information obtained from the Ministry of Education, June 2020.

<sup>220</sup> Report on Implementation of Operative Programmes for National Minorities for the period from August 2017 to February 2019, published in August 2019.

population. Accordingly, one of the goals set in the action plan for the implementation of the 2013-2020 National Roma Inclusion Strategy for 2019 and 2020, is the elimination of all Roma-only classes by 2020.<sup>221</sup>

Compared to the previous school year, in 2018/2019, there was a decline in the number of Roma pupils enrolled in primary school. At the beginning of the 2017/2018 school year, 5 134 Roma pupils were included in the primary level of education (2 496 boys and 2 545 girls), while at the beginning of 2018/2019, there were 4 983 Roma pupils (2 496 boys and 2 487 girls) attending primary schools in Croatia. However, there has been a rise in the number of Roma pupils attending after-school care: 785 compared to 357 in 2017/2018.<sup>222</sup>

The research shows that 68.9 % of Roma children between the age of three and six are not included in preschool education. Only 11.4 % of Roma children attend preschool and 13 % attend kindergarten.<sup>223</sup> Reasons for non-attendance of preschools and kindergartens point to a variety of problems. In the first place, it is a common perception among parents that inclusion of children in such programmes is not necessary as well as a belief that the children are too small. Parents are often not employed, so they can take care of the children at home, but there is also a visible aversion towards the staff of preschool education institutions. This data point to the need for further awareness raising regarding the importance of preschool education as preparation for elementary school among the Roma population. In addition, some of the reasons mentioned by the parents why their children do not attend preschool education also point to certain defects in the institutional regulation of access to these programmes. One fifth of the parents said that these programmes are too expensive, which may indicate either inadequate knowledge of co-financing measures for members of the Roma national minority or inadequate implementation of this measure.

The People's Ombudsperson has expressed the opinion that for quality integration, it is necessary to introduce a mandatory two-year preschool programme for all Roma children, to provide transport to kindergartens and schools and to include them in extra-curricular activities, as well as to arrange courses in the Croatian language and to provide extended time in school for lower-primary pupils.<sup>224</sup> Further efforts are necessary in securing better academic achievement of Roma pupils (better school achievement, lower drop-out rates, better educational outcomes), related to the elimination of problems encountered in primary education, such as insufficient knowledge of the Croatian language, insufficient support from parents for learning and the fulfilment of school obligations, poor material conditions and a lack of necessary equipment for education etc. Apart from the importance of preschool education and training, which is a necessary prerequisite for the elimination of some of these problems, other possible measures, such as engaging greater numbers of Roma assistants should be taken into account in schools.<sup>225</sup> Although Roma secondary school enrolments have been on the increase, a

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<sup>221</sup> Action Plan for the Implementation of the 2013-2020 National Roma Inclusion Strategy for 2019 and 2020, available at <https://pravamanjina.gov.hr/UserDocsImages//dokumenti//Akcijski%20plan%20za%20provedbu%20Nacionalne%20strategije%20za%20uklju%C4%8Divanje%20Roma%20za%20razdoblje%20od%202013.%20do%202020.%20godine.%20za%202019.%20i%202020.%20godinu.pdf>.

<sup>222</sup> Report on Implementation of Operative Programmes for National Minorities for the period from August 2017 to February 2019, published in August 2019, available at <https://pravamanjina.gov.hr/UserDocsImages/arhiva/Izvje%C5%A1%C4%87e%20o%20provedbi%20Operativnih%20programa%20za%20nacionalne%20manjine%20za%20razdoblje%20od%2024.%20kolovoza%202017.%20do%2024.%20velja%C4%8De%202019.%20godine.pdf>.

<sup>223</sup> Kunac, S., Klasnić, K. and Lalić, S. (2018) *Inclusion of Roma in Croatian Society: Database Research*, Centre for Peace Studies, August 2018.

<sup>224</sup> People's Ombudsperson (2019), *Written contribution to the 3rd Review of Croatia under the Universal Periodic Review (UPR) on the situation of human rights of the UN Human Rights Council*, available at: <https://www.ombudsman.hr/wp-content/uploads/2019/10/UPR-REPORT-Croatian-Ombudsman.pdf>.

<sup>225</sup> Kunac, S., Klasnić, K. and Lalić, S. (2018) *Inclusion of Roma in Croatian Society: Database Research*, Centre for Peace Studies, August 2018.

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.<sup>226</sup>

One of the measures that also proved necessary was to provide transportation from home to kindergarten, preschool and school for children belonging to the Roma national minority living in remote, isolated settlements.

According to the available information the average distance of Roma settlements from schools and preschools is 3-10 km. In some cases, schools and preschools have been set up within the settlement, but some of the parents refused to include children in such schools, considering that the children will not receive a satisfactory education and will not learn the Croatian language, which is a prerequisite for further successful education. School founders (Counties) are obliged to organise transportation for students who have a residential address at least 3km (children from first to fourth grade) or 5km (for children from fifth to eighth grade) away from school. There have been some positive examples in Međimurje County, where transportation has been secured for students whose residential address is closer to school than this.

In 2019, the implementation of the European project 'ISKULICA-SCHOOL of equal opportunities in education' began, with the aim to ensure the full integration of children of the Roma national minority in primary education in Međimurje County.<sup>227</sup> The project has two main activities: the inclusion of children in preschool programmes and in the programme of extended stay. The preschool programme includes 148 children from primary schools in Mala Subotica, Podturen, Macinec and from Kindergarten Maslačak in Mursko Središće. The extended stay is carried out in primary schools in Podturen, Mala Subotica, Kotoriba and Orehovica, and involves 173 students. Children will be provided with additional support in completing homework, learning the language and acquiring communication and social skills.

Transportation from the Roma settlement to the institution where the programme takes place is financed for children who participate in the programmes.

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, in previous years it has been determined that almost a third (29.8 %) of Roma pupils in upper primary grades (grades 5 to 8) have trouble understanding Croatian.<sup>228</sup>

In the last few years, an increase in high school enrolment had been noticed. For example, in 2013/2014, 588 students of Roma origin attended high school, in 2015/2016 there were 746, in 2016/2017 there were 820 and at the beginning of 2017/2018 school year, there were 805 students of Roma origin. This number dropped slightly in 2018/2019, when there were 760 students of Roma origin included in high school education, and in 2019/2020, when there were 721 students of Roma origin in high school education.<sup>229</sup> The increase in high school enrolment was partly achieved by providing scholarships and securing accommodation in a student dormitory.

<sup>226</sup> Šikić-Mićanović, L., Ivatts, A. R., Vojak, D., and Geiger-Zeman, M. (2015), *Roma early childhood inclusion+Croatia report*, London, Open Society Foundations, p. 56.

<sup>227</sup> Public presentation of the project 'ISKULICA-SCHOOL of equal opportunities in education' on media conference in October 2018, available at: <https://medjimurska-zupanija.hr/2018/10/01/jednake-mogucnosti-u-obrazovanju-i-za-djecu-romske-nacionalne-manjine/>.

<sup>228</sup> Šikić-Mićanović, L., Ivatts, A. R., Vojak, D., and Geiger-Zeman, M. (2015), *Roma early childhood inclusion+Croatia report*, London, Open Society Foundations.

<sup>229</sup> Information obtained from the Ministry of Education, June 2020.

However, only around 10 % of all Roma children actually finish a four-year secondary education. The number of students in each secondary education year decreases drastically: 257 (45.5 %) in year one; 177 (30.2 %) in year two; 120 (20.4 %) in year three; and 22 (3.7 %) in year four.<sup>230</sup>

Research shows that the main reasons for the lower rate of high-school enrolments and higher drop-out rates, are financial reasons, earlier educational outcomes, marriage and pregnancy, (where it should be noted that marriage is equally common as a reason as the student's financial situation). Consequently, the data show a lower percentage of girls who were included and had finished high school education, than boys of the same age group.<sup>231</sup>

A very small number continue with studies after secondary school even though scholarships from the Roma Education Fund and other donors, including city authorities and the state, are available to Roma students. Research shows that the reasons for this are similar to the ones previously mentioned regarding high school education, which are financial reasons, poor previous education or educational results, marriage and parenthood. Therefore, additional efforts are needed to invest in raising the financial capacity of the Roma population for higher education through scholarship programmes and raising the level of support for students who are parents to continue their education.<sup>232</sup>

In 2018, the Ministry of Science and Education in cooperation with the Agency for Vocational and Adult Education adopted a decision on financing eight projects aimed at providing professional and financial support for the education of children and students belonging to the Roma national minority. The total value of the project is HRK 8 389 419.98 (approximately EUR 1 118 589) and its implementation began during the 2018/2019 school year. These projects provide students with transportation and extended stay, but also other activities such as additional and supplementary classes and extracurricular activities, summer camps and/or extracurricular activities aimed at their social integration, professional development of teachers and professional associates with the aim of raising quality and efficiency of education of students belonging to the Roma national minority, procurement of equipment and teaching aids etc.<sup>233</sup>

In 2019, the Ministry of Science and Education issued a 'Decision on Criteria and Modalities of Exercising the Right to Scholarship for Roma Secondary School Students for Academic Year 2018/2019', which provides the right to scholarships to Roma secondary school students, including those who are repeating the year. However, those repeating the year are not eligible for the full amount of scholarship (HRK 700 a month; approximately EUR 100), but they can still apply and receive HRK 300 (EUR 45) a month.<sup>234</sup> The national scholarship for Roma university students for the academic year 2018/2019 is almost twice as high as the one for secondary students and amounts to HRK 1 300 (EUR 175) which is also an increase compared to the academic year 2017/2018 when the same scholarship amounted to HRK 1 000 a month. According to the information available, scholarships for the academic year 2018/2019 was given to 25

<sup>230</sup> Šikić-Mičanović, L., Ivatts, A. R., Vojak, D., and Geiger-Zeman, M. (2015), *Roma early childhood inclusion+Croatia report*, London, Open Society Foundations.

<sup>231</sup> Kunac, S., Klasnić, K. and Lalić, S. (2018) *Inclusion of Roma in Croatian Society: Database Research*, Centre for Peace Studies, August 2018.

<sup>232</sup> Kunac, S., Klasnić, K. and Lalić, S. (2018) *Inclusion of Roma in Croatian Society: Database Research*, Centre for Peace Studies, August 2018.

<sup>233</sup> Report on implementation of Roma National Inclusion strategy for 2018, available at: <https://ljudskaprava.gov.hr/UserDocsImages//dokumenti/Izvj%C5%A1%C4%87e%20o%20provedbi%20Nacionalne%20strategije%20za%20uklju%C4%8Divanje%20Roma%20za%20razdoblie%20od%202013.%20do%202020.%20godine,%20za%202018.%20godinu.pdf>.

<sup>234</sup> Decision on Criteria and Modalities of Exercising the Right to Scholarship for Roma Secondary School Students for Academic Year 2018/2019, September 2019, available at <https://mzo.gov.hr/vijesti/odluka-o-kriterijima-i-nacinu-ostvarivanja-prava-na-stipendiju-za-redovite-ucenike-polaznike-srednjih-skola-pripadnike-romske-nacionalne-manjine-za-skolsku-godinu-2019-2020/3136>.



university students of Roma origin and for 2019/2020 to 35 university students of Roma origin.<sup>235</sup>

At the end of 2019, the Ministry for Science and Education proposed a Decision on the adoption of a curriculum for a course on 'Language and Culture of the Roma National Minority' in primary and secondary schools in Croatia. The proposed decision lays out a curriculum for an elective course on Romani language and culture that Roma pupils, as well as pupils of any nationality, could attend if they choose to do so. As described in the proposition, the aim of the course would be for Roma students to develop communication skills as well as intercultural and civil competencies that would further help them to understand their identity in the multicultural environment through learning their mother tongue and history.

Achieving higher school registration and attendance rates of Roma children and accomplishing their full inclusion in the education system is the first step to the successful inclusion of Roma in society. Accordingly, the action plan for the implementation of the 2013-2020 National Roma Inclusion Strategy for 2019 and 2020 sets out numerous measures concerning the integration of Roma children in education. Those measures are: 1, professional training of teachers and professional assistants in primary schools; 2, co-financing parents' participation in preschool education; 3, co-financing preschool education programmes; 4, co-financing transport from home to preschool for Roma children who live in isolated and segregated areas; 5, monitoring registration and schooling of Roma pupils of both sexes in primary schools; 6, monitoring registration and schooling of Roma pupils of both sexes in secondary schools; 7, inclusion of Roma pupils in after-school care programme activities aimed at better educational and social integration and offering assistance in learning Croatian; 8, securing support for Roma pupils through civil society projects; 9, elimination of Roma-only classes; 10, monthly scholarships for secondary school Roma pupils; 11, co-financing of accommodation of Roma pupils and students in student dorms; 12, monthly scholarships for Roma university students; 13, inclusion of Roma adults in literacy programmes and training for entry into employment.<sup>236</sup>

#### 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.<sup>237</sup> However, 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.

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<sup>235</sup> Information obtained from the Ministry of Education, June 2020.

<sup>236</sup> Action plan for the implementation of the 2013-2020 National Roma Inclusion Strategy for 2019 and 2020, July 2019, available at <https://pravamanijina.gov.hr/UserDocsImages//dokumenti//Akcijski%20plan%20za%20provedbu%20Nacionalne%20strategije%20za%20uklju%C4%8Divanje%20Roma%20za%20razdoblje%20od%202013.%20do%202020.%20godine.%20za%202019.%20i%202020.%20godinu.pdf>.

<sup>237</sup> 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://mjesec.ffzg.hr/revija.psi/vol%2014%20no%202%202007/Corkalo%20ajdukovic.pdf>.

In the school year 2018/2019, a total of 2 284 students belonging to the Serbian national minority were included in the primary education system, of which 1 553 were in minority education model A, according to which classes are held entirely in the language and script of a national minority, 15 were in model B, according to which classes are performed bilingually, and 716 students were in model C, according to which classes are held in Croatian language with an additional two to five school hours intended for learning (nurturing) the language and culture of the national minority. In secondary education in 2018/2019 there were 637 students belonging to the Serbian national minority, of which 529 students were in minority education model A and 108 students were in model C.

In the 2019/2020 school year, there were a total of 2 187 students belonging to the Serbian national minority in the primary education system, of which 1 500 students were in minority education model A, 7 students were in model B and 680 students were in model C. In 2019/2020, 595 students of Serbian national minority were included in the secondary education system, of which 532 students were in minority education model A and 63 students were in model C.<sup>238</sup>

In the city of Vukovar, an intercultural school project funded by Norway was initiated several years ago, with the aim of eliminating the current practice of separately educating Croatian and Serbian children and presenting a good example of integration and dialogue between Croats and Serbs. The old school building in Borovo settlement was renovated for this purpose and the plan was to enrol students by the beginning of the 2018/2019 school year. However, the plan was not realised as no one applied for enrolment because the interest of the parents that had been shown years ago when the project was first initiated had faded over the years. Consequently, the Government was obliged to return the funds invested by Norway and the renovated school building is still empty.<sup>239</sup> In other regions, minorities attend classes in Czech, Hungarian and Italian, where members of the majority also attend minority classes, while Serbian classes are exclusively attended by the Serbian minority, which presents a visible conflict between the majority and the minority communities in a war-affected region.<sup>240</sup>

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

In Croatia, national legislation prohibits discrimination in access to and the 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.<sup>241</sup> With rare exceptions,<sup>242</sup> 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.<sup>243</sup>

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<sup>238</sup> Information obtained from the Ministry of Education, June 2020.

<sup>239</sup> Media reporting on project of intercultural school in the city of Vukovar, Article published in July 2019 under the title: 'The collapse of a project that was supposed to be an example of integration and dialogue in Vukovar. The ministry returned the money to the Norwegians for the construction of intercultural school', available at: <https://www.jutarnji.hr/vijesti/hrvatska/krah-projekta-koji-je-trebao-biti-primjer-integracije-i-dijaloza-u-vukovaru-ministarstvo-vratilo-novac-norvezanima-za-gradnju-interkulture-skole/9116138/>.

<sup>240</sup> People's Ombudsperson (2019), *Report for 2018*, available at: <http://ombudsman.hr/hr/component/jdownloads/send/84-2018/1534-izvjesce-pucke-pravobraniteljice-za-2018-godinu>.

<sup>241</sup> Anti-discrimination Act, 9 July 2008, Article 8(8).

<sup>242</sup> The name of a medicinal product has to be expressed in Braille format on the packaging.

<sup>243</sup> Same-sex Life Partnership Act, 15 July 2014, Article 71.



In August 2019 there was intense media reporting on a case of discrimination on the ground of sexual orientation in the area of access to services, concerning a same sex-couple from Brazil who wanted to spend their summer holidays in Croatia. They booked an apartment in Zadar through a website intended for booking accommodation. When the owner of the apartment realised that the booking was made by a same-sex couple he refused to accept them as guests and sent them a message stating that he was not having homosexuals rent his apartment and insisting that they cancel their reservation. The state attorney's office filed an indictment against the owner of the apartment charging him with committing the criminal offence of violation of equality. According to the most recent information gathered through the media, criminal proceedings are still in progress.<sup>244</sup>

Discrimination against Roma prevails in all parts of social life, including access to and the supply of goods and services. One example that attracted media coverage during 2019 was the case of Đ.T., a Roma woman who was kicked out of an H&M store in the city of Rijeka, together with her family, including young children, with the explanation that the store management had given orders to kick groups of Roma out of the stores, especially groups with children. During the incident, Đ.T. began filming the H&M security guard who was trying to get the group to leave, in response to which the guard quickly kicked Đ.T.'s phone so violently that it hit Đ.T. in the head, leaving her with a bruised nose. After initially claiming that there had been a reason for such behaviour, the H&M management later issued an apology to Đ.T. and her family.<sup>245</sup>

The media also reported the situation of a Roma man who couldn't get a mortgage because of his Roma surname, but managed to get his loan approved only after he had changed his name to a common Croatian surname, even though his financial circumstances remained the same.<sup>246</sup>

Finally, Croatia is a popular tourist destination, and in the last few years there has been a trend, noticed by the media, that in the most popular destinations during the tourist season, tourists are offered goods and services at higher prices than the local population. In relation to this, the People's Ombudsperson issued a recommendation in which she emphasised that such behaviour constitutes discrimination against foreign nationals and that such practices must be avoided.<sup>247</sup>

a) Distinction between goods and services available publicly or privately

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

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<sup>244</sup> Article published in September 2019 under the title: 'Finally: An indictment has been filed against a man from Zadar who refused to rent an apartment to a gay couple', available at: <https://www.telegram.hr/politika-kriminal/napokon-podignuta-je-optuznica-protiv-zadranina-koji-je-odbio-gay-paru-iznajmiti-apartman/#>.

<sup>245</sup> Article published in June 2019 under the title: 'They kicked me out of H&M store just because I'm a Roma', available at: <https://www.jutarnji.hr/vijesti/hrvatska/izbacili-su-me-iz-hm-a-samo-zato-sto-sam-romkinja-rijecanka-ispricala-sto-je-dozivjela-u-trgovini-iz-lanca-tvrde-izbacili-smo-je-ali-ne-zbog-toga-9181124>, and article published on 30 July 2019 under the title: 'H&M finally apologizes to a woman from Rijeka who have been roughly kicked out from the store. She says that it is only because she is Roma: A mistake had occurred', available at: <https://www.jutarnji.hr/vijesti/hrvatska/hm-se-konacno-ispricao-rijecanki-koju-su-grubo-istjerali-iz-trgovine-ona-kaze-da-je-to-samo-zato-sto-je-romkinja-doslo-je-do-propusta/9185276/>.

<sup>246</sup> Article published in September 2019 under the title: 'How we got out of the Roma settlement, started a business and developed the talent of our genius son', available at: <https://www.telegram.hr/price/kako-smo-se-izvukli-iz-romskog-naselja-pokrenuli-biznis-i-krenuli-razvijati-talent-naseq-genijalnog-sina/>.

<sup>247</sup> People's Ombudsperson analysis: 'Access to services - citizenship as a basis for discrimination?', October 2019, available at: <https://www.ombudsman.hr/hr/analiza/>.

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

In Croatia, national legislation prohibits discrimination in the area of 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.<sup>248</sup>

The Same-sex Life Partnership Act prohibits discrimination based on same-sex partnership, in access to housing.<sup>249</sup> LGBT persons often face discrimination in this field.<sup>250</sup> 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.<sup>251</sup>

In its judgment in *Guberina v. Croatia*<sup>252</sup> (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. The People's Ombudsperson has repeatedly raised the problem of members of the Serbian national minority regarding the supply of electricity and water in areas settled by Serb returnees, especially in rural and underdeveloped regions. The People's Ombudsperson expressed the opinion that Serbs who returned to their pre-war places of residence experience discrimination, often on the grounds of their nationality, age and economic status as they are mostly elderly people on low incomes who live in undeveloped rural areas. Basic services such as water and electricity are often unavailable to them. In addition, Serbs are increasingly exposed to the negative sentiments of the majority population.<sup>253</sup>

There has been some positive action regarding the housing problem of the Serbian national minority. Reconstruction of the electricity system in some of the settlements populated mostly by members of the Serbian national minority has been carried out. The Government allocated financial support for further electrification and made a decision on the implementation of the programme for financing local infrastructure and rural development projects in areas inhabited by more than 5 % members of national minorities.<sup>254</sup>

In her report for 2019, the People's Ombudsperson welcomed the intensified efforts invested in the programme of rehabilitation and reconstruction of electricity network connections in areas inhabited mainly by Serb returnees. The People's Ombudsperson expressed the view that after years of inactivity in this regard, the projects and financial

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<sup>248</sup> Anti-discrimination Act, 9 July 2008, Article 8 (1)(6).

<sup>249</sup> Same-sex Life Partnership Act, 15 July 2014, Articles 71, 72 and 79.

<sup>250</sup> Organisation Zagreb Pride, [http://www.zagreb-pride.net/new/wp-content/uploads/2016/01/brutalna\\_stvarnost\\_hr\\_web.pdf](http://www.zagreb-pride.net/new/wp-content/uploads/2016/01/brutalna_stvarnost_hr_web.pdf).

<sup>251</sup> 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 no information is available regarding a potential conclusion of the case. The case was reported about in the Gender Ombudsperson's *Report for 2014* available at: [https://www.prs.hr/attachments/article/1555/01\\_IZVJESCE\\_2014\\_CJELOVITO.pdf](https://www.prs.hr/attachments/article/1555/01_IZVJESCE_2014_CJELOVITO.pdf).

<sup>252</sup> European Court of Human Rights, *Guberina v. Croatia*, [GC] No. 23682/13, 22 March 2016 [http://hudoc.echr.coe.int/eng#{\"fulltext\":\[\"guberina\"\],\"documentcollectionid2\":\[\"GRANDCHAMBER\"\],\"CHAMBER\":\[\"\"\"001-161530\"\]\"}\]](http://hudoc.echr.coe.int/eng#{\).

<sup>253</sup> People's Ombudsperson (2019), *Written contribution to the 3rd Review of Croatia under the Universal Periodic Review (UPR) on the situation of human rights of the UN Human Rights Council*, <https://www.ombudsman.hr/wp-content/uploads/2019/10/UPR-REPORT-Croatian-Ombudsman.pdf>.

<sup>254</sup> People's Ombudsperson (2019) *Report for 2018*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

resources implemented during 2019, as well as the plans for 2020, indicate significant progress that will certainly contribute to increasing the quality of life in these underdeveloped rural areas.<sup>255</sup>

a) 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 their housing. Only 25 % of Roma households are integrated with the majority population, while others live in separated settlements with much poorer housing conditions where utility and infrastructural services are not available. The Ombudsperson has noted that better and more efficient cooperation and coordination in solving Roma-specific problems should be established.<sup>256</sup>

In April 2019, the annual programme for housing solutions and improvement of living conditions of the members of Roma national minority was adopted.<sup>257</sup> The programme will be implemented through two schemes: scheme 1 relates to housing and scheme 2 relates to the improvement of living conditions for Roma people. The first scheme provides for one of the following: the donation of building material for renovation, extension, and completion of construction of family houses owned or co-owned by Roma or donation of building material for the construction of a house on building land owned or co-owned by Roma. Additionally, the state provides financial assets in the amount of 25 % of the value of the building material, which money can only be used for paying construction costs. Furthermore, scheme 2 provides for the donation of household appliances (fridges, washing machines, stoves and so on) and furniture (chairs, tables, closets). However, the criteria for obtaining donations in the described way are not completely clear as the programme only lists factors that exclude certain individuals from being beneficiaries. For example, a person convicted of a crime against humanity and human dignity or a crime against the Republic of Croatia as well as those sentenced to a term of three or more years of imprisonment for crimes against life and body or crimes against sexual freedom, marriage, family and children cannot be beneficiaries of assistance under the programme. Considering that no other requirements are set out, all Roma are eligible to apply. The available budget is allocated on a first-come, first-served basis. The financial value of the programme is HRK 1 500 000, approximately EUR 200 000.

The lack of social amenities in the Roma settlements has been recognised as one of the main problems of Roma in Croatia. Therefore, in 2019, the Roma Union of Croatia and local self-government units signed five agreements concerning the construction of playing fields in Roma settlements in the towns of Slavonski Brod, Belišće, Čakovec, and Beli Manastir, and in Nedelišće municipality. Furthermore, in May 2019, the construction of sports fields in the Roma settlements in Đurđevac and Kuršanec were completed.

Because of the lack of basic facilities in Roma settlements, in 2019 there were several projects concerning electrification and urbanisation in those areas. For example, street lighting was installed in the Roma settlement Zlatnica and in September 2019, the Croatian electricity company (HEP) agreed to install 176 new electric connections in Roma settlements. It is expected that more connections will be installed in the future.

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<sup>255</sup> People's Ombudsperson (2020), *Report for 2019* available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/#1556196748399-8e18fee7-b3c6>.

<sup>256</sup> People's Ombudsperson (2019), *Written contribution to the 3rd Review of Croatia under the Universal Periodic Review (UPR) on the situation of human rights of the UN Human Rights Council*.

<sup>257</sup> Annual Programme for Housing Solutions and Improvement of Living Conditions of the Members of Roma National Minority. Available at <https://sduosz.gov.hr/UserDocsImages/dokumenti/20190516122657.pdf>.

The biggest project regarding housing in Roma settlements is the one in Darda municipality, which has been on-going since 2014 and is expected to be finished by 2023. The plan is to build 87 family houses and 2 playgrounds with the aim of better including Roma in the social and economic life of all inhabitants of Darda. Also, the specific goal is to improve the quality of living conditions and conditions for the upbringing and schooling of children and youth, to improve the chances of employment of Roma and to increase the value of the real estate. The houses will form a new settlement, but are exclusively intended for members of Roma community, which will result in the creation of a new Roma settlement.

In this regard, it should be mentioned that the project itself, although mostly accepted with approval, has also encountered some controversy, due to its very name: 'Construction of Roma Houses' and the accompanying public tender in which Darda municipality announced a public competition for 'constructors of Roma houses'. This was negatively received in the media who were satirically wondering whether Roma houses are in any way different from Croatian houses and whether the constructors of Roma houses have to have special skills in comparison to constructors of regular houses. Additional controversy has been provoked by a statement from municipality's mayor, who saw nothing wrong with the name of the project and publicly stated that of course that these houses would be Roma houses, and not houses for Croats, Serbs or mujahideens.<sup>258</sup> Although this kind of reporting was partly satirical, it points to the prevailing attitude towards Roma as 'separate' from the rest of the population.

Because of the general lack of inclusion and numerous prejudices directed towards Roma, leaving the Roma-only settlements can be very difficult, even when a person has a high motivation to do so. An example of the difficulties that the Roma face can be found in the story of a Roma man whose house loan applications were repeatedly denied until he decided to replace his Roma surname with a Croatian one. Despite all other circumstances remaining the same, after he had changed his name, he managed to get a loan approved and was consequently able to buy a house outside the Roma settlement, which has immensely improved the quality of life for him, his wife and children.<sup>259</sup>

As the majority of Roma in Croatia live in one of the 13 Roma settlements in Međimurje, that is the area that faces the biggest consequences of social exclusion, as there are numerous statements of the locals reporting Roma people for committing various types of offences and crimes against the Croatian inhabitants as well as against other Roma in Međimurje. In 2019, the media reported on a three-metre high barbed-wire wall built on the border between the Pribislavec municipality, which has a majority of Croatian inhabitants, and the Roma settlement right next to it. According to A.P. who built the wall, he is not the only one that has a barbed wire in his yard, as he and other locals are doing everything they can to protect themselves from the Roma who steal their animals, throw rocks at them and their houses, break into their cars and yards, etc. These events prompted A.P. and his neighbors to organise a peaceful demonstration in Čakovec, the capital of the Međimurje county with the aim of persuading the state institutions to take steps to stop violence and to combat the issues of safety and other problems related to the Roma in Pribislavec and all of Međimurje. It is important to note that many Roma live in peaceful coexistence with the Croatians, but a minority still cause problems that are then wrongfully attributed to the Roma community as a whole.<sup>260</sup>

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<sup>258</sup> Article published in January 2019 under the title: 'Municipality is looking for builders of 'Roma Houses'', available at: <https://www.jutarnji.hr/vijesti/hrvatska/opcina-trazi-graditelja-romskih-kuca-nego-kakve-su-nego-romske-nece-valjda-mudzahedini-u-njih-useliti/8279780/>.

<sup>259</sup> Article published in September 2019 under the title: 'How we got out of the Roma settlement, started a business and developed the talent of our genius son', available at: <https://www.telegram.hr/price/kako-smo-se-izvukli-iz-romskog-naselja-pokrenuli-biznis-i-krenuli-razvijati-talent-naseg-genijalnog-sina/>.

<sup>260</sup> Media reporting on demonstrations against Roma in the city of Čakovec, Article published on 2 June 2019, under the title: 'REACTIONS TO THE PROTEST IN ČAKOVAC. 'It is time for the Government to start solving the problems of the Roma minority'; 'This encourages hate speech', available at: <https://www.jutarnji.hr/vijesti/hrvatska/dijeli-ih-trometarski-zid-s-bodljikavom-zicom-reporteri-jutarnjeg->

In her report for 2019, the People's Ombudsperson pointed out as positive the new programmes for improving the quality of life of Roma, through which in 2019 about 900 Roma households received assistance in the form of household appliances and furniture, or in building materials for renovation, upgrade or completion of family houses.

At the same time, the Ombudsperson warned of a negative practice in Sisak-Moslavina County, where Roma found themselves in a dispute between the city of Sisak and the state regarding the obligation to register the cadastral state of the land on which the members of Roma community built their houses. This prevents Roma from registering ownership and legalising houses and also presents an obstacle for them in applying for the aforementioned projects aimed at improving living conditions.

Also, the Ombudsperson pointed out the non-implementation of the procedure of donating real estate owned by the state to Roma in Kuršanec settlement because the city of Čakovec does not want to give up its financial claims against the state. For this reason, members of the Roma community cannot register ownership of their houses and are prevented from, for example, installing electricity and water connections, since that can be done only by the legal owner of the property.<sup>261</sup>

There have been no anti-discrimination cases in relation to housing involving Roma. It is assumed that the reason for lack of litigation involving the Roma, even though they are one of the groups most affected by discrimination, is their poor economic status, lack of education, lack of legal information and assistance. Also, the prevailing attitude that discriminatory treatment of Roma is normal and usual and that nothing will change by complaining, as well as a general lack of trust in the relevant bodies also forms a deterrent to initiating court proceedings.

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[sa-sukobljenim-romima-i-hrvatima-travu-moramo-kositi-doslovce-s-kacigom-na-glavi/8967161/](https://www.jutarnji.hr/vijesti/hrvatska/reakcije-na-prosvjed-u-cakovcu-posavec-vrijeme-je-da-vlada-pocne-rjesavati-probleme-romske-manjine-kajtazi-ovim-se-potice-govor-mrznje/8954408/),  
<https://www.jutarnji.hr/vijesti/hrvatska/reakcije-na-prosvjed-u-cakovcu-posavec-vrijeme-je-da-vlada-pocne-rjesavati-probleme-romske-manjine-kajtazi-ovim-se-potice-govor-mrznje/8954408/>.

<sup>261</sup> People's Ombudsperson (2020), *Report for 2019*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/#1556196748399-8e18fee7-b3c6>.

## 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 will 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.<sup>262</sup> This exception has to be interpreted in proportion to the aim and purpose for which it is provided.<sup>263</sup>

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 the circumstances under which they are performed, considering the value system of the organisation, religion or belief of a person presents a genuine, legitimate and justified occupational requirement. The exception should have a legitimate aim and be reasonable and necessary. The act is in conformity with Article 4(2) of the Employment Equality Directive taking into account relevant case law of the CJEU and ECtHR in *I.R. v. J.Q.* (C-48/1) and *Egenberger* (C-414/16).<sup>264</sup>

#### – 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 be hired or dismissed from certain jobs when that job is in certain state entities, or in certain entities financed by the state. This is neither provided for nor regulated by national law, but only by the agreements with the Holy See, which causes significant problems in practice.<sup>265</sup> 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.

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<sup>262</sup> Anti-discrimination Act, 9 July 2008, Article 9(2)(4).

<sup>263</sup> Anti-discrimination Act, 9 July 2008, Article 9(3).

<sup>264</sup> Anti-discrimination Act, 9 July 2008, Articles 9(2)(5) and 9(3).

<sup>265</sup> 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,<sup>266</sup> Croatia undertook to provide Catholic religious education in all public primary and secondary schools as well as in preschool institutions as a regular subject for all students who choose to take those classes (with exams and grades as for any other subject and without the option to give it up during a school year).<sup>267</sup> According to the agreement, these classes can be taught only by qualified teachers with a certificate of canonical mandate issued by the proper 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,<sup>268</sup> 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.<sup>269</sup> Among other things, such agreements regulate the subject of religious education, which may be performed in preschool 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.

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.

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 Court<sup>270</sup> 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 school authorities had tried to secure another teaching position for him.<sup>271</sup> 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*

<sup>266</sup> Official Gazette, International Agreements 2/1997.

<sup>267</sup> According to some reports, 93.57 % children chose to take Catholic religious education in public schools. Religious classes are usually organised at the beginning or the end of the school day, but there are reports that in some schools, children who chose not to take those classes have to wait for the next class and do not have other organised activities. (Forum for Freedom in Education (2011), <http://www.fso.hr/wp-content/uploads/2015/06/Ancic-Puhovski-Vjera-u-obrazovanje-i-obrazovanje-u-vjeri.pdf>).

<sup>268</sup> 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.

<sup>269</sup> Act on the legal status of religious communities, 4 July 2002, Official Gazette 83/2002, 73/2013, Article 9.

<sup>270</sup> Supreme Court of the Republic of Croatia, *P.T. v. Gimnazija E.K.*, Revr. 499/08, 3 December 2008.

<sup>271</sup> European Court of Human Rights (ECtHR), *Travaš v. Croatia*, [GC] 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]}).

*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.

Bearing in mind the judgment of the CJEU in *IR v. JQ*, it can be concluded that the decisions of domestic courts in the case *P.T. v. Croatia* are in line with the opinion of the CJEU. In the case of *P.T.* the applicant was directly involved in teaching and promoting a Catholic ethos, therefore his occupational activities were of importance for the promotion of that ethos and could not be compared to occupational activities performed by the applicant in the CJEU case.<sup>272</sup>

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

In Croatia, national legislation does not provide for an exception for the armed forces in relation to age discrimination (Article 3(4), Directive 2000/78).

However, the Act on service in the armed forces,<sup>273</sup> as *lex specialis*, provides general requirements 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 30.<sup>274</sup> An active soldier can be promoted to lower officer status (*dočasnik*) if not older than 30,<sup>275</sup> and to officer status (*časnik*) if not older than 30.<sup>276</sup> 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 in relation to age discrimination.

The Police Act,<sup>277</sup> 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,<sup>278</sup> which regulates employment in the prison services, provides an exception for the judicial police (*pravosudna policija*)<sup>279</sup> in relation to health. The required ability of individuals in the judicial police is to be established by the health committee appointed by the Justice Minister. The Judiciary Act also sets a condition for a person to be admitted in judicial police that they are a maximum of 30 years of age.<sup>280</sup>

#### **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).

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<sup>272</sup> Court of Justice of the European Union, Case C-68/17, Decision of 11 September 2018, EU:C:2018:696.

<sup>273</sup> Act on service in the armed forces, 14 June 2013, *Zakon o službi u ružanim snagama Republike Hrvatske*, Official Gazette 73/13, 75/2015, 50/2016, 30/18, 125/19.

<sup>274</sup> Act on service in the armed forces, Article 36.

<sup>275</sup> Act on service in the armed forces, Article 40.

<sup>276</sup> Act on service in the armed forces, Article 43.

<sup>277</sup> Police Act, 31 March 2013, *Zakon o policiji*, Official Gazette 34/2011, 130/2012, 89/2014, 151/2014, 33/2015, 121/2016, 66/19, Article 47.

<sup>278</sup> Judiciary Act, 14 March 2013, *Zakon o sudovima*, Official Gazette 28/13, 33/2015, 82/2015, 82/2016, 67/18, 126/19, Article 57.

<sup>279</sup> 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.

<sup>280</sup> Judiciary Act, 14 March 2013, *Zakon o sudovima*, Official Gazette 28/13, 33/2015, 82/2015, 82/2016, 67/18, 126/19, Article 57.



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 for any other exception, it should have a legitimate aim and be reasonable and necessary.<sup>281</sup> 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.

In Croatia nationality means affiliation of a person to an ethnic group or nation conceptually defined by ethnicity. As such, nationality can be considered to be protected as a separate discrimination ground under the Anti-discrimination Act as 'national origin'. In this way, nationality is closely linked with ethnicity. However, if nationality is interpreted as citizenship, it is not directly mentioned in the Anti-discrimination Act as a protected ground.

For example, a person can be Croatian citizen but Serb by nationality, and vice versa. Also, a member of Roma Community is by ethnicity and nationality Roma, but by citizenship, Croatian.

In this regard, it is notable that in Croatia, when making a formal request to the relevant authorities (for example, for the issuing of an identity card or passport, or a divorce decision), as well as when enrolling in college and school, it is normal to fill out official forms in which the person is asked to state their citizenship and nationality (ethnicity).

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

There is no definition in the 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.<sup>282</sup>

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 Federal Republic of Yugoslavia (SFRY), which consisted of six republics. The Croatian legislation regarding citizenship, following independence in 1991, had adverse consequences for people 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 whether they had a citizenship of the republic where they lived. After Croatia's independence, people who did not have Croatian republican citizenship became aliens in Croatia. Although ethnic Croats in this 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 and they had to fulfil all the numerous requirements for citizenship as third country nationals.<sup>283</sup>

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<sup>281</sup> Anti-discrimination Act, 9 July 2008, Article 9(2)(9).

<sup>282</sup> Citizenship Act, 8 October 1991, *Zakon o državljanstvu*, Official Gazette 53/1991, 70/1991, 28/1992, 113/1993, 4/1994, 130/2011, 110/2015, 102/19.

<sup>283</sup> 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>.

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.<sup>284</sup> Obtaining citizenship for Roma people remains an issue today and there is still a significant number of Roma with unresolved citizenship status.<sup>285</sup>

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

In 2016, the UNCHR registered 2 800 Roma without permanent or temporary residence who were at risk of statelessness.<sup>286</sup>

A relevant case was the subject of proceedings before the European Court of Human Rights. The applicant B.H. filed an application arguing that he had been unlawfully erased from the register of residence in Croatia which had created an on-going situation making it impossible for him to regularise his residence status. The applicant, like many others, had not been informed of the erasure and had not had an opportunity to challenge it before the relevant authorities, since the erasure was carried out automatically and without prior notification. In his application he stated that erasure from the residence register and lack of personal documents had led to his loss of access to social and economic rights. The European Court of Human Rights found a violation of Article 8 of the European Convention, stating that in the particular circumstances the state had failed fulfil its positive obligation to provide an effective and accessible procedure or combination of procedures that would enable the applicant to decide on matters of his continued residence and status in Croatia, with due respect for the interests of his private life, protected under Article 8 of the Convention.<sup>287</sup>

In 2019, the Croatian Parliament agreed amendments to the Citizenship Act, which are primarily aimed at facilitating the process of acquiring Croatian citizenship for Croats outside the Republic of Croatia.<sup>288</sup> The People's Ombudsperson had been involved in the process of agreeing the amendments and made her recommendations during discussions at parliamentary committee sessions to correct certain omissions and to facilitate the procedure of obtaining citizenship for expatriates and other members of the Croatian ethnic group, as well as for the members of national minorities in the Republic of Croatia.<sup>289</sup> It remains to be seen whether these legislative changes will positively contribute to resolving the citizenship status of members of the Roma community.

In her annual report for 2019, the Ombudsperson pointed out that the amendments to the Citizenship Act unfortunately once again failed to adopt adequate measures to solve the problems of acquiring citizenship for persons who have lived in the Republic of Croatia for a long time and who are not of Croatian nationality (ethnicity). The Ombudsperson stated that if members of the Croatian nation are allowed to acquire

<sup>284</sup> 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.

<sup>285</sup> People's Ombudsperson (2015), *Ombudsperson's Report for 2014*, p.33, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

<sup>286</sup> UNHCR's intervention as a third party in the ECtHR case of *Hoti v. Croatia*, No. 63311/14, 26 April 2018.

287 European Court of Human Rights, *Hoti v. Croatia*, [GC] No. 63311/14, 26 April 2018. available at: <https://hudoc.echr.coe.int/eng/%7B%22fulltext%22:%5B%22hoti%22%22%22%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%22CHAMBER%22%22itemid%22:%5B%22001-182448%22%22%22%7D>.

288 Citizenship Act, 8 October 1991.

<sup>289</sup> People's Ombudsman Statement on legislative amendments of Citizenship Act, available at: <https://www.ombudsman.hr/hr/usvojene-izmjene-zakona-o-hrvatskom-drzavljanstvu-u-skladu-s-preporukama-pucke-pravobraniteljice/>.

citizenship under more favourable conditions, this should also be possible for those who have a strong connection with the Republic of Croatia, regardless of the fact that they are not ethnic Croats.

This refers to members of Roma community who, prior to gaining Croatian citizenship cannot acquire rights which belong to them as members of a national minority, since in order to become a minority, they first have to acquire citizenship. Therefore, the Ombudsperson repeated her recommendation from the *Report for 2018* and stated that existing rules are unfair to persons who are not ethnic Croats but who live in and have strong ties with Croatia.<sup>290</sup>

#### **4.5 Health and safety (Article 7(2) Directive 2000/78)**

In Croatia, there are no exceptions specifically in relation to disability and health and safety as allowed under Article 7(2) of the Employment Equality Directive 2000/78).

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

##### **4.6.1 Direct discrimination**

In Croatia, national law provides for specific exception for direct discrimination on the ground of age.

According to the Anti-discrimination Act, direct discrimination is justified only in situations designated as exceptions to discrimination. All exceptions should be interpreted in a way that is proportionate to the aim and purpose for which they have been set.<sup>291</sup>

##### **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;<sup>292</sup>
- 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;<sup>293</sup>
- 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;<sup>294</sup>
- 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;<sup>295</sup>

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<sup>290</sup> People's Ombudsperson (2020), *Report for 2019*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

<sup>291</sup> Anti-discrimination Act, 9 July 2008, Article 9(3).

<sup>292</sup> Anti-discrimination Act, 9 July 2008, Article 9(2)(4).

<sup>293</sup> Anti-discrimination Act, 9 July 2008, Article 9(2)(6).

<sup>294</sup> Anti-discrimination Act, 9 July 2008, Article 9(2)(8).

- 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<sup>296</sup> (e.g. this exception would justify an age limit for adoptive parents).<sup>297</sup>

All exceptions should be interpreted in a way that is proportionate to the aim and purpose for which they have been set.<sup>298</sup>

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.<sup>299</sup>

#### c) Fixing of ages for admission or entitlement 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.

### 4.6.2 Special conditions for young people and older workers

In Croatia, conditions are set by law for younger workers in order to promote their vocational integration.

The Labour Act provides possibilities for workers without professional experience, which are mostly younger workers, to enter into a special kind of working contract with their employer called 'occupational training without commencing employment'.<sup>300</sup> A person who is employed for the first time in the profession for which he/she was educated may be employed as an intern with the aim of being trained for independent work during the internship.<sup>301</sup>

The Labour Act also provides for the obligation of the employer to provide the employee with education, training and advanced training.

In Croatia there is an active employment policy through various measures aimed at encouraging the employment of hard-to-employ groups of workers. Among these measures, several are aimed at younger people with no work experience, and consist of

<sup>295</sup> Anti-discrimination Act, 9 July 2008, Article 9(2)(8).

<sup>296</sup> Anti-discrimination Act, 9 July 2008, Article 9(2)(10).

<sup>297</sup> 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.

<sup>298</sup> Anti-discrimination Act, 9 July 2008, Article 9.

<sup>299</sup> Anti-discrimination Act, 9 July 2008, Article 9.

<sup>300</sup> Labour Act, 15 July 2014, Article 59.

<sup>301</sup> Labour Act, 15 July 2014, Article 55.

financial incentives in the form of salary co-financing for employers who hire persons without work experience.

#### **4.6.3 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 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.<sup>302</sup> A minor cannot be employed in work that may harm his or her safety, health, morality or development.<sup>303</sup>

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.<sup>304</sup> 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.

Aside from that general rule, provisions on minimum and maximum age requirements are very rare and limited to certain professions. A person older than 30 cannot be employed for the first time as a firefighter,<sup>305</sup> 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.<sup>306</sup> There are also special age requirements for the armed forces (section 4.3 above).

#### **4.6.4 Retirement**

##### **a) State pension age**

In Croatia, there is a state pension age at which individuals must begin to collect their state pensions (65 years of age).<sup>307</sup> The Ministry of Labour and Pension Insurance had announced a pension insurance reform by which the state pension age would be raised to 67, which caused resentment among the general public. During 2019, the labour unions started a referendum initiative and collected a sufficient number of citizens' signatures for a referendum on the issue, following which the Government gave up the reform.

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.<sup>308</sup> 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 employee<sup>309</sup> or as a self-employed short-term contractor (*ugovor o djelu*).

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<sup>302</sup> Labour Act, 15 July 2014, Article 19.

<sup>303</sup> Labour Act, 15 July 2014, Article 21.

<sup>304</sup> Anti-discrimination Act, 9 July 2008, Article 9(2)(7).

<sup>305</sup> Fire-Fighting Act, 20 December 2019, *Zakon o vatrogastvu*, Article 51, Official Gazette 125/19.

<sup>306</sup> According to the available information, this had not been challenged in court.

<sup>307</sup> Labour Act, 15 July 2014, Article 112.

<sup>308</sup> Labour Act, 15 July 2014, Article 112.

<sup>309</sup> Pension Insurance Act, 24 December 2013, Article 37(6), Official Gazette 157/2013, 151/2014, 33/2015, 93/2015, 120/2016, 18/2018, 62/2018, 115/18, 102/2019.

b) Occupational pension schemes

In Croatia, there is a standard 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.<sup>310</sup>

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

An individual can collect a pension and still work.

c) State imposed mandatory retirement ages

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

According to the Labour Act,<sup>311</sup> 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 applied equally 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 are regulated by special laws. The mandatory retirement age for judges is 70;<sup>312</sup> for civil servants it is 65 and 15 years of pensionable service;<sup>313</sup> for public attorneys (and their deputies) it is 70;<sup>314</sup> and for army employees it is 65 and 15 years of pensionable service.<sup>315</sup>

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.<sup>316</sup>

Employers often instruct older employees who have not yet reached retirement age to discontinue their employment by accepting the incentive of severance pay for mutual agreement on the termination of employment before retirement. This practice is especially noticeable in larger firms.

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.

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<sup>310</sup> Voluntary Pension Funds Act, 31 January 2014, *Zakon o dobrovoljnim mirovinskim fondovima*, Article 127.

<sup>311</sup> Labour Act, 15 July 2014, Article 112.

<sup>312</sup> Act on State Judiciary Council, 21 October 2010, *Zakon o Državnom sudbenom vijeću*, Official Gazette [116/2010](#), [57/2011](#), [130/2011](#), [13/2013](#), [28/2013](#), [82/2015](#), [67/2018](#), [126/2019](#), Article 77(2)(5).

<sup>313</sup> Civil Servants Act, 27 July 2005, *Zakon o državnim službenicima*, Official Gazette [92/2005](#), [140/2005](#), [142/2006](#), [77/2007](#), [107/2007](#), [27/2008](#), [34/2011](#), [49/2011](#), [150/2011](#), [34/2012](#), [38/2013](#), [37/2013](#), [1/2015](#), [138/2015](#), [61/2017](#), [70/2019](#), [98/2019](#), Article 137(1)(3).

<sup>314</sup> Act on the State Attorney's Office, 25 July 2018, *Zakon o državnom odvjetništvu*, Official Gazette no. 67/18, Article 27.

<sup>315</sup> Act on service in the armed forces, 14 June 2013, Article 20 (21).

<sup>316</sup> Labour Act, 15 July 2014, Article 112.

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 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 %).<sup>317</sup>

However, there are cases where a legitimate aim does not exist, as in the case of the 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,<sup>318</sup> 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.<sup>319</sup>

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.<sup>320</sup>

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.<sup>321</sup>

#### 4.6.5 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.<sup>322</sup>

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

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<sup>317</sup> Trading Economics (2020) 'Croatia Youth Unemployment Rate': <http://www.tradingeconomics.com/croatia/youth-unemployment-rate>.

<sup>318</sup> They do not have to retire, but they cannot work as doctors or pharmacists.

<sup>319</sup> Health Care Act, 14 November 2018, Article 159.

<sup>320</sup> Zagreb Administrative Court, no. UsI-4894/13, 20 April 2015.

<sup>321</sup> High Administrative Court of the Republic of Croatia, No. UsI-828/15, 23 August 2017.

<sup>322</sup> Labour Act, 15 July 2014, Article 115.

care responsibilities. The law does not specify in what way age should influence the employer's decision.<sup>323</sup>

b) Age taken into account for redundancy compensation

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

The amount of compensation for redundancy is not affected by the age of the worker but by the length of his or her employment with the same employer.<sup>324</sup>

**4.7 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.<sup>325</sup>

**4.8 Any other exceptions**

In Croatia, other exceptions to the prohibition of discrimination provided in national law are the following:

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 is 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 Same-sex Life Partnership Act, which later entered into force, partially regulated the rights of same-sex partners arising from family relations in accordance with the rights of married couples. However, the questions of adoption, foster care and medically assisted reproduction were not regulated by the Same-sex Life Partnership Act. These areas are still regulated exclusively by the Family Act, the Foster Care Act<sup>326</sup> and the Medically Assisted Procreation Act, which do not allow adoption or medically assisted reproduction rights to same-sex couples.<sup>327</sup>

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<sup>323</sup> Labour Act, 15 July 2014, Article 115.

<sup>324</sup> Labour Act, 15 July 2014 Article 126.

<sup>325</sup> Anti-discrimination Act, 9 July 2008, Article 9(2)(1).

<sup>326</sup> Foster Care Act, 1 January 2019, *Zakon o udomiteljstvu*, Official Gazette 105/18.

<sup>327</sup> Medically Assisted Procreation Act, Official Gazette 86/2012, *Zakon o medicinski pomognutoj oplodnji*, 4 August 2012.



At the end of 2019, a heated public debate in Croatia began regarding the rights of the same-sex life partners to foster children. This was initiated by the ruling of the Zagreb Administrative Court in the case of a registered same-sex couple who submitted an application to the social welfare centre requesting permission to become foster parents. Their application was dismissed on the ground that the Foster Care Act stipulates that a foster family consists of a foster parent, the foster parent's spouse (the person they are married to) and other relatives who live in the same household.<sup>328</sup> Consequently, as the law doesn't explicitly mention that registered same-sex life partners can become foster parents, the centre decided to dismiss the claimants' application without considering its merits. After the Ministry of Demographics, Family, Youth and Social Policy confirmed the Centre's decision, the couple filed a claim before the Zagreb Administrative Court. In its judgment, issued in December 2019, the court emphasised the fact that the Foster Care Act does not lay down any requirements regarding the sexual orientation of the future foster parents as well as the fact that, by using this formalistic approach, a single homosexual person could become a foster parent, but they would not be given the same opportunity if they were in a same-sex life partnership, which is completely illogical and not in accordance with the purpose and the spirit of the Foster Care Act. The court ordered the centre to conduct new proceedings and reach a decision about the merits of the claimants' application.<sup>329</sup>

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

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<sup>328</sup> Foster Care Act, 1 January 2019, Article 9.

<sup>329</sup> Decision of the Zagreb Administrative Court, 29 December 2019, UsI-1699/18.

## **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 will not be deemed to be discrimination in the case of a positive action, 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.<sup>330</sup> This exception is to be interpreted in proportion to the aim and purpose for which it is provided.<sup>331</sup> 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 about 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. Those acts provide a positive action measure in respect of ethnic origin such that representation of ethnic minorities must be taken into account when employing civil servants and judges.

An example of a positive action measure on the ground of age in the area of housing is the state subsidy of housing loans for persons under the age of 45. It is a measure of state financial assistance intended to facilitate housing for the 'younger' population by repaying a part of their mortgage and is regulated by the Act on subsidising housing loans.<sup>332</sup> Another example is the free flu vaccination for people aged 65 or older.<sup>333</sup>

An example of a positive active measure in employment is the financial benefits for employers who employ a person under the age of 30, which is an incentive aimed at increasing youth employment.

### **b) Quotas in employment for people with disabilities**

In Croatia national law provides for quotas for people with disabilities in employment.

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 must pay a monthly fee in the amount of 20 % of the minimum salary in the Republic of Croatia for each person with disability he was obliged to employ in order to fulfil the prescribed quota. These funds are used for the sustainability and development of the professional rehabilitation of persons with disabilities, incentives for the employment of persons with disabilities and funding of projects and programmes for the employment of persons with disabilities.<sup>334</sup>

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<sup>330</sup> Anti-discrimination Act, 9 July 2008, Article 9(2)(2).

<sup>331</sup> Anti-discrimination Act, 9 July 2008, Article 9(3).

<sup>332</sup> Act on subsidising housing loans, 15 June 2017, Official Gazette 65/17, 61/18, 66/19.

<sup>333</sup> Croatian Institute of Public Health, Announcement of 28 October 2019, available on <https://www.hzjz.hr/sluzba-epidemiologija-zarazne-bolesti/pocinjje-cijepljenje-protiv-gripe-2/>.

<sup>334</sup> Act on professional rehabilitation and employment of persons with disability, Article 10(6).

A positive trend regarding the employment of people with disabilities has been noticed, with the largest recorded increase since the implementation of the Act on professional rehabilitation and employment of persons with disability. During 2019, a total of 3 948 people with disabilities were registered as unemployed at the Croatian Employment Service, which makes 4.5 % of the total number of people registered as unemployed.<sup>335</sup> The Disability Ombudsperson's report for 2019 states that 1 747 persons or 29.4 % of unemployed persons with disabilities have no work experience at all. That lack of work experience for persons with disabilities is another obstacle to their employment in the open labour market. Given that most people with disabilities are long-term unemployed, which leads to a loss of acquired knowledge and skills and, in addition to disability, further contributes to their non-competitiveness in the open labour market, the Ombudsperson stressed the importance of referring unemployed persons with disabilities to vocational rehabilitation procedures.<sup>336</sup>

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. Employers can fulfil their obligation on quota employment of persons with disabilities only by employing people who are registered in the registry run by Croatian Pension Insurance Institute, which compiles the data on quota compliance. Fees are paid directly to the state budget on the basis of the financial report submitted to the tax administration office.

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.<sup>337</sup> 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 Medical Assessment 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.

In 2019, 11 529 persons with disabilities were registered as employed, which shows an increase in the employment in comparison to previous year when there were 10 836 employed persons with disabilities.<sup>338</sup>

According to the most recent information available, in 2018 the employment quota obligation was fully met by 1 270 employers who employ 3 658 people with disabilities. An additional 1 386 employers partially met the prescribed quota, which means that they were obliged to pay compensation for the remaining part of the quota which they had not met. Therefore, in 2018, every seventh employer, liable for quota employment of persons with disabilities, fulfilled their obligation. In 2018, the replacement quota was used by 234 employers, with 94 of them fully fulfilling the obligation through the replacement quota, while 6 243 employers who neither employ people with disabilities nor announced the fulfilment of the replacement quota were obliged to pay a fine. In

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<sup>335</sup> Disability Ombudsperson (2020), *Report for 2019*, available at: <https://posi.hr/wp-content/uploads/2020/04/Izvje%C5%A1%C4%87e-o-radu-POSI-za-2019.pdf>.

<sup>336</sup> Ordinance on the content and manner of keeping records on employed persons

<sup>337</sup> Disability Ombudsperson (2020), *Report for 2019*, available at: <https://posi.hr/wp-content/uploads/2020/04/Izvje%C5%A1%C4%87e-o-radu-POSI-za-2019.pdf>.

<sup>338</sup> 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.

<sup>339</sup> Disability Ombudsperson (2020), *Report for 2019*, available at: <https://posi.hr/wp-content/uploads/2020/04/Izvje%C5%A1%C4%87e-o-radu-POSI-za-2019.pdf>

2018, HRK 214 500 000 (approximately EUR 28 600 000) had been paid in fines for non-employment of persons with disabilities.<sup>339</sup>

In a relevant case, a person with a disability filed a constitutional complaint stating that he had been denied the 'right of priority under equal conditions' during the process of applying for a position of deputy chief prosecutor and claiming, among other things, that such conduct represents discrimination. The claimant who had scored a lower score on the tests than the candidate who had eventually been employed, argued that he had not been treated equally and that, according to the specified provision, as a person with a disability, he had to be employed. However, the Constitutional Court clarified that in this case, the applicant had had a lower score on the relevant test than the other candidate and that therefore the 'equal conditions' requirement had not been fulfilled. Consequently, the Constitutional Court concluded that the applicant had not been discriminated against.<sup>340</sup>

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<sup>339</sup> Article published in February 2019 under the title: 'Only every seventh employer fulfils the obligation of quota employment of persons with disabilities', available at: <https://faktograf.hr/2019/02/04/tek-svaki-sedmi-poslodavac-ispunjava-obavezu-kvotnog-zaposljavanja-osoba-s-invaliditetom/>.

<sup>340</sup> Constitutional Court of the Republic of Croatia, Decision No. U-III-4141/2018, 6 March 2019, available at: [https://slieme.usud.hr/Usud/Praksaw.nsf/C12570D30061CE54C12583B70030C358/\\$FILE/U-III-4141-2018.pdf](https://slieme.usud.hr/Usud/Praksaw.nsf/C12570D30061CE54C12583B70030C358/$FILE/U-III-4141-2018.pdf).

## 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).<sup>341</sup>

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 within 90 days, the claim can be filed with the court.<sup>342</sup>

Criminal offences of discrimination (see section 6.5 below) 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.<sup>343</sup> 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

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<sup>341</sup> Misdemeanour courts deal with minor offences; Misdemeanours Act, 3 October 2007, *Prekršajni zakon*, (Official Gazette 107/2007, 39/2013, 157/2013, 110/2015, 70/17, 118/18).

<sup>342</sup> Civil Procedure Act, 24 December 1976, *Zakon o parničnom postupku*, Article 186(a).

<sup>343</sup> Misdemeanours are minor offences, most often prosecuted ex officio in proceedings similar to criminal proceedings.

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

The Anti-discrimination Act grants the Ombudsperson the authority to carry out a mediation procedure, with the consent of the parties, with the possibility of an out-of-court settlement.<sup>344</sup>

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 described below.

- 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,<sup>345</sup> as a rule such proceedings in courts in bigger cities last several years.
- Difficulties in proving discrimination: the rule on burden of proof is rarely implemented.<sup>346</sup>
- Fear of public litigation, especially in cases concerning discrimination on the basis of sexual orientation; victims are reluctant to seek court protection because of the fear of potential additional discrimination since the broader public will be aware of their sexual orientation.
- Case law of municipal and county courts, the main source of judicial interpretation of legal provisions that are often very wide, 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 (the Ombudsperson had noticed that in some cases the intention to violate victim's rights on behalf of the perpetrator was considered to be relevant).<sup>347</sup>

#### 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 defendant 50 % of the latter's costs).
- The litigant is not obliged to instruct a lawyer, but due to the complexity of legislation and procedures and the fact that judges are inexperienced in this field, the help of the lawyer is de facto necessary. A system of free legal aid exists, but does not fulfil its function:<sup>348</sup> 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

<sup>344</sup> Anti-discrimination Act, 9 July 2008, Article 12(2)(5).

<sup>345</sup> The provision is mandatory; Article 434(4) of the Civil Procedure Act.

<sup>346</sup> See People's Ombudsperson (2015) *Ombudsperson's Report for 2014*, p. 20: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/> and People's Ombudsperson (2016), *Ombudsperson's Report for 2015*, p. 21.

<sup>347</sup> People's Ombudsperson (2015) *Ombudsperson's Report for 2014*, p. 21.

<sup>348</sup> People's Ombudsperson (2016) *Ombudsperson's Report for 2015*, p. 20.

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

In the report for 2018 the People's Ombudsperson once again noted that the system of free legal aid is not functional and results in inequalities between citizens who are not in the same position to exercise or protect their rights, depending on their property status. The citizens who are particularly vulnerable are those living in isolated and remote areas. Although the budget allocations for free legal aid are continuously increasing, they are still inadequate and low, because of which the free legal aid system cannot adequately respond to the needs of the citizens.<sup>349</sup>

The situation continued during 2019 when the People's Ombudsperson received 50 % more complaints than in 2018 in relation to the (non)-realisation of free legal aid rights. This was due to difficulties in hiring a lawyer and the long duration of resolving requests for secondary free legal aid; some county administrative departments take too long to resolve requests, persons in need of free legal aid, due to lack of information, submit requests too late and in the meantime, the deadlines for filing complaints, appeals, lawsuits or other legal remedies expire.

Despite the Ombudsperson's recommendations on the need for greater availability of information on free legal aid, the relevant information can only be found on the websites of the Ministry of Justice and providers, although many potential users of free legal aid do not use the internet as their primary source of information. The Ombudsperson pointed out that there is a need for more information to be provided by the media and in leaflets in public institutions.<sup>350</sup>

The People's Ombudsperson has also noted that fewer and fewer lawyers are willing to be on the list for providing secondary legal aid. For example, in Zadar county, which has more than 170 000 inhabitants, only seven lawyers are listed. One of the reasons for this is the low value of remuneration.<sup>351</sup>

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. The fear of public litigation can also be seen as a barrier in cases involving sexual orientation. 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.<sup>352</sup>

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

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<sup>349</sup> Ministry of Judiciary, *Budget for 2019*, available at: <https://pravosudje.gov.hr/UserDocsImages/dokumenti/financijski%20dokumenti%20MP/Ministarstvo%20pravosu%C4%91a%20-%20Prora%C4%8Dun%202019%20.pdf>.

<sup>350</sup> People Ombudsperson (2020), *Report for 2019*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/#1556196748399-8e18fee7-b3c6>.

<sup>351</sup> People Ombudsperson (2020), *Report for 2019*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/#1556196748399-8e18fee7-b3c6>.

<sup>352</sup> 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](https://www.cms.hr/system/publication/pdf/104/Analiza_sudske_prakse_u_postupcima_pred_hrvatskim_sudovima_pokrenutima_zbog_diskriminacije.pdf).

know about their rights and ways of protecting themselves. In this regard, it is telling that there are no civil proceedings regarding 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.<sup>353</sup>

#### c) Number of discrimination cases brought to justice

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

#### Civil proceedings

In 2019, 187 civil proceedings regarding discrimination were pending. Most of the cases are about discrimination in employment filed by employees, mainly because their employment contract had been cancelled or because their rights were violated to such a degree that the fear of victimisation has become irrelevant to them.

Unlike in previous years, in which there was a noticeable trend of decline in relation to anti-discrimination civil proceedings, the number of civil proceedings during 2019 is almost identical to 2018 when there were 186 civil proceedings.<sup>354</sup>

In 2019, 48 proceedings were closed: 6 claims had been granted, 26 were denied, while 16 had been closed 'in another way', without further explanation. In 2019, one civil discrimination case was initiated by a joint action (*udružna tužba*).<sup>355</sup>

#### Criminal proceedings

In 2019, 24 criminal proceedings connected to discrimination were pending, which is a slight increase in comparison to the previous year when there were 19 criminal proceedings registered. In 2019, 8 cases were closed and in 6 cases the defendant was found guilty.<sup>356</sup>

Although the number of criminal proceedings has been growing slowly for years, it is still rather low. The largest number of proceedings were conducted for sexual harassment and public incitement to violence and hatred motivated by race or ethnic affiliation or national origin, gender, sexual orientation, language, social status or other characteristics. Among the cases in which proceedings were initiated in 2019, race, ethnicity or national origin, as well as gender and sexual orientation remained the main motives for discriminatory treatment.<sup>357</sup>

Often, defendants who have committed a criminal offence are prosecuted for a misdemeanour. For example, in 2018, one politician made a comment on the internet that the members of an NGO initiative should be shot and that it was likely to happen soon (because he disagreed with their campaign). He was prosecuted for a misdemeanour and sentenced to pay a fine of EUR 666 (HRK 5 000). Such sanctions

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<sup>353</sup> Kesonja, D. and Einwalter T.S. (CMS) (2017) *Analysis of case law in Croatia regarding proceedings initiated for discrimination*, Zagreb.

<sup>354</sup> People's Ombudsperson (2020), *Report for 2019*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/#1556196748399-8e18fee7-b3c6>.

<sup>355</sup> 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.

<sup>356</sup> People's Ombudsperson (2020), *Report for 2019*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/#1556196748399-8e18fee7-b3c6>.

<sup>357</sup> People's Ombudsperson (2020), *Report for 2019*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/#1556196748399-8e18fee7-b3c6>.



disregard adequate social condemnation and the prevention of future criminal offences.<sup>358</sup>

In 2019, there were 51 hate crime cases, which is a significant increase compared to 2018, when there were 33 cases. In 2019, 37 cases were motivated by the national or ethnic origin of the victim while in others, persons were the target of crimes because of their sexual orientation (6), disability (3), racial or skin colour (3), and religion (2). In this area there is an on-going problem of unequal data collection by the relevant authorities and there were additional problems during 2019 caused by changes in the methodology for data collection.<sup>359</sup>

The Gender Equality Ombudsperson reports on increase in hate crimes in 2019 motivated by the victim's sexual orientation with 6 criminal offences of incitement to violence and hatred on the basis of sexual orientation in comparison to 2018 when there were no recorded hate crimes on the basis of sexual orientation.<sup>360</sup>

### Misdemeanour cases

In 2019, 248 misdemeanour cases related to discrimination were pending, which is an increase in comparison to previous years (81 were filed before 2019, 106 were filed during 2019 and 61 were received under the Territories and Seats of Courts Act. During 2019, 101 cases were closed: in 67 cases the defendants were found guilty, in 21 cases the defendant were acquitted from charges and 13 cases were resolved in another way, without further explanation.<sup>361</sup>

Most proceedings were initiated for harassment (85) and sexual harassment (5) under the Anti-discrimination Act. In addition to this, 22 proceedings were conducted for violations of other legal regulations. National origin is, as in previous years, by far the most common discriminatory ground, and was registered as a motive in 94 proceedings (38 %). This is followed by race or ethnicity or skin colour (32) and gender (32). In a small number of misdemeanour cases, the grounds were social status (13), sexual orientation (10), religion (8), political or other belief (7), gender identity or gender expression (7), health status (2) and marital or family status (1).

When assessing misdemeanour liability for harassment based on national origin it is irrelevant whether the injured party is indeed of the national origin on the basis of which he was harassed. The essential element is the intent of the defendant to create a humiliating and insulting environment. Victims are in most cases members of the Serbian national minority, who are often referred to as 'Chetniks' but also people 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 addition, more and more offences are committed through social networks, when the defendant expresses himself/herself in an insulting or humiliating way in referring to individuals or members of a certain group in comments or posts.

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<sup>358</sup> People's Ombudsperson (2019), *Report for 2018*.

<sup>359</sup> People's Ombudsperson (2020), *Report for 2019*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/#1556196748399-8e18fee7-b3c6>.

<sup>360</sup> Gender Equality (2020), *Report for 2019*, available at: [https://www.prs.hr/attachments/article/2894/IZVJESCE\\_O\\_RADU\\_ZA\\_2019\\_Pravobraniteljice\\_za\\_ravnopravnost\\_spolova.pdf](https://www.prs.hr/attachments/article/2894/IZVJESCE_O_RADU_ZA_2019_Pravobraniteljice_za_ravnopravnost_spolova.pdf).

<sup>361</sup> People's Ombudsperson (2020), *Report for 2019*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/#1556196748399-8e18fee7-b3c6>.

d) Registration of discrimination cases by national courts

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

The Anti-discrimination Act<sup>362</sup> 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 in proceedings 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.<sup>363</sup>

b) Engaging in proceedings in support of victims of discrimination (joining existing proceedings)

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 the Anti-discrimination Act as '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'.<sup>364</sup>

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

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<sup>362</sup> Anti-discrimination Act, 9 July 2008, Article 14.

<sup>363</sup> Civil Procedure Act, 24 December 1976, Article 434.a.

<sup>364</sup> Anti-discrimination Act, 9 July 2008, Article 21.

in which civil society organisations have joined the proceedings as interveners, it can be concluded that this legal instrument is still insufficiently used.<sup>365</sup>

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*) in civil and administrative proceedings.

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. 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.<sup>366</sup>

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 a lawyer who is given power of attorney.

By filing a joint legal action (*udružna tužba*),<sup>367</sup> 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 states only that they have to be organised in accordance with the law.<sup>368</sup>

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).<sup>369</sup>

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<sup>365</sup> 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](https://www.cms.hr/system/publication/pdf/104/Analiza_sudske_prakse_u_postupcima_pred_hrvatskim_sudovima_pokrenutima_zbog_diskriminacije.pdf).

<sup>366</sup> Anti-discrimination Act, 9 July 2008, Article 24.

<sup>367</sup> 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.

<sup>368</sup> Anti-discrimination Act, 9 July 2008, Article 24.; Civil Procedure Act, 24 July 2014, Article 502a.

<sup>369</sup> Supreme Court of the Republic of Croatia, No. Pnz-6/10, 24 March 2011.

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 false perception of their psycho-physical abilities. According to the Supreme Court, the statements could not lead to an intimidating, hostile, degrading or offensive environment.<sup>370</sup>

In June 2015, following the claimants' appeal on points of law (*revizija*), the Supreme Court, this time as a third instance court, referring to *Feryn*<sup>371</sup> made a new decision, finding the statement discriminatory. The Court determined that the factual situation of the case is in accordance with the factual situation in *Feryn*, and therefore, that the legal opinion expressed in the 'ECtHR decision' in the *Feryn* case had to be observed in the context of the case of Z.M.<sup>372</sup>

The Supreme Court stated that, bearing in mind that Z.M. is executive manager of a famous football club and has a reputation in the world of football and public authority, his statements could encourage people to discriminate and incite other people in the world of football to treat footballers of homosexual orientation with prejudice. Thus, that the statements of Z.M. present a treatment that would place a person (a homosexual man) in a more unfavourable position than another a person (a heterosexual man) in a comparable situation (hiring a football player). Therefore, such a statement has caused direct discrimination in the sense of the provisions of the Anti-discrimination Act. The court 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*.<sup>373</sup> Except for *Feryn*, no other CJEU case law was invoked in the Supreme Court's decision.

In the same time proceedings against V.M., the president of the Croatian Football Association were also instituted on behalf of the same human rights organisations, because of similar discriminatory statements, more exactly his statement that gay people will not play in the national football team as long as he is the president of the Croatian Football Association. Zagreb County Court concluded that the statement of V.M. did not constitute harassment, since there was no evidence of any negative consequences such as fear or a hostile or intimidating atmosphere. The Supreme Court annulled the first instance judgment and ruled that by his statements V.M. had discriminated against homosexual persons and ordered him to publicly apologise. The Supreme Court held that the burden of proof had shifted to V.M. and that he had to prove that the statement did not constitute discrimination, i.e. that he failed to prove that his statement did not cause an intimidating, hostile, degrading or offensive environment.<sup>374</sup>

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 an 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

<sup>370</sup> Supreme Court of the Republic of Croatia, No. Gž-12/11, 18 April 2012.

<sup>371</sup> European Court of Justice, *CGKR v Firma Feryn NV*, Case C-54/07, 2008, EU:C:2008:397, 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>.

<sup>372</sup> The judgment falsely stated that the *Feryn* case was decided by the ECtHR rather than the CJEU.

<sup>373</sup> Supreme Court of the Republic of Croatia, No. Rev-300/13, 17 June 2015.

<sup>374</sup> Supreme Court of the Republic of Croatia, No. Gž.25/11, judgment of 28 February 2012.

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.<sup>375</sup>

In 2019, NGO Vigilare lodged a complaint against I.J., the former Croatian president, stating that by posting a Facebook comment saying, "Croatia is a secular state. It is not a Catholic Jamahiriya", he had discriminated against Catholics on the basis of religion. The comment was posted as a critique of, in the defendant's opinion, excessive media reporting about the holiday of Assumption in Croatia. The court of first instance (Zagreb County Court) concluded that, even though the statement is capable of hurting the feelings of members of Catholic religion, it does not, per se, put Catholics at a disadvantage compared to other citizens. Given that, in order for discrimination to exist under the Croatian Anti-discrimination Act, a person or a group that is allegedly discriminated against has to be put at a disadvantage, the first instance court concluded that there was no ground to declare that the defendant had discriminated against Catholics. The Supreme Court, acting as a court of second instance, agreed with the reasoning of the first instance court and confirmed its judgment, which then became final.<sup>376</sup>

#### 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.<sup>377</sup>

### **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 Act<sup>378</sup> 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 plausible<sup>379</sup> that discrimination has taken place. In this case, it shall be for the

<sup>375</sup> Information about the proceedings have been gathered through media reports: <https://narod.hr/hrvatska/prvostupajski-sud-prihvatio-indexovo-tumacenje-da-nisu-htjeli-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/>.

<sup>376</sup> Supreme Court of the Republic of Croatia, Decision No. GŽ4-/2019, 5 March 2019, available at: <https://sudskapraksa.csp.vsrh.hr/decisionPdf?id=090216ba8096c5b2>.

<sup>377</sup> Anti-discrimination Act, 9 July 2008, Articles 21 and 24.

<sup>378</sup> An English version of the Anti-discrimination Act is published on the website of the Gender Equality Ombudsperson, <https://www.prs.hr/attachments/article/2127/Croatian%20Anti-discrimination%20Act.pdf>.

<sup>379</sup> The phrase used in the official text '*učiniti vjerojatnim*' corresponds to the English phrase 'to render credible'.

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 relatively new in the Croatian legal system and exists only in the anti-discrimination legislation, the judicial interpretation would be very important.

From the relevant case law in this area presented below it can be concluded that judicial interpretation of burden of proof in anti-discrimination proceedings in previous years was not completely in line with EU law. Bearing in mind that there is no recent case law on this issue, it remains to be seen whether judicial interpretation has changed in the meantime.

In the case mentioned above against V.M., president of the Croatian Football Association, 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.<sup>380</sup>

In a case brought before Zagreb Municipal Court, B.B. claimed that she had been discriminated against by her employer, the Croatian Library for the Blind, 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 of 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.<sup>381</sup> 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.<sup>382</sup>

In a case brought in front of Vukovar Municipal Court by K.B. against her employer, Social Welfare Centre, 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.<sup>383</sup>

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<sup>380</sup> Supreme Court of the Republic of Croatia, No. GŽ.25/11, judgment of 28 February 2012.

<sup>381</sup> Zagreb Municipal Court, No. Pr.4290/12, 20 June 2016.

<sup>382</sup> Zagreb County Court, No. GŽR-1494/16, 3 January 2017.

<sup>383</sup> Vukovar County Court, No. GŽ-2333/14, 23 November 2017.

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.<sup>384</sup> The rule is usually 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'.

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.'<sup>385</sup>

#### **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.<sup>386</sup>

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 137 to EUR 2 740; a person performing independent business activities could be punished with a fine ranging between EUR 685 and EUR 20 548; and a legal person could be punished with a fine ranging between EUR 2 740 and EUR 27 397.<sup>387</sup>

In civil cases on victimisation, a rule on a shift of the burden of proof is 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.

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<sup>384</sup> People's Ombudsperson (2015), *Ombudsperson's Report for 2014*, <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

<sup>385</sup> European Court of Human Rights, decision in *Škorjanec v. Croatia*, No. 25536/14, 28 March 2017, Para. 54,55,57.

<sup>386</sup> Anti-discrimination Act, 9 July 2008, Article 7.

<sup>387</sup> Anti-discrimination Act, 9 July 2008, Article 28.



In some cases, if regulated by special laws, administrative fines are possible (e.g. under the 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.<sup>388</sup>

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 will 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.<sup>389</sup> It is responsibility of the court to interpret the 'objective of compensation' in accordance with the established standards of effective, proportionate and dissuasive sanctions.

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

### 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,<sup>390</sup> craftsmen and persons performing independent business activities, and legal persons, while different levels of fine are set for different categories – from EUR 685 to EUR 41 096 for harassment and from EUR 685 to EUR 47 945 for sexual harassment.

When deciding sanctions for misdemeanours, the courts should take into consideration the principles of general and individual prevention.<sup>391</sup>

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

In 2019, a financial fine remained the most common sanction and was imposed in 90 % of cases. In the remaining cases the defendants were sentenced to community service and in only in one case was the defendant sentenced to imprisonment.<sup>392</sup>

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<sup>388</sup> Anti-discrimination Act, 9 July 2008, Article 17(1)(3).

<sup>389</sup> Civil Obligations Act, 25 February 2005, Article 1100.

<sup>390</sup> A natural person entrusted with certain duties in a legal entity or a person authorised to act on behalf of the legal entity.

<sup>391</sup> Misdemeanour Act, 3 October 2007, Article 6.

<sup>392</sup> People's Ombudsperson (2020), *Report for 2019*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.



## Criminal

The Criminal Code<sup>393</sup> 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.<sup>394</sup>

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.<sup>395</sup> 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).<sup>396</sup>

The criminal offence of discrimination (Article 125 of the Criminal Code) — a crime subject to public prosecution<sup>397</sup> 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.<sup>398</sup> Persecution of individuals or organisations because of their demands for equality is also a criminal offence, which is prosecuted by the State Attorney's Office, following a victim's application and is punishable by up to three years of imprisonment.<sup>399</sup>

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.<sup>400</sup>

According to the People Ombudsperson's Report, in 2019 probation remained the most commonly imposed criminal sanction, while in two cases the defendant was sentenced to community service. Prison sentence was not imposed even once. Given that there is no complete insight into individual cases and thus the profiles of perpetrators and ways of committing crimes, the Ombudsperson stated that penal policy of criminal courts cannot be analysed in more detail, however the Ombudsperson noted that the most severe sanctions for these acts are not used.<sup>401</sup>

### b) Compensation – maximum and average amounts

There is no ceiling on the maximum amount of compensation that can be awarded, under the law. 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

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<sup>393</sup> Official Gazette 125/2011, 144/2012, the law has been in force since 1 January 2013.

<sup>394</sup> Criminal Code, 21 October 2011, *Kazneni zakon*, Article 87(21).

<sup>395</sup> Criminal Code, 21 October 2011, Articles 117(2), 118(2) and 119.

<sup>396</sup> Zagreb Public Attorney Office, Case No. Ko-DO-1204/13.

<sup>397</sup> 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*).

<sup>398</sup> Criminal Code, 21 October 2011, Article 125(1).

<sup>399</sup> Criminal Code, 21 October 2011, Article 125(2).

<sup>400</sup> Criminal Code, 21 October 2011, Article 133.

<sup>401</sup> People's Ombudsperson (2020), *Report for 2019*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/#1556196748399-8e18fee7-b3c6>.

220 000 (approximately EUR 29 000), for the most serious damage e.g. death of a spouse or child.<sup>402</sup>

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)<sup>403</sup> as non-pecuniary damages, which is almost the maximum amount established by the Supreme Court's guiding criteria.<sup>404</sup> 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.<sup>405</sup> However, during 2019, HRK 50 000 to 55 000 (approximately EUR 6 000 to 7 000) were more often awarded. This positive change in case law could be interpreted as the result of the application of criteria based on which the sanction must be proportionate, appropriate and dissuasive in order to provide satisfaction to the victim and prevent potential perpetrators from discriminating.<sup>406</sup> Nevertheless, the cases in which compensation exceeds EUR 6 000 (HRK 50 000) are still the exception.

In 2019, in one anti-discrimination case, the court awarded the victim compensation of HRK 70 000 (approximately EUR 10 000), which can be considered a high amount of compensation.<sup>407</sup> The court has not specified the reasons for awarding damages in the stated amount but it can be inferred that the reason for the higher financial compensation is that the claimant could not attend classes regularly due to illness and remained without grades, which is why he had to repeat the school year. The court found that in this way the school had prevented him from exercising his right to education.

#### c) Assessment of the sanctions

The Anti-discrimination Act does not contain exact rules on compensation nor prescribe any fixed parameters in relation to amounts of compensation in civil proceedings. When deciding on the amount of fair non-pecuniary compensation, the court must take into account general criteria prescribed by the Civil Obligation Act – 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. Under these rules, the courts are allowed to apply the appropriate amount of compensation depending on the circumstances of the individual case. It is the responsibility of the court to interpret the 'objective of compensation' in accordance with the established standards of effective, proportionate and dissuasive sanctions.

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<sup>402</sup> 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.

<sup>403</sup> The maximum award is set at EUR 29 000.

<sup>404</sup> Supreme Court of the Republic of Croatia, Rev 1261/08-2, 16 February 2010 and Supreme Court guiding criteria for non-pecuniary damage:  
<http://www.iusinfo.hr/UsefulDocs/Content.aspx?SOPI=DDHR20110111N53>.

<sup>405</sup> 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](https://www.cms.hr/system/publication/pdf/104/Analiza_sudske_prakse_u_postupcima_pred_hrvatskim_sudovima_pokrenutima_zbog_diskriminacije.pdf).

<sup>406</sup> People's Ombudsperson (2020), *Report for 2019*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/#1556196748399-8e18fee7-b3c6>.

<sup>407</sup> Decision of Varaždin County Court, GŽ-647/2019.

In practice, the compensation amounts awarded are considered to be rather low and it is highly disputable whether they satisfy the criteria of being an effective, proportionate and dissuasive sanction, however, this varies from case to case.

Offences motivated by discrimination are usually prosecuted as misdemeanours and not as criminal offences, although the basis for criminal prosecution in the law exists. In misdemeanour cases, as a rule, judges mitigate the amounts set by law with the result that fines are rather low (EUR 40 to EUR 400) and do not contribute to the specific or general prevention of discrimination.

The People's Ombudsperson has also noted that sanctions imposed in misdemeanour proceedings are not adequate and effective and do not contribute to general and specific prevention since in most cases sanctions consist of a fine or a suspended prison sentence.<sup>408</sup>

Furthermore, although the law provides for imprisonment as a sanction in misdemeanour cases, a financial fine remains the most common sanction and is imposed in 90 % of cases, while in the remaining cases the defendants are sentenced to community service. In 2019, only one defendant was sentenced to imprisonment.

In criminal proceedings, probation remains the most commonly imposed sanction while prison sentences are regularly not imposed so that the most severe sanctions, although provided for by law, are not used in practice.

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<sup>408</sup> People's Ombudsperson (2019), *Report for 2018*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

## **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.<sup>409</sup> 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 responsibilities 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 responsibility 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 of 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. 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

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<sup>409</sup> Anti-discrimination Act, 9 July 2008, Article 12(1).

importance of the recommendations presented in the report.<sup>410</sup> 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.<sup>411</sup> In the years following, the Ombudspersons' reports were accepted by the Parliament.

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.

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 the 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.<sup>412</sup>

The People's Ombudsperson has also reported a concerning practice of the Ministry of the Interior regarding the denial of direct access and insight into data on the treatment of irregular migrants in the information system. Given that this is the only source of relevant data, it is perceived as a barrier to fully exercising the Ombudsperson's competences as provided by the Ombudsperson's Act. This has been repeatedly reported to the Croatian Parliament, but no specific actions to correct the situation have been taken.<sup>413</sup>

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.<sup>414</sup>

### 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 was also given a mandate under the recently adopted Whistle-blowers Protection Act as a competent authority for the external reporting of irregularities.<sup>415</sup>

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

<sup>410</sup> See People's Ombudsperson (2017), *Report for 2016*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

<sup>411</sup> See Ombudsperson for Children (2017) *Report for 2016*, available at: <http://dijete.hr/en/reports-of-the-ombudsperson-for-children/>.

<sup>412</sup> People's Ombudsperson (2018), *Report for 2017*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

<sup>413</sup> People's Ombudsperson (2020), *Report for 2019*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/#1556196748399-8e18fee7-b3c6>.

<sup>414</sup> In comparison to 2018, the budget of the Ombudsperson's Office was increased by 2.53 %.

<sup>415</sup> Whistle-blowers Protection Act, 1 July 2019, *Zakon o zaštiti prijavitelja nepravilnosti*, Official Gazette 17/19.

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.<sup>416</sup>

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 relate to discrimination, it can be concluded that the Ombudsperson's equality mandate has been recognised by the public.<sup>417</sup>

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.<sup>418</sup> 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.

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

<sup>416</sup> According to the People's Ombudsperson's webpage, available at: <https://www.ombudsman.hr/hr/#>.

<sup>417</sup> In 2019 the Ombudsperson's Office acted upon 842 discriminatory complaints.

<sup>418</sup> Act on People's Ombudsperson 9 July 2012; Anti-discrimination Act, 9 July 2008.

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.<sup>419</sup> 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 powers, according to the constitutional guarantees.

In March 2019, at the session of the Subcommittee on Accreditation (SCA) of the Global Alliance of National Human Rights Institutions (GANHRI), which operates within the UN Human Rights Council, the Ombudsperson was confirmed as having the status of the highest A level of compliance with the Paris Principles, as a fully independent institution.<sup>420</sup>

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.

However, for the elimination of discrimination based on certain discrimination grounds, there are specialised Ombudspersons.

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

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 responsibilities.

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. Usually, 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.

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<sup>419</sup> Constitution of the Republic of Croatia, 22 December 1990, Article 93.

<sup>420</sup> People's Ombudsperson (2020), *Report for 2019*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/#1556196748399-8e18fee7-b3c6>.



- f) Competences of the designated body/bodies – and their independent exercise
  - i) Independent assistance to victims

In Croatia, the designated body has 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.<sup>421</sup>

The powers 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 in this respect.

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 in providing independent assistance.

- ii) Independent surveys and reports

In Croatia, the designated body has the power to conduct independent surveys and publish independent reports.

In connection to his/her responsibilities 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.<sup>422</sup> In 2019 the Ombudsperson conducted research on the presence of hate speech on the internet among youth.<sup>423</sup>

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.<sup>424</sup> The *Report for 2019* was published on 31 March 2020.

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.

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

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<sup>421</sup> Anti-discrimination Act, 9 July 2008, Article 12.

<sup>422</sup> People's Ombudsperson (2017), *Ombudsperson's Report for 2016* <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

<sup>423</sup> People's Ombudsperson (2020), *Report for 2019*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/#1556196748399-8e18fee7-b3c6>.

<sup>424</sup> Anti-discrimination Act, 9 July 2008, Article 12.



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.

### iii) Recommendations

In Croatia, the designated body has 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 relevant 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.<sup>425</sup>

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.

These duties 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.

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 relation 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 relevant 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.

Although in recent years the Ombudsperson had recorded an increase in the number of recommendations that had been implemented, in 2019 there was a change in this trend. According to the Government Opinion on the Ombudsperson's Report for 2018, the competent authorities acted or are acting upon only 26 % of recommendations, which is significantly less than year before (65 %) and even less compared to the *Report for 2015* (29 %), which was rejected by the Croatian Parliament. Also, the Ombudsperson stressed that it is of particular concern that the Government failed to comment on to as many as 102 recommendations (48 %).<sup>426</sup>

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<sup>425</sup> Anti-discrimination Act, 9 July 2008, Article 12.

<sup>426</sup> People's Ombudsperson (2020), *Report for 2019*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/#1556196748399-8e18fee7-b3c6>.

#### iv) Other competences

In connection to his/her authority 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.<sup>427</sup>

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

#### g) Legal standing of the designated body

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

The Ombudsperson's authority to bring discrimination complaints includes the authority to file criminal charges for discrimination to the State Attorney's office.<sup>428</sup> The Ombudsperson does not have the authority to institute civil anti-discrimination proceedings on her own.

However, the Ombudsperson can join civil proceedings in anti-discrimination cases as an intervener on the behalf of the claimant.<sup>429</sup> As an intervener, the Ombudsperson does not represent a claimant. Her role is restricted to helping the claimant with her expert knowledge and experience during the court proceedings.

The cases in which the ombudspersons decide 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.<sup>430</sup> The law does not regulate the possibility for the Ombudsperson to intervene in legal cases as *amicus curiae*.

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 in the case against the president of the Croatian Football Association regarding his public statements that gay people could not play in his national football team.<sup>431</sup>

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<sup>427</sup> Information available on People's Ombudsperson website <https://www.ombudsman.hr/hr/#>.

<sup>428</sup> Anti-discrimination Act, 9 July 2008, Article 12(2)(6).

<sup>429</sup> Anti-discrimination Act, 9 July 2008, Article 21.

<sup>430</sup> 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](https://www.cms.hr/system/publication/pdf/104/Analiza_sudske_prakse_u_postupcima_pred_hrvatskim_sudovima_pokrenutima_zbog_diskriminacije.pdf).

<sup>431</sup> Kesonja, D. and Einwalter T.S. (CMS) (2017) *Analysis of case law in Croatia regarding proceedings initiated for discrimination*, Zagreb.

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.<sup>432</sup> 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 registers 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 reports from 2002 to 2018 are available on the website and are easily accessible to everyone.

In 2019 the Ombudsperson received 5 009 complaints.<sup>433</sup>

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) Stakeholder engagement

In Croatia, the designated body engages with stakeholders as part of implementing their mandate.

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 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.

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<sup>432</sup> Act on People's Ombudsperson, 9 July 2012, Article 27.

<sup>433</sup> People's Ombudsperson (2020), *Report for 2019*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/#1556196748399-8e18fee7-b3c6>.

In 2019, the Ombudsperson continued to cooperate with various stakeholders, including state administration bodies, international organisations, local and regional self-government units, councils and representatives of national minorities, civil society organisations and the academic community.

During 2019, the Ombudsperson continued to cooperate with 11 civil society organisations – members of the Anti-discrimination Contact Points Network, with the aim of strengthening the fight against discrimination at national, regional and local level.<sup>434</sup> In addition to the regular exchange of information and participation in activities, the members of the network published a recommendation for the suppression of discrimination and hate speech in the election campaigns on the European Network of Equality Bodies (Equinet) in the run-up to the European Parliament elections.

At the same time, frequent and high-quality cooperation with many other organisations continued, especially in the areas of protection of the rights of the elderly, young people, the homeless, war veterans, migrants, the availability of free legal aid, support for victims and witnesses, rights of persons belonging to national minorities, environmental protection and many others.

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.

The Ombudsperson's Office also held training sessions for civil servants, representatives of local and regional authorities, civil society organisations, public television employees and high school students.

In 2019 the Ombudsperson organised a conference to mark the 10-year anniversary of the implementation of the Anti-discrimination Act.

#### k) Roma and Travellers

The Ombudsperson's office gives special attention to Roma issues. In the Ombudsperson's report for 2018, a whole chapter is dedicated to the problems faced by the Roma population. The Ombudsperson made a number of recommendations to the relevant 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.<sup>435</sup>

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<sup>434</sup> People's Ombudsperson (2019), *Report for 2018*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

<sup>435</sup> People's Ombudsperson (2019), *Report for 2018*.

## **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.<sup>436</sup>

Further, all the ombudspersons are active in organising seminars, roundtables and training.

During 2019 they held numerous workshops and seminars, education sessions, lectures as well national and international events, conferences and expert meetings with foreign delegations and representatives of institutions, civil society organisations, state officials and students.

- 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 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.

- 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)

Article 15 of the Anti-discrimination Act obliges the Ombudsperson to consult not only with civil society organisations and other organisations dealing with the protection of human rights, but also with social partners. According to the Anti-discrimination Act, social partners are representative associations of trade unions and higher-level employers.<sup>437</sup>

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<sup>436</sup> Gender Equality Ombudsperson, <http://www.prs.hr/>.

<sup>437</sup> Anti-discrimination Act, Article 15 (2).

The Ombudsperson occasionally holds meetings, consultations and training sessions for social partners.

d) Addressing the situation of Roma and Travellers

The Government Office for Human Rights and Rights of National Minorities<sup>438</sup> is a specific body appointed on the national level to address the issues facing national minorities. In 2013, the National Roma Inclusion Strategy for the period of 2013-2020 was adopted as well as the action plan for its implementation for the period of 2013-2015. In 2019 the action plan for the implementation of the National Roma Inclusion Strategy for 2019 and 2020 was adopted.<sup>439</sup>

For the purpose of monitoring the implementation of the overall operational part of the National Strategy, the Government of the Republic of Croatia has established the Commission for Monitoring the Implementation of the National Roma Inclusion Strategy for the period 2013-2020.

In July 2019, the report on the implementation of operational programmes for national minorities for the period from August 2017 to February 2019 was published.<sup>440</sup> The report describes activities that were carried out during the reporting period that contributed to the implementation of the National Roma Inclusion Strategy.

In August 2019 the Government issued a report on the implementation of the 2013-2020 National Roma Inclusion Strategy for 2018.<sup>441</sup> The general conclusion of the report is that during 2018, the activities carried out for the purpose of achieving the goals of the National Strategy continued and that in most areas further progress was made regarding the continuous implementation of activities aimed at improving the position of members of the Roma community in the Republic of Croatia.

## **8.2 Measures to ensure compliance with the principle of equal treatment (Article 14 Directive 2000/43, Article 16 Directive 2000/78)**

a) Compliance of national legislation (Articles 14(a) and 16(a))

There are no explicit measures in the Anti-discrimination Act to ensure that any laws, regulations or administrative provisions that would be contrary to the principle of equality are abolished.

In general, laws, regulations and rules in Croatia seem to be non-discriminatory and in line with the principle of equal treatment.

In the event that some regulations are found to be discriminatory in practice, the general equality principles and measures contained in the Anti-discrimination Act and the Constitution are applicable. In particular, according to the Constitutional Act on the

<sup>438</sup> In April 2012, the Government decided to merge the previously existing Office for Human Rights and the Government Office for National Minorities.

<sup>439</sup> Action plan for the implementation of the National Roma Inclusion Strategy for 2019 and 2020, available at <https://pravamanjina.gov.hr/UserDocsImages//dokumenti/Akcijski%20plan%20za%20provedbu%20Nacionalne%20strategije%20za%20uklju%C4%8Divanje%20Roma%20za%20razdoblje%20od%202013.%20do%202020.%20godine,%20za%202019.%20i%202020.%20godinu.pdf>.

<sup>440</sup> Report on the implementation of operational programmes for national minorities for the period from August 2017 to February 2019, Available at: <https://pravamanjina.gov.hr/UserDocsImages/arhiva/Izvje%C5%A1%C4%87e%20o%20provedbi%20Operativnih%20programa%20za%20nacionalne%20manjine%20za%20razdoblje%20od%2024.%20kolovoza%202017.%20do%2024.%20velja%C4%8De%202019.%20godine.pdf>.

<sup>441</sup> Report on the implementation of the 2013-2020 National Roma Inclusion Strategy for 2018, available at: <https://pravamanjina.gov.hr/UserDocsImages/dokumenti/Izvje%C5%A1%C4%87e%20o%20provedbi%20Nacionalne%20strategije%20za%20uklju%C4%8Divanje%20Roma%20za%20razdoblje%20od%202013.%20do%202020.%20godine,%20za%202018.%20godinu.pdf>.



Constitutional Court of the Republic of Croatia, every individual or legal person has the right to bring proceedings to the Constitutional Court to review the constitutionality of the law and the legality and constitutionality of other regulations. The Constitutional Court itself may decide to institute proceedings to review the constitutionality of the law and to review the constitutionality and legality of other regulations.<sup>442</sup>

Some laws are problematic from an anti-discrimination perspective (e.g. provisions of the Family Act regulating the divesting of legal capacity of persons with disabilities).<sup>443</sup>

Provisions of the Family Act regulating the divesting of persons with disabilities' legal capacity proved to be problematic in implementation and the system was the subject of several cases before the European Court of Human Rights.<sup>444</sup> 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 measures.

Legislative amendments to certain laws have been adopted in order to ensure compliance with the principle of equality. For example, amendments to the Aliens Act were adopted according to the decision of the European Court of Human Rights in *Pajić v. Croatia*.<sup>445</sup> The amendments included regulations on temporary residence of foreign citizens, which can now be approved for the purpose of a same-sex life partnership.<sup>446</sup>

The International and Temporary Protection Act, which replaced earlier Asylum Act, introduced regulations by both a life partner and an informal life partner can be considered to as a family member of an asylum seeker, foreigner under subsidiary protection and foreigner under temporary protection.<sup>447</sup>

At the end of 2019, in the light of the decision of the Zagreb Administrative Court, there was heated public debate over the provisions of the Foster Care Act in relation to same-sex couples, however, no legislative changes have been made.

#### b) Compliance of other rules/clauses (Articles 14(b) and 16(b))

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

<sup>442</sup> Constitutional Law on the Constitutional Court of the Republic of Croatia, 24 September 1999, Article 38, Official Gazette 99/1999, 29/2002, 49/2002, *Ustavni zakon o Ustavnom sudu Republike Hrvatske*.

<sup>443</sup> 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 what is an important legal field. The Family Act from 2015 is still in force although it has often been mentioned by the Government that the new Family Act will be drafted soon. There have been no new developments in this area in 2019.

<sup>444</sup> 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.

<sup>445</sup> European Court of Human Rights, *Pajić v. Croatia*, No. 68453, 23 February 2016, available at: [https://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%22\%22CASE%20OF%20PAJI%C4%86%20v.%20CROATIA%22%22\],%22documentcollectionid%22:\[%22GRANDCHAMBER%22,%22CHAMBER%22\],%22itemid%22:\[%22001-161061%22\]}](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22\%22CASE%20OF%20PAJI%C4%86%20v.%20CROATIA%22%22],%22documentcollectionid%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-161061%22]}).

<sup>446</sup> Aliens Act, Official Gazette 130/11, 74/13, 69/17, *Zakon o strancima*, 14 July 2017, Article 47 and Article 56b.

<sup>447</sup> International and Temporary Protection Act, Official Gazette 70/15, 127/17, *Zakon o međunarodnoj i privremenoj zaštiti*, Article 4(18).

A contract that is contrary to the Constitution, mandatory rules or the morals of society is null and void.<sup>448</sup> 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 relevant state body or local authority or a legal person with public authority.

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<sup>448</sup> Civil Obligations Act, 25 February 2005, Article 322.



## 9 COORDINATION AT NATIONAL LEVEL

The Government Office for Human Rights and Rights of National Minorities is responsible for the practical coordination of anti-discrimination activities and communication with experts and civil society stakeholders. The office is responsible directly to the Government of the Republic of Croatia.<sup>449</sup>

In 2008, the Croatian Government adopted the first national anti-discrimination plan for 2008-2013.

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 was postponed until June 2017.<sup>450</sup> 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.<sup>451</sup>

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.

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.<sup>452</sup>

The National Roma Inclusion Strategy for the period of 2013-2020, adopted in 2013 is still running.

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<sup>449</sup> Act on the Government of the Republic of Croatia, 22 December 2011, Article 27, Official Gazette 150/2011, 119/2014, 93/2016.

<sup>450</sup> 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).

<sup>451</sup> National Anti-discrimination Plan 2017-2022, available at: <https://pravamanjina.gov.hr/UserDocsImages/dokumenti/Nacionalni%20plan%20za%20borbu%20protiv%20diskriminacije%20za%20razdoblje%20od%202017.%20do%202022..pdf>.

<sup>452</sup> Amnesty International (2018), *Amnesty International Report 2017/18*, <https://www.amnesty.org/en/countries/europe-and-central-asia/croatia/report-croatia/>.

For the purpose of monitoring the implementation of the overall operational part of the national strategy, the Government established the Commission for Monitoring the Implementation of the National Roma Inclusion Strategy for the period 2013-2020.

At a session held on 24 August 2017, the Government adopted the operational programmes for national minorities for the period of 2017-2020, which sets out 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.<sup>453</sup>

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<sup>453</sup> Operational programmes for national minorities for the period of 2017-2020, available at [https://pravamanijina.gov.hr/UserDocsImages/dokumenti/Zaklju%C4%8Dak%20Vlade%20RH%20i%20OP%20za%20nm%20\(3\).pdf](https://pravamanijina.gov.hr/UserDocsImages/dokumenti/Zaklju%C4%8Dak%20Vlade%20RH%20i%20OP%20za%20nm%20(3).pdf).

## 10 CURRENT BEST PRACTICES

### *People's Ombudsperson and Disability Ombudsperson Office*

The People's Ombudsperson and the Disability Ombudsperson are good examples of equality bodies. They are very active and engaged in the execution of their competences and can be considered reliable and available to provide adequate support to victims of discrimination. Both Ombudspersons are also very active in raising public awareness as well as in the education of public and experts, improves the quality of protection against discrimination. They also participate in legislative proceedings, issue opinions, recommendations and proposals, publish annual reports and organise seminars, conferences, roundtables and similar educational events with the aim of sharing experiences and good practice in the field of discrimination.

### *Roma Housing Projects*

In April 2019, the annual programme for housing solutions and improvement of living conditions of the members of the Roma national minority was adopted.<sup>454</sup> The programme will be implemented through two schemes of which scheme 1 concerns housing and scheme 2 the improvement of living conditions for Roma people. The first scheme provides for one of the following: donations of building material for the renovation, extension, and completion of construction of family houses owned or co-owned by a Roma person or donation of building materials for the construction of a house on a building land owned or co-owned by a Roma person. Additionally, the state provides financial assets in the amount of 25 % of the value of the building materials, which money can be used only for paying construction costs. Scheme 2 provides for the donation of household appliances (fridges, washing machines, stoves and so on) and furniture (chairs, tables, closet). The available budget is allocated on a first-come, first-served basis. The value of the programme is HRK 1 500 000, which is approximately EUR 200 000.

In 2019, the Roma Union of Croatia and local self-government units signed five agreements concerning the construction of playing fields in Roma settlements in the towns of Slavonski Brod, Belišće, Čakovec, and Beli Manastir, and in Nedelišće municipality. Furthermore, in May 2019, construction of sports fields in the Roma settlements in Đurđevac and Kuršanec were completed.

In 2019 there were also several projects concerning electrification and urbanisation in those areas. For example, street lighting was installed in the Roma settlement of Zlatnica and in September 2019, the Croatian electricity company (HEP) agreed to install 176 new electric connections in Roma settlements. It is expected that more connections will be installed in the future.

The biggest housing project in Roma settlements is the project in Darda municipality, which has been on-going since 2014 and is expected to finish by 2023. The plan is to build 87 family houses and 2 playgrounds with the aim of better including Roma in the social and economic life of all inhabitants of Darda. The specific goal is to improve the quality of living conditions and conditions for the upbringing and schooling of children and youth, to improve the chances of employment of Roma and to increase the value of the real estate.

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<sup>454</sup> Annual programme for housing solutions and improvement of living conditions of the members of the Roma national minority. Available at <https://sduosz.gov.hr/UserDocsImages/dokumenti/20190516122657.pdf>.

## **11 SENSITIVE OR CONTROVERSIAL ISSUES**

### **11.1 Potential breaches of the directives at the national level**

#### **a) Burden of proof and intent in anti-discrimination proceedings**

Although in Croatia national law does contain regulations on a shift of the burden of proof in anti-discrimination proceedings from the claimant to the defendant, the interpretation of this rule in practice is still questionable and not completely in line with EU law.

Case law on this issue is also still poorly developed and the rule on the burden of proof is only sometimes mentioned in court decisions.

The general impression is that the courts still perceive the claimants to be the ones who need to prove discrimination.

In this sense the rule that claimants are obliged only to make probable that discrimination had occurred are interpreted very broadly and overlap with the rules on burden of proof.

This is especially problematic in work-related anti-discrimination proceedings, in which the claimant often does not have clear evidence of discrimination and possible witnesses to the discrimination who are current employees of the defendant are reluctant to give evidence before the court in favour of claimant.

Therefore, although the Article 8 of Directive 2000/43 and Article 10 of Directive 2000/78 are correctly transposed in national legislation through Article 20 of the Anti-discrimination Act, these rules are not correctly applied in practice, which can amount to potential breaches of the directives.

The case law is also still not quite clear regarding the issue of intent as an element of discrimination. The courts often contemplate whether the discriminatory treatment was intentional, that is whether the defendant acted with specific intent, and are reluctant to find discrimination if the intent is not evident. Bearing in mind that the directives do not specify intent as an element of discrimination, this kind of interpretation of discrimination in practice can also amount to potential breaches of the directives.

#### **b) Sanctions**

Although rules on sanctions are in line with the directives, often the sanctions offered in practice cannot be considered to be effective, proportionate and dissuasive.

Offences motivated by discrimination are usually prosecuted as misdemeanours and not as criminal offences, although the basis for criminal prosecution in the law exists. In misdemeanour cases, as a rule, judges mitigate the fines set by law, so that the amounts imposed are rather low (EUR 40 to EUR 400) and do not contribute to the specific and general prevention of discrimination.

Furthermore, although the law prescribes imprisonment as a punishment in misdemeanour cases, a financial fine remains the most common sanction and is imposed in 90 % cases, while in the remaining cases the defendants are sentenced to community service. This meant that in 2019, in only one case was the defendant sentenced to imprisonment.

In criminal proceedings, probation remains the most commonly imposed sanction while prison sentences are regularly not imposed, meaning that the most severe sanctions, although provided for, are not used in practice.

Compensation, which is the main sanction in civil anti-discrimination cases, is usually set in amounts that are considered to be rather low and it is highly disputable whether they satisfy the criteria of being effective, proportionate and dissuasive sanctions, although this varies from case to case.

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

The provision of the Act on holidays, remembrance days and non-working days in the Republic of Croatia, which stipulates that members of the three biggest religious minorities in the Republic of Croatia are entitled to additional paid day off on the days of their main religious holidays, can be seen as discriminatory.<sup>455</sup> The aim of this provision is to enable the members of religious minorities in Croatia the right to practice their religion on the same basis as the members of the majority Catholic population, which leads to a situation in which they have the right to a day off on all the main Catholic holidays that have been declared as non-working days by law for all persons, regardless of their religion, as well as to an additional day off. Bearing in mind the case law of the CJEU on this matter, this provision could potentially be discriminatory, however, when making such an assessment in each individual case, it is necessary to assess other circumstances, too.<sup>456</sup>

## 11.2 Other issues of concern

### *Anti-discrimination protection in practice – possible barriers to litigation*

The Ombudsperson's *Report for 2018* and its analysis of cases before the courts, as in previous years, show that anti-discrimination protection often does not work in practice. There is still evident lack of understanding of anti-discrimination legislation and it is notable that in some proceedings the claimants failed to refer to any of the discrimination grounds prescribed by the Anti-discrimination Act. The case law shows that the courts took the position that the Anti-discrimination Act contains a closed list of anti-discrimination grounds. Therefore, if during the proceedings the claimant fails to invoke one of the grounds prescribed by the Anti-discrimination Act, the claim is rejected by the court.

Although indirect discrimination is regulated by the Anti-discrimination Act and prohibited in the same way as direct discrimination, there is no case law available nor special observations of the relevant Ombudspersons on this issue that might reveal whether indirect discrimination is still not sufficiently recognised.

A significant problem is the lengthy duration of the court proceedings, because of which the victims of discrimination are reluctant to seek court protection. Proceedings in Croatia rarely satisfy the standards of fairness in respect of reasonable time, since the proceedings usually last so long that remedies cannot be considered to be effective. Furthermore, a fear of public litigation is another barrier, especially in cases concerning discrimination on the basis of sexual orientation where victims can be reluctant to seek court protection because of the fear of potential additional discrimination given that the broader public will become aware of their sexual orientation.

The free legal aid system is also not functional because of which, in reality, people without sufficient financial means do not have the opportunity to address the court.

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<sup>455</sup> Act on holidays, remembrance days and non-working days, 15 November 2019, Official Gazette 110/19 *Zakon o blagdanima, spomendanima i neradnim danima u Republici Hrvatskoj*, Article 3.

<sup>456</sup> CJEU, judgment of 22 January 2019, *Cresco Investigation GmbH v. Markus Achatzi*, C-193/17, ECLI:EU:C:2019:43.

Case law of municipal and county courts, the main source of judicial interpretation of legal provisions that are often very wide, 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.<sup>457</sup>

#### *Reasonable accommodation duties*

The Disability Ombudsperson's reports as well as the case law indicate that reasonable accommodation duties have not been recognised as important and binding, primarily in the areas of education and employment of persons with disabilities, and are still largely interpreted solely as an obligation to remove architectural barriers.

There is no awareness that failing to comply with reasonable accommodation duties constitutes discrimination against persons with disabilities and there is also a noticeable lack of understanding and willingness of employers and educational institutions to make efforts and enable persons and children with disabilities to participate on an equal basis in working and educational environments.

If a person does not have any medical documentation that would prove his/her disability status and wishes to claim rights on the basis of disability, including reasonable accommodation, an assessment by the Institute for Medical Expertise needs to be conducted, which presents additional problems, primarily because of the length of assessment proceedings.

Everything mentioned above has a significant negative impact on the position of people with disabilities in society and leads to their social exclusion from an early age, bearing in mind that the problems regarding reasonable accommodation duties are in most cases apparent in preschool institutions, although early inclusion mechanisms are vital for the successful integration of people with disabilities in society.

In addition, because of the inability to find employment, failure to meet reasonable accommodation duties also affects the material status of people with disabilities who often live in poverty and are financially dependent on others or are welfare beneficiaries. Quota employment measures for people with disabilities have so far not been proven to be overly effective, since employers under this obligation in many cases prefer to pay a penalty rather than to meet the quota.

#### *Roma national minority*

The situation of the Roma is still very problematic in spite of programmes and strategies aimed to improve their situation.

During 2017, as part of the project 'Fundraising for Effective Implementation of the National Roma Inclusion Strategy' funded under the IPA 2012 programme, which was carried out by the Government's Office for Human Rights and Rights of National Minorities and the Centre for Peace Studies (an NGO), a comprehensive scientific research study on the Roma population in Croatia was conducted. The research findings were published in August 2018 as *Inclusion of Roma in Croatian Society: Database Research*.<sup>458</sup> According to the research, there are 24 524 members of the Roma national

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<sup>457</sup> People's Ombudsperson (2015), *Ombudsperson's Report for 2014*, p. 21: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

<sup>458</sup> Kunac, S., Klasnić, K. and Lalić, S. (2018) *Inclusion of Roma in Croatian Society: Database Research*, Centre for Peace Studies, August 2018, available at

minority, on 134 sites in 15 counties of the Republic of Croatia. This is the first precise indicator of the numbers of the Roma population in Croatia.

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. Given the poverty and social exclusion of the Roma, the quality of healthcare provided to them is lower than the quality of healthcare provided to the rest of the population. In addition to the lower health status of the Roma, differences have also been noted between the quality of healthcare within the Roma community, with Roma women and children having a lower health status than Roma men.

The research published in 2018 found that 28.2 % of Roma stated that they were discriminated against in the last 12 months, 23.1% of them multiple times.<sup>459</sup> Discrimination is in most cases identified in employment and the social care system. It is of particular concern that discrimination is widespread towards Roma in access to employment, which means that members of the Roma minority do not have realistic opportunities to enter the labour market and obtain permanent employment.

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).<sup>460</sup> In 2016, the UNCHR registered 2 800 Roma without permanent or temporary residence who were at risk of statelessness.<sup>461</sup> In its report for 2017, the NGO Human Rights Watch reported that thousands of Roma remain stateless in Croatia.<sup>462</sup>

Roma people also experience difficulties in obtaining identity documents, which has limited their access to public services.<sup>463</sup> In previous years the People's Ombudsperson warned that a significant number of Roma in Croatia are without or in danger of losing their citizenship. 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.

During 2019 the Roma national minority was also exposed to hateful, inciting and provocative public speech, which promoted intolerance and called for action against 'them'. For the most part, the entire Roma community is still attributed with mostly unfavourable, unwanted and bad traits.

Of great concern is the fact that discriminatory treatment of Roma in society is understood as something normal that happens on an everyday basis and not much attention is paid to this problem. In the eyes of the majority, Roma are considered second-class citizens who are violent, uneducated and unemployed by their own choice. Therefore, continuous action by and collaboration between the relevant bodies is necessary in order to eradicate such stigmatisation in the future.

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<https://pravamanjina.gov.hr/UserDocsImages/dokumenti/Uklju%C4%8Divanje%20Roma%20u%20hrvatsko%20dru%C5%A1tvo%20-%20istra%C5%BEivanje%20baznih%20podataka-list%202018.pdf>.

<sup>459</sup> Kunac, S., Klasnić, K. and Lalić, S. (2018) *Inclusion of Roma in Croatian Society: Database Research*, Centre for Peace Studies, August 2018.

<sup>460</sup> UNHCR's intervention as a third party in the EctHR case of *Hoti v. Croatia*, No. 63311/14, 26 April 2018.

<sup>461</sup> People's Ombudsperson (2017), *Ombudsperson's Report for 2016* <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>, pp. 41-42.

<sup>462</sup> Human Rights Watch (2018), *Report for 2017*, available at <https://www.hrw.org/world-report/2018/country-chapters/european-union#560d4c>.

<sup>463</sup> Amnesty International (2017), *Amnesty International Report 2016/17*, available at <https://www.amnesty.org/en/documents/pol10/4800/2017/en/>.

### *Serbian national minority*

Members of the Serbian minority are also more exposed to discrimination based on ethnicity or national origin and there is a long-standing trend of deteriorating relations between the majority of the public and some political and public figures in the Serb community. Serb returnees to their pre-war residences are particularly affected by discrimination. They face discrimination based on national origin, age and property status since most of them are elderly people with exceptionally low incomes, living in underdeveloped rural areas, where basic services, including water and electricity, are often not available.

It is of particular concern that 2019 was marked by incidents of ethnically motivated violence toward Serbs, which represents a radical form of discrimination.

The incidents included violent organised attacks by multi-member groups, including children, as a result of which some victims had to be hospitalised. Although police treatment was timely and appropriate in all of the most serious incidents, there has sometimes been a lack of clear condemnation of such violence from the highest levels of Government.

There is also an on-going issue in relation to the current models of minority education in war-affected regions, where Serbian and Croatian children attend separate classes and are separated even in kindergartens. Although this model of education is in line with the law it does not contribute to intercultural dialogue between the two communities.

### *Increasing levels of hate speech and hate crime*

In recent years, there has been an increase in the number of hate crimes, mostly against members of national minorities (Serbs and Roma). The number of hate crimes motivated by the victim's sexual orientation has also increased.

In their annual reports, the relevant Ombuds people constantly warn of the still inadequate prosecution of such crimes and the mild penal policy that does not achieve the goals of specific and general prevention of hate crime.

It is of particular concern that there is a lack of public condemnation of hate crimes by the Government, especially those committed against members of the Serbian national minority.

In the last few years several anti-discrimination proceedings were initiated by the conservative civic organisations claiming that Catholics had been discriminated against on the basis of their religion. The cases concerned satirical reporting by a media news portal and the publicly expressed opinion of the former president of the Republic of Croatia via Facebook. The impression is that this kind of proceedings suggest a misuse of the protection guaranteed by the Anti-discrimination Act and are intended to curtail free speech and critique of current social events related to the Catholic Church, which has a great influence in Croatia.



## 12 LATEST DEVELOPMENTS IN 2019

### 12.1 Legislative amendments

In 2019 amendments to the Civil Procedure Act entered into force including changes to the provisions regulating appeal on points of law (*revizija*), which regarding anti-discrimination proceedings, were previously considered to be controversial.<sup>464</sup> The Anti-discrimination Act provides that an appeal on points of law in anti-discrimination cases is always admissible, however the case law showed a different picture, since the Supreme Court had in most anti-discrimination cases decided to dismiss an appeal on points of law as inadmissible, because the cases did not fulfil the criteria for an extraordinary appeal on points of law, the remedy being admissible rarely and only in exceptional situations. Therefore, despite the provisions of the Anti-discrimination Act, the Supreme Court took the view that in anti-discrimination cases, an appeal on points of law is admissible only when the value of the case is above the statutory threshold that had also been confirmed by the Constitutional Court. The result of this interpretation was that parties in anti-discrimination proceedings had almost never been entitled to file an appeal on points of law, although such a legal remedy had been granted to them by the Anti-discrimination Act.

The amendments to the Civil Procedure Act introduced new regulations on the admissibility of the appeal on points of law, prescribing in general that this remedy is admissible only if the Supreme Court decides that it is admissible in each specific case, granting permission upon the request of the party to file an appeal on points of law, or refusing such a request.<sup>465</sup> At the same time, the Civil Procedure Act provides exceptions from that general rule, stating that an appeal on points of law is always admissible in certain proceedings, including in anti-discrimination proceedings.<sup>466</sup> It is yet to be seen how will this reflected in the quality and effectiveness of anti-discrimination protection in practice.

### 12.2 Case law

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

**Date of decision:** 6 March 2019

**Name of the parties:** M.C.

**Reference number:** U-III-4141/2018

**Link:**

[https://sljeme.usud.hr/Usud/Praksaw.nsf/C12570D30061CE54C12583B70030C358/\\$FILE/U-III-4141-2018.pdf](https://sljeme.usud.hr/Usud/Praksaw.nsf/C12570D30061CE54C12583B70030C358/$FILE/U-III-4141-2018.pdf)

**Brief summary:** The applicant, M.C., a person with a disability, filed a Constitutional complaint before the Constitutional Court of Croatia stating that he had been denied the 'right of priority under equal conditions' during the process of applying for a position of deputy chief prosecutor and claiming, *inter alia*, that such conduct represents discrimination. The right cited by the applicant is established by the Act on professional rehabilitation and employment of persons with disability and it guarantees that, when multiple persons apply for the same position in public services and fulfil the same requirements, the person with a disability has to be given an advantage in employment. The applicant, who had scored a lower score on the tests than the candidate who was eventually employed, argued that he had not been treated equally and that, according to the provision cited, as person with a disability, he had to be employed. However, the Constitutional Court clarified that in this case, the applicant had had a lower score on the relevant test than the other candidate and that therefore the 'equal conditions'

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<sup>464</sup> Civil Procedure Act, 1 September 2019, *Zakon o parničnom postupku*, Official Gazette 53/91, 91/92, 58/93, 112/99, 88/01, 117/03, 88/05, 02/07, 84/08, 96/08, 123/08, 57/11, 148/11, 25/13, 89/14, 70/19.

<sup>465</sup> Civil Procedure Act, Article 382.

<sup>466</sup> Civil Procedure Act, Article 382a.

requirement had not been fulfilled. Consequently, the Constitutional Court concluded that the applicant had not been discriminated against.

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

**Date of decision:** 9 October 2019

**Name of the parties:** O.M.

**Reference number:** U-III-4748/2017

**Link:** [https://sljeme.usud.hr/Usud/Praksaw.nsf/C12570D30061CE54C1258493002B79F4/\\$FILE/U-III-4748-2017.pdf](https://sljeme.usud.hr/Usud/Praksaw.nsf/C12570D30061CE54C1258493002B79F4/$FILE/U-III-4748-2017.pdf)

**Brief summary:** In this case, the applicant filed a Constitutional Complaint against the decision of the Supreme Court of the Republic of Croatia, which upheld the decision of the Zagreb County Court stating that the applicant had not been discriminated against on the basis on his health status, namely his impaired eyesight. The applicant, a judge who had been reassigned to work at the Investigative Centre of the Zagreb County Court, argued that he had been put at a disadvantage compared to other investigative judges because, among other things, in the annual schedule of work activities he had been addressed as 'judge' rather than 'investigative judge' and had also been given less demanding tasks, which are, in his opinion, suited for legal secretaries and not for judges, all because of his reducing eyesight. However, the Constitutional Court rejected the complaint, stating that the Supreme Court had accurately evaluated that the applicant had been given different tasks not arbitrarily but because of his limited working capability, which had been officially determined by the Croatian Institute for Pension Insurance. In its decision, the Constitutional Court emphasised that the applicant's subjective opinion that he is capable of performing the full scope of tasks despite the certificate stating otherwise cannot represent a basis for discrimination. Moreover, the Constitutional Court stressed that, even if a person is willing to continue with their regular tasks despite the fact that it has been determined that they are objectively incapable of performing some of them and even if they are willing to take the risks linked to that decision, the employers still have the right to assess the potential risks of allowing that person to continue with those tasks because the objective inability to perform the tasks could have a harmful effect on the final quality of the tasks and could jeopardise the interests of others involved in the working process. On those grounds, the Constitutional Court concluded that the applicant had not been put at a disadvantage compared to other investigative judges on the basis of his disability or his limited working capability because the difference in the tasks given to him was objectively justifiable.

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

**Date of decision:** 5 March 2019

**Name of the parties:** V. Association v. I.J.

**Reference number:** Gž 4/2019

**Link:** <https://sudskapraksa.csp.vsrh.hr/decisionPdf?id=090216ba8096c5b2>

**Brief summary:** The claimant, V. Association, lodged a complaint against the defendant, I.J., claiming that the defendant had discriminated against Catholics on the basis of religion by posting a Facebook comment stating: 'Croatia is a secular state. It is not a Catholic Jamahirya.' The comment was posted as a critique of, in the defendant's opinion, excessive media reporting about the holiday of Assumption in Croatia. The court of first instance (Zagreb County Court) concluded that, even though the statement is capable of hurting the feelings of the members of the Catholic religion, it does not, per se, put Catholics at a disadvantage compared to other citizens. Given that, in order for discrimination to exist under the Croatian Anti-discrimination Act, a person or a group that is allegedly discriminated against has to be put at a disadvantage, the first instance court concluded that there was no ground to declare that the defendant had discriminated against Catholics. The Supreme Court, acting as a court of second instance, agreed with the reasoning of the first instance court and confirmed its judgment, which then became final.

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

**Date of decision:** 11 June 2019

**Name of the parties:** M.R. v. Clinical Hospital M.Z.

**Reference number:** GŽ 4/2019

**Link:** <https://sudskapraksa.csp.vsrh.hr/decisionPdf?id=090216ba8099dbe7>

**Brief summary:** In this case, the claimant, M.R., filed a claim against her employer, Clinical Hospital M.Z., alleging that she was discriminated against at her workplace on the basis of education. M.R., who was the chief nurse of one of the hospital's departments, claimed that the chief nurse of the hospital, K.M., had been persistently harassing her based on the fact that M.R. did not have the required level of education to do her job. The harassment consisted mainly in K.M. insulting M.R. in public and in private as well as K.M. yelling at the M.R. in front of the hospital staff about her not being educated enough to do her job. The court of first instance (the Zagreb Municipal Labour Court) concluded that the claimant had been harassed and discriminated against on the basis of education, which is prohibited by the Constitution, and that the harassment had violated the claimant's dignity. The court of second instance (Varaždin County Court) upheld the first instance judgment, but the Supreme Court of the Republic of Croatia, upon reviewing the case, concluded that the Labour Act does not specify education as one of the grounds for discrimination and that consequently, it would have been impossible for the claimant to be discriminated against on that basis. Moreover, the Supreme Court stated that for discrimination to exist under the Labour Act required that the person is put at a disadvantage compared to others in a comparable situation, and concluded that that requirement was not met in this case. However, the Supreme Court concluded that, even though the claimant had not been discriminated against, she had indeed been harassed at work and that the harassment constituted mobbing. Eventually, M.R. was awarded compensation of HRK 10 000 (EUR 1 350) for the emotional pain that she had endured and the same amount for the violation of her honour and dignity.

**Name of the court:** Zagreb County Court

**Date of decision:** 7 May 2019

**Name of the parties:** P. v. T. H. M. I., K. É. S. K. F. T. – PODRUŽNICA Z

**Reference number:** GŽ R-627/19

**Link:** N/A

**Brief summary:** The claimant, A.P., worked for the defendant on the basis of a fixed-term employment contract. A couple of days before the contract was supposed to end, the defendant had notified the claimant and informed him that they would not offer him a consecutive employment contract. Following the notification, the claimant lodged a complaint before the Zagreb Municipal Labour Court (hereafter: the municipal court) claiming that the defendant had decided not to offer him a new contract because of A.P.'s participation in the workers' union, i.e. that the defendant had discriminated against the claimant. During the proceedings, the municipal court established that the defendant had indeed failed to offer new contracts to the workers who were involved with the union, while contracts had been offered to those who had not participated in the union. Consequently, it was concluded that A.P. had been discriminated against and ordered the defendant to eliminate such discrimination by concluding a consecutive fixed-term employment contract with the claimant. However, following the defendant's appeal, the Zagreb County Court, acting as a second instance court, deemed the obligation to conclude a new contract to be contrary to the principle of freedom of contract guaranteed by the law. Since the claimant had not asked for any type of compensation apart from a new contract being concluded and because such a practice would be contrary to the principle of freedom of contract, the county court rejected the claim. However, in its judgment, Zagreb County Court stated that it was still uncertain whether discrimination had happened or not, i.e. it was not concluding that the claimant had not been discriminated against. Nonetheless, the request to eliminate potential discrimination by concluding a new contract was rejected.

**Name of the court:** Varaždin County Court, Koprivnica Permanent Service

**Date of decision:** 16 May 2019

**Name of the parties:** P.B. v. the Republic of Croatia, Ministry of Science, Education and Sports

**Reference number:** GŽ-647/2019

**Link:** N/A

**Brief summary:** The claimant, P.B., is a boy with a medical condition that prevents him from being able to physically attend classes and therefore, in order to take the classes, he needs distance learning courses to be provided to him through electronic means of communication. Since the high school that the boy had initially enrolled in had failed to provide courses in this way, the claimant could not participate in class and eventually did not have enough grades to pass any classes, which led to him being kept back a year. The court determined that the claimant was discriminated against based on his health status and awarded P.B. compensation of HRK 70 000 (EUR 9 400). Given that at the time of proceedings the claimant had already transferred to a private high school, the compensation was the most adequate measure for the situation at issue.

**Name of the court:** High Misdemeanour Court

**Date of decision:** 16 May 2019

**Name of the parties:**

**Reference number:** JŽ 889/2016

**Link:** N/A

**Brief summary:** In this case, the High Misdemeanour Court, following the defendant's appeal, confirmed the judgment of the court of first instance (Split Misdemeanour Court, Kaštel Šućurac Permanent Service) in which the defendant had been found guilty of a misdemeanour prohibited by the Anti-discrimination Act. The defendant committed the misdemeanour by throwing apples at the door of the headquarters of the Islamic community as well as yelling profanities aimed at the members of that community. The court stated that such behaviour without a doubt generates a hostile and degrading environment based on religious differences, which is the essential part of the misdemeanour punishable under Article 25 of the Anti-discrimination Act.<sup>467</sup> The defendant was fined EUR 670 (HRK 5 000), which is the minimum fine for the misdemeanour in question.

**Name of the court:** Zagreb Administrative Court

**Date of decision:** 19 December 2019

**Name of the parties:** I.Š. and M.K. v. Ministry of Demographics, Family, Youth and Social Policy of the Republic of Croatia

**Reference number:** UsI-1699/18

**Link:** N/A

**Brief summary:** The claimants, I.Š. and M.K., are a same-sex couple whose life partnership was registered under the Same-sex Life Partnership Act. In 2017, they submitted an application to the social welfare centre requesting permission to become foster parents. Their application was dismissed on the ground that the Foster Care Act (FCA) stipulates that a foster family consists of a foster parent, the foster parent's spouse (the person they are married to) and other relatives that live in the same household. Consequently, as the FCA does not explicitly mention that registered same-sex life partners can become foster parents, the centre decided to dismiss the claimants' application without considering its merits. After the Ministry of Demographics, Family, Youth and Social Policy confirmed the centre's decision, the claimants filed a claim before the Zagreb Administrative Court. In its judgment, the court emphasised the fact that the

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<sup>467</sup> Article 25 of the Anti-discrimination Act stipulates: 'Whoever, with the aim to intimidate another person or to create a hostile, degrading or offensive environment on the grounds of a difference in race, ethnic affiliation, colour, gender, language, religion, political or other belief, national or social origin, property, trade union membership, social status, marital or family status, age, health condition, disability, genetic origin, native identity or expression, and sexual orientation, hurts another person's dignity, shall be charged a fine for misdemeanour amounting from HRK 5,000.00 to HRK 30,000.00'.

FCA does not lay down any requirements regarding the sexual orientation of the future foster parents as well as the fact that, by using this formalistic approach, a single homosexual person could become a foster parent, but would not be given the same opportunity if they were in a same-sex life partnership, which is completely illogical and not in accordance with the purpose and spirit of the FCA. The court therefore ordered the centre to conduct a new proceeding and reach a decision on the merits of the claimants' application.

**Name of the court:** Split Municipal Misdemeanour Court, Sinj Permanent Service

**Date of decision:** 28 March 2019

**Name of the parties:** Split-Dalmatian Police Department, Sinj Police Station v. Ž.K.

**Reference number:** J-3452/2016

**Link:** N/A

**Brief summary:** In this case, the defendant, Ž.K., was accused of committing a misdemeanour under Article 25 of the Anti-discrimination Act by yelling at R.O., the former Minister of Internal Affairs, during the memorial for victims of the Second World War, telling him to leave because 'this is not a place for politics', threatening to spit on him and addressing him by using a wordplay that implied that R.O. is related to a former Yugoslavian minister of internal affairs and the head of Yugoslavian secret services connected to the mass killing of Croats. The court found him guilty as charged stating that, by behaving in such a way, the defendant had acted with the intent to create a degrading environment on the basis of political beliefs and social status and had thus violated R.O.'s dignity. He was fined HRK 1 000 (EUR 135).

**Name of the court:** Split Municipal Misdemeanour Court

**Date of decision:** 9 July 2019

**Name of the parties:** Split-Dalmatia Police Department, Ist Police Station Split v. M.O.

**Reference number:** J 1477/2019

**Link:** N/A

**Brief summary:** In this case, the police department initiated a proceeding against M.O., a Croatian national who, along with many others, had been spotted at a football match singing a hateful song directed towards the supporters of the opposing team with lyrics threatening to kill them, stating that their hometown is full of Serbs and suggesting that Serbs should be hung on trees. The defendant was found guilty of a misdemeanour under the Prevention of Violence at Sporting Events Act, which prohibits songs and other types of content that demonstrate or incite hatred or violence based on, among other grounds, nationality, and was fined HRK 3 000 (EUR 400). The fine in question was below the minimum amount laid down in the Misdemeanour Act because of the mitigating circumstances: the defendant pleaded guilty and had no prior record as well as the fact that he had acted along with many other supporters of the same team and that the same behaviour had been tolerated in the past.

**Name of the court:** Split Municipal Misdemeanour Court, Sinj Permanent Service

**Date of decision:** 23 December 2019

**Name of the parties:** Split-Dalmatia Police Department, Sinj Police Station v. D.V.

**Reference number:** J-3362/2019

**Link:** N/A

**Brief summary:** The defendant, D.V. wrote a Facebook comment calling another Facebook user 'faggot' and was consequently accused of committing a misdemeanour under Article 25 of the Anti-discrimination Act, which reads:

'a person who acts with the intent to cause fear to another or to create a hostile, degrading or insulting environment based on (...) sexual orientation and by doing so violates another's dignity, shall be sentenced to a fine of between HRK 5.000,00 and 30.000,00.'

During the proceedings, which lasted for six months, the defendant pleaded guilty and expressed his remorse, stating that he had no intention to hurt the victim. When giving its guilty verdict, the court considered the defendant's difficult financial situation as well as the length of the proceedings and the defendant was eventually fined HRK 1 000 (approximately EUR 135), i.e. below the minimum amount.

### **12.3 Cases brought by Roma and Travellers**

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, which represents an on-going problem. They are reluctant to file discrimination complaints because they do not have the financial resources to afford professional assistance. The Ombudsperson continuously points out the problems of the Roma community and the disadvantageous position of Roma in Croatia.

## ANNEX 1: MAIN TRANSPOSITION AND ANTI-DISCRIMINATION LEGISLATION

**Country:** Croatia  
**Date:** 31 December 2019

### **Title of the law: Anti-discrimination Act**

Abbreviation: ADA

Date of adoption: 09 July 2008

Latest relevant amendment: 19 October 2012

Entry into force: 1 January 2009

Web link: <https://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 the law: Gender Equality Act**

Abbreviation: GEA

Date of adoption: 15 July 2008

Latest relevant amendment: 14 July 2017

Entry into force: 15 July 2008

Web link: <https://www.zakon.hr/z/388/Zakon-o-ravnopravnosti-spolova>

Grounds covered: gender, marital or family status, sexual orientation

Civil/administrative/misdemeanour law

Material scope: All fields

Principal content: general framework for the protection and promotion of gender equality and protection from discrimination on the grounds of gender as well as establishment of equal opportunities for women and men

### **Title of the law: Same-sex Life Partnership Act**

Abbreviation: SSLPA

Date of adoption: 15 July 2014

Latest relevant amendment: -

Entry into force: 5 August 2014

Web link: <https://www.zakon.hr/z/732/Zakon-o-%C5%BEivotnom-partnerstvu-osoba-istog-spolu>

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 the law: Labour Act**

Abbreviation: LA

Date of adoption: 15 July 2014

Latest relevant amendment: 16 October 2019

Entry into force: 07 August 2014

Web link: <https://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 law  
Material scope: employment  
Principal content: general act on employment

**Title of the law: Act on Professional Rehabilitation and Employment of Persons with Disability**

Abbreviation: APREPD  
Date of adoption: 18 December 2013  
Latest relevant amendment: 5 May 2018  
Entry into force: 13 December 2013  
Weblink: <https://www.zakon.hr/z/493/Zakon-o-profesionalnoj-rehabilitaciji-i-zapo%C5%A1javanju-osoba-s-invaliditetom>  
Grounds covered: disability  
Civil and administrative law  
Material scope: employment  
Principal content: professional rehabilitation, employment and work of persons with disability



## ANNEX 2: INTERNATIONAL INSTRUMENTS

**Country:** Croatia

**Date:** 31 December 2019

<b>Instrument</b>	<b>Date of signature</b>	<b>Date of ratification</b>	<b>Derogations/ reservations relevant to equality and non-discrimination</b>	<b>Right of individual petition accepted?</b>	<b>Can this instrument be directly relied upon in domestic courts by individuals?</b>
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	Ratified collective complaints protocol?  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	N/A	yes
ILO Convention No. 111 on Discrimination	succession	8.10.1991	no	N/A	yes

<b>Instrument</b>	<b>Date of signature</b>	<b>Date of ratification</b>	<b>Derogations/reservations relevant to equality and non-discrimination</b>	<b>Right of individual petition accepted?</b>	<b>Can this instrument be directly relied upon in domestic courts by individuals?</b>
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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