



European
Commission

European network of legal experts in
gender equality and non-discrimination

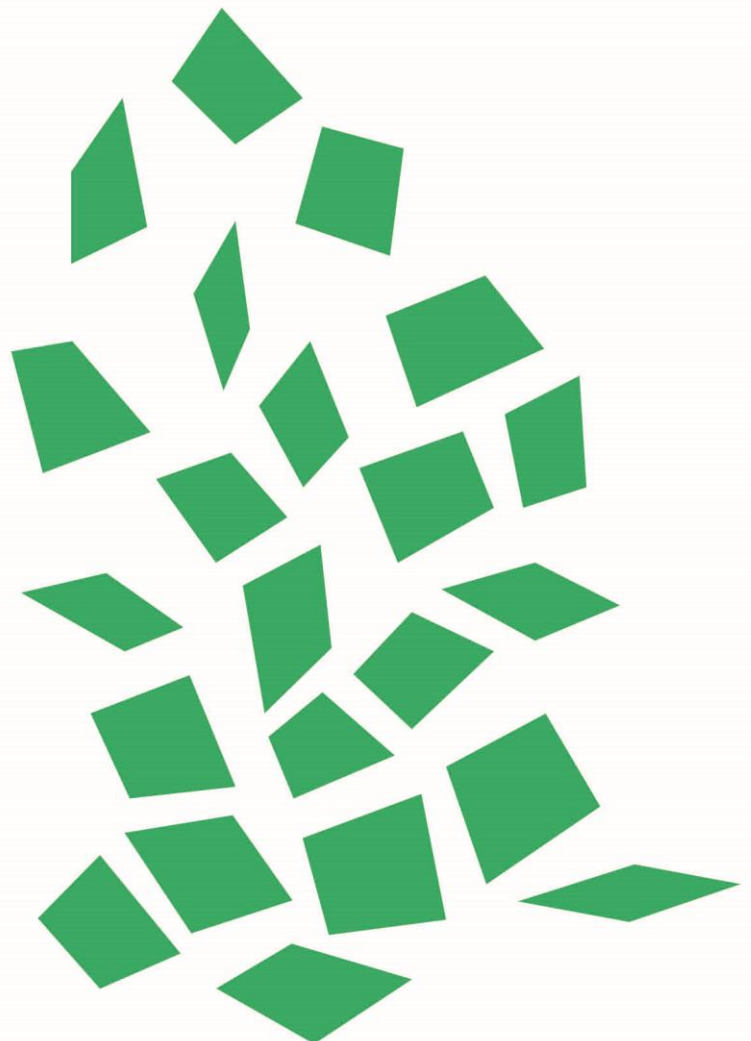
Country report

Non-discrimination

Croatia

2019

including summary



*Justice
and Consumers*

EUROPEAN COMMISSION

Directorate-General for Justice and Consumers
Directorate D — Equality and Union citizenship
Unit D.1 Non-discrimination and Roma coordination

*European Commission
B-1049 Brussels*

Country report

Non-discrimination

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

Croatia

Ines Bojić*

Reporting period 1 January 2018 – 31 December 2018

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

***Europe Direct is a service to help you find answers
to your questions about the European Union.***

Freephone number (*):

00 800 6 7 8 9 10 11

(*) The information given is free, as are most calls (though some operators, phone boxes or hotels may charge you).

LEGAL NOTICE

This document has been prepared for the European Commission however it reflects the views only of the authors, and the Commission cannot be held responsible for any use which may be made of the information contained therein.

More information on the European Union is available on the Internet (<http://www.europa.eu>).

Luxembourg: Publications Office of the European Union, 2019

© European Union, 2019

PDF ISBN 978-92-76-00217-8 ISSN 2599-9176 doi:10.2838/970140 DS-BB-19-018-EN-N

CONTENTS

EXECUTIVE SUMMARY	5
INTRODUCTION	14
1 GENERAL LEGAL FRAMEWORK	16
2 THE DEFINITION OF DISCRIMINATION	17
2.1 Grounds of unlawful discrimination explicitly covered	17
2.1.1 Definition of the grounds of unlawful discrimination within the directives	17
2.1.2 Multiple discrimination	19
2.1.3 Assumed and associated discrimination	21
2.2 Direct discrimination (Article 2(2)(a))	22
2.2.1 Situation testing	22
2.3 Indirect discrimination (Article 2(2)(b))	24
2.3.1 Statistical evidence	25
2.4 Harassment (Article 2(3))	27
2.5 Instructions to discriminate (Article 2(4))	28
2.6 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78)	29
3 PERSONAL AND MATERIAL SCOPE	37
3.1 Personal scope	37
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)	37
3.1.2 Natural and legal persons (Recital 16, Directive 2000/43)	37
3.1.3 Private and public sector including public bodies (Article 3(1))	37
3.2 Material scope	37
3.2.1 Employment, self-employment and occupation	37
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))	38
3.2.3 Employment and working conditions, including pay and dismissals (Article 3(1)(c))	38
3.2.4 Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1)(b))	39
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))	39
3.2.6 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43)	40
3.2.7 Social advantages (Article 3(1)(f) Directive 2000/43)	41
3.2.8 Education (Article 3(1)(g) Directive 2000/43)	41
3.2.9 Access to and supply of goods and services that are available to the public (Article 3(1)(h) Directive 2000/43)	47
3.2.10 Housing (Article 3(1)(h) Directive 2000/43)	48
4 EXCEPTIONS	51
4.1 Genuine and determining occupational requirements (Article 4)	51
4.2 Employers with an ethos based on religion or belief (Article 4(2) Directive 2000/78)	51
4.3 Armed forces and other specific occupations (Article 3(4) and Recital 18 Directive 2000/78)	53
4.4 Nationality discrimination (Article 3(2))	53
4.5 Work-related family benefits (Recital 22 Directive 2000/78)	55
4.6 Health and safety (Article 7(2) Directive 2000/78)	56

4.7	Exceptions related to discrimination on the ground of age (Article 6 Directive 2000/78)	56
4.7.1	Direct discrimination	56
4.7.2	Special conditions for young people, older workers and persons with caring responsibilities	57
4.7.3	Minimum and maximum age requirements	58
4.7.4	Retirement.....	58
4.7.5	Redundancy	60
4.8	Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5), Directive 2000/78)	61
4.9	Any other exceptions.....	61
5	POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78).....	62
6	REMEDIES AND ENFORCEMENT.....	64
6.1	Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)	64
6.2	Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78).....	68
6.3	Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)..	71
6.4	Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78).....	73
6.5	Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78).....	73
7	BODIES FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43).....	77
8	IMPLEMENTATION ISSUES.....	86
8.1	Dissemination of information, dialogue with NGOs and between social partners	86
8.2	Compliance (Article 14 Directive 2000/43, Article 16 Directive 2000/78).....	87
9	COORDINATION AT NATIONAL LEVEL.....	89
10	CURRENT BEST PRACTICES.....	91
11	SENSITIVE OR CONTROVERSIAL ISSUES.....	92
11.1	Potential breaches of the directives (if any).....	92
11.2	Other issues of concern	92
12	LATEST DEVELOPMENTS IN 2018.....	96
12.1	Legislative amendments	96
12.2	Case law.....	96
	ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION.....	99
	ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS.....	101

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 %.¹

The position of the Government and official bodies towards discrimination has moved from pro-nationalistic in the early nineties to denial in the late nineties and a more egalitarian approach since 2000. Ever since then, independently of elections and changes of Government, there has been slow but steady progress, which has been strongly encouraged by human rights organisations as well as by the EU accession process and other international 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.² 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.³

The following year, the Same-sex Life Partnership Act⁴ entered into force regulating the rights of registered and unregistered same-sex relationships.

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

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

³ Since then there has been no debate on the question, even though some issues (adoption etc.) have not yet been solved.

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

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. During 2018, petitions for the abolition or limitation of certain minority rights have been raised, often followed by allegations that minorities are privileged, and that minority legislation discriminates against the majority of Croatian citizens.

This kind of political initiative leads to the spread of anti-minority attitudes towards and the promotion of stereotypes about members of certain minorities, especially Roma and Serbs.

There is consistent problem of segregation of Roma children in education. In some counties with a significant Roma population (Međumirska and Varaždinska), Roma children are put in separate Roma-only classes in regular schools. In March 2010, the Grand Chamber of the European Court of Human Rights, in 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.⁵ 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 during 2018.

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.

The People's Ombudsperson report for 2017 highlighted a case of particular concern from August 2017, when during the fire season, two women were suspected of intentionally setting fire to a village inhabited mostly by Serbs, with the express aim of enacting revenge against the Serbs because of the burning of Croatian houses during the Homeland War. The UNHCR also expressed concern over the increased intolerance towards members of the Serbian minority in 2016 and 2017, drawing attention to the hostile mood apparent in the hate speech, media and public use of fascist symbols and the burning of the minority news magazine *Novosti* by members of the radical conservative political party on 2 September 2017 in the centre of Zagreb.⁶

During 2018, there was a notable increase in hate speech and ethnic intolerance towards Serbs in the media and on social networks, which was followed by some politicians and public figures making public statements expressing ethnic intolerance and historical revisionism.

In 2018, a referendum initiative was launched aiming to reduce the number of members of the Parliament, including minority representatives, and to prevent the participation of minority representatives in decision making on the state budget and the formation of the Government. The constitutionality of such a referendum was the subject of heated public debates, given that it would potentially lead to a situation in which minority rights would depend on majority representatives.

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

⁶ People's Ombudsperson (2018) *Report for 2017*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

The initiative did not collect enough signatures for a referendum to be held. In December 2018, the Constitutional Court rejected the initiative's objections regarding the procedure for checking the accuracy of the collected signatures.

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.⁷

Given that in 2018 Croatia remained a transit country for migrants⁸ heading to Western Europe, as a part of the so-called Balkan route, questions on the rights of migrants have been raised. 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 and sexual orientation are not directly mentioned in the Constitution, but these grounds are covered implicitly as 'other characteristics'.⁹

The main legislation dealing with discrimination comprises:

- the Anti-discrimination Act,¹⁰ 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

⁷ People's Ombudsperson (2019) *Report for 2018*, available at <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

⁸ 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.

⁹ Article 14 of the Croatian Constitution; Official Gazette 56/1990, 135/1997, 113/2000, 28/2001, 76/2010 and 5/2014. For example in the case no. U-I-1092/2017, 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 that the Constitution prohibits age-based discrimination although the Constitution does not explicitly mention age as a discrimination ground.

¹⁰ Official Gazette 85/2008 and 112/2012.

- status, age, health condition, disability, genetic heritage, gender identity and expression and sexual orientation;
- the Gender Equality Act,¹¹ which prohibits discrimination based on gender, gender identity and expression, sexual orientation and marital or family status, and the Same-sex Life Partnership Act, which prohibits discrimination based on a 'same-sex partnership' and 'sexual orientation';
 - the Labour Act,¹² which prohibits discrimination in the field of work and working conditions, including criteria and conditions for recruitment and promotion, vocational training, advanced vocational training and retraining, but does not mention grounds of discrimination.

3. Main principles and definitions

The Anti-discrimination Act prohibits discrimination based on race or ethnic 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.

¹¹ Official Gazette 82/2008, 125/2011, 20/2012 and 138/2012.

¹² Croatia, Labour Act, Official Gazette 93/2014.

The Anti-discrimination Act does not distinguish between citizens and non-citizens and guarantees protection from discrimination to any person.¹³ It does not distinguish between natural persons and legal persons either for the purposes of protection against discrimination or liability for discrimination.

The Anti-discrimination Act provides a relatively large number of exceptions to the prohibition of discrimination.

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

Other exceptions are: health and public order; positive actions; granting privileges to 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:

¹³ The Anti-discrimination Act provides protection from discrimination to any person without exception, which would include undocumented migrants.

- 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 (restitutive anti-discrimination claim); and/or
- damages for the harm caused by discrimination (reparative 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 are prosecuted *ex officio*. If the State Attorney's Office decides not to prosecute, a victim is authorised to take over the prosecution of the case as a subsidiary prosecutor. The sanction is imprisonment for up to three years.

The Anti-discrimination Act specifies misdemeanour liability for harassment, sexual harassment and victimisation. A fine is imposed on natural persons, responsible persons in legal entities, craftsmen and persons performing independent business activities and legal persons, while different levels of fine are set for different categories (from EUR 684 to EUR 41 095 for harassment and from EUR 684 to EUR 47 945 for sexual harassment).

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

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

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

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

National law is silent in respect of the use of situation testing. It does not explicitly permit the use of situation testing; it does not define it or establish procedural conditions for or limitations to the admissibility of such evidence in court. However, there are no obstacles, in anti-discrimination law or in civil procedural legislation, to the use of testing.

National law does not explicitly permit the use of statistical evidence; therefore, it does not define it nor establish procedural conditions for the admissibility of such evidence in

court or any limitations. However, there are no obstacles, in anti-discrimination law or in civil procedural legislation, to the use of statistical evidence.

6. Equality bodies

The Anti-discrimination Act grants the People's Ombudsperson powers as the central body for the elimination of discrimination and promotion of equal treatment irrespective of racial or ethnic origin. The Ombudsperson is the central body for the elimination of discrimination based on other grounds as well, with the exception of disability (which falls within the remit of the Disability Ombudsperson), discrimination against children (dealt with by the Ombudsperson for Children), and gender, gender identity and expression, marital or family status and sexual orientation (dealt with by the Gender Equality Ombudsperson).

The 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 trend is currently positive. In 2018, 55 civil anti-discrimination cases were closed, and discrimination was determined in 11 of them, while anti-discrimination claims were rejected in 31 cases and 11 cases were resolved in another way. This is the largest number of admissible judgments since the Anti-discrimination Act was first implemented.¹⁴

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

¹⁴ People's Ombudsperson (2019), *Report for 2018*, available at <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

conditions in which he will not be subjected to harassment and also to take preventive measures to secure adequate working conditions.¹⁸ The proceedings lasted seven years in total.

¹⁸ In 2019, Zagreb County Court confirmed the decision of the Zagreb Municipal Labour Court, no. GŽR-1415/18, 12 February 2019.

INTRODUCTION

The national legal system

The Republic of Croatia is a unitary state.¹⁹ 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.²⁰

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.²¹

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.²² 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.²³

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.²⁴

¹⁹ Croatia, Constitution of the Republic of Croatia (*Ustav Republike Hrvatske*), 22 December 1990, Article 1. Official Gazette 56/1990, 135/1997, 113/2000, 28/2001, 76/2010, 5/2014, <http://www.usud.hr/en/theconstitution> (According to the Constitutional Court of the Republic of Croatia, the Croatian Parliament, when making the consolidated text of the Constitution, failed to correctly number the articles. That is the reason why the same articles of the Constitution are often enumerated differently depending on the source and time of a creation of a document. In this document, the numbering corrected by the Constitutional Court will be used).

²⁰ Croatia, Constitution of the Republic of Croatia, 22 December 1990, Article 5.

²¹ Croatia, Constitution of the Republic of Croatia, 22 December 1990, Article 4.

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

²³ Croatia, Constitution of the Republic of Croatia, 22 December 1990, Article 125.

²⁴ Croatia, Constitution of the Republic of Croatia, 22 December 1990, Article 134.

List of main legislation transposing and implementing the directives

The first piece of comprehensive anti-discrimination legislation in Croatia was the Anti-discrimination Act (ADA), which entered into force on 1 January 2009 and was amended in October 2012.²⁵ 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.²⁶ The Anti-discrimination Act applies to all areas without any limitation while explicitly enumerating 10 areas to which special attention is to be paid.²⁷

The Labour Act²⁸ (LA), which entered into force on 7 August 2014, prohibits discrimination in the field of work and working conditions, including selection criteria and recruitment conditions, promotions, vocational guidance, vocational training, advanced vocational training and retraining.²⁹ The previous Labour Act included the same provision.³⁰ The Labour Act does not explicitly mention grounds of discrimination but refers to the Anti-discrimination Act in that respect.³¹

The Same-sex Life Partnership Act (SSLPA), which entered into force on 5 August 2014,³² 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.³³ 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.

²⁵ Croatia, Anti-discrimination Act, 9 July 2008, Official Gazette 85/2008, 112/2012, *Zakon o suzbijanju diskriminacije*.

²⁶ Croatia, Anti-discrimination Act, 9 July 2008, Article 1(1).

²⁷ Croatia, Anti-discrimination Act, 9 July 2008, Article 8.

²⁸ Croatia, Labour Act, 15 July 2014, Official Gazette 93/2014, 127/2017 *Zakon o radu*.

²⁹ Croatia, Labour Act, 15 July 2014, Article 7(4).

³⁰ Croatia, Labour Act, 4 December 2009, Official Gazette 149/2009, 61/2011, 82/2012, 73/2013, Article 5(4).

³¹ Croatia, Labour Act, 15 July 2014, Article 7(4).

³² Between August 2014 and 31 December 2015, 108 same-sex partnerships were registered (Gender Ombudsperson (2016), *Report for 2015*).

³³ Croatia, Same-sex Life Partnership Act, 15 June 2014, Official Gazette 92/2014, *Zakon o životnom partnerstvu osoba istog spola*.

1 GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

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

- Article 3 of the Constitution of the Republic of Croatia places equality, ethnic equality and gender equality among the highest values of the constitutional order and the bases for the interpretation of the Constitution;
- Article 14 provides for a general protection against discrimination of all rights and freedoms regardless of race, colour, gender, language, religion, political or other belief, national (ethnic)³⁴ or social origin, property, birth, education, social status or other characteristic.³⁵ 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.³⁶ 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.³⁷

³⁴ In Croatia, 'nationality' (*nacionalnost* or *narodnost* in Croatian) does not refer to 'citizenship', but to the membership of an ethnic group.

³⁵ 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.

³⁶ 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.

³⁷ Croatia, Constitutional Law on the Constitutional Court of the Republic of Croatia, 24 September 1999, Article 62(1), Official Gazette 99/1999 and 29/2002, *Ustavni zakon o Ustavnom sudu Republike Hrvatske*.

2 THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination explicitly covered

The following grounds of discrimination are explicitly prohibited in the main legislation transposing the two EU anti-discrimination directives:

- 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 condition³⁸
- disability
- genetic heritage
- gender identity
- (gender) expression³⁹
- 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 Ombudsperson's report for 2018, as in previous years, most complaints of discrimination are in connection with 'race or ethnic origin' (20.8 %).⁴⁰ 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.⁴¹

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

³⁸ 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.

³⁹ 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'.

⁴⁰ People's Ombudsperson (2019), *Report for 2018*, available at <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

⁴¹ People's Ombudsperson (2019) *Report for 2018*. The Ombudsperson's report was issued in March 2019, after the cut-off date for this report.

The Constitutional Act on the rights of national minorities⁴² 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'.⁴³

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.⁴⁴

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.'⁴⁵

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.⁴⁶

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.'⁴⁷

⁴² Croatia, Constitutional Act on the rights of national minorities, 13 December 2002, Article 5, Official Gazette 155/2002, 47/2010, 80/2010, 93/2011, *Ustavni zakon o pravima nacionalnih manjina*.

⁴³ 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.

⁴⁴ 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.

⁴⁵ 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.

⁴⁶ Croatia, Act on the legal status of religious communities, 4 July 2002, Official Gazette 83/2002, 73/2013, *Zakon o pravnom položaju vjerskih zajednica*.

⁴⁷ 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.

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'.⁴⁸ 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, while in other areas there are still no definitions of disability (e.g., education, transport).⁴⁹ The Anti-discrimination Act does not define disability.

The Primary and Secondary Education Act⁵⁰ states that primary and secondary education is based on the principle of equal educational opportunities for all students in accordance with their abilities.⁵¹ The Rules on primary and secondary education of students with developmental difficulties⁵² 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.⁵³

e) Sexual orientation

National law does not provide a definition of sexual orientation.⁵⁴

2.1.2 Multiple discrimination

In Croatia, multiple discrimination is prohibited in the law. The Anti-discrimination Act defines multiple discrimination as discrimination against a certain person on more than one of the prohibited grounds and considers it a severe form of discrimination (along with repeated discrimination, continued discrimination and discrimination that has consequences that are particularly harmful to the victim).⁵⁵ Multiple discrimination is a

⁴⁸ Croatia, Social Care Act, 13 December 2013, Article 4(1)(9), Official Gazette 157/2013, 152/2014, 99/2015, 52/2016, 16/2017, 130/17, *Zakon o socijalnoj skrbi*; and Croatia, Act on professional rehabilitation and employment of persons with disability, 13 December 2013, Article 3(1), Official Gazette 157/2013, 152/2014, 39/18, *Zakon o profesionalnoj rehabilitaciji i zapošljavanju osoba s invaliditetom*.

⁴⁹ Disability Ombudsperson (2014), *Parallel Report for the UN Committee on the Rights of Persons with Disability*, July 2014.

⁵⁰ Croatia, Primary and Secondary Education Act, 15 July 2008, Official Gazette 87/2008, 86/2009, 92/2010, 105/2010, 90/2011, 5/2012, 16/2012, 86/2012, 94/2013, 152/2014, 07/2017, *Zakon o odgoju i obrazovanju u osnovnoj i srednjojškoli*.

⁵¹ Croatia, Primary and Secondary Education Act, 15 July 2008, Article 4(2)(2).

⁵² Croatia, Rules on primary and secondary education of students with developmental difficulties, 23 February 2015, Official Gazette 24/2015, *Pravilnik o osnovnoškolskom i srednjoškolskom odgoju i obrazovanju učenika s teškoćama u razvoju*.

⁵³ There is no available case law that would give an indication of the scope of age e.g. young people and older people. It is decided upon in each individual case whether discrimination on the basis of age exists with no reference on behalf of the courts to the definition of age.

⁵⁴ 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.

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

⁵⁵ Croatia, Anti-discrimination Act, 9 July 2008, Article 6(1).

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.⁵⁶

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

In 2012, 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.⁵⁷ The Ombudsperson found that the regulation in question resulted in multiple discrimination on the basis of age and religion.⁵⁸ 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 cover for religious or medical reasons.⁵⁹

In *L.J.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 L.J.S. by calling her names, including 'old timer', cursing, commenting on her physical appearance and prohibiting other employees from communicating with her. The court awarded L.J.S. compensation in the amount of EUR 1 330 (HRK 10 000).⁶⁰ The Zagreb County Court confirmed the decision of the first instance court and increased the compensation, awarding L.J.S. an additional EUR 2 660 (HRK 20 000).⁶¹

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.⁶²

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.⁶³ 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

⁵⁶ 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'.

⁵⁷ Croatia, Regulations on driving licences, 23 December 2008, Article 6(3); Official Gazette 155/2008, 8/2009, *Pravilnik o vozačkim dozvolama*.

⁵⁸ People's Ombudsperson (2014), *Report for 2013*, p.116, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

⁵⁹ Croatia, Regulations on driving licences, 5 April 2013, Article 12(3); Official Gazette 43/2013, 77/2013, 155/2013, 01/15, 33/16, 108/16, 86/17, 46/18, *Pravilnik o vozačkim dozvolama*.

⁶⁰ Zagreb Municipal Court, decision no. Pr-205/07, 27 February 2014.

⁶¹ Zagreb County Court, decision no. Gžr-839/2014, 3 June 2014.

⁶² Ombudsperson for Children, (2017), *Report for 2016*, p. 109, available at: <http://dijete.hr/en/reports-of-the-ombudsperson-for-children>.

⁶³ Decision of Zagreb Municipal Labour Court, no. Pr-636/17, of 18 July 2018.

(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.⁶⁴ The decision was reached in July 2018, although the proceedings were commenced in 2012.

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.⁶⁵

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,⁶⁶ in a less favourable position on the prohibited grounds is considered discrimination.⁶⁷ National law is in line with the judgment in Case C-303/06 *Coleman v Attridge Law and Steve Law*.⁶⁸ 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*,⁶⁹ 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 Rights⁷⁰ determined that Croatia had violated Article 3 of the European

⁶⁴ In 2019, Zagreb County Court confirmed the decision of the Zagreb Municipal Labour Court, no. GŽR-1415/18, 12 February 2019.

⁶⁵ Croatia, Anti-discrimination Act, 9 July 2008, Article 1(3).

⁶⁶ This would include same-sex relationships.

⁶⁷ Croatia, Anti-discrimination Act, 9 July 2008, Article 1(2).

⁶⁸ CJEU, judgment of 17 July 2008, *Coleman v Attridge Law and Steve Law*, C-303/06, EU:C:2008:415.

⁶⁹ European Court of Human Rights, *Guberina v. Croatia*, No. 23682/13, 22 March 2016.

⁷⁰ European Court of Human Rights, *Škorjanec v. Croatia*, No. 25536, 28 March 2017.

Convention, which prohibits torture and other forms of ill-treatment, in connection with Article 14 of the convention, which prohibits discrimination. In this case, the applicant and her partner who is Roma, had been physically assaulted and verbally insulted by the attackers on a racial basis, during which attack the applicant had suffered slight bodily injury. During the investigation, the competent authorities determined that only the applicant's partner had been a victim of a hate crime since the applicant herself is not of Roma origin. The 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.'⁷¹

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.⁷²

The same definition of direct discrimination is used by the Gender Equality Act.⁷³

The Labour Act and the Same-sex Life Partnership Act prohibit direct discrimination, but do not define it.⁷⁴ 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.⁷⁵

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). All exceptions need to be in line with the legitimate aim they are determined for and must be appropriate and necessary for the fulfilment of that aim.⁷⁶

2.2.1 Situation testing

a) Legal framework

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

⁷¹ European Court of Human Rights, *Škorjanec v. Croatia*, No. 25536, 28 March 2017, para. 53.

⁷² Croatia, Anti-discrimination Act, 9 July 2008, Article 2(1).

⁷³ Croatia, 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).

⁷⁴ Croatia, Labour Act, 15 July 2014, Article 7(4) and Same-sex Life Partnership Act, 15 July 2014, Article 6(3).

⁷⁵ Croatia, Labour Act, 15 July 2014, Article 134.

⁷⁶ Croatia, Anti-discrimination Act, 9 July 2008, Article 9(3).

National law is silent in respect of the use of situation testing. It does not explicitly permit the use of situation testing; it does not define it or establish procedural conditions for, or limitations to, the admissibility of such evidence in court. However, there are no obstacles, in anti-discrimination law or in civil procedural legislation (regulated by the Civil Procedure Act), to the use of testing, therefore situation testing should be accepted as evidence.

There is no case law on the issue.

b) Practice

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

Situation testing has not been used in practice by the courts yet. However, testing was used once for the purpose of a journalist's article,⁷⁷ when the journalist, together with a Roma woman and a Muslim woman, tried to rent an apartment. Around 40 % of owners rejected either the Muslim or Roma woman as a potential tenant, while they all accepted the journalist, a woman of Croatian ethnicity.

Situation testing was also used in research conducted by a non-governmental organisation, the Centre for Peace Studies (CPS).⁷⁸ In collaboration with the NGOs Censorship Plus⁷⁹ and Zagreb Pride,⁸⁰ the Centre for Peace Studies conducted situation testing in five different fields: access to public institutions for persons with disabilities, discrimination against same-sex couples in the field of providing services, discrimination against transgender persons when applying for change of gender in personal documentation, discrimination against persons of colour in access to goods and services and discrimination on the ground of gender in seasonal jobs.

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

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

The report, among other tests, describes situation testing in respect of potential discrimination against same-sex couples. The situation test involved two virtual same-sex couples (one male and one female couple) writing an email to 10 different cake shops to

⁷⁷ Jutarnji Vijesti (2011) 'Kako u Zagrebu najmiti stan, ilizaposliti se, ako ste romkinja ili muslimanka: Mersiha? Zao mi je. Stan je iznajmljen!', 19 October 2011. Available at: <https://www.jutarnji.hr/vijesti/kako-u-zagrebu-unajmiti-stan-ili-zaposliti-se-ako-ste-romkinja-ili-muslimanka-mersiha-zao-mi-je.-stan-je-iznajmljen/1733565/>.

⁷⁸ The research was conducted as a part of the project 'In the name of equality', carried out by the Centre for Peace Studies, Censorship Plus and Croatian Youth Network, and is funded through the European Union PROGRESS Programme.

⁷⁹ Censorship Plus website: <http://www.cenzura.hr/>.

⁸⁰ Zagreb Pride website: <http://www.zagreb-pride.net/hr/>.

order a wedding cake. The results of the situation test showed that there was no discrimination against same-sex partners in the provision of bakery services.

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

a) Prohibition and definition of indirect discrimination

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

The Anti-discrimination Act defines indirect discrimination as a situation where an apparently neutral provision, criterion or practice places or could place a person in a less favourable position on the prohibited ground, in relation to other persons in a comparable situation, unless such a provision, criterion or practice may be objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.⁸¹

The Labour Act and the Same-sex Life Partnership Act prohibit indirect discrimination, but do not define it.⁸² 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.⁸³

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.⁸⁴

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

The Gender Equality Ombudsperson, in her analysis of the case law in the field of anti-discrimination law published in 2011,⁸⁵ noticed a lack of protection against indirect discrimination before courts. The findings of the analysis might explain the absence of such case law: lawyers were not familiar with the anti-discrimination law and a formalistic approach was widespread in the proceedings before courts. The courts were very reluctant to find discrimination and did so only in cases when violations of a claimant's rights or interests were obvious. As a result, the level of anti-discrimination control was rather low.

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

The most recent annual reports of the three relevant Ombudsperson also do not mention a single case of indirect discrimination.

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

⁸² Croatia, Labour Act, 15 July 2014, Article 7(4) and Same-sex Life Partnership Act, 15 July 2014, Article 6(3).

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

⁸⁴ Croatia, Constitution of the Republic of Croatia, 22 December 1990, Article 16.

⁸⁵ The analysis, published in March 2011, covered case law in the cases of discrimination based on all protected grounds, not just gender.

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.

The People's Ombudsperson's *Report for 2018* pointed to the fact that although 10 years have passed since the Anti-discrimination Act entered into force, in which period the number of complaints on discrimination has increased, it is still evident that discrimination continues to be significantly greater than the number of formal complaints to the relevant authorities show.⁸⁶ Only the most severe and the most visible cases of discrimination are reported, which is also one of the reasons why there is no available case law on indirect discrimination.⁸⁷

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.⁸⁸ However, on 25 May 2018, Regulation 2016/679, of the European Parliament and of the Council of 27 April 2016, on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, (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.⁸⁹

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.⁹⁰

⁸⁶ People's Ombudsperson (2019) *Report for 2018*, available at <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

⁸⁷ People's Ombudsperson (2019), *Report for 2018*.

⁸⁸ Croatia, Personal Data Protection Act, 12 June 2003, Official Gazette 103/2003, 118/2006, 41/2008 and 130/2011, 106/2012, *Zakon o zaštiti osobnih podataka*. Other pieces of legislation on data collection are not relevant for this question, e.g. the Official Statistics Act, 13 June 2003, Official Gazette 103/2003, 75/2009, 59/2012, *Zakon o službenoj statistici*, which regulates methodological and organisational issues of official statistics.

⁸⁹ Croatia, Official Statistics Act, 13 June 2003, Article 4(1)(2).

⁹⁰ E.g. some primary schools have precise data on the numbers of Roma pupils in each class, although it is not clear how they established the pupils' ethnic origin and whether there was parental consent. In 2000, when the Ombudsperson's office started an investigation into discrimination against Roma children in primary schools in Međimurje county, the county's authorities provided 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.

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*.⁹¹

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 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).⁹²

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

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

b) Practice

In Croatia, statistical evidence in order to establish indirect discrimination is very rarely used in practice or in anti-discrimination cases at all.

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

In the case concerning racial discrimination against Roma students in primary schools in Međimurje⁹³ (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.⁹⁴ The Constitutional Court ignored the statistical data in its decision⁹⁵ and simply concluded that statistical data on the number of Roma children in separate classes 'are not in themselves sufficient to indicate that the defendants' practice was discriminatory'. Nevertheless, without those data, the claimants would have had significant problems in proving the existence of Roma-only classes, the drop-out rate and other issues significant for the case.

⁹¹ 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>.

⁹² Mayrhofer, M. (2013), 'Definitions of indicators for the data base on equality data of the Office for Human Rights and Rights of National Minorities' https://pravamanjina.gov.hr/UserDocsImages//dokumenti//definicije_podataka_jednakosti.pdf.

⁹³ ECtHR, *Oršuš and others v Croatia*, [GC] No. 15766/03, 16 March 2010.

⁹⁴ Public Ombudsperson (2001), *Report on the activities of the Ombudsperson in 2000* (not available online).

⁹⁵ Constitutional Court, No. U-III-3138/2002, 7 February 2007.

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,⁹⁶ 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.⁹⁷

The Labour Act does not define harassment, but refers to the Anti-discrimination Act as *lex specialis*.⁹⁸ 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).⁹⁹

Some legal authors, whose opinions often greatly influence case law, use the term 'harassment' as a synonym for mobbing.^{100 101} 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 recent 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 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.¹⁰²

⁹⁶ Croatia, Anti-discrimination Act, 9 July 2008, Article 3(1).

⁹⁷ Croatia, Anti-discrimination Act, 9 July 2008, Article 3(2).

⁹⁸ Croatia, Labour Act, 15 July 2014, Article 134.

⁹⁹ Decision of Zagreb Municipal Labour Court, no. Pr-636/17, of 18 July 2018.

¹⁰⁰ E.g. Crnić, Ivica (ed.) International Organization for Migration (2009), *Guide to Anti-discrimination Legislation and Case Law*, Zagreb, 2009.

¹⁰¹ The term 'mobbing' meaning bullying or psychological violence without discrimination on any ground.

¹⁰² Constitutional Court of the Republic of Croatia, decision no. U-III-6791/2014, 30 May 2018, available at: [https://slieme.usud.hr/Usud/praksaw.nsf/C12570D30061CE54C125829D00352755/\\$FILE/U-III-6791-2014.pdf](https://slieme.usud.hr/Usud/praksaw.nsf/C12570D30061CE54C125829D00352755/$FILE/U-III-6791-2014.pdf).

The Criminal Code¹⁰³ 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.¹⁰⁴ 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 discrimination¹⁰⁵ as the Anti-discrimination Act lists harassment and sexual harassment, together with direct and indirect discrimination, encouragement to discriminate, failure to provide reasonable accommodation and segregation, as forms of discrimination.

b) Scope of liability for harassment

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

The Labour Act regulates an employer's obligations in respect of protection of an employee against harassment. An employer who employs at least 20 employees has to appoint a person who is to receive and decide on complaints of harassment. The complaint should be dealt with and adequate measures should be undertaken in no more than eight days. If an employer fails to do so, the employee has the right to stop working until protection is provided, without losing his or her right to salary, but must seek protection before the court in a maximum of eight days. Harassment is considered to be a violation of employment duties. Acting against harassment cannot be considered as a violation of employment duties.¹⁰⁶

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.¹⁰⁷ 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.¹⁰⁸

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

¹⁰³ Croatia, Criminal Code, 21 October 2011.

¹⁰⁴ Croatia, Criminal Code, 21 October 2011, Article 156.

¹⁰⁵ Croatia, Anti-discrimination Act, 9 July 2008, Article 3.

¹⁰⁶ Croatia, Labour Act, 15 July 2014, Article 134.

¹⁰⁷ Croatia, Civil Obligations Act, 25 February 2005, Official Gazette 35/2005, 41/2008 and 125/2011, *Zakon o obveznim odnosima*.

¹⁰⁸ Croatia, Labour Act, 15 July 2014, Article 111.

provisions of the Anti-discrimination Act are applicable.¹⁰⁹ 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.¹¹⁰

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.¹¹¹ 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.¹¹²

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.'¹¹³

The Act on professional rehabilitation and employment of persons with disability¹¹⁴ 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.¹¹⁵

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-

¹⁰⁹ Croatia, Anti-discrimination Act, 9 July 2008, Article 4(1).

¹¹⁰ Croatia, Anti-discrimination Act, 9 July 2008, Article 4(1).

¹¹¹ Croatia, Civil Obligations Act, 25 February 2005.

¹¹² Croatia, Labour Act, 15 July 2014, Article 111.

¹¹³ Croatia, Anti-discrimination Act, 9 July 2008, Article 4(2).

¹¹⁴ Croatia, Act on professional rehabilitation and employment of persons with disability, 13 December 2013.

¹¹⁵ Croatia, Act on professional rehabilitation and employment of persons with disability, 13 December 2013, Article 7(2).

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 disabilities 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 disabilities, 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 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.¹¹⁶ All employers are eligible for state funding to help with the costs of reasonable accommodation and for certain incentives if employing a person with disability.¹¹⁷ 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 report for 2018, the Disability Ombudsperson stated that the most common form of discrimination against people with disabilities in the area of employment during 2018 was the lack of reasonable accommodation and stressed the importance of finding solutions for reasonable accommodation duties in all areas.¹¹⁸

In practice, when dealing with cases, the Disability Ombudsperson requests a formal proof of disability and where the person does not have any of the necessary documentation, disability in relation to work can be determined by the Institute for Medical Assessment, Professional Rehabilitation and Employment of Persons with Disabilities.¹¹⁹ The formal proof of disability is also required from the relevant bodies in situations where a person wants to achieve rights on the basis of their disability. Thus, only people with official

¹¹⁶ Croatia, Act on professional rehabilitation and employment of persons with disability, 13 December 2013, Article 12(4).

¹¹⁷ Croatia, Act on professional rehabilitation and employment of persons with disability, 13 December 2013, Article 29.

¹¹⁸ Ombudsperson for Persons with Disabilities (2019) *Report for 2018*, available at <http://posi.hr/wp-content/uploads/2019/04/Sa%C5%BFetak-Izvie%C5%A1%C4%87e-o-radu-Pravobranitelja-za-osobe-s-invaliditetom-za-2018.-godinu.pdf>.

¹¹⁹ Letter of the Disability Ombudsperson of 28 August 2018.

recognition of disability status can claim reasonable accommodation or disability protection. There are no objections to such practices as it is widespread common knowledge that in order to achieve rights on the basis of a certain status, formal confirmation of that kind of status is needed.

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 Institute¹²⁰ for Medical Assessment, Professional Rehabilitation and Employment of People with Disabilities.¹²¹ The task of the institute is to establish the degree of disability in each individual case on the basis of which the person involved can then claim their rights, including the right to reasonable accommodation. The medical assessment is conducted by a council 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.¹²²

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.¹²³ 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.

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.¹²⁴

According to the information available from the Disability Ombudsperson's *Report for 2018*, during 2018, the Institute for Medical Assessment, Professional Rehabilitation and Employment of Persons with Disabilities, received a total of 102 378 requests for assessment and by the end of 2018, the number of unresolved cases was 22 404.¹²⁵ During 2018 there were a total of 111 915 requests were resolved.

¹²⁰ 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 better understanding the name *Institute for Medical Assessment. Professional Rehabilitation and Employment of Persons with Disabilities* is used throughout the Report.

¹²¹ Croatia, Act on the single expert body, 4 July 2014, Official Gazette 85/2014 and 95/2015, *Zakon o jedinstvenom tijelu vještačenja*.

¹²² Croatia, Ordinance on the assessment methodology, 6 July 2017, Official Gazette NN 67/17, *Uredba o metodologijama vještačenja*.

¹²³ Croatia, Act on professional rehabilitation and employment of persons with disability, 13 December 2013, Article 37.

¹²⁴ UNCRPD (2015) Concluding observations on the initial report of Croatia, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fCO%2fHRV%2fCO%2f1&Lang=en.

¹²⁵ Disability Ombudsperson (2019) *Report for 2018*, published in March 2019, available at: <http://posi.hr/wp-content/uploads/2019/04/Izvjecje%20C5%A1%20C4%87e-o-rad-u-Pravobraniteljja-za-osobe-s-invaliditetom-za-2018.-godinu.pdf>.

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.¹²⁶

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

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.¹²⁷

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'.¹²⁸ The definition of a disability for the purposes of claiming reasonable accommodation is not different from the one for claiming protection from non-discrimination in general. The Anti-discrimination Act does not define disability and therefore, for claims of non-discrimination in general, definitions from the Social Care Act and the Act on professional rehabilitation and employment of persons with disability are applied, which also implies a need for an official recognition of disability by the relevant body.

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 Act on the

¹²⁶ Disability Ombudsperson (2019), *Report for 2018*.

¹²⁷ Booklet is available at:
https://www.zosi.hr/docs/prirucnik_s_preporukama_za_razumno_prilagodbu_radnog_mjesta.pdf.

¹²⁸ Croatia, Social Care Act, 13 December 2013, Article 4(1)(9) and Act on professional rehabilitation and employment of persons with disability, 13 December 2013, Article 3(1).

professional rehabilitation and employment of persons with disabilities 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'.¹²⁹ In their annual reports, the Disability Ombudsperson always notes that the failure to meet the duty of reasonable accommodation counts as discrimination.¹³⁰

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.¹³¹ However, failure of an employer to provide reasonable accommodation for an employee with disability is a misdemeanour regulated by the Act on professional rehabilitation and employment of persons with disability. A fine is imposed on legal entities, natural persons and responsible persons in legal entities, while different levels of fine are set for different categories (from EUR 133 (HRK 1 000) to EUR 4 000 (HRK 30 000)).¹³²

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.¹³³ 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 Act¹³⁴ provides that primary and secondary education is based on the principle of equal educational opportunities for all students in accordance with their abilities.¹³⁵ The Rules on primary and secondary education of students with developmental difficulties¹³⁶ define a student with difficulties as

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

¹³⁰ Disability Ombudsperson (2019), *Report for 2018*, available at: <http://posi.hr/wp-content/uploads/2019/04/Sa%C5%B4etak-Izvje%C5%A1%C4%87e-o-radu-Pravobranitelja-za-osobe-s-invaliditetom-za-2018.-godinu.pdf>.

¹³¹ 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.

¹³² Croatia, Act on professional rehabilitation and employment of persons with disability, 13 December 2013, Article 41(1)(5).

¹³³ Croatia, Anti-discrimination Act, 9 July 2008, Article 4(2).

¹³⁴ Croatia, Primary and Secondary Education Act, 15 July 2008, Official Gazette 87/2008, 86/2009, 92/2010, 105/2010, 90/2011, 5/2012, 16/2012, 86/2012, 94/2013, 152/2014, 07/2017, *Zakon o odgoju i obrazovanju u osnovnoj i srednjojškoli*.

¹³⁵ Croatia, Primary and Secondary Education Act, 15 July 2008, Article 4(2)(2).

¹³⁶ Croatia, Rules on primary and secondary education of students with developmental difficulties, 23 February 2015, Official Gazette 24/2015, *Pravilnik o osnovnoškolskom i srednjoškolskom odgoju i obrazovanju učenika s teškoćama u razvoju*.

'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).¹³⁷ 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. There are no rules on the national level that would regulate this issue in the field of higher education.

As in previous years, in her 2018 annual report, the Disability Ombudsperson described 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

The Science and Higher Education Act¹³⁸ 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.¹³⁹

In her 2017 annual report, the Disability Ombudsperson 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.¹⁴⁰ 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.¹⁴¹ 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.¹⁴²

In the 2018 annual report, the Disability Ombudsperson described the case of a potential student who has been treated for a malignant disease and who had been assessed by the

¹³⁷ 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).

¹³⁸ Croatia, Science and Higher Education Act, 17 July 2003, Official Gazette 123/2003, 198/2003, 105/2004, 174/2004, 2/2007, 46/2007, 45/2009, 45/2009, 63/2011, 94/2013, 139/2013, 101/2014, 60/2015, 131/2017, *Zakon o znanstvenoj djelatnosti i visokom obrazovanju*.

¹³⁹ It is not clear why the Science and Higher Education Act established reasonable accommodation only in transportation from home to school.

¹⁴⁰ Disability Ombudsperson (2018) *Report for 2017*, available at: <http://posi.hr/wp-content/uploads/2018/04/Izvje%C5%A1%C4%87e-o-radu-Pravobranitelja-za-osobe-s-invaliditetom-2017..pdf>.

¹⁴¹ 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.

¹⁴² University of Zagreb (2007) http://www.unizg.hr/fileadmin/rektorat/O_Sveucilistu/Dokumenti_javnost/Propisi/Pravilnici/Pravilnik_Ured_za_studente_s_invaliditetom.pdf.

Institute for Medical Assessment, Professional Rehabilitation and Employment of Persons with Disabilities as having IV degree of disability. However, for the purpose of enrolment at the university, in order to achieve rights on the basis of his disability, he was required to prove his status by presenting a disability decision by the Croatian Pension Insurance Institute.

The Ombudsperson issued a recommendation to the Agency for Higher Education stating that the opinion of the Institute for Medical Assessment, Professional Rehabilitation and Employment represents the relevant proof of disability status and therefore it is wrong to ask students for a decision on disability from the Croatian Pension Insurance Institute as a proof of disability in order to obtain their rights upon enrolment at the University, bearing in mind that prospective students as children are not insured in the pension insurance system and cannot obtain such a decision. The Agency for Higher Education adopted the recommendation of the Disability Ombudsperson.¹⁴³

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

The acts make no distinction between the duties of private and state bodies and institutions.¹⁴⁴

During 2018 the Ministry of Education and Science has been active in the adoption of a strategic framework within 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. 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.¹⁴⁵

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.¹⁴⁶

In *Guberina v. Croatia*, the European Court of Human Rights¹⁴⁷ 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

¹⁴³ Disability Ombudsperson (2019), *Report for 2018*, available at <http://posi.hr/wp-content/uploads/2019/04/Sa%C5%BEEetak-Izvje%C5%A1%C4%87e-o-radu-Pravobraniteljia-za-osobe-s-invaliditetom-za-2018.-godinu.pdf>.

¹⁴⁴ 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.

¹⁴⁵ Disability Ombudsperson (2019), *Report for 2018*, available at: <http://posi.hr/wp-content/uploads/2019/04/Sa%C5%BEEetak-Izvje%C5%A1%C4%87e-o-radu-Pravobraniteljia-za-osobe-s-invaliditetom-za-2018.-godinu.pdf>.

¹⁴⁶ Disability Ombudsperson (2019), *Report for 2018*.

¹⁴⁷ 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":\["itemid":\["001-161530"\]}\]](http://hudoc.echr.coe.int/eng#{).

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.¹⁴⁸

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 national holidays, members of the three biggest religious minorities only (Orthodox Christians, Muslims and Jews) have a right to a day off¹⁴⁹ on the days of their main religious holidays.¹⁵⁰

In 2013, the Ministry of Interior amended the Regulations on driving licences and allowed head covers to be worn in the driving licence photographs when a person wears such a cover for religious reasons.¹⁵¹

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.¹⁵²

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

¹⁴⁸ Croatia, Anti-discrimination Act, 9 July 2008, Article 4(2).

¹⁴⁹ This is a supplementary day off and it is not included in the annual holidays.

¹⁵⁰ Croatia, Act on holidays, remembrance days and non-working days, 19 April 1996, Official Gazette 33/1996 with amendments, *Zakon o blagdanima, Spomendanu i neradnim danima u Republici Hrvatskoj*.

¹⁵¹ Croatia, Regulations on driving licences, 1 July 2013, Article 12(4), Official Gazette 43/2013, 77/2013, 155/2013, 01/15, 33/16, 108/16, 86/17, 46/18, *Pravilnik o vozačkim dozvolama*.

¹⁵² Croatia, Health Care Act, 15 December 2008, Article 22, Official Gazette 150/2008, 155/2009, 71/2010, 139/2010, 22/2011, 84/2011, 154/2011, 12/2012, 35/2012, 70/2012, 144/2012, 82/2013, 159/2013, 22/2014, 154/2014, 70/2016, 131/2017, *Zakon o zdravstvenoj zaštiti*.

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.¹⁵³

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.¹⁵⁴

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.¹⁵⁵

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.¹⁵⁶

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.¹⁵⁷

3.2 Material scope

3.2.1 Employment, self-employment and occupation

¹⁵³ Croatia, Anti-discrimination Act, 9 July 2008, Article 1.

¹⁵⁴ Croatia, Anti-discrimination Act, 9 July 2008, Article 1.

¹⁵⁵ Croatia, Anti-discrimination Act, 9 July 2008, Article 8.

¹⁵⁶ Croatia, Anti-discrimination Act, 9 July 2008, Article 1.

¹⁵⁷ Croatia, Anti-discrimination Act, 9 July 2008, Article 8.

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.¹⁵⁸

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.¹⁵⁹

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 the following areas: 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.¹⁶⁰

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.¹⁶¹

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.¹⁶²

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, in 2018, the faculty continued this discriminatory practice.¹⁶³

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.

Most complaints of discrimination, both to the Ombudsperson and to courts, are in the field of general employment.¹⁶⁴

¹⁵⁸ Croatia, Anti-discrimination Act, 9 July 2008, Article 8.

¹⁵⁹ Croatia, Labour Act, 15 July 2014, Article 7(4).

¹⁶⁰ Croatia, Anti-discrimination Act, 9 July 2008, Article 8.1.

¹⁶¹ Croatia, Anti-discrimination Act, 9 July 2008, Article 8(1).

¹⁶² Croatia, Labour Act, 15 July 2014, Article 7(4).

¹⁶³ People's Ombudsperson (2019), *Report for 2018*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

¹⁶⁴ People's Ombudsperson (2017), *Ombudsperson's Report for 2016*, p. 6, <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

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.¹⁶⁵

During 2017, the Centre for Peace Studies (an NGO) warned that the main problem faced by migrants in Croatia is discrimination in the labour market. When migrants manage to get a job, it is often poorly paid and not in line with their qualifications.

This kind of practice continued during 2018. The People's Ombudsperson warned that migrants as well as members of Roma community are often subjected to ethnic profiling 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.¹⁶⁶

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

In Croatia, national legislation prohibits discrimination in 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 retraining¹⁶⁷ as well as to education and science.¹⁶⁸ 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 Brankad.o.o., owned by B.J., (the training being an obligatory part of their education), and filed a discrimination claim against Brankad.o.o. and B.J. before the Varaždin Municipal Court. The court found that the applicants had faced discrimination because they were Roma, forbade Brankad.o.o. and B.J. to undertake any further discriminatory actions and awarded compensation of HRK 8 000 (EUR 1 066) to each applicant. Following the appeal of both defendants, the 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 consequences, the gravity of violation and the purpose of compensation, the awarded sum was reasonable.¹⁶⁹

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))

¹⁶⁵ Croatia, Anti-discrimination Act, 9 July 2008, Article 8(1) and 8(3) and Labour Act, 15 July 2014, Article 7(4).

¹⁶⁶ People's Ombudsperson (2019), *Report for 2018*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

¹⁶⁷ Croatia, Anti-discrimination Act, 9 July 2008, Article 8(1).

¹⁶⁸ Croatia, Anti-discrimination Act, 9 July 2008, Article 8(2).

¹⁶⁹ Varaždin County Court, *L.I. and Ž.B. v. Brankad.o.o.*, Gž.3684/12, 2 April 2013.

In Croatia, national legislation prohibits discrimination in the following area: 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.¹⁷⁰ 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'. In 2016, membership of a worker's organisation was more frequently raised as a discrimination ground before the Ombudsperson and before the courts. In such situations the special challenge for the claimants is to prove that the unfavourable treatment by the employer is caused by the claimant's membership of a worker's organisation, rather than by other justified reasons. Specifically, every unfavourable action by an employer towards a worker may be justified by the organisation of the work process, savings or a new systematisation of posts. The most common witnesses of unfavourable treatment in labour disputes, including in cases of discrimination on the ground of membership of a worker's organisation, are co-workers, who, due to fear of their employer, often elide or deny circumstances with which they are familiar. Even in the cases where some of the witnesses confirmed allegations from the civil suits, their statements are rarely identical, and in such cases play the decisive role in the assessment of the court if the conditions for the shifting of burden of proof to the employer are fulfilled. As in previous years, this principle is still inconsistently applied which often results in the rejection of civil suits.¹⁷¹

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

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

The Anti-discrimination Act prohibits discrimination based on racial or ethnic origin in the area of social protection, including social security, retirement, health and unemployment insurance, and healthcare. Age, disability, religion or belief and sexual orientation are also covered.¹⁷²

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.

Amnesty International warned that in Croatia, Roma children and women continued to be disadvantaged in accessing healthcare, and that one fifth of this group lacked access to healthcare altogether.¹⁷³ The lack of access to healthcare is a result of the general position of Roma in the community, primarily their social segregation and isolation, as well as the

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

¹⁷¹ People's Ombudsperson (2017), *Ombudsperson's Report for 2016*, p. 24. Available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

¹⁷² Croatia, Anti-discrimination Act, 9 July 2008, Articles 8(3) and 8(4).

¹⁷³ Amnesty International (2018) *Report 2017/2018*, available at: <https://www.amnesty.org/en/countries/europe-and-central-asia/croatia/report-croatia/>.

fact that many of them do not have personal identification cards nor a regulated right to free healthcare.

According to the most recent 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.¹⁷⁴ 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.¹⁷⁵

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;¹⁷⁶ it therefore covers implicitly social advantages of all kinds.

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

Regarding the social welfare rights of migrants, people who are in the process of seeking international protection receive financial help in the amount of HRK 100 (EUR 15) per month, while people who have been granted international protection are entitled to financial help of HRK 800 per month (EUR 115), the same as Croatian citizens receiving social assistance. However, problems often occur because it takes a long time for the relevant authorities to secure accommodation for those who have been granted international protection. During this period, the person is forced to stay at the shelter and is not entitled to financial aid, since it is considered that all of their basic social needs are covered by the institution in which she or he resides.¹⁷⁷

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

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

¹⁷⁴ 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%20hrvatsk%20dru%C5%A1tvo%20-%20istra%C5%BEivanje%20baznih%20podataka-list%202018.pdf>.

¹⁷⁵ Kunac, S., Klasnić, K. and Lalić, S. (2018) *Inclusion of Roma in Croatian Society: Database Research*, Centre for Peace Studies, August 2018.

¹⁷⁶ Croatia, Anti-discrimination Act, 9 July 2008, Article 8.

¹⁷⁷ Croatia, Social Care Act, 13 December 2013, Article 4(1)(9), Official Gazette 157/2013, 152/2014, 99/2015, 52/16,16/17 *Zakon o socijalnoj skrbi*.

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.¹⁷⁸

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).¹⁷⁹

a) Pupils with disabilities

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

In all relevant documents, the authorities recognise the need to include people with disabilities in the mainstream education system (e.g. the National Strategy for Persons with Disabilities 2003-2006,¹⁸⁰ the National Strategy for Persons with Disabilities 2007-2015,¹⁸¹ the National Strategy for Persons with Disabilities 2017-2020¹⁸² and the Parliamentary Declaration on the Rights of People with Disabilities).¹⁸³

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.

As in previous years, in their 2018 report, the Disability Ombudsperson described 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.

Furthermore, a constant problem is that children with disabilities are not included in the regular education system only because of their disability, which is discrimination. It is common practice for kindergartens to condition the child's enrolment on the prior engagement of an assistant. However, the Disability Ombudsperson highlighted a situation in which a child with disabilities was not included in the kindergarten for several years, with the apparent reasoning that the kindergarten did not have the adequate conditions to provide the necessary support for the child. In 2018, there were 23 627 pupils with developmental difficulties in primary schools with regular and special programmes (7.37 % of primary school students). Most pupils with developmental disabilities (19 933 or 84.39 %) attend regular classes, some under special conditions (236; 1 %), some in smaller classes (71; 0.3 %) or integrated into regular classes (10 733 students or 45.43% of students with disabilities) and some in a regular programme with individualised procedures (8 899 students or 33.76% of students with disabilities).¹⁸⁴

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

¹⁷⁸ Croatia, Anti-discrimination Act, 9 July 2008, Article 8(2).

¹⁷⁹ Gender Equality Ombudsperson (2013) *Research on Gender Issues in Primary Schools Textbooks*, 2013.

¹⁸⁰ Official Gazette 13/2003.

¹⁸¹ Official Gazette 63/2007.

¹⁸² Official Gazette 42/2017.

¹⁸³ Official Gazette 47/2005.

¹⁸⁴ Disability Ombudsperson (2019) *Report for 2018*, available at: <http://posi.hr/wp-content/uploads/2019/04/Izvje%C5%A1%C4%87e-o-radu-Pravobranitelja-za-osobe-s-invaliditetom-za-2018.-godinu.pdf>. The report was issued after the cut-off date for this report.

accommodation.¹⁸⁵ In 2018, the ordinance has finally been adapted, 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 better understanding of the meaning, role and purpose of such support for students. The Disability Ombudsperson in her 2018 report again pointed out that assistants are a form of reasonable adaptation 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).¹⁸⁶

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 in their *Report for 2018*, as in previous years, 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.¹⁸⁷ The total number of children in kindergartens in 2018 was 153 933, while the number of children with disabilities in kindergartens is 2 192, out of which 628 are included in the special educational groups. In addition, 356 preschool children are in programmes at the special centres for the education of children with disabilities.¹⁸⁸

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 facilities, only 7 % are fully adjusted to pupils with disabilities and only 26 % are partially adjusted to pupils with disabilities.¹⁸⁹

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 (Međimirska and Varaždinska). 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.¹⁹⁰

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.¹⁹¹

¹⁸⁵ 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.

¹⁸⁶ Croatia, 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.

¹⁸⁷ Disability Ombudsperson (2019), *Report for 2018*.

¹⁸⁸ Disability Ombudsperson (2019), *Report for 2018*.

¹⁸⁹ 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.

¹⁹⁰ European Court of Human Rights (ECtHR), *Oršuš and Others v Croatia* [GC], No.15766/03, 16 March 2010.

¹⁹¹ See the judgment in ECtHR, *Oršuš and Others v Croatia* [GC], No.15766/03, 16 March 2010, paragraphs 158-160.

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

For example, the Primary and Secondary School Education Act was amended in July 2010 so that schools are under an obligation to provide special assistance to children with insufficient command of the Croatian language. Further, new secondary legislation was adopted in May 2011 regulating the procedure for a child's initial placement in a class.¹⁹² In accordance with this legislation, a panel of experts, composed of a physician, a pedagogue¹⁹³ 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 25 teaching assistants of Roma origin in a number of primary schools in order to ensure special assistance to Roma children. Special measures were taken to provide education and training to these assistants, who are responsible for assisting Roma children to overcome difficulties in following the school curriculum.

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

In March 2012, the Committee of Ministers decided to continue their supervision of this case under the standard procedure with a view to assessing the impact of the measures that have been taken by the authorities, including the specific results obtained in abolishing 'Roma-only' classes.¹⁹⁴

The latest report confirmed that the ethnic segregation by class or pupil grouping within classes (segregation within classrooms) is still present and showed that 20 % of Roma children attend classrooms that are attended exclusively by students who are members of the Roma national minority, and therefore it is evident that additional efforts for progress in this area have to be made.¹⁹⁵ However, there are also some examples of good practice of integration in schools at the local level. For example, local self-government in the city of Kutina, in cooperation with primary schools in that area and with the approval of the relevant ministry, has prevented the existence of Roma-only classes, by organising transportation of Roma pupils to primary schools away from their place of residence.¹⁹⁶

The other patterns concerning Roma pupils include not all Roma children participating in preschool and compulsory primary education, and also a high drop-out rate and a high level of illiteracy among Roma. After-school programmes for Roma children, funded by the Ministry of Education, are often unavailable due to a lack of classroom space and available teaching staff.

The latest 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

¹⁹² This procedure is applied to each child entering the educational system.

¹⁹³ 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.

¹⁹⁴ [http://hudoc.exec.coe.int/ENG#{"EXECIdentifier":\["004-10085"\]}](http://hudoc.exec.coe.int/ENG#{).

¹⁹⁵ 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://www.cms.hr/system/publication/pdf/108/Uklju_ivanje_Roma_u_hrvatsko_dru_tvo_istra_ivanje_baz_nih_podataka.pdf.

¹⁹⁶ Kunac, S., Klasnić, K. and Lalić, S. (2018) *Inclusion of Roma in Croatian Society: Database Research*, Centre for Peace Studies, August 2018.

and 13 % attend kindergarten.¹⁹⁷ 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 survey data show that 95 % of Roma children in the 7-14 years age group attend primary school, which means that the goal set by National Strategy for Roma Inclusion has almost been reached. However, further efforts are necessary in securing better academic achievement of Roma pupils (better school achievement, lower drop-out rates, better educational outcomes), related to elimination problems encountered in primary education, such as insufficient knowledge of Croatian language, insufficient support of parents in learning and the fulfilment of school obligations, poor material conditions and 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.¹⁹⁸

Although Roma secondary school enrolments have been on the increase, a substantial decrease in each academic year can be noted compared to primary school enrolments, which seems to indicate a high drop-out rate towards the end of upper primary school. The number of Roma pupils who left school increased between 2008/2009 and 2011/2012. At the same time, Croatia has a significantly lower drop-out rate among the general population than many European countries and significantly lower than the EU 27 Member States' average (15.3 %). In Croatia, 19 % of Roma pupils finish only grades 1-4 of primary school while only 24 % complete primary school.¹⁹⁹

Only around 10 % of all Roma children go on to finish a four-year secondary education. The number of students in each secondary education year decreases drastically: 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.²⁰⁰

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.²⁰¹

With the aim of securing the financial preconditions for attending high school, the Ministry of Science and Education grants scholarships to secondary school students on the basis of criteria defined by the special regulation, which can be considered to be positive practice.

¹⁹⁷ Kunac, S., Klasnić, K. and Lalić, S. (2018) *Inclusion of Roma in Croatian Society: Database Research*, Centre for Peace Studies, August 2018.

¹⁹⁸ Kunac, S., Klasnić, K. and Lalić, S. (2018) *Inclusion of Roma in Croatian Society: Database Research*, Centre for Peace Studies, August 2018.

¹⁹⁹ Šikić-Mičanović, L., Ivatts, A. R., Vojak, D., and Geiger-Zeman, M. (2015), *Roma early childhood inclusion+Croatia report*, London, Open Society Foundations, p.56.

²⁰⁰ Šikić-Mičanović, L., Ivatts, A. R., Vojak, D., and Geiger-Zeman, M. (2015), *Roma early childhood inclusion+Croatia report*, London, Open Society Foundations.

²⁰¹ Šikić-Mičanović, L., Ivatts, A. R., Vojak, D., and Geiger-Zeman, M. (2015), *Roma early childhood inclusion+Croatia report*, London, Open Society Foundations.

The data show that 72.6 % of Roma pupils had received some kind of scholarship, and therefore the scholarship is not received by all pupils of Roma population, the reasons for which may be lack of information on the availability of scholarships, reluctance to obtain the documentation required to apply for a scholarship and poor educational outcomes. Also, the monetary value of scholarships can be considered to be low and not enough to motivate students to stay in the educational system, especially for the students who are also parents and need to care for their families.²⁰²

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.²⁰³

A very small number continue with studies after secondary school even though scholarships from the Roma Education Fund and other donors, including city authorities, are available to Roma students. 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.²⁰⁴

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.²⁰⁵ 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.

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 visible conflict between the majority and the minority community in a war-affected region.²⁰⁶

²⁰² 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://www.cms.hr/system/publication/pdf/108/Uklju_ivanje_Roma_u_hrvatsko_dru_tvo_istra_ivanje_baz_nih_podataka.pdf.

²⁰³ Kunac, S., Klasnić, K. and Lalić, S. (2018) *Inclusion of Roma in Croatian Society: Database Research*, Centre for Peace Studies, August 2018.

²⁰⁴ Kunac, S., Klasnić, K. and Lalić, S. (2018) *Inclusion of Roma in Croatian Society: Database Research*, Centre for Peace Studies, August 2018.

²⁰⁵ See Čorkalo Biruški, D. and Ajduković, D. (2007), 'Separate schools – a divided community: The role of the school in post-war social reconstruction', *Review of Psychology*, 2007, Vol. 14, No. 2, pp. 93-108. http://mjesecc.ffzg.hr/revija_psi/vol%2014%20no%202%202007/Corkalo%20ajdukovic.pdf.

²⁰⁶ People Ombudsman (2019), *Report for 2018*, available at: <http://ombudsman.hr/hr/component/jdownloads/send/84-2018/1534-izvjesce-pucke-pravobraniteljice-za-2018-godinu>.

Migrants²⁰⁷

Migrants are not treated differently under anti-discrimination legislation and should benefit equally with nationals from anti-discrimination law enforcement and implementation in the field of education.²⁰⁸

According to the International and Temporary Protection Act,²⁰⁹ migrant children have the right to primary and secondary education under the same conditions as Croatian citizens. The state has an obligation to ensure their right to education by 30 days after they have made such a request. However, those provisions have not been implemented consistently. Frequently, children spend a whole year in Croatia without being included in the educational system. Also, schools that are willing to enrol migrant children are rare, since the teachers are not adequately trained nor educated for the specific needs of these children and often do not have enough understanding of them, while the law does not provide for the possibility of engaging teaching assistants who would provide help to those children.

Obstacles also exist in the secondary education system. For example, when a 15-year-old boy from Iraq wanted to enrol in high school, the Agency for Science and Higher Education demanded as a condition of entry his certificate of completion of the lower grades – a certificate, which of course, the boy does not have.²¹⁰

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

The law does not provide for the inclusion of migrant children in the higher education system.²¹¹

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 the following areas: access to and supply of goods and services as formulated in the Racial Equality Directive. The Anti-discrimination Act prohibits discrimination based on racial or ethnic origin, religion or belief, age, disability and sexual orientation, in access to and supply of goods and services.²¹²

With rare exceptions,²¹³ there are no special regulations on access to and supply of goods and services for persons with disabilities.

²⁰⁷ For the purpose of this 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.

²⁰⁸ The Anti-discrimination Act grants protection to any person, which would include irregular migrants as well. However, for the realisation of certain rights it is necessary that conditions regulated by other laws are met, which can mean that irregular migrants cannot achieve some rights because of their unresolved status.

²⁰⁹ Croatia, International and Temporary Protection Act, 24 June 2015, Official Gazette no. 70/15, *Zakon o međunarodnoj i privremenoj zaštiti*.

²¹⁰ MAZ (Anti-Fascist Network Zagreb) (2016), 'Refugees have the right to education and healthcare', <http://www.maz.hr/2017/01/14/izbjeglice-imaju-pravo-na-obrazovanje-i-zdravlje/>.

²¹¹ Croatia, International and Temporary Protection Act, 24 June 2015, Official Gazette no. 70/15, *Zakon o međunarodnoj i privremenoj zaštiti*.

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

²¹³ The name of a medicinal product has to be expressed in Braille format on the packaging.

The Same-sex Life Partnership Act prohibits discrimination based on same-sex partnership, in access to and supply of goods and services.²¹⁴

a) Distinction between goods and services available publicly or privately

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

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

In Croatia, national legislation 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.²¹⁵

The Same-sex Life Partnership Act prohibits discrimination based on same-sex partnership, in access to housing.²¹⁶ LGBT persons often face discrimination in this field.²¹⁷ 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.²¹⁸

In its judgment in *Guberina v. Croatia*²¹⁹ (described in detail in section 2.6 above), the ECtHR found that the Croatian authorities were under a duty to provide a reasonable accommodation to the father by allowing him a tax exemption when purchasing a house to meet the basic needs of his family, including his disabled child.

Members of the Roma and Serbian national minorities encounter the greatest problems in respect of housing. Although the housing segregation of Roma is often talked about, the issues faced by the Serbian national minority are often greatly neglected. In her report for 2017, the People's Ombudsperson noted that members of the Serbian national minority have for a number of years been pointing to problems regarding the supply of electricity and water in areas settled by Serb returnees, especially in rural and underdeveloped regions. The data from 2017 show that electricity needs to be (re)-connected to 126 villages and that there are still more than 500 returnee households that do not have electricity (although they did have it before the war). The Ombudsperson states that from the complaints received during 2017, and having toured some of the settlements with a predominately Serb population, it is obvious that there is intentional neglect of the villages by local authorities, since they are mostly inhabited by a low number of people and the fact that most of these people are of Serbian ethnicity also affected the lack of interest for resolving the housing problems.²²⁰

The People's Ombudsperson *Report for 2018* noted that 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

²¹⁴ Croatia, Same-sex Life Partnership Act, 15 July 2014, Article 71.

²¹⁵ Croatia, Anti-discrimination Act, 9 July 2008, Article 8 (1) (6)

²¹⁶ Croatia, Same-sex Life Partnership Act, 15 July 2014, Articles 71, 72 and 79.

²¹⁷ Organisation Zagreb Pride, http://www.zagreb-pride.net/new/wp-content/uploads/2016/01/brutalna_stvarnost_hr_web.pdf.

²¹⁸ 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.

²¹⁹ 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":\["itemid":\["001-161530"\]}\]](http://hudoc.echr.coe.int/eng#{).

²²⁰ People's Ombudsperson (2018) *Report for 2017*, available at <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

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.²²¹

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

In 2015, the Ombudsperson's office paid special attention to the issue of housing and visited some 20 Roma settlements in several counties. It confirmed the existence of segregation in housing and the numerous problems Roma faced due to their exclusion and poverty.²²²

In 2017, the Ombudsperson's office reported that as a consequence of poverty and unemployment, the majority of Roma have exceedingly bad living conditions, which in certain cases display extreme characteristics. During 2017, employees of the Ombudsperson's office visited several locations where Roma live. What those locations have in common is that they are isolated from the city/municipality, lack basic infrastructure and the living quarters are extremely dilapidated, without sanitary space and are usually too small for the number of people who live in them. In many locations, Roma are settled on land owned by local government or private persons, which leads to a constant fear of eviction. Additionally, the fact that private individuals own the land is an obstacle to securing a connection to the power grid, even when it is technically possible. As a consequence, an excessively high number of houses/shelters are connected to the same power meter, which presents a clear danger. In one settlement situated in a forest, the inhabitants consume non-drinking water, live in a small number of containers and until recently were not connected to the power grid. Aside from such drastic examples, many families have problems with the legalisation of their living quarters.²²³ In 2016, out of 576 requests for legalisation, only 58 were accepted.²²⁴ The policy context for the legalisation of Roma settlements is set by the *National Strategy for Roma Inclusion for the period 2013-2020*, a document that sets out goals and measures that have to be taken in order to improve the position of the Roma minority in Croatia, including the legalisation of Roma settlements.

In their 2017 report, the People's Ombudsperson noted that the issue of Roma housing provokes controversy and resistance even at the planning stage. In this regard, she pointed to the City of Zagreb's plan to resettle several Roma families in the newly built city settlement, the reaction to which was that some of the inhabitants of this and surrounding settlements publicly revolted, while even the Roma community was not in favour of such a plan. Roma people do not want a new 'ghetto', and the local residents do not want a 'Roma ghetto' in their neighbourhood. The City of Zagreb introduced long-term plans for the construction of settlements for residents with increased social needs, including, in this

²²¹ People's Ombudsperson (2019) *Report for 2018*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

²²² People's Ombudsperson (2016), *Ombudsperson's Report for 2015*, pp. 34-36, <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

²²³ In previous decades, many houses in Croatia were built without the necessary permits from the relevant authorities. In 2013, the Ministry of Construction started a project of legalisation where the owners of such 'illegally built objects' were allowed to legalise their houses without having to pay a fine.

²²⁴ People's Ombudsperson (2017), *Ombudsperson's Report for 2016*. The data on this issue for 2017 are not available. <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>, p.41-42. There is no exact information for 2017.

case, the members of Roma national minority.²²⁵ During 2018, these plans were not realised, nor were specific actions taken with the aim of solving the housing situation of Roma.

Nevertheless, the Ombudsperson has welcomed the positive efforts of the Government expressed in the operational programmes for national minorities as well as the intention of the Government to revise and implement the National Roma Inclusion Strategy, with particular emphasis on specific measures and objectives in the areas of education, social integration, employment and housing. However, the Ombudsperson expressed concern that the likely implementation of such measures is questionable, especially given the deadlines for their execution.²²⁶

The People's Ombudsperson *Report for 2018* reported that 75 % of Roma live in separated Roma settlements where housing conditions, availability of communal and infrastructure services and equipment of households are poor, which is another consequence of their locational segregation.²²⁷

As a good example of cooperation between the Roma community and local self-government bodies, the Ombudsperson pointed to the Rujevica settlement in Rijeka, where infrastructure construction, home legalisation and connection to supply networks is ongoing.

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

Migrants

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

However, Croatia has failed to secure adequate housing solutions for migrants and to establish a system of accommodation for people seeking international protection. Seekers of international protection are placed in shelters that are located on the outskirts of the city, often isolated from the local population.²²⁸ Measures to build relationships with the local community have not been determined, which leads to hostility towards migrants from local residents. The state does not have a structured plan for the accommodation of migrants and places them in existing shelters and detention centres that do not have sufficient capacity to accommodate so many people. Younger unaccompanied children are placed in institutions for abandoned children, while older children are placed in youth detention centres, which is particularly problematic since they are automatically treated as troubled and do not get adequate care.²²⁹

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

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

²²⁵ People's Ombudsperson (2018) *Report for 2017*, available at <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

²²⁶ People's Ombudsperson (2018) *Report for 2017*.

²²⁷ People's Ombudsperson (2019), *Report for 2018*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

²²⁸ The Croatian International and Temporary Protection Act distinguishes between two categories of seekers of international protection: asylum seekers and persons under subsidiary protection.

²²⁹ MAZ (Anti-Fascist Network Zagreb) (2016), 'Refugees have the right to education and healthcare', <http://www.maz.hr/2017/01/14/izbjeglice-imaju-pravo-na-obrazovanje-i-zdravlje/>.

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.²³⁰ This exception has to be interpreted in proportion to the aim and purpose for which it is provided.²³¹

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).²³²

– 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.²³³ 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.

²³⁰ Croatia, Anti-discrimination Act, 9 July 2008, Article 9(2)(4).

²³¹ Croatia, Anti-discrimination Act, 9 July 2008, Article 9(3).

²³² Croatia, Anti-discrimination Act, 9 July 2008, Articles 9(2)(5) and 9(3).

²³³ 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,²³⁴ 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).²³⁵ 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,²³⁶ 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.²³⁷ 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 Court²³⁸ 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.²³⁹ The claimant relied on Article 8 and on Article 8 in conjunction with Article 14 of the convention. However, the European Court of Human Rights, referring to *Fernández Martínez v. Spain* (no. 56030/07), among other cases, found no violation of Article 8 and concluded that

²³⁴ Official Gazette International Agreements 2/1997.

²³⁵ 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>).

²³⁶ Croatia, Act on the legal status of religious communities, 4 July 2002, Official Gazette 83/2002, 73/2013, *Zakon o pravnom položaju vjerskih zajednica*, Article 9.

²³⁷ Croatia, Act on the legal status of religious communities, 4 July 2002, Official Gazette 83/2002, 73/2013, Article 9.

²³⁸ Supreme Court of the Republic of Croatia, *P.T. v. Gimnazija E.K.*, Revr. 499/08, 3 December 2008.

²³⁹ 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]}).

given its finding under Article 8, it was not necessary to examine the complaint under Article 8 taken together with Article 14 separately.²⁴⁰

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.²⁴¹

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

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

The Act on service in the armed forces,²⁴² as *lex specialis*, provides an exception for the armed forces in relation to age, health and physical abilities. Regarding the minimum age, the Act on service in the armed forces specifies that a person can be admitted into active military service as an active soldier if he or she is not older than 27.²⁴³ An active soldier can be promoted to lower officer status (*dočasnik*) if not older than 29,²⁴⁴ and to officer status (*časnik*) if not older than 30.²⁴⁵ 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,²⁴⁶ 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,²⁴⁷ which regulates employment in the prison services, provides an exception for the judicial police (*pravosudna policija*)²⁴⁸ in relation to health. The ability is to be established by the health committee appointed by the Justice Minister.

4.4 Nationality discrimination (Article 3(2))

a) Discrimination on the ground of nationality

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

The Anti-discrimination Act regulates that placing a person in a less favourable position on the grounds of nationality (citizenship) in accordance with specific regulations is not discrimination. It does not specify anything further (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.²⁴⁹ The act does not mention statelessness in any way.

²⁴⁰ <http://www.vecernji.hr/hrvatska/echr-otkaz-vjeroucitelju-petru-travasu-zbog-povrede-kanonskog-prava-je-opravan-1118685>.

²⁴¹ Court of Justice of the European Union, Case C-68/17, decision of 11 September 2018, EU:C:2018:696.

²⁴² Official Gazette 73/13, 75/2015, 50/2016.

²⁴³ Croatia, Act on service in the armed forces, 14 June 2013, *Zakon o službi u Oružanim snagama Republike Hrvatske*, Article 36.

²⁴⁴ Croatia, Act on service in the armed forces, 14 June 2013, Article 40.

²⁴⁵ Croatia, Act on service in the armed forces, Article 43.

²⁴⁶ Official Gazette 34/2011, 130/2012, 89/2014, 151/2014, 33/2015, 121/2016.

²⁴⁷ Official Gazette 28/13, 33/2015, 82/2015, 82/2016.

²⁴⁸ 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.

²⁴⁹ Croatia, Anti-discrimination Act, 9 July 2008, Article 9(2)(9).

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

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.²⁵⁰

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.²⁵¹

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.²⁵² Obtaining citizenship for Roma people remains an issue today and there is still a significant number of Roma with unresolved citizenship status.²⁵³

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.²⁵⁴

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

²⁵⁰ Official Gazette 53/1991, 70/1991, 28/1992, 113/1993, 4/1994, 130/2011 and 110/2015.

²⁵¹ 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>.

²⁵² 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.

²⁵³ People's Ombudsperson (2015), *Ombudsperson's Report for 2014*, p.33, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

²⁵⁴ UNHCR's intervention as a third party in the ECtHR case of *Hoti v. Croatia*, No. 63311/14, 26 April 2018.

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.²⁵⁵

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

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

a) Benefits for married employees

In Croatia, it would constitute unlawful discrimination in national law if an employer provided benefits only to those employees who are married. Compared to marriage, cohabitation (*izvanbračna zajednica*) has limited legal consequences regulated by specific laws that are not consistent (the Family Act, the Act on statutory pension insurance, the Health Care Act, etc.), although most laws recognise equal rights between married persons and those who are cohabitating.²⁵⁶

Registered same-sex partnerships in this area have the same rights as married couples and domestic law is here consistent with CJEU judgements in *Maruko*, *Romer* and *Hay*. People in non-registered same sex partnerships have the same rights as those who are cohabitating.

The Labour Act, in connection with paid leave, explicitly considers a cohabitation partner to be a member of the close family.²⁵⁷

However, some laws, especially those dealing with taxes, do not recognise or give any rights to cohabitation partners, because of which, on several occasions, they have been the subject of challenges addressed to the Constitutional Court. The Court has taken the stand that there is no objective and reasonable justification for the different treatment of cohabitation and married partners regarding the application of tax provision regulating the exemption from inheritance taxes.²⁵⁸

b) Benefits for employees with opposite-sex partners

In Croatia, it would constitute unlawful discrimination in national law if an employer provided benefits only to those employees with opposite-sex partners.²⁵⁹

The Croatian legal system recognises both registered same-sex partnership and unregistered informal same-sex cohabitation. The Same-sex Life Partnership Act (entered into force in August 2014) gives partners in same-sex registered partnerships access to labour rights (in the field of employment, work conditions and participation in the labour

²⁵⁵ 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%2C%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%2C%22CHAMBER%22%2C%22itemid%22:%5B%22001-182448%22%5D%7D>.

²⁵⁶ In Croatia there is a registry only for same-sex partnerships, while there is no registry in which cohabitation could be registered. Therefore, this applies to de facto cohabitation.

²⁵⁷ Croatia, Labour Act, 15 July 2014, Article 86(3).

²⁵⁸ Constitutional Court of the Republic of Croatia, decision no. U-III-4804/13 and U-III-3034/2012.

²⁵⁹ There is no available case law on this issue.

market, opposite-sex partners should have the same rights as married employees),²⁶⁰ pension, health insurance and health care, social benefits, tax benefits, equal access to goods and services and part of family privileges²⁶¹ already granted to married different-sex couples.²⁶² It further gives partners in same-sex cohabitations (*neformalno životno partnerstvo*) the same rights granted to partners in different-sex cohabitations (*izvanbračna zajednica*).²⁶³

According to the Gender Ombudsperson's 2017 report, there have been no specific problems with the implementation of the Same-sex Life Partnership Act.²⁶⁴ The same practice continued during 2018.

4.6 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).

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

4.7.1 Direct discrimination

In Croatia, national law provides 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.²⁶⁵

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;²⁶⁶
- 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;²⁶⁷
- 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;²⁶⁸

²⁶⁰ Croatia, Same-sex Partnership Act, 15 July 2014, Article 69.

²⁶¹ With the exception of adoption and medically assisted procreation.

²⁶² Croatia, Same-sex Life Partnership Act, 15 July 2014, Articles 37-79.

²⁶³ Croatia, Same-sex Life Partnership Act, 15 July 2014, Article 4(2).

²⁶⁴ Gender Equality Ombudsperson (2018), *Report for 2017*, available at https://www.prs.hr/attachments/article/2404/IZVJE%C5%A0%C4%86E_O_RADU_ZA_2017.pdf.

²⁶⁵ Croatia, Anti-discrimination Act, 9 July 2008, Article 9(3).

²⁶⁶ Croatia, Anti-discrimination Act, 9 July 2008, Article 9(2)(4).

²⁶⁷ Croatia, Anti-discrimination Act, 9 July 2008, Article 9(2)(6).

²⁶⁸ Croatia, Anti-discrimination Act, 9 July 2008, Article 9(2)(8).

- fixing a suitable and appropriate maximum age as a reason for the termination of employment and prescribing a certain age as a condition for acquiring the right to retirement;²⁶⁹
- 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 Act²⁷⁰ (e.g. this exception would justify an age limit for adoptive parents).²⁷¹

All exceptions should be interpreted in a way that is proportionate to the aim and purpose for which they have been set.²⁷²

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.²⁷³

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.

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

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

The Labour Act provides protection for pregnant and breastfeeding women – such workers should be offered a temporary transfer to another safer job. If that is not possible, pregnant or breastfeeding women are entitled to paid leave.²⁷⁴

An employer is not allowed to terminate the employment of an employee during maternity leave or paid leave due to breastfeeding, or when an employee is working part time due to her or his parental responsibilities.²⁷⁵ The protected period ends with the end of maternity leave.

²⁶⁹ Croatia, Anti-discrimination Act, 9 July 2008, Article 9(2)(8).

²⁷⁰ Croatia, Anti-discrimination Act, 9 July 2008, Article 9(2)(10).

²⁷¹ Croatia, Family Act, 18 September 2015, 2015, Article 184, Official Gazette 103/15: minimum age of adoptive parent is 21 and minimum 18 years older than adopted child.

²⁷² Croatia, Anti-discrimination Act, 9 July 2008, Article 9.

²⁷³ Croatia, Anti-discrimination Act, 9 July 2008, Article 9.

²⁷⁴ Croatia, Labour Act, 15 July 2014, Article 31.

²⁷⁵ Croatia, Labour Act, 15 July 2014, Article 34. The Labour Act does not provide benefits for other workers who are carers, only for the workers who are parents and are caring for their children.

4.7.3 Minimum and maximum age requirements

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

The 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.²⁷⁶ A minor cannot be employed in work that may harm his or her safety, health, morality or development.²⁷⁷

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.²⁷⁸ 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,²⁷⁹ 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.²⁸⁰ There are also special age requirements for the armed forces (section 4.3 above).

4.7.4 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).^{281 282}

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.²⁸³ 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 employee²⁸⁴ or as a self-employed short-term contractor (*ugovor o djelu*).

The Anti-discrimination Act provides exceptions permitting maximum age requirements in relation to termination of employment.²⁸⁵ The provision is general and its aim is to enable an employee's employment to be terminated at a specific age laid down by particular legislation (e.g. according to the Labour Act, employment terminates when an employee turns 65 years of age and has 15 years of service, unless employer and employee agree otherwise).

²⁷⁶ Croatia, Labour Act, 15 July 2014, Article 19.

²⁷⁷ Croatia, Labour Act, 15 July 2014, Article 21.

²⁷⁸ Croatia, Anti-discrimination Act, 9 July 2008, Article 9(2)(7).

²⁷⁹ Croatia, Fire-Fighting Act, 1 October 1999, Article 21, Official Gazette 106/99 with amendments.

²⁸⁰ According to the available information, this had not been challenged in court.

²⁸¹ Croatia, Labour Act, 15 July 2014, Article 112.

²⁸² The Ministry of Labour and Pension Insurance had announced pension insurance reforms by which the state pension age would be extended to the age of 67.

²⁸³ Croatia, Labour Act, 15 July 2014, Article 112.

²⁸⁴ Croatia, Pension Insurance Act, Article 37(6), Official Gazette 157/2013, 151/2014, 33/2015, 93/2015, 120/2016, 18/2018, 62/2018.

²⁸⁵ Croatia, Anti-discrimination Act, 9 July 2008, Article 9(2)(8).

b) Occupational pension schemes

In Croatia, there is a normal age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements. The law sets a minimum age (50) when people can begin to receive payments from voluntary pension schemes, but not the maximum age.²⁸⁶

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

An individual can collect a pension and still work.

c) State imposed mandatory retirement ages

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

According to the Labour Act,²⁸⁷ 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;²⁸⁸ for civil servants it is 65 and 15 years of pensionable service;²⁸⁹ for public attorneys (and their deputies) it is 70;²⁹⁰ and for army employees it is 65 and 15 years of pensionable service.²⁹¹

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.²⁹²

There is still no case law on this issue.

e) Employment rights applicable to all workers irrespective of age

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

f) Compliance of national law with CJEU case law

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

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

²⁸⁶ Croatia, Voluntary Pension Funds Act, 31 January 2014, *Zakon o dobrovoljnim mirovinskim fondovima*, Article 127.

²⁸⁷ Croatia, Labour Act, 15 July 2014, Article 112.

²⁸⁸ Croatia, Act on State Judiciary Council, 1 October 2010, *Zakon o Državnom sudbenom vijeću*, Article 77(2)(5).

²⁸⁹ Croatia, Civil Servants Act, 15 July 2005, *Zakon o državnim službenicima*, Article 137(1)(3).

²⁹⁰ Croatia, Act on the State Attorney's Office, 30 June 2009, *Zakon o državnom odvjetništvu*, Article 112(1).

²⁹¹ Croatia, Act on service in the armed forces, 14 June 2013, Article 205/1/3.

²⁹² Croatia, Labour Act, 15 July 2014, Article 112.

kind in the Civil Servants Act and the Act on service in the armed forces. A legitimate aim might be freeing up posts for younger workers as Croatia has a high rate of youth unemployment (28.8 %).²⁹³

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,²⁹⁴ 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.²⁹⁵

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.²⁹⁶

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.²⁹⁷

4.7.5 Redundancy

a) Age and seniority taken into account for redundancy selection

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

National law obliges an employer to take into account an employee's age when selecting workers for redundancy, but it does not specify in what way age should influence its decision.²⁹⁸

In a situation where an employer terminates employment for business reasons (*poslovno uvjetovani otkaz*) or because an employee is not able to perform duties due to his or her permanent abilities or characteristics (*osobno uvjetovani otkaz*), the employer has to take into consideration the length of the employee's service, his or her age, disability and care responsibilities. The law does not specify in what way age should influence the employer's decision.²⁹⁹

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.

²⁹³ <http://www.tradingeconomics.com/croatia/youth-unemployment-rate>.

²⁹⁴ They do not have to retire, but they cannot work as doctors or pharmacists.

²⁹⁵ Croatia, Health Care Act, 15 December 2008, Article 159.

²⁹⁶ Zagreb Administrative Court, no. UsI-4894/13, 20 April 2015.

²⁹⁷ High Administrative Court of the Republic of Croatia, no. UsI-828/15, 23 August 2017.

²⁹⁸ Croatia, Labour Act, 15 July 2014, Article 115.

²⁹⁹ Croatia, Labour Act, 15 July 2014, Article 115.

The amount of compensation for redundancy is not affected by the age of the worker but by the length of his or her employment with the same employer.³⁰⁰

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

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

According to the Anti-discrimination Act placement in a less favourable position is not discrimination when such conduct is carried out with the aim of preserving health and preventing criminal acts and misdemeanours, when the means used are appropriate and necessary for the aim to be achieved and when such conduct does not lead to direct or indirect discrimination based on race and ethnicity, skin colour, religion, gender, ethnic and social origin, sexual orientation or disability.³⁰¹

4.9 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 and medically assisted reproduction were not regulated by the Same-sex Life Partnership Act. These areas are still regulated exclusively by the Family Act and the Medically Assisted Procreation Act, which do not allow adoption or medically assisted reproduction rights to same sex couples.³⁰²

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

³⁰⁰ Croatia, Labour Act, 15 July 2014, Article 126.

³⁰¹ Croatia, Anti-discrimination Act, 9 July 2008, Article 9(2)(1).

³⁰² Croatia, Medically Assisted Procreation Act, Official Gazette 86/2012, *Zakon o medicinski potpomognutoj oplodnji*, 4 August 2012.

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.³⁰³ This exception is to be interpreted in proportion to the aim and purpose for which it is provided.³⁰⁴ 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.

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 have to pay a fee. A positive trend regarding the employment of people with disabilities has been noticed, with the largest recorded increase since the implementation of the Act on professional rehabilitation and employment of persons with disabilities. During 2018, a total of 5 843 people with disabilities were registered as unemployed at the Croatian Employment Service, which makes 3.5 % of the total number of people registered as unemployed. In comparison, the number of people with disabilities registered as unemployed at the Croatian Employment Service in 2017 totalled 6 497 and in 2016, it was 7 204.³⁰⁵ 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

³⁰³ Croatia, Anti-discrimination Act, 9 July 2008, Article 9(2)(2).

³⁰⁴ Croatia, Anti-discrimination Act, 9 July 2008, Article 9(3).

³⁰⁵ Disability Ombudsperson (2019), *Report for 2018*, available at: <http://posi.hr/wp-content/uploads/2019/04/Izvje%C5%A1%C4%87e-o-radu-Pravobranitelja-za-osobe-s-invaliditetom-za-2018.-godinu.pdf>.

Insurance Institute.³⁰⁶ 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.

As of 31 December 2018, 10 836 persons with disabilities were registered as employed, which shows an increase in the employment of 324 persons with disabilities compared to 31 December 2017. In December 2018, there were 9 435 quota employees, out of which 2 670 were in public sector entities, 6 659 were employed by private sector taxpayers and 106 by tax-paying civil society organisations, while 364 were employed by newly established employers who are liable to quota employment, but at the time of their introduction (24 months since the commencement of their work) were not obliged to meet the quota obligation.³⁰⁷

³⁰⁶ Croatia, Ordinance on the content and manner of keeping records on employed persons with disabilities, 1 January 2015, (*Pravilnik o sadržaju i načinu vođenja očevidnika zaposlenih osoba sa invaliditetom*) Official Gazette 44/2014.

³⁰⁷ Disability Ombudsperson (2019), *Report for 2018*, available at: <http://posi.hr/wp-content/uploads/2019/04/Izvje%C5%A1%C4%87e-o-radu-Pravobranitelja-za-osobe-s-invaliditetom-za-2018.-godinu.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).³⁰⁸

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.³⁰⁹

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.³¹⁰ A victim of discrimination can file a complaint with the Ombudsperson as the central body responsible for anti-discrimination. If a person faces discrimination by an administrative act, he or she can file a complaint with the Administrative Court of the Republic of Croatia, which is authorised to review the legality of administrative acts.

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

³⁰⁸ Misdemeanour courts deal with minor offences; Croatia, Misdemeanours Act, 3 October 2007, *Prekršajni zakon*, (Official Gazette 107/2007, 39/2013, 157/2013, 110/2015).

³⁰⁹ Croatia, Civil Procedure Act, 24 December 1976, *Zakon o parničnom postupku*, Article 186(a).

³¹⁰ Misdemeanours are minor offences, most often prosecuted ex officio in proceedings similar to criminal proceedings.

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

The Anti-discrimination Act grants the Ombudsperson the authority to carry out a mediation procedure, with the consent of the parties, with the possibility of an out-of-court settlement.³¹¹

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,³¹² as a rule such proceedings in courts in bigger cities last several years.³¹³
- Difficulties in proving discrimination: the rule on burden of proof is rarely implemented.³¹⁴
- 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.³¹⁵
- 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:³¹⁶ the procedure to obtain free legal aid is too complicated; the lawyers' fee paid by the state is symbolic; although people often need legal aid as soon as possible due to short deadlines for filing a legal remedy, the administrative procedure to get free legal aid lasts on average from 45 to 90 days; competent administrative offices dealing with the 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.

³¹¹ Croatia, Anti-discrimination Act, 9 July 2008, Article 12(2)(5).

³¹² The provision is mandatory; Article 434(4) of the Civil Procedure Act.

³¹³ See also People's Ombudsperson (2016), *Report for 2015*, p. 28: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

³¹⁴ 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.

³¹⁵ People's Ombudsperson (2015) *Ombudsperson's Report for 2014*, p.21.

³¹⁶ People's Ombudsperson (2016), *Ombudsperson's Report for 2015*, p.20.

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 in exercising or protecting 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 in 2018 have increased to EUR 2.6 per capita, they are still inadequate and extremely low compared to the European average of EUR 9 per capita.³¹⁷

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.³¹⁸

Finally, it should be pointed out that groups of citizens who are most often affected by discrimination, such as Roma, also find it difficult to exercise their rights since discrimination is often only one of the violations that they are faced with, along with a poor economic situation and social exclusion. Furthermore, such groups often do not know about their rights and ways of protecting themselves. In this regard, it is telling that there are no civil proceedings 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.³¹⁹

c) Number of discrimination cases brought to justice

In Croatia, statistics are available on the number of cases related to discrimination brought to justice. As a rule, the statistics form part of the Ombudsperson's annual report.³²⁰

Civil proceedings

In 2018, 186 civil proceedings regarding discrimination were pending (80.6% of the cases were continued from previous years). Most of the cases are about discrimination in employment filed by employees, mainly because their employment contract had been cancelled or because their rights were violated to such a degree that the fear of victimisation has become irrelevant to them.

This is a continuous decrease in comparison with the previous years (in 2017, 203 civil proceedings regarding discrimination were pending; 147 filed before 2017 and 56 filed during 2017). The statistics show only the number of special individual anti-discrimination actions and no other proceedings where discrimination is an incidental issue. In 2018, 55 proceedings were closed: 11 claims had been granted, 31 denied and 13 closed in another

³¹⁷ People's Ombudsperson (2019), *Report for 2018*, available at <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

³¹⁸ 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.

³¹⁹ Kesonja, D. and Einwalter T.S. (CMS) (2017) *Analysis of case law in Croatia regarding proceedings initiated for discrimination*, Zagreb.

³²⁰ People's Ombudsperson (2018) *Report for 2017*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

way', without further explanation. In 2018, none of the civil discrimination cases was initiated by a joint action (*udruženatuzba*).³²¹

Criminal proceedings

In 2018, 19 criminal proceedings connected with discrimination were pending (in 2018, five cases were closed, in four cases the defendant was found guilty and one case was resolved 'in another way', without further explanation).³²²

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 offences based on discrimination on sexual orientation and language, followed by national origin, race and ethnicity, gender, religion, social status and other characteristics. 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 misdemeanour and sentenced to pay a fine of EUR 666 (HRK 5 000). Such sanctions discount adequate social condemnation and the prevention of future criminal offences.³²³

Statistical data also point to a small number of hate crime cases as well as to unequal data collection by the relevant authorities. As in previous years, the highest number of crimes was motivated by the national or ethnic origin of the victim (30), with 10 crimes committed against Serbs, 9 against Bosniaks, 8 against Jews, 2 against Roma and 1 against a Croatian, while in 2 cases the motive was racial affiliation, and in 1 case religion. According to the preliminary data of the State Attorney's Office, 31 criminal charges were filed for acts of hatred, of which 11 were in the stage of indictment, 1 complaint was dismissed, while investigatory actions are still being conducted in the other cases.³²⁴

In June 2018, the Pula Municipal Court issued a decision by which the defendant was found guilty of the criminal offence of public incitement to violence and hatred towards Jews committed via the internet by posting videos on YouTube which encourage hate against the Jews and denied the significance of the Holocaust crimes.³²⁵

Misdemeanour cases

In 2018, 156 misdemeanour cases connected with discrimination were pending (81 filed before 2018 and 75 filed in 2017); 87 cases were closed and in 48 cases the defendants were found guilty.

Defendants in misdemeanour proceedings are most often prosecuted for harassment while the most frequent discrimination ground is national origin – in 38 % of all cases. 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

³²¹ In Croatia, an association may bring a joint legal action (association action, *udruženatuzba*), 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.

³²² People's Ombudsperson (2019), *Report for 2018*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

³²³ People's Ombudsperson (2019), *Report for 2018*.

³²⁴ People's Ombudsperson (2019), *Report for 2018*.

³²⁵ Pula Municipal Court, Decision no. K-830/17, of 20 June 2018.

aggressors and are exposed to insult, public commentary on reducing their recognised minority rights and violent assaults.

d) Registration of discrimination cases by national courts

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

The Anti-discrimination Act³²⁶ states that all judicial bodies should keep statistics on cases related to discrimination with data on the grounds and fields of discrimination and forward them to the Ministry of Justice, and that the Ministry of Justice should forward these statistics to the Ombudsperson no later than 1 February of the year following the year for which these data are collected. The statistics are then included in the Ombudsperson's annual report on discrimination.

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

a) Engaging on behalf of victims of discrimination (representing them)

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

As a rule, associations cannot represent an individual victim in court, with the exception of lawyers employed by the trade unions, who can represent workers in labour disputes.³²⁷

b) Engaging 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'.³²⁸

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

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

³²⁶ Croatia, Anti-discrimination Act, 9 July 2008, Article 14.

³²⁷ Croatia, Civil Procedure Act, 24 December 1976, Article 434.a.

³²⁸ Croatia, Anti-discrimination Act, 9 July 2008, Articles 21 and 24.

which civil society organisations have joined the proceedings as interveners, it can be concluded that this legal instrument is still insufficiently used.³²⁹

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, *udruženatuzba*), as described above, if it demonstrates plausibly that the defendant's conduct has violated the right to equal treatment of a larger number of persons who predominantly belong to the group whose rights the association defends, and the association may file this action without a specific victim to support or represent. Such an action can be brought in the public interest on an association's own behalf. The law is not clear as to whether such an action may be brought in the interest of a larger number of individual victims.³³⁰

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 (*udruženatuzba*),³³¹ 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.³³²

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).³³³

³²⁹ Kesonja, D. and Einwarter 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.

³³⁰ Croatia, Anti-discrimination Act, 9 July 2008, Article 24.

³³¹ 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.

³³² Croatia, Anti-discrimination Act, 9 July 2008, Article 24.; Croatia, Civil Procedure Act, 24 July 2014, Article 502a.

³³³ 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.³³⁴

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*^{335 336} made a new decision, finding the statement discriminatory. The Court determined that the factual situation of the case is in accordance to 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.

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*.³³⁷ 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.³³⁸

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 intention of the article was a social critique of Croatian national television and the behaviour of the Church, not

³³⁴ Supreme Court of the Republic of Croatia, no. GŽ-12/11, 18 April 2012.

³³⁵ 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>.

³³⁶ However, in the judgment it was falsely stated that *Feryn* was a European Court of Human Rights case.

³³⁷ Supreme Court of the Republic of Croatia, no. Rev-300/13, 17 June 2015.

³³⁸ Supreme Court of the Republic of Croatia, No.GŽ.25/11, judgment of 28 February 2012.

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.³³⁹

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.³⁴⁰

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 Act³⁴¹ 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 plausible³⁴² that discrimination has taken place. In this case, it shall be for the respondent to prove that there has been no discrimination. (2) The provision of paragraph 1 of this Article shall not apply to misdemeanour and criminal proceedings.'

From the pure wording of the provision, it may seem that the standard in the Croatian law is tougher for the victim than the one provided for by Article 10 of Directive 2000/78 and Article 8 of Directive 2000/43. Since the concept itself is 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

³³⁹ Information about the proceedings have been gathered through media reports:

<https://narod.hr/hrvatska/prvostupajnski-sud-prihvatilo-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/>.

³⁴⁰ Croatia, Anti-discrimination Act, 9 July 2008, Articles 21 and 24.

³⁴¹ 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>.

³⁴² The phrase used in the official text '*učiniti vjerojatnim*' corresponds to the English phrase 'to render credible'.

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.³⁴³

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.³⁴⁴ 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.³⁴⁵

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.³⁴⁶

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.³⁴⁷ 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

³⁴³ Supreme Court of the Republic of Croatia, No.Gž.25/11, judgment of 28 February 2012.

³⁴⁴ Zagreb Municipal Court, no. Pr.4290/12, 20 June 2016.

³⁴⁵ Zagreb County Court, no. GžR-1494/16, 3 January 2017.

³⁴⁶ Vukovar County Court, no. Gž-2333/14, 23 November 2017.

³⁴⁷ People's Ombudsperson (2015), *Ombudsperson's Report for 2014*, <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

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'.³⁴⁸

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.³⁴⁹

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 27 397.³⁵⁰

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

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

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

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

In some cases, if regulated by special laws, administrative fines are possible (e.g. 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.³⁵¹

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.³⁵²

³⁴⁸ European Court of Human Rights, decision in *Škorjanec v. Croatia*, no. 25536/14, 28 March 2017, Para. 54,55,57.

³⁴⁹ Croatia, Anti-discrimination Act, 9 July 2008, Article 7.

³⁵⁰ Croatia, Anti-discrimination Act, 9 July 2008, Article 28.

³⁵¹ Croatia, Anti-discrimination Act, 9 July 2008, Article 17(1)(3).

³⁵² Croatia, Civil Obligations Act, 25 February 2005, Article 1100.

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

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

Misdemeanour

The Anti-discrimination Act specifies misdemeanour liability and sanctions in cases of harassment and sexual harassment. A fine is imposed on natural persons, responsible persons in legal entities,³⁵³ 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.³⁵⁴

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

Criminal

The Criminal Code³⁵⁵ 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.³⁵⁶

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.³⁵⁷ 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).³⁵⁸

The criminal offence of discrimination (Article 125 of the Criminal Code) — a crime subject to public prosecution³⁵⁹ 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.³⁶⁰ Persecution of individuals or organisations because of their demands for

³⁵³ A natural person entrusted with certain duties in a legal entity or a person authorised to act on behalf of the legal entity.

³⁵⁴ Croatia, Misdemeanour Act, 3 October 2007, Article 6.

³⁵⁵ Official Gazette 125/2011, 144/2012, the law has been in force since 1 January 2013.

³⁵⁶ Croatia, Criminal Code, 21 October 2011, *Kazneni zakon*, Article 87(21).

³⁵⁷ Croatia, Criminal Code, 21 October 2011, Articles 117(2), 118(2) and 119.

³⁵⁸ Zagreb Public Attorney Office, case no. Ko-DO-1204/13.

³⁵⁹ 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 progono*).

³⁶⁰ Croatia, Criminal Code, 21 October 2011, Article 125(1).

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.³⁶¹

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.³⁶²

b) Ceiling and amount of compensation

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 220 000 (approximately EUR 29 000), for the most serious damage e.g. death of a spouse or child.³⁶³

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)³⁶⁴ as non-pecuniary damages, which is almost the maximum amount established by the Supreme Court's guiding criteria.³⁶⁵

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.³⁶⁶

c) Assessment of the sanctions

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

³⁶¹ Croatia, Criminal Code, 21 October 2011, Article 125(2).

³⁶² Croatia, Criminal Code, 21 October 2011, Article 133.

³⁶³ 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.

³⁶⁴ The maximum award is set at EUR 29 000.

³⁶⁵ 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>.

³⁶⁶ 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.

In the *Report for 2018*, the People's Ombudsperson noted that sanctions imposed in misdemeanour proceedings are not adequate and effective and do not contribute to general and special prevention since in most cases sanctions consist of a fine or suspended prison sentence.³⁶⁷

³⁶⁷ 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.³⁶⁸ 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 for the designated body

The Ombudsperson, as a commissioner of the Croatian Parliament, submits regular annual reports on the status of human rights and freedoms in the Republic of Croatia, after which the Parliament conducts a debate and votes on whether to accept the Ombudsperson's report. At a session in May 2016, the Parliament rejected the Ombudsperson's annual report (for 2015) for the second time since the Office of the People's Ombudsperson was established. 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 importance of the recommendations presented in the report.³⁶⁹ It should be mentioned that the

³⁶⁸ Croatia, Anti-discrimination Act, 9 July 2008, Article 12(1).

³⁶⁹ See People's Ombudsperson (2017), *Report for 2016*, available at <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

Ombudsperson for Children's annual report for 2015 was also rejected by the Croatian Parliament in the session held in June 2016.³⁷⁰

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

In June 2018, the Parliament accepted the Ombudsperson's *Report for 2017*.³⁷¹

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.³⁷²

Funds necessary for the functioning of the Office of the Ombudsperson are apportioned from the annual state budget, which is proposed by the Government and adopted by the Parliament. No significant increases or budget cutbacks have been noticed in the previous period, moreover, a steady slight increase in the budget has been recorded since 2013. The Ombudsperson's total budget for the year 2017 was EUR 1 522 585. The Ombudsperson's office employs 45 people.³⁷³

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

c) Institutional architecture

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

The Ombudsperson's Office consists of several services (offices): the office for the protection of human rights; office for the protection of persons deprived of freedom and National Preventive Mechanism; the anti-discrimination office; the office for communication, cooperation and promotion of human rights; and the office for general 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.³⁷⁴

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

³⁷⁰ See Ombudsperson for Children (2017) *Report for 2016*, available at <http://dijete.hr/en/reports-of-the-ombudsperson-for-children/>.

³⁷¹ <http://ombudsman.hr/hr/naslovna/novost/1352-hrvatski-sabor-podrzao-izvjesce-pucke-pravobraniteljice-za-2017>.

³⁷² People's Ombudsperson (2018), *Report for 2017*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

³⁷³ People's Ombudsperson (2018), *Ombudsperson's Report for 2017*.

³⁷⁴ According to the People's Ombudsperson's webpage, available at: <https://www.ombudsman.hr/hr/#>.

equality body, especially in the field of discrimination, data on discrimination from all the ombudspersons are consolidated and published in the Ombudsperson's report. The ombudspersons forward each other complaints that they receive if they fall under the powers of another ombudsperson or they work together on the same cases.

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

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

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

i) Status of the body

The Ombudsperson was established by the Constitution of the Republic of Croatia as a commissioner of the Croatian Parliament. Its scope of duties and powers are regulated in detail by the Ombudsperson Act and Anti-Discrimination Act.³⁷⁵ 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 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.³⁷⁶ Every form of influence on the work of the Ombudsperson is

³⁷⁵ Croatia, Act on People's Ombudsperson 9 July 2012; Croatia, Anti-discrimination Act, 9 July 2008.

³⁷⁶ Croatia, Constitution of the Republic of Croatia, 22 December 1990, Article 93.

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.

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.

The mandate of the Ombudsperson also includes cases regarding discrimination against migrants, which, together with discrimination against the Serbian and Roma national minorities, is emphasised as a priority issue in the most recent Ombudsperson's report. In her report, the Ombudsperson noted that discrimination against migrants occurs frequently, particularly in relation to education, employment, housing and health protection. The Ombudsperson also made a list of recommendations regarding activities that must be conducted by the relevant state authorities in order to ensure the integration of migrants in society and eliminate any form of discrimination towards them.

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

i) Independent assistance to victims

In Croatia, the designated body does have the competence to provide independent assistance to victims. The Ombudsperson has the power to provide information necessary to natural and legal persons who have filed a complaint of discrimination with regard to their rights and obligations and on their options for legal and other protection. If court proceedings have not yet been initiated,

the Ombudsperson also has the right to examine individual reports and take any action that falls under their remit that is required to eliminate discrimination and protect the rights of people facing discrimination.³⁷⁷

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.

In the Ombudsperson's *Report for 2018*, as in previous years, the Ombudsperson stated that only by strengthening the material and financial capacity of the Ombudsperson's Office would the Ombudsperson be able fulfil all the tasks and duties as an independent institution.³⁷⁸

ii) Independent surveys and reports

In Croatia, the designated body does have 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.³⁷⁹ There is no information regarding any surveys conducted during 2018.

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.³⁸⁰ The *Report for 2018* was published in March 2019.

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

³⁷⁷ Croatia, Anti-discrimination Act, 9 July 2008, Article 12.

³⁷⁸ People's Ombudsperson (2019), *Report for 2018*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

³⁷⁹ People's Ombudsperson (2017), *Ombudsperson's Report for 2016* <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

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

his/her remit to conduct independent surveys and publish independent reports are implemented at a good quality level in practice, and there were no objections by the relevant stakeholders, such as NGOs, to the work of the Ombudsperson in this respect.

iii) Recommendations

In Croatia, the designated body does have the competence to issue independent recommendations on discrimination issues in individual cases. The Ombudsperson also issues recommendation on a general level in its annual reports, which are addressed to the 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.³⁸¹

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.

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

³⁸¹ Croatia, Anti-discrimination Act, 9 July 2008, Article 12.

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.³⁸²

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/bodies

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

The Ombudsperson's authority to bring discrimination complaints includes the authority to file criminal charges for discrimination to the state attorney's office.³⁸³ 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.³⁸⁴ 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.³⁸⁵ 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.³⁸⁶

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

³⁸² Information available on People's Ombudsperson website <https://www.ombudsman.hr/hr/#>.

³⁸³ Croatia, Anti-discrimination Act, 9 July 2008, Article 12(2)(6).

³⁸⁴ Croatia, Anti-discrimination Act, 9 July 2008, Article 21.

³⁸⁵ 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.

³⁸⁶ Kesonja, D. and Einwalter T.S. (CMS) (2017) *Analysis of case law in Croatia regarding proceedings initiated for discrimination*, Zagreb.

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.³⁸⁷ 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/bodies of complaints and decisions

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

These data are available to the public through the Ombudsperson's annual reports, which are published on its website: <http://ombudsman.hr/hr/>. The Ombudsperson's annual reports from 2002 to 2018 are available on the website and are easily accessible to everyone.

In 2016, the Ombudsperson received 5 433 complaints, in 2017, 5 203 complaints and in 2018, 5 082 complaints.

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

j) Stakeholder engagement

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.

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

³⁸⁷ Croatia, Act on People's Ombudsperson, 9 July 2012, Article 27.

This cooperation was expanded further during 2018. In March 2018, the Ombudsperson signed agreements on cooperation with members of the Anti-Discrimination Contact Points Network which now consists of 11 civil society organisations, aimed at strengthening the fight against discrimination at national, regional and local level.³⁸⁸ There is no information available on the engagement of other stakeholders, such as business/employer service provider networks and organisations, public bodies, local government entities, trade unions or employee associations.

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

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 also pays special attention to the issue of housing by visiting Roma settlements through the country in order to check the housing conditions. The Ombudsperson made a number of recommendations to the 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.³⁸⁹

³⁸⁸ People's Ombudsperson (2019), *Report for 2018*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

³⁸⁹ 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.³⁹⁰

Further, all the ombudspersons were active in organising seminars, roundtables and training. For example, during 2018, the People's Ombudsperson organised a series of education sessions for civil servants, representatives of local and regional authorities, judges, trade unions and civil society organisations. In 2018, the Ombudsperson also held education classes in nine high schools in Zagreb, Rijeka and Osijek with the aim of introducing students to the role and responsibilities of the Ombudsperson, human rights and discrimination.

The Disability Ombudsperson also held numerous workshops and seminars with the aim of informing the relevant stakeholders and the public on the rights of persons with disabilities. For example, the Disability Ombudsperson organised a workshop on stereotypes and prejudices about people with disabilities in the media. In addition, education sessions for students and staff of health and educational institutions were held as well as lectures in public institutions.

During 2018, the Gender Equality Ombudsperson, dealing with sexual orientation, also participated in numerous national and international events, conferences and expert meetings with foreign delegations and representatives of institutions at international and regional level. The Gender Equality Ombudsperson also held educational workshops and cooperated with representatives of Government bodies, representatives of the Parliament, members of political parties, workers organisations, students and others.

- 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.

³⁹⁰ Gender Equality Ombudsperson, <http://www.prs.hr/>.

In 2018, the Ombudsperson continued its activities according to the cooperation agreements with civil society organisations on the basis of which direct cooperation between the Ombudsperson and civil society organisations was established in the fight against discrimination and signed an agreement with 11 civil society organisations, which have become the Ombudsperson's contact points at the local and regional level.

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

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

- d) Addressing the situation of Roma and Travellers

The Government Office for Human Rights and Rights of National Minorities³⁹¹ 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.

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.

The action plan for the implementation of the National Roma Inclusion Strategy expired in 2015 and the new one has not yet been issued.

In November 2018, the Government issued a report on the implementation of the National Roma Inclusion Strategy for 2016 and 2017.³⁹² The report concluded that the continuity of the implementation of the National Roma Inclusion Strategy in the reporting period was visible in the areas of education, employment, social welfare, while progress has been made in the inclusion of Roma in social and cultural life, and less progress is registered in the areas of housing and healthcare. The general conclusion is that additional efforts have to be made in order to achieve the goals set out in the National Roma Inclusion Strategy and to improve the status of the members of Roma national minority in Croatian society.

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

- a) Mechanisms

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

A contract that is contrary to the Constitution, mandatory rules or the morals of society is null and void.³⁹³ 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

³⁹¹ In April 2012, the Government decided to merge the previously existing Office for Human Rights and the Government Office for National Minorities.

³⁹² Government Of The Republic Of Croatia (2018) *Report on the Implementation of the National Roma Inclusion Strategy 2013 to 2020, for 2016 and 2017*. The report is available at: <https://pravamanjina.gov.hr/UserDocsImages/dokumenti/Izvjecje%20o%20provedbi%20Nacionalne%20strategije%20za%20uklju%20vanje%20Roma,%20za%202016-2017.pdf>.

³⁹³ Croatia, Civil Obligations Act, 25 February 2005, Article 322.

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.

It is not always clear if a rule would be considered a regulation or not (e.g. the Constitutional Court found itself competent to review the legality of the articles of association of the Architects' Association, but not to review the legality of the code of ethics of the same organisation).³⁹⁴ If internal rules or rules governing various associations are not considered regulations, they may be subject to judicial review as contracts.

b) Rules contrary to the principle of equality

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

In most cases, laws, regulations and rules seem to be non-discriminatory and neutral, but their interpretation and implementation may result in discriminatory treatment (e.g. whether the definition of the hate crime in the Criminal Code covers discrimination by association). Sometimes the lack of regulation can lead to discrimination (e.g. lack of regulation on education of children with disabilities). However, some laws are clearly problematic from the anti-discrimination perspective (e.g. provisions of the Family Act regulating the divesting of legal capacity of persons with disabilities;³⁹⁵ the Aliens Act does not enable same-sex partners to get a residence permit;³⁹⁶ the Asylum Act does not extend protection of an asylum seeker to his or her same-sex partner; provisions of the Health Insurance Act in connection with the reimbursement of transportation costs and their unfavourable impact on persons with disabilities). Provisions of the Family Act regulating the divesting of persons with disabilities' legal capacity proved to be problematic in implementation and the system was the subject of several cases before the European Court of Human Rights.³⁹⁷ 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.

³⁹⁴ Constitutional Court of the Republic of Croatia, U-II/544/2001, 1 June 2006.

³⁹⁵ The Family Act (Official Gazette 116/03., 17/04., 136/04., 107/07., 57/11., 61/11. and 25/13) was in force until September 2014, when the new Family Act (Official Gazette 75/14) entered into force. That law enabled only partial and not complete deprivation of legal capacity as well as the revision of existing decisions on legal capacity. In January 2015, the latter act was found unconstitutional by the Constitutional Court, and the previous act (re)entered into force. In November 2015, the latest Family Act (Official Gazette 103/2015) entered into force, but the new Government announced that it was drafting a new Family Act. Hence there is great legal uncertainty in such an important legal field. The Family Act from 2015 is still in force although it is often mentioned by the Government that the new Family Act will be drafted soon.

³⁹⁶ European Court of Human Rights, *Pačić v. Croatia*, No. 68453/13, judgment of 23 February 2016; the ECtHR held that there had been a violation of Article 14 (prohibition of discrimination) taken in conjunction with Article 8 (right to respect for private and family life) of the European Convention on Human Rights because of the impossibility for a partner in a same-sex relationship to obtain a residence permit for family reunification. Since the ECtHR judgment there have been no new developments in this regard and this part of the Aliens Act remains unchanged.

³⁹⁷ European Court of Human Rights: *Ivinović v. Croatia*, No.13006/13, judgment of 18 September 2014; *X and Y v. Croatia*, No. 5193/09, judgment of 3 November 2011; *M.S. v. Croatia*, No. 36337/10, judgment of 25 April 2013. There have been no new developments in national law regarding this issue, except one mentioned in relation to the new Family Act, which enables only partial deprivation of legal capacity.

9 COORDINATION AT NATIONAL LEVEL

The Government Office for Human Rights and Rights of National Minorities 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.³⁹⁸

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 2017.³⁹⁹ 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 2017.⁴⁰⁰

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.⁴⁰¹

The National Roma Inclusion Strategy for the period of 2013-2020, adopted in 2013 is still running.

³⁹⁸ Croatia, Act on the Government of the Republic of Croatia, 22 December 2011, Article 27, Official Gazette 150/2011,119/2014, 93/2016.

³⁹⁹ 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).

⁴⁰⁰ <https://pravamanjina.gov.hr/UserDocsImages/dokumenti/Nacionalni%20plan%20za%20borbu%20protiv%20odiskriminacije%20za%20razdoblje%20od%202017.%20do%202022..pdf>.

⁴⁰¹ 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.⁴⁰²

In November 2018, the Government issued a Report on the implementation of the National Roma Inclusion Strategy for 2016 and 2017 in which it reported on the improvements and progress that had been made in the reporting period, mostly in the areas of education, employment, social welfare system and the inclusion of Roma in social and cultural life. However, further activities have to be made in order to achieve the goals set out in the strategy.⁴⁰³

⁴⁰² Operational programmes for national minorities for the period of 2017-2020, available at [https://pravamanjina.gov.hr/UserDocsImages/dokumenti/Zaklju%C4%8Dak%20Vlade%20RH%20i%20OP%20za%20nm%20\(3\).pdf](https://pravamanjina.gov.hr/UserDocsImages/dokumenti/Zaklju%C4%8Dak%20Vlade%20RH%20i%20OP%20za%20nm%20(3).pdf).

⁴⁰³ The Report is drafted by the Commission for Monitoring the Implementation of the National Roma Inclusion Strategy.

10 CURRENT BEST PRACTICES

Disability Ombudsperson

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

This practice of the Disability Ombudsperson continued during 2018 through the active participation of the Disability Ombudsperson in legislative proceedings, individual complaints and the dissemination of information and other activities aimed at improving the position of people with disabilities in Croatian society. In 2018, the Disability Ombudsperson held a series of workshops and seminars, lectures and educational sessions with different stakeholders and interested members of the general public.

11 SENSITIVE OR CONTROVERSIAL ISSUES

11.1 Potential breaches of the directives (if any)

The Anti-discrimination Act provides that, in anti-discrimination civil cases, appeal on points of law (*revizija*) (an appeal to the Supreme Court), is always admissible. The aim of that provision is to provide for Supreme Court protection in anti-discrimination cases due to the importance of equality and the need to provide consistent judicial interpretation of the anti-discrimination provisions. In spite of that provision, the Supreme Court took the opposite stand, which was that an appeal on points of law in anti-discrimination cases is admissible only when the value of the case is above the statutory threshold, as in other civil cases.⁴⁰⁴

Therefore, in the period 2014-2017, the Supreme Court found an appeal on points of law admissible in a few cases in which the value of the claim was above HRK 200 000 (EUR 27 000).

Appeal on points of law is regulated by the Civil Procedure Act, which differentiates between appeal on points of law (*revizija*) and the extraordinary appeal on points of law (*izvanrednarevizija*), the latter being admissible very rarely and only in very exceptional situations (different case law on the same legal issue; second-instance decision not following existing Supreme Court case law; when it is necessary to challenge existing Supreme Court case law due to an ECtHR or ECJ decision) and limited by complicated rules on formality (the exact question should be formulated together with the arguments on the importance of that question for the uniform application of law and equality before the law). Since in anti-discrimination cases the right to appeal on points of law is regulated by *lex specialis* and not the Civil Procedure Act, the Supreme Court considers those appeals on points of law to be extraordinary appeals on points of law. Such a practice is, in the view of the author, contrary to the purpose and meaning of Article 23 of the Anti-discrimination Act and prevents the development of anti-discrimination case law and is therefore a breach of the directives.

In 2018, the question of admissibility of appeal on points of law in anti-discrimination cases was the subject of constitutional proceedings upon a constitutional complaint in which the applicant argued that her right to access to court had been violated by the ruling of the Supreme Court on inadmissibility of appeal on points of law in an anti-discrimination case. The Constitutional Court, referring to the provisions of the Civil Procedure Act, as the general law that regulates appeal on points of law, confirmed the legal standing of the Supreme Court on inadmissibility of the appeal on points of law in anti-discrimination cases, stating that extraordinary appeal on points of law can be used in anti-discrimination proceedings, while regular appeal on points of law is admissible only in anti-discrimination cases when the value of the case is above the statutory threshold which is set on HRK 200 000 (approximately EUR 27 000).⁴⁰⁵

11.2 Other issues of concern

Anti-discrimination protection in practice

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, however a positive trend has emerged. In 2018, there were 11 judgments in favour of the

⁴⁰⁴ The appeal on points of law is always admissible in cases where the value of the claim is over HRK 200 000 (EUR 27 000).

⁴⁰⁵ Constitutional Court of The Republic of Croatia, decision no: *U-III-2263/2016*, of 19 October 2018, available at: [https://sljeme.usud.hr/Usud/Praksaw.nsf/C12570D30061CE54C1258321003B793D/\\$FILE/U-III-2263-2016.pdf](https://sljeme.usud.hr/Usud/Praksaw.nsf/C12570D30061CE54C1258321003B793D/$FILE/U-III-2263-2016.pdf).

victim of discrimination, which is the largest number of admissible anti-discrimination claims since the Anti-discrimination Act entered into force in Croatia.

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.

Furthermore, a significant problem is the lengthy duration of the court proceedings, because of which the victims of discrimination are reluctant to seek court protection. For example, the proceedings in the case of S.M., who filed an anti-discrimination complaint against his employer for harassment and discrimination in the workplace on the basis of his nationality, ethnicity and religion, lasted seven years which is long overdue and results in legal uncertainty. Therefore, that 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.

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.

Another problem is that offences motivated by discrimination are often prosecuted as misdemeanours and not as criminal offences, although the basis for criminal prosecution in the law exists. In misdemeanour cases, sanctions imposed by courts are neither effective, proportionate nor dissuasive, since misdemeanour judges, as a rule, mitigate fines set by law that are rather low (EUR 40 and EUR 400) and do not contribute to special and general prevention.

In civil proceedings, claimants face difficulties in proving discrimination since the rule on burden of proof is often not implemented.

Case law of municipal and county courts, the main source of judicial interpretation of 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.⁴⁰⁶

Roma community

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*.⁴⁰⁷ According to

⁴⁰⁶ People's Ombudsperson (2015), *Ombudsperson's Report for 2014*, p. 21: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

⁴⁰⁷ 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%20hrvatsk%20dru%C5%A1tvo%20-%20istra%C5%BEivanje%20baznih%20podataka-list%202018.pdf>.

the research, there are 24 524 members of the Roma national 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. There are still serious problems regarding their integration in society. Research data from 2016 indicate that social intolerance towards Roma in Croatian society is almost 50 %.⁴⁰⁸

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.⁴⁰⁹ 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).⁴¹⁰ In 2016, the UNCHR registered 2 800 Roma without permanent or temporary residence who were at risk of statelessness.⁴¹¹ In its report for 2017, the NGO Human Rights Watch reported that thousands of Roma remain stateless in Croatia.⁴¹²

Roma people have also experienced difficulties in obtaining identity documents, which has limited their access to public services.⁴¹³ 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.

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 as 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.

Migrants⁴¹⁴

Given that in 2018 Croatia remained a transit country for migrants heading to Western Europe, as part of the so-called Balkan route, questions on the rights of the migrants have been raised and significant disadvantages have been noted, especially in social rights, education, healthcare and employment.

⁴⁰⁸ People's Ombudsperson in collaboration with Centre for Peace Studies (2016), 'Research on attitudes and level of awareness of discrimination and forms of discrimination 2016'.

⁴⁰⁹ Kunac, S., Klasnić, K. and Lalić, S. (2018) *Inclusion of Roma in Croatian Society: Database Research*, Centre for Peace Studies, August 2018.

⁴¹⁰ UNHCR's intervention as a third party in the EctHR case of *Hoti v. Croatia*, No. 63311/14, 26 April 2018.

⁴¹¹ People's Ombudsperson (2017), *Ombudsperson's Report for 2016* <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/> pp. 41-42.

⁴¹² Human Rights Watch (2018), *Report for 2017*, available at <https://www.hrw.org/world-report/2018/country-chapters/european-union#560d4c>.

⁴¹³ Amnesty International (2017), *Amnesty International Report 2016/17*, available at <https://www.amnesty.org/en/documents/pol10/4800/2017/en/>.

⁴¹⁴ For the purpose of this 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.

Croatia continued to return to Serbia refugees and migrants who entered the country irregularly, without granting them access to an effective asylum process. These pushbacks by police, sometimes from deep inside Croatian territory, routinely involved coercion, intimidation, confiscation or destruction of private valuables and the disproportionate use of force by the police.⁴¹⁵

The Government currently does not have structured plan for the inclusion of migrants in Croatian society – such inclusion is reliant on the work of NGOs. Language barriers are not addressed properly, housing needs are not satisfied in an adequate manner, the process of enrolling migrant children in schools is slow and there is an evident lack of comprehensive plan and policy measures for the employment of migrants.

As in previous reports, the People's Ombudsperson *Report for 2018* states that a series of allegations was made by civil society organisations and the media regarding the return of migrants to Serbia without the implementation of the procedure prescribed for in the Aliens Act. Many migrants testified that they were not allowed to seek international protection, even though they wanted to do so and that their return did not follow the procedures provided by law. Moreover, the documented allegations contained claims that Croatian police beat them with bats, forced them to take off their shoes in the snow, insulted them and took their money and mobile phones.

There were also several public protests against building a migrant reception centres in local self-governments units due to lack of objective and relevant information which further incites hatred towards migrants. The Ombudsperson pointed out that there is a need to open a public discussion about migration and migration issues objectively and that the authorities need to provide accurate and timely information and act preventively in order to avoid fear and possible hate crimes.⁴¹⁶

⁴¹⁵ Amnesty International (2018), *Amnesty International Report 2017/18*,

<https://www.amnesty.org/en/countries/europe-and-central-asia/croatia/report-croatia/>.

⁴¹⁶ People's Ombudsperson (2019), *Report for 2018*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

12 LATEST DEVELOPMENTS IN 2018

12.1 Legislative amendments

There have been no relevant legislative amendments in 2018.

12.2 Case law

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

Date of decision: 16 October 2018

Name of the parties: J.D.

Reference number: U-III-2263/2016

Address of the webpage:

[https://sljeme.usud.hr/Usud/praksaw.nsf/C12570D30061CE54C1258321003B793D/\\$FILE/U-III-2263-2016.pdf](https://sljeme.usud.hr/Usud/praksaw.nsf/C12570D30061CE54C1258321003B793D/$FILE/U-III-2263-2016.pdf)

Brief summary: In this case, the applicant filed a constitutional complaint against the decision of the Supreme Court by which her appeal on points of law in anti-discrimination proceedings had been dismissed as inadmissible, in spite of the provision of the Anti-discrimination Act that in anti-discrimination cases an appeal on points of law is always admissible. This position of Supreme Court has been causing controversy for a long period of time as it is seen as contrary to the aim of the provisions of the Anti-discrimination Act. However, the Constitutional Court in its decision, referring to the provisions of the Civil Procedure Act, as the general law which regulates an appeal on points of law, confirmed the legal standing of the Supreme Court on inadmissibility of the appeal on points of law in anti-discrimination cases, stating that an extraordinary appeal on points of law can be used in anti-discrimination proceedings, the remedy being admissible rarely and only in exceptional situations, while the ordinary appeal on points of law is admissible only in anti-discrimination cases when the value of the case is above the statutory threshold which is set on HRK 200 000 (approximately EUR 27 000).

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

Date of decision: 30 May 2018

Name of the parties: V.Š.

Reference number: U-III-6791/2014

Address of the webpage:

[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)

Brief summary: In this case the applicant filed a Constitutional Complaint against the decision of the County Court in Split which, in its decision of 3 July 2014, stated that in the specific case it could not be argued that harassment in the workplace occurred, in spite of clear evidence, as the claimant did not prove that harassment was based on any of the discrimination grounds set out in the Anti-discrimination Act. The Constitutional Court stated that the argumentation of the county court is unfounded, given that 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 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. This decision of the Constitutional Court finally resolved doubts regarding the interpretation of harassment (mobbing) within the Labour Act and so giving a broader protection to the victims of harassment in the workplace that occurs in the form of mobbing and not discrimination. This claim would not have been successful under the Anti-discrimination Act since the applicant did not refer to any of the discrimination grounds set out by the Anti-discrimination Act.

Name of the court: European Court of Human Rights

Date of decision: 26 April 2018

Name of the parties: *B.H. v. Croatia*

Reference number: 63311/14

Address of the webpage:

[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)

Brief summary: The applicant, B.H., was born in Kosovo soon after his parent's arrival in the Socialist Federal Republic of Yugoslavia (SFRY). In 1979, the applicant, who was 17 years old, came from Kosovo to Croatia and settled in Novska, which is where he has lived ever since. The applicant complained of the insecurity of his residence status in Croatia, stating that he had been unlawfully erased from the register of residence in Croatia some time between 1993 and 1995, which had created an on-going situation making it impossible for him to regularise his residence status. The 'erasure' in question affected those persons who had had a registered domicile in the Socialist Republic of Croatia, but had not acquired Croatian citizenship or obtained permanent residence in the new Croatian State due to the fact that they had failed to meet one of the necessary requirements (to have sufficient financial means, to have secured housing, to have health insurance, to provide documents that justify the purpose of the residence, and to have a valid passport). 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 had been carried out automatically and without prior notification. The applicant stated that erasure from the residence register and lack of personal documents had led to his loss of access to social and economic rights. He also contended that the absence of a legal mechanism that would enable persons who had lost their legal status owing to Croatian independence in spite of their long-term residence in Croatia and the prolonged impossibility of obtaining valid residence permits was disproportionate and unjustified. The applicant stressed that he was a long-term migrant in Croatia stating that his right to personal and family life had been violated and that he was discriminated against as former citizen of the Socialist Federal Republic of Yugoslavia. The European Court of Human Rights in this case found a violation of Article 8 of the European Convention, stating that in the particular circumstances, the state had failed to 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.

Name of the court: Zagreb Municipal Labour Court

Date of decision: 18 July 2018

Name of the parties: *M.S. v. Emergency Medicine Institute Zagreb and City of Zagreb*

Reference number: *Pr-636/17*

Address of the webpage: not available

Brief summary: 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 in his workplace (at his desk and locker), which said: 'smelly Arab', 'you are taking bread 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 Zagreb Municipal Labour Court determined that the claimant had been discriminated against and harassed in the workplace on the basis of his nationality, ethnicity and religion. The court found that the defendant did not take the necessary actions in order to protect M.H. from discrimination, awarded M.H. compensation of EUR 6 660 (HRK 50 000) and salary compensation 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 would not be subjected to harassment and also to take preventive measures to secure adequate working conditions.⁴¹⁷ The proceedings had begun in 2012.

Name of the court: Pula Municipal Court

Date of decision: 20 June 2018

Name of the parties: *State Attorney's Office v. R.T.*

⁴¹⁷ In 2019, Zagreb County Court confirmed the decision of the Zagreb Municipal Labour Court, no. GŽR-1415/18, 12 February 2019.

Reference number: K-830/17

Address of the webpage: not available

Brief summary: The defendant, R.T., in the period between November 2013 and October 2017 posted inappropriate videos on YouTube, which encouraged hate against the Jewish religion and denied the significance of the Holocaust crimes. The State Attorney's office initiated ex officio criminal proceedings and R.T. was found guilty of the criminal offence of public incitement to violence and hatred and sentenced to three months imprisonment, which will be executed if he commits another criminal offence within the next two years.

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

Date of decision: 10 July 2018

Name of the parties: N/A

Reference number: U-I-1092/2017

Address of the webpage:

[https://sljeme.usud.hr/Usud/praksaw.nsf/C12570D30061CE54C12582C8003F2006/\\$FILE/U-I-1092-2017.pdf](https://sljeme.usud.hr/Usud/praksaw.nsf/C12570D30061CE54C12582C8003F2006/$FILE/U-I-1092-2017.pdf)

Brief summary: In this case the Constitutional Court decided on the constitutionality of the Employment Incentives Act, which had been challenged due to the provisions that regulate certain employment rights and benefits only to people under the age of 30. The Constitutional Court stated that these provisions are in line with the Constitution and do not represent discrimination on the basis of age since the Anti-discrimination Act prescribes exceptions to discrimination regarding age in employment. The Court determined that the measures have a legitimate aim and are appropriate and proportionate.

Roma

There are no court cases regarding discrimination against members of the Roma community, although they represent a group of citizens who are most often affected by discrimination. This is due to their economic status and social exclusion as well as the fact that they are not familiar with their rights and the ways to achieve legal protection, which presents 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 to the problems of the Roma community and to the position of Roma in Croatia.

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

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

Country: Croatia
Date: 31 December 2018

<p>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</p>
<p>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-spola Grounds covered: same-sex life partnership, sexual orientation and gender identity Civil law Material scope: All fields Principal content: Prohibition of direct and indirect discrimination, definitions and legal consequences of formal and informal same-sex partnerships</p>
<p>Title of the law: Labour Act Abbreviation: LA Date of adoption: 15 July 2014 Latest relevant amendment: 28 December 2017 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</p>
<p>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</p>

Entry into force: 13 December 2013

Weblink: <https://www.zakon.hr/z/493/Zakon-o-profesionalnoj-rehabilitaciji-i-zapo%C5%A1lavanju-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: TABLE OF INTERNATIONAL INSTRUMENTS

Country: Croatia

Date: 31 December 2018

Instrument	Date of signature	Date of ratification	Derogations/ reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
European Convention on Human Rights (ECHR)	6.11.1996	5.11.1997	No	yes	yes
Protocol 12, ECHR	6.3.2002	3.2.2003	no	yes	yes
Revised European Social Charter	6.11.2009	not ratified	N/A	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
Convention on the Elimination of Discrimination	succession	09.09.1992	no	N/A	yes

Instrument	Date of signature	Date of ratification	Derogations/ reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
n Against Women					
ILO Convention No. 111 on Discrimination	succession	8.10.1991	no	N/A	yes
Convention on the Rights of the Child	succession	12.10.1992	no	N/A	yes
Convention on the Rights of Persons with Disabilities	30.03.2007	15.8.2007	no	yes	yes

GETTING IN TOUCH WITH THE EU

In person

All over the European Union there are hundreds of Europe Direct information centres. You can find the address of the centre nearest you at: https://europa.eu/european-union/contact_en.

On the phone or by email

Europe Direct is a service that answers your questions about the European Union. You can contact this service: – by freephone: 00 800 6 7 8 9 10 11 (certain operators may charge for these calls), – at the following standard number: +32 22999696, or – by email via: https://europa.eu/european-union/contact_en.

FINDING INFORMATION ABOUT THE EU

Online

Information about the European Union in all the official languages of the EU is available on the Europa website at: https://europa.eu/european-union/index_en.

EU publications

You can download or order free and priced EU publications from: <https://publications.europa.eu/en/publications> . Multiple copies of free publications may be obtained by contacting Europe Direct or your local information centre (see https://europa.eu/european-union/contact_en).

EU law and related documents

For access to legal information from the EU, including all EU law since 1952 in all the official language versions, go to EUR-Lex at: <http://eur-lex.europa.eu>.

Open data from the EU

The EU Open Data Portal (<http://data.europa.eu/euodp/en>) provides access to datasets from the EU. Data can be downloaded and reused for free, for both commercial and non-commercial purposes.

