

NATIONAL LEGAL MEASURES TO COMBAT RACISM AND INTOLERANCE IN THE MEMBER STATES OF THE COUNCIL OF EUROPE

CROATIA, Situation as of 31 December 2003

General Overview

Preliminary Note: this table is self-sufficient and is not accompanied by an explanatory note.

COUNTRY: CROATIA	Constitutional provisions	Specific legislation	Criminal Law	Civil and Administrative Law
Norms concerning discrimination in general	Yes.	No.	Yes.	See comments on Constitutional Law.
Norms concerning racism	Yes.	No.	Yes.	No.
Relevant jurisprudence	No cases were found on this subject.	No.	Yes.	No.

Constitutional Law - Croatia

Preliminary Note: this table is accompanied by an explanatory note.

Constitutional provisions	Scope	Relevant jurisprudence	Remarks
Constitution (1990) Article 14 [Equality]	(1) Citizens of the Republic of Croatia enjoy all rights and freedoms regardless of race, colour, sex, language, religion, political or other opinion, national or		

	<p>social origin, property, birth, education, social status, or other characteristics.</p> <p>(2) All are equal before the law.</p>	
<p>Constitution (1990) Article 15 [Rights of Foreigners, Cultural Rights]</p>	<p>(1) Members of all nations and minorities have equal rights in the Republic of Croatia.</p> <p>(2) Members of all nations and minorities are guaranteed freedom to express their national identity, freedom to use their language and script, and cultural autonomy.</p>	
<p>Constitution (1990) Article 39 [Intolerance]</p>	<p>Any call for or incitement to war, or resort to violence, national, racial, or religious hatred, or any form of intolerance is prohibited and punishable.</p>	
<p>Constitution (1990) Article 40 [Religion]</p>	<p>Freedom of conscience and religion and free public profession of religion and other convictions are guaranteed.</p>	
<p>Constitution (1990) Article 41 [Religious Communities, Religious Neutrality]</p>	<p>(1) All religious communities are equal before the law and separate from the State.</p> <p>(2) Religious communities shall be free, in conformity with law, to publicly perform religious</p>	

	<p>services, open schools, teaching establishments or other institutions, social and charitable institutions and to manage them, and shall in their activity enjoy the protection and assistance of the State.</p>	
<p>Constitution (1990) Article 42 [Assembly, Protest]</p>	<p>All citizens are guaranteed the right to peaceful assembly and public protest.</p>	
<p>Constitution (1990) Article 43 [Association]</p>	<p>(1) Citizens are guaranteed the right to free association for the purposes of protection of their interests or promotion of social, economic, political, national, cultural, and other convictions and objectives. For this purpose, citizens may freely form political parties, trade unions, and other associations, join them, or leave them.</p> <p>(2) The right to free association shall be restricted by the prohibition of any violent threat to the democratic constitutional order and the independence, unity, and territorial integrity of the Republic.</p>	
<p>Constitutional Law on the Rights of National Minorities</p>	<p>In addition to the human rights and freedoms recognised</p>	

(2002) Article 2
[Recognition and
protection of rights]

under its constitutional provisions, the Republic of Croatia shall recognise and protect all other rights envisaged in the international treaties to which it is a part, without any discrimination based on gender, race, colour of skin, language, religion, political and other beliefs, national and social background, association with a national minority, property, status inherited by birth or on any other basis, in accordance with the Constitution of the Republic.

Constitutional Law
on the Rights of
National Minorities
(2002) Article 3

The rights and freedoms of the members of national minorities, being fundamental human rights and freedoms, shall constitute an inseparable part of the democratic system in the Republic of Croatia and shall enjoy necessary support and protection, including relevant measures taken in favour of national minorities. Ethnic and multicultural diversity, the spirit of understanding, mutual respect and tolerance contribute to the enhanced

development of the Republic.

Constitutional Law on the Rights of National Minorities (2002) Article 4 [Equality]

Every citizen of the Republic of Croatia shall have the right to freely express his/her national affiliation, the right to exercise individually or jointly with other members of his/her respective national minority or jointly with members of other national minorities the rights and freedoms defined in this Constitutional Law and other minority rights and freedoms as defined in special laws.

Members of national minorities shall enjoy on an equal footing with other citizens of the Republic of Croatia the rights and freedoms guaranteed under the Constitution of the Republic as well as the rights and freedoms defined by the Constitutional Law on the Rights of National Minorities and special laws.

Any discrimination based on ethnic origin shall be prohibited. The members of national minorities shall be guaranteed equality before law and equal

legal protection.
It shall be prohibited to take any measures designed to change the ethnic structure in areas populated by national minorities, with a view to undermining the exercise of or limiting the rights and freedoms defined by this Constitutional Law and special laws.

Constitutional Law on the Rights of National Minorities (2002) Article 8

The provisions of the Constitutional Law on the Rights of National Minorities and of special laws governing the rights and freedoms of national minority members shall be construed and applied with a view to ensuring respect for the members of national minorities and other citizens of the Republic, to promoting understanding, solidarity, tolerance and dialogue among them.

Constitutional Law on the Rights of National Minorities (2002) Article 19 [Right to representation]

National minorities shall have the right to representation in the Croatian Parliament.
Members of national minorities can elect at least five and not more than eight MPs in special constituencies in accordance with the law regulating the

	election of MPs, which, however, shall not derogate the already acquired rights of national minorities.	
Constitutional Law on the Rights of National Minorities (2002) Article 20 [Right to representation]	The Republic of Croatia guarantees national minority members the right to representation in the representative bodies of local and regional self-government units.	
Constitutional Law on the Rights of National Minorities (2002) Article 35 [Council for national minorities]	A Council for National Minorities shall be set up to consider and propose ways of regulating and addressing issues related to the exercise and safeguarding of minority rights and freedoms. To this end the Council shall co-operate with competent government and self-government bodies, minority self-governments, national minority organisations and legal entities engaged in activities related to the exercise of minority rights and freedoms.	

EXPLANATORY NOTE

Croatia/ Constitutional law

The Croatian Constitution protects democratic values, bans discrimination on all grounds whatsoever and elaborates individual, political, economic and other rights and freedoms in detail. Since the new Constitution of the Republic of Croatia reflects fundamental changes in the nation's political system and social principles, the entire

body of existing legislation had to be adjusted to comply with it after its adoption. In addition to that also the Croatian Ombudsman is charged with ensuring that the legal and constitutional rights of citizens are not violated by organs of the state administration or other public bodies or agencies. The Ombudsman, whose role was consolidated in a Constitutional amendment of November 2000 (Article 93, paragraph 4), may act on individual complaints or on his or her own initiative. Besides seeking action directly from the concerned body, the Ombudsman submits an annual report to the Croatian Parliament and may release his or her findings and proposals to the media.

On 13 December 2002 the Croatian Parliament adopted the Constitutional Law on the Rights of National Minorities (CLNM). With this Constitutional Law (according to its Article 1) the Republic of Croatia, pursuant to the Constitution of the Republic of Croatia, the principles embodied in the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Final Act of the Organisation for European Security and Co-operation, the Charter of Paris for a New Europe and other OSCE documents relating to human rights, the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, with the pertaining Protocols; the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention on the Rights of the Child, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief; the Convention Against Discrimination in Education, the UN Declaration on the Rights of Persons Belonging to National or Ethnic Religious and Linguistic Minorities, the Council of Europe Framework Convention for the Protection of National Minorities; the European Charter for Regional or Minority Languages; the European Charter of Local Self-Government and to other instruments for the protection of minority rights undertakes to respect and protect the rights of national minorities and other fundamental rights and freedoms of man and citizen, the rule of law and all other highest values enshrined in its Constitution and in international law in relation to all its citizens.

The Constitutional Law envisages that national minorities shall have the right to representation in the Croatian Parliament. Members of national minorities can elect at least five and not more than eight MPs in special constituencies in accordance with the law regulating the election of MPs, which, however, shall not derogate the already acquired rights of national minorities. A national minority with a share of more than 1.5% in the total population of the Republic of Croatia shall be guaranteed at least one and not more than three parliament seats in accordance with the law regulating the election of MPs. National minorities with a share of less than 1.5% in the total population of the Republic of Croatia shall have the right to elect at least four MPs from among the members of national minorities in accordance with the law regulating the election of MPs (Article 19 of the Constitutional Law on the Rights of National Minorities). The Republic of Croatia guarantees in the Article 20 of this Constitutional Law to national minority members the right to representation also in the representative bodies of local and regional self-government units. Unless at least one member of a national minority having a share in the population of a self-government unit above 5% and below 15% is elected by universal suffrage to the representational body of the self-government unit, the number of members of the

representational body shall be increased by one member and as elected shall be considered a minority member who has not been elected as the first in the order of proportional success of each electoral list, unless otherwise provided in the law governing the election of members of the representational body of the self-government unit. Unless an election by universal suffrage fails to result in as many minority members in the representational body of a local self-government unit as pertaining to the respective national minority having at least 15% share in the local population, the number of members of the representational body of that unit shall be increased to a number required to achieve that representation and as elected shall be considered minority members who have not been elected in the order of proportional success of each electoral list, unless otherwise provided in the law governing the election of members of the representational body of the local self-government unit. Unless an election by universal suffrage fails to result in as many minority members in the representational body of a regional self-government unit as pertaining to the respective national minority having more than 5% share in the population of the regional self-government unit, the number of members of the representational body of that unit shall be increased to a number required to achieve that representation and as elected shall be considered minority members who have not been elected in the order of proportional success of each electoral list, unless otherwise provided in the law governing the election of members of the representational body of the regional self-government unit. Should even the application of the above mentioned provisions fail to result in the desired representation of minority members in the representational body of a local self-government unit, or a regional self-government a by-election shall be announced in the self-government unit concerned.

The Constitutional Law on Rights of National Minorities establishes a Council for National Minorities which consider and propose ways of regulating and addressing issues related to the exercise and safeguarding of minority rights and freedoms. To this aim the Council shall co-operate with competent government and self-government bodies, minority self-governments, national minority organisations and legal entities engaged in activities related to the exercise of minority rights and freedoms. The Council for National Minorities shall be entitled to propose to legislative and executive authorities debates on particular issues relevant for a national minority, especially the implementation of this Constitutional Law and the special laws governing minority rights and freedoms; to propose to legislative and executive authorities measures to improve the position of a national minority nation-wide or in a specific area; to give views and make proposals concerning public radio and TV broadcasts intended for national minorities, or the treatment of minority issues in public radio and TV broadcasts or other media; to propose taking economic, social or other measures in areas traditionally or significantly populated by national minorities with a view to preserving their existence in those areas; to seek and receive from the central government and local and regional government bodies information and reports required for considering matters within their scope; to invite and request the presence of representatives of a central government or local and regional government body responsible for matters within the scope of the Council as defined in this Constitutional Law and the Statute of the Council. The Council for National Minorities shall co-operate in matters of interest to national minorities in the Republic with competent international organisations and institutions engaged in minority issues and with the competent authorities of the countries of origin of the national minorities in the Republic. The Council for National Minorities shall disburse the state budget

funds earmarked for the needs of national minorities. The beneficiaries of these funds shall file annual reports on the use of funds being remitted to them from the state budget, which in turn shall be reported by the Council to the Croatian Government and Parliament.

Implementation of the Constitutional Law on Rights of National Minority seems to be crucial. The next essential step is to adapt and enforce the electoral legislation, both for the national and local institutions, and to amend or introduce legislation regulating the local self-government system as well as related legal acts in order to provide regulations for the representation of national minorities in the representative, executive, judiciary and administrative bodies at the state, regional and local levels as stipulated in this Constitutional law. The Effectiveness of the Constitutional Law on Rights of National Minorities has to be considered in longer period.

Criminal Law - Croatia

Preliminary Note: this table is accompanied by an explanatory note.

Offence	Source	Scope	Sanction	Relevant jurisprudence	Remarks
Denial or restriction of human rights on the racial basis	Criminal Code (1998) Article 106	Any person who on the basis of a distinction in race, colour, sex, language, religion, political or other beliefs, national or social origin, property, birth, education, social status or other characteristics or due to membership of a minority in the Republic of Croatia, withholds or restricts a freedom or right of man and citizen as determined by the Constitution,	Will be punished with a prison sentence of six months to five years. The same sentence shall apply to those who withhold from or restrict the right of a member of a nation or a national minority to express their national affiliation or the right to cultural autonomy. If someone, notwithstanding the laws on the use of language and script, withholds from or restricts the right of a		

		law or other regulation, or grants preferences or privileges to citizens on the basis of distinctions or membership.	citizen to use his language and script, he will be punished with a fine or prison sentence of up to one year.
Genocide	Criminal Code (1998) Article 156	Any person who, with the intention of completely or partially destroying some national, ethnic, racial or religious group, orders the murder of, or the infliction of serious bodily injuries upon, or of serious harm to the physical or mental health of members of the group, or the forced resettlement of a population, or the placement of the group under such living conditions as to bring about the complete or partial extermination of the group, or the application of measures to prevent births among the members of the group; any	Imprisonment for a period from ten years.

		<p>person who, with the same intention, himself commits any of the above-mentioned crimes.</p>		
Racial discrimination	Criminal Code (1998) Article 174	<p>Criminal offence of racial and other discrimination, stipulating that a person who, on the basis of a difference in race, sex, colour, nationality or ethnic origin, violates fundamental human rights and freedoms recognized by the international community will be punished.</p>	<p>Imprisonment of six months to five years. The punishment of those who persecute organizations or individuals on account of their advocacy of equality of people</p>	
Detainees equality	Act on Penal Procedure (1997) Article 112	<p>The implementation of detention shall ensure respect for the person and the dignity of detainees. All detainees are granted equality during the detention without distinction as to their race, colour, sex, language, religion, political or</p>		

other opinion,
national or
social origin,
property, birth,
education,
social or other
status.

EXPLANATORY NOTE

Croatia / Criminal law

The criminal legislation of the Republic of Croatia protects human rights in accordance with the requirements of three principal international instruments: the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention Against Torture and Other Cruel, Inhuman or Humiliating Punishments or Procedures.

Art. 106 of the Criminal Code (violation of the equality of citizens) provides the principal sanctions for denial of or derogation from rights defined in the Constitution, laws and other regulations and for other discriminatory acts based on the ethnicity, race, colour of skin, religion or similar distinguishing characteristics of the victim.

All forms of discrimination, maltreatment and violence on the basis of the said differences among citizens are effectively also prohibited under Art. 174 of the Criminal Code (instigation of national, racial or religious hatred, strife or intolerance).

In compliance with the international conventions, Croatian legislation sanctions a specific group of criminal acts against humanity and international law including the criminal act of racial and other discrimination and genocide (Art. 156 of the Criminal Code).