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Croatia

2023

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Country report

Non-discrimination

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

Croatia

Ines Bojić

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EXECUTIVE SUMMARY

1. Introduction

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

According to the results of the 2021 census, Croatia has a population of 3 871 833.¹ The ethnic structure of the country, according to the census shows that Croats make up the majority of the population with a share of 91.63 %. The most numerous minorities are Serbs, 3.20 %; Bosniaks, 0.62 %; Roma, 0.46 %; Italians, 0.36 %; and Albanians, 0.36 %, while the share of other members of national minorities is individually less than 0.30 %. The religious structure of the population is as follows: 78.97 % of citizens declared themselves Catholic; 4.8 % as other Christian denominations; 4.71 % as non-believers and atheists; 3.32 % as Orthodox; 1.65 % as agnostics and sceptics; 1.32 % as Muslims; 0.95 % as other religions, movements and life philosophies; 1.72 % as undecided and 2.1 % as unknown. Of the total population of the Republic of Croatia, 99.24 % have Croatian citizenship, while 0.74 % or 28 784 are foreign citizens.²

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

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.⁴ The existence of Roma-only classes is still widespread (see section 3.2.7a).

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 the Serb community. In recent years there have been several incidents of ethnically motivated

¹ Compared to the 2011 census, the population decreased by 413 056 or 9.64 %.

² Results of the 2021 census, State Bureau of Statistics; <https://dzs.gov.hr/vijesti/objavljeni-konacni-rezultati-popisa-2021/1270>.

³ Anti-discrimination Act, 9 July 2008, *Zakon o suzbijanju diskriminacije*, Official Gazette 85/2008 and 112/2012.

⁴ European Court of Human Rights (ECtHR), *Oršuš and Others v Croatia* [GC], No.15766/03, 16 March 2010.

violence towards Serbs and the intense level of hate speech towards members of the Serbian minority is notable.

2. Main legislation

In 2022 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, age and sexual orientation are not directly mentioned in the Constitution, but these grounds are covered implicitly as 'other characteristics'.⁵

The main legislation dealing with discrimination comprises:

- the Anti-discrimination Act,⁶ 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,⁷ which prohibits discrimination based on gender, sexual orientation, marital or family status and pregnancy and the Same-sex Life Partnership Act, which prohibits discrimination based on a 'same-sex partnership' and 'sexual orientation';
- the Labour Act,⁸ 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,

⁵ 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 although the Constitution does not explicitly mention age as a discrimination ground. Also, in the case U-I-144/2019, the Constitutional Court decided on the constitutionality of the Foster Act regarding discrimination of the same-sex couples who were denied the right to foster children because of their sexual orientation. The Constitutional Court also regularly decides in cases regarding disability discrimination, for example in the cases U-III-4748/2017; U-I-5286/2014. Article 14 of the Croatian Constitution; Official Gazette 56/1990, 135/1997, 113/2000, 28/2001, 76/2010 and 5/2014.

⁶ Anti-discrimination Act, *Zakon o suzbijanju diskriminacije*, Official Gazette 85/2008 and 112/2012.

⁷ Gender Equality Act, 15 July 2008, *Zakon o ravnopravnosti spolova*, Official Gazette 82/2008, 125/2011, 20/2012 and 138/2012.

⁸ Labour Act, 15 July 2014, *Zakon o radu*, Official Gazette [93/2014](#), [127/2017](#) and [98/2019](#), [151/22](#)

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.

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 persons with disabilities. It specifies that a failure to enable persons with disabilities 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.⁹ 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 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

⁹ The Anti-discrimination Act provides protection from discrimination to any person without exception, which would include undocumented migrants.

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 persons with disabilities; 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 job 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) 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 (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 (publishing anti-discrimination claim).

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.¹⁰

The Anti-discrimination Act specifies misdemeanour liability for harassment, sexual harassment and victimisation.¹¹

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;

¹⁰ Criminal Code, Article 125.

¹¹ Anti-discrimination Act, Articles 25-28.

3. if court proceedings have not yet been initiated, to examine individual reports and take action falling within his/her power required to eliminate the discrimination and protect the rights of people facing discrimination;
4. to make the public aware of occurrences of discrimination;
5. to conduct, with the parties' consent, mediation with the possibility of reaching an out-of-court settlement;
6. to file criminal charges relating to discrimination to the relevant State Attorney's office;
7. to collect and analyse statistical data on discrimination;
8. to inform the Croatian Parliament of the prevalence of discrimination in his/her annual reports and, when required, extraordinary reports;
9. to conduct surveys on discrimination, give opinions and recommendations, and suggest appropriate legal and strategic solutions to the Government.

The Disability Ombudsperson and the Gender Equality Ombudsperson have almost the same powers as the People's Ombudsperson.

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

7. Key issues

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.

The Constitutional Court and the European Court of Human Rights have ruled in several cases concerning violations of the right to a trial within a reasonable time in anti-discrimination proceedings, awarding the applicants compensation for the violation of their rights, which shows that this is an issue in obtaining anti-discrimination protection.¹² This practice continued in 2022.¹³

The reluctance of victims of discrimination in seeking protection was also confirmed by the results of the People's Ombudsperson survey conducted at the end of 2022 according to which only 40 % of the respondents who stated that they were victims of discrimination acted upon it, while only 17 % of those who acted decided to seek court protection. Those who did not react to discrimination expressed the opinion that it would not change anything (52 %), that the proceedings would be too complicated, time-consuming, and expensive (21 %) or that their situation would get even worse (29 %) (please see section 6.1.b).

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.

In 2022, the provisions of the Civil Procedure Code which regulate the right of filing an appeal on the points of law (revision) in anti-discrimination proceedings were amended in a way that anti-discrimination cases are now equalised with all other proceedings and are not subjected to more favourable conditions for submitting a revision. Thus, there is no

¹² Constitutional Court of the Republic of Croatia, decisions no. U-IIIA-1038/2020, 9 September 2020, and U-IIIA-3623/2019, 1 October 2020; European Court of Human Rights, [Salameh v. Croatia](#), No. 38943/15, 14 October 2021; European Court of Human Rights, [Kirncic and Others v. Croatia](#), No. 31386/17, 30 July 2020; [Mirjana Maric v. Croatia](#), No. 9849/15, 30 July 2020.

¹³ Decision of the Constitutional Court of the Republic of Croatia, no. U-IIIA-2294/22, 29 September 2022.

longer an automatic right of parties in anti-discrimination procedures to submit a revision but as in all other proceedings, the parties must first submit a proposal for permission of revision, and if it is approved, they can only then file a revision to the Supreme Court.¹⁴

During 2022 there were no significant policy developments in the area of discrimination.

Despite previous announcements, the National Plan for the Protection and Promotion of Human Rights and Suppression of Discrimination has not yet been adopted. Public consultation on the draft of the National Plan had been opened for discussion at the end of 2022.¹⁵

Case law relevant to the area of discrimination in 2022 includes decisions on reasonable accommodation duties, which still represent the biggest problem faced by persons with disabilities in Croatia and the main form of discrimination against them (see section 12.2).

Also, during 2022, several decisions were issued in misdemeanour proceedings for violations of the Anti-discrimination Act, mainly for discrimination based on sexual orientation and nationality (see section 12.2). Furthermore, the Supreme Court of the Republic of Croatia issued a decision in joint proceedings in a case initiated by the NGO which deals with the protection and promotion of parental and family rights of LGBTIQ persons. In this case, the Supreme Court established that members of the LGBTIQ community were discriminated against due to their sexual orientation (see section 12.2).

Also relevant is the decision of the High Administrative Court of the Republic of Croatia regarding the adoptive rights of same-sex couples. The Court determined that same-sex couples must be allowed access to the procedure for registration in the register of potential adoptive parents (see section 12.2).

At the end of 2022, the People's Ombudsperson conducted her fourth piece of research dealing with the topic of attitudes and the level of awareness of discrimination and the forms of discrimination in society (the last research was conducted in 2016).¹⁶ The results of the research showed that 56 % of respondents are aware that the Anti-discrimination Act is in force in Croatia which is an increase of 6 % compared to the 2016 research. 20 % of respondents stated that they had been discriminated against in the last five years, which is more than was the case in the last research in 2016. There has also been an increase in the number of respondents who accurately describe the concept of discrimination and understand that it is a matter of treating someone differently based on some characteristic (discrimination ground), which is close to the definition from the Anti-discrimination Act. However, only 3.9 % of respondents correctly identify the People's Ombudsperson as a central equality body for combating discrimination, which remains low. The results of the research furthermore showed that prejudices are less present than before, especially towards asylum seekers, persons with mental disorders, members of the LGBTIQ community and older people. At the same time, however, negative trends have also been noted. For example, in relation to members of the Roma national minority, 55 % of respondents agreed with the statement that most Roma live on social welfare support and do not want to work, while in 2016, 48 % of respondents expressed this kind of attitude. 18 % of respondents believe that Roma is the group that is most exposed to discrimination, followed by members of the LGBTIQ community (16 %), persons with disabilities (10 %), women (9 %) and people living in poverty (9 %).

¹⁴ Amendments to the Civil Procedure Code, Official Gazette No. 80/22.

¹⁵ Public consultations, National Plan for the Protection and Promotion of Human Rights and Suppression of Discrimination, <https://esavjetovanja.gov.hr/ECon/MainScreen?entityId=3503>.

¹⁶ People's Ombudsperson, Research on attitudes and the level of awareness of discrimination and the forms of discrimination for 2022, available at: <https://www.ombudsman.hr/hr/download/istrazivanje-o-stavovima-i-razini-svijesti-o-diskriminaciji-i-pojavnim-oblicima-diskriminacije-2022/?wpdmdl=15351&refresh=63e0c6603768c1675675232>.

INTRODUCTION

The national legal system

The Republic of Croatia is a unitary state.¹⁷ 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.¹⁸

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.¹⁹

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.²⁰ 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.²¹

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.²²

¹⁷ 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, https://www.usud.hr/sites/default/files/dokumenti/The_consolidated_text_of_the_Constitution_of_the_Republic_of_Croatia_as_of_15_January_2014.pdf (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 creation of a document. In this document, the numbering corrected by the Constitutional Court will be used).

¹⁸ Constitution of the Republic of Croatia, 22 December 1990, Article 5.

¹⁹ Constitution of the Republic of Croatia, 22 December 1990, Article 4.

²⁰ Constitution of the Republic of Croatia, 22 December 1990, Article 116.

²¹ Constitution of the Republic of Croatia, 22 December 1990, Article 125.

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

List of main legislation transposing and implementing the directives**Official title of the law: Anti-discrimination Act²³**

Name used in this report: N/a

Abbreviation: ADA

Date of adoption: 9 July 2008

Entry into force: 1 January 2009

Latest relevant amendment: 19 October 2012

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,²⁴ age, health condition, disability, genetic heritage, gender identity and expression, sexual orientation.

Civil/administrative/criminal 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.

Official title of the law: Gender Equality Act²⁵

Name used in this report: N/a

Abbreviation: GEA

Date of adoption: 15 July 2008

Entry into force: 15 July 2008

Latest relevant amendment: 14 July 2017

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.

Official title of the law: Same-sex Life Partnership Act²⁶

Name used in this report: N/a

Abbreviation: SSLPA

Date of adoption: 15 July 2014

Entry into force: 5 August 2014

Latest relevant amendment: -

Web link: <https://www.zakon.hr/z/732/Zakon-o-%C5%BDivotnom-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.

²³ Anti-discrimination Act, 9 July 2008, Official Gazette 85/2008, 112/2012, *Zakon o suzbijanju diskriminacije*.

²⁴ It protects all persons discriminated against on the basis of their marital/family status, including same-sex families.

²⁵ Gender Equality Act, 15 July 2008, Official Gazette 82/08, 69/17, Article 6.

²⁶ Same-sex Life Partnership Act, 15 July 2014, Official Gazette 92/14, 98/19, *Zakon o životnom partnerstvu osoba istog spola*.

Official title of the law: Labour Act²⁷

Name used in this report: N/a

Abbreviation: LA

Date of adoption: 15 July 2014

Entry into force: 7 August 2014

Latest relevant amendment: 1 January 2023

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.

Official title of the law: Act on Professional Rehabilitation and Employment of Persons with Disability²⁸

Name used in this report: N/a

Abbreviation: APREPD

Date of adoption: 13 December 2013

Entry into force: 1 January 2014

Latest relevant amendment: 5 May 2018

Weblink: <https://www.zakon.hr/z/493/Zakon-o-profesionalnoj-rehabilitaciji-i-zapo%C5%A1ljavanju-osoba-s-invaliditetom>

Grounds covered: disability

Civil and administrative law

Material scope: Employment

Principal content: Professional rehabilitation, employment and work of persons with disability.

²⁷ Labour Act, 15 July 2014, Official Gazette 93/2014, 127/2017, 98/19, 151/22, *Zakon o radu*.

²⁸ Act on Professional Rehabilitation and Employment of Persons with Disability, 18 December 2013, Official Gazette 157/13, 152/14, 39/18, 32/20, *Zakon o profesionalnoj rehabilitaciji i zapošljavanju osoba s invaliditetom*.

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)²⁹ or social origin, property, birth, education, social status or other characteristic.³⁰ 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.³¹ 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.³²

²⁹ In Croatia, 'nationality' (*nacionalnost* or *narodnost* in Croatian) does not refer to 'citizenship', but to the membership of an ethnic group.

³⁰ Other discrimination grounds, such as age, disability and 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). Therefore, through its case law, the Constitutional Court had confirmed that those grounds are also protected under the Constitution.

³¹ 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.

³² 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 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' (69 complaints out of 469).³³ 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.³⁴

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

The Constitutional Act on the rights of national minorities³⁵ 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'.³⁶

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.³⁷

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 (Socialist Federal Republic of Yugoslavia) 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.

³³ People's Ombudsperson (2022), [Report for 2021](#).

³⁴ People's Ombudsperson (2022), [Report for 2021](#).

³⁵ 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*.

³⁶ 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.

³⁷ 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.

According to case law:

'belonging to a certain ethnicity is primarily a 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.'³⁸

b) Religion or 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.³⁹

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.'⁴⁰

There is no definition of belief in national law. The Anti-discrimination Act explicitly covers religion (*vjera*) as a discrimination ground while belief is mentioned as political or other belief (*uvjerenje*).

c) Disability

The definitions of disability in national law are in compliance with the definition set by the CJEU.⁴¹

Disability is defined both by the Social Welfare 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'.⁴² 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.⁴³ The same definition is also contained in the Act on the Register of persons with disabilities⁴⁴ and the Act on protection from domestic violence.⁴⁵

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

³⁸ 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.

³⁹ Act on the legal status of religious communities, 4 July 2002, Official Gazette 83/2002, 73/2013, *Zakon o pravnom položaju vjerskih zajednica*.

⁴⁰ 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.

⁴¹ CJEU HK Danmark (Ring and Skouboe Werge) C-335/11 and C-337/11, para 38.

⁴² Social Welfare Act, 1 January 2022, Article 15(1)(11), Official Gazette 18/22, 46/22, 119/22, *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, 32/20, *Zakon o profesionalnoj rehabilitaciji i zapošljavanju osoba s invaliditetom*.

⁴³ Disability Ombudsperson (2014), *Parallel Report for the UN Committee on the Rights of Persons with Disability*, July 2014.

⁴⁴ Act on the Register of persons with disabilities, Official Gazette 63/22, 11 June 2022, Article 2(1)(1), *Zakon o registru osoba s invaliditetom*.

⁴⁵ Act on protection from domestic violence, 1 January 2018, Article 8(9) Official Gazette 70/2017, 126/2019, 84/2021, *Zakon o zaštiti od nasilja u obitelji*.

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 rely on the Convention on the Rights of Persons with Disabilities which contains guidance on who is to be regarded as a person with disability, 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 Persons with Disabilities. So far, the length of the assessment proceedings has proved to be the biggest problem.

The Primary and Secondary Education Act⁴⁶ states that primary and secondary education is based on the principle of equal educational opportunities for all students according to their abilities.⁴⁷ The Rules on primary and secondary education of students with developmental difficulties⁴⁸ 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.

⁴⁶ 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, 64/20, 151/22, *Zakon o odgoju i obrazovanju u osnovnoj i srednjoj školi*.

⁴⁷ Primary and Secondary Education Act, 15 July 2008, Article 4(2)(2).

⁴⁸ Rules on primary and secondary education of students with developmental difficulties, 23 February 2015, Official Gazette 24/2015, *Pravilnik o osnovnoškolskom i srednjoškolskom odgoju i obrazovanju učenika s teškoćama u razvoju*.

The Social Welfare Act defines 'elderly person' as a person aged 65 and over.⁴⁹ 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.⁵⁰ 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.⁵¹ The Act on protection from domestic violence also defines 'elderly person' as a person aged 65 and over.⁵²

e) Sexual orientation

National law does not provide a definition of sexual orientation.⁵³ There is also no available case law that would provide a definition of sexual orientation.

2.2 Multiple and intersectional 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).⁵⁴ 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.⁵⁵

In Croatia, intersectional discrimination is not (explicitly) prohibited by law. The Anti-discrimination Act does not define intersectional discrimination, however, as a concept intersectional discrimination is applied by the People's Ombudsperson.⁵⁶

In Croatia, the following case law deals with multiple and/or intersectional discrimination:

In a landmark case, the People's Ombudsperson determined multiple discrimination of women belonging to the Muslim minority who were not allowed to wear head covers in photographs for driving licences, finding that the regulation in question resulted in multiple discrimination on the basis of age and religion.⁵⁷ The Regulation on driving licences, allowed for head covers in photographs to be worn only by older 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 religious dress code. 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.⁵⁸

⁴⁹ Social Welfare Act, Official Gazette 18/22, 46/22, 119/22, *Zakon o socijalnoj skrbi*, Article 15(1)(9).

⁵⁰ Healthcare Act, 1 January 2009, Official Gazette 100/18, 125/19, 147/20, 119/22, 156/22, *Zakon o zdravstvenoj zaštiti*, Articles 21, 30 and 31.

⁵¹ Labour Act, 15 July 2014, Article 112(6).

⁵² Act on protection from domestic violence, 1 January 2018, Article 8(10) Official Gazette 70/2017, 126/2019, 84/2021, *Zakon o zaštiti od nasilja u obitelji*.

⁵³ 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.

⁵⁴ Anti-discrimination Act, 9 July 2008, Article 6(1).

⁵⁵ 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.'

⁵⁶ People's Ombudsperson, Analysis: About intersectionality and can it influence more successful suppression of discrimination? (*Analiza: O intersektionalnosti i može li utjecati na uspješnije suzbijanje diskriminacije?*), <https://www.ombudsman.hr/>.

⁵⁷ People's Ombudsperson (2012), Report on occurrence of discrimination for 2011, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/#1556196759007-36eed5fe-764d>.

⁵⁸ Regulations on driving licences, 11 December 2019, Article 17(4) Official Gazette 2/2019, *Pravilnik o vozačkim dozvolama*.

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, aged 55 at the time, who claimed that he was unjustifiably fired from his job because he held classes in Serbian instead of the standard Croatian language.

The ECtHR determined that in the specific case, rights of the applicant guaranteed by the Article 8 of the European Convention had been violated since the decision on termination of employment relied on the applicant's ethnicity and age.⁵⁹

In the author's opinion 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 People's Ombudsperson reported on a suspicion of intersectional discrimination based on age and gender for television presenters on Croatian public television.⁶⁰ In accordance with the findings of her analysis, the Ombudsperson recommended the reorganisation of work tasks in a way that TV anchor engagement would include equal numbers of male and female presenters of all age groups.⁶¹

The People's Ombudsperson has repeatedly reported on 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 older 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.⁶²

In 2022 there were no known cases dealing with multiple or intersectional discrimination.

2.3 Assumed and associated discrimination

a) Discrimination by assumption

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

The Anti-discrimination Act provides that placing a person in an unfavourable position based on a misconception of the existence of a prohibited ground of discrimination is discrimination.⁶³

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,⁶⁴ in a less favourable position on the prohibited grounds is considered discrimination.⁶⁵ National law is in line with the judgment in

⁵⁹ European Court of Human Rights, [Mile Novaković v. Croatia](#), No. 73544/14, 17 December 2020.

⁶⁰ People's Ombudsperson (2022), [Report for 2021](#).

⁶¹ People's Ombudsperson (2022), [Report for 2021](#).

⁶² People's Ombudsperson (2022), [Report for 2021](#).

⁶³ Anti-discrimination Act, 9 July 2008, Article 1(3).

⁶⁴ This would include same-sex relationships.

⁶⁵ Anti-discrimination Act, 9 July 2008, Article 1(2).

C-303/06 *Coleman v. Attridge Law and Steve Law*.⁶⁶ 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*,⁶⁷ 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 child with a disability who required accessible housing but he 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 child with a disability 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*, the European Court of Human Rights⁶⁸ determined that Croatia had violated Article 3 and Article 14 of the European Convention since upon a criminal complaint of verbal and physical assault, it failed to examine whether the victim had been attacked because she was perceived by the attacker as Roma and thus whether the criminal offence in question constitutes a hate crime.⁶⁹

In 2022 there was no available case law dealing with the issue of discrimination by association.

2.4 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.⁷⁰

The same definition of direct discrimination is used by the Gender Equality Act.⁷¹

The Labour Act and the Same-sex Life Partnership Act prohibit direct discrimination, but do not define it.⁷² For the purpose of cases that concern those two acts, the definition of direct discrimination from the Anti-discrimination Act should be used.⁷³ The Labour Act refers to special laws dealing with discrimination, i.e. the Anti-discrimination Act.

⁶⁶ CJEU, judgment of 17 July 2008, *Coleman v. Attridge Law and Steve Law*, C-303/06, EU:C:2008:415.

⁶⁷ European Court of Human Rights, *Guberina v. Croatia*, No. 23682/13, 22 March 2016.

⁶⁸ European Court of Human Rights, *Škorjanec v. Croatia*, No. 25536, 28 March 2017.

⁶⁹ European Court of Human Rights, *Škorjanec v. Croatia*, No. 25536, 28 March 2017.

⁷⁰ Anti-discrimination Act, 9 July 2008, Article 2(1).

⁷¹ 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).

⁷² Labour Act, 15 July 2014, Article 7(4) and Same-sex Life Partnership Act, 15 July 2014, Article 6(3).

⁷³ Anti-discrimination Act, 9 July 2008, Article 1.

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).⁷⁴

2.5 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.⁷⁵

The Labour Act and the Same-sex Life Partnership Act prohibit indirect discrimination, but do not define it.⁷⁶ For the purpose of cases concerning those two acts, the definition of indirect discrimination from the Anti-discrimination Act should be used. The ADA is general law that is applicable in every situation in which there are no different provisions in special laws regulating particular areas.⁷⁷

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.⁷⁸

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.⁷⁹

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

The issue of indirect discrimination had been raised in several court proceedings, however, the final results of these proceedings were such that indirect discrimination was not explicitly determined.⁸⁰

From the case law so far, it can be argued that the concept of indirect discrimination is perhaps not well understood by the courts and by victims of discrimination themselves.

Some examples of indirect discrimination are mentioned in the People's Ombudsperson's annual reports. The Ombudsperson acted in several cases of indirect discrimination on different discrimination grounds and found indirect discrimination, for example, in cases relating to conditions for the promotion of a police officer on the basis of a health condition,⁸¹ implementation of epidemiological measures and work from home on the basis

⁷⁴ Anti-discrimination Act, 9 July 2008, Article 9(3).

⁷⁵ Anti-discrimination Act, 9 July 2008, Article 2(2).

⁷⁶ Labour Act, 15 July 2014, Article 7(4) and Same-sex Life Partnership Act, 15 July 2014, Article 6(3).

⁷⁷ Anti-discrimination Act, 9 July 2008, Article 1.

⁷⁸ Anti-discrimination Act, 9 July 2008, Article 2(2).

⁷⁹ Constitution of the Republic of Croatia, 22 December 1990, Article 16.

⁸⁰ High Misdemeanour Court of the Republic of Croatia, Decision no. JŽ-1434/2017, of 26 September 2018; Zagreb Municipal Labour Court, Decision no: Pr-9812/13 of 23 May 2014, Zagreb County Court, Decision no: GŽr-1367/14 of 18 November 2014, Supreme Court of the Republic of Croatia, Decision no. Revr-707/15 of 23 May 2017, Constitutional Court of the Republic of Croatia, Decision no. U-III-4748/17 of 9 October 2019.

⁸¹ People's Ombudsperson (2021), Report for 2020.

of financial status⁸² and indirect discrimination of Roma families in exercising social welfare rights.⁸³

2.5.1 Statistical evidence

Section 2.5.1 has not been updated for 2022. Regarding the legal framework and practice, please see Country report Non-discrimination Croatia 2022, Transposition at national level of Council Directives 2000/43 and 2000/78, reporting period 01.01.2021 – 01.01.2022.

2.6 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.⁸⁴

The Labour Act does not define harassment but refers to the Anti-discrimination Act as *lex specialis*.⁸⁵ 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.

Some legal authors, whose opinions often greatly influence case law, use the term 'harassment' as a synonym for mobbing.⁸⁶ 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.

In a landmark case, 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 or not it is caused by some of the prohibited grounds of discrimination under the Anti-discrimination Act.⁸⁷ 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 has confirmed the distinction established by the Constitutional Court in relation to 'harassment' (qualified as mobbing) on grounds not covered by the Anti-discrimination Act.⁸⁸

⁸² People's Ombudsperson (2021), Report for 2020.

⁸³ People's Ombudsperson, [Report for 2020](#).

⁸⁴ Anti-discrimination Act, 9 July 2008, Article 3(1).

⁸⁵ Labour Act, 15 July 2014, Article 134.

⁸⁶ e.g. Crnić, Ivica (ed.) International Organization for Migration (2009), *Guide to Anti-discrimination Legislation and Case Law*, Zagreb, 2009; The term 'mobbing' meaning bullying or psychological violence without discrimination on any ground.

⁸⁷ 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).

⁸⁸ Supreme Court of the Republic of Croatia, Decision No. GŽ-4/2019, 11 June 2019, available at: <https://sudskapraksa.csp.vsrh.hr/decisionPdf?id=090216ba8099d8e7>.

The Criminal Code⁸⁹ 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.⁹⁰ 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 discrimination⁹¹ 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.

In 2022, the Supreme Court of Croatia issued a decision in a joint action initiated by the NGO for the protection and the promotion of the family and parental rights of LGBTIQ persons, ruling that the NGO which promotes conservative and traditional family values through its public petition and content published on its website, encouraged discrimination of LGBTIQ persons and harassed persons belonging to the LGBTIQ community on the basis of their sexual orientation. (For more on the judgment see section 12.2).⁹²

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.⁹³

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 their employee.⁹⁴ Regarding the liability of an employer for the actions of third parties against their employee, the employer is, in general, liable for the damages their 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.⁹⁵

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.

⁸⁹ Criminal Code, 21 October 2011, *Kazneni zakon*, Official Gazette [125/2011](#), [144/2012](#), [56/2015](#), [61/2015](#), [101/2017](#), [118/2018](#), [126/2019](#).

⁹⁰ Criminal Code, 21 October 2011, Article 156.

⁹¹ Anti-discrimination Act, 9 July 2008, Article 3.

⁹² Decision of the Supreme Court of the Republic of Croatia, no. GŽ-10/2021, 14 December 2021, published in May 2022.

⁹³ Labour Act, 15 July 2014, Article 134.

⁹⁴ Civil Obligations Act, 25 February 2005, Official Gazette 35/2005, 41/2008 and 125/2011, *Zakon o obveznim odnosima*.

⁹⁵ Labour Act, 15 July 2014, Article 111.

2.7 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.⁹⁶ 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.⁹⁷

In the 2022 ruling of the Supreme Court of the Republic of Croatia, in a case initiated by a joint action, the court determined that the defendant encouraged the discrimination of LGBTIQ persons, stating that the public invitation to sign a petition by which the families of LGBTIQ persons are called false solely because of their sexual orientation, constitutes encouragement to discrimination (for more on the judgment see section 12.2).⁹⁸

b) Scope of liability for instructions to discriminate

In Croatia, the instructor and the discriminator are liable.

The law does not contain any specific provisions regarding the liability of legal persons for such actions, but as these actions are considered discrimination, the general provision on the liability of all legal and natural persons should apply (see section 2.6.b above).

2.8 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78)

a) Implementation of the duty to provide reasonable accommodation for persons with disabilities in the area of employment

In Croatia, the duty on employers to provide reasonable accommodation for persons with disabilities is included in the law. It is defined.

The Anti-discrimination Act prohibits the failure to provide reasonable accommodation for persons 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.'⁹⁹

⁹⁶ Anti-discrimination Act, 9 July 2008, Article 4(1).

⁹⁷ Anti-discrimination Act, 9 July 2008, Article 4(1).

⁹⁸ Decision of the Supreme Court of the Republic of Croatia, no. Gž-10/2021, 14 December 2021, published in May 2022.

⁹⁹ Anti-discrimination Act, 9 July 2008, Article 4(2). The expression 'other means' implies any other way of making accommodation, for example changing procedures and practices, redeployment, changing working hours, etc.

The Act on professional rehabilitation and employment of persons with disability¹⁰⁰ defines a reasonable accommodation of a workplace (and work in general) 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.¹⁰¹

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 disability 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 disability, 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.

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 Persons with Disabilities, which conducts professional assessment and establishes the employee's reduced working capacity. In situations in which the employee has a disability which results from an employment-related incident, but that does not involve reduced working capacity, the employer has reasonable accommodation duties in accordance with the Anti-discrimination Act and the Act on professional rehabilitation and employment of persons with disability.

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.¹⁰² 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.¹⁰³

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.

¹⁰⁰ Act on professional rehabilitation and employment of persons with disability, 13 December 2013.

¹⁰¹ Act on professional rehabilitation and employment of persons with disability, 13 December 2013, Article 7(2).

¹⁰² Act on professional rehabilitation and employment of persons with disability, 13 December 2013, Article 12(4).

¹⁰³ Act on professional rehabilitation and employment of persons with disability, 13 December 2013, Article 29.

b) Case law

Case law in this field is still rather undeveloped with only a few known cases dealing with reasonable accommodation duties regulated by the Anti-discrimination Act. In a landmark decision, Zagreb County Court expressed 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 an employee with a disability 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.¹⁰⁴

In 2022 a relevant decision has been brought in the proceedings before the Zagreb County Court in a case of a claimant who claimed that she was discriminated against on the basis of her health condition (disability). The employer refused to adapt her workplace in accordance with the instructions of the Institute for Medical Assessment, Professional Rehabilitation and Employment of Persons with Disabilities. The first-instance court rejected the discrimination claim on the grounds that the claimant failed to prove that she was placed in an unequal position compared to other persons in a comparable situation, while upon an appeal of the claimant the second-instance court ordered a retrial with the explanation that the criterion in deciding whether the claimant's rights had been violated is in determining whether the employer treated all employees who due to a certain health diagnosis suffer from an immediate risk of a reduction in working capacity in the same way as the claimant which the first-instance court failed to do. The second-instance court also emphasised that in anti-discrimination cases it is sufficient for the claimant to present facts that justify the suspicion that discrimination has been committed, which in this case the claimant has done following which the burden of proof is shifted to the respondent who is obliged to prove that there was no discrimination. (For more on the judgment please see section 12.2).¹⁰⁵

The Disability Ombudsperson constantly receives complaints regarding reasonable accommodation duties and presents them in her annual reports. She regularly points out that the most common form of discrimination against persons with disabilities in the area of employment is the lack of reasonable accommodation.¹⁰⁶

In her annual reports, the Disability Ombudsperson reported on the case of an employer ignoring the requests for accommodation of an employee with a disability of which the employer was aware, which amounted to a failure to take appropriate actions in order to ensure safe working conditions and reasonable accommodation. The Ombudsperson determined that a violation of the rights based on disability in relation to work had occurred, because the employer failed to take appropriate actions in order to ensure safe working conditions and reasonable accommodation.¹⁰⁷

In this regard, the Ombudsperson generally commented 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 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

¹⁰⁴ Zagreb County Court, Decision No. GŽr-1708/16, 20 December 2016.

¹⁰⁵ Zagreb County Court, Decision No. GŽR-1545/2021, 7 June 2022.

¹⁰⁶ Ombudsperson for Persons with Disabilities (2020), [Report for 2019](#).

¹⁰⁷ Ombudsperson for Persons with Disabilities (2020), [Report for 2019](#)

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.¹⁰⁸

In her annual report for 2022, the Disability Ombudsperson reported about a case of an employee with disability who has diagnosed MS and moves with the help of a wheelchair and who was fired from his job for not satisfying the employer's expectations during a trial working period. The employment contract was concluded at the beginning of September 2019 for a fixed period of time. From mid-September to the end of January, the employee was on sick leave, and during the period when he was not on sick leave, he was not at his workplace, given that the building where the employer's premises are located is inaccessible for persons moving with the help of a wheelchair. The employee turned to his employer with a request to enable him to work from home, but his request was denied because, according to the employer's reasoning, the possibility of working from home was not foreseen by the internal acts of the employer. The employment contract was terminated because from the evaluation of the professional and other work abilities of the employee during the trial period, it was determined that he had not demonstrated working abilities expected of him, nor the expected business results. The Ombudsperson found that in the specific case the employee, due to obstacles arising from disability, did not have the opportunity to access his workplace on the days when he did not use his right to sick leave and therefore, did not have the possibility to present his work abilities to the employer nor the possibility of even trying to achieve business results. Furthermore, that due to his disability, the employee was in a disadvantageous position in the process of assessment of the professional and other working abilities compared to other employees in a comparable situation. The Ombudsperson reported that the employee in question initiated court proceedings against his employer in which the Ombudsperson was involved as an intervener and that the proceedings ended with a court settlement.¹⁰⁹

In her most recent annual report, the Disability Ombudsperson also reported about several cases of discrimination regarding the violation of reasonable accommodation duties towards employees who are primary carers of their family members with disabilities. One case concerns a father who asked the employer for redistribution of working hours and shifts so that he would be able to take care of his son whose health condition, caused by a malignant disease, requires constant multidisciplinary monitoring by a doctor at the clinical hospital in another city, frequent trips there and medical therapy, usually in the morning hours. The employer rejected the father's request, following which the father initiated court proceedings for discrimination and as reported by the Ombudsperson, the first-instance court determined that the employer's decision not to comply with the father's request for reasonable accommodation of working hours and place of work was discriminatory, and that it presented a violation of reasonable accommodation duties. In addition to referring to the national legislation, the court justified its decision by referring to the provisions of the Convention on the Rights of Persons with Disabilities. The decision of the higher court is currently pending upon the employer's appeal.¹¹⁰

The Ombudsperson also reported on a similar case related to the complaint of the father of a child with developmental difficulties who due to the change in his working hours, had no one to leave the child with while he is at work, nor did he have anyone to drive the child to school. Along with the complaint, the father submitted documentation from which it was evident that his child needs increased parental care in activities of daily life due to developmental difficulties, that he cannot independently perform activities appropriate for his age and depends on the help of another person in dressing and undressing, performing basic life needs, using medication and going to therapy, moving, performing daily life activities, etc. The Ombudsperson recommended the employer enable necessary accommodation in relation to the father's working hours to the needs arising from parental

¹⁰⁸ Ombudsperson for Persons with Disabilities (2022), [Report for 2021](#).

¹⁰⁹ Ombudsperson for Persons with Disabilities (2023), [Report for 2022](#)

¹¹⁰ Ombudsperson for Persons with Disabilities (2023), [Report for 2022](#)

care for his child. The employer accepted the recommendation and accommodated the organisation of working hours in a way that enables the father to care for his child.¹¹¹

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 (see section 2.1 c above).

The Anti-discrimination Act does not define disability. When claiming rights under the Anti-discrimination Act, the definition prescribed by the Social Welfare Act and the Act on professional rehabilitation and employment of persons with disability can be applied as well as the guidance on who is to be regarded as a person with disability, prescribed by the Convention on the Rights of Persons with Disabilities.

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 Persons with Disabilities.¹¹² 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.¹¹³ According to the law, the Institute should have a significant role in the employment of persons with disabilities through advising employers regarding the reasonable accommodation duties,¹¹⁴ however, in the author's opinion, in practice the role of the Institute is primarily reduced to expert examination of the degree of disability, and less to providing assistance to employers and persons with disabilities regarding their actual employment.¹¹⁵

The medical assessment is conducted by a panel of experts: medical doctors, social workers, psychologists, educational rehabilitation professionals and pedagogues. The degree of disability is established according to the Ordinance on the assessment methodology, which regulates proceedings and criteria for the determination of disability.¹¹⁶

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. The Disability Ombudsperson regularly draws attention to this issue in annual reports.¹¹⁷ Furthermore, other problems in connection with the functioning of the Institute have emerged, the most

¹¹¹ Ombudsperson for persons with disabilities (2023), [Report for 2022](#)

¹¹² Act on the single expert body, 4 July 2014, Official Gazette 85/2014 and 95/2015, *Zakon o jedinstvenom tijelu vještačenja*. There is no official translation of the name of the institute. The direct translation from Croatian would be 'Institute for Expertise, Professional Rehabilitation and Employment of Persons with Disabilities', however, for greater clarity, the name 'Institute for Medical Assessment, Professional Rehabilitation and Employment of Persons with Disabilities' is used throughout the report.

¹¹³ 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.

¹¹⁴ Act on professional rehabilitation and employment of persons with disability, 13 December 2013, Article 37.

¹¹⁵ Act on professional rehabilitation and employment of persons with disability, 13 December 2013, Article 37.

¹¹⁶ Ordinance on the assessment methodology, 6 July 2017, Official Gazette NN 67/17, *Uredba o metodologijamavještačenja*.

¹¹⁷ Ombudsperson for Persons with Disabilities (2022), [Report for 2021](#).

important of which is the length of the procedure. The Disability Ombudsperson also constantly warns of shortcomings in the implementation of assessment procedures, which affect the realisation of rights of persons with disabilities and emphasise the need for greater functionality of the Institute for Medical Assessment, Professional Rehabilitation and Employment of Persons with Disabilities.¹¹⁸

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 whether 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 a medical assessment of disability (as, for example, when claiming a priority right in employment, when it is necessary to present 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 Persons 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 persons with disabilities entered in the register are included in the quota of employed persons with disabilities under the Act on the professional rehabilitation and employment of persons with disability.¹¹⁹ The Regulations provide that persons with disabilities may enter the register if they have acquired disability status by the decision of the competent body and according to various regulations in relation to social care, pension insurance, etc. Furthermore, the 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 on the register of employed persons with disabilities.¹²⁰

The duty to provide reasonable accommodation is not restricted only to persons who have an expert assessment from the Institute for Medical Assessment, Professional Rehabilitation and Employment of Persons with Disabilities.

The Institute for Medical Assessment, Professional Rehabilitation and Employment of Persons with Disabilities published a booklet with recommendations on making reasonable accommodation in the workplace. It is based on past experiences in working with employers and the need to ensure systematic and continuous support in planning the adaptation of the workplace according to the needs of persons with disabilities. The booklet contains practical, simple, and easy-to-use instructions and it is intended for employers, managers and colleagues, as well as for persons with disabilities. It contains instructions on reasonable accommodation duties for various medical conditions (autism, MS, alcoholism, arthritis, muscular dystrophy, Parkinson's disease, PTSD, malignant tumours, traumatic injuries, hearing impairment, visual impairment, mobility difficulties – using a wheelchair, stroke, mental disorders, cerebral palsy, diabetes, depressive disorders, epilepsy...).¹²¹

¹¹⁸ European Semester 2018/2019 country fiche on disability, available at: <https://www.disability-europe.net/country/croatia>.

¹¹⁹ 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*.

¹²⁰ 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*.

¹²¹ Institute for medical assessment, expertise and employment of persons with disabilities, Guidelines with recommendations for reasonable accommodation, available at: https://www.zosi.hr/docs/prirucnik_s_preporukama_za_razumnu_prilagodbu_radnog_mjesta.pdf; https://www.zosi.hr/docs/prirucnik_s_preporukama_za_razumnu_prilagodbu_radnog_mjesta_ii.pdf;

The Institute recognises different types of reasonable accommodation of the workplace, including architectural adaptation (physical adaptation for easier accessibility of the space, removal of existing architectural barriers in the work environment, ensuring the possibility of access to all premises where a person with disabilities performs work tasks, installation of a ramp, elevator, lifting platform, wide door frames, corridor extension, adaptation of sanitary facilities, etc.); technical adjustments (adaptation of equipment and means of work with the purpose of performing tasks independently, provision of additional lighting, sound or light signalling, suitable telephone, keyboard, use of assistive technology, custom-made furniture, office desk with the possibility of height adjustment, massage chair or other specific aids, depending on the needs of the individual employee); psychosocial adjustments of the workplace and work environment (support in work, cooperation with others, more frequent control of work performance tasks, encouragement, additional effort of other employees); cognitive adjustments (simplification of work operations, work assistance in the execution of part of the work tasks, providing clear instructions appropriate to the person's level of intellectual status and understanding, adjustment of the pace and complexity of work tasks, demonstration of the execution of tasks for better understanding, ensuring a longer time for the execution of the work task); organisational adjustments (flexibility in working hours, changing schedules, enabling the use of several shorter breaks instead of one longer one, redistribution of tasks among other employees, with respect to their existing workload and work schedule, changing the way of business communication between employees, provision of additional training or practice, a calm working atmosphere without many distractions, good working climate environment – without a lot of noise, murmurs, phone calls...).

The Disability Ombudsperson expressed the view that 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 made and whether they represent a disproportionate burden for the employer.¹²²

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

In Croatia, failure to meet the duty of reasonable accommodation in employment for persons 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.¹²³

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'.¹²⁴ 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 persons with disabilities.¹²⁵

https://www.hzz.hr/app/uploads/2022/09/ZOSI-prirucnik_s_preporukama_za_razumnu_prilagodbu_radnog_mjesta_iii-1.pdf

¹²² Ombudsperson for Persons with Disabilities (2021), [Report for 2020](#).

¹²³ Anti-discrimination Act, Article 4(2).

¹²⁴ Act on professional rehabilitation and employment of persons with disability, 13 December 2013, Article 7(2).

¹²⁵ Ombudsperson for Persons with Disabilities (2022), [Report for 2021](#).

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.¹²⁶ 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.¹²⁷ A fine is imposed on legal entities, natural persons and responsible persons in legal entities, while different levels of fine are set for different categories (from EUR 133 (HRK 1 000) to EUR 4 000 (HRK 30 000)).¹²⁸

The labour inspectorate does not interpret the failure of the employer to ensure reasonable accommodation as a violation of labour regulations, which means that persons 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.¹²⁹

The Disability Ombudsperson regularly reports that persons 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. In her annual reports, the Disability Ombudsperson repeatedly stated 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.¹³⁰ In this regard, the Disability Ombudsperson pointed to a case of a person with disability who moves using a wheelchair and stated so in her job application. After receiving an invitation to an interview, she called the employer to check whether the building has an adapted entrance for persons in a wheelchair and was told that the building has an elevator. However, an hour before the scheduled interview, the employer informed her over the phone that the building does not have adapted access for persons moving with the help of a wheelchair, for which reason she was unable to attend the job interview. The Ombudsperson issued a warning to the employer, pointing to his obligation to provide reasonable accommodation when conducting job interviews for candidates who are persons with disabilities.¹³¹

As a positive example, the Disability Ombudsperson pointed to the practice of the Ministry of the Interior, which in November 2022 presented activities with the aim of encouraging persons with disabilities to participate equally in the upcoming employment selection proceedings. In the employment advertisements, the Ministry invited all candidates with

¹²⁶ 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.

¹²⁷ Act on professional rehabilitation and employment of persons with disability, 13 December 2013, Article 41(1)(5).

¹²⁸ 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.

¹²⁹ Ombudsperson for Persons with Disabilities (2020), [Report for 2019](#).

¹³⁰ Ombudsperson for Persons with Disabilities (2022), [Report for 2021](#).

¹³¹ Ombudsperson for Persons with Disabilities (2023), [Report for 2022](#)

reasonable accommodation needs to state this in their application and then contact the Ministry for the purpose of ensuring appropriate accommodation during the selection proceedings. Also, the Ministry stated that during selection proceedings with the candidates with disabilities it will be individually discussed what possible adjustments of the workplace are needed if they are selected for the job position, with the aim to provide conditions in which they will be able to use their potential and effectively perform their work tasks.¹³²

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

In Croatia, there is a legal duty to provide reasonable accommodation for persons with disabilities outside the area of employment. The Anti-discrimination Act prohibits failure to provide reasonable accommodation for persons with disabilities outside the area of employment and defines it (for the exact wording see section 2.8.a above). Such a failure is considered discrimination.¹³³ The Anti-discrimination Act specifies that reasonable accommodation duties exist whenever they are needed to enable persons with disabilities, according to their specific needs, to use publicly available resources and to participate in public and social life.¹³⁴ 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 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).¹³⁵ 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.

The case law acknowledged the reasonable accommodation duties in the area of education.¹³⁶

Certain problems regarding the court interpretation of the reasonable accommodation duties have also been noticed. For example, an opinion of a second-instance court taken in a case involving a student with developmental issues who filed an anti-discrimination claim due to the school's failure to comply with reasonable accommodation duties. The court rejected the claim on the basis of a comparison between children with disabilities and children without disabilities where the court determined that standards for schooling in regular schools also do not meet prescribed criteria (for example in terms of classroom size, equipment, infrastructure, etc.) which is common knowledge in Croatia and that there is a similar situation in special schools for children with disabilities, meaning that the conditions are the same for all children regardless of their disability. The court then

¹³² Ombudsperson for Persons with Disabilities (2023), [Report for 2022](#).

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

¹³⁴ Anti-discrimination Act, 9 July 2008, Article 4(2).

¹³⁵ 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*. There is a lack of educational programmes adjusted to persons 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).

¹³⁶ Varaždin County Court, Koprivnica Permanent Service, Decision No. GŽ-647/2019, of 16 May 2019.

concluded that this cannot be considered to be discriminatory towards children with disabilities.

Therefore, although the school did not comply with relevant regulations, the court still found that there was no duty to make reasonable accommodation to meet the needs of the child. Following the appeal filed by the claimant, the retrial was ordered by the Supreme Court of the Republic of Croatia which is still ongoing.

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

The Science and Higher Education Act¹³⁷ 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.¹³⁸

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.¹³⁹ During 2022, a public consultation was held on the Draft of the National Plan for the Development of the Education System for the period until 2027, and the draft of the Action Plan for the Implementation of the National Plan for the Development of the Education System (2022-2024). One of the goals set by the Draft of the National Plan is to improve the education of pupils and students with special educational needs.¹⁴⁰

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.¹⁴¹

In *Guberina v. Croatia* (please see section 2.3) 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, the authorities failed to recognise the difference between the circumstances of the applicant – a father of a child with a disability 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

¹³⁷ 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*.

¹³⁸ It is not clear why the Science and Higher Education Act established reasonable accommodation only in transportation from home to school.

¹³⁹ Disability Ombudsperson (2019), *Report for 2018*.

¹⁴⁰ Public consultation, Draft of the National Plan for the Development of the Education System, <https://esavjetovanja.gov.hr/ECon/MainScreen?entityId=22062>.

¹⁴¹ 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.

with the duty of reasonable accommodation by allowing the father to benefit from the tax exemption when purchasing accessible housing.

Also relevant is the case of a claimant, a person with disability who moves with the support of an electric wheelchair, a lawyer by profession who sought damages from the State because the building of the Administrative Court is not accessible to persons in an electric wheelchair. In the specific case, the Court determined that the situation in question constitutes repeated discrimination, i.e. a more severe form of discrimination (for more on the judgment see section 12.2).¹⁴²

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

Section 2.8.f is not updated for 2022. Please see Country report Non-discrimination Croatia 2022 Transposition and implementation at national level of Council Directives 2000/43 and 2000/78, Reporting period 1 January 2021 – 1 January 2022.

¹⁴² Decision of the Zagreb County Court, No. GŽ-1322/2021, 18 July 2022.

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.¹⁴³

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.¹⁴⁴

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.¹⁴⁵

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.¹⁴⁶

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.¹⁴⁷

¹⁴³ Anti-discrimination Act, 9 July 2008, Article 1.

¹⁴⁴ Anti-discrimination Act, 9 July 2008, Article 1.

¹⁴⁵ Anti-discrimination Act, 9 July 2008, Article 8.

¹⁴⁶ Anti-discrimination Act, 9 July 2008, Article 1.

¹⁴⁷ 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.¹⁴⁸ Gender identity and expression are also covered in the national legislation.¹⁴⁹ Sex characteristics are not explicitly covered.

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.¹⁵⁰

The Labour Act prohibits direct and indirect discrimination in the field of employment including selection criteria and recruitment conditions, promotion, vocational training, advanced vocational training and retraining.¹⁵¹

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 will not 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.¹⁵²

In 2022 media reported about a case regarding the employment advertisement published on Facebook in which it was stated that persons from certain countries do not need to respond to the advertisement since they will not be hired.¹⁵³

The case was reported to the police and the People's Ombudsperson reacted through public announcement stating that this behaviour constitutes direct discrimination in access to employment which is prohibited under Croatian law. The Ombudsperson explained that the only legal criterion by which the employer can be guided when hiring is whether the candidates have the required knowledge and skills for the position, not their skin colour, ethnicity, national origin or any other basis. The Ombudsperson also reminded that the prohibition of discrimination also applies to owners of companies and other entities and legal persons, therefore, also to the owner of the restaurant in question. Also, the

¹⁴⁸ Anti-discrimination Act, 9 July 2008, Article 8(1).

¹⁴⁹ Anti-discrimination Act, 9 July 2009, Article 1 and Article 8(1).

¹⁵⁰ Anti-discrimination Act, 9 July 2008, Article 8(1).

¹⁵¹ Labour Act, 15 July 2014, Article 7(4).

¹⁵² Media reports: Al Jazeera (2016) 'Roma change their names to get a job or a loan', 31 March 2016, available at: <https://balkans.aljazeera.net/teme/2016/3/31/romi-mijenjaju-imena-da-bi-dobili-posao-ili-kredit>.

¹⁵³ <https://www.24sata.hr/news/nakon-skandalozne-objave-pizzerije-iz-samobora-reagirala-i-policija-zaprimili-smo-prijavu-859802>.

Ombudsperson stressed that in that particular situation even if the restaurant eventually did not refuse a qualified candidate for the job because of their skin colour or nationality, the sole fact that the statement itself could have discouraged some candidates from applying for the job at all presents discrimination. In connection to this, the Ombudsperson referred to the *Feryn* case.¹⁵⁴

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. Gender identity and expression are also covered in national legislation.¹⁵⁵ Sex characteristics as a separate ground is not explicitly covered.

Most complaints of discrimination, both to the Ombudsperson and to courts, are in the field of general employment.¹⁵⁶ This is also in accordance with the results of the most recent Ombudsperson's survey on attitudes and the level of awareness of discrimination and the forms of discrimination which show that the respondents' perception about the prevalence of discrimination in society is that discrimination is most common in the field of working conditions and employment (53 %).¹⁵⁷

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.¹⁵⁸ Issues of pay and dismissals are covered implicitly by the Anti-discrimination Act and explicitly by the Labour Act.¹⁵⁹

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.¹⁶⁰ 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

¹⁵⁴ People's Ombudsperson, <https://www.ombudsman.hr/hr/biranje-radnika-po-boji-koze-etnickoj-pripadnosti-i-nacionalnom-podrijetlu-je-protuzakonito/>; 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>.

¹⁵⁵ Anti-discrimination Act, 9 July 2008, Article 1 and Article 8(1).

¹⁵⁶ People's Ombudsperson (2017), *Report for 2016*, p. 6.

¹⁵⁷ People's Ombudsperson, Research on attitudes and the level of awareness of discrimination and the forms of discrimination for 2022, <https://www.ombudsman.hr/hr/download/istrazivanje-o-stavovima-i-razini-svijesti-o-diskriminaciji-i-pojavnim-oblicima-diskriminacije-2022/?wpdmdl=15351&refresh=63e0c6603768c1675675232>.

¹⁵⁸ Anti-discrimination Act, 9 July 2008, Article 8(1).

¹⁵⁹ Anti-discrimination Act, 9 July 2008, Article 8(1) and 8(3) and Labour Act, 15 July 2014, Article 7(4).

¹⁶⁰ People's Ombudsperson (2019), *Report for 2018*.

vocational training and retraining¹⁶¹ as well as to education and science.¹⁶² 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. Gender identity and expression are also covered by the national legislation.¹⁶³ Sex characteristics as a separate ground is not explicitly covered.

The Labour Act also explicitly prohibits discrimination in the field of vocational training, advanced vocational training and retraining.¹⁶⁴

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.¹⁶⁵ 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'. Gender identity and expression are also covered in national legislation.¹⁶⁶ Sex characteristics as a separate ground is not explicitly covered.

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.¹⁶⁷

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.¹⁶⁸ Age, disability, religion or belief and sexual orientation as well as gender identity and expression are also covered.¹⁶⁹ Sex characteristics as a separate ground is not explicitly covered.

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

¹⁶² Anti-discrimination Act, 9 July 2008, Article 8(2).

¹⁶³ Anti-discrimination Act, 9 July 2008, Article 1 and Article 8(1).

¹⁶⁴ Labour Act, 15 July 2014, Article 7(4).

¹⁶⁵ Anti-discrimination Act, 9 July 2008, Article 8(9).

¹⁶⁶ Anti-discrimination Act, 9 July 2008, Article 1 and Article 8(9).

¹⁶⁷ Labour Act, Article 166.

¹⁶⁸ The area of social housing is also implicitly covered by the Anti-discrimination Act.

¹⁶⁹ Anti-discrimination Act, 9 July 2008, Articles 8(3) and 8(4).

Members of the Roma community sometimes face obstacles in accessing healthcare.

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 the Roma community by health insurance. According to the survey results, as many as 54.6 % of households in the year preceding the survey were found to be unable to pay for a medicine or medical service that was required by a household member, which suggests insufficient availability of healthcare. Also, according to research findings, as many as 27 % of respondents had not contacted a doctor in the past 12 months, although they needed medical attention. This is partly related to a lack of financial means and partly due to the location of Roma settlements, which are often far away from health institutions.¹⁷⁰ 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 were lacking basic hygiene prerequisites, such as obtaining water through the water supply, drainage and functional bathrooms inside the housing units, which directly affects the health of the household.¹⁷¹

Considering everything mentioned above, the quality of healthcare provided to Roma is lower than the quality of healthcare provided to the rest of the population. However, vaccination rates of preschool Roma children in Croatia have reached the rates of vaccination coverage of preschool children in the rest of the population. All children in Croatia, including Roma children, have the right to free healthcare until the age of 18.¹⁷²

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 had conducted research on public health indicators of Roma health status in the Republic of Croatia. The health status and healthcare of the Roma national minority is largely determined by their socio-economic position, with the Roma population facing various social challenges, exclusion and poverty. All this directly affects the increase in health inequalities, and thus differences in the use of healthcare services and quality of life among persons belonging to the Roma minority in comparison to members of the general population. The research showed that special attention in policy making, improvement and protection of Roma health status should be given to children and women, prevention of addiction and improving the quality of life of Roma with disabilities and Roma persons with chronic diseases. In addition, it is necessary to continuously improve other areas, such as the prevention of infectious diseases and to increase health literacy among Roma people and health information for Roma in the Republic of Croatia.¹⁷³

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, however, there is no specific data on this issue.

¹⁷⁰ Kunac, S., Klasnić, K. and Lalić, S. (2018) *Inclusion of Roma in Croatian Society: Database Research*, Centre for Peace Studies, August 2018.

¹⁷¹ Kunac, S., Klasnić, K. and Lalić, S. (2018) *Inclusion of Roma in Croatian Society: Database Research*, Centre for Peace Studies, August 2018.

¹⁷² 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>.

¹⁷³ Croatian Institute of Public Health (2020) *Research on public health indicators of Roma health status*, March 2020.

a) Article 3(3) exception (Directive 2000/78)

The Anti-discrimination Act prohibits discrimination based on religion or belief, age, disability and sexual orientation, 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. Gender identity and expression are also covered by the Anti-discrimination Act.¹⁷⁴ Sex characteristics as a separate ground is not explicitly covered.

The Anti-discrimination Act applies to all areas, without any limitation;¹⁷⁵ it therefore covers implicitly social advantages of all kinds.

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.¹⁷⁶ Gender identity and expression are also covered in national legislation.¹⁷⁷ Sex characteristics as a separate ground is not explicitly covered.

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).

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

In all relevant documents, the authorities recognise the need to include persons with disabilities in the mainstream education system (e.g. the Parliamentary Declaration on the Rights of Persons with Disabilities).¹⁷⁸ However, in spite of the fine aims expressed in these documents, there are still numerous problems: lack of educational programmes adjusted to persons 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 Government adopted the National Plan for the Equalisation of Opportunities for Persons with Disabilities for 2021 to 2027 and an accompanying action plan.¹⁷⁹ It is stated that this document represents a continuation of strategic planning in the field of promoting the rights of persons with disabilities with the aim of making all areas of life open and accessible to persons with disabilities. The final goal is to create conditions in Croatian society for

¹⁷⁴ Anti-discrimination Act, 9 July 2008, Article 1 and Article 8(1)(3).

¹⁷⁵ Anti-discrimination Act, 9 July 2008, Article 8.

¹⁷⁶ Anti-discrimination Act, 9 July 2008, Article 8(2).

¹⁷⁷ Anti-discrimination Act, 9 July 2008, Article 1 and Article 8(1)(2).

¹⁷⁸ Official Gazette 47/2005.

¹⁷⁹ Decision of the Government of the Republic of Croatia, Official Gazette 143/2021, available at: https://narodne-novine.nn.hr/clanci/sluzbeni/2021_12_143_2440.html.

active inclusion and equal participation of persons with disabilities and to prevent discrimination. One of the main priority areas of the National Plan is the inclusive education of persons with disabilities as the basic precondition for their active participation in society. In order to achieve this goal, activities are planned to provide infrastructural support to students with disabilities, support of teaching assistants and professional communication mediators, further professional development of teachers and professional associates, increased access to higher education, etc.¹⁸⁰ In order to implement the specific objectives defined by the National Plan, the accompanying action plan was adopted as well.¹⁸¹ The action plan prescribes specific measures, a time frame for their execution and specifies the bodies authorised and obliged to implement the prescribed measures.

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.¹⁸²

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 in which schools refuse to enrol students because of their disabilities and refer them to special institutions. The Disability Ombudsperson concluded that nevertheless, discrimination is still present since inclusion of pupils with disabilities in regular schools is not accompanied by appropriate support.¹⁸³

In her latest annual report, the Disability Ombudsperson once again noticed that national regulations in the area of education in the Republic of Croatia have largely integrated inclusive education, the need for reasonable accommodation and equal opportunities. However, implementation is lacking and there is still fear, disbelief and prejudice, which means that children with disabilities cannot participate equally in regular schools.¹⁸⁴ The Ombudsperson stressed the importance of ensuring reasonable accommodation for children with disabilities in education. In May 2022, the Disability Ombudsperson issued a brochure for current and future students with disabilities which contains a catalogue of their rights, instructions on how to achieve those rights, etc.¹⁸⁵

According to the latest data, in the school year 2022/2023, there were 12 022 children with disabilities included in preschool education. At the same time a total of 24 913 pupils with disabilities were included in the primary education system, while 5 218 pupils with disabilities were included in the secondary education system.¹⁸⁶ Also, 322 students with disabilities were enrolled in higher education institutions.¹⁸⁷

The Ombudsperson for persons with disabilities reports that the largest number of children with disabilities are included in regular schools. According to the data presented by the Ombudsperson at the level of primary school education, 2 731 children (11 %) attend institutions with special educational conditions, 1 760 children (7 %) attend regular school in special classes, and 20 422 children attend regular school in regular classes (82 %). At the secondary school level, 258 children (5 %) attend institutions with special educational

¹⁸⁰ [National plan of Equalisation of Opportunities for Persons with Disabilities for the period from 2021 to 2027](#), June 2020.

¹⁸¹ [Action Plan for Equalisation of Opportunities for Persons with Disabilities for the period from 2021 to 2024](#), June 2020.

¹⁸² Disability Ombudsperson (2021), [Report for 2020](#).

¹⁸³ Disability Ombudsperson (2021), [Report for 2020](#).

¹⁸⁴ Disability Ombudsperson (2022), [Report for 2021](#).

¹⁸⁵ Disability Ombudsperson, <https://posi.hr/wp-content/uploads/2022/05/Brosura-za-sadasnje-i-buduce-studente-s-invaliditetom.pdf>.

¹⁸⁶ The Ombudsperson for persons with disabilities (2023), [Report for 2022](#).

¹⁸⁷ Letter of the Ministry of Science and Education, 28 February 2023.

conditions, 419 students (8 %) attend regular high school in special classes, and 4 541 children (87 %) attend regular high school in regular classes.¹⁸⁸ In the area of education, the lack of accessibility of buildings to students with disabilities also stands out.

In the context of the COVID-19 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.

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.¹⁸⁹ 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.¹⁹⁰ Despite the judgment of the European Court of Human Rights and some positive legislative measures adopted afterwards, the problem of Roma-only classes still persists.

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. In 2021, a new National Plan for Roma Inclusion (2021-2027) was adopted by the Government along with the accompanying action plan for its implementation for 2021 and 2022.¹⁹¹ The National Plan is a strategic framework for the development of equality, inclusion and participation of members of the Roma national minority in the Republic of Croatia. One of the main objectives of the National Plan for Roma Inclusion is to guarantee the members of the Roma community effective and equal access to quality and inclusive education. The action plan prescribes in more detail specific measures and activities that should be taken in order to achieve the goals set out by the National Plan.¹⁹²

Objectives set out by the action plan include reducing the share of Roma children in preschool and primary education in classes where most or all children are Roma, reducing the gap in participation in preschool and primary school education between Roma and children from the general population, reducing the gap in the completion of secondary education between Roma children and children from the general population, increasing the share of young Roma in higher education, etc. Measures aimed at achieving these objectives include co-financing transport to kindergarten/school, co-financing preschool

¹⁸⁸ The Ombudsperson for persons with disabilities (2023), [Report for 2022](#).

¹⁸⁹ European Court of Human Rights (ECtHR), *Oršuš and Others v. Croatia* [GC], No. 15766/03, 16 March 2010.

¹⁹⁰ See the judgment in ECtHR, *Oršuš and Others v. Croatia* [GC], No. 15766/03, 16 March 2010, paragraphs 158-160.

¹⁹¹ [National Plan for Roma Inclusion \(2021-2027\)](#), June 2021.

¹⁹² [Action Plan for the Implementation of the National Plan for Roma Inclusion \(2021 and 2022\)](#), June 2021.

programmes, involving younger children in an extended school stay where they can do their homework, study and spend time with other children in different activities, providing additional assistance in learning the Croatian language, involving children in additional activities aimed at educational and social integration, co-financing equipment and school supplies, ensuring scholarships, financing and ensuring accommodation in student dormitories, etc.

The People's Ombudsperson continuously notes that the problem of educational segregation is still present given that one fifth of Roma children in the Republic of Croatia study in fully ethnically segregated classes, and an additional 12.8 % are in mixed classes in which most of the students are Roma. She also notes that there are significant regional differences, and this issue is most evident in Međimurje county where almost half of the Roma children attend school in segregated classes.¹⁹³ In her most recent annual report, the People's Ombudsperson issued a recommendation to the Ministry of Science and Education that in cooperation with schools and local communities they urgently create an action plan for the desegregation of Roma pupils.¹⁹⁴

According to the latest data, in the year 2022/2023, 1 234 children of the Roma national minority (out of a total of 142 351 children) attended preschool education programmes. Also, in the school year 2022/2023, a total of 454 221 children were included in the primary and secondary education system, of which 6 021 were members of the Roma national minority. Roma-only classes were present in 8 elementary schools in 77 classes with a total of 1 638 children.¹⁹⁵

There is no available data on the total number of students belonging to the Roma national minority in the academic year 2022/2023, however, 51 students belonging to the Roma national minority achieved the right to a state scholarship in the year 2022/2023.¹⁹⁶

It should be noted that Roma-only classes prevail in the Međimurje county 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. 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.

The Ombudsperson reported that the schools often justify the existence of Roma-only classes with the explanation that Roma children often do not have sufficient knowledge of the Croatian language, and because of the organisation of transportation of children from isolated Roma settlements, etc. In addition, the schools say that parents of children belonging to the majority of the population, when they notice an increase in the number of Roma students in the school of their enrolment area, often decide to enrol their children in one of the neighbouring schools where there are no Roma children or the number of Roma children in school is lower, which also contributes to the formation of Roma-only classes.

The Ombudsperson stated that the reasons which lead to ethnically segregated classes cannot serve as an excuse but need to serve as a basis to identify the problems from which desegregation should be planned, taking into account that integration is necessary from an early age.

The Ombudsperson also noticed that apart from the fact that a large number of Roma children are currently deprived of the possibility of integration, there are frequent criticisms that the quality of education in the Roma-only (or Roma-majority) classes is lower. The Ombudsperson concluded that it is particularly worrying that only 31 % of young Roma

¹⁹³ People's Ombudsperson (2022), [Report for 2021](#).

¹⁹⁴ People's Ombudsperson (2023), [Report for 2022](#).

¹⁹⁵ Letter of the Ministry of Science and Education, 28 February 2023.

¹⁹⁶ Letter of the Ministry of Science and Education, 28 February 2023.

aged 15 to 18 attend secondary school (36 % of boys and 26 % of girls) and that further efforts need to be taken in order to achieve greater Roma inclusion in the education system.¹⁹⁷

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 extracurricular activities, as well as to arrange courses in the Croatian language and to provide extended time in school for lower-primary pupils.¹⁹⁸ 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.¹⁹⁹

There are 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.²⁰⁰ 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.²⁰¹

According to the Report on the implementation of the Action plan for the implementation of the National Plan for Roma Inclusion for 2021, with the aim of ensuring effective and equal access of Roma to quality inclusive education, during 2021 numerous activities were carried out, including co-financing of transportation from home to kindergarten/school for children and students members of the Roma national minority who live in isolated, segregated settlements, co-financing of the parental share in the economic cost of preschool education for children belonging to the Roma national minority who are integrated into preschool programmes, co-financing of the implementation of the preschool programme for children belonging to the Roma national minority and providing funds for the work of educators, didactics and children's nutrition. A national campaign was carried out with the aim of increasing the enrolment of children of the Roma national minority in preschool educational programmes and preventing the outflow of children from secondary school education. Activities were carried out for the purpose of including students of the Roma national minority in an extended stay, providing additional help in learning the Croatian language and including students in additional activities aimed at educational and social integration, co-financing of summer schools and other special educational programmes, co-financing of didactic equipment and school supplies, providing

¹⁹⁷ People's Ombudsperson (2022), [Report for 2021](#).

¹⁹⁸ 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>.

¹⁹⁹ Kunac, S., Klasnić, K. and Lalić, S. (2018) *Inclusion of Roma in Croatian Society: Database Research*, Centre for Peace Studies, August 2018.

²⁰⁰ 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.

²⁰¹ Office for Human Rights and Rights of National Minorities (2019) [Report on implementation of Roma National Inclusion strategy for 2018](#).

scholarships, etc.²⁰²

As a result of circumstances caused by the COVID-19 pandemic, a new problem arose regarding the education of Roma children in the context of distance learning and online teaching. 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.

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 noted 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 learning, a group of non-governmental organisations had filed a complaint with the UN Committee on the Rights of the Child.²⁰³

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.²⁰⁴ 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 school year 2022/2023, there were a total of 2 648 students belonging to the Serbian national minority in the primary and secondary education system included in minority education model A (in the Serbian language and Cyrillic script).²⁰⁵

The Ombudsperson noted that the number of students attending some of the minority education models is stagnating, primarily as a result of negative demographic trends, however she noted that it is positive that the number of students in model C (according to which classes are conducted in the Croatian language with an additional two to five school hours intended for learning (cultivating) the language and culture of the national minority while an additional five school hours per week includes learning the language and literature of the national minority, geography, history, music and visual arts) is increasing due to the introduction of classes in other languages and an increase in the number of schools that provide classes in model C.

²⁰² Report on the implementation of the Action Plan for the implementation of the National Plan for Roma Inclusion for 2021, March 2022, https://pravamanjina.gov.hr/UserDocsImages/dokumenti/Izvje%C5%A1%C4%87e%20AP%20NPUR_2021..pdf.

²⁰³ People's Ombudsperson (2021), *Report for 2020*.

²⁰⁴ 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>.

²⁰⁵ Letter of Ministry of Science and Education, 28 February 2023.

The Ombudsperson stated that after rising tensions in Vukovar, fuelled by inter-ethnic youth conflicts, Vukovar city authorities announced the abolition of separate education for Croats and Serbs. In this regard the Ombudsperson emphasised that Serbs, like other national minorities, have the right to choose the model of education they consider best for their children, indicating that the city authorities must restrain from such statements and interference with the rights of national minorities.²⁰⁶

In her most recent annual report, the People's Ombudsperson issued a recommendation to the Ministry of Science and Education to include more content on the contribution of members of national minorities to society as a whole and to local communities in educational programmes for all students. The Ombudsperson further stated that education in the languages and scripts of national minorities is one of the foundations of preserving minority identities and pointed out that out of the 22 national minorities in Croatia, 16 have the possibility of education in their own language and script. The Ombudsperson also noted that from preschool to high school institutions, over 10 000 children are involved in education in minority languages, and that the number of schools where these educational models are carried out is constantly increasing.²⁰⁷

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.²⁰⁸ With rare exceptions,²⁰⁹ there are no special regulations on access to and supply of goods and services for persons with disabilities. Gender identity and expression are also covered in national legislation.²¹⁰ Sex characteristics as a separate discrimination ground is not explicitly covered.

The Same-sex Life Partnership Act (SSLPA) prohibits discrimination based on same-sex partnership, in access to and supply of goods and services (prohibition of discrimination against same-sex life partners in seeking goods and services who are discriminated against because they are in a life partnership).²¹¹ 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 booked accommodation in Croatia and were later on forced to cancel their reservation by the owner of the apartment because of their sexual orientation. The state attorney's office filed an indictment against the owner of the apartment charging him with committing the criminal offence of violation of equality. According to the most recent information gathered through the media, criminal proceedings are still in progress.²¹²

In her last annual report, the Gender Equality Ombudsperson reported on a decision of the High Misdemeanour Court in a case of a same-sex couple who were denied participation in activities of a local singing group due to their sexual orientation. In the specific case, the Ombudsperson acted upon an individual complaint and gave her recommendation to the local cultural society within which the singing group was established, however the group failed to act according to her recommendations. In misdemeanour proceedings, the Court

²⁰⁶ People's Ombudsperson (2022), [Report for 2021](#).

²⁰⁷ People's Ombudsperson (2023), [Report for 2022](#).

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

²⁰⁹ The name of a medicinal product has to be expressed in Braille format on the packaging.

²¹⁰ Anti-discrimination Act, 9 July 2008, Article 1 and Article 8(1)(8).

²¹¹ Same-sex Life Partnership Act, 15 July 2014, Article 71.

²¹² 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/#>.

established discrimination on the basis of sexual orientation and issued a fine according to the Anti-discrimination and Gender Equality Act.²¹³

Discrimination against Roma prevails in all parts of social life, including access to and the supply of goods and services and examples of such cases are reported in the media on a regular basis.²¹⁴

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.²¹⁵

Also, the People's Ombudsperson expressed an opinion that conditioning a rental of an apartment with the evidence that the potential tenants belong to the Roman Catholic religion, constitutes discrimination on the grounds of religion. The Ombudsperson stated that it is not disputed that everyone enjoys the freedom of religion, which includes public expression of religion as well, and that everyone has the right to freely dispose of their property. However, when a person offers their private property on the market, they are obliged to offer it to all interested parties under equal conditions, regardless of their religious beliefs or other characteristics prescribed by the Anti-discrimination Act as discrimination grounds. Therefore, the Ombudsperson concluded that it is contrary to the Anti-discrimination Act to select potential tenants according to discriminatory criteria.²¹⁶

With regard to age discrimination, the Ombudsperson identified the practice of some insurance companies of denying voluntary health insurance to persons over the age of 65 as discriminatory. The Ombudsperson received several complaints from long-term voluntary health insurance policyholders who were denied their request to extend their policy after reaching the age of 65. The Ombudsperson concluded that a total of 10 insurance companies that offer this product have a certain upper age limit for insurance that ranges from 60 to 70 years of age, while some of them have an upper age limit for the offer of any of their insurance services. Some of them have an upper limit on the duration of insurance, for example, by limiting the possibility of renewing the insurance policy after a certain age.²¹⁷

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

²¹³ Gender Equality Ombudsperson (2023), [Report for 2022](#).

²¹⁴ 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-toqa-9181124>; 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/velike-price/kako-smo-se-izvukli-iz-romskog-naselja-pokrenuli-biznis-i-krenuli-razvijati-talent-naseq-genijalnog-sina/>.

²¹⁵ People's Ombudsperson analysis: 'Access to services – citizenship as a basis for discrimination?', October 2019, available at: <https://www.ombudsman.hr/hr/analiza/>.

²¹⁶ People's Ombudsperson (2022), [Report for 2021](#).

²¹⁷ People's Ombudsperson (2022), [Report for 2021](#).

origin, religion or belief, age, disability and sexual orientation.²¹⁸ Gender identity and gender expression are also covered.²¹⁹ Sex characteristics as a separate discrimination ground is not explicitly covered.

The Same-sex Life Partnership Act (SSLPA) prohibits discrimination based on same-sex partnership, in access to housing.²²⁰ LGBT persons often face discrimination in this field.²²¹ The SSLPA protects life partners. LGBT persons who are not in a life partnership are protected under the Anti-discrimination Act and Gender Equality Act.

The Gender Equality Ombudsperson reports that discrimination against LGBT persons in this field is widespread but unreported.²²²

In its judgment in *Guberina v. Croatia*²²³ (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 child with a disability.

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, including in the most recent annual report.²²⁴ 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 older 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.²²⁵

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.²²⁶

In her most recent annual report, the People's Ombudsperson reported that the electrical network continues to be repaired and restored in the areas inhabited by the Serbian returnee population, which were left without electricity during and after the Homeland War. The Ombudsperson pointed out that it is still necessary to re-electrify more than 1 000 households, most often in poorly populated and dislocated settlements in areas affected by the war, that is, to restore the connections that existed earlier. The Ombudsperson reported that due to limited resources, as well as complex and slow proceedings conducted

²¹⁸ Anti-discrimination Act, 9 July 2008, Article 8(1)(6).

²¹⁹ Anti-discrimination Act, 9 July 2008, Article 1 and Article 8(1)(6).

²²⁰ Same-sex Life Partnership Act, 15 July 2014, Articles 71, 72 and 79.

²²¹ Organisation Zagreb Pride, <https://zagreb-pride.net/>.

²²² 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 the conclusion of the case. The case was reported about in the Gender Ombudsperson's *Report for 2014* available at: https://arhiva.prs.hr/attachments/article/1555/01_IZVJESCE_2014_CJELOVITO.pdf.

²²³ European Court of Human Rights, *Guberina v. Croatia*, [GC] No. 23682/13, 22 March 2016.

²²⁴ People's Ombudsperson (2022), *Report for 2021*.

²²⁵ 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>.

²²⁶ People's Ombudsperson (2019), *Report for 2018*.

with the aim of resolution of property issues in those areas, only about 80 households are being connected to the electricity system each year.²²⁷

New problems emerged regarding the housing situation of members of the 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 still ongoing and most of the people who lost their homes in the earthquake are still living in containers and mobile homes in poor living conditions, sometimes without basic facilities. Reconstruction is planned to be carried out by the State, however, no concrete results have yet been seen and the Government is heavily criticised in public and by the media because of the slow reconstruction.²²⁸

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 as many as 46 % of Roma live in settlements, where housing conditions, access to utilities and infrastructure and household equipment are extremely poor, and in many such settlements, unfortunately, facilities suitable for children and young people do not exist.²²⁹ The Ombudsperson has noted that better and more efficient cooperation and coordination in solving Roma-specific problems should be established.²³⁰

Within the National Plan for Roma Inclusion, activities and measures in the field of housing are planned in order to ensure efficient and equal access of Roma to appropriate desegregated housing and basic services.²³¹ Measures include ensuring access to basic services such as tap water, sanitation facilities, waste collection services, digital communication services, prevention of spatial segregation and promotion of desegregation by drawing up concrete housing plans in cooperation with local communities, prevention of evictions and ensuring alternative accommodation, development of integrated housing programmes, and the implementation of financial literacy and savings programmes, etc.

According to the report on the implementation of the Action plan for the implementation of the National Plan for Roma Inclusion for 2021, with the aim of ensuring effective and equal access of Roma to adequate, desegregated housing and basic services in accordance with the measures provided by the National Plan, numerous activities were carried out, including financing and procurement of construction materials, equipping sanitary facilities and bathrooms, purchase of household appliances, financial assistance to local and regional self-government units for the construction of roads, water connections, public lighting, etc.²³²

²²⁷ People's Ombudsperson (2023), [Report for 2022](#).

²²⁸ Media reports: Dvije godine nakon potresa Banovina je 'zaboravljena': [Slobodna Dalmacija - Gdje je zapela obnova nakon potresa? 'Ministarstvo graditeljstva nije pretvorilo u odluke ni dva posto zahtjeva građana jer im nije odobreno povećanje broja ljudi'](#); [Tri godine od potresa u Zagrebu: Spora dinamika obnove privatne imovine | Hrvatska Vijesti | Al Jazeera](#); [Jutarnji list - Horvat se hvalio da je država učinila puno, oporba nije zadovoljna: 'Niste obnovili ni 1% štete'](#); [Prosvjed u Petrinji, ljudi prozivali Plenkovića: "Ovo je skroz nova razina drskosti" - Index.hr](#).

²²⁹ People's Ombudsperson (2022), [Report for 2021](#).

²³⁰ 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*.

²³¹ [National Plan for Roma Inclusion for the period 2021-2027](#), June 2021.

²³² [Report on the implementation of the Action Plan for the implementation of the National Plan for Roma Inclusion for 2021, March 2022](#).

There are several programmes for housing solutions and the improvement of living conditions of the members of the Roma national minority underway. These include the donation of building materials 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.

The biggest project regarding housing in Roma settlements is the one in Darda municipality, which has been ongoing 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 the Roma community, which will result in the creation of a new Roma settlement.

The Ombudsperson reported on the success of the project in Darda, which is near completion and has significantly improved the living conditions of members of the Roma community in that area.²³³

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 the municipality's mayor, who saw nothing wrong with the name of the project and publicly stated that of course these houses would be Roma houses, and not houses for Croats, Serbs or mujahideen.²³⁴ Although this kind of reporting was partly satirical, it points to the prevailing attitude towards Roma as 'separate' from the rest of the population.

Because of the general lack of inclusion and numerous prejudices directed towards Roma, leaving the Roma-only settlements can be very difficult, even when a person has a high motivation to do so. There are media reports of a Roma person being denied a bank loan to buy a house outside the settlements purely on the basis of their Roma ethnicity.²³⁵

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

[https://pravamanjina.gov.hr/UserDocsImages/dokumenti/Izvj%C5%A1%C4%87e%20AP%20NPUR_2021..pdfv.hr\).](https://pravamanjina.gov.hr/UserDocsImages/dokumenti/Izvj%C5%A1%C4%87e%20AP%20NPUR_2021..pdfv.hr).)

²³³ People's Ombudsperson (2022), *Report for 2021*.

²³⁴ 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/>.

²³⁵ 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/>.

offences and crimes against the Croatian inhabitants as well as against other Roma in 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.²³⁶

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.²³⁷

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.

The Ombudsperson reported on difficulties regarding the implementation of the Operational Programmes for the Roma National Minority, i.e. the Annual Programme for the Improvement of the Living Conditions of the Roma National Minority for the year 2022. Namely, the Ombudsperson pointed out that during 2022, 914 decisions were made on the allocation of housing aid to the members of the Roma national minority. However, that amount of the granted aid exceeds the available funds allocated for the implementation of the programme. Therefore, due to insufficient allocation of financial resources and inadequate budget planning, many people who meet the conditions for financial assistance in housing cannot exercise their right to housing aid.²³⁸

The Ombudsperson also reported on the housing problems of several groups of Roma in two Zagreb settlements where they lived in inadequate conditions surrounded by garbage, without electricity and access to drinking water, as well as the evictions of Roma families from several locations owned by local regional units. The Ombudsperson sent a recommendation to the Ministry of Spatial Planning, Construction and State Property and the Office for Human Rights and Rights of National Minorities to ensure sufficient funds within the annual programmes for improving the living conditions of the Roma national minority.²³⁹

Additional shortcomings of life in Roma settlements came to light particularly 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 in

²³⁶ 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-kacijom-na-qlavi/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/>.

²³⁷ Decision of the Varaždin County Court, no: KŽ-517/2020, 15 December 2020.

²³⁸ People's Ombudsperson (2023), [Report for 2022](#).

²³⁹ People's Ombudsperson (2023), [Report for 2022](#).

Roma settlements, a large number of household members, inadequate sanitary conditions, etc.²⁴⁰

Also, 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. The process of reconstruction is still ongoing, however, there have been no concrete results as yet.

²⁴⁰ Media reporting <https://www.slobodnaevropa.org/a/hrvatska-romi-korona-virus/30542202.html> and <https://www.portalnovosti.com/vise-srece-nego-drzavne-pameti>.

4 EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4 Directive 2000/43, Article 4(1) Directive 2000/78)

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.²⁴¹ This exception has to be interpreted in proportion to the aim and purpose for which it is provided.²⁴²

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).²⁴³

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.²⁴⁴

In the case of P.T., a teacher of Catholic religious education who was fired from his job after getting divorced since his canonical mandate was thus withdrawn by the church authorities, 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

²⁴¹ Anti-discrimination Act, 9 July 2008, Article 9(2)(4).

²⁴² Anti-discrimination Act, 9 July 2008, Article 9(3).

²⁴³ Anti-discrimination Act, 9 July 2008, Articles 9(2)(5) and 9(3).

²⁴⁴ People's Ombudsperson (2019), [Report for 2018](#).

of entering into a second marriage, as well as the fact that the school authorities had tried to secure another teaching position for him.²⁴⁵ 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 *I.R. v. J.Q.*, 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.²⁴⁶

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,²⁴⁷ 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 30.²⁴⁸ An active soldier can be promoted to lower officer status (*dočasnik*) if not older than 30,²⁴⁹ and to officer status (*časnik*) if not older than 30.²⁵⁰ 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,²⁵¹ 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 People's Ombudsperson expressed an opinion of age discrimination in employment proceedings of professional firefighters which put older candidates at a disadvantage since their age is being assessed twice during the recruitment process. Following the Ombudsperson's recommendations, the newly adopted Ordinance on employment and physical fitness testing changed the criteria for evaluating applications in the recruitment process.²⁵²

²⁴⁵ 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]}).

²⁴⁶ Court of Justice of the European Union, Decision of 11 September 2018, *IR v. JQ*, C-68/17, EU:C:2018:696.

²⁴⁷ 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.

²⁴⁸ Act on service in the armed forces, Article 36.

²⁴⁹ Act on service in the armed forces, Article 40.

²⁵⁰ Act on service in the armed forces, Article 43.

²⁵¹ 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.

²⁵² People's Ombudsperson (2022), *Report for 2021*.

The Judiciary Act,²⁵³ 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.²⁵⁴

4.4 Nationality discrimination (Article 3(2))

a) Discrimination on the ground of nationality

In Croatia, national law does not include exceptions relating to difference of treatment based on nationality (citizenship in Croatian law).

The Anti-discrimination Act regulates, however, that placing a person in a less favourable position on the grounds of 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.²⁵⁵ The Act does not mention statelessness in any way.

In Croatia, nationality (citizenship in Croatian law) is not explicitly 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 a Croatian citizen but a Serb by nationality, and vice versa. Also, a member of the 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.²⁵⁶

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).

²⁵³ Judiciary Act, 14 March 2013, *Zakon o sudovima*, Official Gazette 28/13, 33/2015, 82/2015, 82/2016, 67/18, 126/19, Article 57.

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

²⁵⁶ 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.

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 citizenship of the republic where they lived. After Croatia's independence, people who did not have Croatian republican citizenship became aliens in Croatia. Although ethnic Croats in this situation were granted citizenship (the Croatian Citizenship Act provides that any member of the Croatian People (ethnic Croats) will be considered to be a Croatian citizen), no automatic or facilitated grant of Croatian citizenship was provided for other ex-SFRY citizens who were permanent residents in Croatia, and they had to fulfil all the numerous requirements for citizenship as third country nationals.²⁵⁷

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.²⁵⁸ According to the most recent data available, 1.8 % of Roma in Croatia do not have Croatian citizenship.²⁵⁹

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.²⁶⁰

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 ongoing 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 to fulfil its positive obligation to provide an effective and accessible procedure or combination of procedures that would enable the applicant to decide on matters of his continued residence and status in Croatia, with due respect for the interests of his private life, protected under Article 8 of the Convention.²⁶¹

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.²⁶² 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 the Roma community who, prior to gaining Croatian citizenship cannot acquire rights which belong

²⁵⁷ 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>.

²⁵⁸ See: Zoon, I. (2002), *Report on obstacles facing the Roma minority of Croatia in acquiring citizenship and accessing citizenship, housing, health and social assistance*, Council of Europe/OSCE-ODIHR/European Commission Project 'Roma under the Stability Pact', September 2002.

²⁵⁹ [National Plan for Roma Inclusion for the period 2021-2027](#), June 2021.

²⁶⁰ UNHCR's intervention as a third party in the ECtHR case of *Hoti v. Croatia*, No. 63311/14, 26 April 2018.

²⁶¹ European Court of Human Rights, *Hoti v. Croatia*, [GC] No. 63311/14, 26 April 2018.

²⁶² Citizenship Act, 8 October 1991.

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 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.²⁶³

²⁶³ People's Ombudsperson (2020) [*Analysis: \(Im\)possibility of changing the data on national affiliation in the birth register.*](#)

Results of the most recent Ombudsperson's research on attitudes and the level of awareness of discrimination and the forms of discrimination show that the largest number of respondents believe that nationality and origin are the most common basis of discrimination (38 %).²⁶⁴

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

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

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

4.6.1 Direct discrimination

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

In Croatia, national law provides for specific exceptions 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

²⁶⁴ People's Ombudsperson, Research on attitudes and the level of awareness of discrimination and the forms of discrimination for 2022, <https://www.ombudsman.hr/hr/download/istrazivanje-o-stavovima-i-razini-svijesti-o-diskriminaciji-i-pojavnim-oblicima-diskriminacije-2022/?wpdmdl=15351&refresh=63e0c6603768c1675675232>

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

²⁶⁶ Anti-discrimination Act, 9 July 2008, Article 9(2)(2), 9(2)(4) 9(2)(6), 9(2)(8) 9(2)(10) and 9(3).

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

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
- fixing minimum conditions of age for access to a certain job 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

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

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

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

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).

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 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 persons with no work experience and consist of financial incentives in the form of salary co-financing for employers who hire persons without work experience.

The Ombudsperson noted that the labour market is not particularly favourable to older people since there are prevailing prejudices among employers that older people do not have work potential. They are also most exposed to termination of employment due to business reasons, where workers over the age of 55 make up 41 % of the total number of workers declared redundant. In this regard, the Ombudsperson continuously points to the discriminatory effect of the Compulsory Health Insurance Act provision, which puts employees over the age of 65 at a disadvantage compared to others: although the costs of compulsory health insurance are paid by employers for all employees, the costs of salary compensation during sick leave for employees over the age of 65 cannot be compensated at the expense of the state budget and employers need to cover such costs on their own. The Ombudsperson issued a recommendation to the Ministry of Health to amend this provision.²⁸¹

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

²⁷⁶ Labour Market Act, 1 January 2019, Official Gazette 118/18, 32/20, 18/22, Labour Act, 15 July 2014.

²⁷⁷ Labour Act, 15 July 2014, Article 59.

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 People's Ombudsperson (2023), [Report for 2022](#).

education.²⁸² A minor cannot be employed in work that may harm his or her safety, health, morality or development.²⁸³

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.²⁸⁴ 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,²⁸⁵ 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.²⁸⁶ 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).²⁸⁷ The Ministry of Labour and Pension Insurance had announced a pension insurance reform by which the state pension age would be raised to 67, which caused resentment among the general public. During 2019, the labour unions started a referendum initiative and collected a sufficient number of citizens' signatures for a referendum on the issue, following which the Government gave up the reform.

An individual can work full time when he/she reaches the age of 65 if their employer agrees. If such an agreement does not exist, the employment contract is terminated by the force of law when a person turns 65. If the person collects a pension, he/she cannot work full time. The Constitutional Court has decided on a proposal for constitutionality assessment of the Labour Act provision prescribing the termination of the employment contract when a person reaches the age of 65 (see 4.6.4.f, below).²⁸⁸

If an individual wishes to work longer, the pension cannot be deferred but the 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.²⁸⁹ 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 employee²⁹⁰ 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

²⁸² Labour Act, 15 July 2014, Article 19, 19a.

²⁸³ Labour Act, 15 July 2014, Article 21.

²⁸⁴ Anti-discrimination Act, 9 July 2008, Article 9(2)(7).

²⁸⁵ Fire-Fighting Act, 20 December 2019, *Zakon o vatrogastvu*, Article 51, Official Gazette 125/19.

²⁸⁶ According to the available information, this had not been challenged in court.

²⁸⁷ Labour Act, 15 July 2014, Article 112.

²⁸⁸ 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>.

²⁸⁹ Labour Act, 15 July 2014, Article 112.

²⁹⁰ 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.

sets a minimum age (50) when people can begin to receive payments from voluntary pension schemes, but not the maximum age.²⁹¹

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,²⁹² 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;²⁹³ for civil servants it is 65 and 15 years of pensionable service;²⁹⁴ for public attorneys (and their deputies) it is 70;²⁹⁵ and for army employees it is 65 and 15 years of pensionable service.²⁹⁶

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.²⁹⁷

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.

When a person reaches the age of 65 the employment contract is terminated by the force of law, unless otherwise agreed by the parties. From the legal point of view this is not considered as dismissal (the person is not fired) and the worker does not have a legal ground to refute it.

²⁹¹ Voluntary Pension Funds Act, 31 January 2014, *Zakon o dobrovoljnim mirovinskim fondovima*, Article 127.

²⁹² Labour Act, 15 July 2014, Article 112.

²⁹³ 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](#), 80/112, 16/23, Article 77(2)(5).

²⁹⁴ 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](#), 141/22, Article 137(1)(3).

²⁹⁵ Act on the State Attorney's Office, 25 July 2018, *Zakon o državnom odvjetništvu*, Official Gazette No. 67/18, Article 27.

²⁹⁶ Act on service in the armed forces, 14 June 2013, Article 20(21).

²⁹⁷ Labour Act, 15 July 2014, Article 112.

f) Compliance of national law with CJEU case law

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

General compulsory retirement at the age of 65 (plus 15 years of pensionable service) might be problematic. The only exception, provided for by the Labour Act, is made if both employer and employee wish to prolong the employment. There is no exception of any kind in the Civil Servants Act and the Act on service in the armed forces. A legitimate aim might be freeing up posts for younger workers as Croatia has a high rate of youth unemployment (17.30 %).²⁹⁸

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.²⁹⁹

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,³⁰⁰ 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.³⁰¹

The case law took a stand that this kind of practice does not constitute age discrimination.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.

²⁹⁸ Trading Economics (2023) 'Croatia Youth Unemployment Rate':

<https://tradingeconomics.com/croatia/youth-unemployment-rate>.

²⁹⁹ 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>.

³⁰⁰ They do not have to retire, but they cannot work as doctors or pharmacists.

³⁰¹ Healthcare Act, 14 November 2018, Article 159.

³⁰² Zagreb Administrative Court, No. UsI-4894/13, 20 April 2015; High Administrative Court of the Republic of Croatia, No. UsI-828/15, 23 August 2017; 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>.

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

4.7 Further exceptions necessary in a democratic society: 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, public security, maintaining public order and peace, preventing criminal acts and protecting the rights and freedoms of others, 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

³⁰³ Labour Act, 15 July 2014, Article 115.

³⁰⁴ Labour Act, 15 July 2014, Article 115.

³⁰⁵ Labour Act, 15 July 2014, Article 126.

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

couples.³⁰⁷ 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 Act³⁰⁸ and the Medically Assisted Procreation Act, which do not allow adoption or medically assisted reproduction rights to same-sex couples.³⁰⁹

Recently, a heated public debate in Croatia began regarding the rights of same-sex life partners to foster children. Namely, from the strict wording of the Foster Care Act it follows that same-sex partners cannot foster children under Croatian law, as interpreted by the social welfare centre and the competent ministry.³¹⁰ The Administrative Court, however, took a different stance, ordering the centre to reconsider its decision in one case of a same-sex couple trying to foster a child setting a 'precedent' in this area.³¹¹

Finally, the Constitutional Court of the Republic of Croatia decided on the constitutionality of the Foster Care Act. It 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 therefore unacceptable, disproportionate and show a disregard for the equality of same-sex partners compared to marital and extramarital partners.³¹²

The Constitutional Court 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 of the Foster Care Act 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.

In connection to this, also relevant is a decision brought in 2022 in a case of a same-sex couple who were denied registration in the registry of potential adopters. The High Administrative Court determined that there is no obstacle to allowing the couple access to the register of adoptive parents, because acting contrary to this would mean discrimination on the basis of sexual orientation (for more on the judgment see 12.2).³¹³

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

³⁰⁷ Provisions contained in the Same-sex Life Partnership Act that regulate rights of same-sex partners override Article 9(2)(10) of the ADA. Same-sex partners cannot be denied protection under the SSLP Act on the basis of Article 9(2)(10) of the ADA.

³⁰⁸ Foster Care Act, 1 January 2019, *Zakon o udomiteljstvu*, Official Gazette 105/18.

³⁰⁹ Medically Assisted Procreation Act, Official Gazette 86/2012, *Zakon o medicinski pomognutoj oplodnji*, 4 August 2012.

³¹⁰ Foster Care Act, 1 January 2019, Article 9.

³¹¹ Zagreb Administrative Court, Decision No. UsI-1699/18, of 29 December 2019.

³¹² 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>.

³¹³ Decision of the High Administrative Court, No. Usž-2402/22, 20 April 2022.

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.³¹⁴ This exception is to be interpreted in proportion to the aim and purpose for which it is provided.³¹⁵ This exception is applicable to any grounds covered by the ADA and not just to positive action in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation.

The most important case law and legal discussion was about the positive action measure in respect of ethnic origin provided for by the Judiciary Act, the Act on the 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 disability 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.³¹⁶ 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 candidates 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 in 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 in 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.³¹⁷

An example of a positive action measure on the grounds 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.³¹⁸ Another example is the free flu vaccination for people aged 65 or older.³¹⁹

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

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

³¹⁶ Act on professional rehabilitation and employment of persons with disability, 13 December 2013, Article 9.

³¹⁷ 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).

³¹⁸ Act on subsidising housing loans, 15 June 2017, Official Gazette 65/17, 61/18, 66/19.

³¹⁹ Croatian Institute of Public Health, Announcement of 28 October 2019, available at: <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 persons with disabilities

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

The Act on professional rehabilitation and employment of persons with disability introduced a quota system for all employers (in both private and public sectors) who employ at least 20 workers, with the quota of employees with disabilities 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 that they are obliged to employ in order to fulfil the prescribed quota.³²⁰ 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 persons with disabilities, incentives for the employment of persons with disabilities and funding of projects and programmes for the employment of persons with disabilities.³²¹

In the annual report for 2022, the Disability Ombudsperson reported that in December 2022, 15 513 employed persons with disabilities were registered, which indicates an increase in employment of 3 819 persons with disabilities more than in December 2021 (11 694 persons with disabilities). The Ombudsperson, however, noted that such an increase is partly the result of updating the database of the register of persons with disabilities. Also, the Ombudsperson pointed out that in December 2022, there were 9 793 employers under the quota obligation of which 2 707 were from the public sector, 6 970 from the private sector and 116 who are civil society organisations. According to the Ombudsperson, by 31 December 2022, 1 942 notices of fulfilment of the quota obligation in an alternative way (by paying a fee) were registered. The Ombudsperson further reported that in 2022, the total amount of funds paid by the employers as fees for not employing persons with disabilities reached HRK 154 956 593.42 (approximately EUR 20 660 879). The Ombudsperson also found that during 2022, the number of employers who are not under a quota employment obligation and who nevertheless choose to employ persons with disabilities has increased.³²²

Employers can fulfil their obligation on quota employment of persons with disabilities only by employing people who are registered in the registry run by the 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.³²³ Registration of the employee is the employer's obligation. The employee is not obliged to reveal his/her disability status if he/she does not wish to exercise his/her rights on the basis of disability in employment and if his/her condition does not interfere with the ability to perform his/her job. According to Article 24 of the Labour Act, when concluding an employment contract and during the period of employment, the employee is obliged to inform the employer about an illness or other circumstance that prevents or significantly interferes with the performance of his/her

³²⁰ The monthly fee in 2021 was HRK 850 (approximately EUR 115), Disability Ombudsperson (2022), [Report for 2021](#).

³²¹ Act on professional rehabilitation and employment of persons with disability, Article 10(6).

³²² Disability Ombudsperson (2023), [Report for 2022](#).

³²³ 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.

obligations under the employment contract or endangers the life or health of persons with whom the employee comes into contact during work.

To be eligible for the incentives, the employer has to provide, for each employee with disability, an expert assessment by the Institute for Medical Assessment Professional Rehabilitation and Employment of Persons with Disabilities – the reasonable accommodation plan is part of such an assessment. Further, administrative bodies, judicial bodies, local authorities, public services and legal persons owned by the state or local authorities are obliged to give priority in employment to persons with disabilities.

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).³²⁴

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 (publishing 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.³²⁵

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.³²⁶ 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

³²⁴ 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).

³²⁵ Civil Procedure Act, 24 December 1976, *Zakon o parničnom postupku*, Article 186(a).

³²⁶ 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.³²⁷

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,³²⁸ 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:³²⁹ 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

³²⁷ Anti-discrimination Act, 9 July 2008, Article 12(2)(5).

³²⁸ The provision is mandatory; Article 434(4) of the Civil Procedure Act.

³²⁹ 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.³³⁰

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

In her most recent annual report, the Ombudsperson once again drew attention to problems in obtaining free legal aid and complaints received in connection to this issue. The Ombudsperson stated that proceedings to grant free legal aid last too long, which calls into question the main purpose of the free legal aid, which is access to justice.³³¹

To support the position that the issue of the cost of proceedings is a possible barrier to litigation, a decision issued in 2021 is relevant. In the decision the discrimination complaint for failure to ensure reasonable accommodation in education was rejected (see section 2.8.e) and the claimant was ordered to reimburse the costs of the proceedings in the amount of over HRK 50 000 (approximately EUR 7 000). It can be concluded that such high costs certainly have a deterrent effect on potential victims of discrimination in seeking court protection.

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. Decisions of the Constitutional Court related to complaints of violation of the right to a trial within a reasonable time in anti-discrimination proceedings support this argument. In several cases the Constitutional Court has upheld the constitutional complaints and awarded the applicants compensation for the violation of their right to a trial within a reasonable time.³³² This practice continued in 2022 when the Constitutional Court once again determined a violation of the right to a trial within a reasonable time in connection to anti-discrimination proceedings which at the time lasted over seven years (see section 12.2).³³³

The European Court of Human Rights had also issued several decisions against Croatia determining a violation of Article 6(1) of the Convention due to the excessive length of the anti-discrimination proceedings before domestic courts.³³⁴

Recent research conducted by the People's Ombudsperson shows that among respondents who state they were discriminated against, only 40 % acted upon it. At the same time, among those who state that they have acted in the matter of discrimination, the largest number (18 %) reacted in a way such as quitting their jobs or retiring, that is, leaving the discriminatory environment. Some of them filed a private lawsuit (17 %) or complained to their superiors (14 %) or someone else from the organisation (13 %). Those who did not react to discrimination expressed the opinion that it would not change anything (52 %), that the proceedings would be too complicated, time-consuming, and expensive (21 %) or that their situation would get even worse (29 %).³³⁵

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

³³⁰ People's Ombudsperson (2020), [Report for 2019](#).

³³¹ People's Ombudsperson (2022), [Report for 2021](#).

³³² Constitutional Court of the Republic of Croatia, Decision Nos.: U-IIIA-1038/2020, 9 September 2020, and U-IIIA-3623/2019, 1 October 2020.

³³³ Decision of the Constitutional Court of the Republic of Croatia, No. U-IIIA-2294/22, 29 September 2022.

³³⁴ Decision of the European Court of Human Rights, [Salameh v. Croatia](#), 38943/15, 14 October 2021; European Court of Human Rights, [Kirncic and Others v. Croatia](#), No. 31386/17, 30 July 2020; [Mirjana Maric v. Croatia](#), No. 9849/15, 30 July 2020.

³³⁵ People's Ombudsperson, Research on attitudes and the level of awareness of discrimination and the forms of discrimination for 2022: <https://www.ombudsman.hr/hr/download/istrazivanje-o-stavovima-i-razini-svijesti-o-diskriminaciji-i-pojavnim-oblicima-diskriminacije-2022/?wpdmdl=15351&refresh=63e0c6603768c1675675232>.

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.³³⁶

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 the annual report for 2022, the Ombudsperson stated that although the Ministry of Justice and Administration is obliged to submit records and statistical data on court cases related to discrimination for the previous year to the Ombudsperson by 1 February in accordance with the Anti-discrimination Act, the Ministry submitted relevant information for 2022 to the Ombudsperson with a delay, as a result of which the statistics could not be processed before the date of the issuance of the Ombudsperson's annual report (31 March). Accordingly, the Ombudsperson's report for 2022 does not contain statistical data on court proceedings for discrimination as in previous years.³³⁷

Civil proceedings

In relation to civil anti-discrimination proceedings for 2022, the Ombudsperson does not provide statistical data in her annual report, but only states that court proceedings were initiated due to various reasons, most often against the employers due to harassment at the workplace, violation of the dignity of the employees, degrading behaviour, denial of rights, etc. Proceedings were most often initiated due to discrimination based on union membership, gender and social status, and less often on the basis of racial or ethnic origin, religion or political belief.³³⁸

Criminal proceedings

The Ombudsperson reports that in 2022, the Ministry of the Interior recorded 51 criminal offences of hate crimes, including the criminal offence of public incitement to violence and hatred, which is a significant decrease in the number of cases that has been recorded for the first time in recent years. National origin remains the most common motive of hate crimes in 2022, it appears in as many as 35 cases, followed by race (5) and sexual orientation (5).

Among those cases, the Ombudsperson pointed to a case of a Zagreb taxi driver who was beaten because of his Roma origin.

The Ombudsperson also pointed to the phenomenon of the perpetrators of criminal offences motivated by hate to record and film their actions and then publish it on social media which makes it available to a larger number of persons.³³⁹

The Government issued a Protocol on conduct in hate crime cases.³⁴⁰ The purpose of the Protocol is to set conditions for the effective and comprehensive work of the competent authorities involved in the detection, handling and monitoring of hate crimes proceedings in order to improve the suppression, prosecution and statistical monitoring of hate crimes cases. The Protocol also defines the establishment and competencies of the Working Group for Monitoring Hate Crimes, which is responsible for coordinating the collection of data on

³³⁶ Kesonja, D. and Einwalter, T.S. (CMS) (2017) *Analysis of case law in Croatia regarding proceedings initiated for discrimination*, Zagreb.

³³⁷ People's Ombudsperson (2023), [Report for 2022](#).

³³⁸ People's Ombudsperson (2023), [Report for 2022](#).

³³⁹ People's Ombudsperson (2023), [Report for 2022](#).

³⁴⁰ Protocol on conduct in hate crime cases, Official Gazette No. 43/21.

hate crimes, monitoring and analysing their occurrence, coordinating interdepartmental cooperation, and making recommendations for improving the system for combating hate crimes. Besides the representatives of bodies responsible for combating hate crimes and academia, the working group also includes representatives of civil society organisations as well as the Ombudsperson.³⁴¹

Misdemeanour cases

The Ombudsperson reported on misdemeanour cases related to discrimination on the basis of the preliminary data of the Ministry of the Interior and judgments submitted by municipal courts. The Ombudsperson determined that misdemeanours related to discrimination are in most cases committed during verbal conflicts in neighbourly, family or partner relationships in which circumstances, a personal characteristic of the victim which presents a discrimination ground is used in order to humiliate or hurt the victim's dignity. In cases where misdemeanour behaviour is directed at a larger group of people or is of a less personal nature, most often it concerns misdemeanours committed during football matches or comments on the internet. The Ombudsperson reported that according to the data of the Ministry of the Interior, during 2022, 58 persons were convicted for committing a misdemeanour under the Anti-discrimination Act. Most of the available cases concern a situation in which the perpetrator, often in an intoxicated state, used derogatory names for members of certain minority, usually ethnic, groups.³⁴²

d) Registration of national court decisions on discrimination cases

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

The Anti-discrimination Act³⁴³ 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, however, in 2022 the Ministry failed to act in accordance with their obligation in a timely manner, because of which the data on court decisions on cases related to discrimination are not included in the Ombudsperson's annual report.

The data on administrative proceedings related to discrimination are not included in the statistical data of the Ministry of Justice and the Ombudsperson receives information on such cases directly from the administrative courts. The Ombudsperson noted that administrative court decisions are an important indicator of the occurrence of discrimination for which reason the Ombudsperson made a recommendation to the Ministry of Justice and Administration to collect statistical data on administrative proceedings related to discrimination and include those data in statistics on discrimination cases.³⁴⁴

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.

³⁴¹ People's Ombudsperson (2022), [Report for 2021](#).

³⁴² People's Ombudsperson (2023), [Report for 2022](#).

³⁴³ Anti-discrimination Act, 9 July 2008, Article 14.

³⁴⁴ People's Ombudsperson (2023), [Report for 2022](#).

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.³⁴⁵

- 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 intervener, 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 intervener 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'.³⁴⁶

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.³⁴⁷

Although the People's Ombudsperson also has the right to intervene in court proceedings, she does not often use this authority.

- c) *Actio popularis*

In Croatia, national law allows associations, organisations and trade unions to act in the public interest on their own behalf, without a specific victim to support or represent (*actio popularis*) in civil and administrative proceedings.

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

³⁴⁵ Civil Procedure Act, 24 December 1976, Article 434.a.

³⁴⁶ Anti-discrimination Act, 9 July 2008, Article 21.

³⁴⁷ 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.

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.³⁴⁸

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*),³⁴⁹ 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.³⁵⁰

In a landmark case, 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*,³⁵¹ 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.³⁵²

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 Association. In another landmark decision the Supreme Court acting as an appellate Court found that V.M. had discriminated against homosexual persons and ordered him to publicly apologise.³⁵³

In 2022 a decision was issued in a joint action filed by the NGO Rainbow Families against NGO Vigilare for discrimination, encouragement to discrimination and harassment against LGBTIQ persons regarding the petition published on the Vigilare website 'Stop the homo-propaganda of state television. Let's stop fake rainbows and protect children and families!' The Supreme Court decided that NGO Vigilare discriminated, incited to discrimination and

³⁴⁸ Anti-discrimination Act, 9 July 2008, Article 24.

³⁴⁹ 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.

³⁵⁰ Anti-discrimination Act, 9 July 2008, Article 24; Civil Procedure Act, 24 July 2014, Article 502a.

³⁵¹ 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>.

³⁵² The judgment falsely stated that the *Feryn* case was decided by the ECtHR rather than the CJEU.

³⁵³ Supreme Court of the Republic of Croatia, No.GŽ.25/11, judgment of 28 February 2012.

harassed LGBTIQ persons and their families (for more on the judgment please see section 12.2).³⁵⁴

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 intervener 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.³⁵⁵

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 Act³⁵⁶ 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 plausible³⁵⁷ 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 of Human Rights in the case *Škorjanec v. Croatia*, stated the following:

'In practice, admittedly, it is often extremely difficult to prove a racist motive. The obligation on the respondent State to investigate possible racist overtones to an act of violence is an obligation of the means employed rather than an obligation to achieve a specific result. The authorities must take all reasonable measures, having regard to the circumstances of the case ...[and] ... do what is reasonable in the circumstances to collect and secure the evidence, explore all practical means of discovering the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of racially induced violence.'³⁵⁸

Case law shows some difficulties encountered by the courts when interpreting and implementing the rule on burden of proof. The relevant cases mentioned are those in which

³⁵⁴ Supreme Court of the Republic of Croatia, Decision No. GŽ-10/2021, 14 December 2021. Decision was published in 2022 and was a subject of media reporting in May 2022.

³⁵⁵ Anti-discrimination Act, 9 July 2008, Articles 21 and 24.

³⁵⁶ An English version of the Anti-discrimination Act is published on the website of the Gender Equality Ombudsperson: <https://arhiva.prs.hr/attachments/article/2127/Croatian%20Anti-discrimination%20Act.pdf>.

³⁵⁷ The phrase used in the official text '*učiniti vjerojatnim*' corresponds to the English phrase 'to render credible'.

³⁵⁸ European Court of Human Rights, decision in *Škorjanec v. Croatia*, No. 25536/14, 28 March 2017, Paras. 54, 55, 57.

the first-instance courts in accordance with the Anti-discrimination Act applied the rule on the shift of the burden of proof from the claimant to the respondent. However, referring to that rule, the courts rejected evidence proposed by the claimants as unnecessary, taking into consideration only evidence proposed by the respondents who were obliged to prove that discrimination had not occurred. Ultimately in both cases the first-instance courts rejected the claims on the grounds that during the proceedings the respondents had managed to prove that discrimination had not occurred. In their appellate decisions, the county courts found that this represents a breach of procedure to the detriment of the claimants, stating that regardless of the shift of the burden of proof, the claimants should be allowed to propose evidence during the proceedings and have the possibility to prove that claims of the respondents are unfounded and that the courts need to take this evidence into consideration, despite the fact that the claimants are not obliged to prove discrimination.³⁵⁹

In this regard, the Ombudsperson noticed that especially in labour disputes, the claimants can hardly make plausible the existence of circumstances necessary for the shift of the burden of proof on the opposite party, because employees often do not have all the information available to the employer, such as information on salaries of other employees, their education, working hours, etc. It is also problematic that other employees, who are often the only ones who witness the discriminatory behaviour of the employer, are often reluctant to testify due to fear of victimisation.³⁶⁰

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.³⁶¹

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 27 397.³⁶²

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 disability).

³⁵⁹ Split County Court, Decision No. GŽR-394/20, 19 August 2021 and Zagreb County Court, Decision No. GŽR-1123/21, 8 September 2021.

³⁶⁰ People's Ombudsperson (2022), [Report for 2021](#).

³⁶¹ Anti-discrimination Act, 9 July 2008, Article 7.

³⁶² Anti-discrimination Act, 9 July 2008, Article 28.

Civil

The main sanction in civil anti-discrimination cases is compensation (pecuniary and non-pecuniary damages) for a victim of discrimination.³⁶³

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.³⁶⁴ 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.

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,³⁶⁵ craftspeople 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.³⁶⁶

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 Code³⁶⁷ 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.³⁶⁸

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.³⁶⁹ But it is not a hate crime when a victim is attacked because of his/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).³⁷⁰

³⁶³ Anti-discrimination Act, 9 July 2008, Article 11 and Article 17(1)(3).

³⁶⁴ Civil Obligations Act, 25 February 2005, Article 1100.

³⁶⁵ A natural person entrusted with certain duties in a legal entity or a person authorised to act on behalf of the legal entity.

³⁶⁶ Misdemeanour Act, 3 October 2007, Article 6.

³⁶⁷ Official Gazette 125/2011, 144/2012, the law has been in force since 1 January 2013.

³⁶⁸ Criminal Code, 21 October 2011, *Kazneni zakon*, Article 87(21).

³⁶⁹ Criminal Code, 21 October 2011, Articles 117(2), 118(2) and 119.

³⁷⁰ Zagreb Public Attorney Office, Case No. Ko-DO-1204/13.

The criminal offence of discrimination (Article 125 of the Criminal Code) – a crime subject to public prosecution³⁷¹ 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.³⁷² 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.³⁷³

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.³⁷⁴

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.³⁷⁵ 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.³⁷⁶

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)³⁷⁷ as non-pecuniary damages, which was almost the maximum amount established by the Supreme Court's guiding criteria at the time.³⁷⁸ The compensation for damages in discriminatory court proceedings is usually in the range of HRK 20 000 to HRK 30 000 (approximately EUR 3 000 to EUR 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.³⁷⁹ However, in recent

³⁷¹ In the Croatian legal system, criminal offences are in general subject to public prosecution. Exceptionally, for certain criminal offences, it may be prescribed by statute that criminal proceedings shall be instituted by a private charge (*privatna tužba*), or that the State Attorney's Office shall institute criminal proceedings following a victim's application (*prijedlog za progono*).

³⁷² Criminal Code, 21 October 2011, Article 125(1).

³⁷³ Criminal Code, 21 October 2011, Article 125(2).

³⁷⁴ Criminal Code, 21 October 2011, Article 133.

³⁷⁵ 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.

³⁷⁶ 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.

³⁷⁷ The maximum award at the time was set at EUR 29 000.

³⁷⁸ 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>.

³⁷⁹ 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.

years higher amounts (HRK 50 000 to HRK 55 000, approximately EUR 6 000 to EUR 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.³⁸⁰ 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.³⁸¹ 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.

Based on available court decisions, in 2022, the Ombudsperson reported that claimants usually seek compensation in the amount of HRK 5 000 (EUR 600) to HRK 110 000 (EUR 14 500), however, that compensation in the full amount requested was not awarded in a single case. In relation to this, the Ombudsperson expressed an opinion that since sanctions play a major role in strengthening the fight against discrimination, compensation for damages in court proceedings must be effective, proportionate and dissuasive.³⁸²

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.³⁸³

³⁸⁰ People's Ombudsperson (2020), [Report for 2019](#).

³⁸¹ Varaždin County Court, Decision Gž-647/2019.

³⁸² People's Ombudsperson (2023), [Report for 2022](#).

³⁸³ People's Ombudsperson (2019), [Report for 2018](#).

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.

7 BODY FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43)

7.1 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.³⁸⁴ 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 to the People's Ombudsperson 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 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.

The services of the People's Ombudsperson are accessible on an equal basis for all, without any costs. Reasonable accommodation for persons with disabilities is provided within the office of the Disability Ombudsperson. Other ombudspersons as well provide reasonable accommodation where needed.

In 2014 regional offices of the People's Ombudsperson had been opened in Osijek and Rijeka and in 2015 in Split. The People's Ombudsperson is on a daily basis in communication with different media, has open profiles on social networks and has launched an email newsletter. The equality body is also accessible over the specialised anti-discrimination phone line.

Despite the presence and visibility of the People's Ombudsperson throughout the national territory, it is relevant to mention that the latest research conducted by the Ombudsperson's Office show that only 3.9 % of the respondents of the survey are aware

³⁸⁴ Anti-discrimination Act, 9 July 2008, Article 12(1).

that the Ombudsperson acts as a central body for the elimination of discrimination and promotion of equal treatment.³⁸⁵

7.2 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 Parliament conducts a debate and votes on whether to accept the Ombudsperson's report. Parliament also discusses and votes on annual reports of the special ombudspersons as well (Disability Ombudsperson, Ombudsperson for Children and Gender Equality Ombudsperson). If Parliament does not approve the report, special ombudspersons are automatically relieved of their duties, while this is not the case with the People's Ombudsperson whose status is in this respect more favourable. At a session in May 2016, 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 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.³⁸⁶ It should be mentioned that the Ombudsperson for Children's annual report for 2015 was also rejected by the Croatian Parliament in the session held in June 2016 because of which the Ombudsperson for Children lost her position.³⁸⁷ In the years following, the Ombudspersons' reports were accepted by Parliament.

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 the 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.³⁸⁸ The European Court of Human Rights issued a decision in this case, finding Croatia responsible for a number of violations of Convention rights: right to life, degrading treatment, lawful detention, collective expulsion, and effective exercise of individual petition hindered through restriction of contact with the chosen lawyer.³⁸⁹

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 competencies 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.³⁹⁰

7.3 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 Parliament for the

³⁸⁵ People's Ombudsperson, Research on attitudes and the level of awareness of discrimination and the forms of discrimination for 2022, <https://www.ombudsman.hr/hr/download/istrazivanje-o-stavovima-i-razini-svijesti-o-diskriminaciji-i-pojavnim-oblicima-diskriminacije-2022/?wpdmdl=15351&refresh=63e0c6603768c1675675232>.

³⁸⁵ People's Ombudsperson (2017), *Report for 2016*.

³⁸⁶ People's Ombudsperson (2017), *Report for 2016*.

³⁸⁷ Ombudsperson for Children (2017), *Report for 2016*.

³⁸⁸ People's Ombudsperson (2018), *Report for 2017*.

³⁸⁹ European Court of Human Rights, *M.H. v. Croatia*, No. 15670/18 and 43115/18, 18 November 2021.

³⁹⁰ People's Ombudsperson (2020), *Report for 2019*.

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 Whistle-blowers Protection Act as a competent authority for the external reporting of irregularities.³⁹¹

The Ombudsperson's Office consists of several services (offices): the office for the protection of human rights; the 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.³⁹²

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.

7.4 Status of the designated body – general independence

a) Status of the body

- Separate or other legal status or personality: The Ombudsperson has separate legal status as a commissioner of the Croatian Parliament.
- Selection of governing body: The Ombudsperson is elected by the Croatian Parliament.
- Sources of funding: 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 Parliament.
- Powers to recruit and manage staff: The Ombudsperson has the powers to recruit and manage staff.
- Accountability: The Ombudsperson is accountable to the Croatian Parliament.

The Ombudsperson was established by the Constitution of the Republic of Croatia. Its scope of duties and powers are regulated in detail by the Ombudsperson Act and Anti-discrimination Act.³⁹³ 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 Parliament. The Ombudsperson has three deputies. The deputies are chosen and dismissed by the Croatian Parliament upon the proposal of the Ombudsperson.

³⁹¹ Whistle-blowers Protection Act, 1 July 2019, *Zakon o zaštiti prijavitelja nepravilnosti*, Official Gazette 46/22.

³⁹² According to the People's Ombudsperson's webpage, available at: <https://www.ombudsman.hr/hr/#>.

³⁹³ Act on People's Ombudsperson 9 July 2012; Anti-discrimination Act, 9 July 2008.

The Ombudsperson is obliged to adopt the Ordinance of the Ombudsperson's Office, which regulates the internal organisation of the Ombudsperson's Office and has to be confirmed by 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 must present their annual reports to Parliament. 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, Parliament has the power to relieve the Ombudsperson of his or her duty.

b) Independence of the body

The independence of the Ombudsperson is stipulated in the Constitution and the Ombudsperson is considered to be independent by the relevant stakeholders.³⁹⁴ 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.

It can be considered that there are certain risks for the independence of the Ombudsperson in terms of accountability to Parliament, which is especially important for special ombudspersons who may lose their mandate if their annual report is not approved by Parliament. The financial dependence of the Ombudsperson on the Government is also relevant in the terms of the Ombudsperson's independence, as there are no guarantees against arbitrary cuts, however, the issue of funding has not proven to be controversial so far.

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.³⁹⁵

c) Resources

- The annual budget of the body: HRK 16 215 780 (approximately EUR 2 162 104)
- The share of the annual budget dedicated to the equality body mandate: N/a
- The total number of staff of the body: 58
- The number of staff dedicated to the equality body mandate: N/a

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 Parliament.

The equality mandate does not have a separate budget item within the general budget of the Ombudsperson's Office since there is a single budget for the entire institution.

According to the most recent data available, in 2022 the Office of the Ombudsperson employed 58 persons of whom 49 were based at the institution's headquarters in Zagreb, three in Split and Osijek and two in Rijeka. There is no information on the number of staff dedicated to the equality mandate exclusively.

Considering that the Ombudsperson was assigned additional mandates over time, it is to be expected that the same will be followed by a significant increase in the budget and staff,

³⁹⁴ Constitution of the Republic of Croatia, 22 December 1990, Article 93.

³⁹⁵ People's Ombudsperson (2020), [Report for 2019](#).

which did not happen. In the author's opinion, there is a need for the proper allocation of new financial and human resources as well as improvement of spatial and other working conditions of the Ombudsperson's Office.

7.5 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 and genetic heritage.

However, for the elimination of discrimination based on certain discrimination grounds, there are specialised ombudspersons.

Discrimination on the basis of gender, gender identity and expression, 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.

7.6 Competencies of the designated body – and their independent exercise

a) Independent assistance to victims

In Croatia, the designated body has the competence to provide independent assistance to victims. The Ombudsperson has the power to provide information necessary to natural and legal persons who have filed a complaint of discrimination with regard to their rights and obligations and on their options for legal and other protection. If court proceedings have not yet been initiated, the Ombudsperson also has the right to examine individual reports and take any action that falls under their remit that is required to eliminate discrimination and protect the rights of people facing discrimination.³⁹⁶

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.

³⁹⁶ Anti-discrimination Act, 9 July 2008, Article 12(2)(2) and 12(2)(3).

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.

b) Independent surveys and reports

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

In connection to her responsibilities as the central anti-discrimination body the Ombudsperson has the power to conduct surveys on discrimination.

At the end of 2022, the People's Ombudsperson conducted her fourth piece of research dealing with the topic of attitudes and the level of awareness of discrimination and the forms of discrimination in society (the last research was conducted in 2016). The research was conducted on a sample of 1 000 respondents and covered four thematic areas – social distance (prejudices and stereotypes), acquaintance with the legislative and institutional framework for combating discrimination, perception of the prevalence of discrimination and personal experience of discrimination.³⁹⁷

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.³⁹⁸ The Ombudsperson engages in strategic planning by adopting, for each year, an annual plan that contains the planned activities of each service of the Ombudsperson's Office in the following year.³⁹⁹ It does not have the practice of adopting multi-annual programmes or adapting individual strategies on specific aspects of their mandate.

c) Recommendations

The Ombudsperson also issues recommendations on a general level in its annual reports, which are addressed to the relevant state authorities in order to eliminate certain discrimination practices noted in the reporting period. According to the Anti-discrimination Act, the Ombudsperson has the power to give opinions and recommendations and suggest appropriate legal and strategic solutions to the Government in connection with the Ombudsperson's duties as the main anti-discrimination body.⁴⁰⁰

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.

³⁹⁷ People's Ombudsperson, Research on attitudes and the level of awareness of discrimination and the forms of discrimination for 2022: <https://www.ombudsman.hr/hr/download/istrazivanje-o-stavovima-i-razini-svijesti-o-diskriminaciji-i-pojavnim-oblicima-diskriminacije-2022/?wpdmdl=15351&refresh=63e0c6603768c1675675232>.

³⁹⁸ Anti-discrimination Act, 9 July 2008, Article 12.

³⁹⁹ People's Ombudsperson, Annual plan for 2022: <https://www.ombudsman.hr/hr/download/godisnji-plan-ureda-pucke-pravobraniteljice-za-2022-godinu/?wpdmdl=15401&refresh=63fcd2442ecb21677513284>.

⁴⁰⁰ Anti-discrimination Act, 9 July 2008, Article 12.

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. 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.

The Ombudsperson constantly points to the problem of insufficient implementation of recommendations. In this regard, the Ombudsperson pointed out that in 2022 the European Commission published a Report on the Rule of Law within which the Republic of Croatia received five recommendations, including the one to ensure a more systematic response to the recommendations of the Ombudsperson and her requests for information.

The Ombudsperson stated that for the adequate fulfilment of her constitutional role, the support of and cooperation with the Croatian Parliament is essential. In this regard, the Ombudsperson noted that practice of untimely parliamentary discussions on the Ombudsperson's annual reports which are not conducted in the year of submission, but with a delay of a couple of years, diminishes the significance of the recommendations and negatively impacts on their effectiveness. For example, in 2021, a joint discussion was held on the annual reports of the Ombudsperson for 2018, 2019 and 2020.⁴⁰¹ In October 2022, the parliamentary committee for human rights and the rights of national minorities accepted the Ombudsperson's report for 2021, but a wider parliamentary discussion has not been held to date.

The Ombudsperson stated that for the increase of implementation of her recommendations it is necessary that parliamentary discussion takes place in the year of submission of the report since reported data and analyses contained in the annual report lose relevance over time. It is therefore important, in order for the report to achieve its intended effect, that it be presented to the members of Parliament and that they have the opportunity to discuss it while the presented data, analysis and recommendations are current.

Regarding the fulfilment of the recommendations from the Report for 2021, the Ombudsperson noted that according to the analysis of information received from the authorities to which the recommendations were addressed, the competent authorities acted or are acting on 45 % of the recommendations. Furthermore, it was noted that competent authorities do not implement 37 % of recommendations, and for 18 % there is no information about their implementation from the bodies to which they were addressed.⁴⁰²

In her most recent annual report, the Ombudsperson stated that the Government Office for Human Rights and the Rights of National Minorities as the body responsible for preparing the report for the Government on the implementation of the Ombudsperson's recommendations, has not done so since the 2013 report for which reason she expressed an opinion that there is a need to evaluate the purpose of this mechanism.⁴⁰³ As a positive step forward, the Ombudsperson identified the establishment of the Human Rights Council

⁴⁰¹ Croatian Parliament, Report of the Committee on Justice on the Ombudsperson's Reports, available at: <https://www.sabor.hr/radna-tijela/odbori-i-povjerenstva/izvjesce-odbora-za-pravosude-s-rasprave-o-izvjescu-pucke-3>.

⁴⁰² People's Ombudsperson (2023), [Report for 2022](#).

⁴⁰³ People's Ombudsperson (2023), [Report for 2022](#).

as an interdepartmental advisory body through which the Ombudsperson's recommendations could be monitored more closely.⁴⁰⁴ During 2022, the Human Rights Council held several meetings at which it was concluded that thematic meetings will be held with the purpose of discussing the implementation of the Ombudsperson's recommendations in certain areas.⁴⁰⁵

In the author's opinion, the competence of the Ombudsperson to issue recommendations is exercised in an independent manner, however, recommendations are not being followed and implemented in practice in a sufficient manner which greatly diminishes and negatively impacts their significance.

d) Prevention, promotion and awareness-raising

The Ombudsperson has the competence to engage in the prevention of discrimination and in the promotion of equal treatment. It has the power to make the public aware of occurrences of discrimination. On its website, the Ombudsperson regularly publishes its opinions regarding specific political and legal measures, participates in public discussions regarding specific legal acts within its scope of duties that are in the parliamentary procedure and proposes appropriate legal and strategic solutions to the Government.⁴⁰⁶

The Ombudsperson regularly holds meetings with the representatives of groups at risk of discrimination, provides training and education, holds round-tables and seminars, publishes analyses in relevant areas, etc.

The Ombudsperson has developed cooperation with civil society associations through the anti-discrimination network of contact points, which consists of civil society organisations. Also, cooperation agreements between the Ombudsperson and civil society organisations are in force, meetings are held periodically, and there is cooperation in individual cases as well. Prior to the publication of the annual report, the People's Ombudsperson makes a public call to the civil society organisations to submit their reports on the occurrence of discrimination.⁴⁰⁷

The Human Rights Council of the People's Ombudsperson as an advisory body has also been established with the purpose to propose strategic guidelines to the Ombudsperson in the field of promoting human rights and freedoms and enhance the cooperation with civil society, academia and the media. It meets at least twice a year, where, in addition to the above-mentioned tasks, it also discusses analytical and research work and proposes guidelines for strengthening the visibility of the institution.⁴⁰⁸

In the author's opinion, the cooperation between the Ombudsperson and civil society organisations is at a satisfactory level. The Ombudsperson is open to dialogue with civil society organisations, and civil society organisations recognise the Ombudsperson as an independent body.

e) Other competencies

The Ombudsperson has the competence to warn the public about the occurrence of discrimination and suggest appropriate legal and strategic solutions to the Government of the Republic of Croatia.⁴⁰⁹

⁴⁰⁴ People's Ombudsperson (2022), [Report for 2021](#).

⁴⁰⁵ <https://ljudskaprava.gov.hr/ljudska-prava/savjet-za-ljudska-prava/zapisnici-sa-sjednica-savjeta-za-ljudska-prava/1077>. For example, at the session held in October 2022 the recommendation concerning elderly had been discussed.

⁴⁰⁶ Information available on People's Ombudsperson website: <https://www.ombudsman.hr/hr/#>.

⁴⁰⁷ Anti-discrimination Act, Official Gazette No.112/12, Article 15.

⁴⁰⁸ People's Ombudsperson's Council: <https://www.ombudsman.hr/hr/savjet-za-ljudska-prava-puckog-pravobranitelja/>.

⁴⁰⁹ Anti-discrimination Act, 9 July 2008, Article 12(2)(4) and 12(2)(9).

7.7 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.⁴¹⁰ 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.⁴¹¹ 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 behalf of the claimant.⁴¹² 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 has 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.⁴¹³ 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.⁴¹⁴

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

7.8 Dispute resolution

a) Quasi-judicial functions

In Croatia, the designated body is not a quasi-judicial institution. The body cannot issue binding enforceable decisions. The Ombudsperson can issue non-binding opinions and it does not have the power to impose sanctions.

⁴¹⁰ Anti-discrimination Act, 9 July 2008, Article 12(2)(6).

⁴¹¹ People Ombudsperson's Act, 9 July 2012, Article 6.

⁴¹² Anti-discrimination Act, 9 July 2008, Article 21.

⁴¹³ 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.

⁴¹⁴ Kesonja, D. and Einwalter, T.S. (CMS) (2017) *Analysis of case law in Croatia regarding proceedings initiated for discrimination*, Zagreb.

The opinions 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 opinion.⁴¹⁵ The Ombudsperson makes opinions 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 opinions are not legally binding, by the power of their authority and reputation it can be concluded that their opinions 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.

b) Amicable settlements

The Ombudsperson has the competence to offer the parties to a discrimination complaint the possibility to seek an amicable resolution to their dispute. There is no information available on the manner in which this process is conducted. The Anti-discrimination Act does not prescribe explicitly whether conciliation procedures can be carried out by a third party.

7.9 Procedural safeguards

There are no prescribed limitations/safeguards in the case of the designated equality body entrusted with several powers.

7.10 Data collection by the designated body/bodies

a) Registration 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.⁴¹⁶ The Ombudsperson's annual reports from 2002 to 2022 are available on the website and are easily accessible to everyone.

During 2022 the Ombudsperson's Office acted in a total of 6 099 complaints (5.7 % more than in 2021), out of which 4 534 were newly received.

In 2022, the Ombudsperson's Office acted in 774 discrimination case, of which 594 cases were opened based on individual complaints and initiatives and 180 of them were related to general initiatives, i.e. participation in various events or promotional activities. The 594 complaints include those newly received in 2022 (376) and complaints from earlier years in which the Ombudsperson continued to act during 2022 due to the complexity of the case (218). In 2022, 139 cases were opened upon general initiatives, and 41 were carried from previous years.⁴¹⁷

The Ombudsperson noted that 376 newly received complaints is significantly less than in 2021, when there were 469 complaints, which was the highest number of complaints since the Anti-discrimination Act entered into force and is related to the COVID-19 pandemic.

⁴¹⁵ Act on People's Ombudsperson, 9 July 2012, Article 27.

⁴¹⁶ People's Ombudsperson, [Official Web Page](#).

⁴¹⁷ People's Ombudsperson (2023), [Report for 2022](#).

Also, it was noted that the number of discrimination complaints does not reflect the actual presence of discrimination, which was confirmed through the 2022 Survey on Attitudes and Level of Awareness of Discrimination.

As in previous years, most complaints on discrimination related to employment (124 complaints) and a significant number of complaints related to access to goods and services (35) as well as public information and media (21).⁴¹⁸ Discrimination complaints based on national origin, race, ethnicity and skin colour still prevail (86 complaints in 2022).⁴¹⁹

Other complaints referred to discrimination on the basis of gender (16), health status (33), age (27), financial status (9), political or other belief (17), family or marital status (10), education (16), social status (9), religion (5), disability (23), sexual orientation (7), union membership (6), language (1) and gender identity and expression (1). In addition, 37 complaints referred to multiple discrimination. In 73 complaints, the discrimination grounds were not indicated.⁴²⁰

Areas to which complaints referred include employment (124), public information and media (21), access to goods and services (35), health insurance (10), administration (15), health protection (16), social welfare (19), education (19), housing (8), judiciary (18), pension insurance (12), science (3), culture (1), union membership (2), and sport (5). There were 4 complaints that referred to multiple areas of discrimination and 67 complaints that referred to discrimination in general.⁴²¹

b) Equality data collection

In Croatia, the designated body does not collect general equality data.

7.11 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.⁴²²

⁴¹⁸ The numbers referred to in this and the following paragraphs relate to complaints acted upon by the Ombudsperson.

⁴¹⁹ People's Ombudsperson (2023), [Report for 2022](#).

⁴²⁰ People's Ombudsperson (2023), [Report for 2022](#).

⁴²¹ People's Ombudsperson (2023), [Report for 2022](#).

⁴²² People's Ombudsperson (2023), [Report for 2022](#).

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 is 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 the 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 is 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.

Furthermore, all the ombudspersons have been active in organising seminars, round-tables and training. This practice continued in 2022.⁴²³

- 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.⁴²⁴

The Ombudsperson occasionally holds meetings, consultations and training sessions for social partners.

⁴²³ People's Ombudsperson's website.

⁴²⁴ Anti-discrimination Act, Article 15(2).

d) Addressing the situation of Roma and Travellers

The Government Office for Human Rights and Rights of National Minorities⁴²⁵ is a specific body appointed at the national level to address the issues facing national minorities.

In 2021 the National Plan for Roma Inclusion (2021 to 2027) and the action plan for its implementation for 2021 and 2022 were adopted. The National Plan is a strategic framework for the development of equality, inclusion and participation of members of the Roma national minority in the Republic of Croatia.⁴²⁶ The objectives of the National Plan are to combat anti-Roma racism and discrimination, reduce Roma poverty and social exclusion in order to reduce the socio-economic gap, encourage Roma participation through empowerment, cooperation and trust of Roma in public institutions, guarantee effective and equal access of Roma to quality, inclusive education, effective and equal access for Roma to quality and sustainable employment, improve Roma health and achieve effective, equal access for Roma to quality health services, as well as achieving effective and equal access for Roma to adequate desegregated housing and basic services.

For the purpose of monitoring the implementation of the overall operational part of the National Plan, the Government of the Republic of Croatia has established the Commission for Monitoring the Implementation of the National Roma Inclusion Plan.⁴²⁷

In 2022 the report on implementation of the Action plan for the implementation of the National Plan for Roma Inclusion for the period 2021-2022 had been published containing the list of measures implemented in the reporting period in the areas of education, health, housing, etc. with the aim of improvement of the position and status of members of the Roma national minority in society.⁴²⁸

The Government of the Republic of Croatia had also adopted 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.⁴²⁹

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.

⁴²⁵ In April 2012, the Government decided to merge the previous Office for Human Rights and the Government Office for National Minorities.

⁴²⁶ [National Plan for Roma Inclusion \(2021 to 2027\)](#), June 2021.

⁴²⁷ Decision of the Government of the Republic of Croatia, 23 June 2021, Official Gazette No. 70/21, available at: https://narodne-novine.nn.hr/clanci/sluzbeni/2021_06_70_1339.html

⁴²⁸ Action plan for the implementation of the National Plan for Roma Inclusion for the period 2021-2022: https://pravamanjina.gov.hr/UserDocsImages/dokumenti/Izvje%C5%A1%C4%87e%20AP%20NPUR_2021..pdf

⁴²⁹ 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>

In the event that some regulations are found to be discriminatory in practice, the general equality principles and measures contained in the Anti-discrimination Act and the Constitution are applicable. In particular, according to the Constitutional Act on the 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.⁴³⁰

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).⁴³¹

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.⁴³²

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*.⁴³³ The amendments included regulations on temporary residence of foreign citizens, which can now be approved for the purpose of a same-sex life partnership.⁴³⁴

In a landmark case 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.⁴³⁵

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.⁴³⁶ 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.

⁴³⁰ 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*.

⁴³¹ The current Family Act (Official Gazette 103/2015) has been in force since November 2015, but the Government mentions regularly that a new Family Act will be drafted.

⁴³² 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.

⁴³³ 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]}).

⁴³⁴ Aliens Act, Official Gazette 130/11, 74/13, 69/17, *Zakon o strancima*, 14 July 2017, Article 47 and Article 56b.

⁴³⁵ Constitutional Court of the Republic of Croatia, No. U-I-144/2019, 29 January 2020, available at: <https://sljeme.usud.hr/usud/praksaw.nsf/fOdIuka.xsp?action=openDocument&documentId=C12570D30061CE54C12585060030E2EC>.

⁴³⁶ Civil Obligations Act, 25 February 2005, Article 322.

Internal rules of undertakings and the rules governing independent occupations, professions, workers' associations or employers' associations that conflict with the principle of equal treatment can be subject to a review of constitutionality and legality before the Constitutional Court if they can be considered regulations, i.e. if they are of a general nature and adopted by a 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.⁴³⁷

The *National Anti-discrimination Plan 2017-2022* is the current relevant document in the field of anti-discrimination.⁴³⁸ The National Plan for the Protection and Promotion of Human Rights and the Suppression of Discrimination for the period 2021-2027 which was announced in 2020 and planned for 2021 has not been adopted during 2022.⁴³⁹ At the end of 2022 public consultations on the final draft of the National Plan had been opened for discussion.⁴⁴⁰

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.⁴⁴¹

In 2021 the Government adopted the National Plan on Roma Inclusion (2021-2027) and the National Plan for the Equalisation of Opportunities for Persons with Disabilities (2021-2027).

Civil society organisations and the equality body have been involved in the design and implementation of the national plans through participation of their representatives in working groups who are in charge of creating draft plans before their final conclusion and adoption as well as thorough public counselling.

In 2022 action plans against racism and action plans on LGBTIQ equality were not adopted nor planned for adoption, consultation or discussion.

⁴³⁷ Act on the Government of the Republic of Croatia, 22 December 2011, Article 27, Official Gazette 150/2011, 119/2014, 93/2016.

⁴³⁸ *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>.

⁴³⁹ *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>.

⁴⁴⁰ Public consultation, Draft of the National Plan for the Development of the Education System: <https://esavjetovanja.gov.hr/ECon/MainScreen?entityId=22687>.

⁴⁴¹ Amnesty International (2018), *Amnesty International Report 2017/18*.

10 CURRENT BEST PRACTICES

There is no current best practice on the use of artificial intelligence.

In her most recent annual report, the Ombudsperson reported on the impact of artificial intelligence on human rights and equality. She noted that Croatia has not yet adopted a strategic document for the development of artificial intelligence, although this had been planned for the end of 2019. The Ombudsperson stated that although the relevant ministry has drafted a National Plan for the Development of Artificial Intelligence, it does not contain specific measures and activities and as such it is not ready for adoption since its content needs to be further discussed and finalised by the working group for the creation of the National Plan. The Ombudsperson is a member of the working group; however, during 2022, not a single meeting was held. The Ombudsperson emphasised that artificial intelligence is already a big part of daily life, that in the future it will have an even greater impact on people's way of life and work, and that the use of new technologies, especially artificial intelligence, can present a threat to fundamental human rights and equality. She stressed the importance of monitoring the progress, development and implementation of artificial intelligence and pointed out a number of initiatives and activities that are taking place in this respect at European level.⁴⁴²

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 competencies 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 the public and experts, improving the quality of protection against discrimination. They also participate in legislative proceedings, issue opinions, recommendations and proposals, publish annual reports and organise seminars, conferences, round-tables 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.⁴⁴³ 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.

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 ongoing 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

⁴⁴² People's Ombudsperson (2023), [Report for 2022](#).

⁴⁴³ 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>.

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 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.⁴⁴⁴ The Support Programme for the education of members of the Roma national minority was adopted with the aim of providing support for the inclusion of children and students of the Roma minority in the educational system at all levels in order to ensure the conditions for improving their educational achievements and successful socialisation.⁴⁴⁵

⁴⁴⁴ Office for Human Rights and Rights of National Minorities (2019) [Report on implementation of Roma National Inclusion strategy for 2018](#).

⁴⁴⁵ Decision on the adoption of a support programme for the education of members of the Roma national minority (2021-2023), Official Gazette 23/2021.

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 % 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, 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 an additional paid day off on the days of their main religious holidays, can be seen as discriminatory.⁴⁴⁶ 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.⁴⁴⁷

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 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.

⁴⁴⁶ 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.

⁴⁴⁷ CJEU, judgment of 22 January 2019, *Cresco Investigation GmbH v. Markus Aschatz*, C-193/17, ECLI:EU:C:2019:43.

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 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. There have been several cases regarding the violation of the right to a trial within a reasonable time in connection with anti-discrimination proceedings before the Constitutional Court as well as the European Court of Human Rights in which a violation of Article 6(1) of the Convention has been determined due to the excessive length of anti-discrimination proceedings before domestic courts.

In this regard, the amendments of the provisions of the Civil Procedure Code which refer to the right of filing an appeal on the points of law (revision) in anti-discrimination proceedings in a way that there is no longer an automatic right of parties in anti-discrimination procedures to submit a revision – but as in all other procedures, the parties must first submit a proposal for permission for revision, and if it is approved, they can only apply to the Supreme Court after that – can be qualified as a certain setback since it can potentially further extend the decision-making time for the parties in urgent anti-discrimination court proceedings.

The free legal aid system is also not functional because of which, in reality, persons without sufficient financial means do not have the opportunity to address the court.

The potential high cost of court proceedings also has a deterrent effect on victims of discrimination in seeking court protection.

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 persons 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 persons 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 persons with disabilities who often live in poverty and are financially dependent on others or are welfare beneficiaries. Quota employment measures for persons 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 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 their 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 to improve their situation. According to the most recent official data, there are 24 524 members of the Roma national minority in Croatia.⁴⁴⁸

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. According to the relative poverty rate, 92.3 % of Roma in Croatia are poor while 70 % of Roma minority families live in extreme poverty.⁴⁴⁹

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.⁴⁵⁰ 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.⁴⁵¹ 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.

⁴⁴⁸ Kunac, S., Klasnić, K. and Lalić, S. (2018) *Inclusion of Roma in Croatian Society: Database Research*, Centre for Peace Studies, August 2018.

⁴⁴⁹ [National Plan for Roma Inclusion](#), June 2021.

⁴⁵⁰ Kunac, S., Klasnić, K. and Lalić, S. (2018) *Inclusion of Roma in Croatian Society: Database Research*, Centre for Peace Studies, August 2018.

⁴⁵¹ Amnesty International (2017), [Amnesty International Report 2016/17](#).

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.

New difficulties for some members of the Roma national minority emerged as a result of the COVID-19 pandemic and the earthquake, which further reduced their already poor living conditions.

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 persons 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 as a result of the earthquake that hit Sisak-Moslavina County.

Members of the 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 the 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 continued 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 these kinds 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 significant influence in Croatia.

Regarding the potential issues of concern that can be identified in connection with the use of artificial intelligence in relation to the implementation of the national legislation transposing the directives, the People's Ombudsperson pointed to the fact that the Republic of Croatia still does not have a strategic document that would regulate the development and use of artificial intelligence and stressed the importance of artificial intelligence and its impact on everyday lives alongside the potential for it to have new discriminatory effects.

The Ombudsperson indicated that the working group for the creation of the National Plan for the Development of Artificial Intelligence, of which the Ombudsperson herself is a member, was formed; however, in 2022 meetings were not held. In relation to this, the Ombudsperson pointed to the importance of a policy framework for the use of artificial intelligence, which has an impact in various areas of life – employment, work, health, public administration, the fight against misinformation and hate speech, and others, both in the private and public sectors, and pointed out again the current problems with the application of artificial intelligence in the field of employment.⁴⁵²

In connection to this, the Ombudsperson drew attention to discriminatory treatment of workers on digital platforms (specifically in the area of transport) based on their health condition; if the algorithm of the worker's platform records him/her as absent on the platform during sick leave, he/she is then assigned less desirable routes or work tasks with lower earnings.⁴⁵³

In her report for 2022, the Ombudsperson issued a recommendation to the Ministry of Economy and Sustainable Development to create a National Plan for the Development of Artificial Intelligence and to establish a register of artificial intelligence systems used in the public sector.⁴⁵⁴

⁴⁵² People's Ombudsperson (2023), [Report for 2022](#).

⁴⁵³ People's Ombudsperson (2022), [Report for 2021](#).

⁴⁵⁴ People's Ombudsperson (2023), [Report for 2022](#).

12 LATEST DEVELOPMENTS IN 2022

12.1 Legislative amendments

In 2022, the provisions of the Civil Procedure Code which refer to the right of filing an appeal on the points of law (revision) in anti-discrimination proceedings were amended in a way that anti-discrimination cases are now equalised with all other proceedings, and are not subject to more favourable conditions for submitting a revision. Thus, there is no longer an automatic right of parties in anti-discrimination procedures to submit a review, but as in all other procedures, the parties must first submit a proposal for permission to review, and if it is approved, they can only apply to the Supreme Court after that.

This can be qualified as a certain setback, bearing in mind that the purpose of the earlier provision, which enabled parties in certain types of proceedings, including in anti-discrimination proceedings, the automatic right to submit a revision to the Supreme Court, was to provide parties with more direct access to all instances of judicial protection in proceedings which were recognised as urgent and complex. The legal amendments prescribe only revision by permission, which further extends the decision-making time for the parties in urgent anti-discrimination court proceedings, if it is allowed.

12.2 Case law

Relevant discrimination ground(s): N/a

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

Date of decision: 29 September 2022

Name of the parties: D.J. v. Republic of Croatia

Reference number: U-III A-2294/2022

ECLI reference: N/a

Link: https://narodne-novine.nn.hr/clanci/sluzbeni/2022_11_129_1958.html

Brief summary: The case concerns the applicant who filed a constitutional complaint for violation of his right to a trial within a reasonable time, in connection to anti-discrimination proceedings conducted against the State which at the time of filing the constitutional complaint lasted seven years. The Constitutional Court found that there are no justified reasons for the length of the proceedings and determined that the applicant's right to a trial within a reasonable time was violated. The applicant was awarded compensation in the amount of HRK 2 200.00 (approximately EUR 290).⁴⁵⁵

Relevant discrimination ground(s): Disability

Name of the court: Zagreb County Court

Date of decision: 18 July 2022

Name of the parties: D.J. vs Republic of Croatia

Reference number: GŽ-1322/2021

ECLI reference: N/a

Link: <https://sudskapraksa.csp.vsrh.hr/decisionText?id=090216ba80d579be&q=h.hr>

Brief summary: The decision concerns the case initiated by D.J., a person with a disability, a lawyer by profession, against the Republic of Croatia for damages due to the fact that the building of the administrative court in Rijeka is not accessible to persons in an electric wheelchair. In separate court proceedings, it was previously determined that the Republic of Croatia had failed to take actions and measures that led to the violation of D.J.'s right to equal treatment in the way that it relocated the administrative court in Rijeka into a building unsuitable for the movement of persons with disabilities.⁴⁵⁶ The State was ordered to remove the architectural barriers in the building within six months and compensate D.J. for damages in the amount of HRK 30 000.00 (Approximately EUR 3 900).

⁴⁵⁵ It is noted that in connection with the same proceedings, the applicant was previously awarded compensation for violation of the right to a trial within a reasonable time in the amount of HRK 8 800.00 (Approximately EUR 1 160).

⁴⁵⁶ This case was reported about in the Croatia Country report non-discrimination 2018.

After that, D.J. initiated further court proceedings for compensation of damages because the Republic of Croatia did not take actions to remove the architectural barriers, in which the State was ordered to compensate D.J. the amount of HRK 9 750.00 (Approximately EUR 1 290). However, not even in the further period did the Republic of Croatia take the necessary actions in order to enable access to the administrative court building in Rijeka for persons with disabilities, as a result of which D.J. initiated third proceedings for damages due to discrimination. The first-instance court found that the State did not implement measures to reasonably adapt the court building to persons who move with the help of electric wheelchairs and that it thereby discriminated against D.J. on the basis of his disability. In appeal proceedings, Zagreb County Court acting as a second-instance court, ruled that the situation in question constitutes repeated discrimination that had been going on for a long time, that D.J. as a lawyer was denied the opportunity to practise his profession in the court building, therefore, that it is a more serious form of discrimination, as a result of which the Court decided to increase the compensation awarded by the court of first instance, awarding D.J. a total of HRK 21 000.00 (Approximately EUR 2 700). The court determined that D.J. has no right to compensation for separate damages caused by secondary traumatising, because the fact that the discrimination in question was repeated and prolonged was taken into account when determining the amount of compensation for non-pecuniary damages.

Relevant discrimination ground(s): Disability

Name of the court: Zagreb County Court

Date of decision: 7 June 2022

Name of the parties: A.Č. vs Clinical Hospital Centre Split

Reference number: GŽR-1545/2021

ECLI reference: N/a

Link: [\(https://sudskapraksa.csp.vsrh.hr/decisionText?id=090216ba80d2a54e&q=\(vsrh.hr\)\)](https://sudskapraksa.csp.vsrh.hr/decisionText?id=090216ba80d2a54e&q=(vsrh.hr))

Brief summary: A.Č., a nurse by profession, initiated proceedings against her employer for violation of her right to work because the employer did not allow her to perform her job in conditions in which she would not come into contact with allergens that can lead to a decrease in her work capacity, in accordance with the recommendation of the Institute for Medical Assessment, Professional Rehabilitation and Employment of persons with disabilities. A.Č. also claimed that she was discriminated against by her employer on the basis of her health condition and disability since she was given a warning before dismissal and instructed to perform her job according to the employer's order with the use of personal protective equipment. The Municipal Court in Split, as a court of first instance, partially accepted the claim and found that the employer violated A.Č.'s right to work and ordered him to assign A.Č. to a suitable workplace within eight days. However, the first-instance court rejected the discrimination claim with the explanation that the employer does not employ any other employee, besides A.Č., who would be in danger of reduced work capacity due to a diagnosed allergic dermatitis that would be caused by the job he/she performs and that therefore A.Č. failed to make plausible that she was put or could be put in a less favourable position than other persons in a comparable situation. Upon A.Č.'s appeal, the second-instance court annulled the first-instance decision in the part in which the anti-discrimination claim was rejected and ordered a retrial. The County Court determined that the reasoning of the first-instance court cannot be accepted since the criterion for deciding whether A.Č.'s right to equal treatment has been violated is not whether the employer treated employees diagnosed with allergic dermatitis in a different way, but whether the employer treated all employees who, due to a certain health diagnosis, have an immediate risk of a reduction in working capacity in the same way. The court also emphasised that in anti-discrimination cases it is sufficient for the claimant to present facts that justify the suspicion that discrimination has been committed, which in this particular case A.Č. has done, following which the burden of proof is shifted to the respondent who is obliged to prove that there was no discrimination. It is additionally explained that from the reasoning of the second-instance decision, it follows that the claimant argued that she was put in a disadvantageous position in relation to other

employees who were found to be at an immediate risk of a reduction in working capacity, and who, unlike her, were reassigned to other work tasks. Therefore, although this case in its essence is a reasonable accommodation case, the claimant herself did not seek protection on the basis of reasonable accommodation. She claimed that she was discriminated against (in its reasoning, the court refers to provisions of the Anti-discrimination Act on direct discrimination) in comparison to her other colleagues in a comparable position.

Relevant discrimination ground(s): Racial or ethnic origin

Name of the court: Rijeka Municipal Court

Date of decision: 7 February 2022

Name of the parties: Primorsko Goranska County Police Department v. L.Š.

Reference number: Pp-849/2022

ECLI reference: N/a

Link: <https://sudskapraksa.csp.vsrh.hr/decisionText?id=090216ba80d162a3&q=>

Brief summary: L.Š. was found guilty in misdemeanour proceedings conducted against him for misdemeanour under the Anti-discrimination Act initiated by the Police Department of Primorsko Goranska County. The Court determined that L.Š. verbally and physically attacked M.V. at the parking lot in front of a supermarket because he did not approve of the type of music M.V. was playing in his car. L.Š. called M.V. 'chetnik' and addressed the following words to him: 'Fuck you and your Chetnik mother, I'll shoot you from the R. hill G., you don't know who my grandfather was', after which M.V. drove away. The Court determined that this kind of behaviour caused M.K. a feeling of anxiety and created a hostile and humiliating environment, putting him in a disadvantageous position on the basis of ethnic and national origin. L.Š. admitted committing a misdemeanour and was fined HRK 5 000.00 (Approximately EUR 663).

Relevant discrimination ground(s): Racial or ethnic origin

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

Date of decision: 23 March 2022

Name of the parties: Istria Police Administration v. N.R.

Reference number: JŽ-953/19

ECLI reference: N/a

Link: <https://sudskapraksa.csp.vsrh.hr/decisionText?id=090216ba80d0f276&q=>

Brief summary: Acting as a second-instance court upon appeal of the Istria Police Department against the first-instance decision of the Pazin Municipal Court by which N.R. was acquitted of the charge of committing a misdemeanour under the Anti-discrimination Act, the High Misdemeanour Court rejected the appeal of the Police and confirmed the first-instance decision. In this case N.R. was accused of committing a misdemeanour under the Anti-discrimination Act against N.S. on the basis of his national origin calling him 'Šiptar' (insulting term for persons of Albanian Origin) and cursing him. The Court stressed that a decisive fact that constitutes an offence under the Anti-discrimination Act is the intention to cause fear to another or to create a hostile, humiliating or offensive environment, based on prescribed discriminatory grounds (which is correctly stated in the factual description of the case), and causing consequences for that person in the form of a violation of his dignity, which was not indicated in the specific case. Therefore, having in mind that one of the constitutive elements of the misdemeanour of which the defendant had been charged was not indicated in the factual description of the offence contained in the indictment proposal, the Court determined that N.R. ought to be acquitted of the charge.⁴⁵⁷

⁴⁵⁷ Similar also in the cases: PPŽ-3011/21, Decision of the High Misdemeanour Court of the Republic of Croatia of 4 January 2022; Pp-281/22, Decision of the Zagreb Municipal Misdemeanour Court of 1 July 2022; Pp-3228/22, Decision of the Zagreb Misdemeanour Court of 5 March 2022. In all mentioned cases, the defendants were acquitted of charges because the factual description of the indictment proposals did not contain one of the constitutive elements of misdemeanour prescribed by the Anti-discrimination Act – intent or consequence.

Relevant discrimination ground(s): sexual orientation

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

Date of decision: 14 December 2021⁴⁵⁸

Name of the parties: Rainbow Families Association vs Vigilare, an association for promotion of the participation of citizens in the civil and political sectors of society and preservation of the dignity and rights of individuals, families, and the value of life.⁴⁵⁹

Reference number: GŽ-10/2021

ECLI reference: N/a

Link:

<https://sudskapraksa.csp.vsrh.hr/decisionView?id=090216ba80d02c3f&q=G%C5%BE-10%2F2021>

Brief summary: The association Rainbow Families, which represents the family and parental rights of LGBTIQ persons, filed a joint complaint against the Vigilare association, claiming that the association in question discriminated, encouraged to discriminate and harassed LGBTIQ persons and their families by launching a petition called: '*Stop homo-propaganda on state television. Let's stop fake rainbows, protect children and families!*' and by publishing inappropriate content on its website, especially regarding the following statements: 'Such an environment is harmful for children and contributes to the creation of unhealthy individuals, and thus also an unstable society' and 'Croatian television wants to cook our children through homosexual content as well as the whole society and by imposing homo-propaganda to normalise what is unnatural and perverse'. The County Court in Zagreb rejected the claim with the explanation that Vigilare expressed its civil criticism regarding the content of the Croatian Television programme within the values that Vigilare promotes in accordance with freedom of speech and expression as fundamental values of a democratic society. Upon the appeal, the Supreme Court of the Republic of Croatia, as a second-instance court, overturned the first-instance decision, taking a stand that public invitation to sign the petition which attributes the family of a person as fake, unhealthy, unnatural, perverse, and one that will destroy our children and the whole society, only because of the person's sexual orientation or gender identity, presents incitement to discriminate and harassment. The association Vigilare was ordered to remove all disturbing content from its website within eight days and was prohibited from further publication and use of content that discriminates in any way, encourages discrimination and harasses LGBTIQ persons, their families and children. The Court also ordered that the judgment be published in the daily newspaper at the respondent's expense. The reasoning of the court decision does not contain specific argumentation regarding the freedom of expression. The Court purely stated that the respondent failed to prove that the petition in question had no purpose to violate dignity and cause fear and was hostile, humiliating and offensive and that the petition represents expression of the right to free speech, and critical reasoning on issues of public or social and political interest.

Relevant discrimination ground(s): sexual orientation

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

Date of decision: 20 April 2022

Name of the parties: I.Š. and M.K. vs Ministry of Work, Pension System, Family, and Social Policy⁴⁶⁰

Reference number: Usž-2402/21

ECLI reference: N/a

Link:

Brief summary: This decision concerns a case of a same-sex couple who initiated proceedings before the competent social welfare centre for registration in the register of potential adopters which precedes the child adoption procedure. The social welfare centre denied their request as well as the competent Ministry acting as a second-instance body. After that, I.Š. and M.K. initiated court proceedings before the Zagreb Administrative Court which accepted their complaint and annulled the first-instance and second-instance

⁴⁵⁸ Decision was published in May 2022.

⁴⁵⁹ Further in the text: Vigilare.

⁴⁶⁰ Further in the text: the Ministry.

decisions. The Ministry filed an appeal against the decision of the Administrative Court to the High Administrative Court of the Republic of Croatia which rejected the appeal and confirmed the first-instance court decision. In the explanation of its decision, the High Administrative Court stated that in cases concerning the personal sphere of an individual's life, it is important to achieve a balance between the rights of the individual and the public interest, that is, to assess whether there is a public interest that could be violated and for the protection of which there would be justified reasons for limitation of the Convention right to respect for private (family) life. The Court stated that the difference in the treatment of persons who are in similar situations solely on the basis of sexual orientation, in the light of today's social standards and civilisation achievements, is a form of discrimination. The Court found that there is no obstacle to allowing I.Š. and M.K. access to the register of adoptive parents, because acting contrary to this would mean discrimination on the basis of sexual orientation. The Court found that there are no justified reasons for the protection of the public interest in the specific case and also that the legitimate aim cannot be found in the protection of the interests of the child, as claimed by the Ministry, since the interest of the specific child to be adopted will be evaluated in the adoption process and when choosing specific adopters. The court did not give an opinion on whether, when considering the specific interests of individual children, it would be legitimate to take into account the sexual orientation of the proposed adopter. The decision and the court reasoning were focused on the issue of registration of same-sex couples in the register of potential adopters. It is yet to be seen whether sexual orientation will be taken into account when selecting adoptive parents from the registry.

Relevant discrimination ground(s): sexual orientation

Name of the court: Zagreb Misdemeanour Municipal Court

Date of decision: 13 January 2022

Name of the parties: Zagreb Police Administration v. K.C.

Reference number: Pp-18758/2021

ECLI reference: N/a

Link: <https://sudskapraksa.csp.vsrh.hr/decisionText?id=090216ba80d3927e&q=>

Brief summary: K.C. was found guilty in misdemeanour proceedings initiated against her by the Zagreb Police Administration for a misdemeanour under the Anti-discrimination Act. The court determined that by addressing A.Š., who declares himself to be a member of the LGBTIQ community, with the following words: 'You fags and gypsies should be burned and killed', K.C. acted with the aim of creating a hostile, humiliating and offensive environment based on the difference in gender expression and sexual orientation and thus violated the dignity of A.Š. She was fined HRK 5 000.00 (Approximately EUR 663).

Relevant discrimination ground(s): sexual orientation

Date of decision: 10 February 2022

Name of the parties: Zagreb Police Department v. O.R.

Reference number: Pp-12840/2021

ECLI reference:

Link: <https://sudskapraksa.csp.vsrh.hr/decisionText?id=090216ba80cb9347&q=Pp-12840%2F2021>

Brief summary: O.R. was found guilty of committing a misdemeanour under the Anti-discrimination Act against A.L. and I.T. concerning the incident when he blocked their way with his vehicle, after which he got out of the vehicle and started shouting at them and insulting them with the words: 'fucking lesbians', and then spat twice in the face of A.L. and aggressively pushed himself into the faces of A.L. and I.T. The Court determined that O.R. violated the dignity of A.L. and I.T. and put them in a humiliating position with the aim of creating a humiliating and offensive environment because of their sexual orientation, thereby committing a misdemeanour for which he was fined HRK 5 000.00 (Approximately EUR 663).

Relevant discrimination ground(s): sexual orientation

Name of the court: Zagreb Municipal Misdemeanour Court

Date of decision: 23 May 2022

Name of the parties: Zagreb Municipal State Attorney's Office v. A.J.

Reference number: Pp-17617/21

ECLI reference: N/a

Link: <https://sudskapraksa.csp.vsrh.hr/decisionText?id=090216ba80d25363&q=Pp-17617%2F21>

Brief summary: In misdemeanour proceedings initiated by the Municipal State Attorney's Office in Zagreb the Court determined that at the public gathering held after Zagreb Pride where members of the LGBTIQ community were present, at the moment when members of opposite groups set the rainbow flag on fire, A.J. approached three persons who were taking photos and video of the burning flag, and addressed the following words to them: 'fag, what are you filming, fag' and 'fag, stop filming', 'what are you filming, lesbian', 'whore, slut and trash', as well as slapping them in the face. Therefore, the Court determined that A.J. with the aim of causing fear to another and creating a hostile, humiliating and offensive environment based on the difference in sexual orientation, violated their dignity, by which she committed a misdemeanour prescribed by the Anti-discrimination Act. A.J. was fined HRK 3 600.00 (Approximately EUR 470).

ANNEX 1: INTERNATIONAL INSTRUMENTS

Country: Croatia
Date: 1 January 2023

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)	06.11.1996	05.11.1997	no	yes	yes
Protocol 12, ECHR	06.03.2002	03.02.2003	no	yes	yes
Revised European Social Charter	06.11.2009	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	06.11.1996	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	08.10.1991	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	15.08.2007	no	yes	yes

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