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Country report

Non-discrimination

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

Croatia

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

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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	20
2.1.3 Assumed and associated discrimination	22
2.2 Direct discrimination (Article 2(2)(a))	24
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))	29
2.6 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78)	30
3 PERSONAL AND MATERIAL SCOPE	40
3.1 Personal scope	40
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)	40
3.1.2 Natural and legal persons (Recital 16, Directive 2000/43)	40
3.1.3 Private and public sector including public bodies (Article 3(1))	40
3.2 Material scope	41
3.2.1 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))	41
3.2.2 Employment and working conditions, including pay and dismissals (Article 3(1)(c))	41
3.2.3 Access to all types and all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1)(b))	42
3.2.4 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))	43
3.2.5 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43)	43
3.2.6 Social advantages (Article 3(1)(f) Directive 2000/43)	44
3.2.7 Education (Article 3(1)(g) Directive 2000/43)	45
3.2.8 Access to and supply of goods and services that are available to the public (Article 3(1)(h) Directive 2000/43)	51
3.2.9 Housing (Article 3(1)(h) Directive 2000/43)	52
4 EXCEPTIONS	57
4.1 Genuine and determining occupational requirements (Article 4)	57
4.2 Employers with an ethos based on religion or belief (Article 4(2) Directive 2000/78)	57
4.3 Armed forces and other specific occupations (Article 3(4) and Recitals 18 and 19, Directive 2000/78)	58
4.4 Nationality discrimination (Article 3(2))	58
4.5 Health and safety (Article 7(2) Directive 2000/78)	61
4.6 Exceptions related to discrimination on the ground of age (Article 6 Directive 2000/78)	62
4.6.1 Direct discrimination	62
4.6.2 Special conditions for younger or older workers	63

4.6.3	Minimum and maximum age requirements	64
4.6.4	Retirement.....	64
4.6.5	Redundancy	67
4.7	Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5), Directive 2000/78)	68
4.8	Any other exceptions.....	68
5	POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78).....	70
6	REMEDIES AND ENFORCEMENT.....	72
6.1	Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)	72
6.2	Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78).....	77
6.3	Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)..	79
6.4	Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78).....	80
6.5	Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78).....	80
7	BODIES FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43).....	84
8	IMPLEMENTATION ISSUES.....	93
8.1	Dissemination of information, dialogue with NGOs and between social partners	93
8.2	Measures to ensure compliance with the principle of equal treatment (Article 14 Directive 2000/43, Article 16 Directive 2000/78).....	94
9	COORDINATION AT NATIONAL LEVEL.....	97
10	CURRENT BEST PRACTICES.....	98
11	SENSITIVE OR CONTROVERSIAL ISSUES	99
11.1	Potential breaches of the directives at the national level	99
11.2	Other issues of concern	99
12	LATEST DEVELOPMENTS IN 2020.....	103
12.1	Legislative amendments	103
12.2	Case law.....	103
ANNEX 1: MAIN TRANSPOSITION AND ANTI-DISCRIMINATION LEGISLATION		
.....		107
ANNEX 2: INTERNATIONAL INSTRUMENTS.....		109

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 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 areas are not regulated. For example, adoption by same-sex couples is still not allowed.

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

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

There is a consistent problem of segregation of Roma children in education. In some counties with a significant Roma population (Međimurje and Varaždin), Roma children are put in separate Roma-only classes in regular schools. In March 2010, the Grand Chamber of the European Court of Human Rights, in a case initiated by Roma students, issued a judgment finding a violation of their right not to be discriminated against in the enjoyment of the right to education.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. Such problems remained widespread in 2020 especially in connection to the coronavirus pandemic and the December 2020 earthquake, which struck Sisak-Moslavina County where a significant number of Roma people live. These events further revealed their poor economic status and led to new challenges regarding education, employment and Roma housing.

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. In recent years there have been several incidents of ethnically motivated violence towards Serbs and the intense level of hate speech towards members of Serbian minority is notable.

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 unavailable. In 2020, these problems came to greater prominence in connection to the earthquake that struck Sisak-Moslavina County, which is populated by a large number of Serb returnees.

2. Main legislation

In 2020 there were no legislative developments in the area of anti-discrimination law.

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, age⁶ and sexual orientation are not

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

⁶ For example, in case no. U-I-1092/2017 (discrimination on the ground of age) the Constitutional Court decided on the constitutionality of the Employment Incentives Act, which had been challenged regarding the provision that guarantees certain employment rights and benefits only to persons under the age of 30. The Constitutional Court did not question in any way whether the Constitution prohibits age-based discrimination although the Constitution does not explicitly mention age as a discrimination ground.

directly mentioned in the Constitution, but these grounds are covered implicitly as 'other characteristics'.⁷

The main legislation dealing with discrimination comprises:

- the Anti-discrimination Act,⁸ which prohibits discrimination based on race or ethnic origin or colour, gender, language, religion, political or other belief, national or social origin, property, trade union membership, education, social status, marital or family status, age, health condition, disability, genetic heritage, gender identity and expression and sexual orientation;
- the Gender Equality Act,⁹ which prohibits discrimination based on gender, sexual orientation and marital or family status, and the Same-sex Life Partnership Act, which prohibits discrimination based on a 'same-sex partnership' and 'sexual orientation';
- the Labour Act,¹⁰ 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 based on 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.

⁷ Article 14 of the Croatian Constitution; Official Gazette 56/1990, 135/1997, 113/2000, 28/2001, 76/2010 and 5/2014.

⁸ Anti-discrimination Act, *Zakon o suzbijanju diskriminacije*, Official Gazette 85/2008 and 112/2012.

⁹ Gender Equality Act, 15 July 2008, *Zakon o ravnopravnosti spolova*, Official Gazette 82/2008, 125/2011, 20/2012 and 138/2012.

¹⁰ Labour Act, 15 July 2014, *Zakon o radu*, Official Gazette [93/2014](#), [127/2017](#) and [98/2019](#).

The Anti-discrimination Act prohibits encouragement to discriminate, but it does not define encouragement nor specifically address instructions to discriminate.

The Anti-discrimination Act prohibits failure to provide reasonable accommodation for people with disabilities. It specifies that a failure to enable disabled persons to use publicly available resources, to participate in public and social life and to have access to the workplace and appropriate working conditions in line with their specific needs by adapting infrastructure and premises and by using equipment and other means that do not present an unreasonable burden for the person obliged to provide it, is considered discrimination.

The Anti-discrimination Act does not distinguish between citizens and non-citizens and guarantees protection from discrimination to any person.¹¹ It does not distinguish between natural persons and legal persons either for the purposes of protection against discrimination or liability for discrimination.

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

The Anti-discrimination Act provides an exception for genuine and determining occupational requirements. It states that placement in a less favourable position shall not 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) healthcare; 5) judiciary and administration; 6) housing; 7) public information and the media; 8) access to goods and services and their provision; 9)

¹¹ The Anti-discrimination Act provides protection from discrimination to any person without exception, which would include undocumented migrants.

membership of and activities in trade unions, civil society organisations, political parties or any other organisations; and 10) access to participation in cultural and artistic creation.

5. Enforcing the law

A victim of discrimination can seek protection through judicial proceedings – civil and/or criminal (both adjudicated by ordinary courts) and/or misdemeanour (for less serious offences adjudicated by misdemeanour courts).

In civil proceedings a victim of discrimination can file a claim seeking protection of his/her individual rights claiming that a right has been violated on account of discrimination (incidental anti-discrimination protection) or a claim seeking a ruling on the existence of discrimination as the main issue (special individual anti-discrimination action). In the latter case, victims can ask for:

- determination of the existence of discrimination (declaratory anti-discrimination claim); and/or
- prohibition of discrimination (prohibitive anti-discrimination claim); and/or
- elimination of discrimination or its effects (restitutional anti-discrimination claim); and/or
- damages for the harm caused by discrimination (reparational anti-discrimination claim); and/or
- publication of the decision determining the existence of discrimination (publishing anti-discrimination claim).

The Anti-discrimination Act does not provide any rules on compensation and the general rules of the Civil Obligations Act and its tort provisions (i.e. its provisions on damage and compensation) are to be applied. Under these rules, in the event of a violation of personality rights the court will, when it finds that this is justified by the seriousness of the violation and circumstances, award fair compensation. When deciding on the amount of fair pecuniary compensation, the court must take into account the degree and duration of the physical and mental distress and fear caused by the violation, the objective of this compensation and the fact that it should not encourage expectations that are not compatible with its nature and social purpose.

In 2020, the Supreme Court of the Republic of Croatia reached a decision to change the guiding criteria for compensation for non-pecuniary damage in all civil proceedings including anti-discrimination proceedings, increasing the amounts of non-pecuniary damages by 50 % in comparison to earlier amounts. This should have a positive effect in anti-discrimination proceedings for victims of discrimination because the amounts of compensation awarded to the victims of discrimination should be higher.¹²

The rules make no distinction between private or public employment and fields outside employment.

Criminal offences of discrimination (violations of equality as stipulated by the Criminal Code) are prosecuted *ex officio*. If the State Attorney's Office decides not to prosecute, a victim is authorised to take over the prosecution of the case as a subsidiary prosecutor. The sanction is imprisonment for up to three years.¹³

The Anti-discrimination Act specifies misdemeanour liability for harassment, sexual harassment and victimisation. A fine is imposed on natural persons, responsible persons

¹² Decision of the second session of civil department of the Supreme Court of the Republic of Croatia, no: Su-IV-47/2020-5, sessions held in March and June 2020, available at: http://www.vsrh.hr/custompages/static/HRV/files/PravnaShvacanja/zadnja_verzija_VSRH_GO_2020_Su-IV-47-2020-5_2020-3-5_sjed02.pdf.

¹³ Criminal Code, Article 125.

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).¹⁴

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

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

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

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

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

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

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

¹⁴ Anti-discrimination Act, Articles 25-28.

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

Key issues related to anti-discrimination protection in Croatia are related to the prolonged duration of court proceedings, which rarely satisfy the standards of fairness in respect of reasonable time. The proceedings usually last so long that remedies cannot be considered effective.

For example, although the law clearly states that employment disputes should be decided in the first instance in six months, as a rule such proceedings in courts in bigger cities last several years. Two decisions of the Constitutional Court issued during 2020, which relate to complaints of violation of the right to a trial within a reasonable time in anti-discrimination proceedings, show that this is the case. In both cases, the Constitutional Court upheld the constitutional complaints and awarded the applicants compensation for the violation of their right to a trial within a reasonable time.¹⁵

Victims of discrimination are reluctant to seek anti-discrimination protection before court for various reasons but common knowledge of the long duration of court proceedings and their uncertain outcome can be considered to be the main barrier.

For these reasons, most victims address their complaints on discrimination to the Ombudsperson, while only a small minority seek court protection.

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

The year 2020 was marked by the coronavirus pandemic, but in the Republic of Croatia it was also marked by the earthquakes that struck Zagreb in March and Sisak-Moslavina County in December 2020.

With the introduction of lockdown due to the coronavirus pandemic at the end of March 2020, kindergartens, schools and education facilities were closed and online classes were introduced, which proved to be particularly problematic for Roma national minority children living in Roma settlements, which lack even basic living conditions, let alone have internet access. Some Roma national minority children did not have the conditions for adequate monitoring of online classes, given that they did not have technological devices or internet access. In settlements where children were provided with tablets and an internet connection, they did not know how to use it and their parents, who are also mostly computer illiterate and do not know the Croatian language, could not help either. Distance

¹⁵ Constitutional Court of the Republic of Croatia, decisions no. U-IIIA-1038/2020, 9 September 2020, and U-IIIA-3623/2019, 1 October 2020.

learning was conducted in Croatian and was not adapted for children with a poor knowledge of the Croatian language. In monitoring online classes, some children depended exclusively on the resourcefulness and efforts of their teachers, who tried to explain the materials to them using phone and text messages, and by printing teaching materials and bringing them to their pupils etc.

In addition, in the circumstances surrounding the coronavirus pandemic, the issue of adequate education for students with disabilities was raised in connection with teaching assistants to support students with disabilities in online learning, as well as their presence in schools due to anti-pandemic measures that required as few people in each class as possible.

Distance learning as the form of education in the circumstances of the pandemic had a particularly negative impact on pupils with disabilities since at the beginning of the pandemic conditions for ensuring support for their online schooling were not established. Pupils with disabilities did not have appropriate assistance in monitoring online classes and they depended entirely on the help of their parents and other family members. After the first lockdown, the education system was better prepared and explicit instructions were issued regulating the online schooling of pupils with disabilities.¹⁶

The earthquake that struck Zagreb at almost the same time as the introduction of the lockdown, seriously damaged most of the buildings located in the very centre of the city, which is where the County Court, the Supreme Court and the Constitutional Court of the Republic of Croatia are located. In general, due to the pandemic and the earthquake, the work of the courts was almost completely stopped for a period of almost three months and court hearings were not held, except in urgent criminal cases in which remote hearings were introduced. However, civil proceedings, including those for the protection of discrimination, stopped completely and the work of the courts has been significantly slowed down due to the pandemic and earthquake.

The Central Ombudsperson's Office was also severely impacted by the earthquake; it was closed for a short period of time and subsequently relocated to a new address. During the time in which the Office was shut, calls were directed to regional offices and complaints were received by e-mail.

After Croatia partially recovered from the Zagreb earthquake in March, at the end of the year, on 29 December 2020, a second earthquake struck Sisak-Moslavina County, with devastating consequences. Sisak-Moslavina County is one of the poorest and least developed areas in the Republic of Croatia and has never fully recovered from the effects of war. It is also an area inhabited by a large number of Serb returnees, who are largely elderly and of lower social and material status, and who live in houses of older construction, which are often completely isolated from city centres.

A large number of members of the Roma national minority also live in this area. Their living conditions, which were already poor even before the earthquake, further deteriorated following the earthquake. The houses in which they live were in most cases older and of weaker construction and were significantly damaged and unsuitable for living in after the earthquake.

In addition, following the earthquake, messages began to spread on social networks that members of the Roma national minority had broken into destroyed houses. These allegations provoked the anger of a number of social network users who launched initiatives to organise groups to defend 'other people' from Roma citizens, even though the allegations were denied by the police, who issued a statement that no reports of robbery and theft in the earthquake-affected area had been recorded.

¹⁶ Instructions of the Croatian Institute for Public Health od 24 April 2020, available at: <https://www.hzjz.hr/wp-content/uploads/2020/03/Upute-vrtici-i-skole-29-4-2020-finalno.pdf>.

The media also reported the testimonies of some Roma families who said that they were told that they could not get mobile homes and housing containers for accommodation because they were Roma. Many Roma families spent days outdoors and slept in cars and when they finally received mobile homes and housing containers, these often had insufficient capacity to accommodate all the members of a family.

At the beginning of the year, the decision of the Constitutional Court of the Republic of Croatia in the proceedings on the assessment of the constitutionality of the part of the Foster Care Act in which same-sex couples are not listed as possible foster families, received public attention. The Constitutional Court found that the Foster Care Act was discriminatory towards same-sex couples living in registered and unregistered partnerships and instructed lower courts on how to interpret and apply the law in order to meet the principle of gender equality and prohibition of discrimination.¹⁷

At the end of the year, the European Court of Human Rights issued a decision against the Republic of Croatia in the case of a high school teacher of Serbian ethnicity who claimed that he was unjustifiably fired from his job because he held classes in Serbian instead of the standard Croatian language. The European Court determined that the dismissal was unjustifiable and a violation of Article 8 of the Convention, awarding the applicant non-pecuniary damage. The Court held that there was no need to examine separately the applicant's complaints of discrimination under Article 14 and Article 1 of Protocol no. 12 of the Convention (prohibition of discrimination), noting that it had already taken into account the domestic authorities' reliance on the applicant's age and their decision to inspect the work of only some teachers, based on their ethnic origin, under the Court's assessment of a breach of Article 8.¹⁸

¹⁷ Constitutional Court of the Republic of Croatia, decision no: U-I-144/2019, 29 January 2020, available at: <https://slieme.usud.hr/usud/praksaw.nsf/fOdluka.xsp?action=openDocument&documentId=C12570D30061CE54C12585060030E2EC>.

¹⁸ European Court of Human Rights, *Mile Novaković v. Croatia*, No. 73544/14, 17 December 2020, available at: [https://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%22%22CASE%20OF%20MILE%20NOVAKOVI%C4%86%20v.%20CROATIA%22%22\],%22documentcollectionid%22:\[%22GRANDCHAMBER%22,%22CHAMBER%22\],%22itemid%22:\[%22001-206515%22\]}.](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22%22CASE%20OF%20MILE%20NOVAKOVI%C4%86%20v.%20CROATIA%22%22],%22documentcollectionid%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-206515%22]})

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

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

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

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

²⁴ 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 Gender Equality Act, which entered into force on 15 July 2008, also prohibits discrimination on the ground of sexual orientation. However, the main purpose of the Gender Equality Act is to lay down a general framework for the protection and promotion of gender equality as a fundamental value of the constitutional order of the Republic of Croatia, to define and regulate the method of protection from discrimination on the grounds of gender and to establish equal opportunities for women and men.²⁸ Thus, the Gender Equality Act is more focused on discrimination on the basis of gender (sex). Nevertheless, bearing in mind that the act also explicitly forbids discrimination on the basis of sexual orientation,²⁹ it can be considered that its provisions are also applicable to the discrimination ground of sexual orientation.

The Labour Act (LA),³⁰ 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.³¹ The previous Labour Act included the same provision.³² The Labour Act does not explicitly mention grounds of discrimination but refers to the Anti-discrimination Act in that respect.³³

The Same-sex Life Partnership Act (SSLPA), which entered into force on 5 August 2014,³⁴ 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.³⁵ 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 Anti-discrimination Act, 9 July 2008, Official Gazette 85/2008, 112/2012, *Zakon o suzbijanju diskriminacije*.

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

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

²⁸ Gender Equality Act, 15 July 2008, Official Gazette 82/08, 69/17, Article 1.

²⁹ Gender Equality Act, 15 July 2008, Article 6(3).

³⁰ Labour Act, 15 July 2014, Official Gazette 93/2014, 127/2017, 98/19, *Zakon o radu*.

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

³² Labour Act, 4 December 2009, Official Gazette 149/2009, 61/2011, 82/2012, 73/2013, Article 5(4).

³³ Labour Act, 15 July 2014, Article 7(4).

³⁴ Between August 2014 and 31 December 2015, 108 same-sex partnerships were registered (Gender Ombudsperson (2016), *Report for 2015*).

³⁵ 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)³⁶ or social origin, property, birth, education, social status or other characteristic.³⁷ 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.³⁸ 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.³⁹

³⁶ In Croatia, 'nationality' (*nacionalnost* or *narodnost* in Croatian) does not refer to 'citizenship', but to the membership of an ethnic group.

³⁷ Other discrimination grounds as age, disability, sexual orientation are implicitly covered by 'other characteristics'. The fact that these discrimination grounds are not explicitly mentioned in the Constitution is of no relevance and the Constitutional Court has never called into question whether disability, age, sexual orientation and other discrimination grounds that are explicitly mentioned in the Anti-discrimination Act are covered by the Constitution as well. In its decisions, the Constitutional Court never questioned this issue and under Article 14 of the Constitution, the Constitutional Court regularly decides on discrimination on the ground of disability (for example in the case No. U-III-4748/2017), age (case No. U-III-280/15) and sexual orientation (case No. U-IIIBi-2349/2013).

³⁸ 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.

³⁹ Constitutional Law on the Constitutional Court of the Republic of Croatia, 24 September 1999, Article 62(1), Official Gazette 99/1999, 29/2002, 49/2002, *Ustavni zakon o Ustavnom sudu Republike Hrvatske*.

2 THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination explicitly covered

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

- race or ethnic origin or colour
- gender
- language
- religion
- political or other belief
- national or social origin
- property
- trade union membership
- education
- social status
- marital or family status
- age
- health condition⁴⁰
- disability
- genetic heritage
- gender identity
- (gender) expression⁴¹
- sexual orientation

2.1.1 Definition of the grounds of unlawful discrimination within the directives

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

a) Racial or ethnic origin

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

According to the latest available Ombudsperson's report, as in previous years, most complaints of discrimination relate to 'race or ethnic origin' (63 complaints out of 266).⁴² 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.⁴³

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

⁴⁰ 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.

⁴¹ 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'.

⁴² People's Ombudsperson (2021), *Report for 2020*, available at <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

⁴³ People's Ombudsperson (2021) *Report for 2020*.

The Constitutional Act on the rights of national minorities⁴⁴ 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'.⁴⁵

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.⁴⁶

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.'⁴⁷

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.⁴⁸

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.'⁴⁹

⁴⁴ 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*.

⁴⁵ 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.

⁴⁶ 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.

⁴⁷ 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.

⁴⁸ Act on the legal status of religious communities, 4 July 2002, Official Gazette 83/2002, 73/2013, *Zakon o pravnom položaju vjerskih zajednica*.

⁴⁹ 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'.⁵⁰ 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.⁵¹

Disability is also defined by the Act on the Croatian register of persons with disabilities, according to which disability is a permanent limitation, reduction or loss of ability (resulting from impairment of health) of a physical activity or mental function appropriate to a person's age and refers to abilities in the form of complex activities and behaviours that are generally accepted as essential components of everyday life.⁵²

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

The Anti-discrimination Act does not define disability. Courts do not necessarily need to rely on strict definitions when deciding in cases concerning disability discrimination. The issue of a claimant needing to 'prove' disability can arise only when the existence of disability is disputed by the other party, which is usually not the case in practice. The courts have the option to determine visible disability without needing to examine medical documentation. In cases of hidden disability, claimants usually submit to the court medical documentation in which their medical condition is explained.

In proceedings in which the facts require the court to rely on strict definitions of disability (which is usually not the case) the Court is free to use the definition provided by the Convention on the Rights of Persons with Disabilities, as well as the definitions contained in national law.

Disability must be formally established in order for the person to realise certain rights outside court proceedings (for example, social welfare rights, disability pension, employment benefits etc). These rights are realised on the basis of the opinion of the Institute for Medical Assessment and Professional Rehabilitation. The institute conducts an expert assessment of the medical condition of the person claiming certain rights on the basis of his/her disability (health impairment) and gives an opinion on the degree of disability in each case.

The need for formal recognition of disability by the institute for achieving certain rights has not been perceived as particularly problematic by the Disability Ombudsperson, and the Ombudsperson herself does not have a clear standpoint on this issue. However, she constantly warns of shortcomings in the implementation of assessment procedures, which affect the realisation of rights of persons with disabilities and the greater functionality of the Institute for Medical Assessment, Professional Rehabilitation and Employment of People with Disabilities. So far, the length of the assessment proceedings has proved to be the biggest problem.

⁵⁰ Social Care Act, 13 December 2013, Article 4(1)(9), Official Gazette 157/2013, 152/2014, 99/2015, 52/2016, 16/2017, 130/17, 98/19, *Zakon o socijalnoj skrbi*; and Act on professional rehabilitation and employment of persons with disability, 13 December 2013, Article 3(1), Official Gazette 157/2013, 152/2014, 39/18, *Zakon o profesionalnoj rehabilitaciji i zapošljavanju osoba s invaliditetom*.

⁵¹ Disability Ombudsperson (2014), *Parallel Report for the UN Committee on the Rights of Persons with Disability*, July 2014.

⁵² Act on the Croatian register of persons with disabilities, 24 July 2001, Article 2(1), Official Gazette 64/01, *Zakon o Hrvatskom registru o osobama s invaliditetom*,

The Primary and Secondary Education Act⁵³ states that primary and secondary education is based on the principle of equal educational opportunities for all students in accordance with their abilities.⁵⁴ The Rules on primary and secondary education of students with developmental difficulties⁵⁵ defines a student with difficulties as

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

d) Age

National law does not provide a definition of age.

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

The Social Welfare Act defines ‘elderly person’ as a person aged 65 and over.⁵⁶ In several provisions of the Healthcare Act, persons of the age of 65 and over are singled out as a special group in the context of the application of special healthcare measures for the population of that age.⁵⁷ In addition, the Labour Act singles out the over-65 age group, stipulating that the employment contract is automatically terminated when the employee reaches the age of 65 and has completed 15 years of service.⁵⁸

e) Sexual orientation

National law does not provide a definition of sexual orientation.⁵⁹

2.1.2 Multiple discrimination

In Croatia, multiple discrimination is prohibited by the law. The Anti-discrimination Act defines multiple discrimination as discrimination against a certain person on more than one of the prohibited grounds and considers it a severe form of discrimination (along with repeated discrimination, continued discrimination and discrimination that has consequences that are particularly harmful to the victim).⁶⁰ Multiple discrimination is a factor that the court has to take into consideration when determining the amount of compensation or the sanction for a misdemeanour, presumably as an aggravating factor.⁶¹

⁵³ Primary and Secondary Education Act, 15 July 2008, Official Gazette 87/2008, 86/2009, 92/2010, 105/2010, 90/2011, 5/2012, 16/2012, 86/2012, 94/2013, 152/2014, 07/2017, 68/18, 98/19, *Zakon o odgoju i obrazovanju u osnovnoj i srednjoj školi*.

⁵⁴ Primary and Secondary Education Act, 15 July 2008, Article 4(2)(2).

⁵⁵ 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*.

⁵⁶ Social Welfare Act, Official Gazette [152/2014](#), [99/2015](#), [52/2016](#), [16/2017](#), [130/2017](#), [98/2019](#), *Zakon o socijalnoj skrbi*, Article 4(11).

⁵⁷ Healthcare Act, 1 January 2009, Official Gazette 125/19, *Zakon o zdravstvenoj zaštiti*, Articles 21, 30 and 31.

⁵⁸ Labour Act, 15 July 2014, Article 112 (4).

⁵⁹ 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.

⁶⁰ Anti-discrimination Act, 9 July 2008, Article 6(1).

⁶¹ 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.’

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

In 2011, the Ombudsperson's Office received complaints from three young women belonging to a Muslim minority, about discriminatory provisions of the Regulations on driving licences, which allowed in photographs head covers to be worn only by elderly people who wore head covers as part of a traditional dress code and not by young people and/or people who wore head covers as part of a religious dress code.⁶² The Ombudsperson found that the regulation in question resulted in multiple discrimination on the basis of age and religion.⁶³ In this case, gender was not considered as a ground of discrimination. Following the Ombudsperson's recommendation, the Ministry of the Interior amended the Regulations on driving licences and allowed head covers to be worn in driving licence photographs when a person wears such a covering for religious or medical reasons.⁶⁴

In *LJ.S. v G.L. d.o.o.*, the Zagreb Municipal Court determined that the claimant had been discriminated against by her employer on the basis of gender and age. The court awarded LJ.S. compensation of EUR 1 330 (HRK 10 000).⁶⁵ The Zagreb County Court confirmed the decision of the first instance court and increased the compensation, awarding LJ.S. an additional EUR 2 660 (HRK 20 000).⁶⁶

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.⁶⁷

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.⁶⁸ The claimant, who is of Arabic origin, received several threatening messages at his workplace, some of which referred to his origin. The court found that the employer had not taken the necessary action to protect the claimant from discrimination and awarded him compensation of EUR 6 660 (HRK 50 000) and salary compensation of EUR 18 226 (HRK 136 699). The court also ordered his employer to protect the dignity of M.S. in the 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.⁶⁹ The decision was reached in July 2018, although the proceedings were commenced in 2012.⁷⁰

In December 2020, the European Court of Human Rights issued a decision against the Republic of Croatia in the case of a high school teacher of Serbian ethnicity who claimed that he was unjustifiably fired from his job because he held classes in Serbian instead of

⁶² Regulations on driving licences, 23 December 2008, Article 6(3); Official Gazette 155/2008, 8/2009, *Pravilnik o vozačkim dozvolama*.

⁶³ People's Ombudsperson (2012), *Report on occurrence of discrimination for 2011*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/#1556196759007-36eed5fe-764d>.

⁶⁴ Regulations on driving licences, 11 December 2019, Article 17(4) Official Gazette 2/2019, *Pravilnik o vozačkim dozvolama*.

⁶⁵ Zagreb Municipal Court, Decision No. Pr-205/07, 27 February 2014.

⁶⁶ Zagreb County Court, Decision No. Gžr-839/2014, 3 June 2014.

⁶⁷ Ombudsperson for Children, (2017), *Report for 2016*, p. 109, available at: <http://dijete.hr/en/reports-of-the-ombudsperson-for-children>.

⁶⁸ Zagreb Municipal Labour Court, Decision No. Pr-636/17, of 18 July 2018.

⁶⁹ In 2019, Zagreb County Court confirmed the decision of the Zagreb Municipal Labour Court, No. GžR-1415/18, 12 February 2019.

⁷⁰ In connection to this it should be mentioned that M.S. filed another anti-discrimination complaint against his employer in relation to which proceedings before Constitutional Court were conducted in 2020 because of a violation of M.S.'s right to a trial within a reasonable time. The Constitutional Court found that his claim was founded and awarded him damages for violation of the right to a trial within a reasonable time.

the standard Croatian language. The claimant had worked as a teacher in Croatia from 1971 and from 1 July 1998 he was employed as a teacher at the Second Secondary School in Darda, a city in eastern Slavonia, which was peacefully reintegrated into Croatian territory after the war. During the school year 1998/1999, the school in which he was employed began to apply Section 4 of the Secondary Education Act, which provided that all classes in the Republic of Croatia were to be held in Croatian. After that, upon a complaint by some of the students against the teachers of Serbian origin, an inspection was conducted in order to establish whether their use of language was appropriate and whether it complied with statutory regulations. The inspection determined that the claimant taught his classes in Serbian and he was prohibited from performing his work and consequently fired from his job.

The ECtHR emphasised that in the specific case, no teachers of Croatian ethnicity had been subjected to inspection and that, while it is true that complaints were lodged only against the teachers of Serbian origin, in the specific post-war context of the eastern Slavonia region at the relevant time, singling out a certain group of persons on the basis of language, which is closely related to their ethnic origin, could justifiably raise an issue of compatibility with the prohibition of discrimination guaranteed by both the Convention and the Constitution of the Republic of Croatia. In addition to his ethnicity, the decision on the termination of his employment was also unjustified in the context of the claimant's age, as he was 55 at the time and had been considered unable to adapt due to his pre-retirement age, without any explanation as to why it was expected that he could not improve his Croatian language skills, bearing in mind the similarity of the Croatian and Serbian languages, as well as the fact that the claimant had lived and worked in Croatia for most of his professional life.

The Court held that there was no need to examine separately the claimant's complaints under Article 14 in conjunction with Article 8 of the Convention and under Article 1 of Protocol no. 12 of the Convention (prohibition of discrimination), noting that it had already taken into account the domestic authorities' reliance on the claimant's age and their decision to inspect the work of only some teachers based on their ethnic origin, in its examination of the complaint under Article 8.⁷¹

Therefore, this case can be considered as a case of multiple discrimination on the basis of ethnic origin, age and language, although the European Court of Human Rights itself did not carry out any analysis in this respect and did not draw any conclusions regarding the multiple criteria of discrimination.

The annual report of the People's Ombudsperson repeatedly points out the problem of Serbs who have returned to their pre-war places of residence and regions, who are often exposed to multiple discrimination on the basis of their age, economic status and nationality. They are mostly elderly people on low incomes who live in rural areas and often have not secured basic living conditions, such as water and electricity and are also exposed to the negative sentiments of the majority population. There is no case law on the issue, only the findings of the People's Ombudsperson.

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.

⁷¹ *Mile Novaković v. Croatia.*

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.⁷²

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,⁷³ in a less favourable position on the prohibited grounds is considered discrimination.⁷⁴ National law is in line with the judgment in Case C-303/06 *Coleman v Attridge Law and Steve Law*.⁷⁵ 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*,⁷⁶ 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 Rights⁷⁷ determined that Croatia had violated Article 3 of the European Convention, which prohibits torture and other forms of ill-treatment, in connection with Article 14 of the convention, which prohibits discrimination. In this case, the applicant and her partner who is Roma, had been physically assaulted and verbally insulted by the attackers on a racial basis, during which attack the applicant had suffered slight bodily injury. During the investigation, the competent authorities determined that only the applicant's partner had been a victim of a hate crime since the applicant herself is not of Roma origin. The 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

⁷² Anti-discrimination Act, 9 July 2008, Article 1(3).

⁷³ This would include same-sex relationships.

⁷⁴ Anti-discrimination Act, 9 July 2008, Article 1(2).

⁷⁵ CJEU, judgment of 17 July 2008, *Coleman v Attridge Law and Steve Law*, C-303/06, EU:C:2008:415.

⁷⁶ European Court of Human Rights, *Guberina v. Croatia*, No. 23682/13, 22 March 2016.

⁷⁷ European Court of Human Rights, *Škorjanec v. Croatia*, No. 25536, 28 March 2017.

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.'⁷⁸

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.⁷⁹

The same definition of direct discrimination is used by the Gender Equality Act.⁸⁰

The Labour Act and the Same-sex Life Partnership Act prohibit direct discrimination, but do not define it.⁸¹ For the purpose of cases that concern those two acts, the definition of direct discrimination from the Anti-discrimination Act should be used.⁸² The Labour Act directly refers to the Anti-discrimination Act.⁸³

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).⁸⁴

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.⁸⁵

The Labour Act and the Same-sex Life Partnership Act prohibit indirect discrimination, but do not define it.⁸⁶ 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

⁷⁸ European Court of Human Rights, *Škorjanec v. Croatia*, No. 25536, 28 March 2017, para. 53.

⁷⁹ Anti-discrimination Act, 9 July 2008, Article 2(1).

⁸⁰ 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).

⁸¹ Labour Act, 15 July 2014, Article 7(4) and Same-sex Life Partnership Act, 15 July 2014, Article 6(3).

⁸² Anti-discrimination Act, 9 July 2008, Article 1.

⁸³ Labour Act, 15 July 2014, Article 134.

⁸⁴ Anti-discrimination Act, 9 July 2008, Article 9(3).

⁸⁵ Anti-discrimination Act, 9 July 2008, Article 2(2).

⁸⁶ Labour Act, 15 July 2014, Article 7(4) and Same-sex Life Partnership Act, 15 July 2014, Article 6(3).

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.⁸⁷

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.⁸⁸

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.⁸⁹

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

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

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.

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.⁹¹ 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 establishing long-term statistics activities.⁹²

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

⁸⁷ Anti-discrimination Act, 9 July 2008, Article 1.

⁸⁸ Anti-discrimination Act, 9 July 2008, Article 2(2).

⁸⁹ Constitution of the Republic of Croatia, 22 December 1990, Article 16.

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

⁹¹ 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.

⁹² Official Statistics Act, 13 June 2003, Article 4(1)(2).

disaggregated data.⁹³ Therefore, estimates and unofficial data have often been used for general purposes. In contrast, in spite of regulations banning the collection of data on ethnic origin, some institutions have precise information on the ethnicity of particular groups. For example, some primary schools have precise data on the numbers of Roma pupils in each class, although it is not clear how they established the pupils' ethnic origin and whether there was parental consent.⁹⁴

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

During 2017, within the project 'Fundraising for Effective Implementation of the National Roma Inclusion Strategy', funded under the IPA 2012 programme, which was carried out by the Government Office for Human Rights and Rights of National Minorities and the NGO Centre for Peace Studies, a comprehensive scientific research on the Roma population in Croatia was carried out. Research findings were published in August 2018 in the publication *Inclusion of Roma in Croatian Society: Database Research*.⁹⁵

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.

The People's Ombudsperson has pointed out that race, ethnicity, skin colour and national origin are particularly sensitive personal data, but nevertheless, the collection of such data is very important for the effective suppression of discrimination. The Ombudsperson therefore reiterated its instructions to the relevant state administration and public authorities, particularly those dealing with health, social welfare, labour, pension insurance and education, to start collecting and processing such data by applying appropriate safeguards.

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

The Ombudsperson expressed the view that since equality and anti-discrimination are constitutionally guaranteed rights and are of important public interest, collection and

⁹³ 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); https://pravamanjina.gov.hr/UserDocsImages/dokumenti/definicije_podataka_jednakosti.pdf.

⁹⁴ 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.

⁹⁵ 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>.

storage of statistical, anonymised and pseudonymous data on national origin or ethnicity is in line with the GDPR.⁹⁶

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

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

b) Practice

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

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

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

In the case concerning racial discrimination against Roma students in primary schools in Međimurje⁹⁷ (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.⁹⁸ The Constitutional Court ignored the statistical data in its decision⁹⁹ and simply concluded that statistical data on the number of Roma children in separate classes 'are not in themselves sufficient to indicate that the defendants' practice was discriminatory'. Nevertheless, without those data, the claimants would have had significant problems in proving the existence of Roma-only classes, the drop-out rate and other issues significant for the case.

2.4 Harassment (Article 2(3))

a) Prohibition and definition of harassment

In Croatia, harassment is prohibited in national law. The Anti-discrimination Act defines harassment as any unwanted conduct 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.¹⁰⁰ 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.¹⁰¹

The Labour Act does not define harassment, but refers to the Anti-discrimination Act as *lex specialis*.¹⁰² 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.

⁹⁶ People's Ombudsperson (2020), *Report for 2019*, available at: <https://www.ombudsman.hr/hr/izviesca-puckog-pravobranitelja/#1556196748399-8e18fee7-b3c6>.

⁹⁷ ECtHR, *Oršuš and others v Croatia*, [GC] No. 15766/03, 16 March 2010.

⁹⁸ Public Ombudsperson (2001), *Report on the activities of the Ombudsperson in 2000* (not available online).

⁹⁹ Constitutional Court, No. U-III-3138/2002, 7 February 2007.

¹⁰⁰ Anti-discrimination Act, 9 July 2008, Article 3(1).

¹⁰¹ Anti-discrimination Act, 9 July 2008, Article 3(2).

¹⁰² Labour Act, 15 July 2014, Article 134.

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).¹⁰³

Some legal authors, whose opinions often greatly influence case law, use the term 'harassment' as a synonym for mobbing.^{104 105} 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.

Recently, a clearer distinction between harassment and mobbing has been established by the Constitutional Court which determined 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.¹⁰⁶ In this way, the Constitutional Court made a clear distinction between harassment in the sense of the Labour Act (mobbing) which does not need to be based on specific anti-discrimination grounds and harassment regulated by the Anti-discrimination Act which needs to be based on the anti-discrimination grounds prescribed by the Anti-discrimination Act.

The Supreme Court of the Republic of Croatia in a case in which the claimant claimed that she had been discriminated against and harassed in the workplace on the basis of her education, determined that the Labour Act does not specify education as one of the discrimination grounds and that consequently, it would have been impossible for the claimant to be discriminated against on that basis. However, the Supreme Court concluded that, even though the claimant had not been discriminated against, she had indeed been harassed at work and that the harassment constituted mobbing.¹⁰⁷ This is in line with the mentioned decision of the Constitutional Court.

The Criminal Code¹⁰⁸ 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.¹⁰⁹ 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 discrimination¹¹⁰ 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.

¹⁰³ Zagreb Municipal Labour Court, Decision No. Pr-636/17, of 18 July 2018.

¹⁰⁴ E.g. Crnić, Ivica (ed.) International Organization for Migration (2009), *Guide to Anti-discrimination Legislation and Case Law*, Zagreb, 2009.

¹⁰⁵ The term 'mobbing' meaning bullying or psychological violence without discrimination on any ground.

¹⁰⁶ Constitutional Court of the Republic of Croatia, Decision No. U-III-6791/2014, 30 May 2018, available at: [https://sljeme.usud.hr/Usud/praksaw.nsf/C12570D30061CE54C125829D00352755/\\$FILE/U-III-6791-2014.pdf](https://sljeme.usud.hr/Usud/praksaw.nsf/C12570D30061CE54C125829D00352755/$FILE/U-III-6791-2014.pdf).

¹⁰⁷ Supreme Court of the Republic of Croatia, Decision No. GŽ-4/2019, 11 June 2019, available at: <https://sudskapraksa.csp.vsrh.hr/decisionPdf?id=090216ba8099dbe7>.

¹⁰⁸ Criminal Code, 21 October 2011, *Kazneni zakon*, Official Gazette [125/2011](#), [144/2012](#), [56/2015](#), [61/2015](#), [101/2017](#), [118/2018](#), [126/2019](#).

¹⁰⁹ Criminal Code, 21 October 2011, Article 156.

¹¹⁰ Anti-discrimination Act, 9 July 2008, Article 3.

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.¹¹¹

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.¹¹² 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.¹¹³

The individual harasser or discriminator would always be held liable.

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

2.5 Instructions to discriminate (Article 2(4))

a) Prohibition of instructions to discriminate

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

The Anti-discrimination Act prohibits encouragement to discriminate, while the Labour Act and the Same-sex Life Partnership Act do not have that specific provision, although general provisions of the Anti-discrimination Act are applicable.¹¹⁴ 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.¹¹⁵

b) Scope of liability for instructions to discriminate

In Croatia, the instructor and the discriminator are liable.

¹¹¹ Labour Act, 15 July 2014, Article 134.

¹¹² Civil Obligations Act, 25 February 2005, Official Gazette 35/2005, 41/2008 and 125/2011, *Zakon o obveznim odnosima*.

¹¹³ Labour Act, 15 July 2014, Article 111.

¹¹⁴ Anti-discrimination Act, 9 July 2008, Article 4(1).

¹¹⁵ Anti-discrimination Act, 9 July 2008, Article 4(1).

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.¹¹⁶ 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.¹¹⁷

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.’¹¹⁸

The Act on professional rehabilitation and employment of persons with disability¹¹⁹ 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.¹²⁰

The Anti-discrimination Act is a general law that regulates discrimination and is applicable to different areas, while the Act on professional rehabilitation refers only to the area of employment and regulates the duty of reasonable accommodation of the workplace. The main purpose of the Act on professional rehabilitation and employment of persons with disabilities is the protection of the rights of the persons with disabilities to work and the promotion of their employment.

When claiming reasonable accommodation, a person can refer either to the Anti-discrimination Act or the Act on professional rehabilitation and employment of persons with disabilities, or both acts, as the relevant law. This choice of relevant law does not have any impact on the outcome of proceedings.

The reasonable accommodation duty is imposed on both public and private employers of any size. The burden of proof should be shifted when claiming the right to reasonable accommodation, as in other cases of discrimination. However, there is no case law on this issue.

¹¹⁶ Civil Obligations Act, 25 February 2005.

¹¹⁷ Labour Act, 15 July 2014, Article 111.

¹¹⁸ Anti-discrimination Act, 9 July 2008, Article 4(2).

¹¹⁹ Act on professional rehabilitation and employment of persons with disability, 13 December 2013.

¹²⁰ Act on professional rehabilitation and employment of persons with disability, 13 December 2013, Article 7(2).

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 Institute for Medical Assessment, Professional Rehabilitation and Employment of People with Disabilities, which conducts professional assessment and establishes the employee's reduced working capacity.

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.¹²¹ All employers are eligible for state funding to help with the costs of reasonable accommodation and for certain incentives if employing a worker with disability entered in the register of employed persons with disabilities.¹²²

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. 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.

b) Case law

Case law in this field is still rather undeveloped, with only one known case dealing with reasonable accommodation duties by the employer in connection to harassment regulated by the Anti-discrimination Act. In its decision, Zagreb County Court quashed the decision of the Zagreb Municipal Labour Court and returned the case for re-trial, expressing the opinion that a breach of the guarantee of reasonable accommodation cannot be interpreted only as a separate violation of the principle of non-discrimination, but could also be relevant for the assessment of the violation of discriminatory harassment. The fact that the employer did not meet its obligation to reasonably adapt the conditions of a particular workplace to the needs of a disabled employee is also relevant in assessing the existence of a hostile work environment. Moreover, a violation of the obligation to make reasonable accommodations is sufficient for the court to presume that the adverse conduct in terms of the emergence of a hostile work environment may have been contingent on the ground of disability.¹²³

In this respect, it is important to mention the case in which an applicant filed a constitutional complaint against the decision of the Supreme Court of the Republic of Croatia, which upheld the decision of the Zagreb County Court, stating that the applicant had not been discriminated against on the basis of his health status (impaired eyesight).¹²⁴ The applicant, a judge who had been reassigned to work at the Investigative Centre of the Zagreb County Court, argued that he had been put at a disadvantage compared to other investigative judges because, among other things, in the annual schedule of work activities he had been addressed as 'judge' rather than 'investigative judge' and had also been given less demanding tasks, which are, in his opinion, suited for legal secretaries and not for judges, all because of his reduced eyesight. The Constitutional Court rejected the complaint, stating that the Supreme Court had accurately evaluated that the applicant had been given different tasks not arbitrarily but because of his limited working capability,

¹²¹ Act on professional rehabilitation and employment of persons with disability, 13 December 2013, Article 12(4).

¹²² Act on professional rehabilitation and employment of persons with disability, 13 December 2013, Article 29.

¹²³ Decision of the Zagreb County Court, No. Gžr-1708/16, 20 December 2016.

¹²⁴ Decision of the Constitutional Court of the Republic of Croatia, no. U-III-4748/2017, 9 October 2019, available at: [https://sljeme.usud.hr/Usud/Praksaw.nsf/C12570D30061CE54C1258493002B79F4/\\$FILE/U-III-4748-2017.pdf](https://sljeme.usud.hr/Usud/Praksaw.nsf/C12570D30061CE54C1258493002B79F4/$FILE/U-III-4748-2017.pdf).

which had been officially determined by the Croatian Institute for Pension Insurance. In its decision, the Constitutional Court emphasised that the applicant's subjective opinion that he is capable of performing the full scope of tasks despite the certificate stating otherwise cannot represent a basis for discrimination. Moreover, the Constitutional Court stressed that, even if a person is willing to continue with their regular tasks despite the fact that it has been determined that he/she is objectively incapable of performing some of them and even if he/she is willing to take the risks linked to that decision, the employers still have the right to assess the potential risks of allowing that person to continue with those tasks because the objective inability to perform the tasks could have a harmful effect on the final quality of the tasks and could jeopardise the interests of others involved in the working process. On those grounds, the Constitutional Court concluded that the applicant had not been put at a disadvantage compared to other investigative judges on the basis of his disability or his limited working capability because the difference in the tasks given to him was objectively justifiable.

The Disability Ombudsperson constantly receives complaints regarding reasonable accommodation duties and presents them in her annual reports. She has pointed out that the most common form of discrimination against people with disabilities in the area of employment is the lack of reasonable accommodation.¹²⁵

In her recent annual reports, the Disability Ombudsperson reported on the case of a kindergarten teacher who was diagnosed with seropositive rheumatoid arthritis, which is a connective tissue disease that mostly affects the small joints of the hand, limits the mobility of the hands, reduces fine motor skills, makes the movements painful and makes her intolerant and prevents her from performing repetitive movements. Because of the reduced functionality of her hands and fists, she is no longer able to work with children of nursery age, for which reason she asked to be allowed to work with older children since her assignment to work in a nursery group could endanger the safety and health of children, as well as herself. The employer ignored her requests and despite her disability and potential difficulties in relation to the work, about which he had knowledge, he assigned her to work in a younger nursery group once again. The Ombudsperson determined that a violation of the right on the basis of disability had occurred, because the employer failed to take appropriate actions in order to ensure safe working conditions and reasonable accommodation.¹²⁶

The Ombudsperson also reported a case concerning a woman employed as a psychologist in a kindergarten, who suffers from cystic fibrosis, a hereditary disease from the group of rare diseases that primarily causes recurrent respiratory infections. She requested a reassignment due to her health condition, describing in detail the difficulties arising from her disability in relation to her current post, in which she is in contact with children who are often carriers of various bacterial and viral infections. She supported her request with the opinion of a specialist, who confirmed the need to enable her to work in a more suitable workplace in order to prevent respiratory infections and deterioration of her lung function. The Ombudsperson recommended that she should be provided with the necessary accommodation to enable her to work in conditions that do not pose an increased risk to her health. The Ombudsperson held a meeting with representatives of the kindergarten to discuss possible appropriate solutions in the context of reasonable accommodation, including assignment to a post that does not include working with children, for example, in the human resources department.

In connection to this case, the Ombudsperson emphasised that when finding appropriate solutions for reasonable accommodation, it is necessary to think outside the box. The Ombudsperson also expressed the opinion that, in practice, the conduct of employers in similar cases is not adequate and often ends with excuses that a workplace cannot be

¹²⁵ Ombudsperson for Persons with Disabilities (2020) *Report for 2019*, available at <https://posi.hr/wp-content/uploads/2020/04/Izvje%C5%A1%C4%87e-o-radu-POSI-za-2019.pdf>.

¹²⁶ Ombudsperson for Persons with Disabilities (2020), *Report for 2019*.

adapted, without any further explanation, which sends a message to the worker that disability is his/her own problem. The Ombudsperson also stated that it is still not uncommon for a person who makes a reasonable accommodation request to be perceived by the employer as someone seeking preferential treatment. The Ombudsperson concluded that without the employer actually considering the worker's request and conducting detailed analyses of possible appropriate solutions, these situations indicate discrimination on the grounds of disability.¹²⁷

c) Definition of disability and non-discrimination protection

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. When claiming rights under the Anti-discrimination Act, the definition prescribed by the Social Care Act and the Act on professional rehabilitation and employment of persons with disability can be applied as well as the definition prescribed by the Convention on the Rights of Persons with Disabilities.

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

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

It is not always necessary for the court in anti-discrimination proceedings to rely on specific definitions since in some cases disability is visible and usually the existence of the claimant's disability is not even disputed by the opposite party.

In 2014, Croatia passed legislation to create a single expert body competent to establish disability (in the pension, health insurance, employment and labour, and social care systems etc.) – the Institute for Medical Assessment, Professional Rehabilitation and Employment of People with Disabilities.¹²⁹ The task of the institute is to establish the degree of disability in each individual case as well as the needs and capabilities of the person regarding their ability to perform professional duties etc., on the basis of which the individual can then claim their rights, including the right to reasonable accommodation.¹³⁰ 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.¹³¹ The medical assessment is conducted by a panel of experts: medical doctors, social workers, psychologists,

¹²⁷ Ombudsperson for Persons with Disabilities (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>.

¹²⁸ 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).

¹²⁹ Act on the single expert body, 4 July 2014, Official Gazette 85/2014 and 95/2015, *Zakon o jedinstvenom tijelu vještačenja*. There is no official translation of the name of the institute. The direct translation from Croatian would be 'Institute for Expertise, Professional Rehabilitation and Employment of Persons with Disabilities', however, for greater clarity, the name 'Institute for Medical Assessment, Professional Rehabilitation and Employment of People with Disabilities' is used throughout the report.

¹³⁰ 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.

¹³¹ Act on professional rehabilitation and employment of persons with disability, 13 December 2013, Article 37.

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.¹³²

The purpose of setting up the institute was to create a single body for medical assessment, the opinions of which would be relevant for achieving different types of disability rights under different procedures, however, this has not yet been achieved since, in practice, persons with disabilities are still repeatedly referred for assessments and a new assessment is usually required for claiming each right and for any proceedings.¹³³ Furthermore, other problems in connection to the functioning of the institute have emerged, the most important of which is the length of the procedure. The Disability Ombudsperson constantly warns of shortcomings in the implementation of assessment procedures, which affect the realisation of rights of persons with disabilities and the need for greater functionality of the Institute for Medical Assessment, Professional Rehabilitation and Employment of People with Disabilities.¹³⁴

Although the expert opinion of the Institute for Medical Assessment and Professional Rehabilitation is used as a basis for achieving disability rights (pension, social rights etc.), it is not completely clear does the law requires the expert opinion of the institute for claiming reasonable accommodation and the Ombudsperson herself does not have a clear standpoint on this issue. The Act on the professional rehabilitation and employment of persons with disability does not provide sufficient detail on whether or not it is necessary for a person claiming reasonable accommodation rights to present formal proof of disability (as for example, when claiming priority right in employment, when it is necessary to present a proof of disability as a condition for exercising that right).

Also, 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 People with Disabilities and the reasonable accommodation plan is part of such an assessment. The Regulations on the content and manner of keeping the register of employed persons with disabilities provide that people with disabilities entered in the register are included in the quota of employed people with disabilities under the Act on the professional rehabilitation and employment of persons with disability.¹³⁵ The regulations provide that people with disabilities may enter the register if they have acquired disability status by the decision of the competent body and according to various regulations in relation to social care, pension insurance etc. Furthermore, the Regulations on the incentives for the employment of persons with disabilities state that incentives can be provided only for the employment of persons who are entered in the register of employed persons with disabilities.¹³⁶

The Institute for Medical Assessment, Professional Rehabilitation and Employment of People 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,

¹³² Ordinance on the assessment methodology, 6 July 2017, Official Gazette NN 67/17, *Uredba o metodologijamavještačenja*.

¹³³ Disability Ombudsperson (2020), *Report for 2019*. Available at: <https://posi.hr/wp-content/uploads/2020/04/Izvj%C5%A1%C4%87e-o-radu-POSI-za-2019.pdf>.

¹³⁴ European Semester 2018/2019 country fiche on disability, available at: <https://www.disability-europe.net/country/croatia>.

¹³⁵ Regulations on the content and manner of keeping the register of employed persons with disabilities, 22 August 2018, Official Gazette, 75/2018, *Pravilnik o sadržaju i načinu vođenja očevidnika zaposlenih osoba s invaliditetom*.

¹³⁶ Regulations on the incentives for employment of persons with disabilities, 22 August 2018, Official Gazette 75/2018, *Pravilnik o poticajima pri zapošljavanju osoba sa invaliditetom*.

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.¹³⁷

In her recent annual report, the Disability Ombudsperson expressed the view that the employers should be required to contact the Institute for Professional Rehabilitation in cases where employees with disabilities claim reasonable accommodation rights to determine appropriate workplace accommodations that need to be done and whether they represent a disproportionate burden for the employer.¹³⁸

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 is recognised as a form of discrimination under the Anti-discrimination Act. The Anti-discrimination Act stipulates that failure to provide reasonable accommodation to persons with disabilities constitutes discrimination, not only in the area of employment, but also in the area of use of publicly available resources and participation in public and social life.¹³⁹

The Act on the professional rehabilitation and employment of persons with disability does not explicitly recognise failure to provide reasonable accommodation as discrimination. It states in general that reasonable accommodation means 'necessary and appropriate adjustment, which does not represent a disproportionate or inappropriate burden, in order to ensure employment and work of persons with disabilities on an equal basis with others'.¹⁴⁰ In annual reports, the Disability Ombudsperson always notes that the failure to meet the duty of reasonable accommodation counts as discrimination and is the most common form of discrimination towards people with disabilities.¹⁴¹

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.¹⁴² 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.¹⁴³ A fine is imposed on legal entities, natural

¹³⁷ Booklet is available at:

https://www.zosi.hr/docs/prirucnik_s_preporukama_za_razumnu_prilagodbu_radnog_mjesta.pdf.

¹³⁸ Disability Ombudsperson (2021), *Report for 2020*, available at: <https://posi.hr/wp-content/uploads/2021/04/Izvjescje-o-radu-Pravobranitelja-za-osobe-s-invaliditetom-za-2020.-godinu.pdf>.

¹³⁹ Anti-discrimination Act, Article 4(2).

¹⁴⁰ Act on professional rehabilitation and employment of persons with disability, 13 December 2013, Article 7(2).

¹⁴¹ Disability Ombudsperson (2021), *Report for 2020*, available at: <https://posi.hr/wp-content/uploads/2021/04/Izvjescje-o-radu-Pravobranitelja-za-osobe-s-invaliditetom-za-2020.-godinu.pdf>.

¹⁴² 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.

¹⁴³ Act on professional rehabilitation and employment of persons with disability, 13 December 2013, Article 41(1)(5).

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)).¹⁴⁴

The labour inspectorate does not interpret the failure of the employer to ensure reasonable accommodation as a violation of labour regulations, which means that people with disabilities are left to seek their right to reasonable accommodation through court proceedings. In cases in which the employer complies with the reasonable accommodation duty, it is perceived that the employee should show gratitude, ignoring the point that reasonable accommodation is the employer's legal obligation and the right of the person with disability.¹⁴⁵

In her recent report, the Disability Ombudsperson stated that people with disabilities are often exposed to harassment and misunderstanding by their superiors and colleagues when claiming reasonable accommodation rights. Furthermore, the large number of complaints regarding the denial of reasonable accommodation in the workplace indicates a negative attitude towards this particular right of persons with disabilities. The Disability Ombudsperson once again pointed out that fulfilment of the reasonable accommodation duties by the employer must not be perceived as the 'good will' of the employer but as a fundamental right of persons with disabilities.¹⁴⁶

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.¹⁴⁷ 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.¹⁴⁸ 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 Act¹⁴⁹ provides that primary and secondary education is based on the principle of equal educational opportunities for all students in accordance with their abilities.¹⁵⁰ The Rules on primary and secondary education of students with developmental difficulties¹⁵¹ define a student with difficulties as

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

¹⁴⁴ The obligation to make reasonable accommodation is not strictly prescribed, however, if the employer does not make reasonable accommodation new misdemeanour proceedings can be initiated against him. The obligation to make reasonable accommodation may be ordered only by the civil court.

¹⁴⁵ Disability Ombudsperson (2020), *Report for 2019*, available at: <https://posi.hr/wp-content/uploads/2020/04/Izvie%C5%A1%C4%87e-o-radu-POSI-za-2019.pdf>.

¹⁴⁶ Disability Ombudsperson (2021), *Report for 2020*, available at: <https://posi.hr/wp-content/uploads/2021/04/Izvjesce-o-radu-Pravobranitelja-za-osobe-s-invaliditetom-za-2020.-godinu.pdf>.

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

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

¹⁴⁹ Primary and Secondary Education Act, 15 July 2008, Official Gazette 87/2008, 86/2009, 92/2010, 105/2010, 90/2011, 5/2012, 16/2012, 86/2012, 94/2013, 152/2014, 07/2017, 68/18, 98/19, *Zakon o odgoju i obrazovanju u osnovnoj i srednjoj školi*.

¹⁵⁰ Primary and Secondary Education Act, 15 July 2008, Article 4(2)(2).

¹⁵¹ Rules on primary and secondary education of students with developmental difficulties, 23 February 2015, Official Gazette 24/2015, *Pravilnik o osnovnoškolskom i srednjoškolskom odgoju i obrazovanju učenika s teškoćama u razvoju*.

The 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).¹⁵² The purpose of the rules is to determine the types of disabilities on the basis of which students have the right to appropriate schooling programmes, professional support and adaptation, as a form of reasonable accommodation.

In her annual reports, the Disability Ombudsperson repeatedly points out the problems faced by students in connection with reasonable accommodation in education: technical barriers; inflexible implementation of the rules on placement (inability to be placed in a school more convenient for a child with disability instead of placement by residence); and the resistance of school authorities to enrol a student with disability because of the reasonable accommodation obligations.

In relation to this, it is worth mentioning the decision of Varaždin County Court, by which *de facto* reasonable accommodation was acknowledged in connection to education.

The claimant was a boy with a medical condition that prevents him from being able to physically attend classes and therefore, in order to take the classes, he needs distance learning courses to be provided to him through electronic means of communication. Since the high school that the boy had initially enrolled in had failed to provide courses in this way, the claimant could not participate in class and eventually did not have enough grades to pass any classes, which led to him being kept back a year. The court determined that the claimant was discriminated against based on his health status and awarded P.B. compensation of HRK 70 000 (EUR 9 400). Given that at the time of proceedings the claimant had already transferred to a private high school, the compensation was the most adequate measure for the situation at issue.¹⁵³

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

The Science and Higher Education Act¹⁵⁴ 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.¹⁵⁵

The Disability Ombudsperson has stated the need to establish a legal definition of the rights of students with disabilities and 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.¹⁵⁶ The Ministry of Education and Science adopted the National Plan for Improving the Social Dimension of Higher Education in the Republic of Croatia from 2019 to 2021, which should contribute to improving the position of students with disabilities.¹⁵⁷ Guidelines for improving the support system for students with

¹⁵² 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).

¹⁵³ Varaždin County Court, Koprivnica Permanent Service, Decision no. GŽ-647/2019, of 16 May 2019

¹⁵⁴ 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*.

¹⁵⁵ It is not clear why the Science and Higher Education Act established reasonable accommodation only in transportation from home to school.

¹⁵⁶ Disability Ombudsperson (2019), *Report for 2018*.

¹⁵⁷ National Plan for improving the Social Dimension of Higher Education in the Republic of Croatia 2019-2021, available at: <https://mzo.gov.hr/UserDocsImages/dokumenti/Obrazovanje/VisokoObrazovanje/RazvojVisokogObrazovanja>

disabilities in higher education in the Republic of Croatia are an integral part of the national plan. These documents recognise students with disabilities as a vulnerable group and set goals for improving access to higher education for students with disabilities, providing equal opportunities during their studies, including through improving the system of reasonable accommodation, greater flexibility of study programmes, using tools for distance learning, subsidising the costs of studies, providing scholarships and giving students with disabilities an advantage in admission to study, using a quota system.

In the Anti-discrimination Act and other relevant laws there is no definition of 'disproportionate burden'. It is up to the courts to determine what factors are to be considered in deciding whether a burden is proportionate or disproportionate.

The law makes no distinction between the duties of private and state bodies and institutions.¹⁵⁸

In *Guberina v. Croatia*, the European Court of Human Rights¹⁵⁹ found a violation of Article 14 (prohibition of discrimination) of the European Convention on Human Rights in conjunction with Article 1 of Protocol No. 1 (protection of property) to the convention. In this case, the authorities failed to recognise the difference between the circumstances of the applicant – a father of a disabled child who asked for a tax exemption on the basis of meeting the housing needs of his family with regard to basic infrastructure requirements – in comparison with other people seeking a tax exemption. The ECtHR found that the domestic authorities had taken too restrictive an approach and had disregarded other provisions of domestic law, which address the question of accessibility of buildings for persons with disabilities, as well as Croatia's obligations under the UN Convention on the Rights of Persons with Disabilities and had thus failed to comply with the duty of reasonable accommodation by allowing the father to benefit from the tax exemption when purchasing accessible housing.

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.

Some experts have expressed the view that in order to properly interpret Article 7 of the Labour Act, which regulates the prohibition of discrimination as one of the basic obligations of the employer towards the employee, it could be concluded that the employer is obliged to make reasonable accommodation on the basis of all prohibited grounds of discrimination. However, it would be necessary to introduce an explicit legal provision that would regulate this issue to avoid potential different interpretations.¹⁶⁰

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

While Catholic religious holidays are regulated by law as non-working days and, as such, are not limited only to members of the Catholic church, members of the three biggest religious minorities only (Orthodox Christians, Muslims and Jews) have a right to an

[a/SIDERAL/Nacionalni%20plan%20za%20unaprije%20C4%91enje%20socijalne%20dimenzije%20visokog%20obrazovanja%20u%20Republici%20Hrvatskoj%202019.%20-%202021..pdf](http://sideral.nacionalniplan.gov.hr/plan/2020/2020-2021/2020-2021.pdf).

¹⁵⁸ 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.

¹⁵⁹ European Court of Human Rights, *Guberina v. Croatia*, [GC] No. 23682/13, 22 March 2016. Available at: [http://hudoc.echr.coe.int/eng#{"fulltext":\["guberina"\],"documentcollectionid2":\["GRANDCHAMBER"\],"CHAMBER":\["itemid":\["001-161530"\]}\]](http://hudoc.echr.coe.int/eng#{).

¹⁶⁰ Gregurev, I. (2020) 'Dosezi razumne prilagodbe (u domaćem, anglosaksonskom i pravu Europske unije)', (Achievements of reasonable accommodation (in domestic, Anglo-Saxon and European Union law)), *Zbornik Pravnog fakulteta u Zagrebu*, Vol. 70 No. 2-3, available at: <https://hrcak.srce.hr/244576>.

additional day off on the days of their main religious holidays.¹⁶¹ The Government also announced possible amendments to the Act on holidays, remembrance days and non-working days in accordance with the proposal of representatives of the Roma national minority and the Roma community to allow declared members of the Roma national minority the right to use the right to a non-working day on 8 April, when World Day of Roma is marked.¹⁶²

The most important collective agreements, for example the one in public services, do not regulate the issue of days off work for religious reasons.

In the context of the CJEU case law, the question of compliance of the Act on holidays, remembrance days and non-working days, with the judgment in *Cresco* arose, since it gives the right to non-working days only to workers of certain religions, and not to workers of other religions on the same day.¹⁶³ This had been determined to be discriminatory by the CJEU and not as an example of reasonable accommodation. According to some experts, this is an additional argument for the necessity of introducing into national legislation explicit legal provisions that would provide for the obligation of reasonable accommodation on the basis of religion in general.¹⁶⁴

The Regulations on driving licences allow head coverings to be worn in driving licence photographs when a person wears such a covering for religious reasons.¹⁶⁵

The Healthcare 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.¹⁶⁶

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

¹⁶¹ Act on holidays, remembrance days and non-working days, 15 November 2019, Official Gazette 110/19 *Zakon o blagdanima, spomendanima i neradnim danima u Republici Hrvatskoj*. Article 3.

¹⁶² Operational programmes for national minorities 2021-2024, 30 December 2020, available at: <https://pravamanjina.gov.hr/UserDocsImages/dokumenti/Operativni%20programi%20nacionalnih%20manjina%20za%20razdoblje%202021.-2024..pdf>.

¹⁶³ CJEU judgment of 22 January 2019, *Cresco Investigation GmbH v Markus Achatzi*, Grand Chamber, C-193/17, ECLI:EU:C:2019:43.

¹⁶⁴ Gregurev, I. (2020) 'Dosezi razumne prilagodbe (u domaćem, anglosaksonskom i pravu Europske unije)', (Achievements of reasonable accommodation (in domestic, Anglo-Saxon and European Union law)), *Zbornik Pravnog fakulteta u Zagrebu*, Vol. 70 No. 2-3, available at: <https://hrcak.srce.hr/244576>.

¹⁶⁵ Regulations on driving licences, 4 November 2019, Article 17(4), Official Gazette 2/19, *Pravilnik o vozačkim dozvolama*.

¹⁶⁶ Healthcare Act, 21 December 2018, Article 26, Official Gazette 100/18, 125/19, *Zakon o zdravstvenoj zaštiti*.

3 PERSONAL AND MATERIAL SCOPE

3.1 Personal scope

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

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

The Anti-discrimination Act does not distinguish between citizens and non-citizens and guarantees protection from discrimination to any person.¹⁶⁷

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

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

a) Protection against discrimination

In Croatia, the personal scope of anti-discrimination law covers natural and legal persons for the purpose of protection against discrimination.¹⁶⁸

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.¹⁶⁹

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.¹⁷⁰

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.¹⁷¹

¹⁶⁷ Anti-discrimination Act, 9 July 2008, Article 1.

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

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

¹⁷⁰ Anti-discrimination Act, 9 July 2008, Article 1.

¹⁷¹ Anti-discrimination Act, 9 July 2008, Article 8.

3.2 Material scope

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

In Croatia, national legislation prohibits discrimination in relation to conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy for the five grounds in both private and public sectors as described in the directives.¹⁷²

The Anti-discrimination Act explicitly covers access to employment and self-employment, for all of the grounds covered by the directives. There is no specific regulation for self-employment.

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

The Labour Act prohibits direct and indirect discrimination in the field of employment and working conditions, including selection criteria and recruitment conditions, promotion, vocational training, advanced vocational training and retraining.¹⁷⁴

The People's Ombudsperson has repeatedly pointed out the discriminatory practice of the Catholic Theological Faculty in Zagreb in the process of recruitment of administrative and technical staff. In order to apply for a job at the faculty, a person is required to present a confirmation of baptism, irrespective of the job position. On several occasions the Ombudsperson has issued warnings and recommendations stating that this kind of practice represents direct discrimination since the exception from the Anti-discrimination Act relating to the religious ethos of religious communities referred to in Article 9 is not applicable to the employment of administrative and technical personnel. Nevertheless, the faculty continued this discriminatory practice.¹⁷⁵

The main problem in this area in general continues to relate to access to employment by members of the Roma community, who are often subjected to discriminatory treatment by potential employers. For example, according to the experiences of some Roma people expressed through the media, when applying for a job, based on their written CV, employers at the start show interest in them as potential employees, but when they reach the face-to-face interview, the attitude of the employers often changes. On the basis of their physical appearance, employers conclude that they are Roma and because of the widespread prejudices about Roma as problematic and violent, their applications get rejected. In some situations, employers do not even try to hide this reaction, but openly express their views and state that they won't hire a Roma person, regardless of their professional qualifications. Some Roma applicants do not even get the chance of an interview because of their Roma surnames.¹⁷⁶

3.2.2 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.

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

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

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

¹⁷⁵ People's Ombudsperson (2019), *Report for 2018*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

¹⁷⁶ Media reports: <https://balkans.aljazeera.net teme/2016/3/31/romi-mijenjaju-imena-da-bi-dobili-posao-ili-kredit>.

Most complaints of discrimination, both to the Ombudsperson and to courts, are in the field of general employment.¹⁷⁷

The Anti-discrimination Act explicitly covers, for all 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.¹⁷⁸

Members of the Roma national minority are faced with problems in this area. They are often subjected to discriminatory treatment by potential employers, which means that 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.¹⁷⁹ This negatively affects their economic and social status and deprives them of possibilities of, for example, obtaining a house loan and moving out of the Roma settlements.

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

In Croatia, national legislation prohibits discrimination in vocational training outside the employment relationship, such as adult lifelong learning courses or vocational training provided by technical schools or universities.

The Anti-discrimination Act explicitly covers, for each of the grounds covered by the directives, access to all types of vocational guidance, vocational training, advanced vocational training and retraining¹⁸⁰ as well as to education and science.¹⁸¹ It further implicitly covers all other areas, activities and situations, because it does not limit the material scope in any way. The definition of education and science is left to the courts' interpretation. Practical work experience is covered implicitly.

In 2013, L.I. and Ž.B., both Roma students at the Varaždin Business School, were denied access to training at the company B., owned by B.J., (the training being an obligatory part of their education), and filed a discrimination claim against B. and B.J. before the Varaždin Municipal Court. The court found that the applicants had faced discrimination because they were Roma, forbade B. and B.J. to undertake any further discriminatory actions and awarded compensation of HRK 8 000 (EUR 1 066) to each applicant. Following the appeal of both defendants, the Varaždin County Court, as the appellate court, confirmed the first instance judgment in respect of finding discrimination and forbidding the defendants to undertake any further discriminatory actions, but reduced the compensation awarded to HRK 5 000 (EUR 666) to each applicant. The court said that, having regard to all the circumstances of the case, the lack of any serious consequences, the gravity of violation and the purpose of compensation, the sum awarded was reasonable.¹⁸²

¹⁷⁷ People's Ombudsperson (2017), *Ombudsperson's Report for 2016*, p. 6, <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

¹⁷⁸ Anti-discrimination Act, 9 July 2008, Article 8(1) and 8(3) and Labour Act, 15 July 2014, Article 7(4).

¹⁷⁹ People's Ombudsperson (2019), *Report for 2018*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

¹⁸⁰ Anti-discrimination Act, 9 July 2008, Article 8(1).

¹⁸¹ Anti-discrimination Act, 9 July 2008, Article 8(2).

¹⁸² Varaždin County Court, *L.I. and Ž.B. v. Brankad.o.o.*, Gž.3684/12, 2 April 2013.

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

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

The Anti-discrimination Act explicitly covers, for each of the grounds covered by the directives, membership of and involvement in workers' organisations, civil society organisations, political parties or any other organisations.¹⁸³ Benefits provided for by such organisations are covered implicitly. Membership of and involvement in employers' organisations is not specifically mentioned but are covered implicitly under 'any other organisations'.

The Labour Act stipulates that no one can be placed in a disadvantageous position due to membership of an association, or participation or non-participation in the activities of an association since the contrary would constitute discrimination.¹⁸⁴

During recent years, discrimination in relation to this area has been raised mostly in cases of employees who find themselves discriminated against by their employers because they are members of a workers' organisation. There is no case law regarding discrimination in access to membership of workers' or employers' organisations.

3.2.5 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.¹⁸⁵

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 healthcare because of language barriers.

According to the most recent available data, the main problem faced by the Roma population in the area of access to healthcare is the insufficient coverage of members of Roma community by health insurance. According to the survey results, as many as 54.6 % of households in the year preceding the survey were found to be unable to pay for a medicine or medical service that was required by a household member, which suggests insufficient availability of healthcare. Also, according to research findings, as many as 27 % of respondents had not contacted a doctor in the past 12 months, although they needed medical attention. This is partly related to a lack of financial means and partly due to the

¹⁸³ Anti-discrimination Act, 9 July 2008, Article 8(9).

¹⁸⁴ Labour Act, Article 166.

¹⁸⁵ Anti-discrimination Act, 9 July 2008, Articles 8(3) and 8(4).

location of Roma settlements, which are often far away from health institutions.¹⁸⁶ 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.¹⁸⁷

Considering everything mentioned above, the quality of healthcare provided to Roma is lower than the quality of healthcare provided to the rest of population. However, vaccination rates of pre-school Roma children in Croatia have reached the rates of vaccination coverage of pre-school children in the rest of population. All children in Croatia, including Roma children, have the right to free healthcare until the age of 18.¹⁸⁸

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

The Croatian Institute of Public Health has begun the implementation of measures aimed at improving the monitoring of the health status and social determinants of health of members of Roma national minority. Publication of the analysis and a report was planned for 2020, however it was not published during 2020.¹⁸⁹

However, most health services and campaigns during 2020, except for the basic and necessary ones, were stopped due to the coronavirus pandemic.

As a result of the pandemic, the question of adequate living conditions in Roma settlements with regard to hygienic conditions and the lack of communal infrastructure was raised. There is no specific data on this yet and the report of the Ombudsperson is expected to deal with the problem in more detail.

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.

3.2.6 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;¹⁹⁰ it therefore covers implicitly social advantages of all kinds.

¹⁸⁶ 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>.

¹⁸⁷ Kunac, S., Klasnić, K. and Lalić, S. (2018) *Inclusion of Roma in Croatian Society: Database Research*, Centre for Peace Studies, August 2018.

¹⁸⁸ Action plan for the Implementation of the 2013-2020 National Roma Inclusion Strategy for 2019 and 2020, July 2019, available at <https://pravamanjina.gov.hr/UserDocsImages//dokumenti/Akcijski%20plan%20za%20provedbu%20Nacionalne%20strategije%20za%20uklju%C4%8Divanje%20Roma%20za%20razdoblje%20od%202013.%20do%202020.%20godine,%20za%202019.%20i%202020.%20godinu.pdf>.

¹⁸⁹ Office for Human Rights and Rights of National Minorities (2020) *Report on the implementation of the action plan for the implementation of the 2013-2020 Roma inclusion strategy for 2019*, December 2020, available at: <https://pravamanjina.gov.hr/UserDocsImages/dokumenti/Izvj%C5%A1%C4%87e%20o%20provedbi%20ANSUR%20za%202019.%20godinu.pdf>.

¹⁹⁰ Anti-discrimination Act, 9 July 2008, Article 8.

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

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

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

The Anti-discrimination Act prohibits discrimination in education based on, among other grounds, racial or ethnic origin, religion or belief, age, disability and sexual orientation.¹⁹¹

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).¹⁹²

In practice there are notable problems regarding the education of pupils with disabilities.

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 2017-2020¹⁹³ and the Parliamentary Declaration on the Rights of People with Disabilities).¹⁹⁴ However, 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.

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

The Disability Ombudsperson regularly reports that a significant number of children continue to be directed to special educational institutions due to a lack of reasonable accommodation (inaccessibility of schools, insufficient number of teaching assistants, lack of professional educators in secondary education, etc). The Ombudsperson also pointed out that the education of children with disabilities in specialised educational institutions at the state level is still not perceived as unacceptable and is not considered as segregation.¹⁹⁵

In their most recent annual report, the Disability Ombudsperson stated that it is noticeable that this kind of segregation is decreasing and that more and more pupils with disabilities are enrolling in regular schools, although there are still cases when schools refuse to enrol students because of their disabilities and refer them to special institutions. The Disability Ombudsperson concludes that nevertheless, discrimination is still present since inclusion of pupils with disabilities in regular schools is not followed by appropriate support.¹⁹⁶

A significant judgment was made in relation to the education of pupils with disabilities. The claimant was a boy with a medical condition that prevents him from being able to physically attend classes because of which, he needed distance learning courses to be provided to him via electronic means of communication. Since the high school that he had initially enrolled in had failed to provide courses in the described way, the boy could not participate in class and eventually did not have enough grades to pass any of the classes, which led to him being kept back a year. The court determined that the claimant was discriminated

¹⁹¹ Anti-discrimination Act, 9 July 2008, Article 8(2).

¹⁹² Gender Equality Ombudsperson (2013) *Research on Gender Issues in Primary Schools Textbooks*.

¹⁹³ Official Gazette 42/2017.

¹⁹⁴ Official Gazette 47/2005.

¹⁹⁵ Disability Ombudsperson (2020), *Report for 2019*, available at: <https://posi.hr/wp-content/uploads/2020/04/Izvje%C5%A1%C4%87e-o-radu-POSI-za-2019.pdf>.

¹⁹⁶ Disability Ombudsperson (2021), *Report for 2020*, available at: <https://posi.hr/wp-content/uploads/2021/04/Izvjescje-o-radu-Pravobraniteljja-za-osobe-s-invaliditetom-za-2020.-godinu.pdf>.

against based on his health status and awarded him compensation of HRK 70 000 (EUR 9 400). Given that at the time of proceedings the boy had already transferred to a private high school, the compensation was the most adequate measure for the situation at issue.¹⁹⁷

In the area of education, the lack of accessibility of buildings to students with disabilities also stands out.

In 2020, in the context of the coronavirus pandemic, the issue of adequate education of students with disabilities was raised in connection with teaching assistants who would provide assistance to students with disabilities in monitoring online teaching, as well as providing teaching assistants in schools due to anti-pandemic measures that required as few people in each class as possible.

Even before the outbreak of the epidemic, individualisation of the teaching process for students with disabilities was not always carried out in a professional and quality manner within educational institutions. The Disability Ombudsperson noted that this especially came to light during the pandemic since distance learning was not accompanied by appropriate support for pupils with disabilities. In the conditions of the epidemic, education focused on various forms of distance learning that was not sufficiently adapted to the needs of pupils with disabilities and didactic, IT and professional support was not provided to pupils with disabilities. Certain categories of students could not get the appropriate quality of teaching (students with sensory impairments, deaf and blind students, students with multiple disabilities). The support of teaching assistants was not available for distance learning, so the students were left on their own, depending on the help of their parents and other family members.¹⁹⁸

Moreover, while students in regular schools followed lectures by their teachers online, pupils with disabilities enrolled in special institutions were at a disadvantage because teachers did not hold online classes but only sent assignments to their students, thus turning parents into teachers. This has been going on for more than a year without any indication that the practice will change soon.¹⁹⁹

a) Trends and patterns regarding Roma pupils

In Croatia, there are specific patterns regarding Roma pupils in education, such as segregation, which manifests in such a way that Roma children are put in separate Roma-only classes in some counties with a significant Roma population (Međimurje and Varaždin). The school authorities justify this practice, which has existed for as long as Roma have attended these schools, by Roma children's poor grasp of the Croatian language and by the high number of Roma pupils in schools close to Roma settlements.

In 2003, a group of Roma students initiated judicial proceedings claiming to be victims of discrimination/segregation in primary education. After all domestic remedies had been unsuccessfully exhausted, the students filed an application before the European Court of Human Rights. In March 2010, the Grand Chamber of the Court issued a judgment finding a violation of their right not to be discriminated against in the enjoyment of the right to education.²⁰⁰ 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.²⁰¹ Despite the judgment of the European Court of Human Rights and some

¹⁹⁷ Varaždin County Court, Koprivnica Permanent Service, decision no. GŽ-647/2019, 16 May 2019.

¹⁹⁸ Disability Ombudsperson (2021), *Report for 2020*, available at: <https://posi.hr/wp-content/uploads/2021/04/Izvjesce-o-radu-Pravobranitelja-za-osobe-s-invaliditetom-za-2020.-godinu.pdf>.

¹⁹⁹ Disability Ombudsperson (2021), *Report for 2020*.

²⁰⁰ European Court of Human Rights (ECtHR), *Oršuš and Others v Croatia* [GC], No. 15766/03, 16 March 2010.

²⁰¹ See the judgment in ECtHR, *Oršuš and Others v Croatia* [GC], No. 15766/03, 16 March 2010, paragraphs 158-160.

positive legislative measures adopted afterwards, the problem of Roma-only classes still persists.

According to the most recent available data, at the beginning of the school year 2020/2021, the number of classes in which only students belonging to the Roma national minority were included was 73, with a total of 1 071 students.²⁰² Most Roma-only classes are in schools in Međimurje County, in which there are 59 classes attended only by the children of the Roma national minority, in 4 elementary schools.²⁰³

It should be noted that Roma-only classes in the Međimurje county prevail in the areas with a high percentage of Roma population where Roma pupils consequently make a high proportion of the total number of pupils in schools. For example, in the Kuršanec primary school, 71.6 % of the pupils are Roma, in the Mačinec primary school that number is even higher (80.4 %), while in the Džimorec Strelec district primary school all pupils are Roma.²⁰⁴ This also points to a continued existence of Roma-only settlements where Roma people live segregated from the rest of the population, often lacking basic necessities such as electricity and running water.

Although one of the goals set by the 2013-2020 National Roma Inclusion Strategy (and its accompanying action plan) was the elimination of all Roma-only classes by 2020, this has still not been achieved.²⁰⁵

According to the report on the implementation of the National Roma Inclusion Strategy for 2019, which was published in December 2020, the analysis of the situation in schools with a larger number of Roma children is ongoing and a reduction in the number of classes in which only members of the Roma national minority are included is expected in the coming period. It is also states that the reduction of the number of classes in which only members of the Roma national minority are included depends on the network of schools and enrolment areas where there are classes in which only Roma are present. In order to establish the optimal ratio of Roma students with other students, there is a need for space, and the transportation and relocation of staff, and students to other schools, which requires action to provide adequate infrastructure.²⁰⁶

According to the latest available data, during 2020/2021 a total of 1 943 children belonging to the Roma national minority were included in the preschool education system, while in the previous year there were 1 171. The research shows that 68.9 % of Roma children between the ages of three and six are not included in preschool education. Only 11.4 % of Roma children attend preschool and 13 % attend kindergarten.²⁰⁷ 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

²⁰² Information obtained from the Ministry of Education, March 2021.

²⁰³ Information obtained from the Ministry of Education, March 2021.

²⁰⁴ Report on Implementation of Operative Programmes for National Minorities for the period from August 2017 to February 2019, published in August 2019.

²⁰⁵ Action Plan for the Implementation of the 2013-2020 National Roma Inclusion Strategy for 2019 and 2020, available at <https://pravamanjina.gov.hr/UserDocsImages//dokumenti//Akcijski%20plan%20za%20provedbu%20Nacionalne%20strategije%20za%20uklju%C4%8Divanje%20Roma%20za%20razdoblje%20od%202013.%20do%202020.%20godine,%20za%202019.%20i%202020.%20godinu.pdf>.

²⁰⁶ Office for Human Rights and Rights of National Minorities (2020) *Report on Implementation of Operative Programmes for National Minorities for the period from 2019 to 2020*, available at: <https://pravamanjina.gov.hr/UserDocsImages/dokumenti/Izvje%C5%A1%C4%87e%20o%20provedbi%20A%20NSUR%20za%202019.%20godinu.pdf>.

²⁰⁷ Kunac, S., Klasnić, K. and Lalić, S. (2018) *Inclusion of Roma in Croatian Society: Database Research*, Centre for Peace Studies, August 2018.

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.

At the beginning of 2020/2021, 5 047 students belonging to the Roma national minority were included in the primary education system, compared to 4 637 in the previous year. In the 2020/2021 school year, 772 students belonging to the Roma national minority were included in the secondary education system and in 2019/2020, there were 721 Roma secondary school students.²⁰⁸ 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.²⁰⁹

A very small number continue with studies after secondary school even though scholarships from the Roma Education Fund and other donors, including city authorities and the state, are available to Roma students. Research shows that the reasons for this are similar to the ones previously mentioned regarding high school education, which are financial reasons, poor previous education or educational results, marriage and parenthood. Therefore, additional efforts are needed to invest in raising the financial capacity of the Roma population for higher education through scholarship programmes and raising the level of support for students who are parents to continue their education.²¹⁰ In 2020/2021, the right to a scholarship was exercised by 45 students belonging to the Roma national minority, while the year before the scholarship was provided for 31 students belonging to the Roma national minority.

The People's Ombudsperson continuously points out that for quality integration of Roma children in the educational system and society as a whole it is necessary to introduce a mandatory two-year preschool programme for all Roma children, to provide transport to kindergartens and schools and to include them in extra-curricular activities, as well as to arrange courses in the Croatian language and to provide extended time in school for lower-primary pupils.²¹¹ Further efforts are necessary in securing better academic achievement of Roma pupils (better school achievement, lower drop-out rates, better educational outcomes), related to the elimination of problems encountered in primary education, such as insufficient knowledge of the Croatian language, insufficient support from parents for learning and the fulfilment of school obligations, poor material conditions and a lack of necessary equipment for education etc. Apart from the importance of preschool education and training, which is a necessary prerequisite for the elimination of some of these problems, other possible measures, such as engaging greater numbers of Roma assistants should be taken into account in schools.²¹²

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

²⁰⁸ Information of Ministry of Education and Science obtained in March 2021.

²⁰⁹ Kunac, S., Klasnić, K. and Lalić, S. (2018) *Inclusion of Roma in Croatian Society: Database Research*, Centre for Peace Studies, August 2018.

²¹⁰ Kunac, S., Klasnić, K. and Lalić, S. (2018) *Inclusion of Roma in Croatian Society: Database Research*, Centre for Peace Studies, August 2018.

²¹¹ People's Ombudsperson (2019), *Written contribution to the 3rd Review of Croatia under the Universal Periodic Review (UPR) on the situation of human rights of the UN Human Rights Council*, available at: <https://www.ombudsman.hr/wp-content/uploads/2019/10/UPR-REPORT-Croatian-Ombudsman.pdf>.

²¹² Kunac, S., Klasnić, K. and Lalić, S. (2018) *Inclusion of Roma in Croatian Society: Database Research*, Centre for Peace Studies, August 2018.

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

Currently, there are eight different programmes aimed at providing professional and financial support for the education of children and students belonging to the Roma national minority being implemented on behalf of the Ministry of Education.²¹³ These projects provide students with transportation and extended stay, but also other activities such as additional and supplementary classes and extracurricular activities, summer camps and/or extracurricular activities aimed at their social integration, professional development of teachers and professional associates with the aim of raising quality and efficiency of education of students belonging to the Roma national minority, procurement of equipment and teaching aids etc.²¹⁴

During 2020, as a result of circumstances caused by the COVID-19 pandemic, a new problem arose regarding the education of Roma children: at the end of March 2020, lockdown was introduced, during which schools, kindergartens and education facilities were closed and online classes were introduced.

Bearing in mind the living conditions of a certain number of children of the Roma national minority living in Roma settlements, some of whom do not even have basic electricity and communal infrastructure connections, let alone internet access, it can be concluded that children from such areas did not have equal conditions and access to education during the period when classes were conducted online. Also, although the state was supposed to provide all children with tablets through which they were supposed to follow online classes, the purchase of those tablets was delayed meaning that parents had to manage on their own. Children in Roma settlements did not have the necessary technological devices to participate in online classes, and parents did not have the financial means to purchase them. Furthermore, the parents did they know how to use such devices due to their own ignorance, and lack of the Croatian language and lack of knowledge of digital technology. Therefore, they could neither provide tablets nor help the children to follow online classes, even when the children received the tablets from school.

For example, children in the Roma settlement of Drnje received school tablets, but generally did not know how to use them, so teachers called them by phone and sent text messages to parents and older siblings in order to pass the material on to them.²¹⁵

Some schools with a large number of Roma students equipped Roma helpers with portable IT equipment (23 laptops, printers, paper and spare toners) from the funds allocated by the Ministry to help Roma students in Roma settlements in online learning. Following this good practice, the Ministry provided additional funds for 23 Roma helpers to purchase equipment. UNICEF also came to the aid of Roma students, purchasing 100 tablets and, in cooperation with TELE 2, 500 SIM cards for distance learning.²¹⁶

²¹³ The total value of the project is approximately EUR 1 118 589 (HRK 8 389 419.98) and its implementation began during the 2018/2019 school year.

²¹⁴ Office for Human Rights and Rights of National Minorities (2019) *Report on implementation of Roma National Inclusion strategy for 2018*, available at: <https://ljudskaprava.gov.hr/UserDocsImages//dokumenti/Izvj%C5%A1%C4%87e%20o%20provedbi%20Nacionalne%20strategije%20za%20uklju%C4%8Divanje%20Roma%20za%20razdoblje%20od%202013.%20do%202020.%20godine,%20za%202018.%20godinu.pdf>.

²¹⁵ <https://www.24sata.hr/tech/zadace-radili-preko-mobitela-699830>.

²¹⁶ <https://skolazavivot.hr/akcijski-plan-za-provedbu-nastave-na-daljinu-prijedlog/>.

Teachers had to manage on their own, so they explained the material over the phone, printed teaching materials and delivered them to the students themselves. The content of online classes, which was produced in Croatian, was not adapted to students who are not native speakers of Croatian, and due to work overload and objective impossibilities, teachers could not get around this problem and help students who had such difficulties. It is important to point out that most Roma children live in families that do not have a telephone, and there were cases where in some classes, no student had access to the internet.

It should be noted here that the implementation of online teaching failed to provide equal access to quality teaching, in the sense that parents had de facto become teaching assistants due to a system that had not adequately prepared teachers, students and parents for this type of teaching. The quality of teaching consequently became dependent not only on the skills and capabilities of teachers, but also parents, and due to the previously described capacities of parents of Roma children, it can be concluded that Roma children were deprived of this support in a disorganised system and did not have equal access to education.

Some steps were taken with to improve the situation, however, the fact that the great number of Roma children do not have adequate conditions and support for following online classes remains.

The Ministry reported that because of the lack of technical support for distance learning, distance learning in Roma settlements is organised through various communication channels. Also, that with the aim of detecting difficulties for Roma pupils in accessing education as a result of the pandemic, the Roma Child Support Network with the support of the Ministry of Education conducted a survey on the involvement of Roma students in distance learning activities.

Sixty-five schools responded to the survey and it was determined that in as many as 30 % of schools more than 30 % of Roma children do not regularly participate in distance learning. There are various reasons for this, from poverty to the inability to obtain adequate support in families.²¹⁷ In cooperation with Roma associations, the Ministry provided funds for the purchase of additional computers and internet access for Roma pupils. In cooperation with UNICEF, additional activities are being undertaken for students belonging to the Roma national minority, including learning assistance projects (preparation of the project 'Learning amidst COVID-19 and the earthquake – improving the learning of Roma students').²¹⁸

The Ministry also reported that in cooperation with schools with a large number of Roma children, additional assistance in learning had been provided through summer schools. Also, the development of projects aimed at providing further professional and financial assistance to Roma pupils is in progress.

In her recent annual report, the People's Ombudsperson found that minority students, particularly Roma students, but also refugee and migrant students whose mother tongue is not Croatian, had limited access to distance learning due to insufficient knowledge of the Croatian language. She also notes that students and families living in poverty or at risk of poverty, which includes 83 % of Roma, have lost various forms of support due to the closure of schools, such as meals for children, and psychological or learning support. The Ombudsperson stated that, in addition to this, most of these students cannot even afford IT equipment, so only 19.6 % of Roma children have a personal computer, laptop or tablet. The Ombudsperson reported that due to a possible violation of the right to access education and discrimination against children whose mother tongue is not Croatian in distance

²¹⁷ <https://infogram.com/uključenost-ucenika-romske-nacionalne-manjine-u-nastavu-na-daljinu-1hmr6gvrl57z6nl?live&fbclid=IwAR0A2un5vpfc4Lqzdd0x1BM0uOuH6xDKBQnYGOLFkvh7vaDdqNBI7jF8EwQ>.

²¹⁸ Information of the Ministry of Education and Science, obtained in March 2021.

learning, a group of non-governmental organisations had filed a complaint with the UN Committee on the Rights of the Child.²¹⁹

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.²²⁰ 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 the 2020/2021 school year, there were a total of 1 494 students belonging to the Serbian national minority in the primary education system included in minority education model A, 10 students were in model B and 641 students were in model C. In 2020/2021, 523 students of the Serbian national minority were included in the secondary education system in minority education model A and 33 students were in model C.²²¹

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

In Croatia, national legislation prohibits discrimination in access to and the supply of goods and services as formulated in the Racial Equality Directive. The Anti-discrimination Act prohibits discrimination based on racial or ethnic origin, religion or belief, age, disability and sexual orientation, in access to and supply of goods and services.²²² With rare exceptions,²²³ there are no special regulations on access to and supply of goods and services for persons with disabilities.

The Same-sex Life Partnership Act prohibits discrimination based on same-sex partnership, in access to and supply of goods and services.²²⁴

The media intensively reported on a case of discrimination on the ground of sexual orientation in the area of access to services, concerning a same sex-couple from Brazil who wanted to spend their summer holidays in Croatia. They booked an apartment in Zadar through a website intended for booking accommodation. When the owner of the apartment realised that the booking was made by a same-sex couple he refused to accept them as guests and sent them a message stating that he was not having homosexuals rent his apartment and insisting that they cancel their reservation. The state attorney's office filed an indictment against the owner of the apartment charging him with committing the

²¹⁹ People's Ombudsperson (2021), *Report for 2020*.

²²⁰ See Ćorkalo Biruški, D. and Ajduković, D. (2007), 'Separate schools – a divided community: The role of the school in post-war social reconstruction', *Review of Psychology*, 2007, Vol. 14, No. 2, pp. 93-108 <http://mjesecc.ffzg.hr/revija.psi/vol%2014%20no%202%202007/Corkalo%20ajdukovic.pdf>.

²²¹ Information obtained from the Ministry of Education, March 2021. Model A means that teaching is provided in Serbian, model B offers bilingual teaching and in model C, teaching is in Croatian, with additional lessons on Serbian culture and language.

²²² Anti-discrimination Act, 9 July 2008, Article 8(8).

²²³ The name of a medicinal product has to be expressed in Braille format on the packaging.

²²⁴ Same-sex Life Partnership Act, 15 July 2014, Article 71.

criminal offence of violation of equality. According to the most recent information gathered through the media, criminal proceedings are still in progress.²²⁵

Discrimination against Roma prevails in all parts of social life, including access to and the supply of goods and services. One example that attracted media coverage during 2019 was the case of Đ.T., a Roma woman who was kicked out of an H&M store in the city of Rijeka, together with her family, including young children, with the explanation that the store management had given orders to kick groups of Roma out of the stores, especially groups with children. During the incident, Đ.T. began filming the H&M security guard who was trying to get the group to leave, in response to which the guard quickly kicked Đ.T.'s phone so violently that it hit Đ.T. in the head, leaving her with a bruised nose. After initially claiming that there had been a reason for such behaviour, the H&M management later issued an apology to Đ.T. and her family.²²⁶

The media also reported the situation of a Roma man who couldn't get a mortgage because of his Roma surname, but managed to get his loan approved only after he had changed his name to a common Croatian surname, even though his financial circumstances remained the same.²²⁷

Following the earthquake that hit Sisak-Moslavina County in December 2020, stories appeared in the media that members of the Roma national minority in the ruined area were unable to obtain mobile homes and housing containers due to their national origin.

Finally, Croatia is a popular tourist destination, and in the last few years there has been a trend, noticed by the media, that in the most popular destinations during the tourist season, tourists are offered goods and services at higher prices than the local population. In relation to this, the People's Ombudsperson issued a recommendation in which she emphasised that such behaviour constitutes discrimination against foreign nationals and that such practices must be avoided.²²⁸

a) Distinction between goods and services available publicly or privately

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

3.2.9 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.²²⁹

²²⁵ Article published in September 2019 under the title: 'Finally: An indictment has been filed against a man from Zadar who refused to rent an apartment to a gay couple', available at: <https://www.telegram.hr/politika-kriminal/napokon-podignuta-je-optuznica-protiv-zadranina-koji-je-odbio-gay-paru-iznajmiti-apartman/#>.

²²⁶ Article published in June 2019 under the title: 'They kicked me out of H&M store just because I'm a Roma', available at: <https://www.jutarnji.hr/vijesti/hrvatska/izbacili-su-me-iz-hm-a-samo-zato-sto-sam-romkinja-rijecanka-ispricala-sto-je-dozivjela-u-trgovini-iz-lanca-tvrde-izbacili-smo-je-ali-ne-zbog-toga-9181124>, and article published on 30 July 2019 under the title: 'H&M finally apologizes to a woman from Rijeka who have been roughly kicked out from the store. She says that it is only because she is Roma: A mistake had occurred', available at: <https://www.jutarnji.hr/vijesti/hrvatska/hm-se-konacno-ispricao-rijecanki-koju-su-grubo-istjerali-iz-trgovine-ona-kaze-da-je-to-samo-zato-sto-je-romkinja-doslo-je-do-propusta/9185276/>.

²²⁷ Article published in September 2019 under the title: 'How we got out of the Roma settlement, started a business and developed the talent of our genius son', available at: <https://www.telegram.hr/price/kako-smo-se-izvukli-iz-romskog-naselja-pokrenuli-biznis-i-krenuli-razvijati-talent-naseg-genijalnog-sina/>.

²²⁸ People's Ombudsperson analysis: 'Access to services - citizenship as a basis for discrimination?', October 2019, available at: <https://www.ombudsman.hr/hr/analiza/>.

²²⁹ Anti-discrimination Act, 9 July 2008, Article 8 (1)(6).

The Same-sex Life Partnership Act prohibits discrimination based on same-sex partnership, in access to housing.²³⁰ LGBT persons often face discrimination in this field.²³¹ 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.²³²

In its judgment in *Guberina v. Croatia*²³³ (described in detail in section 2.6 above), the ECtHR found that the Croatian authorities were under a duty to provide a reasonable accommodation to the father by allowing him a tax exemption when purchasing a house to meet the basic needs of his family, including his disabled child.

Members of the Roma and Serbian national minorities encounter the greatest problems in respect of housing. Although the housing segregation of Roma is often talked about, the issues faced by the Serbian national minority are often greatly neglected. The People's Ombudsperson has repeatedly raised the problem of members of the Serbian national minority regarding the supply of electricity and water in areas settled by Serb returnees, especially in rural and underdeveloped regions. The People's Ombudsperson expressed the opinion that Serbs who returned to their pre-war places of residence experience discrimination, often on the grounds of their nationality, age and economic status as they are mostly elderly people on low incomes who live in undeveloped rural areas. Basic services such as water and electricity are often unavailable to them. In addition, Serbs are increasingly exposed to the negative sentiments of the majority population.²³⁴

There has been some positive action regarding the housing problem of the Serbian national minority. Reconstruction of the electricity system in some of the settlements populated mostly by members of the Serbian national minority has been carried out. The Government allocated financial support for further electrification and made a decision on the implementation of the programme for financing local infrastructure and rural development projects in areas inhabited by more than 5 % members of national minorities.²³⁵

In 2020, new problems emerged regarding the housing situation of members of Serbian national minority in the light of the earthquake which hit Sisak-Moslavina County in December 2020. The area is inhabited by a large number of members of the Serbian national minority, who are mostly returnees after the war, and who are an elderly population of lower property status who often live in isolated areas, and in older houses of weaker construction. The effects of the earthquake meant that their position has further deteriorated.

The reconstruction process is underway and a high level of state involvement is planned with significant support and assistance from civil society, citizens, neighbouring countries and the international community. It remains to be seen whether or not such a model will provide effective results in improving living conditions in the area.

²³⁰ Same-sex Life Partnership Act, 15 July 2014, Articles 71, 72 and 79.

²³¹ Organisation Zagreb Pride, http://www.zagreb-pride.net/new/wp-content/uploads/2016/01/brutalna_stvarnost_hr_web.pdf.

²³² In 2014, there was one court case of discrimination in housing based on sexual orientation (the owner of an apartment refused to let it to a gay person), but no information is available regarding a potential conclusion of the case. The case was reported about in the Gender Ombudsperson's *Report for 2014* available at: https://www.prs.hr/attachments/article/1555/01_IZVJESCE_2014_CJELOVITO.pdf.

²³³ 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#{\).

²³⁴ People's Ombudsperson (2019), *Written contribution to the 3rd Review of Croatia under the Universal Periodic Review (UPR) on the situation of human rights of the UN Human Rights Council*, <https://www.ombudsman.hr/wp-content/uploads/2019/10/UPR-REPORT-Croatian-Ombudsman.pdf>.

²³⁵ People's Ombudsperson (2019) *Report for 2018*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

a) Trends and patterns regarding housing segregation for Roma

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

The Roma are still segregated to a great extent in their housing. Only 25 % of Roma households are integrated with the majority population, while others live in separated settlements with much poorer housing conditions where utility and infrastructural services are not available. The Ombudsperson has noted that better and more efficient cooperation and coordination in solving Roma-specific problems should be established.²³⁶

There are several programmes for housing solutions and the improvement of living conditions of the members of Roma national minority underway. These include the donation of building material for renovation and construction of family houses, as well as donations of household appliances, furniture etc.

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

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

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

In this regard, it should be mentioned that the project itself, although mostly accepted with approval, has also encountered some controversy, due to its very name: 'Construction of Roma Houses' and the accompanying public tender in which Darda municipality announced a public competition for 'constructors of Roma houses'. This was negatively received in the media who were satirically wondering whether Roma houses are in any way different from Croatian houses and whether the constructors of Roma houses have to have special skills in comparison to constructors of regular houses. Additional controversy has been provoked by a statement from municipality's mayor, who saw nothing wrong with the name of the project and publicly stated that of course that these houses would be Roma houses, and not houses for Croats, Serbs or mujahideens.²³⁷ Although this kind of reporting was partly satirical, it points to the prevailing attitude towards Roma as 'separate' from the rest of the population.

Because of the general lack of inclusion and numerous prejudices directed towards Roma, leaving the Roma-only settlements can be very difficult, even when a person has a high

²³⁶ People's Ombudsperson (2019), *Written contribution to the 3rd Review of Croatia under the Universal Periodic Review (UPR) on the situation of human rights of the UN Human Rights Council*.

²³⁷ Article published in January 2019 under the title: 'Municipality is looking for builders of 'Roma Houses'', available at: <https://www.jutarnji.hr/vijesti/hrvatska/opcina-trazi-graditelja-romskih-kuca-nego-kakve-su-nego-romske-nece-valjda-mudzahedini-u-njih-useliti/8279780/>.

motivation to do so. An example of the difficulties that the Roma face can be found in the story of a Roma man whose house loan applications were repeatedly denied until he decided to replace his Roma surname with a Croatian one. Despite all other circumstances remaining the same, after he had changed his name, he managed to get a loan approved and was consequently able to buy a house outside the Roma settlement, which has immensely improved the quality of life for him, his wife and children.²³⁸

As the majority of Roma in Croatia live in one of the 13 Roma settlements in Međimurje, that is the area that faces the biggest consequences of social exclusion, as there are numerous statements of the locals reporting Roma people for committing various types of offences and crimes against the Croatian inhabitants as well as against other Roma in Međimurje. In 2019, the media reported on a three-metre high barbed-wire wall built on the border between the Pribislavec municipality, which has a majority of Croatian inhabitants, and the Roma settlement right next to it. According to A.P. who built the wall, he is not the only one that has a barbed wire in his yard, as he and other locals are doing everything they can to protect themselves from the Roma who steal their animals, throw rocks at them and their houses, break into their cars and yards, etc. These events prompted A.P. and his neighbours to organise a peaceful demonstration in Čakovec, the capital of the Međimurje county with the aim of persuading the state institutions to take steps to stop violence and to combat the issues of safety and other problems related to the Roma in Pribislavec and all of Međimurje. It is important to note that many Roma live in peaceful coexistence with the Croatians, but a minority still cause problems that are then wrongfully attributed to the Roma community as a whole.²³⁹

A relevant case is that of a Roma family who bought some land and planned to build a house in the Varaždin area, outside the Roma settlement. The family was exposed to hate speech and threats from locals trying to make them leave. One of them told the family: 'When the police leave, be ready to attack. If Sarkozy flew his Roma out of France, we'll drive ours away on foot'. Out of fear for their safety, the family decided to leave the Varaždin area. Criminal proceedings were instituted against one of the locals who threatened the family. The first instance court found him guilty of committing a criminal offence in violation of equality in connection with a hate crime. However, the county court upheld the defendant's appeal and the case was returned to the court of first instance for retrial due to procedural violations. It should be noted that proceedings in this case commenced in 2012 and are still ongoing.²⁴⁰

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

Additional shortcomings of life in Roma settlements particularly came to light during 2020 in the context of the COVID-19 pandemic. The pandemic brought to the surface deficiencies that previously existed and were not resolved, such as: unfavourable hygienic conditions

²³⁸ Article published in September 2019 under the title: 'How we got out of the Roma settlement, started a business and developed the talent of our genius son', available at: <https://www.telegram.hr/price/kako-smo-se-izvukli-iz-romskog-naselja-pokrenuli-biznis-i-krenuli-razvijati-talent-naseg-genijalnog-sina/>.

²³⁹ Media reporting on demonstrations against Roma in the city of Čakovec, Article published on 2 June 2019, under the title: 'REACTIONS TO THE PROTEST IN ČAKOVAC. 'It is time for the Government to start solving the problems of the Roma minority'; 'This encourages hate speech', available at: <https://www.jutarnji.hr/vijesti/hrvatska/dijeli-ih-trometarski-zid-s-bodljikavom-zicom-reporteri-jutarnjeg-sa-sukobljenim-romima-i-hrvatima-travu-moramo-kositi-doslovce-s-kacigom-na-glavi/8967161/>, <https://www.jutarnji.hr/vijesti/hrvatska/reakcije-na-prosvjed-u-cakovcu-posavec-vrijeme-je-da-vlada-pocne-rjesavati-probleme-romske-manjine-kajtazi-ovim-se-potice-govor-mrznje/8954408/>.

²⁴⁰ Decision of the Varaždin County Court, no: KŽ-517/2020, 15 December 2020.

in Roma settlements, a large number of household members, inadequate sanitary conditions etc.²⁴¹

The representative of the Roma national minority in the Parliament informed the public and the Government of the Republic of Croatia about this long-standing problem of the Roma community in the context of the current pandemic, and pointed out that due to poor living conditions, Roma are among the most vulnerable groups. In addition to the threat to health, he pointed out the even greater vulnerability to poverty in the context of restrictions on the economy and reduced economic activity in the country. In this regard, he called for the construction of soup kitchens in Roma settlements that would provide them with one meal a day.

The living conditions of members of the Roma minority were further aggravated by the earthquakes in March 2020, which hit Zagreb, and in December 2020, which hit Sisak-Moslavina County, where a large number of members of the Roma national minority live, and their already poor living conditions were further worsened.

The houses in which they lived were of inferior and older construction and were demolished or destroyed in the earthquake to the point of being unusable. In the post-earthquake period, housing containers and mobile homes for citizens affected by the earthquake served as a temporary solution to the housing issue.

However, during the distribution of such housing solutions, there were also complaints about unequal criteria when allocating temporary houses. The representative of the Roma national minority in the Parliament pointed out that everyone had forgotten the Roma settlements and that they had not even visited them, let alone provided for their living conditions.

Roma people were stigmatised as thieves in the period immediately after the earthquake, which was marked by chaos in the public space and in the earthquake-affected area. Social networks and public media suggested that dangerous groups of Roma were robbing demolished houses, and individuals in some areas called for self-organisation in order to defend other groups against Roma people.

Members of the Roma national minority made frequent complaints that they could not get houses because they were Roma.

However, those Roma families who received temporary accommodation facilities did not receive adequate living conditions. Roma families have a larger number of members, in the case of one family from a village near Glina, 15 of them received one container. Therefore, temporary facilities were inadequate for them because they did not offer adequate conditions and enough living space.²⁴² There have been no recent reports on this issue, so it can be concluded that the problems have been resolved in the meantime.

²⁴¹ <https://www.slobodnaevropa.org/a/hrvatska-romi-korona-virus/30542202.html>;
<https://www.portalnovosti.com/vise-srece-nego-drzavne-pameti>.

²⁴² <https://www.portalnovosti.com/zaboravljeni-romi>.

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.²⁴³ This exception has to be interpreted in proportion to the aim and purpose for which it is provided.²⁴⁴

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).²⁴⁵

The case of a teacher of Catholic religious education is relevant in that respect. P.T.'s employers were two schools, both of which were 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 Court²⁴⁶ 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

²⁴³ Anti-discrimination Act, 9 July 2008, Article 9(2)(4).

²⁴⁴ Anti-discrimination Act, 9 July 2008, Article 9(3).

²⁴⁵ Anti-discrimination Act, 9 July 2008, Articles 9(2)(5) and 9(3).

²⁴⁶ Supreme Court of the Republic of Croatia, *P.T. v. Gimnazija E.K.*, Revr. 499/08, 3 December 2008.

school authorities had tried to secure another teaching position for him.²⁴⁷ The claimant relied on Article 8 and on Article 8 in conjunction with Article 14 of the convention. However, the European Court of Human Rights, referring to *Fernández Martínez v. Spain* (no. 56030/07), among other cases, found no violation of Article 8 and concluded that given its finding under Article 8, it was not necessary to examine the complaint under Article 8 taken together with Article 14 separately.

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.²⁴⁸

4.3 Armed forces and other specific occupations (Article 3(4) and Recitals 18 and 19, Directive 2000/78)

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

However, the Act on service in the armed forces,²⁴⁹ as *lex specialis*, provides general requirements for the armed forces in relation to age, health and physical abilities. Regarding the minimum age, the Act on service in the armed forces specifies that a person can be admitted into active military service as an active soldier if he or she is not older than 30.²⁵⁰ An active soldier can be promoted to lower officer status (*dočasnik*) if not older than 30,²⁵¹ and to officer status (*časnik*) if not older than 30.²⁵² 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,²⁵³ 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,²⁵⁴ which regulates employment in the prison services, sets a condition that, for a person to be admitted to the judicial police, they must be a maximum of 30 years of age.²⁵⁵

4.4 Nationality discrimination (Article 3(2))

a) Discrimination on the ground of nationality

²⁴⁷ 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]}).

²⁴⁸ Court of Justice of the European Union, Decision of 11 September 2018, *IR v. JQ*, C-68/17, EU:C:2018:696.

²⁴⁹ Act on service in the armed forces, 14 June 2013, *Zakon o službi u ružanim snagama Republike Hrvatske*, Official Gazette 73/13, 75/2015, 50/2016, 30/18, 125/19.

²⁵⁰ Act on service in the armed forces, Article 36.

²⁵¹ Act on service in the armed forces, Article 40.

²⁵² Act on service in the armed forces, Article 43.

²⁵³ Police Act, 31 March 2013, *Zakon o policiji*, Official Gazette 34/2011, 130/2012, 89/2014, 151/2014, 33/2015, 121/2016, 66/19, Article 47.

²⁵⁴ Judiciary Act, 14 March 2013, *Zakon o sudovima*, Official Gazette 28/13, 33/2015, 82/2015, 82/2016, 67/18, 126/19, Article 57.

²⁵⁵ Judiciary Act, 14 March 2013, *Zakon o sudovima*, Official Gazette 28/13, 33/2015, 82/2015, 82/2016, 67/18, 126/19, Article 57.

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.²⁵⁶ The act does not mention statelessness in any way.

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

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

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

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

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

There is no definition in the Anti-discrimination Act of nationality and race or ethnic origin as grounds of discrimination. The Anti-discrimination Act lists as prohibited grounds of discrimination race and ethnic origin as well as national (i.e. ethnic) or social origin. Citizenship is regulated by the Croatian Citizenship Act.²⁵⁷

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

²⁵⁶ Anti-discrimination Act, 9 July 2008, Article 9(2)(9).

²⁵⁷ Citizenship Act, 8 October 1991, *Zakon o državljanstvu*, Official Gazette 53/1991, 70/1991, 28/1992, 113/1993, 4/1994, 130/2011, 110/2015, 102/19.

citizens who were permanent residents in Croatia, and they had to fulfil all the numerous requirements for citizenship as third country nationals.²⁵⁸

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.²⁵⁹ Obtaining citizenship for Roma people remains an issue today and there is still a significant number of Roma with unresolved citizenship status.²⁶⁰

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.²⁶¹

A relevant case was the subject of proceedings before the European Court of Human Rights. The applicant B.H. filed an application arguing that he had been unlawfully erased from the register of residence in Croatia which had created an on-going situation making it impossible for him to regularise his residence status. The applicant, like many others, had not been informed of the erasure and had not had an opportunity to challenge it before the relevant authorities, since the erasure was carried out automatically and without prior notification. In his application he stated that erasure from the residence register and lack of personal documents had led to his loss of access to social and economic rights. The European Court of Human Rights found a violation of Article 8 of the European Convention, stating that in the particular circumstances the state had failed fulfil its positive obligation to provide an effective and accessible procedure or combination of procedures that would enable the applicant to decide on matters of his continued residence and status in Croatia, with due respect for the interests of his private life, protected under Article 8 of the Convention.²⁶²

In 2019, the Croatian Parliament agreed amendments to the Citizenship Act that are primarily aimed at facilitating the process of acquiring Croatian citizenship for Croats outside the Republic of Croatia.²⁶³ Unfortunately once again, by the amendments, the legislature failed to introduce adequate measures to solve the problems of acquiring citizenship for persons who have lived in the Republic of Croatia for a long time and who are not of Croatian nationality (ethnicity). This primarily refers to members of Roma community who, prior to gaining Croatian citizenship cannot acquire rights which belong to them as members of a national minority, since in order to become a minority, they first have to acquire citizenship.

The Ombudsperson carried out a study regarding the impossibility of changing data on ethnicity in the birth registry. Namely, during the implementation of a project by an NGO PGP Sisak, which aimed to help persons of Roma origin to declare themselves as members

²⁵⁸ 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>.

²⁵⁹ See: Zoon, I. (2002), *Report on obstacles facing the Roma minority in 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.

²⁶⁰ People's Ombudsperson (2015), *Ombudsperson's Report for 2014*, p. 33, available at: <https://www.ombudsman.hr/hr/izviesca-puckog-pravobranitelja/>.

²⁶¹ UNHCR's intervention as a third party in the ECtHR case of *Hoti v. Croatia*, No. 63311/14, 26 April 2018.

262 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%3A%22hoti%22%22documentcollectionid%22%3A%22GRANDCHAMBER%22%22CHAMBER%22%22itemid%22%3A%22001-182448%22%7D>.

263 Citizenship Act, 8 October 1991.

of the Roma national minority in order to exercise their rights as Roma, the Ombudsperson was informed that state administration offices reject requests for changes in the data on national affiliation entered during the basic registration in the birth register.

In the Republic of Croatia, everyone is free to declare that he or she is a member of a national minority. The parents decide on the nationality of their children when enrolling in the birth registry. Until 1994, data on nationality was not entered in the birth register. The obligation to enter such data was introduced by law in 2004, and the child's personal name and nationality are entered on the basis of a parent's statement. Unlike other data that is entered in the birth register, which can later be changed, nationality is not specified as data that can be changed. In this regard, the Ombudsperson requested an interpretation from the Ministry of Administration and recommended that the state administration offices be instructed on the potential for subsequent changes regarding nationality data.

The Ministry of Administration explained that it is true that the law does not allow nationality information entered on registration in the birth registry to be changed later. However, it stated that this is not important since every person is free to declare his/her nationality regardless of nationality data entered in the birth register. The Ministry concluded that belonging to a certain nation does not need to be proven by the documents since the declaration itself is enough.

The Ombudsperson found that the Ministry's interpretation could not be fully accepted because, for example, when applying for scholarships, Roma high school and university students often use a certificate from the voter list as proof of Roma affiliation, however, as minors are not registered in it, because they do not have the right to vote, a birth certificate is also used as proof. Of course, this is possible only if the information is registered in the birth register and if the registration really coincides with the feeling of belonging to the Roma minority.

Another example is the application for Croatian citizenship on the basis of belonging to the Croatian nation, which must be accompanied by documents proving a personal national declaration in legal documents, which can be an excerpt from the birth register, if it contains information about nationality. If, on the other hand, the party invokes the affiliation of his parents to the Croatian nation when submitting this request, proof of the national declaration of the parents must be submitted, which may also be an excerpt from the birth register for the parents. Thus, the Ombudsperson found that the birth certificate in various proceedings can serve as proof of a person's affiliation, and thus affects their personal status.

The Ombudsperson expressed the view that it is necessary to ensure the right of all citizens to freely express their national affiliation, and to enable them to ensure that official records, including the birth register, are in line with their feelings of national affiliation. In addition, bearing in mind that many citizens do not have just one national origin, the Ombudsperson stated that in collecting such data, it is necessary to enable a declaration of multiple affiliation, which was a recommendation made to the Republic of Croatia by the 2017 Resolution on the implementation of the Framework Convention for the Protection of National Minorities.²⁶⁴

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

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

²⁶⁴ People's Ombudsperson (2020) *Analysis: (Im) possibility of changing the data on national affiliation in the birth register*, available at: <https://www.ombudsman.hr/hr/analiza-nemogucnost-promjene-podatka-o-nacionalnoj-pripadnosti-u-matici-rodenih/>.

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

4.6.1 Direct discrimination

a) Exceptions to the prohibition of direct discrimination on grounds of age

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

b) 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.

All exceptions should be interpreted in a way that is proportionate to the aim and purpose for which they have been set.²⁶⁶

The Anti-discrimination Act explicitly lists specific potential legitimate aims as in Article 6 of the Directive.

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

c) 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.²⁶⁷

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 (genuine and determining occupational requirements);²⁶⁸
- 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;²⁶⁹

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

²⁶⁶ Anti-discrimination Act, 9 July 2008, Article 9.

²⁶⁷ Anti-discrimination Act, 9 July 2008, Article 9.

²⁶⁸ Anti-discrimination Act, 9 July 2008, Article 9(2)(4).

²⁶⁹ Anti-discrimination Act, 9 July 2008, Article 9(2)(6).

- 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;²⁷⁰
- 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;²⁷¹
- 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 Act²⁷² (e.g. this exception would justify an age limit for adoptive parents).²⁷³

d) Fixing of ages for admission to occupational pension schemes

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

The Anti-Discrimination Act explicitly stipulates that placement in a disadvantageous position based on age when contracting premiums, insurance policies and other insurance conditions in accordance with relevant and accurate statistics and rules of actuarial mathematics will not be considered discrimination. That exception must seek to achieve a legitimate aim and the measures must be appropriate and necessary to achieve that aim.²⁷⁴

Also, placement in a disadvantageous position based on age will not be considered discrimination if such conduct is objectively and reasonably justified by a legitimate aim, including the legitimate objectives of social policy, social care and healthcare, employment policy, the promotion of labour market objectives and vocational training, and if the means to achieve it are appropriate and necessary. For example, determining the appropriate and maximum age as a reason for termination of employment consistent with the conditions for acquiring the right to an old-age pension, and prescribing the age or reasonable period of employment as a condition for acquiring or exercising the right to a pension, or other rights from the social security system, including the area of social welfare, pension and health insurance, are not considered to be discriminatory.²⁷⁵

4.6.2 Special conditions for younger or older workers

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

There are no laws that have the sole purpose of promoting vocational integration. Regulations and measures that promote the vocational integration of younger workers are contained in the Labour Act and the Labour Market Act.²⁷⁶

The Labour Act and the Labour Market Act provide possibilities for workers without professional experience, who are mostly younger workers, to enter into a special kind of working contract with their employer called 'occupational training without commencing employment'.²⁷⁷ A person who is employed for the first time in the profession for which he/she was educated may be employed as an intern with the aim of being trained for

²⁷⁰ Anti-discrimination Act, 9 July 2008, Article 9(2)(8).

²⁷¹ Anti-discrimination Act, 9 July 2008, Article 9(2)(8).

²⁷² Anti-discrimination Act, 9 July 2008, Article 9(2)(10).

²⁷³ Family Act, 18 September 2015, Article 184, Official Gazette 103/15: minimum age of adoptive parent is 21 and minimum 18 years older than adopted child.

²⁷⁴ Anti-discrimination Act, Article 1(6).

²⁷⁵ Anti-discrimination Act, Article 1(8).

²⁷⁶ Labour Market Act, 1 January 2019, Official Gazette 118/18, 32/20, Labour Act, 15 July 2014.

²⁷⁷ Labour Act, 15 July 2014, Article 59.

independent work during the internship.²⁷⁸

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

In Croatia there is an active employment policy through various measures aimed at encouraging the employment of hard-to-employ groups of workers, which are in general prescribed by the Labour Market Act.²⁷⁹ These measures are defined by the programmes of the Croatian Employment Service, which plans and conducts measures of active employment policies on a yearly basis.²⁸⁰

Among these measures, several are aimed at younger people with no work experience and consist of financial incentives in the form of salary co-financing for employers who hire persons without work experience.

4.6.3 Minimum and maximum age requirements

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

The Labour Act stipulates the minimum age for employment – 15 years of age. A minor older than 15 cannot be employed until the end of his or her compulsory primary education.²⁸¹ A minor cannot be employed in work that may harm his or her safety, health, morality or development.²⁸²

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.²⁸³ 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,²⁸⁴ 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.²⁸⁵ There are also special age requirements for the armed forces (section 4.3 above).

4.6.4 Retirement

a) State pension age

In Croatia, there is a state pension age at which individuals must begin to collect their state pensions (65 years of age).²⁸⁶ The Ministry of Labour and Pension Insurance had announced a pension insurance reform by which the state pension age would be raised to 67, which caused resentment among the general public. During 2019, the labour unions

²⁷⁸ Labour Act, 15 July 2014, Article 55.

²⁷⁹ Labour Market Act, 1 January 2019, Article 35.

²⁸⁰ Labour Market Act, 1 January 2019, Article 35.

²⁸¹ Labour Act, 15 July 2014, Article 19.

²⁸² Labour Act, 15 July 2014, Article 21.

²⁸³ Anti-discrimination Act, 9 July 2008, Article 9(2)(7).

²⁸⁴ Fire-Fighting Act, 20 December 2019, *Zakon o vatrogastvu*, Article 51, Official Gazette 125/19.

²⁸⁵ According to the available information, this had not been challenged in court.

²⁸⁶ Labour Act, 15 July 2014, Article 112.

started a referendum initiative and collected a sufficient number of citizens' signatures for a referendum on the issue, following which the Government gave up the reform.

If an individual wishes to work longer, the pension cannot be deferred but individual can work on a short-term contract (in that case he or she can collect a pension and still work) or the employment can be prolonged, but in both cases the employer's consent is needed.²⁸⁷ 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 employee²⁸⁸ or as a self-employed short-term contractor (*ugovor o djelu*).

b) Occupational pension schemes

In Croatia, there is a standard age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements. The law sets a minimum age (50) when people can begin to receive payments from voluntary pension schemes, but not the maximum age.²⁸⁹

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

An individual can collect a pension and still work.

c) State imposed mandatory retirement ages

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

According to the Labour Act,²⁹⁰ 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;²⁹¹ for civil servants it is 65 and 15 years of pensionable service;²⁹² for public attorneys (and their deputies) it is 70;²⁹³ and for army employees it is 65 and 15 years of pensionable service.²⁹⁴

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.²⁹⁵

²⁸⁷ Labour Act, 15 July 2014, Article 112.

²⁸⁸ Pension Insurance Act, 24 December 2013, Article 37(6), Official Gazette 157/2013, 151/2014, 33/2015, 93/2015, 120/2016, 18/2018, 62/2018, 115/18, 102/2019.

²⁸⁹ Voluntary Pension Funds Act, 31 January 2014, *Zakon o dobrovoljnim mirovinskim fondovima*, Article 127.

²⁹⁰ Labour Act, 15 July 2014, Article 112.

²⁹¹ Act on State Judiciary Council, 21 October 2010, *Zakon o Državnom sudbenom vijeću*, Official Gazette [116/2010](#), [57/2011](#), [130/2011](#), [13/2013](#), [28/2013](#), [82/2015](#), [67/2018](#), [126/2019](#), Article 77(2)(5).

²⁹² Civil Servants Act, 27 July 2005, *Zakon o državnim službenicima*, Official Gazette [92/2005](#), [140/2005](#), [142/2006](#), [77/2007](#), [107/2007](#), [27/2008](#), [34/2011](#), [49/2011](#), [150/2011](#), [34/2012](#), [38/2013](#), [37/2013](#), [1/2015](#), [138/2015](#), [61/2017](#), [70/2019](#), [98/2019](#), Article 137(1)(3).

²⁹³ Act on the State Attorney's Office, 25 July 2018, *Zakon o državnom odvjetništvu*, Official Gazette no. 67/18, Article 27.

²⁹⁴ Act on service in the armed forces, 14 June 2013, Article 20 (21).

²⁹⁵ Labour Act, 15 July 2014, Article 112.

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

There is still no case law on this issue.

e) Employment rights applicable to all workers irrespective of age

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

f) Compliance of national law with CJEU case law

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

General compulsory retirement at the age of 65 (plus 15 years of pensionable service) might be problematic. The only exception, provided for by the Labour Act, is made if both employer and employee wish to prolong the employment. There is no exception of any kind in the Civil Servants Act and the Act on service in the armed forces. A legitimate aim might be freeing up posts for younger workers as Croatia has a high rate of youth unemployment (21-60 %).²⁹⁶

In 2020, the Constitutional Court decided on a proposal to initiate proceedings for a constitutionality assessment of the relevant provision of the Labour Act. The proposal was submitted with the argument that provision of the Labour Act that enforces automatic termination of employment when a worker reaches the age of 65 and has 15 years of pensionable service, introduces discrimination by age and abolishes the right to work for a certain age group. The proposer argued that retirement should be a right, not a coercion conditioned by law and that automatic termination of employment should be linked to retirement when the worker decides to retire, since every person should be able to choose whether to exercise his or her right to a pension when he or she reaches the age of 65. However, the Constitutional Court did not accept the proposal for assessment of constitutionality with the explanation that the proposer was in fact requesting an amendment to the law, which is not within the jurisdiction of the Constitutional Court, and that they had not stated detailed and precise reasons that would indicate a suspicion that the disputed provision was not in accordance with law.²⁹⁷

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 being a lack of medical doctors in Croatia.

The right of pharmacists and medical doctors to practice,²⁹⁸ 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.²⁹⁹

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

²⁹⁶ Trading Economics (2020) 'Croatia Youth Unemployment Rate': <http://www.tradingeconomics.com/croatia/youth-unemployment-rate>.

²⁹⁷ Constitutional Court of the Republic of Croatia, Decision no: U-I-6269/2014, 24 June 2020, available at: <https://sljeme.usud.hr/usud/praksaw.nsf/fOdluka.xsp?action=openDocument&documentId=C12570D30061CE54C125859600276FFD>.

²⁹⁸ They do not have to retire, but they cannot work as doctors or pharmacists.

²⁹⁹ Healthcare Act, 14 November 2018, Article 159.

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.³⁰⁰

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.³⁰¹

In 2020, the Constitutional Court decided in the case of an administrative court judge who filed an appeal against the decision of the State Judiciary Council on her dismissal from judicial duties because she had reached the age of 70. The judge claimed that she was discriminated against on the basis of age since she was allowed to work only up to the age of 70, while state officials as well as judges of the Constitutional Court and university professors do not have such a restriction and can work for an unlimited time. The Constitutional Court found that the Constitution itself presents a basis for dismissal of a judge from judicial office when reaching the age of 70. Therefore, that upon reaching that age, the judicial office ceases by virtue of the Constitution and at the same time creates the obligation of the state judicial office to establish cessation of judicial office by a formal decision. Therefore, there was no possibility of a different decision, as the judge herself does not dispute her age. Following this finding, her appeal was rejected.³⁰²

4.6.5 Redundancy

a) Age and seniority taken into account for redundancy selection

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

National law obliges an employer to take into account an employee's age when selecting workers for redundancy, but it does not specify in what way age should influence its decision.³⁰³

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.³⁰⁴

b) Age taken into account for redundancy compensation

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

The amount of compensation for redundancy is not affected by the age of the worker but by the length of his or her employment with the same employer.³⁰⁵

³⁰⁰ Zagreb Administrative Court, no. UsI-4894/13, 20 April 2015.

³⁰¹ High Administrative Court of the Republic of Croatia, No. UsI-828/15, 23 August 2017.

³⁰² Constitutional Court of the Republic of Croatia, decision no: U-IX-5329/2019, 9 January 2020, available at: <https://sljeme.usud.hr/usud/praksaw.nsf/fOdluka.xsp?action=openDocument&documentId=C12570D30061CE54C12584EA00347E03>.

³⁰³ Labour Act, 15 July 2014, Article 115.

³⁰⁴ Labour Act, 15 July 2014, Article 115.

³⁰⁵ Labour Act, 15 July 2014, Article 126.

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

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

According to the Anti-discrimination Act placement in a less favourable position is not discrimination when such conduct is carried out with the aim of preserving health and preventing criminal acts and misdemeanours, when the means used are appropriate and necessary for the aim to be achieved and when such conduct does not lead to direct or indirect discrimination based on race and ethnicity, skin colour, religion, gender, ethnic and social origin, sexual orientation or disability.³⁰⁶

4.8 Any other exceptions

In Croatia, other exceptions to the prohibition of discrimination (on any ground covered by this report) provided in national law are set out below.

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

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

The obvious aim of this exception is to prevent gay and lesbian persons from seeking protection against discrimination when family-related issues such as registered partnership or marriage, child adoption or medically assisted reproduction are at stake. The Same-sex Life Partnership Act, which later entered into force, partially regulated the rights of same-sex partners arising from family relations in accordance with the rights of married couples. However, the questions of adoption, foster care and medically assisted reproduction were not regulated by the Same-sex Life Partnership Act. These areas are still regulated exclusively by the Family Act, the Foster Care Act³⁰⁷ and the Medically Assisted Procreation Act, which do not allow adoption or medically assisted reproduction rights to same-sex couples.³⁰⁸

At the end of 2019, a heated public debate in Croatia began regarding the rights of the same-sex life partners to foster children. This was initiated by the ruling of the Zagreb Administrative Court in the case of a registered same-sex couple who submitted an application to the social welfare centre requesting permission to become foster parents. Their application was dismissed on the ground that the Foster Care Act stipulates that a foster family consists of a foster parent, the foster parent's spouse (the person they are married to) and other relatives who live in the same household.³⁰⁹ Consequently, as the law doesn't explicitly mention that registered same-sex life partners can become foster parents, the centre decided to dismiss the claimants' application without considering its merits. After the Ministry of Demographics, Family, Youth and Social Policy confirmed the Centre's decision, the couple filed a claim before the Zagreb Administrative Court. In its judgment, issued in December 2019, the court emphasised the fact that the Foster Care Act does not lay down any requirements regarding the sexual orientation of the future

³⁰⁶ Anti-discrimination Act, 9 July 2008, Article 9(2)(1).

³⁰⁷ Foster Care Act, 1 January 2019, *Zakon o udomiteljstvu*, Official Gazette 105/18.

³⁰⁸ Medically Assisted Procreation Act, Official Gazette 86/2012, *Zakon o medicinski pomognutoj oplodnji*, 4 August 2012.

³⁰⁹ Foster Care Act, 1 January 2019, Article 9.

foster parents as well as the fact that, by using this formalistic approach, a single homosexual person could become a foster parent, but they would not be given the same opportunity if they were in a same-sex life partnership, which is completely illogical and not in accordance with the purpose and the spirit of the Foster Care Act. The court ordered the centre to conduct new proceedings and reach a decision about the merits of the claimants' application.³¹⁰

In 2020, the Constitutional Court of the Republic of Croatia decided on the constitutionality of the Foster Care Act. The Constitutional Court found that restrictions relating to the procedural aspect of the institution of foster care which apply only to one (very small) group of potential foster parents determined solely by the form of family community in which they live according to their sexual orientation, are not necessary in a democratic society, are discriminatory and therefore unacceptable, disproportionate and show a disregard for the equality of same-sex partners compared to marital and extramarital partners. Although the Constitutional Court rejected the constitutionality proposal with the explanation that otherwise a legal gap could arise with potentially negative consequences for children whose protection is in the focus of the Foster Care Act, it clearly stated that bearing in mind the basic constitutional principle of gender equality and taking into account the legal prohibition of discrimination based on sexual orientation contained in the Anti-Discrimination Act, the Gender Equality Act and the Life Partnership Act, the courts and other bodies are obliged to interpret and apply the provisions in a way that will enable all persons to participate in the public foster care service under equal conditions, that is, regardless of whether the potential foster parent lives in a formal or informal life partnership.³¹¹

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

³¹⁰ Decision of the Zagreb Administrative Court, 29 December 2019, UsI-1699/18.

³¹¹ Constitutional Court of the Republic of Croatia, Decision no. U-I-144/2019, 29 January 2020, available at: <https://sljeme.usud.hr/usud/praksaw.nsf/fOdluka.xsp?action=openDocument&documentId=C12570D30061CE54C12585060030E2EC>.

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 considered 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.³¹² This exception is to be interpreted in proportion to the aim and purpose for which it is provided.³¹³ 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.

The Act on professional rehabilitation and employment of persons with disabilities provides that when giving employment, state bodies, public administration bodies and public institutions are obliged to give priority to persons with disabilities under equal conditions.³¹⁴ This means that when making a decision on employment between different candidates under the condition that all of the candidates have achieved equal results on testing, interview etc., if one of the candidate is a person with a disability, the employer is obliged to give this candidate priority.

In a relevant case, a person with a disability filed a constitutional complaint stating that he had been denied the 'right of priority under equal conditions' during the process of applying for a position of deputy chief prosecutor and claiming, among other things, that such conduct represents discrimination. The claimant who had scored a lower score on the tests than the candidate who had eventually been employed, argued that he had not been treated equally and that, according to the specified provision, as a person with a disability, he had to be employed. However, the Constitutional Court clarified that in this case, the applicant had had a lower score on the relevant test than the other candidate and that therefore the 'equal conditions' requirement had not been fulfilled. Consequently, the Constitutional Court concluded that the applicant had not been discriminated against.³¹⁵

An example of a positive action measure on the ground of age in the area of housing is the state subsidy of housing loans for persons under the age of 45. It is a measure of state financial assistance intended to facilitate housing for the 'younger' population by repaying a part of their mortgage and is regulated by the Act on subsidising housing loans.³¹⁶ Another example is the free flu vaccination for people aged 65 or older.³¹⁷

³¹² Anti-discrimination Act, 9 July 2008, Article 9(2)(2).

³¹³ Anti-discrimination Act, 9 July 2008, Article 9(3).

³¹⁴ Act on professional rehabilitation and employment of persons with disability, 13 December 2013, Article 9

³¹⁵ Constitutional Court of the Republic of Croatia, Decision No. U-III-4141/2018, 6 March 2019, available at: [https://sljeme.usud.hr/Usud/Praksaw.nsf/C12570D30061CE54C12583B70030C358/\\$FILE/U-III-4141-2018.pdf](https://sljeme.usud.hr/Usud/Praksaw.nsf/C12570D30061CE54C12583B70030C358/$FILE/U-III-4141-2018.pdf).

³¹⁶ Act on subsidising housing loans, 15 June 2017, Official Gazette 65/17, 61/18, 66/19.

³¹⁷ Croatian Institute of Public Health, Announcement of 28 October 2019, available on <https://www.hzjz.hr/sluzba-epidemiologija-zarazne-bolesti/pocinje-cijepljenje-protiv-gripe-2/>.

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

b) Quotas in employment for people with disabilities

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

The Act on professional rehabilitation and employment of persons with disabilities introduced a quota system for all employers (in both private and public sectors) who employ at least 20 workers, with the quota of disabled employees set between 2 % and 6 %. If the employer fails to fulfil that obligation, they must pay a monthly fee in the amount of 20 % of the minimum salary in the Republic of Croatia for each person with disability he was obliged to employ in order to fulfil the prescribed quota. Monthly fees are paid directly to the state budget on the basis of the financial report submitted to the tax administration office. These funds are used for the sustainability and development of the professional rehabilitation of people with disabilities, incentives for the employment of people with disabilities and funding of projects and programmes for the employment of people with disabilities.³¹⁸

In 2020, the total amount of funds paid by the employers as fees for not employing people with disabilities reached approximately EUR 21 298 956 (HRK 159 742 174). In their most recent annual report, the Disability Ombudsperson reported that during 2020, the number of employers who are not under a quota employment obligation and who nevertheless choose to employ persons with disabilities had increased as had the number of employees with disabilities employed by such employers. The number of employers under the quota obligation who decided to employ people with disabilities above the prescribed quota during 2020 has also increased.³¹⁹

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.

All employers are eligible for state funding to help with the costs of reasonable accommodation and to certain incentives if they employ a person with disability, but only for those employees with disabilities who are registered in the Register of the Pension Insurance Institute.³²⁰ 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 People 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.

³¹⁸ Act on professional rehabilitation and employment of persons with disability, Article 10(6).

³¹⁹ Disability Ombudsperson (2021), *Report for 2020*, available at: <https://posi.hr/wp-content/uploads/2021/04/Izvjesce-o-radu-Pravobranitelja-za-osobe-s-invaliditetom-za-2020.-godinu.pdf>.

³²⁰ 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.

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).³²¹

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.³²²

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.³²³ 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

³²¹ Misdemeanour courts deal with minor offences; Misdemeanours Act, 3 October 2007, *Prekršajni zakon*, (Official Gazette 107/2007, 39/2013, 157/2013, 110/2015, 70/17, 118/18).

³²² Civil Procedure Act, 24 December 1976, *Zakon o parničnom postupku*, Article 186(a).

³²³ 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.³²⁴

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,³²⁵ as a rule such proceedings in courts in bigger cities last several years.
- 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.

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:³²⁶ 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.

The People's Ombudsperson continuously receives complaints in relation to the (non) realisation of free legal aid rights. Obstacles in this area concern the difficulties in hiring a lawyer and the long duration of resolving requests for secondary free legal aid; some county administrative departments take too long to resolve requests, persons in need of free legal aid, due to lack of information, submit requests too late and in the meantime, the deadlines for filing complaints, appeals, lawsuits or other legal remedies expire.

Despite the Ombudsperson's recommendations on the need for greater availability of information on free legal aid, the relevant information can only be found on the websites of the Ministry of Justice and providers, although many potential users of free legal aid do not use the internet as their primary source of information. The Ombudsperson pointed

³²⁴ Anti-discrimination Act, 9 July 2008, Article 12(2)(5).

³²⁵ The provision is mandatory; Article 434(4) of the Civil Procedure Act.

³²⁶ People's Ombudsperson (2016) *Ombudsperson's Report for 2015*, p. 20.

out that there is a need for more information to be provided by the media and in leaflets in public institutions.³²⁷

The People's Ombudsperson has also noted that fewer and fewer lawyers are willing to be on the list for providing secondary legal aid.

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. Two decisions of the Constitutional Court that were issued during 2020 related to complaints of violation of the right to a trial within a reasonable time in anti-discrimination proceedings, support this argument. In both cases, the Constitutional Court upheld the constitutional complaints and awarded the applicants compensation for the violation of their right to a trial within a reasonable time.³²⁸ It is notable that in one of the cases, the proceedings lasted for eight years and in other they lasted for four years.

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.³²⁹

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.³³⁰

c) Number of discrimination cases brought to justice

In Croatia, statistics on the number of cases related to discrimination brought to justice are available. As a rule, the statistics form part of the Ombudsperson's annual report. In her *Annual Report for 2020*, the Ombudsperson reported that by the time of issuing the report, she had not received the statistics on case law related to discrimination from the Ministry of Justice and Administration. Therefore, in the Ombudsperson's annual report for 2020 there is no information on the exact number of cases related to discrimination brought to justice during 2020.³³¹

For this reason, the relevant statistics for 2019 are presented as the most recent available data.

Civil proceedings

The latest available data refers to 2019, when 187 civil proceedings regarding discrimination were pending. Most of the cases are about discrimination in employment

³²⁷ People Ombudsperson (2020), *Report for 2019*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/#1556196748399-8e18fee7-b3c6>.

³²⁸ Constitutional Court of the Republic of Croatia, decisions no.: U-IIIA-1038/2020, 9 September 2020, and U-IIIA-3623/2019, 1 October 2020

³²⁹ 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.

³³⁰ Kesonja, D. and Einwalter T.S. (CMS) (2017) *Analysis of case law in Croatia regarding proceedings initiated for discrimination*, Zagreb.

³³¹ People's Ombudsperson (2021), *Report for 2020*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

filed by employees, mainly because their employment contract had been cancelled or because their rights were violated to such a degree that the fear of victimisation has become irrelevant to them.

Unlike in previous years, in which there was a noticeable trend of decline in relation to anti-discrimination civil proceedings, the number of civil proceedings during 2019 was almost identical to 2018 when there were 186 civil proceedings.³³²

In 2019, 48 proceedings were closed: 6 claims had been granted, 26 were denied, while 16 had been closed 'in another way', without further explanation. In 2019, one civil discrimination case was initiated by a joint action (*udružna tužba*).³³³

Criminal proceedings

According to the latest available data in 2019, 24 criminal proceedings connected to discrimination were pending, which is a slight increase in comparison to the previous year when 19 criminal proceedings were registered. In 2019, 8 cases were closed and in 6 cases the defendant was found guilty.³³⁴

Although the number of criminal proceedings has been growing slowly for years, it is still rather low. The largest number of proceedings were conducted for sexual harassment and public incitement to violence and hatred motivated by race or ethnic affiliation or national origin, gender, sexual orientation, language, social status or other characteristics. Among the cases in which proceedings were initiated in 2019, race, ethnicity or national origin, as well as gender and sexual orientation remained the main motives for discriminatory treatment.³³⁵

Often, defendants who have committed a criminal offence are prosecuted for a misdemeanour. For example, in 2018, one politician made a comment on the internet that the members of an NGO initiative should be shot and that it was likely to happen soon (because he disagreed with their campaign). He was prosecuted for a misdemeanour and sentenced to pay a fine of EUR 666 (HRK 5 000). Such sanctions disregard adequate social condemnation and the prevention of future criminal offences.³³⁶

In her most recent annual report, the People's Ombudsperson reported that during 2020 the Ministry of Interior acted in 87 criminal offences of hate crime, which is significantly more than in 2019 (51). As growth was recorded in both 2018 and 2019, this is a continuous trend. As in previous years, the most common offences were damage to another's property (29) and threat (24). The great majority of perpetrators were motivated by the national or ethnic origin of the victim, which was the motive in as many as 69 cases, while in the remaining cases, victims were targeted because of their religion (8), sexual orientation (7), and one case was motivated by hatred on the basis of gender, gender identity, and language.³³⁷

³³² People's Ombudsperson (2020), *Report for 2019*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/#1556196748399-8e18fee7-b3c6>.

³³³ In Croatia, an association may bring a joint legal action (association action, *udružna tužba*), if it demonstrates plausibly that the defendant's conduct has violated the right to equal treatment of a larger number of persons who predominantly belong to the group whose rights the association defends, and the association may file this action without a specific victim to support or represent.

³³⁴ People's Ombudsperson (2020), *Report for 2019*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/#1556196748399-8e18fee7-b3c6>.

³³⁵ People's Ombudsperson (2020), *Report for 2019*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/#1556196748399-8e18fee7-b3c6>.

³³⁶ People's Ombudsperson (2019), *Report for 2018*.

³³⁷ People's Ombudsperson (2021), *Report for 2020*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

Misdemeanour cases

According to the latest available data, in 2019, 248 misdemeanour cases related to discrimination were pending, which was an increase in comparison to previous years (81 were filed before 2019, 106 were filed during 2019 and 61 were received under the Territories and Seats of Courts Act). During 2019, 101 cases were closed: in 67 cases the defendants were found guilty, in 21 cases the defendant were acquitted from charges and 13 cases were resolved in another way, without further explanation.³³⁸

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

In her recent annual report, on the basis of the case law that was available to her and which does not include all relevant court decisions, the Ombudsperson concluded that national origin is by far the most common motive for committing misdemeanour offences concerning discrimination. The Ombudsperson concluded that this coincides with data from previous years, when national origin was also the most common cause of misdemeanour prosecution. In addition, in several cases, individuals have been the target of harassment because of their religious affiliation, which sometimes occurs in combination with ethnicity. Other grounds of discrimination most often include race, ethnicity or skin colour, gender and sexual orientation.³³⁹

When assessing misdemeanour liability for harassment based on national origin it is irrelevant whether the injured party is indeed of the national origin on the basis of which he was harassed. The essential element is the intent of the defendant to create a humiliating and insulting environment. Victims are in most cases members of the Serbian national minority, who are often referred to as 'Chetniks' but also people of Bosniak origin and Islamic religion. There is still a significant degree of social distance, prejudice and hate in relation to members of the Serbian national minority. They are commonly equated with war-related aggressors and are exposed to insult, public commentary on reducing their recognised minority rights and violent assaults.

In addition, more and more offences are committed through social networks, when the defendant expresses himself/herself in an insulting or humiliating way in referring to individuals or members of a certain group in comments or posts.

d) Registration of national court decisions on discrimination

In Croatia, court decisions on discrimination are registered as such by national courts.

The Anti-discrimination Act³⁴⁰ states that all judicial bodies should keep statistics on cases related to discrimination with data on the grounds and fields of discrimination and forward them to the Ministry of Justice, and that the Ministry of Justice should forward these statistics to the Ombudsperson no later than 1 February of the year following the year for which these data are collected. The statistics are then usually included in the Ombudsperson's annual report on discrimination.

³³⁸ People's Ombudsperson (2020), *Report for 2019*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/#1556196748399-8e18fee7-b3c6>.

³³⁹ People's Ombudsperson (2021), *Report for 2020*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

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

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

- a) Engaging in proceedings on behalf of victims of discrimination (representing them)

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

As a rule, associations cannot represent an individual victim in court, with the exception of lawyers employed by the trade unions, who can represent workers in labour disputes.³⁴¹

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

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

As an intervenor, an association (i.e. a body, organisation, institution, association or another person, which, within its scope of activities, deals with the protection of the right to equal treatment in relation to groups whose rights are decided upon in the proceedings) can join a claimant. The court must allow participation of the intervenor only with the claimant's consent.

Entities that are entitled under national law to act in support of victims of discrimination are defined by the Anti-discrimination Act as 'a body, organisation, institution, association or another person, which, within its scope of activities, deals with the protection of the right to equal treatment in relation to groups whose rights are decided upon in the proceedings'.³⁴²

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

Civil society organisations are the most common interveners in court proceedings and so far, their intervention has been most visible in proceedings on discrimination on the basis of sexual orientation. In addition, civil society organisations as interveners participated in proceedings on discrimination based on national origin, ethnicity, religion and political belief. It is to be assumed that the motive for intervening is the gravity of the discriminatory treatment. However, bearing in mind the number of civil society organisations in Croatia dealing with human rights and the number of court proceedings in which civil society organisations have joined the proceedings as interveners, it can be concluded that this legal instrument is still insufficiently used.³⁴³

Although the People's Ombudsperson also has the right to intervene in court proceedings, she does not often use this authority. According to the available information, the last proceedings in which it is known that the Ombudsperson participated as intervenor date from 2013.

- c) Actio popularis

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

³⁴² Anti-discrimination Act, 9 July 2008, Article 21.

³⁴³ 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 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.

The Ombudsperson also has the power to bring a case as *actio popularis*. However, so far the Ombudsperson has not used this competence.

An association may bring a joint legal action (association action, *udružna tužba*), if it demonstrates plausibly that the defendant's conduct has violated the right to equal treatment of a larger number of persons who predominantly belong to the group whose rights the association defends, and the association may file this action without a specific victim to support or represent. Such an action can be brought in the public interest on an association's own behalf. The law is not clear as to whether such an action may be brought in the interest of a larger number of individual victims.³⁴⁴

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

By filing a joint legal action (*udružna tužba*),³⁴⁵ 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.³⁴⁶

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.

After the complaint was rejected by the first and the second instance court as unfounded, the Supreme Court acting as a third instance court and referring to *Feryn*,³⁴⁷ made a new decision, finding the statement discriminatory. The Court determined that the factual situation of the case is in accordance with the factual situation in *Feryn*, and therefore, that the legal opinion expressed in the 'ECtHR decision' in the *Feryn* case had to be observed in the context of the case of Z.M.³⁴⁸

At 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, and specifically his statement that gay people will not play in the national football team as long as he is the president of the Croatian Football

³⁴⁴ Anti-discrimination Act, 9 July 2008, Article 24.

³⁴⁵ 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.

³⁴⁶ Anti-discrimination Act, 9 July 2008, Article 24.; Civil Procedure Act, 24 July 2014, Article 502a.

³⁴⁷ 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>.

³⁴⁸ The judgment falsely stated that the *Feryn* case was decided by the ECtHR rather than the CJEU.

Association. In this case the Supreme Court acting as an appellate Court found that V.M. had discriminated against homosexual persons and ordered him to publicly apologise.³⁴⁹

There were also two joint anti-discrimination actions filed by conservative civic organisations complaining of discrimination against persons of Catholic religion in connection to satirical media reports about a religious event and comments made by the former President of Croatia on Facebook regarding the excessive media reporting of the religious holiday. In both cases the courts determined that the situations in question did not lead to discrimination against persons of Catholic religion.³⁵⁰

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.³⁵¹

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 Article 20 of the Anti-discrimination Act³⁵² 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 plausible³⁵³ 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.'

The wording of this provision can be read as less favourable to the victim than the Directives. However, while in previous reports the People's Ombudsperson reported that the courts have not applied the rule on burden of proof in anti-discrimination proceedings consistently, which the Ombudsperson identified as a possible obstacle to seeking anti-discrimination protection, in more recent reports the People's Ombudsperson has not mentioned this as an issue.

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

'In practice, admittedly, it is often extremely difficult to prove a racist motive. The obligation on the respondent State to investigate possible racist overtones to an act of violence is an obligation of the means employed rather than an obligation to achieve a specific result. The authorities must take all reasonable measures, having regard to the circumstances of the case ...[and] ... do what is reasonable in the circumstances to collect and secure the evidence, explore all practical means of

³⁴⁹ Supreme Court of the Republic of Croatia, No.GŽ.25/11, judgment of 28 February 2012.

³⁵⁰ Supreme Court of the Republic of Croatia, Decision No. GŽ4-/2019, 5 March 2019, available at: <https://sudskapraksa.csp.vsrh.hr/decisionPdf?id=090216ba8096c5b2>.

³⁵¹ Anti-discrimination Act, 9 July 2008, Articles 21 and 24.

³⁵² 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>.

³⁵³ The phrase used in the official text '*učiniti vjerojatnim*' corresponds to the English phrase 'to render credible'.

discovering the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of racially induced violence.³⁵⁴

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.³⁵⁵

Such actions lead to misdemeanour liability. Those people who are, under special laws, entrusted with certain duties in a legal entity or authorised to act on behalf of the legal entity, may be punished with a fine ranging from EUR 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 27 397.³⁵⁶

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

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

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

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

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.³⁵⁷

The Anti-discrimination Act does not provide any rules on compensation and the general rules of the Civil Obligations Act and its tort provisions (i.e. its provisions on damage and compensation) are to be applied.

Under these rules, in the event of a violation of personality rights, the court 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.³⁵⁸ It is responsibility of the court to interpret the 'objective of compensation' in accordance with the established standards of effective, proportionate and dissuasive sanctions.

³⁵⁴ European Court of Human Rights, decision in *Škorjanec v. Croatia*, No. 25536/14, 28 March 2017, Para. 54, 55, 57.

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

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

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

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

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

Misdemeanour

The Anti-discrimination Act specifies misdemeanour liability and sanctions in cases of harassment and sexual harassment. A fine is imposed on natural persons, responsible persons in legal entities,³⁵⁹ 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.³⁶⁰

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

Criminal

The Criminal Code³⁶¹ defines hate crime as any criminal offence committed because of another person's race, colour, religion, national or ethnic origin, disability, gender, sexual orientation or gender identity. Such conduct is to be considered as an aggravating circumstance.³⁶²

When a criminal offence of physical injury is committed as a hate crime it is always prosecuted ex officio and the sanction is more severe.³⁶³ But it is not a hate crime when a victim is attacked because of her association to a person with certain characteristics (e.g. the non-Roma wife of a Roma person would not be considered a victim of a hate crime although her association with her Roma husband is the only motive for an attack).³⁶⁴

The criminal offence of discrimination (Article 125 of the Criminal Code) – a crime subject to public prosecution³⁶⁵ and punishable by up to three years of imprisonment – is defined as denying, limiting or setting conditions to the right to acquisition of goods or services, employment and promotion, or giving benefits, because of one's race, ethnic belonging, colour, gender, language, religion, national (ethnic) origin (...) age, disability and sexual orientation.³⁶⁶ Persecution of individuals or organisations because of their demands for equality is also a criminal offence, which is prosecuted by the State Attorney's Office, following a victim's application and is punishable by up to three years of imprisonment.³⁶⁷

Harassment in employment (insulting, humiliating, abusing or harassing someone in any other way) is a criminal offence, punishable by up to two years of imprisonment, when it impairs the health of a victim.³⁶⁸

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

³⁶⁰ Misdemeanour Act, 3 October 2007, Article 6.

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

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

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

³⁶⁴ Zagreb Public Attorney Office, Case No. Ko-DO-1204/13.

³⁶⁵ In the Croatian legal system, criminal offences are in general subject to public prosecution. Exceptionally, for certain criminal offences, it may be prescribed by statute that criminal proceedings shall be instituted by a private charge (*privatna tužba*), or that the State Attorney's Office shall institute criminal proceedings following a victim's application (*prijedlog za progon*).

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

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

³⁶⁸ Criminal Code, 21 October 2011, Article 133.

b) Compensation – maximum and average amounts

There is no ceiling on the maximum amount of compensation that can be awarded, under the law. However, in 2002 the Supreme Court of the Republic of Croatia adopted guiding criteria for non-pecuniary damage (physical and mental pain, fear, mental pain caused by the death of a spouse or child, etc.) and the courts use them as guidelines in all cases when they are deciding on non-pecuniary damage. The guidelines specify the amounts to be awarded for various types of non-pecuniary damage with the maximum award of HRK 220 000 (approximately EUR 29 000), for the most serious damage e.g. death of a spouse or child.³⁶⁹ At its sessions held in March and June 2020, the Supreme Court decided to increase the guiding criteria for non-pecuniary damage in civil proceedings by 50 % in comparison to earlier amounts, which is expected to have a positive impact in anti-discrimination proceedings, by leading to the award of higher amounts of compensation.³⁷⁰

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)³⁷¹ as non-pecuniary damages, which was almost the maximum amount established by the Supreme Court's guiding criteria at the time.³⁷² 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.³⁷³ However, during 2019, HRK 50 000 to 55 000 (approximately EUR 6 000 to 7 000) were more often awarded. This positive change in case law could be interpreted as the result of the application of criteria based on which the sanction must be proportionate, appropriate and dissuasive in order to provide satisfaction to the victim and prevent potential perpetrators from discriminating.³⁷⁴ Nevertheless, the cases in which compensation exceeds EUR 6 000 (HRK 50 000) are still the exception.

In one anti-discrimination case, the court awarded the victim compensation of HRK 70 000 (approximately EUR 10 000), which can be considered a high amount of compensation.³⁷⁵ The court has not specified the reasons for awarding damages in the stated amount but it can be inferred that the reason for the higher financial compensation is that the claimant could not attend classes regularly due to illness and remained without grades, which is why he had to repeat the school year. The court found that in this way the school had prevented him from exercising his right to education.

³⁶⁹ 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.

³⁷⁰ Supreme Court of the Republic of Croatia, decision of the second session of the civil department, No. Su-IV-47/2020-5, available at: http://www.vsrh.hr/custompages/static/HRV/files/PravnaShvacanja/zadnja_verzija_VSRH_GO_2020_Su-IV-47-2020-5_2020-3-5_sjed02.pdf.

³⁷¹ The maximum award at the time was set at EUR 29 000.

³⁷² 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>.

³⁷³ 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.

³⁷⁴ People's Ombudsperson (2020), *Report for 2019*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/#1556196748399-8e18fee7-b3c6>.

³⁷⁵ Decision of Varaždin County Court, GŽ-647/2019.

c) Assessment of the sanctions

The Anti-discrimination Act does not contain exact rules on compensation nor prescribe any fixed parameters in relation to amounts of compensation in civil proceedings. When deciding on the amount of fair non-pecuniary compensation, the court must take into account general criteria prescribed by the Civil Obligation Act – the degree and duration of the physical and mental distress and fear caused by the violation, the objective of this compensation and the fact that it should not encourage expectations that are not compatible with its nature and social purpose. Under these rules, the courts are allowed to apply the appropriate amount of compensation depending on the circumstances of the individual case. It is the responsibility of the court to interpret the 'objective of compensation' in accordance with the established standards of effective, proportionate and dissuasive sanctions.

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

Offences motivated by discrimination are usually prosecuted as misdemeanours and not as criminal offences, although the basis for criminal prosecution in the law exists. In misdemeanour cases, as a rule, judges mitigate the amounts set by law with the result that fines are rather low (EUR 40 to EUR 400) and do not contribute to the specific or general prevention of discrimination.

The People's Ombudsperson has also noted that sanctions imposed in misdemeanour proceedings are not adequate and effective and do not contribute to general and specific prevention since in most cases sanctions consist of a fine or a suspended prison sentence.³⁷⁶

Furthermore, although the law provides for imprisonment as a sanction in misdemeanour cases, a financial fine remains the most common sanction and is imposed in 90 % of cases, while in the remaining cases the defendants are sentenced to community service.

In criminal proceedings, probation remains the most commonly imposed sanction while prison sentences are regularly not imposed so that the most severe sanctions, although provided for by law, are not used in practice.

³⁷⁶ 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 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.³⁷⁷ The Ombudsperson is the main body for the elimination of discrimination based on other grounds as well, with the exception of disability, which falls within the responsibilities of the Disability Ombudsperson, and gender and sexual orientation, which is dealt with by the Gender Equality Ombudsperson. Further, when the victim of discrimination is a child, it falls within the responsibility of the Ombudsperson for Children. The latter three ombudspersons have similar powers in connection with discrimination based on the grounds covered by them (they receive individual complaints, issue recommendations, publish annual reports etc).

The duty of the People's Ombudsperson, as a commissioner of the Croatian Parliament, is to protect the constitutional and legal rights of citizens in their dealings with the state administration and bodies vested with public authority. The Anti-discrimination Act has given it the role of the specialised body for the promotion of equal treatment.

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

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

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

The Ombudsperson, as a commissioner of the Croatian Parliament, submits regular annual reports on the status of human rights and freedoms in the Republic of Croatia, after which the Parliament conducts a debate and votes on whether to accept the Ombudsperson's report. At a session in May 2016, the Parliament rejected the Ombudsperson's annual report (for 2015) for the second time since the Office of the People's Ombudsperson was established. Rejection of the report did not have any formal consequences for the Ombudsperson's mandate, although it was mentioned in the media that the procedure for the Ombudsperson's dismissal would be initiated. The fact that the Parliament did not accept the Ombudsperson's report could be interpreted as political pressure on the independence of the Ombudsperson and it certainly diminishes the importance of the recommendations presented in the report.³⁷⁸ It should be mentioned that the

³⁷⁷ Anti-discrimination Act, 9 July 2008, Article 12(1).

³⁷⁸ 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 2016.³⁷⁹ In the years following, the Ombudspersons' reports were accepted by the Parliament.

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

Regarding the political pressure on the work of the Ombudsperson's Office, it should be noted that in her 2017 report, the Ombudsperson pointed to the interference of the highest officials of the Ministry of Interior who publicly criticised the Ombudsperson's reporting on the conduct of police officers in the case of the tragic death of a six-year-old Afghan girl on the border of Croatia and Serbia.³⁸⁰

The People's Ombudsperson has also reported a concerning practice of the Ministry of the Interior regarding the denial of direct access and insight into data on the treatment of irregular migrants in the information system. Given that this is the only source of relevant data, it is perceived as a barrier to fully exercising the Ombudsperson's competences as provided by the Ombudsperson's Act. This has been repeatedly reported to the Croatian Parliament, but no specific actions to correct the situation have been taken.³⁸¹

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. In comparison to 2019, the budget of the Ombudsperson's Office for 2020 was increased by 3.13 %.³⁸²

c) Institutional architecture

In Croatia, the Ombudsperson, as the designated body for the promotion of equal treatment irrespective of racial or ethnic origin according to Article 13 of the Racial Equality Directive has multiple mandates, which in addition to its position as the main equality body, include duties in connection to its role as the commissioner of the Parliament for the protection of human rights and freedoms, as well as its responsibilities regarding its function as the National Preventive Mechanism for the Protection of Persons Deprived of Freedom. The Ombudsperson was also given a mandate under the recently adopted Whistle-blowers Protection Act as a competent authority for the external reporting of irregularities.³⁸³

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.³⁸⁴

³⁷⁹ See Ombudsperson for Children (2017) *Report for 2016*, available at: <http://dijete.hr/en/reports-of-the-ombudsperson-for-children/>.

³⁸⁰ People's Ombudsperson (2018), *Report for 2017*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

³⁸¹ People's Ombudsperson (2020), *Report for 2019*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/#1556196748399-8e18fee7-b3c6>.

³⁸² People's Ombudsperson (2021), *Report for 2020*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

³⁸³ Whistle-blowers Protection Act, 1 July 2019, *Zakon o zaštiti prijavitelja nepravilnosti*, Official Gazette 17/19.

³⁸⁴ According to the People's Ombudsperson's webpage, available at: <https://www.ombudsman.hr/hr/#>.

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

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

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

Given the number of complaints addressed to the Ombudsperson regarding specific cases of discrimination, which increases every year, and the fact that the majority of complaints received by the Ombudsperson's Office relate to discrimination, it can be concluded that the Ombudsperson's equality mandate has been recognised by the public.³⁸⁵

d) Status of the designated body – 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.³⁸⁶ 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

³⁸⁵ In 2019, the Ombudsperson's Office acted upon 842 discriminatory complaints.

³⁸⁶ Act on People's Ombudsperson 9 July 2012; Anti-discrimination Act, 9 July 2008.

The independence of the Ombudsperson is stipulated in the Constitution and the Ombudsperson is considered to be independent by the relevant stakeholders.³⁸⁷ Every form of influence on the work of the Ombudsperson is prohibited. In exercising its authority, the Ombudsperson acts in accordance with the constitutional and legal provisions and internal legal acts on the protection of human rights and freedoms adopted by the Republic of Croatia. In practice, the Ombudsperson has independently exercised its powers, according to the constitutional guarantees.

In March 2019, at the session of the Subcommittee on Accreditation (SCA) of the Global Alliance of National Human Rights Institutions (GANHRI), which operates within the UN Human Rights Council, the Ombudsperson was confirmed as having the status of the highest A level of compliance with the Paris Principles, as a fully independent institution.³⁸⁸

e) Grounds covered by the designated body

The mandate of the Ombudsperson as the designated body for the elimination of discrimination covers discrimination based on race or ethnic origin or colour, language, 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.

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

i) Independent assistance to victims

In Croatia, the designated body has the competence to provide independent assistance to victims. The Ombudsperson has the power to provide information necessary to natural and legal persons who have filed a complaint of discrimination with regard to their rights and obligations and on their options for legal and other protection. If court proceedings have

³⁸⁷ Constitution of the Republic of Croatia, 22 December 1990, Article 93.

³⁸⁸ People's Ombudsperson (2020), *Report for 2019*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/#1556196748399-8e18fee7-b3c6>.

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.³⁸⁹

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

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

ii) Independent surveys and reports

In Croatia, the designated body has the power to conduct independent surveys and publish independent reports.

In connection to his/her responsibilities as the central anti-discrimination body the Ombudsperson has the power to conduct surveys on discrimination. For example, in 2016, the Ombudsperson conducted a survey on visible forms of discrimination and the opinions of people regarding the different forms of discrimination to which they were exposed.³⁹⁰ In 2019 the Ombudsperson conducted research on the presence of hate speech on the internet among youth.³⁹¹

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.³⁹²

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

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

iii) Recommendations

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

³⁸⁹ Anti-discrimination Act, 9 July 2008, Article 12.

³⁹⁰ People's Ombudsperson (2017), *Ombudsperson's Report for 2016* <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

³⁹¹ People's Ombudsperson (2020), *Report for 2019*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/#1556196748399-8e18fee7-b3c6>.

³⁹² Anti-discrimination Act, 9 July 2008, Article 12.

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.³⁹³

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.

In her most recent annual report, the Ombudsperson stated that the implementation of recommendations has significantly decreased in recent years. The last Ombudsperson's Report discussed by the Croatian Parliament was the one for 2017. The Ombudsperson found that in 2020, the competent authorities acted or are acting on only 20 % of her recommendations, which is significantly less than year before (26 %) and also less than for the *Report for 2015* (29 %), which was not accepted by the Croatian Parliament. The Ombudsperson expressed the view that it is particularly worrying that the Government did not respond to as many as 60 % of the recommendations, which is a significant increase in comparison to the previous year (48 %).³⁹⁴

iv) Other competences

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

³⁹³ Anti-discrimination Act, 9 July 2008, Article 12.

³⁹⁴ People's Ombudsperson (2021), *Report for 2020*, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>.

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.³⁹⁵

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

g) Legal standing of the designated body

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

The Ombudsperson's authority to bring discrimination complaints includes the authority to file criminal charges for discrimination to the State Attorney's office.³⁹⁶ The Ombudsperson does not have the authority to institute civil anti-discrimination proceedings on her own.

The Ombudsperson has the authority to bring *actio popularis* proceedings, however, so far the Ombudsperson has not used this competence. The Ombudsperson also has the power to propose the institution of proceedings for a constitutionality assessment of laws and the assessment of constitutionality of other regulations and acts within her competence.³⁹⁷ According to available information, the Ombudsperson has not used this power in practice.

The Ombudsperson can join civil proceedings in anti-discrimination cases as an intervener on the behalf of the claimant.³⁹⁸ 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.³⁹⁹ 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.⁴⁰⁰

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

³⁹⁵ Information available on People's Ombudsperson website <https://www.ombudsman.hr/hr/#>.

³⁹⁶ Anti-discrimination Act, 9 July 2008, Article 12(2)(6).

³⁹⁷ People Ombudsperson's Act, 9 July 2012, Article 6.

³⁹⁸ Anti-discrimination Act, 9 July 2008, Article 21.

³⁹⁹ 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.

⁴⁰⁰ 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.⁴⁰¹ The Ombudsperson makes recommendations as a result of paper-based investigations. Upon receiving a complaint, the Ombudsperson asks the parties involved to submit their observations and all relevant documentation, after which she issues a recommendation.

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

i) Registration by the body of complaints and decisions

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

These data are available to the public through the Ombudsperson's annual reports, which are published on its website: <http://ombudsman.hr/hr/>. The Ombudsperson's annual reports from 2002 to 2020 are available on the website and are easily accessible to everyone.

In 2020, the Ombudsperson's Office acted upon a total of 4 894 complaints out of which 2 919 were newly received which is 16 % more than in 2019. The opinion of the Ombudsperson is that this increase is largely due to the coronavirus epidemic and the earthquake that strongly impacted the state of human rights in Croatia.⁴⁰²

During 2020, the Ombudsman's Office acted upon 419 complaints on discrimination, of which 266 were newly received. The Ombudsperson noted that the epidemic also affected the structure of discriminatory complaints, with 15 % directly connected to the pandemic and its consequences. As in previous years, most complaints on discrimination were in connection with employment (66 complaints) and a significant number of complaints related to public information and media, as well as access to goods and services.⁴⁰³ Discrimination complaints based on national origin, race, ethnicity and skin colour still prevail (31 complaints in 2020).⁴⁰⁴

Other complaints refer to discrimination on the basis of gender (27), health status (18), age (17), financial status (17), political or other belief (15), family or marital status (13), education (12), social status (9), religion (7), disability (5), sexual orientation (2), union membership (1), and language (1). In addition, 54 complaints referred to multiple discrimination and most often include national origin, race, ethnicity and skin colour (32), gender (14), education (13), marital or family status (9), age (9) and political belief (7). In 38 complaints, the discrimination grounds were not indicated.⁴⁰⁵

⁴⁰¹ Act on People's Ombudsperson, 9 July 2012, Article 27.

⁴⁰² People's Ombudsperson (2021), *Report for 2020*.

⁴⁰³ The numbers referred to in this and the following paragraphs relate to complaints acted upon by the Ombudsperson.

⁴⁰⁴ People's Ombudsperson (2021), *Report for 2020*.

⁴⁰⁵ People's Ombudsperson (2021), *Report for 2020*.

Areas to which complaints refer include employment (66), public information and media (25), access to goods and services (24), health insurance (15), administration (13), health protection (12), social welfare (10), education (9), housing (8), judiciary (6), culture (5), science (3), sport (3), pension insurance (2), and union membership (1). In 15 complaints, the area of discrimination was not indicated, 15 complaints referred to multiple areas of discrimination and 24 complaints referred to discrimination in general.

The Ombudsperson pointed that the number of citizens who contacted the Ombudsperson's Office is significantly higher than the number of newly opened cases. For example, more than 4 700 citizens contacted the Ombudsperson's Office by email alone. Also, as the central Ombudsperson's office was damaged in the earthquake, from the end of March to the beginning of June 2020 the conditions for regular office operations were not established, meaning that most of the contacts from that period are not included in these statistics. The Ombudsperson points out that during that period almost 1 500 citizens contacted the Ombudsperson's Office by phone.⁴⁰⁶

j) Roma and Travellers

The annual reports of the Ombudsperson give special attention to Roma issues. The Ombudsperson has 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.⁴⁰⁷

⁴⁰⁶ People's Ombudsperson (2021), *Report for 2020*.

⁴⁰⁷ 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 Ombudsperson'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, etc).

The Ombudsperson regularly reacts and comments on current events and issues and communicates with citizens through media and social networks, especially Twitter, on which she is particularly active. This means that she is always involved in and aware of current problems, reactions and people's opinions and active in relevant public debates

In order to be more accessible, the Ombudsperson set up a special anti-discrimination line on which people can receive advice on how to protect themselves from discrimination and if there is a suspicion of discrimination on one of the grounds within the competence of the Ombudsperson, information that needs to be provided in order that the Ombudsperson can initiate proceedings.

Further, all the ombudspersons are active in organising seminars, roundtables and training.

- 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.

According to Article 15, the Ombudsperson has to consult the stakeholders mentioned when submitting his or her annual Report to the Croatian Parliament, as well as when drafting his or her opinions and recommendations.

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

Article 15 of the Anti-discrimination Act obliges the Ombudsperson to consult not only with civil society organisations and other organisations dealing with the protection of human rights, but also with social partners. According to the Anti-discrimination Act, social partners are representative associations of trade unions and higher-level employers.⁴⁰⁸

The Ombudsperson occasionally holds meetings, consultations and training sessions for social partners.

⁴⁰⁸ Anti-discrimination Act, Article 15(2).

d) Addressing the situation of Roma and Travellers

The Government Office for Human Rights and Rights of National Minorities⁴⁰⁹ 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.

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.

At its session held on 3 September 2020, the Government of the Republic of Croatia adopted a decision on the development of operational programmes for national minorities for the period 2021-2024 relating to all national minorities in Croatia. Special operational programmes for particular national minorities were also adopted, including for the Roma national minority.⁴¹⁰

The report on the implementation of the action plan for the implementation of the 2013-2020 National Roma Inclusion Strategy for 2019 was adopted by the Government of the Republic of Croatia at a session held on 30 December 2020. The general conclusion of the report is that during the reporting period, the activities carried out for the purpose of achieving the goals of the National Strategy continued and that in most of the areas progress was made but that further efforts are needed in order to achieve targeted goals.⁴¹¹

In October 2020, the process of drafting the 2021-2027 National Plan for Roma Inclusion and the Action plan for the implementation of the National Plan for Roma Inclusion for 2021 and 2022 began. A working group was established with a wide range of participants - representatives of the competent state administration bodies and other institutions, local and regional self-government, the civil sector, civil society organisations of the Roma national minority and the academic community.⁴¹²

8.2 Measures to ensure compliance with the principle of equal treatment (Article 14 Directive 2000/43, Article 16 Directive 2000/78)

a) Compliance of national legislation (Articles 14(a) and 16(a))

There are no explicit measures in the Anti-discrimination Act to ensure that any laws, regulations or administrative provisions that would be contrary to the principle of equality are abolished.

In general, laws, regulations and rules in Croatia seem to be non-discriminatory and in line with the principle of equal treatment.

In the event that some regulations are found to be discriminatory in practice, the general equality principles and measures contained in the Anti-discrimination Act and the

⁴⁰⁹ In April 2012, the Government decided to merge the previously existing Office for Human Rights and the Government Office for National Minorities.

⁴¹⁰ Operational programmes for national minorities 2021-2024, 30 December 2020, available at: <https://pravamanjina.gov.hr/UserDocsImages/dokumenti/Operativni%20programi%20nacionalnih%20manjina%20za%20razdoblje%202021.-2024..pdf>.

⁴¹¹ Office for Human Rights and Rights of National Minorities (2020) *Report on the implementation of the action plan for the implementation of the 2013-2020 Roma inclusion strategy for 2019*, December 2020, available at: <https://pravamanjina.gov.hr/UserDocsImages/dokumenti/Izvje%C5%A1%C4%87e%20o%20provedbi%20AP%20NSUR%20za%202019.%20godinu.pdf>.

⁴¹² Office for Human Rights and Rights of National Minorities (2020) *Development of the National Plan for Roma Inclusion 2021-2027*, available at: [https://pravamanjina.gov.hr/?id=973&pregled=1&datum=Thu%20Dec%2003%202020%2011:59:06%20GMT+0100%20\(srednjoeuropsko%20standardno%20vrijeme\)](https://pravamanjina.gov.hr/?id=973&pregled=1&datum=Thu%20Dec%2003%202020%2011:59:06%20GMT+0100%20(srednjoeuropsko%20standardno%20vrijeme)).

Constitution are applicable. In particular, according to the Constitutional Act on the Constitutional Court of the Republic of Croatia, every individual or legal person has the right to bring proceedings to the Constitutional Court to review the constitutionality of the law and the legality and constitutionality of other regulations. The Constitutional Court itself may decide to institute proceedings to review the constitutionality of the law and to review the constitutionality and legality of other regulations.⁴¹³

Some laws are problematic from an anti-discrimination perspective (e.g. provisions of the Family Act regulating the divesting of legal capacity of persons with disabilities).⁴¹⁴

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.⁴¹⁵

Legislative amendments to certain laws have been adopted in order to ensure compliance with the principle of equality. For example, amendments to the Aliens Act were adopted according to the decision of the European Court of Human Rights in *Pajić v. Croatia*.⁴¹⁶ The amendments included regulations on temporary residence of foreign citizens, which can now be approved for the purpose of a same-sex life partnership.⁴¹⁷

In January 2020, the Constitutional Court of the Republic of Croatia issued a decision on the constitutionality of the part of the Foster Care Act that does not mention same-sex couples as possible foster families, which received public attention. The Constitutional Court found that the Foster Care Act was discriminatory towards same-sex couples in this regard and instructed lower courts on how to interpret and apply the law in order to meet the principle of gender equality and the prohibition of discrimination.⁴¹⁸

b) Compliance of other rules/clauses (Articles 14(b) and 16(b))

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

A contract that is contrary to the Constitution, mandatory rules or the morals of society is null and void.⁴¹⁹ Contracts can be subject to judicial review if the case is brought before court. When a contract, or part of a contract, is in conflict with the principle of equal treatment, a party to that contract is entitled to initiate court proceedings requesting the court to rule the contract or part of the contract null.

Internal rules of undertakings and the rules governing independent occupations, professions, workers' associations or employers' associations that conflict with the principle of equal treatment can be subject to a review of constitutionality and legality before the Constitutional Court if they can be considered regulations, i.e. if they are of a general

⁴¹³ Constitutional Law on the Constitutional Court of the Republic of Croatia, 24 September 1999, Article 38, Official Gazette 99/1999, 29/2002, 49/2002, *Ustavni zakon o Ustavnom sudu Republike Hrvatske*.

⁴¹⁴ The current Family Act (Official Gazette 103/2015) is in force since November 2015, but the Government mentions regularly that a new Family Act will be drafted.

⁴¹⁵ 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.

⁴¹⁶ European Court of Human Rights, *Pajić v. Croatia*, No. 68453, 23 February 2016, available at: [https://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%22%22CASE%20OF%20PAJI%C4%86%20v.%20CROATIA%22%22\],%22documentcollectionid%22:\[%22GRANDCHAMBER%22,%22CHAMBER%22\],%22itemid%22:\[%22001-161061%22\]}](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22%22CASE%20OF%20PAJI%C4%86%20v.%20CROATIA%22%22],%22documentcollectionid%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-161061%22]}).

⁴¹⁷ Aliens Act, Official Gazette 130/11, 74/13, 69/17, *Zakon o strancima*, 14 July 2017, Article 47 and Article 56b.

⁴¹⁸ Constitutional Court of the Republic of Croatia, no. U-I-144/2019, 29 January 2020, available at: <https://sljeme.usud.hr/usud/praksaw.nsf/fOdLuka.xsp?action=openDocument&documentId=C12570D30061CE54C12585060030E2EC>.

⁴¹⁹ Civil Obligations Act, 25 February 2005, Article 322.

nature and adopted by a relevant state body or local authority or a legal person with public authority.

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.⁴²⁰

The *National Anti-Discrimination Plan 2017-2022* is the current relevant document in the field of anti-discrimination.⁴²¹ The Office for Human Rights and the Rights of National Minorities is coordinating the drafting of the National Plan for the Protection and Promotion of Human Rights and the Suppression of Discrimination for the period 2021-2027.⁴²²

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 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.⁴²³

⁴²⁰ Act on the Government of the Republic of Croatia, 22 December 2011, Article 27, Official Gazette 150/2011, 119/2014, 93/2016.

⁴²¹ *National Anti-discrimination Plan 2017-2022*, available at: <https://pravamanjina.gov.hr/UserDocsImages/dokumenti/Nacionalni%20plan%20za%20borbu%20protiv%20diskriminacije%20za%20razdoblje%20od%202017.%20do%202022..pdf>.

⁴²² *National Plan for the Protection and Promotion of Human Rights and the Suppression of Discrimination for the Period from 2021 to 2027*, available at: <https://pravamanjina.gov.hr/ljudska-prava/nacionalni-plan-zastite-i-promicanja-ljudskih-prava-i-suzbijanja-diskriminacije-za-razdoblje-od-2021-do-2027-godine/989>.

⁴²³ Amnesty International (2018), *Amnesty International Report 2017/18*, <https://www.amnesty.org/en/countries/europe-and-central-asia/croatia/report-croatia/>.

10 CURRENT BEST PRACTICES

There are no current best practices on the use of Artificial Intelligence.

People's Ombudsperson and Disability Ombudsperson Office

The People's Ombudsperson and the Disability Ombudsperson are good examples of equality bodies. They are very active and engaged in the execution of their competences and can be considered reliable and available to provide adequate support to victims of discrimination. Both Ombudspersons are also very active in raising public awareness as well as in the education of public and experts, improves the quality of protection against discrimination. They also participate in legislative proceedings, issue opinions, recommendations and proposals, publish annual reports and organise seminars, conferences, roundtables and similar educational events with the aim of sharing experiences and good practice in the field of discrimination.

Roma housing projects and projects for the inclusion of Roma children in education

Several programmes for housing solutions and the improvement of living conditions of the members of the Roma national minority are currently being implemented.⁴²⁴ The programmes include donations of building materials for renovation, extension and completion of construction of family houses owned or co-owned by Roma or donation of building materials for the construction of a house to be built on land owned or co-owned by Roma, donation of household appliances and furniture etc.

The Roma Union of Croatia and local self-government units signed five agreements concerning the construction of playing fields in Roma settlements in the towns of Slavonski Brod, Belišće, Čakovec, and Beli Manastir, and in Nedelišće municipality. Furthermore, in May 2019, the construction of sports fields in the Roma settlements in Đurđevac and Kuršanec were completed.

There have also been several projects concerning electrification and urbanisation of Roma settlements. For example, street lighting was installed in the Roma settlement of Zlatnica and the Croatian electricity company (HEP) agreed to install new electric connections in Roma settlements.

The biggest housing project in Roma settlements is the project in Darda municipality, which has been on-going since 2014 and is expected to finish by 2023. The plan is to build 87 family houses and 2 playgrounds with the aim of better including Roma in the social and economic life of all inhabitants of Darda. The specific goal is to improve the quality of living conditions and conditions for the upbringing and schooling of children and youth, to improve the chances of employment of Roma and to increase the value of the real estate. Projects are aimed at diminishing the spatial exclusion of the Roma.

Furthermore, there are currently eight different programmes aimed at providing professional and financial support for the education of children and students belonging to the Roma national minority on behalf of the Ministry of Education. These projects provide children with transportation and extended stay, but also other activities, such as additional and supplementary classes and extracurricular activities, summer camps and/or extracurricular activities aimed at their social integration, professional development of teachers and professional associates with the aim of raising the quality and efficiency of the education of students belonging to the Roma national minority, procurement of equipment and teaching aids etc.⁴²⁵

⁴²⁴ Annual programme for housing solutions and improvement of living conditions of the members of the Roma national minority. Available at: <https://sduosz.gov.hr/UserDocsImages/dokumenti/20190516122657.pdf>.

⁴²⁵ Office for Human Rights and Rights of National Minorities (2019) *Report on implementation of Roma National Inclusion strategy for 2018*, available at:

11 SENSITIVE OR CONTROVERSIAL ISSUES

11.1 Potential breaches of the directives at the national level

a) Sanctions

Although rules on sanctions are in line with the directives, often the sanctions offered in practice cannot be considered to be effective, proportionate and dissuasive.

Offences motivated by discrimination are usually prosecuted as misdemeanours and not as criminal offences, although the basis for criminal prosecution in the law exists. In misdemeanour cases, as a rule, judges mitigate the fines set by law, so that the amounts imposed are rather low (EUR 40 to EUR 400) and do not contribute to the specific and general prevention of discrimination.

Furthermore, although the law prescribes imprisonment as a punishment in misdemeanour cases, a financial fine remains the most common sanction and is imposed in 90 % cases, while in the remaining cases the defendants are sentenced to community service.

In criminal proceedings, probation remains the most commonly imposed sanction while prison sentences are regularly not imposed, meaning that the most severe sanctions, although provided for, are not used in practice.

Compensation, which is the main sanction in civil anti-discrimination cases, is usually set in amounts that are considered to be rather low and in the author's view, it is highly disputable whether they satisfy the criteria of being effective, proportionate and dissuasive sanctions, although this varies from case to case.

b) Potential discrimination on the basis of religion

The provision of the Act on holidays, remembrance days and non-working days in the Republic of Croatia, which stipulates that members of the three biggest religious minorities in the Republic of Croatia are entitled to additional paid day off on the days of their main religious holidays, can be seen as discriminatory.⁴²⁶ The aim of this provision is to enable the members of religious minorities in Croatia the right to practice their religion on the same basis as the members of the majority Catholic population, which leads to a situation in which they have the right to a day off on all the main Catholic holidays that have been declared as non-working days by law for all persons, regardless of their religion, as well as to an additional day off. Bearing in mind the case law of the CJEU on this matter, this provision could potentially be discriminatory.⁴²⁷

11.2 Other issues of concern

Anti-discrimination protection in practice – possible barriers to litigation

Anti-discrimination protection often does not work in practice. There is still an 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 provided 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

<https://ljudskaprava.gov.hr/UserDocsImages//dokumenti/Izvj%C5%A1%C4%87e%20o%20provedbi%20Nacionalne%20strategije%20za%20uklju%C4%8Divanje%20Roma%20za%20razdoblje%20od%202013.%20do%202020.%20godine,%20za%202018.%20godinu.pdf>

⁴²⁶ Act on holidays, remembrance days and non-working days, 15 November 2019, Official Gazette 110/19 *Zakon o blagdanima, spomendanima i neradnim danima u Republici Hrvatskoj*, Article 3.

⁴²⁷ CJEU, judgment of 22 January 2019, *Cresco Investigation GmbH v. Markus Aschatzi*, C-193/17, ECLI:EU:C:2019:43.

during the proceedings the claimant fails to invoke one of the grounds prescribed by the Anti-discrimination Act, the claim is rejected by the court.

Although indirect discrimination is regulated by the Anti-discrimination Act and prohibited in the same way as direct discrimination, there is no case law available nor special observations of the relevant Ombudspersons on this issue that might reveal whether indirect discrimination is still not sufficiently recognised.

A significant problem is the lengthy duration of the court proceedings, because of which the victims of discrimination are reluctant to seek court protection. Proceedings in Croatia rarely satisfy the standards of fairness in respect of reasonable time, since the proceedings usually last so long that remedies cannot be considered to be effective.

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.

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.

Reasonable accommodation duties

The Disability Ombudsperson's reports as well as the case law indicate that reasonable accommodation duties have not been recognised as important and binding, primarily in the areas of education and employment of persons with disabilities, and are still largely interpreted solely as an obligation to remove architectural barriers.

There is no awareness that failing to comply with reasonable accommodation duties constitutes discrimination against persons with disabilities and there is also a noticeable lack of understanding and willingness of employers and educational institutions to make efforts and enable persons and children with disabilities to participate on an equal basis in working and educational environments.

Everything mentioned above has a significant negative impact on the position of people with disabilities in society and leads to their social exclusion from an early age, bearing in mind that the problems regarding reasonable accommodation duties are in most cases apparent in preschool institutions, although early inclusion mechanisms are vital for the successful integration of people with disabilities in society.

In addition, because of the inability to find employment, failure to meet reasonable accommodation duties also affects the material status of people with disabilities who often live in poverty and are financially dependent on others or are welfare beneficiaries. Quota employment measures for people with disabilities have so far not been proven to be overly effective, since employers under this obligation in many cases prefer to pay a penalty rather than to meet the quota.

No issues have been raised with regard to the possible obligation of having a formal proof of disability (assessment of the Institute for Medical Assessment) in order to achieve certain disability rights, including the right to reasonable accommodation. It is still not clear whether that kind of proof represents a condition for achieving reasonable accommodation rights. The Disability Ombudsperson does not have a clear standpoint on the matter. In order for an employer to be entitled to financial help to fulfil his reasonable accommodation duties, the employee must be registered in the register of employed persons with disabilities.

Roma national minority

The situation of the Roma is still very problematic in spite of programmes and strategies aimed to improve their situation. According to the results of the 2011 census, 16 975 people declared themselves as Roma in the Republic of Croatia, but it is estimated that 30 000 to 40 000 members of the Roma minority actually live in the Republic of Croatia, although approximately half of them do not declare themselves for various reasons. According to the most recent official data, there are 24 524 members of Roma national minority in Croatia.⁴²⁸

Although progress has been made in general regarding the position of the Roma minority in Croatia, Roma still face discrimination on an everyday basis in all areas, but particularly in education, employment, housing and healthcare. Given the poverty and social exclusion of the Roma, the quality of healthcare provided to them is lower than the quality of healthcare provided to the rest of the population. In addition to the lower health status of the Roma, differences have also been noted between the quality of healthcare within the Roma community, with Roma women and children having a lower health status than Roma men.

The research published in 2018 found that 28.2 % of Roma stated that they were discriminated against in the last 12 months, 23.1 % of them multiple times.⁴²⁹ 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 and research shows that thousands of Roma are at risk of statelessness.

Roma people also experience difficulties in obtaining identity documents, which has limited their access to public services.⁴³⁰ 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.

The Roma national minority has also been exposed to hateful, inciting and provocative public speech, which promotes intolerance and calls for action against 'them'. For the most part, the entire Roma community is still attributed with mostly unfavourable, unwanted and bad traits.

Of great concern is the fact that discriminatory treatment of Roma in society is understood as something normal that happens on an everyday basis and not much attention is paid to this problem. In the eyes of the majority, Roma are considered second-class citizens who are violent, uneducated and unemployed by their own choice. Therefore, continuous action by and collaboration between the relevant bodies is necessary in order to eradicate such stigmatisation in the future.

During 2020, new difficulties for some members of the Roma national minority emerged in connection to the coronavirus pandemic and the earthquake, which further reduced their already poor living conditions.

⁴²⁸ Kunac, S., Klasnić, K. and Lalić, S. (2018) *Inclusion of Roma in Croatian Society: Database Research*, Centre for Peace Studies, August 2018.

⁴²⁹ Kunac, S., Klasnić, K. and Lalić, S. (2018) *Inclusion of Roma in Croatian Society: Database Research*, Centre for Peace Studies, August 2018.

⁴³⁰ Amnesty International (2017), *Amnesty International Report 2016/17*, available at <https://www.amnesty.org/en/documents/pol10/4800/2017/en/>.

Serbian national minority

Members of the Serbian minority are also more exposed to discrimination based on ethnicity or national origin and there is a long-standing trend of deteriorating relations between the majority of the public and some political and public figures in the Serb community. Serb returnees to their pre-war residences are particularly affected by discrimination. They face discrimination based on national origin, age and property status since most of them are elderly people with exceptionally low incomes, living in underdeveloped rural areas, where basic services, including water and electricity, are often not available.

The poor economic and social position of Serb returnees in war-affected regions particularly came to light in 2020 as a result of the earthquake that hit Sisak-Moslavina County.

Members of Serbian national minority in Croatia are also often victims of ethnically motivated violence because of the dominant nationalistic narrative about the war in Croatia in the 1990s, which casts the members of Serbian national minority as the aggressors and the ones to blame for the war and the atrocities.

There is also an ongoing issue in relation to the current models of minority education in war-affected regions, where Serbian and Croatian children attend separate classes and are separated even in kindergartens. Although this model of education is in line with the law, it does not contribute to intercultural dialogue between the two communities.

Increasing levels of hate speech and hate crime

In recent years, there has been an increase in the number of hate crimes, mostly against members of national minorities (Serbs and Roma). The number of hate crimes motivated by the victim's sexual orientation has also increased.

In their annual reports, the relevant Ombudspersons constantly warn of the still inadequate prosecution of such crimes and the mild penal policy that does not achieve the goals of specific and general prevention of hate crime.

It is of particular concern that there is a lack of public condemnation of hate crimes by the Government, especially those committed against members of the Serbian national minority.

In the last few years several anti-discrimination proceedings were initiated by the conservative civic organisations claiming that Catholics had been discriminated against on the basis of their religion. The cases concerned satirical reporting by a media news portal and the publicly expressed opinion of the former president of the Republic of Croatia via Facebook. The impression is that this kind of proceedings suggest a misuse of the protection guaranteed by the Anti-discrimination Act and are intended to curtail free speech and critique of current social events related to the Catholic Church, which has a great influence in Croatia.

12 LATEST DEVELOPMENTS IN 2020

12.1 Legislative amendments

During 2020, there were no legislative amendments in the area of anti-discrimination law.

12.2 Case law

Relevant discrimination ground(s): Ethnic origin

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

Date of decision: 9 September 2020

Name of the parties: M.S.

Reference number: U-III A-1038/2020

Link:

<https://sljeme.usud.hr/usud/praksaw.nsf/fOdluka.xsp?action=openDocument&documentId=C12570D30061CE54C12585DE003DF609>

Brief summary: In this case, the Constitutional Court decided on the request for protection of the right to a trial within a reasonable time in the proceedings initiated by M.S. against their employer for discrimination, protection of dignity and damages.⁴³¹ At the time of the Constitutional Court's decision, the proceedings had lasted for more than eight years, during which time the proceedings had been suspended three times. Bearing in mind the total duration of the proceedings, the period of several months of inactivity of the court and the importance of the case for the applicant, as well as the nature of the proceedings which consider the issue of discrimination and are urgent, the Constitutional Court found that M.S.'s constitutional rights had been violated. The Constitutional Court found that the Municipal Labour Court was obliged to render a decision as soon as possible, but not longer than six months, and awarded the applicant appropriate compensation for violation of the constitutional right to a reasonable length of proceedings in the amount of HRK 17 600.00 (Approximately EUR 2 350).⁴³²

Relevant discrimination ground(s): Ethnic origin

Name of the court: High Misdemeanour Court

Date of decision: 24 September 2020

Name of the parties: *Ministry of Interior v. D.K.*

Reference number: JŽ-1503/2020

Link: N/A

Brief summary: The High Misdemeanor Court rejected the appeal of the Ministry of the Interior against the decision of the Municipal Court in Osijek by which the accused D.K. had been acquitted of having committed an offence under Article 25 of the Anti-Discrimination Act. She was accused of discrimination on the basis of national origin by sending several text messages to the victim, including a message telling him that he was a Chetnik, which violated the dignity of the victim by creating a degrading and offensive environment based on national origin. The High Misdemeanor Court found that the first instance court correctly concluded that the indictment did not cover all the elements of the misdemeanor at issue since the factual description of the indictment did not indicate the defendant's direct intent to create a hostile, degrading or offensive environment due to the victim's nationality. Since this misdemeanor can be committed only with intent, the High Court confirmed the first instance decision.

Relevant discrimination ground(s): Ethnic origin

Name of the court: Varaždin County Court

⁴³¹ It should be noted that M.S. previously filed another suit for protection against discrimination against his employer, in which proceedings it had been determined that he was discriminated against in the workplace (see section 2.1.2. of the report, above) and that these cases are related.

⁴³² There was one other such case in 2020: Constitutional Court of the Republic of Croatia, decision no. U-III A-3623/2019, 1 October 2020. Available at: <https://sljeme.usud.hr/usud/praksaw.nsf/fOdluka.xsp?action=openDocument&documentId=C12570D30061CE54C12585F5002DB85A>.

Date of decision: 15 December 2020

Name of the parties: L.Š.

Reference number: KŽ-517/2020

Link: N/A

Brief summary: In this case, the County Court in Varaždin decided on the appeal against the judgment of the first instance court by which L.Š. had been found guilty of committing a criminal offence against human rights and fundamental freedoms - violation of equality in connection with a hate crime, because on 3 May 2012, in the area of Varaždin in front of about thirty locals, he shouted at a Roma family who had recently moved to their neighbourhood to leave, intending to prevent them from inheriting the land they bought, and said to them, "When the police leave, be ready to attack. If Sarkozy flew his Roma out of France, we'll drive ours away on foot". The first instance court determined that these words had caused fear and anxiety among the Roma family, who left the area of Varaždin in fear. However, the county court upheld the appeal of L.Š. and the case was returned to the court of first instance for retrial due to procedural violations. It should be noted that proceedings in this case commenced in 2012.

Relevant discrimination ground(s): Age

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

Date of decision: 9 January 2020

Name of the parties: *S.M.O. v. State Judicial Council*

Reference number: U-IX-5329/2019

Link:

<https://sljeme.usud.hr/usud/praksaw.nsf/fOdluka.xsp?action=openDocument&documentId=C12570D30061CE54C12584EA00347E03>

Brief summary: S.M.O., a judge of the Administrative Court, filed an appeal against the decision of the State Judicial Council of 5 December 2019 by which she was dismissed from her judicial duties from 24 January 2020 onwards, claiming that her constitutional rights had been violated and that she had been discriminated against on the grounds of age. S.M.O. argued that she was discriminated against because she was allowed to work only up to the age of 70, while state officials, as well as judges of the Constitutional Court and university professors, do not have such a restriction and can work for an unlimited period. The Constitutional Court found that the Constitution itself provides a basis for the dismissal of a judge from judicial office when reaching the age of 70. Therefore, upon reaching that age, the judicial office ceases by virtue of the Constitution and at the same time creates the obligation of the state judicial office to establish cessation of judicial office by a formal decision. Therefore, there was no possibility for a different decision, as S.M.O. does not dispute that she will turn 70 on 24 January 2020. Following this finding, her appeal was rejected.

Relevant discrimination ground(s): Age

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

Date of decision: 24 June 2020

Name of the parties: P.P.

Reference number: U-I-6269/2014

Link:

<https://sljeme.usud.hr/usud/praksaw.nsf/fOdluka.xsp?action=openDocument&documentId=C12570D30061CE54C125859600276FFD>

Brief summary: In this case, the Constitutional Court decided on a proposal to initiate proceedings for the assessment of the constitutionality of the Labour Act. The proposal was submitted by P.P. claiming that Article 112 of the Labour Act, which stipulates that when a worker reaches the age of 65 and has 15 years of pensionable service, the employment is terminated, unless the employer and the employee agree otherwise, is not in accordance with the Constitution because it introduces discrimination by age and abolishes the right to work for a particular age group. He believed that retirement should be a right and not a coercion conditioned by law, and that the automatic termination of an employment contract should be linked to retirement when the worker decides to retire,

and not to age, since every person should be able to choose whether to exercise his or her right to a pension when he or she reaches the age of 65. The Constitutional Court did not accept the proposal, with the explanation that the P.P. was in fact requesting an amendment to the law, which is not within the jurisdiction of the Constitutional Court, and that the proposer had not given detailed and precise reasons that would indicate a suspicion that the disputed provision was not in accordance with law.

Relevant discrimination ground(s): Sexual orientation

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

Date of decision: 29 January 2020

Name of the parties: N/A

Reference number: U-I-144/2019

Link:

<https://sljeme.usud.hr/usud/praksaw.nsf/fOdluka.xsp?action=openDocument&documentId=C12570D30061CE54C12585060030E2EC>

Brief summary: In this case, the Constitutional Court decided on the constitutionality of the Foster Care Act. The applicants submitted a proposal claiming that people living in formal and informal life partnerships (same-sex couples) are discriminated against by the provisions of the Foster Care Act on the grounds of sexual orientation due to the fact that they are not mentioned in the text of the Foster Act because of which they are not considered to be foster families and as such cannot provide social accommodation services to children or adults. On the other hand, consideration is given to spouses and extramarital partners (who, with children and other relatives who may live in a joint household, are considered foster families), as well as single people, regardless of their sexual orientation, which sends a message to the public that the provision of foster care services is inaccessible only to persons who have publicly expressed their (homo)sexual orientation. The Constitutional Court found that restrictions relating to the procedural aspect of the institution of foster care that apply only to one (very small) group of potential foster parents, determined solely by the form of family community in which they live according to their sexual orientation, are not necessary in a democratic society, are discriminatory and are therefore unacceptable and disproportionate. The Constitutional Court determined that it shows a disregard for the equality of same-sex partners compared to different sex marital and extramarital partners. However, due to the specific circumstances of this case, which focuses on the protection of the interests of socially vulnerable persons, and especially the protection of the welfare of children, these negative effects cannot be 'compensated' by the Constitutional Court's intervention in the existing content of the law and therefore, because a worrying legal gap could arise, the Constitutional Court rejected the proposal. Nevertheless, the Constitutional Court explicitly stated that the courts and other competent bodies that directly decide on the rights and obligations of citizens in resolving individual cases are obliged to interpret and apply laws in accordance with their meaning and legitimate purpose and make decisions based on the Constitution, laws, international treaties and other valid sources of rights even without the proposed intervention of the Constitutional Court. Therefore, bearing in mind the basic constitutional principle of gender equality and taking into account the legal prohibition of discrimination based on sexual orientation contained in the Anti-Discrimination Act, the Gender Equality Act and the Life Partnership Act, the Constitutional Court pointed out that courts and other bodies are obliged to interpret and apply the law in a way that will enable all persons to participate in the public foster care service under equal conditions, that is, regardless of whether the potential foster parent lives in a formal or informal life partnership with a person of the same sex.

Relevant discrimination ground(s): N/A

Name of the court: Zagreb County Court

Date of decision: 21 January 2020

Name of the parties: *J.K. v. Social Welfare Centre*

Reference number: GŽ-75/20

Link: N/A

Brief summary: J.K. filed a suit seeking protection from discrimination and damages against the social welfare centre, in connection with the proceedings for exercising the right to social financial support. However, during the proceedings, J.K. did not state on what grounds he was discriminated against, which is why his claim was rejected. The county court upheld the first instance court's decision, stating that J.K. had to state on what grounds the discrimination was committed, which he did not do, following which the first instance court justifiably rejected the legal protection he had requested.

ANNEX 1: MAIN TRANSPOSITION AND ANTI-DISCRIMINATION LEGISLATION

Country: Croatia
Date: 31 December 2020

Title of the law: Anti-discrimination Act

Abbreviation: ADA

Date of adoption: 09 July 2008

Latest relevant amendment: 19 October 2012

Entry into force: 1 January 2009

Web link: <https://www.zakon.hr/z/490/Zakon-o-suzbijanju-diskriminacije>

Grounds covered: race or ethnic origin or colour, gender, language, religion, political or other belief, national or social origin, property, trade union membership, education, social status, marital or family status, age, health condition, disability, genetic heritage, gender identity and expression, sexual orientation

Civil/administrative/misdemeanour law

Material scope: All fields

Principal content: Prohibition of direct and indirect discrimination, harassment, sexual harassment; reasonable accommodation; exceptions; segregation; encouragement to discriminate; victimisation; anti-discrimination proceedings; specialised body; misdemeanours

Title of the law: Gender Equality Act

Abbreviation: GEA

Date of adoption: 15 July 2008

Latest relevant amendment: 14 July 2017

Entry into force: 15 July 2008

Web link: <https://www.zakon.hr/z/388/Zakon-o-ravnopravnosti-spolova>

Grounds covered: gender, marital or family status, sexual orientation

Civil/administrative/misdemeanour law

Material scope: All fields

Principal content: general framework for the protection and promotion of gender equality and protection from discrimination on the grounds of gender as well as establishment of equal opportunities for women and men

Title of the law: Same-sex Life Partnership Act

Abbreviation: SSLPA

Date of adoption: 15 July 2014

Latest relevant amendment: -

Entry into force: 5 August 2014

Web link: <https://www.zakon.hr/z/732/Zakon-o-%C5%BEivotnom-partnerstvu-osoba-istog-spolu>

Grounds covered: same-sex life partnership, sexual orientation and gender identity

Civil law

Material scope: All fields

Principal content: Prohibition of direct and indirect discrimination, definitions and legal consequences of formal and informal same-sex partnerships

Title of the law: Labour Act

Abbreviation: LA

Date of adoption: 15 July 2014

Latest relevant amendment: 16 October 2019

Entry into force: 07 August 2014

Web link: <https://www.zakon.hr/z/307/Zakon-o-radu>

Grounds covered: race or ethnic origin or colour, gender, language, religion, political or other belief, national or social origin, property, trade union membership, education,

social status, marital or family status, age, health condition, disability, genetic heritage, gender identity and expression, sexual orientation (it refers to ADA)

Civil law

Material scope: employment

Principal content: general act on employment

Title of the law: Act on Professional Rehabilitation and Employment of Persons with Disability

Abbreviation: APREPD

Date of adoption: 18 December 2013

Latest relevant amendment: 5 May 2018

Entry into force: 13 December 2013

Weblink: <https://www.zakon.hr/z/493/Zakon-o-profesionalnoj-rehabilitaciji-i-zapo%C5%A1ljanju-osoba-s-invaliditetom>

Grounds covered: disability

Civil and administrative law

Material scope: employment

Principal content: professional rehabilitation, employment and work of persons with disability

ANNEX 2: INTERNATIONAL INSTRUMENTS

Country: Croatia

Date: 31 December 2020

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
ILO Convention No. 111 on Discrimination	succession	8.10.1991	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?
Convention on the Rights of the Child	succession	12.10.1992	no	N/A	yes
Convention on the Rights of Persons with Disabilities	30.03.2007	15.8.2007	no	yes	yes

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