



**REPORT ON MEASURES TO COMBAT DISCRIMINATION
Directives 2000/43/EC and 2000/78/EC**

COUNTRY REPORT 2010

CROATIA

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State of affairs up to 1st January 2011

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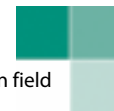


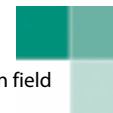
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INTRODUCTION

0.1 The national legal system

Explain briefly the key aspects of the national legal system that are essential to understanding the legal framework on discrimination. For example, in federal systems, it would be necessary to outline how legal competence for anti-discrimination law is distributed among different levels of government.

The Republic of Croatia is a unitary state¹. 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 law².

Government is organised on the principle of separation of powers into the legislative, executive and judicial branches, but limited by the right to local and regional self-government guaranteed by the Constitution³.

The Croatian Parliament is vested with legislative power. The Parliament may authorise the Government, for a maximum period of one year, to regulate, by decrees, certain issues within its competence. The Governmental decrees cannot deal with the issues relating to the application of constitutionally defined human rights and fundamental freedoms, the rights of national minorities, the electoral system, and the organisation, powers and operation of government bodies and local self-government since those issues are in the exclusive competence of the Parliament.

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, judicial review of administrative decisions is available. The role of the Supreme Court, as the highest court, is to ensure uniform application of laws and equal justice for all⁴. Judicial office is permanent. Courts' decisions are in principle 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 competences of the Constitutional Court of the Republic of Croatia are, among others, to decide on the conformity of laws with the Constitution; to decide on the conformity of other regulations with the

¹Article 1 of the Constitution of the Republic of Croatia

²Article 5 of the Constitution of the Republic of Croatia

³Article 4 of the Constitution of the Republic of Croatia

⁴Article 118 of the Constitution of the Republic of Croatia

Constitution and laws; to decide on constitutional complaints against individual decisions of governmental 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 to ensure that constitutionality and legality are observed and notify the Croatian Parliament of instances of unconstitutionality and illegality observed⁵.

The duty of the People's Ombudsman, 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 first detailed anti-discrimination provisions (definition of direct and indirect discrimination, harassment and sexual harassment, shift of the burden of proof etc.) were introduced into Croatian legislation by amendments to the Employment Act in July 2003⁶, with the aim of harmonising the Employment Act with EU law.

The first piece of comprehensive anti-discrimination legislation in Croatia was the Anti-discrimination Act that entered into force on 1 January 2009. This law covers all grounds of discrimination dealt with by the Directives as well as some other grounds such as property, genetic heritage, education etc.

The anti-discrimination provisions in the new Employment Act⁷ that entered into force on 1 January 2010 have been significantly reduced in comparison with the previous Employment Act. It seems that the legislator viewed these provisions as unnecessary after the Anti-discrimination Act, supposed to cover all fields including employment relations, had been introduced. The new Employment Act does not explicitly mention grounds of discrimination but refers to the Anti-discrimination Act in that respect.

0.2 Overview/State of implementation

List below the points where national law is in breach of the Directives. This paragraph should provide a concise summary, which may take the form of a bullet point list. Further explanation of the reasons supporting your analysis can be provided later in the report.

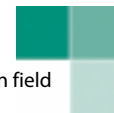
This section is also an opportunity to raise any important considerations regarding the implementation and enforcement of the Directives that have not been mentioned elsewhere in the report.

This could also be used to give an overview on the way (if at all) national law has given rise to complaints or changes, including possibly a reference to the number of complaints, whether instances of indirect discrimination have been found by judges, and if so, for which grounds, etc.

⁵Article 128 of the Constitution of the Republic of Croatia

⁶Amendments to the Employment Act, Official Gazette 114/2003

⁷Official Gazette 149/2009



Please bear in mind that this report is focused on issues closely related to the implementation of the Directives. General information on discrimination in the domestic society (such as immigration law issues) are not appropriate for inclusion in this report.

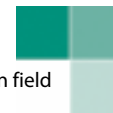
Please ensure that you review the existing text and remove items where national law has changed and is no longer in breach.

The Anti-discrimination Act has been in force only since 1 January 2009 and there is still no case law based on it.

It seems that the Government is planning to amend the Anti-discrimination Act and an expert group has been established to draft amendments. It is not clear what is planned to be changed but the part of the Act dealing with exceptions has been criticised as too wide and unclear.

There are certain issues where national law is not in compliance with the Directives:

- exceptions to the prohibition of discrimination are too wide, unclear and open to interpretation;
- in Constitutional Court case-law intent is still considered as an element of discrimination;
- case-law considers instructions to discriminate discrimination only if issued intentionally;
- equal access to occupation, pay, dismissal and practical work experience are not explicitly listed as issues covered by anti-discrimination legislation although existing case law shows that it is these issues that most frequently lead to complaints of discrimination (however, they are covered implicitly);
- the exception for employers with an ethos based on religion or belief is too wide and not limited just to situations where a person's religion or belief constitute a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos;
- the rules on compensation are not in compliance with the Directives because a court, when deciding compensation, does not have to take into consideration whether a particular amount of compensation in a particular case of discrimination would be an effective and dissuasive sanction;
- due to the length of proceedings before Croatian courts, the effectiveness of remedies in general is uncertain;
- individual cases dealing with discrimination in areas that are covered by the Directives but are not constitutional rights (e.g. equal access to and supply of goods and services) cannot be heard before the Constitutional Court because according to Constitutional Court case-law, the Court can establish violation of the right to equality only in connection with other constitutional right(s);
- in employment disputes the time limit within which an employee must initiate a procedure (15 days) is often too short to prepare a claim.



0.3 Case-law

Provide a list of any *important* case law within the national legal system relating to the application and interpretation of the Directives. This should take the following format:

Name of the court

Date of decision

Name of the parties

Reference number (or place where the case is reported).

Address of the webpage (if the decision is available electronically)

Brief summary of the key points of law and of the actual facts (no more than several sentences)

•Please use this section not only to update, complete or develop last year's report, but also to include information on important and relevant case law concerning the equality grounds of the two Directives (also beyond employment on the grounds of Directive 2000/78/EC), even if it does not relate to the legislation transposing them - e.g. if it concerns previous legislation unrelated to the transposition of the Directives

Please describe trends and patterns in cases brought by Roma and Travellers, and provide figures – if available.

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

Date of decision: 18 April 2007

Reference number: U-I/1152/2000

Address of the webpage:

<http://sljeme.usud.hr/usud/prakswen.nsf/Praksa/C12570D30061CE53C12572C1003E11D0?OpenDocument>

Brief summary: The Constitutional Court repealed provisions of the Pension Insurance Act as discriminatory on the ground of sex because they set different ages for entitlement to a statutory old-age pension for men and women; different ages for entitlement to an early old-age pension for men and women; different ages for entitlement to a survivor's pension for the mother and the father of a deceased insured person and different ages for the application of the initial factor used for calculating the level of early old-age pension to be paid to men and women. By the same decision the Constitutional Court, 'respecting the time needed for the process of equalisation of rights of men and women in the pension insurance system', decided that those provisions would remain in force until 2018.

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

Date of decision: 7 February 2007

Name of the parties: S.O. and others

Reference number: U-III/3138/2002

Address of the webpage:

<http://sljeme.usud.hr/usud/prakswen.nsf/Praksa/C12570D30061CE53C125727B0038B838?OpenDocument>

Brief summary: A constitutional complaint was filed, after proceedings before the ordinary courts, by several Roma students from four primary schools who claimed to be victims of discrimination/segregation due to their Romani origin. They had been placed in separate Roma-only classes. The Constitutional Court rejected their complaint and concluded that such separation of students was justified because their knowledge of the Croatian language was not sufficient to follow education with other children. At the same time the Constitutional Court noted that such separation would constitute discrimination if Roma students had been placed in separate classes in higher grades of primary education when their knowledge of the language would not have been a problem. The case, as *Oršuš and others v. Croatia*, was in the end decided by the Grand Chamber of the European Court of Human Rights, which found violation of the prohibition of discrimination taken together with the right to education.

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

Date of decision: 4 July 2006

Name of the parties: A.C. v. V.K. i g. d.d.

Reference number: Revr.90/06

Brief summary: A.C., who was 59 at the time, was employed at V.K. for 36 years. Due to the new organisation of work and new technology his job was abolished and his employment terminated. The employer employed 16 new workers afterwards. The Court stated that this was not discrimination, because, having in mind the plaintiff's age (59) and long service (36 years), the employer's decision to terminate employment instead of organising vocational training for the plaintiff to enable him to work with the new technology, was based on 'a realistic estimation of expected results of professional training'.

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

Date of decision: 25 September 2007

Name of the parties: J.M. v. Z.d.d.P.V.Z.

Reference number: Revr.459/07

Brief summary: The Court found discrimination based on age when an employer terminated the employment of a 51-year-old employee without offering him other available jobs that had been reserved for younger workers.

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

Date of decision: 17 May 2007

Name of the parties: D.Š.

Reference number: Ur.4/07

Brief summary: The Croatian Bar Association refused to add D.Š. to their list of law trainees because he was 51 years old. The Supreme Court decided that such a decision was discriminatory.

Name of the court: Bjelovar County Court

Date of decision: 20 April 2006

Name of the parties: S.Z. v. H.š. d.o.o.

Reference number: Gž.815/2006

Brief summary: H.š. d.o.o. as an employer refused to renew S.Z.'s temporary employment and employ him on a permanent basis due to his alleged need for sick leave. The Court established direct discrimination, without stating the ground of discrimination, and ordered the defendant to return S.Z. to work and to employ him permanently.

Name of the court: Zagreb County Court

Date of decision: 24 March 2011 (not final)

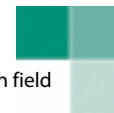
Name of the parties: LORI Lesbian Organization Rijeka, Zagreb Pride, Domino Zagreb and Centre for Peace Studies Zagreb v. Z.M.

Reference number: Pnz.6/10

Brief summary: Four human rights organizations filed a joint action against Z.M., 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 football national team. Zagreb County Court ruled that such a statement does not constitute discrimination because it does not place any person in less favourable position but is a hypothetical statement and not a decision or conduct that did place or could have placed any person of same sexual orientation in less favourable position since Z.M., as an official of a football club and not a national selector, is not in a position to decide who will play in the national team. Further, the Court said that Z.M. had the right to publicly express his opinion, even if he was wrong and that accepting the claim would constitute violation of Z.M.'s right guaranteed by Art. 10 of the European Convention.

Ordinary courts' decisions and their reasoning are very dry and most often exclude important points: the ground of discrimination is rarely explicitly noted, there is no comparison with person(s) who do not possess certain characteristics; and justification for different treatment is not properly explained or is not explained at all.

Anti-discrimination cases brought by Roma are still so rare that no pattern or trend can be observed. Rare cases have been brought before the courts with the help of NGOs (e.g. European Roma Rights Centre) and they were about discrimination in education (*Oršuš and others*), discrimination in access to health care (refusal to send an ambulance to a Roma settlement); and discrimination by the police (refusal to let a group of Roma enter Croatia at the border, and ineffective investigation of a hate crime – *Šečić v. Croatia*).



1 GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

- a) *Briefly specify the grounds covered (explicitly and implicitly) and the material scope of the relevant provisions. Do they apply to all areas covered by the Directives? Are they broader than the material scope of the Directives?*

The Constitution of the Republic of Croatia⁸ 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 characteristics⁹. Other grounds, such as disability, age and sexual orientation, are covered implicitly as 'other characteristics' but have yet to be interpreted.

The Constitution does not specify or limit the material scope of this provision and therefore it should cover all rights and freedoms provided by the legislation, including all areas covered by the Directives.

On the other hand, the Constitutional Court has stated in some decisions on constitutional complaints filed against court rulings or against regulations determining rights, obligations or criminal liability, that a violation of the right to equality can be established only in connection with a violation of other constitutional right(s)¹⁰. Individual cases of discrimination in areas covered by the Directives but not the Constitution would therefore not be heard before the Constitutional Court (e.g. access to and supply of goods and services which are available to the public, including housing).

- b) *Are constitutional anti-discrimination provisions directly applicable?*

According to Article 5 of the Judiciary Act¹¹, courts must apply the Constitution and laws as well as the international treaties which are part of the legal system of the Republic of Croatia (i.e. which have been concluded and ratified in accordance with the Constitution and promulgated, and which are in force¹²).

⁸ Official Gazette no. 56/1990, 135/1997, 8/1998, 113/2000, 124/2000, 28/2001, 41/2001 and 5/2001; 76/2010; 85/2010

⁹Article 14 of the Constitution reads as follows: '(1) Everyone in the Republic of Croatia shall enjoy rights and freedoms, regardless of race, colour, gender, language, religion, political or other belief, national or social origin, property, birth, education, social status or other characteristics. (2) All shall be equal before the law.'

¹⁰E.g. Constitutional Court decision U-III/2224/2004 of 14 February 2005

¹¹Official Gazette 50/2005, 16/2007, 113/2008, 153/2009; 116/2010; 122/10

¹²Article 140 of the Constitution of the Republic of Croatia

If a court determines during its proceedings that a law to be applied, or some of its provisions, are not in accordance with the Constitution it should stop the proceedings and present a request to the Constitutional Court to review the constitutionality of the law or some of its provisions. If a court determines that another (subordinate) regulation to be applied is not in accordance with the Constitution and/or the law, it should apply the law directly to that specific case, ignoring the subordinate regulation that is not in accordance with the law, and present a request to the Constitutional Court to review the constitutionality and legality of the disputed regulation¹³.

It is not clear what should be done in a situation where the law to be applied is not in accordance with an international treaty. There is still no case law on this issue.

c) *In particular, where a constitutional equality clause exists, can it (also) be enforced against private actors (as opposed to the State)?*

The constitutional equality clause can be enforced against private actors as well, and not just against the State.

¹³Article 37 of the Constitutional Act on the Constitutional Court of the Republic of Croatia (Official Gazette 49/2002)



2 THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination

Which grounds of discrimination are explicitly prohibited in national law? All grounds covered by national law should be listed, including those not covered by the Directives.

The Anti-discrimination Act¹⁴ prohibits discrimination on following grounds:

- race or ethnic affiliation 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.

The Sex Equality Act¹⁵ prohibits discrimination based on gender, while the Same-sex Relationships Act¹⁶ prohibits discrimination based on 'same-sex relationship' and 'homosexual orientation'¹⁷.

The Employment Act prohibits discrimination in the field of work and working conditions; criteria and conditions for recruitment, promotion, vocational training, advanced vocational training and retraining, but does not mention grounds of discrimination.

2.1.1 Definition of the grounds of unlawful discrimination within the Directives

- a) *How does national law on discrimination define the following terms: racial or ethnic origin, religion or belief, disability, age, sexual orientation?*

¹⁴Official Gazette 85/2008

¹⁵Official Gazette 82/2008

¹⁶Official Gazette 116/2003

¹⁷Article 21(1) of the Same-sex Relationships Act

Is there a definition of disability at the national level and how does it compare with the concept adopted by the European Court of Justice in case C-13/05, Chacón Navas, Paragraph 43, according to which "the concept of 'disability' must be understood as referring to a limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life"?

The Anti-discrimination Act does not define the terms 'racial or ethnic origin', 'religion or belief', 'disability', 'age', 'sexual orientation' (nor any other term listed as grounds of prohibited discrimination).

The Same-sex Relationships Act does not define the term 'sexual orientation'.

b) *Where national law on discrimination does not define these grounds, how far have equivalent terms been used and interpreted elsewhere in national law (e.g. the interpretation of what is a 'religion' for the purposes of freedom of religion, or what is a "disability" sometimes defined only in social security legislation)? Is recital 17 of Directive 2000/78/EC reflected in the national anti-discrimination legislation?*

Disability

Different regulations use different terms and definitions for disability and different types of disability, which leads to inconsistent application of the law and makes it difficult for people with disabilities to enforce their rights.

The Social Care Act¹⁸ uses the term 'person with a physical or mental disorder'. The types and levels of different kind of disabilities are defined by the Ordinance on the Composition and Procedures of Expert Bodies in the Process of Acquiring Social Care and Other Rights¹⁹.

The Act on the Croatian Registry of Persons with Disabilities²⁰ uses the term 'person with a disability' and has its own terms and definitions of different types and levels of disabilities.

The education system uses the term 'children and young people with developmental difficulties'.

The Act on the Vocational Rehabilitation and Employment of Disabled Persons²¹ uses the term 'persons with disabilities' and defines them as persons with a physical, sensory or mental disorder that causes a permanent disability or reduced ability to personally fulfil everyday needs that lasts at least twelve months'.

¹⁸Official Gazette 73/1997 with later amendments

¹⁹Pravilnik o sastavu i načinu rada tijela vještačenja u postupku ostvarivanja prava is socijalne skrbi i drugih prava po posebnim propisima, Official Gazette 64/2002 with later amendments

²⁰Official Gazette 64/2001

²¹Official Gazette 143/2002 with later amendments

The health insurance legislation and pension legislation have their own terms and definitions.

Recital 17 of Directive 2000/78/EC is not reflected in national anti-discrimination legislation.

Religion

National legislation does not define religion. The Act on the Legal Status of Religious Communities²² regulates the rights and duties of religious communities and their members, including the registration of religious communities. It defines religious communities as communities of natural persons who realise their freedom of religion through public religious services and other expressions of their faith. In 2008 there were 42 religious communities registered in accordance with the Act on the Legal Status of Religious Communities²³.

- c) *Are there any restrictions related to the scope of 'age' as a protected ground (e.g. a minimum age below which the anti-discrimination law does not apply)?*

In the Anti-discrimination Act there are no restrictions related to the scope of 'age' as a protected ground.

- d) *Please describe any legal rules (or plans for the adoption of rules) or case law (and its outcome) in the field of anti-discrimination which deal with situations of multiple discrimination. This includes the way the equality body (or bodies) are tackling cross-grounds or multiple grounds discrimination. Would national or European legislation dealing with multiple discrimination be necessary in order to facilitate the adjudication of such cases?*

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 whose consequences are particularly harmful for the victim)²⁴. Multiple discrimination is a circumstance that the court has to take into consideration when determining the amount of compensation or the sanction for a misdemeanour²⁵.

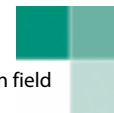
- e) *How have multiple discrimination cases involving one of Art. 19 TFEU grounds and gender been adjudicated by the courts (regarding the burden of proof and the award of potential higher damages)? Have these cases been treated under one single ground or as multiple discrimination cases?*

²²Official Gazette 83/2002

²³Government Office for National Minorities, Report on the Implementation of the Constitutional Law on the Rights of National Minorities for 2008

²⁴Article 6(1) of the Anti-discrimination Act

²⁵Article 6(2) of the Anti-discrimination Act



There has been no case law in connection with multiple discrimination, but the law obliges the courts to treat such a cases as multiple discrimination cases.

2.1.2. Assumed and associated discrimination

- a) *Does national law (including case law) prohibit discrimination based on perception or assumption of what a person is? (e.g. where a person is discriminated against because another person assumes that he/she is a Muslim or has a certain sexual orientation, even though that turns out to be an incorrect perception or assumption).*

The Anti-discrimination Act prohibits discrimination based on a misconception (i.e. a perception that turns out to be wrong) of the existence of a prohibited ground of discrimination²⁶.

There is no case law on discrimination based on perception or assumption of a characteristic.

- b) *Does national law (including case law) prohibit discrimination based on association with persons with particular characteristics (e.g. association with persons of a particular ethnic group or the primary carer of a disabled person)? If so, how? Is national law in line with the judgment in Case C-303/06 Coleman v Attridge Law and Steve Law?*

The Anti-discrimination Act prohibits discrimination based on association with person(s) with a particular characteristic. It states that placing any person, or a person related to that person by kinship or other relationship, in a less favourable position on the prohibited grounds is considered discrimination²⁷. National law is in line with the judgment in Case C-303/06 *Coleman v. Attridge Law and Steve Law*.

There is no case law on discrimination based on association with persons with particular characteristics.

2.2 Direct discrimination (Article 2(2)(a))

- a) *How is direct discrimination defined in national law?*

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 situation²⁸.

²⁶Article 1(3) of the Anti-discrimination Act

²⁷Article 1(2) of the Anti-discrimination Act

²⁸Article 2(1) of the Anti-discrimination Act

The same definition of direct discrimination is used by the Sex Equality Act²⁹ and the Same-sex Relationships Act³⁰.

The Employment Act prohibits direct and indirect discrimination, but does not define either.

- b) *Are discriminatory statements or discriminatory job vacancy announcements capable of constituting direct discrimination in national law? (as in Case C-54/07 Firma Feryn)*

The Anti-discrimination Act does not specify that discriminatory statements or discriminatory job advertisements would be considered direct discrimination, and it remains to be seen what the courts' interpretation would be in this respect.

There has been only one case against discriminatory statement, initiated by four human rights organizations against Z.M., 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 football national team. Zagreb County Court ruled, by a decision that is not final yet, that such a statement does not constitute discrimination because it does not place any person in less favourable position but is a hypothetical statement and not a decision or conduct that did place or could have placed any person of same sexual orientation in less favourable position since Z.M., as an official of a football club and not a national selector, is not in a position to decide who will play in the national team. Further, the Court said that Z.M. had the right to publicly express his opinion, even if he was wrong and that accepting the claim would constitute violation of Z.M.'s right guaranteed by Art. 10 of the European Convention.

- c) *Does the law permit justification of direct discrimination generally, or in relation to particular grounds? If so, what test must be satisfied to justify direct discrimination? (See also 4.7.1 below).*

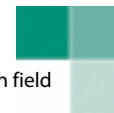
The Anti-discrimination Act does not permit justification of direct discrimination generally or in relation to particular grounds. The only permitted justifications are those defined as exceptions (see 4.).

- d) *In relation to age discrimination, if the definition is based on 'less favourable treatment' does the law specify how a comparison is to be made?*

In relation to age discrimination the law does not specify how a comparison is to be made.

²⁹Official Gazette 82/2008

³⁰Official Gazette 116/2003



2.2.1 Situation Testing

- a) *Does national law clearly permit or prohibit the use of 'situation testing'? If so, how is this defined and what are the procedural conditions for admissibility of such evidence in court? For what discrimination grounds is situation testing permitted? If not all grounds are included, what are the reasons given for this limitation? If the law is silent please indicate.*

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 nor 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, for the use of testing.

- b) *Outline how situation testing is used in practice and by whom (e.g. NGOs, equality body, etc)*

Situation testing has not been used in practice yet.

- c) *Is there any reluctance to use situation testing as evidence in court (e.g. ethical or methodology issues)? In this respect, does evolution in other countries influence your national law (European strategic litigation issue)?*

There have not been any cases before the Croatian courts where situational testing was used as evidence for discrimination.

Evolution in other countries in this respect might influence Croatian national law.

- d) *Outline important case law within the national legal system on this issue.*

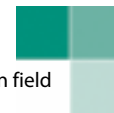
There is no case law on the issue of situation testing.

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

- a) *How is indirect discrimination defined in national law?*

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 necessary³¹.

³¹Article 2(2) of the Anti-discrimination Act



The Same-sex Relationships Act defines indirect discrimination as a situation where an apparently neutral provision, criterion or practice places or could place a member of a same-sex relationship in a less favourable position in relation to other persons on the ground of that fact (comparison or justification is not mentioned)³².

The Employment Act prohibits indirect discrimination but does not define it.

In one case of indirect discrimination³³ (in several primary schools Roma children were placed in separate Roma-only classes allegedly due to their poor knowledge of the Croatian language), the Constitutional Court has introduced intent as an element of discrimination. In its decision³⁴ the Constitutional Court found that the question of whether Roma students had been placed in separate classes with the aim of discriminating against them on the basis of their race or ethnicity was crucial in determining whether discrimination had occurred.

b) *What test must be satisfied to justify indirect discrimination? What are the legitimate aims that can be accepted by courts? Do the legitimate aims as accepted by courts have the same value as the general principle of equality, from a human rights perspective as prescribed in domestic law? What is considered as an appropriate and necessary measure to pursue a legitimate aim?*

Indirect discrimination is justified if there is a legitimate aim and the means of achieving that aim are appropriate and necessary.

There is no ordinary court case law on legitimate aims or appropriate and necessary measures.

The Constitution itself³⁵ defines legitimate aims for restrictions on constitutional rights and freedoms: 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.

As a rule, the Constitutional Court has avoided dealing with the issue of legitimate aim and appropriate and necessary measures (proportionality test) in its decisions in discrimination-related cases. In one case this problem was the main issue in the concurring opinion³⁶. The authors of the concurring opinion stressed that, when deciding on alleged violations of the right to equality, the Constitutional Court should not ignore the principle of proportionality.

³²Article 21 of the Same-sex Relationships Act

³³The case *Oršuč and others v. Croatia* described above.

³⁴Constitutional Court decision number U-III-3138/2002, 7 February 2007

³⁵Article 16 of the Constitution of the Republic of Croatia

³⁶Constitutional Court of the Republic of Croatia, decision number U-III/1600/2004 of 17 October 2007

In the case of discrimination against Roma students in primary schools (separate Roma-only classes) the Constitutional Court found the need to adapt primary education to the abilities and the needs of Roma students to be a legitimate aim.

c) *Is this compatible with the Directives?*

The wording of the Anti-discrimination Act is compatible with the Directives, but it remains to be seen how the courts will interpret it.

d) *In relation to age discrimination, does the law specify how a comparison is to be made?*

In relation to age discrimination the law does not specify how a comparison is to be made.

e) *Have differences in treatment based on language been perceived as potential indirect discrimination on the grounds of racial or ethnic origin?*

Differences in treatment based on language have not been perceived as indirect discrimination on the grounds of racial or ethnic origin. On the contrary, in the case of discrimination against Roma children in education³⁷, language was considered as a justification for differences in treatment of persons of different racial or ethnic origin³⁸. The ordinary courts as well as the Constitutional Court held that lack of knowledge of the Croatian language was an objective and reasonable justification for placing Roma children in separate classes.

2.3.1 Statistical Evidence

a) *Does national law permit the use of statistical evidence to establish indirect discrimination? If so, what are the conditions for it to be admissible in court?*

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.

b) *Is the use of such evidence widespread? Is there any reluctance to use statistical data as evidence in court (e.g. ethical or methodology issues)? In this respect, does evolution in other countries influence your national law?*

The use of statistical evidence is not widespread in anti-discrimination cases.

³⁷The case of *Oršuš and others v. Croatia*, described above

³⁸Constitutional Court decision number U-III-3138/2002, 7 February 2007

One of the reasons for this might be the lack of statistical data or of reliable statistical data. For example, according to official statistics there are 9 463 Roma in Croatia, although the authorities recognise that there are more than 30 000 Roma³⁹. The Government recognise that this difference results from the reluctance of Roma to declare themselves as Roma in the census.

Evolution in other countries in respect of use of statistical data as evidence in court might influence Croatian national law.

c) *Please illustrate the most important case law in this area.*

In the case concerning racial discrimination against Roma students in primary schools in Međimurje⁴⁰ (placing Roma children in separate Roma-only classes), the Constitutional Court in its decision⁴¹ discussed the issue of statistical evidence. It concluded that statistical data on the number of Roma children in separate classes are not sufficient evidence of discrimination. The Constitutional Court made its ruling before the ECHR Grand Chamber brought its decision in the case of *D.H. v. Czech Republic* and was therefore unaware of the ECHR's final conclusion on statistical evidence.

d) *Are there national rules which permit data collection? Please answer in respect to all five grounds. The aim of this question is to find out whether or not data collection is allowed for the purposes of litigation and positive action measures. Specifically, are statistical data used to design positive action measures? How are these data collected/generated?*

Data collection is regulated by the Act on Personal Data Protection⁴². It allows data collection only when the person questioned is informed of the purpose of data collection. Collected data can be further processed only for the same purpose for which they were collected, but statistical processing is considered admissible when adequate protection measures are undertaken.

The Act on Personal Data Protection does not allow collection and processing of data on race/ethnicity, political belief, religious and other belief, or sexual orientation. An exception is presented by situations where the data collection and processing are carried out with the consent of the person questioned and within the scope of the legal activity of an institution, association or any other non-profit body with a political, religious or other aim, provided that such processing relates solely to the members of the body and that the data obtained are not disclosed to a third party without the prior consent of the data subject⁴³.

³⁹National Programme for the Roma;

<http://www.vlada.hr/nacionalniprogramromi/content/view/13/26/lang,english/>

⁴⁰The case of *Oršuš and others v. Croatia*, described above

⁴¹Constitutional Court decision number U-III-3138/2002, 7 February 2007

⁴²Official Gazette 103/2003, 118/2006 and 41/2008

⁴³Article 8 of the Act on Personal Data Protection



It was held that this rule obstructed the design and implementation of positive action measures in relation to Roma. Estimations and unofficial data were therefore used⁴⁴. On the other hand, in spite of regulations banning data collection on ethnic origin, some institutions have precise information on the ethnicity of particular groups⁴⁵.

A third party can be given the data collected only if this is necessary for carrying out tasks encompassed within its legal activity as defined by law.

In discrimination cases, obtaining the relevant statistics would be a significant obstacle.

2.4 Harassment (Article 2(3))

- a) *How is harassment defined in national law? Include reference to criminal offences of harassment insofar as these could be used to tackle discrimination falling within the scope of the Directives.*

The Anti-discrimination Act defines harassment as any unwanted conduct caused by any of the prohibited grounds with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading or offensive environment⁴⁶, while sexual harassment is defined as any verbal, non-verbal or physical conduct of sexual nature with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading or offensive environment⁴⁷.

The Employment Act⁴⁸ obliges the employer to protect the employee's dignity during his/her work against the conduct of superiors, co-workers and persons whom employee meets in connection with his/her work, if that conduct is unwanted and contrary to special regulations.

⁴⁴National Programme for Roma;

<http://www.vlada.hr/nacionalniprogramromi/content/view/13/26/lang,english/>

⁴⁵E.g. some primary schools have precise data on number of Roma pupils in each class

⁴⁶Article 3(1) of the Anti-discrimination Act

⁴⁷Article 3(2) of the Anti-discrimination Act

⁴⁸Article 5(5) of the Employment Act

There is no provision in criminal law corresponding to the Directives' definition of harassment. In some recent harassment cases the State Attorney's Office has based prosecution of a superior employee on the provision dealing with violation of the rights of workers⁴⁹.

b) *Is harassment prohibited as a form of discrimination?*

Harassment is prohibited as a form of discrimination⁵⁰.

c) *Are there any additional sources on the concept of harassment (e.g. an official Code of Practice)?*

Some school and university codes of ethics define and forbid harassment.

For example, the Code of Ethics of the University of Rijeka⁵¹ forbids any form of harassment based on, among other grounds, religion, ethnicity or nationality, race, sex, sexual orientation and disability. It defines harassment as any inappropriate behaviour with the aim or effect of violating the dignity of a person and decreasing a person's quality of life. Harassment is defined as any act, single or repeated, verbal, non-verbal or physical, that creates an intimidating or hostile working or educational environment that frightens, offends or humiliates another person.

It should be noted that the Code of Ethics of the Croatian Association of Employers forbids (only) sexual harassment but does not define it⁵² while the Code of Business Ethics of the Croatian Chamber of Economy forbids harassment but does not define it.

Some legal authors, whose opinions often greatly influence case law, use the term 'harassment' as a synonym for mobbing⁵³. On the one hand, such an interpretation gives legal protection to the victims of mobbing, who otherwise do not have a legal remedy available.

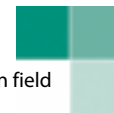
⁴⁹Article 114 of the Criminal Code, Violation of the Right to Work and Other Employment-related Rights: Whoever denies or limits the right of a citizen to work, to the freedom to work, to the free choice of vocation or occupation, to access to a work place and to duties offered to everyone under the same terms, or to the right to earnings, or who without a justified reason denies earnings to a worker within the prescribed period of time or social security, retirement or disability rights, or who does not register a worker with the bodies of health, retirement and disability insurance, or who does not observe working hours and time off regulated by law, the rights of specific groups of workers to special protection, the rights resulting from unemployment, the rights related to employment, maternity and child care or other employment-related rights stipulated by law, a court decision or collective agreement, shall be punished by imprisonment for between three months and three years.

⁵⁰Article 3 of the Anti-discrimination Act

⁵¹http://www.uniri.hr/hr/propisi_i_dokumenti/eticki_kodeks_svri.htm

⁵²http://209.85.229.132/search?q=cache:RL44t0CisMJ:www.hup.hr/Upload/Eti%C4%8Dki%2520kodeks.doc+uznemiravanje+kodeks+hrvatska+udruga+poslodavaca&cd=1&hl=hr&ct=clnk&gl=hr&lr=lang_hr

⁵³E.g. Ivica Crnić in *Guide on Anti-discrimination Legislation and Case law*, International Organisation for Migration and others, Zagreb, 2009



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.

2.5 Instructions to discriminate (Article 2(4))

Does national law (including case law) prohibit instructions to discriminate? If yes, does it contain any specific provisions regarding the liability of legal persons for such actions?

The Anti-discrimination Act prohibits intentional encouragement to discriminate⁵⁴, but it does not specifically address instructions to discriminate. The term 'instructions to discriminate' is not used in the law at all. Neither does it 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. Since such encouragement is considered discrimination only if conducted intentionally, this provision is not in accordance with the Directives.

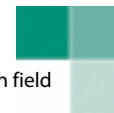
There is no case law in connection with instructions to discriminate.

National law does not contain any specific provision regarding the liability of legal persons for instructions to discriminate.

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

- a) *How does national law implement the duty to provide reasonable accommodation for people with disabilities? In particular, specify when the duty applies, the criteria for assessing the extent of the duty and any definition of 'reasonable'. For example, does national law define what would be a "disproportionate burden" for employers or is the availability of financial assistance from the State taken into account in assessing whether there is a disproportionate burden? Please also specify if the definition of a disability for the purposes of claiming a reasonable accommodation is the same as for claiming protection from non-discrimination in general, i.e. is the personal scope of the national law different (more limited) in the context of reasonable accommodation than it is with regard to other elements of disability non-discrimination law.*

⁵⁴Article 4(1) of the Anti-discrimination Act



The Anti-discrimination Act prohibits failure to provide reasonable accommodation for people with disabilities. It specifies that a failure to enable disabled persons to use publicly available resources, to participate in public and social life and to have access to the workplace and appropriate working conditions in line with their specific needs by adapting infrastructure and premises and by using equipment and other means which do not present an unreasonable burden for the person obliged to provide it, is considered discrimination⁵⁵.

The Act does not set criteria for assessing the extent of the duty to provide reasonable accommodation nor does it define in any way what an un/reasonable burden would be. The availability of financial assistance from the State is not considered in any sense in the text of the Act nor does the Act make any distinction between the duties of private companies and State bodies and institutions.

The Anti-discrimination Act does not contain a definition of disability for the purposes of claiming reasonable accommodation.

b) *Does national law provide for a duty to provide a reasonable accommodation for people with disabilities in areas outside employment? Does the definition of “disproportionate burden” in this context, as contained in legislation and developed in case law, differ in any way from the definition used with regard to employment?*

The Anti-discrimination Act provides for a duty to provide reasonable accommodation for people with disabilities in connection with their access to the workplace and appropriate working conditions, use of publicly available resources and participation in public and social life.

What falls under the scope of use of publicly available resources and participation in public and social life is left to the courts to interpret.

The requirement of ‘reasonable burden’ is the same for all three areas (access to the workplace and appropriate working conditions; use of publicly available resources; and participation in public and social life). It is up to the courts to determine what factors are to be considered in deciding if a burden is reasonable. At the moment there is still no case law.

The Act makes no distinction between the duties of private and State bodies and institutions.

There is still no case law on reasonable accommodation duties.

c) *Does failure to meet the duty of reasonable accommodation count as discrimination? Is there a justification defence? How does this relate to the prohibition of direct and indirect discrimination?*

⁵⁵Article 4(2) of the Anti-discrimination Act

The failure to meet the duty of reasonable accommodation is considered discrimination (the law does not specify if it is considered direct, indirect or *sui generis* discrimination). The Anti-discrimination Act does not provide a justification defence.

- d) *Has national law (including case law) implemented the duty to provide reasonable accommodation in respect of any of the other grounds (e.g. religion)?*

National law in principle has not implemented the duty to provide reasonable accommodation in respect of any of the other grounds, with some exceptions.

While Catholic religious holidays are national holidays, members of the three biggest religious minorities (Orthodox Christians, Muslims and Jews) have a right to a day off on the days of their main religious holidays⁵⁶.

- e) *Does national law clearly provide for the shift of the burden of proof, when claiming the right to reasonable accommodation?*

In respect of reasonable accommodation duties, the general rule on the shift of the burden of proof⁵⁷ is to be applied.

- f) *Does national law require services available to the public, buildings and infrastructure to be designed and built in a disability-accessible way? If so, could and has a failure to comply with such legislation be relied upon in a discrimination case based on the legislation transposing Directive 2000/78?*

The Anti-discrimination Act specifies that reasonable accommodation duties exist whenever they are needed to enable disabled persons, according to their specific needs, to use publicly available resources and to participate in public and social life, but it does not define those terms and it is left to the courts to interpret them⁵⁸.

The obligation to design and build buildings and infrastructure in a disability-accessible way is regulated by the Regulations on Accessibility of Buildings to Persons with Disabilities⁵⁹. The Regulations define a number of types of buildings that have to be disability-accessible, respecting all types of disability (including intellectual disability) and providing numerous elements of accessibility (e.g. tactile surfaces, detailed technical details for various parts of the building such as stairs, lifts, entrance, toilets, bathrooms etc.). In theory, a failure to comply with such legislation could be relied upon in a discrimination case.

⁵⁶Act on Holidays, Remembrance Days and Non-working Days; Official Gazette 33/1996 with amendments

⁵⁷Article 20 of the Anti-discrimination Act

⁵⁸Article 4(2) of the Anti-discrimination Act

⁵⁹(*Pravilnik o osiguranju pristupačnosti građevina osobama s invaliditetom i smanjene pokretljivosti*) Official Gazette 151/2005

- g) *Does national law contain a general duty to provide accessibility for people with disabilities by anticipation? If so, how is accessibility defined, in what fields (employment, social protection, goods and services, transport, housing, education, etc.) and who is covered by this obligation? On what grounds can a failure to provide accessibility be justified?*

There is no general duty to provide accessibility for people with disabilities by anticipation other than those explained above.

- h) *Please explain briefly the existing national legislation concerning people with disabilities (beyond the simple prohibition of discrimination). Does national law provide for special rights for people with disabilities?*

There are over 270 laws and regulations concerning people with disabilities. The existence of such a number of regulations is a problem in itself because the system is not transparent and persons with disabilities face problems in finding out what their rights are in certain fields.

There are a number of special rights for people with disabilities (e.g. personal assistance and special regulations on the employment, training, rehabilitation and sheltered employment of people with disabilities etc.).

2.7 Sheltered or semi-sheltered accommodation/employment

- a) *To what extent does national law make provision for sheltered or semi-sheltered accommodation/employment for workers with disabilities?*

Sheltered employment and semi-sheltered employment are regulated by the Act on the Vocational Rehabilitation and Employment of Persons with Disabilities⁶⁰. Persons who cannot be employed at all because they do not fulfil general and special requirements for employment can work in 'work centres' (*radni centri*).

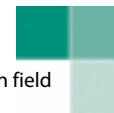
Persons who cannot be employed because they do not fulfil general requirements for employment can work in 'protective workshops' (*zaštitne radionice*) which are companies or institutions established for employing persons with disabilities. At least 51% of their employees have to be persons with disabilities.

- b) *Would such activities be considered to constitute employment under national law-including for the purposes of application of the anti-discrimination law ?*

Work in a work centre is not considered to constitute employment. A person working in a work centre is considered to be a beneficiary of a service.

Work in a protective workshop is considered to be employment.

⁶⁰Official Gazette 143/2002 with amendments



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)

Are there 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 person⁶¹. Citizenship is not therefore a requirement for such protection.

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

Does national law distinguish between natural persons and legal persons, either for purposes of protection against discrimination or liability for discrimination?

The Anti-discrimination Act does not distinguish between natural persons and legal persons either for purposes of protection against discrimination or liability for discrimination.

3.1.3 Scope of liability

What is the scope of liability for discrimination (including harassment and instruction to discriminate)? Specifically, can employers or (in the case of racial or ethnic origin) service providers (e.g. landlords, schools, hospitals) be held liable for the actions of employees? Can they be held liable for actions of third parties (e.g. tenants, clients or customers)? Can the individual harasser or discriminator (e.g. co-worker or client) be held liable? Can trade unions or other trade/professional associations be held liable for actions of their members?

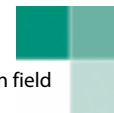
The Anti-discrimination Act is to be applied to discriminatory conduct, including harassment and encouragement to discriminate, by all state bodies, bodies of local and regional self-government, and legal persons vested with public authority and to discriminatory conduct by all legal and natural persons⁶².

The scope of liability is also defined by the provisions of the Civil Obligation Act (the act that, among other issues, covers tort law). It specifies that an employer is liable for harm caused by an employee to another person when the harm is caused during or in connection with the work⁶³.

⁶¹Article 1 of the Anti-discrimination Act

⁶²Article 8 of the Anti-discrimination Act

⁶³Article 1061 of the Civil Obligation Act



A legal person is liable for the harm caused to another person by its body⁶⁴. In this case the individual harasser or discriminator would be held liable as well.

Employers and service providers cannot be held liable for the actions of third parties (tenants, clients or customers). But the employer is obliged to ensure the dignity of an employee against the conduct of persons whom the employee regularly meets in connection with his/her work⁶⁵.

Trade unions or other trade/professional associations cannot be held liable for the actions of their members.

3.2 Material Scope

3.2.1 Employment, self-employment and occupation

Does national legislation apply to all sectors of public and private employment and occupation, including contract work, self-employment, military service, holding statutory office?

The Anti-discrimination Act applies to all areas without any limitation while explicitly enumerating ten areas to which special attention is to be paid.

The Employment Act prohibits direct and indirect discrimination in the field of employment and working conditions, including selection criteria and recruitment conditions, promotion, vocational training, advanced vocational training and retraining⁶⁶.

In paragraphs 3.2.2 - 3.2.5, you should specify if each of the following areas is fully and expressly covered by national law for each of the grounds covered by the Directives.

3.2.2 Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1)(a)) Is the public sector dealt with differently to the private sector?

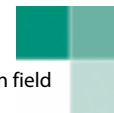
The Anti-discrimination Act explicitly covers, for all of the grounds covered by the Directives, each of the following areas: access to self-employment and employment, including selection criteria, recruitment and promotion conditions.

Access to occupation is not explicitly listed, but it is implicitly covered since the Anti-discrimination Acts applies to all areas, without any limitation.

⁶⁴Article 1062 of the Civil Obligation Act

⁶⁵Article 5(5) of the Employment Act

⁶⁶Article 5(4) of the Employment Act



The Anti-discrimination Act does not explicitly state that discrimination in this area is prohibited whatever the branch of activity and at all levels of the professional hierarchy.

The public sector is not dealt with differently to the private sector⁶⁷.

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

In respect of occupational pensions, how does national law ensure the prohibition of discrimination on all the grounds covered by Directive 2000/78 EC? NB: Case C-267/06 Maruko confirmed that occupational pensions constitute part of an employee's pay under Directive 2000/78 EC.

Note that this can include contractual conditions of employment as well as the conditions in which work is, or is expected to be, carried out.

The Anti-discrimination Act explicitly covers, for all of the grounds covered by the Directives, the area of work and working conditions; retirement insurance; and unemployment insurance. The issues of pay and dismissals are covered implicitly⁶⁸.

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

Note that there is an overlap between 'vocational training' and 'education'. For example, university courses have been treated as vocational training in the past by the Court of Justice. Other courses, especially those taken after leaving school, may fall into this category. Does the national anti-discrimination law apply to vocational training outside the employment relationship, such as that provided by technical schools or universities, or such as adult life long learning courses?

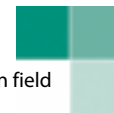
The Anti-discrimination Act explicitly covers, for each of the grounds covered by the Directives, access to all types of vocational guidance, vocational training, advanced vocational training and retraining⁶⁹ as well as to education and science⁷⁰. The definition of education and science is left to the courts' interpretation. Practical work experience is covered implicitly.

⁶⁷Article 8(1) of the Anti-discrimination Act

⁶⁸Article 8(1) and 8(3) of the Anti-discrimination Act

⁶⁹Article 8(1) of the Anti-discrimination Act

⁷⁰Article 8(2) of the Anti-discrimination Act



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

In relation to paragraphs 3.2.6 – 3.2.10 you should focus on how discrimination based on racial or ethnic origin is covered by national law, but you should also mention if the law extends to other grounds.

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 organisations⁷¹. Benefits provided for by such organisations are covered implicitly. Membership of and involvement in employers' organisations is not specifically mentioned.

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

In relation to religion or belief, age, disability and sexual orientation, does national law seek to rely on the exception in Article 3(3), Directive 2000/78?

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 insurance⁷², and healthcare⁷³.

It prohibits discrimination based on religion or belief, age, disability and sexual orientation in these areas, therefore national legislation does not seek to rely on the exception in Article 3(3), Directive 2000/78.

3.2.7 Social advantages (Article 3(1)(f) Directive 2000/43)

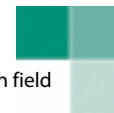
This covers a broad category of benefits that may be provided by either public or private actors to people because of their employment or residence status, for example reduced rate train travel for large families, child birth grants, funeral grants and discounts on access to municipal leisure facilities. It may be difficult to give an exhaustive analysis of whether this category is fully covered in national law, but you should indicate whether national law explicitly addresses the category of 'social advantages' or if discrimination in this area is likely to be unlawful.

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

⁷¹Article 8(9) of the Anti-discrimination Act

⁷²Article 8(3) of the Anti-discrimination Act

⁷³Article 8(4) of the Anti-discrimination Act



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

This covers all aspects of education, including all types of schools. Please also consider cases and/ or patterns of segregation and discrimination in schools, affecting notably the Roma community and people with disabilities. If these cases and/ or patterns exist, please refer also to relevant legal/political discussions that may exist in your country on the issue.

Please briefly describe the general approach to education for children with disabilities in your country, and the extent to which mainstream education and segregated "special" education are favoured and supported.

The Anti-discrimination Act prohibits discrimination in education based on racial or ethnic origin, religion or belief, age, disability and sexual orientation⁷⁴.

Roma

According to the Constitutional Act on the Rights of National Minorities⁷⁵ and the Act on Education in the Languages and Scripts of National Minorities⁷⁶, the Roma and other national minorities have the right to education in their languages and scripts, but the Roma do not exercise that right because such a request has not been made by Roma minority⁷⁷.

The authorities recognise the problems faced by the Roma in the field of education (not all Roma children participate in compulsory primary education; high drop-out rate; high level of illiteracy among Roma, etc.) but there are still no reliable data on the extent of the problem. According to the existing data in the school year 2002/2003 approximately one third of Roma children were not involved in any form of education at any time⁷⁸.

In some counties with a significant Roma population (Međumirska and Varaždinska), Roma children are put in separate Roma-only classes. 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.

The latest reports show a dramatic increase of Roma-only classes in spite of the authorities' commitment to reduce the number of classes with Roma pupils only. In 2004 there were 27 Roma-only classes in the whole of Croatia, all of them in Međimurska and Varaždinska counties.

⁷⁴Article 8(2) of the Anti-discrimination Act

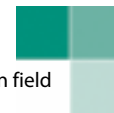
⁷⁵Official Gazette 155/02

⁷⁶Official Gazette 51/2000 and 56/2000

⁷⁷Some other minorities do exercise this right (e.g. members of the Czech, Hungarian, Serbian and Italian minorities were taught either in their own language (Model A) or both in their own and Croatian language (Model B) in about 40 primary schools).

⁷⁸National Programme for the Roma,

<http://www.vlada.hr/nacionalniprogramromi/content/view/21/36/lang,english/>



In 2008 there were 68 Roma-only classes, and not just in Međimurska county (with 62 Roma-only classes) and Varaždinska county, where the practice had existed before, but also in two other counties⁷⁹.

The Committee on the Elimination of Racial Discrimination has twice expressed its concern at the continued segregation of Roma children within the educational system⁸⁰.

In 2003, 57 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 April 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 education⁸¹.

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.

People with disabilities

In all relevant documents the authorities recognise the need to integrate people with disabilities into the mainstream education system (e.g. the National Strategy for Persons with Disabilities 2003-2006⁸²; the National Strategy for Persons with Disabilities 2007-2015⁸³; and the Parliamentary Declaration on the Rights of People with Disabilities⁸⁴).

In spite of the fine aims expressed in these documents, problems are still numerous: lack of educational programmes adjusted to people with disabilities, lack of adequate textbooks and teaching tools; lack of teachers trained to work with students with special needs; and architectural and transport barriers.

⁷⁹Report on the Implementation of the Decade of Roma inclusion in the field of Education for 2007 and 2008, prepared by the Ministry of Education

⁸⁰CERD Concluding Observations on Croatia of 21 May 2002 and of 5 March 2009

⁸¹*Oršuš and Others v. Croatia* [GC], no.15766/03, 16 March 2010

⁸²Official Gazette 13/2003

⁸³Official Gazette 63/2007

⁸⁴Official Gazette 47/2005

The work of assistants to students with disabilities (employment, qualifications, payment, responsibilities etc.) has not yet been adequately regulated⁸⁵.

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

- a) *Does the law distinguish between goods and services available to the public (e.g. in shops, restaurants, banks) and those only available privately (e.g. limited to members of a private association)? If so, explain the content of this distinction.*

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 services⁸⁶. The Act does not make any distinction between goods and services available to the public and those only available privately.

- b) *Does the law allow for differences in treatment on the grounds of age and disability in the provision of financial services? If so, does the law impose any limitations on how age or disability should be used in this context, e.g. does the assessment of risk have to be based on relevant and accurate actuarial or statistical data?*

The Anti-discrimination Act does not allow for differences in treatment on the grounds of age and disability in the provision of financial services⁸⁷.

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

To which aspects of housing does the law apply? Are there any exceptions? Please also consider cases and patterns of housing segregation and discrimination against the Roma and other minorities or groups, and the extent to which the law requires or promotes the availability of housing which is accessible to people with disabilities and older people.

The Anti-discrimination Act applies to housing in general without any exceptions. The prohibition of discrimination in this area covers racial or ethnic origin, religion or belief, age, disability and sexual orientation.

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

There is still a substantial number of unresolved cases involving the restitution of property and tenancy rights to Serbian returnees⁸⁸.

⁸⁵Ombudsman for Persons with Disabilities, Report for 2008; http://www.posi.hr/download/Isvjescje_2008.pdf

⁸⁶Article 8(8) of the Anti-discrimination Act

⁸⁷Article 9(2) of the Anti-discrimination Act

⁸⁸CERD, Concluding Observations, Croatia, 5 March 2009, CERD/C/HRV/CO/8



The Regulations on the Accessibility of Buildings to Persons with Disabilities⁸⁹ regulate not only the accessibility of public buildings but also private housing (entrance, communal spaces, independent living facilities, etc).

⁸⁹(*Pravilnik o osiguranju pristupačnosti građevina osobama s invaliditetom i smanjene pokretljivosti*)
Official Gazette 151/2005



4 EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4)

Does national law provide an exception for genuine and determining occupational requirements? If so, does this comply with Article 4 of Directive 2000/43 and Article 4(1) of Directive 2000/78?

The Anti-discrimination Act provides an exception for genuine and determining occupational requirements. It states that placement in a less favourable position shall not be deemed to be discrimination in relation to a particular job when the nature of the job is such or the job is performed under such conditions that characteristics related to any of the prohibited grounds of discrimination present an actual and decisive condition for performing that job, provided that the purpose to be achieved is justified and the condition appropriate⁹⁰. This exception has to be interpreted in proportion to the aim and purpose for which it is provided⁹¹.

4.2 Employers with an ethos based on religion or belief (Art. 4(2) Directive 2000/78)

a) Does national law provide an exception for employers with an ethos based on religion or belief? If so, does this comply with Article 4(2) of Directive 2000/78?

The Anti-discrimination Act provides an exception for employers with an ethos based on religion or belief.

This exception is regulated by the more general provision which covers employment not just with the employers with an ethos based on religion or belief but also in other public or private organizations. The provision states that placement in a less favourable position shall not be deemed to be discrimination in employment if this is required by religious doctrine, beliefs or objectives of an employer⁹².

This provision does not fully comply with Article 4(2) of Directive 2000/78. While the Directive explicitly states that this exception will be allowed when 'a person's religion or belief constitute a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos', the Anti-discrimination Act is less restrictive in this respect because it applies not only to religion or belief but any objective of an employer. Such a wording could allow discrimination on any ground if justified by an objective of an employer.

⁹⁰ Article 9(2)(4) of the Anti-discrimination Act

⁹¹ Article 9(3) of the Anti-discrimination Act

⁹² Article 9(2)(5) of the Anti-discrimination Act

- b) *Are there any specific provisions or case law in this area relating to conflicts between the rights of organisations with an ethos based on religion or belief and other rights to non-discrimination? (e.g. organisations with an ethos based on religion v. sexual orientation or other ground.)*

There are no any specific provisions or case law in this area relating to conflicts between the rights of organisations with an ethos based on religion or belief and other rights to non-discrimination.

- c) *Are there cases where religious institutions are permitted to select people (on the basis of their religion) to hire or to dismiss from a job when that job is in a state entity, or in an entity financed by the State (e.g. the Catholic church in Italy or Spain can select religious teachers in state schools)? What are the conditions for such selection? Is this possibility provided for by national law only, or international agreements with the Holy See, or a combination of both?*

By signing the Agreement between the Holy See and the Republic of Croatia on Cooperation in the Field of Education and Culture⁹³ Croatia undertook the obligation to provide Catholic religious education in all public primary and secondary schools as well as in pre-school institutions as an obligatory subject for all students who make a choice to take those classes. According to the Agreement, these classes can be taught only by qualified teachers with a certificate of canonical mandate issued by competent church authorities. A teacher's right to teach Catholic religious education ceases if his/her certificate of canonical mandate is withdrawn.

P.T. was a teacher of Catholic religious education in two secondary schools. His employers were two schools, both schools established, funded and governed by public authorities. When he divorced his certificate of canonical mandate was withdrawn by the church authorities and the school consequently terminated his employment. P.T. challenged the termination before a court, but the court decided that the termination was legal. The second instance court as well as the Supreme Court⁹⁴ confirmed the first instance decision. P.T. filed a constitutional complaint claiming that these decisions violated his right to work, right to personal and family life and the prohibition of discrimination. The case is still pending before the Constitutional Court and the decision is expected in summer 2011⁹⁵.

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

- a) *Does national law provide for an exception for the armed forces in relation to age or disability discrimination (Article 3(4), Directive 2000/78)?*

⁹³Official Gazette International Agreements 2/1997

⁹⁴Decision number Revr.499/08, 3 December 2008

⁹⁵Case number U-III-775/2008

There is no provision in the Anti-discrimination Act specifying an exception for the armed forces in relation to age or disability discrimination.

The Act on Service in the Armed Forces⁹⁶ provides an exception for the armed forces in relation to age, health and physical abilities.

b) *Are there any provisions or exceptions relating to employment in the police, prison or emergency services (Recital 18, Directive 2000/78)?*

There is no provision in the Anti-discrimination Act specifying an exception relating to employment in the police, prison or emergency services. The Police Act⁹⁷ provides an exception for recruitment to the police in relation to age (maximum 25 years of age) and mental and physical abilities.

The Judiciary Act⁹⁸, which regulates employment in the prison services, provides an exception for the judicial police (*pravosudna policija*) in relation to health (the requirement is for a particular state of health in accordance with an ordinance of the Ministry of Justice).

4.4 Nationality discrimination (Art. 3(2))

Both the Racial Equality Directive and the Employment Equality Directive include exceptions relating to difference of treatment based on nationality (Article 3(2) in both Directives).

a) *How does national law treat nationality discrimination? Does this include stateless status?
What is the relationship between 'nationality' and 'race or ethnic origin', in particular in the context of indirect discrimination?
Is there overlap in case law between discrimination on grounds of nationality and ethnicity (i.e. where nationality discrimination may constitute ethnic discrimination as well?)*

Placing a person in a less favourable position on the grounds of nationality (citizenship) in accordance with specific laws is not discrimination⁹⁹. The law does not mention statelessness in any way.

There is no definition in law of nationality and race or ethnic origin as grounds of discrimination. The Anti-discrimination Act lists as prohibited grounds of discrimination race and ethnic affiliation as well as national (i.e. ethnic) or social origin.

⁹⁶Official Gazette 33/2002 with later amendments

⁹⁷Official Gazette 129/2000 with later amendments

⁹⁸Official Gazette 150/2005 with later amendments

⁹⁹Article 9(2)(9) of the Anti-discrimination Act

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.

b) *Are there exceptions in anti-discrimination law that seek to rely on Article 3(2)?*

According to the Anti-discrimination Act, placing a person in a less favourable position on the grounds of nationality pursuant to specific regulations is not considered discrimination¹⁰⁰.

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

Some employers, both public and private, provide benefits to employees in respect of their partners. For example, an employer might provide employees with free or subsidised private health insurance, covering both the employees and their partners. Certain employers limit these benefits to the married partners (e.g. Case C-267/06 Maruko) or unmarried opposite-sex partners of employees. This question aims to establish how national law treats such practices. Please note: this question is focused on benefits provided by the employer. We are not looking for information on state social security arrangements.

a) *Would it constitute unlawful discrimination in national law if an employer provides benefits that are limited to those employees who are married?*

It would not constitute unlawful discrimination in national law if an employer provides benefits that are limited to those employees who are married because cohabitation has limited legal consequences regulated by specific laws (Family Act, Act on Statutory Pension Insurance, Health Care Act etc.).

b) *Would it constitute unlawful discrimination in national law if an employer provides benefits that are limited to those employees with opposite-sex partners?*

The Anti-discrimination Act prohibits discrimination based on sexual orientation in all areas with the exception of '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'. This provision is the most controversial in the Anti-discrimination Act, and was introduced into the Act at the strong insistence of the Catholic Church.

Although the Same-sex Relationships Act has anti-discrimination provisions, their scope is very narrow.

¹⁰⁰Article 9(2)(9) of the Anti-discrimination Act

The Same-sex Relationships Act¹⁰¹ defines the legal consequences of the existence of such a relationship and limits them to the right to support between partners and to common property issues. The Croatian legislator was very careful to limit the consequences of same-sex relationships only to the partners in such a relationship and not to involve third parties.

An employer is not therefore obliged to take into consideration an employee's same sex partnership in any way.

4.6 Health and safety (Art. 7(2) Directive 2000/78)

- a) *Are there exceptions in relation to disability and health and safety (Article 7(2), Directive 2000/78)?*

According to the Anti-discrimination Act placement in a less favourable position is not discrimination when such conduct is carried out with the aim of preserving health and preventing criminal acts and misdemeanours, when the means used are appropriate and necessary for the aim to be achieved¹⁰².

Further, placement in a less favourable position is not discrimination in the case of privileges granted to disabled persons with the aim of protecting them, when such conduct is based on the provisions of laws, subordinate regulations, programmes and measures¹⁰³.

- b) *Are there exceptions relating to health and safety law in relation to other grounds, for example, ethnic origin or religion where there may be issues of dress or personal appearance (turbans, hair, beards, jewellery etc)?*

The above mentioned exception - placement in a less favourable position is not discrimination when such conduct is carried out with the aim of preserving health and preventing criminal acts and misdemeanours, when the means used are appropriate and necessary for the aim to be achieved – is a general and very wide one, covering theoretically all grounds.

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

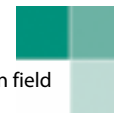
4.7.1 Direct discrimination

- a) *Is it possible, generally, or in specified circumstances, to justify direct discrimination on the ground of age? If so, is the test compliant with the test in Article 6, Directive 2000/78, account being taken of the European Court of Justice in the Case C-144/04, Mangold ?*

¹⁰¹Official Gazette 116/2003

¹⁰²Article 9(2)(1) of the Anti-discrimination Act

¹⁰³Article 9(2)(3) of the Anti-discrimination Act



According to the Anti-discrimination Act direct discrimination is justified only in situations designated as exceptions to discrimination. In relation to age these are:

- in relation to a particular job, when the nature of the job is such or the job is performed under such conditions that characteristics relating to any of the (prohibited) grounds (of discrimination) present an actual and decisive condition for performing that job, provided that the purpose to be achieved is justified and the condition appropriate¹⁰⁴;
- 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 calculations¹⁰⁵;
- fixing minimum conditions of age for access to a certain employment or for acquiring other advantages linked to employment when this is provided for in separate regulations¹⁰⁶;
- 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 retirement¹⁰⁷;
- 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 Act¹⁰⁸ (e.g. this exception would justify an age limit for adoptive parents).

All exceptions should be interpreted in a way which is proportionate to the aim and purpose for which they have been set¹⁰⁹.

b) *Does national law permit differences of treatment based on age for any activities within the material scope of Directive 2000/78?*

Some of the above-mentioned activities, specified as exceptions to discrimination, are activities within the material scope of Directive 2000/78.

c) *Does national legislation allow occupational pension schemes to fix ages for admission to the scheme or entitlement to benefits, taking up the possibility provided for by article 6(2) ?*

The Anti-discrimination Act allows a suitable and appropriate maximum age to be fixed as a reason for the termination of employment and a certain age to be prescribed as a condition for acquiring the right to retirement.

¹⁰⁴Article 9(2)(4) of the Anti-discrimination Act

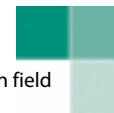
¹⁰⁵Article 9(2)(6) of the Anti-discrimination Act

¹⁰⁶Article 9(2)(7) of the Anti-discrimination Act

¹⁰⁷Article 9(2)(8) of the Anti-discrimination Act

¹⁰⁸Article 9(2)(10) of the Anti-discrimination Act

¹⁰⁹Article 9(3) of the Anti-discrimination Act



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

Are there any special conditions set by law for older or younger workers in order to promote their vocational integration, or for persons with caring responsibilities to ensure their protection? If so, please describe these.

According to the Anti-discrimination Act, the granting of privileges to pregnant women, children, young people, older persons, persons with caring responsibilities who duly fulfil their caring duties and disabled persons with a view to their protection, when such conduct is based on provisions of law, subordinate regulations, programmes and measures, shall not be deemed to be discrimination¹¹⁰.

The Employment Act stipulates the minimum age for employment – 15 years of age. A minor older than 15 cannot be employed until the end of his/her compulsory primary education¹¹¹. A minor cannot be employed in work that may harm his/her safety, health, morality or development¹¹².

The Employment Act provides protection for pregnant and breastfeeding women – such workers can ask for a temporary transfer to another job. If such workers work in jobs that endanger their or their children's lives, the employer is obliged to offer them another safer job. If that is not possible, pregnant or breastfeeding women are entitled to paid leave¹¹³.

An employer is not allowed to terminate the employment of an employee during maternity leave or paid leave due to breastfeeding, or when an employee is working part time due to her/his caring responsibilities¹¹⁴.

4.7.3 Minimum and maximum age requirements

Are there exceptions permitting minimum and/or maximum age requirements in relation to access to employment (notably in the public sector) and training?

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 regulations¹¹⁵. Although the provision is general it obviously covers regulations dealing with the minimum age for employment (Employment Act); minimum age for work under special conditions (Rules on Work under Special Conditions), etc.

¹¹⁰Article 9(2)(2) of the Anti-discrimination Act

¹¹¹Article 17(1) of the Employment Act

¹¹²Article 19(1) of the Employment Act

¹¹³Article 68 of the Employment Act

¹¹⁴Article 71 of the Employment Act

¹¹⁵Article 9(2)(7) of the Anti-discrimination Act

The Anti-discrimination Act provides exceptions permitting maximum age requirements in relation to access to employment/termination of employment¹¹⁶. The provision is general and its aim is to enable an employee's employment to be terminated at a specific age laid down by particular legislation (e.g. according to the Employment Act, employment terminates when an employee turns 65 years of age and has 15 years of service).

4.7.4 Retirement

In this question it is important to distinguish between pensionable age (the age set by the state, or by employers or by collective agreements, at which individuals become entitled to a state pension, as distinct from the age at which individuals actually retire from work), and mandatory retirement ages (which can be state-imposed, employer-imposed, imposed by an employee's employment contract or imposed by a collective agreement).

For these questions, please indicate whether the ages are different for women and men.

- a) *Is there a state pension age, at which individuals must begin to collect their state pensions? Can this be deferred if an individual wishes to work longer, or can a person collect a pension and still work?*

The law prescribes a state pension age at which an individual must begin to collect his/her state pension. If an individual wishes to work longer, he/she is allowed to do so: he/she can work on short-term engagement (in that case he/she can collect a pension and still work) or prolong employment if both he/she and his/her employer wish to do so.

The prescribed state pension ages are different for women and men. The Constitutional Court found this difference to be discrimination based on sex but prolonged the validity of the law until 2018.

- b) *Is there a normal age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements? Can payments from such occupational pension schemes be deferred if an individual wishes to work longer, or can an individual collect a pension and still work?*

The law¹¹⁷ sets a minimum age (50) when people can begin to receive payments from voluntary pension schemes.

- c) *Is there a state-imposed mandatory retirement age(s)? Please state whether this is generally applicable or only in respect of certain sectors, and if so please state which. Have there been recent changes in this respect or are any planned in the near future?*

¹¹⁶Article 9(2)(8) of the Anti-discrimination Act

¹¹⁷The Act on Statutory and Voluntary Pension Funds, Official Gazette 49/1999 with amendments

According to the Employment Act, 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.

- d) *Does national law permit employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract, collective bargaining or unilaterally?*

The employer and employee can contractually set higher retirement ages than those provided for by the law.

- e) *Does the law on protection against dismissal and other laws protecting employment rights apply to all workers irrespective of age, if they remain in employment, or are these rights lost on attaining pensionable age or another age (please specify)?*

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/her permanent abilities or characteristics (*osobno uvjetovani otkaz*), the employer has to take into consideration the length of the employee's service, his/her age, disability and care responsibilities. The law does not specify in what way age should influence the employer's decision¹¹⁸.

4.7.5 Redundancy

- a) *Does national law permit age or seniority to be taken into account in selecting workers for redundancy?*

National law obliges an employer to take into account an employee's age when selecting workers for redundancy, but it does specify in what way age should influence its decision¹¹⁹.

- b) *If national law provides compensation for redundancy, is this 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/her employment with the same employer¹²⁰.

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

¹¹⁸Article 107(3) of the Employment Act

¹¹⁹Article 107(3) of the Employment Act

¹²⁰Article 119 of the Employment Act



Does national law include any exceptions that seek to rely on Article 2(5) of the Employment Equality Directive?

The Anti-discrimination Act states that placement in a less favourable position shall not be deemed to be discrimination 'when such conduct is carried out lawfully with the aim of preserving health or preventing criminal acts and misdemeanours and when the means used are appropriate and necessary for the aim to be achieved'¹²¹. This exception is to be interpreted in proportion to the aim and purpose for which it is provided¹²².

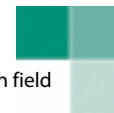
4.7.7 Any other exceptions

Please mention any other exceptions to the prohibition of discrimination (on any ground) provided in national law.

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'.

¹²¹Article 9(2)(1) of the Anti-discrimination Act

¹²²Article 9(3) of the Anti-discrimination Act



5 POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78)

- a) *What scope does national law provide for taking positive action in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation? Please refer to any important case law or relevant legal/political discussions on this topic.*

According to the Anti-discrimination Act, placement in a less favourable position shall not be deemed to be discrimination in the case of 'positive actions, i.e. 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'¹²³. This exception is to be interpreted in proportion to the aim and purpose for which it is provided¹²⁴. 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 Constitutional Law on the Rights of Ethnic Minorities¹²⁵ provides the positive action of proportionate representation of members of ethnic minorities in the state administration, judiciary and bodies and administration of local authorities. The Law 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'¹²⁶. The reports on implementation of the Law list numerous national minorities that benefit from it (more than 19, including the Roma, who have their own representative in the Parliament).

The Judiciary Act¹²⁷ provides a positive action measure in respect of ethnic origin i.e. representation of ethnic minorities must be taken into account when nominating judges.

These provisions were challenged before the Constitutional Court as discriminatory. In its decisions¹²⁸, the Constitutional Court established that such an advantage is a special positive action measure i.e. the intentional favouring of a certain group with the aim of eliminating factual inequality and differentiation of such persons based on their characteristics; it is a method of preventing various forms of open (direct) or hidden (indirect) discrimination when the legislator finds that such persons face discrimination.

¹²³Article 9(2)(2) of the Anti-discrimination Act

¹²⁴Article 9(3) of the Anti-discrimination Act

¹²⁵*Ustavni zakon o pravima nacionalnih manjina*, Official Gazette 155/02

¹²⁶Article 5 of the Constitutional Law on the Rights of National Minorities

¹²⁷Article 78(7) and (8), *Zakon o sudovima*, Official Gazette 150/2005, 16/2007 and 113/08

¹²⁸Constitutional Court decisions number U-I-2767/2007, 31 March 2009 and number U-I-402/2003 and U-I-2812/2007, 30 April 2008

Further, the Constitutional Court stated that such an advantage in employment of members of national minorities is not automatic and unconditional; it is implemented only when legal requirements are fulfilled; it ensures the proportional participation of ethnic minorities in judicial bodies and their equality with other citizens.

Such a measure falls within the margin of appreciation of the legislator and is considered justified and allowable as long as the reasons for which it was introduced continue to exist and the principle of proportionality is not violated. The Constitutional Court concluded that such a measure is not discriminatory as long as it is justified, allowable and proportionate ('Provision of the above positive measure in the employment of the members of national minorities falls within the legislator's scope for discretion and is to be considered justified and allowed as long as the reasons why it was introduced persist, which is in the first place decided by the legislator, i.e. until it starts to violate the principle of proportionality laid down in Article 16 of the Constitution, which is in the first place the subject of Constitutional Court control'¹²⁹).

- b) *Do measures for positive action exist in your country? Which are the most important? Please provide a list and short description of the measures adopted, classifying them into broad social policy measures, quotas, or preferential treatment narrowly tailored. Refer to measures taken in respect of all five grounds, and in particular refer to the measures related to disability and any quotas for access of people with disabilities to the labour market, any related to Roma and regarding minority rights-based measures.*

Race/ethnicity

In October 2003 the Croatian Government adopted the National Programme for Roma¹³⁰ and in May 2005 the Action Plan for the Decade of Roma Inclusion 2005-2015¹³¹. Both documents introduced some measures for positive action in following fields:

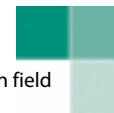
- inclusion of the Roma in social and political life (encouraging the establishment of Roma minority councils at local and regional levels and ensuring that the Roma are represented in representative bodies at those levels; implementation of the right to elect a Roma representative to the Croatian Parliament; training of Roma representatives, especially women and young people, to participate in decision-making processes; exercise of their rights and greater involvement in social life);

¹²⁹Constitutional Court decisions number U-I-2767/2007, 31 March 2009 (official translation)

¹³⁰<http://www.vlada.hr/nacionalniprogramromi/content/blogcategory/13/29/lang,english/>

¹³¹<http://www.vlada.hr/nacionalniprogramromi/content/blogcategory/14/30/lang,english/>

- preservation of Romani traditional culture (e.g. finance for Roma associations' amateur cultural programmes, cultural events, publishing and information; training and educating the Roma for involvement and employment in the media);
- status-related issues (formation of mobile teams composed of representatives of relevant ministries, state administration offices, social welfare centres, Roma non-governmental organisations and Roma representatives, which work to determine the situation in each individual case in areas inhabited by Roma and advise inhabitants of the area on how to resolve their status issues, especially as regards registration of their residence and acquisition of Croatian citizenship; prescribing methods for acquiring Croatian citizenship with a view to the difficulties pointed out by members of the Roma population in resolving their status in the Republic of Croatia; education of officials in charge of regulating the status issues of Roma about Roma laws and customs in order to prevent any form of discrimination);
- legal aid (free legal aid for Roma in proceedings where they are exercising their rights guaranteed by the Constitution and the law, through an attorney based in the county in which they live);
- education (measures to enrol Roma children in mainstream kindergartens where they will mix with non-Roma children; testing the phonetic, linguistic, psychological and physiological abilities of Roma children prior to their involvement in pre-school programmes; one free meal a day for children involved in pre-school programmes and primary education; additional training for teachers to work with children from socially and economically deprived environments, and for Roma teaching assistants who have completed secondary school and who will assist teachers to better understand the Romani language; motivating and reintegrating in schools Roma children who have dropped out of primary school and inclusion of Roma who are above 15 years of age and have not completed primary school or are illiterate; scholarships for Roma students; granting additional points to Roma students on the basis of the socio-economic conditions in which they live to enable them to obtain a place in students' residences);
- health care (health education and awareness raising among the Roma, especially Roma women, and health surveys);
- employment (employment in public works; employment of six Roma counsellors for mediation in field of Roma employment in the Croatian Employment Service);
- social welfare (e.g. training for the staff of social welfare centres to encourage consistent application of measures under the Family Act aiming to protect Roma children);
- protection of the family, mothers and young people (e.g. educational materials in Romani languages to inform Roma about their rights in the field of family protection and how to exercise them);
- urban planning (county action programmes and measures for the improvement of the environment and surroundings of Roma settlements).



Disability

In June 2007 the Croatian Government adopted the National Strategy on the Equalisation of Opportunities for Persons with Disabilities¹³². One of its measures is incentives for employers of people with disabilities.

According to the Report of the Ombudsman for Persons with Disabilities for 2009 the measure has not had the expected results for the following reasons: employers have not been informed about the measure; lack of work that persons with disabilities are able to perform - people with disabilities are most often not educated/qualified for work needed by employers; employers are entitled to reimbursement only after a year of employment, which is a disincentivising factor; lack of workplaces adapted to persons with disabilities; and problems with transport to and from work¹³³.

According to the Act on the Vocational Rehabilitation and Employment of Disabled Persons¹³⁴ administrative bodies, judicial bodies, local authorities, public services and legal persons owned by the state or local authorities with more than 20 employees are obliged to employ a certain number of persons with disabilities. The quota should increase over time - by the end of 2005 they had to employ one person with disabilities for every 50 employees; by the end of 2017 they have to employ one person with disability for every 20 employees.

In her report for the year 2009 the ombudswoman for persons with disability explains in details the problems she faced when she tried to get information on number of persons employed under the quota scheme¹³⁵.

Age

In May 2009 the Croatian Government adopted the National Plan for Employment 2009-2010. One of its measures is incentives for the employment of people of over 50 years of age and incentives for the first-time employment of young people who do not have work experience.

Religion

Several religious communities receive financial support from the State – in 2008 the Serbian Orthodox Church, the Islamic Community in Croatia, the Bulgarian Orthodox Church, the Macedonian Orthodox Church and the Bet Israel' Jewish Religious Community received such support. In addition, in 2008 the Serbian Orthodox Church received funds to reconstruct churches damaged in the war.

¹³²Official Gazette 63/2007

¹³³Ombudsman for Persons with Disabilities, Report for 2009

¹³⁴Official Gazette 33/1996 with amendments

¹³⁵ In her report, the Ombudswoman reported that local offices of the Croatian Pension Insurance Institute, Croatian Employment Office, Croatian Institute for Health Insurance either ignored her request for information or gave insufficient information on number of persons employed under the quota scheme



Other religious communities have the right to pastoral care in health and social care institutions, prisons and the army. The Health Care Act provides the right to food served in accordance with religious customs, religious ceremonies and special ceremonies in the event of a patient's death¹³⁶.

¹³⁶Government Office for National Minorities, Report on the Implementation of the Constitutional Rights of National Minorities for 2008

6 REMEDIES AND ENFORCEMENT

6.1 Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)

In relation to each of the following questions please note whether there are different procedures for employment in the private and public sectors.

In relation to the procedures described, please indicate any costs or other barriers litigants will face (e.g. necessity to instruct a lawyer?) and any other factors that may act as deterrents to seeking redress (e.g. strict time limits, complex procedures, location of court or other relevant body).

Are there available statistics on the number of cases related to discrimination brought to justice? If so, please provide recent data.

- a) *What procedures exist for enforcing the principle of equal treatment (judicial/administrative/alternative dispute resolution such as mediation)?*

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

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

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

The civil procedure is the same for employment in the private and public sectors, except that a plaintiff 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 for 90 days, the claim can be filed with the court.

Both criminal offences of discrimination (see 6.5.) are prosecuted *ex officio*, so a victim of discrimination could in theory just file a criminal complaint with the State Attorney's Office. If State Attorney's Office decides not to prosecute, the victim is authorised to continue prosecution.

The Anti-discrimination Act specifies misdemeanour liability for harassment, sexual harassment and victimisation. A victim of discrimination can file a complaint with the Ombudsman 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.

Finally, a victim of discrimination can file a constitutional complaint with the Constitutional Court if he/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 which determined his/her rights and obligations, has violated his/her human rights or fundamental freedoms guaranteed by the Constitution.

The Anti-discrimination Act grants the Ombudsman the authority to carry out a mediation procedure, with the consent of the parties, with the possibility of an out-of-court settlement.¹³⁷

Possible barriers to litigation are as follows:

- 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. E.g., although the law clearly states that employment disputes should be decided in the first instance in six months, such proceedings in courts in bigger cities as a rule last several years.
- costs:
 - o if a plaintiff loses a case or wins only in part, he/she risks paying costs to the other party (e.g. if a plaintiff asks for compensation of 10 000 EUR and the court awards him only 5 000 EUR, he has to pay the respondent party 50% of the latter's costs)
 - o some authors, influential among judges, claim that decisions on non-pecuniary damages (e.g. mental suffering caused by discrimination etc.) should be based on a psychiatric expert assessment. The costs of such expert assessments are to be paid in advance by the plaintiff.
 - o 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 (the procedure to obtain free legal aid is too complicated; the lawyers' fee paid by the state is symbolic).

There are still no available statistics on the number of cases related to discrimination brought to justice.

¹³⁷Article 12(2)(5) of the Anti-discrimination Act

The Anti-discrimination Act¹³⁸ states that all judicial bodies should keep statistics on cases related to discrimination with data on the grounds of discrimination and forward them to the Ministry of Justice, and that the Ministry of Justice should forward these statistics to the Ombudsman no later than 1 February of the year following the year that such data are collected for.

b) *Are these binding or non-binding?*

A final ruling of a court is binding only on the parties to the proceedings¹³⁹. An exception to this is a judgment accepting a publicational claim, which creates an obligation for the media publisher in which the judgment has to be published even when it was not party to the proceedings¹⁴⁰.

c) *What is the time limit within which a procedure must be initiated?*

The time limit within which a procedure must be initiated depends on the subject-matter and the special legislation regulating the field in which discrimination occurred.

In the case of an employment dispute where an employee's right has been violated by an action of the employer, the employee should file a complaint with the employer within 15 days. The employer has another 15 days to decide on the complaint. If the employee is unsatisfied by the employer's decision or the employer does not respond, the employee can file a claim with the court within 15 days. In practice, this time limit is sometimes too short to prepare a claim.

A civil claim for compensation and other claims provided for by the Anti-discrimination Act as special individual anti-discrimination claims can be filed within three years from the time victim became aware of the damage or the person causing the damage, but no later than five years from the moment the violation occurred.

d) *Can a person bring a case after the employment relationship has ended?*

A person can bring a case even after the employment relationship has ended.

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

Please list the ways in which associations may engage in judicial or other procedures

a) *What types of entities are entitled under national law to act on behalf or in support of victims of discrimination? (please note that these may be any association).*

¹³⁸Article 14 of the Anti-discrimination Act

¹³⁹Civil Procedures Act, Official Gazette 53/1991 with amendments

¹⁴⁰Article 17(6) of the Anti-discrimination Act

Organization, 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 proceedings¹⁴¹ are entitled to act on behalf or in support of victims of discrimination.

- b) *What are the respective terms and conditions under national law for associations to engage in proceedings on behalf and in support of complainants? Please explain any difference in the way those two types of standing (on behalf/in support) are governed. In particular, is it necessary for these associations to be incorporated/registered? Are there any specific chartered aims an entity needs to have; are there any membership or permanency requirements (a set number of members or years of existence), or any other requirement (please specify)? If the law requires entities to prove "legitimate interest", what types of proof are needed? Are there legal presumptions of "legitimate interest"?*

An association can engage in anti-discrimination proceedings either on behalf of the victims of discrimination by filing a joint legal action (*udružna tužba*) or in support of the complainant(s) as intervenor (*umještač*).

An association (association, body, institution or other organization set up in line with the law and having a justified interest in protecting collective interests of a certain group, or those which within their scope of activities deal with the protection of the right to equal treatment) may bring a legal action (*udružna tužba*) against a person that has violated the right to equal treatment, if it makes plausible that the defendant's conduct has violated the right to equal treatment of a larger number of persons who predominantly belong to the group whose rights the plaintiff defends. In such a legal action the following claims may be brought 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 which violate or may violate the right to equal treatment; c) to carry out activities which eliminate discrimination or its consequences in relation to members of the group or d) to publish in the media the ruling establishing violation of the right to equal treatment.

As an intervenor, association (body, organization, 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) can join a plaintiff. The court shall allow participation of the intervenor only with the plaintiff's consent.

These associations (body, organization, institution, association or another person) should be registered ("set up in line with the law"), but once they are registered they do not need to fulfill any other requirements in connection with the membership or permanency to be able to engage in the proceedings.

¹⁴¹Article 21 and 24 of the Anti-discrimination Act

The registration procedure and criteria for registration are different for different kind of associations, e.g. the registration of non-governmental organizations is regulated by The Associations Act; the registration of foundations is regulated by the Act on Foundations and funds; the registration of institutions is regulated by the Institutions Act etc.

The law does not define “legitimate interest” nor the types of proof that are needed to prove it. An association does not have to prove legitimate interest if it within its “scope of activities deal with the protection of the right to equal treatment”. The evidence on the scope of activities could be the information from the association registry or a statute of an association.

- c) *Where entities act on behalf or in support of victims, what form of authorization by a victim do they need? Are there any special provisions on victim consent in cases, where obtaining formal authorization is problematic, e.g. of minors or of persons under guardianship?*

If an association acts on behalf of the victim (by filing a joint legal action) it does not need any form of authorization by a victim(s). If an association acts in support of victim(s) as an intervenor it does need a victim’s consent.

- d) *Is action by all associations discretionary or some have legal duty to act under certain circumstances? Please describe.*

There is no legal duty for associations to engage in anti-discrimination proceedings on behalf or in support of victims.

- e) *What types of proceedings (civil, administrative, criminal, etc.) may associations engage in? If there are any differences in associations’ standing in different types of proceedings, please specify.*

The actions of associations described above are done in civil proceedings. Beside those types of activities, associations can file criminal complaint if discrimination constitutes criminal offence of discrimination or a misdemeanour as defined by the Anti-discrimination Act.

- f) *What type of remedies may associations seek and obtain? If there are any differences in associations’ standing in terms of remedies compared to actual victims, please specify*

By filing a joint legal action (*udružna tužba*), an association 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 which violate or may violate the right to equal treatment; c) to carry out activities which eliminate discrimination or its consequences in relation to members of the group or d) to publish in the media the ruling establishing violation of the right to equal treatment.

Those are the same claims that may be brought by a victim her/himself, but the victim may claim compensation and association may not.

- g) *Are there any special rules on the shifting burden of proof where associations are engaged in proceedings?*

The rules on the shifting burden of proof are the same regardless of whether the claim is brought by a victim or an association.

- h) *Does national law allow associations to act in the public interest on their own behalf, without a specific victim to support or represent (**actio popularis**)? Please describe in detail the applicable rules, including the types of associations having such standing, the conditions for them to meet, the types of proceedings they may use, the types of remedies they may seek, and any special rules concerning the shifting burden of proof.*

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

- i) *Does national law allow associations to act in the interest of more than one individual victim (**class action**) for claims arising from the same event? Please describe in detail the applicable rules, including the types of associations having such standing, the conditions for them to meet, the types of proceedings they may use, the types of remedies they may seek, and any special rules concerning the shifting burden of proof.*

The ADA does not regulate the authorization of the association to file a claim in the interest of more than one individual victim.

6.3 Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)

Does national law require or permit a shift of the burden of proof from the complainant to the respondent? Identify the criteria applicable in the full range of existing procedures and concerning the different types of discrimination, as defined by the Directives (including harassment).

According to the Anti-discrimination Act a person bringing an anti-discrimination claim (in civil and administrative proceedings,) has to prove that discrimination has probably occurred. It is then up to the defendant to prove that it did not¹⁴². The Act does not exclude this rule in cases of harassment and victimisation.

¹⁴²Article 20 of the Anti-discrimination Act

There are no regulations or case law on the criteria applicable, the standards of probability which need to be met, or rules which are more favourable to plaintiffs than those defined by the Directives.

The concept of *prima facie* evidence is new in the Croatian legal system and exists only in anti-discrimination legislation.

6.4 Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78)

What protection exists against victimisation? Does the protection against victimisation extend to people other than the complainant? (e.g. witnesses, or someone who helps the victim of discrimination to bring a complaint)

The Anti-discrimination Act prohibits placement in a less favourable position of a person who has reported, in a good faith, discrimination; witnessed discrimination; refused to obey an instruction to discriminate; or participated in any manner in proceedings relating to discrimination in accordance with the Act¹⁴³.

Such actions lead to misdemeanour liability. Those people who are, under special laws, responsible for the legal actions of a legal entity may be charged with a fine ranging from 136.98 EUR to 2 739.72 EUR; a person performing independent business activities could be charged with a fine ranging between 684.93 EUR and 20 547.94 EUR; and a legal person could be charged with a fine ranging between 2 739.72 EUR and 27 397.26 EUR¹⁴⁴.

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

a) *What are the sanctions applicable where unlawful discrimination has occurred? Consider the different sanctions that may apply where the discrimination occurs in private or public employment, or in a field outside employment.*

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

Civil

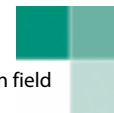
The main sanction in civil anti-discrimination cases is compensation (pecuniary and non-pecuniary damages) for a victim of discrimination¹⁴⁵.

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.

¹⁴³Article 7 of the Anti-discrimination Act

¹⁴⁴Article 28 of the Anti-discrimination Act

¹⁴⁵ Article 17(1)(3) of the Anti-discrimination Act



Under these rules, in the event of a violation of personality rights the court shall, 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 shall 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 purpose¹⁴⁶.

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

The rules on compensation are narrower than those established by the Directives because a court does not have to take into consideration whether a particular amount of compensation in a particular case of discrimination would be an effective, proportionate and dissuasive sanction. These rules significantly reduce the scope and nature of circumstances that the court has to take into account. It is up to the court whether it interprets 'objective of compensation' in accordance with the established standards of effective, proportionate and dissuasive sanctions.

Misdemeanour

The Anti-discrimination Act specifies misdemeanour liability and sanctions in cases of harassment and sexual harassment. A fine is imposed on natural persons, people who under special laws are responsible for the legal actions of legal entities, craftsmen and persons performing independent business activities and legal persons, while different levels of fine are set for different categories (from 684.93 EUR to 41 095.89 EUR for harassment and from 684.93 EUR to 47 945.20 EUR for sexual harassment).

When deciding sanctions for misdemeanours, the courts should take into consideration the principles of general and individual prevention¹⁴⁷.

Criminal

The criminal offences of discrimination are violation of the equality of citizens¹⁴⁸ (in Chapter XI Criminal Offences against the Freedoms and Rights of People and Citizens) and racial and other discrimination¹⁴⁹ (in Chapter XIII Criminal Offences against Values Protected by International Law). The sanction for both offences is imprisonment for six months to five years.

The consistent application of criminal law principles of general and individual prevention when deciding a sanction in a particular case could make these sanctions effective, proportionate and dissuasive.

¹⁴⁶Article 1100 of the Civil Obligations Act

¹⁴⁷Article 6 of the Misdemeanour Act, Official Gazette 107/2007

¹⁴⁸Article 106 of the Criminal Code

¹⁴⁹Article 174 of the Criminal Code



- b) *Is there any ceiling on the maximum amount of compensation that can be awarded?*

There is no any ceiling on the maximum amount of compensation that can be awarded.

- c) *Is there any information available concerning:
the average amount of compensation available to victims
the extent to which the available sanctions have been shown to be - or are likely to be - effective, proportionate and dissuasive, as required by the Directives?*

Due to the lack of anti-discrimination case law, there is still no information available concerning the average amount of compensation available to victims or the extent to which the available sanctions have been shown to be effective, proportionate and dissuasive.

7 SPECIALISED BODIES, Body for the promotion of equal treatment (Article 13 Directive 2000/43)

When answering this question, if there is any data regarding the activities of the body (or bodies) for the promotion of equal treatment, include reference to this (keeping in mind the need to examine whether the race equality body is functioning properly). For example, annual reports, statistics on the number of complaints received in each year or the number of complainants assisted in bringing legal proceedings.

- a) *Does a 'specialised body' or 'bodies' exist for the promotion of equal treatment irrespective of racial or ethnic origin?(Body/bodies that correspond to the requirements of Article 13. If the body you are mentioning is not the designated body according to the transposition process, please clearly indicate so.)*

The Anti-discrimination Act grants the Ombudsman powers as the central body for the elimination of discrimination and promotion of equal treatment irrespective of racial or ethnic origin¹⁵⁰. The Ombudsman is the central body for the elimination of discrimination based on other grounds as well, with the exception of disability, which falls within the competence of the Ombudsman for Persons with Disabilities and sex, which is dealt with by the Gender Equality Ombudsperson.

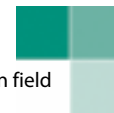
- b) *Describe briefly the status of this body (or bodies) including how its governing body is selected, its sources of funding and to whom it is accountable.*

The Ombudsman is established by the Constitution of the Republic of Croatia as a commissioner of the Croatian Parliament. The Ombudsman protects the constitutional and legal rights of citizens in their dealings with the state administration and bodies vested with public authority, with the Ministry of Defence, including the army and security services, and with local and regional self government, as well as protecting the right to local and regional self government. In 2008 the Ombudsman was accredited as an A-status national human rights institution for the protection and promotion of human rights by the International Coordinating Committee for Human Rights as an institution which meets the Paris Principles to a great extent (these are: independence guaranteed by the constitution or a law; autonomous as regards governance; pluralistic membership; broad mandate for the protection and promotion of human rights; sufficient resources for independent work; and investigative powers).

By virtue of the entry into force of the Anti-discrimination Act on 1 January 2009, the Ombudsman became the central equality body. In order to liaise and cooperate with similar bodies within the European Union, the Ombudsman's Office was accepted as a member of EQUINET on 1 January 2009.

Professional and administrative services for the Ombudsman are provided by the Office of the Ombudsman.

¹⁵⁰Article 12(1) of the Anti-discrimination Act



Funds necessary for the functioning of the Office of the Ombudsman are apportioned from the annual state budget.

The Ombudsman has three deputies. The Ombudsman and his deputies are elected by the Croatian Parliament for a term of eight years¹⁵¹. One of the deputies is in charge of discrimination issues.

There are 31 officials working in the Ombudsman's Office. One of them is Ombudsman's advisor for legal issues – the coordinator for anti-discrimination activities. Besides this coordinator, one more advisor works on discrimination complaints.

No additional funding has been allocated to the Ombudsman's Office for the implementation of the Anti-discrimination Act. The Ombudsman's Office therefore is currently working on discrimination with the same budget and staff as it had before the Anti-discrimination Act entered into force. Its only additional resources are those allocated by EU projects¹⁵².

In 2009 Ombudsman received 169 complaints of discrimination, and three cases were initiated by the Ombudsman himself after reports of discrimination in the media. The complaints concerned the following grounds: race/ethnicity/colour/national origin (53); sex (17); religion (4); political or other belief (3); membership of a trade union (6); education (7); social status/origin (11); marital or family status (3); age (5); health (4); disability (10) and sexual orientation (1). In two cases complaints were about multiple discrimination (sex + age and sex + membership of a trade union)¹⁵³. The Ombudsman's report on complaints of discrimination in 2010 has not been published yet.

It seems that the Ombudsman received and dealt with complaints on discrimination based on sex and disability although such complaints should be dealt with by special ombudsmen (the Ombudsman for Persons with Disabilities and the Gender Equality Ombudsperson).

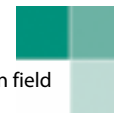
The discrimination reported occurred in the following areas: work/working conditions/employment/vocational training and qualifications (55); education, science and sport (10); social security/social care/pension and health insurance/unemployment insurance (16); health care (2); judiciary and administration (50); housing (3); public information and media (3); access to and provision of goods and services (18); membership of and participation in trade unions, civil society organisations, political parties and other associations (9); and participation in culture and art (4)¹⁵⁴.

¹⁵¹<http://www.ombudsman.hr/en/about-the-ombudsman.html>

¹⁵²Information given by the Ombudsman's Office to the Centre for Human Rights in February 2010

¹⁵³Information given by the Ombudsman's Office to the Centre for Human Rights in February 2010

¹⁵⁴Information given by the Ombudsman's Office to the Centre for Human Rights in February 2010



The Ombudsman's statistics do not contain data connecting grounds and areas. Further, there is no information about what was done in these cases, whether the complaints were justified and what the outcome was.

- c) *Describe the competences of this body (or bodies), including a reference to whether it deals with other grounds of discrimination and/or wider human rights issues.*

In connection with discrimination based on racial or ethnic origin, the competences of the Ombudsman are as follows:

1. to receive reports from all natural and legal persons of reasonable suspicions of discrimination;
2. to provide the information necessary to natural and legal persons who have filed a complaint of discrimination with regard to their rights and obligations and on their options for legal and other protection;
3. if court proceedings have not yet been initiated, to examine individual reports and take actions falling within his/her competence required to eliminate 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 competent 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 Government¹⁵⁵.

The Ombudsman is responsible for discrimination on all the grounds prohibited by the Act which are not covered by the specialised ombudsmen¹⁵⁶. As mentioned above, special ombudsmen exist for gender and disability.

The Ombudsman is defined by the Constitution as the authorised representative of the Croatian Parliament protecting the constitutional and legal rights of citizens in their dealings with state administration bodies and other bodies with public authority. The Ombudsman therefore deals with wider human rights issues.

- d) *Does it / do they have the competence to provide independent assistance to victims, conduct independent surveys and publish independent reports, and issue recommendations on discrimination issues?*

¹⁵⁵Article 12(2) of the Anti-discrimination Act

¹⁵⁶Articles 12 and 13 of the Anti-discrimination Act

The Ombudsman has the power to provide independent assistance to victims, conduct independent surveys and publish independent reports, and issue recommendations on discrimination issues¹⁵⁷.

- e) *Does the body (or bodies) have legal standing to bring discrimination complaints or to intervene in legal cases concerning discrimination?*

The Ombudsman is authorised to file criminal charges for discrimination to the competent state attorney's office¹⁵⁸.

Further, the Ombudsman can join the proceedings in anti-discrimination cases as an intervenor on the behalf of the plaintiff¹⁵⁹.

- f) *Is / are the body / bodies a quasi-judicial institution? Please briefly describe how this functions. Are the decisions binding? Does the body /bodies have the power to impose sanctions? Is an appeal possible? To the body itself? To courts?) Are the decisions well respected? (Please illustrate with examples/decisions) Is the independence of the body / bodies stipulated in the law? If not, can the body/bodies be considered to be independent ? Please explain why.*

The Ombudsman is not a quasi-judicial institution. S/he does not have the authority to pass binding decision nor does s/he have the power to impose sanctions.

The independence of the Ombudsman is stipulated in the Constitution¹⁶⁰.

- g) *Are the tasks undertaken by the body / bodies independently (notably those listed in the Directive 2000/43; providing independent assistance to victims of discrimination in pursuing their complaints about discrimination, conducting independent surveys concerning discrimination and publishing independent reports)*

The Ombudsman undertakes his tasks independently.

- h) *Does the body treat Roma and Travellers as a priority issue? If so, please summarise its approach relating to Roma and Travellers.*

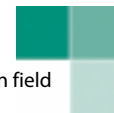
Due to the wide scope of its competences and the issues the Ombudsman deals with, the Roma are not a priority issue.

¹⁵⁷Article 12(2) of the Anti-discrimination Act

¹⁵⁸Article 12(2)(6) of the Anti-discrimination Act

¹⁵⁹Article 21 of the Anti-discrimination Act

¹⁶⁰Article 93 of the Constitution of the Republic of Croatia



8 IMPLEMENTATION ISSUES

8.1 Dissemination of information, dialogue with NGOs and between social partners

Describe *briefly* the action taken by the Member State

- a) *to disseminate information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)*

The Government Office for Human Rights has undertaken some measures in this direction. It prepared and supported the EU Progress project 'Support to the implementation of the Anti-discrimination Act'. The aims of the project were to improve implementation of the Anti-discrimination Act, develop the monitoring framework and inform/train all relevant stakeholders. Its partners were the Ombudsman's Office and some of the biggest human rights NGOs. As part of this project, the Ombudsman's Office, in cooperation with the Centre for Peace Studies (an NGO), conducted research on citizens' attitudes towards discrimination and their knowledge of the newly adopted Act. A series of seminars for judges in Zagreb and Split, state attorneys, journalists and NGO representatives were conducted in order to inform and/or train stakeholders in the implementation of the Act. Generally speaking, the Government Office for Human Rights has been proactive in attracting EU and other funds in order to speed up the implementation of the law and develop a network of interested stakeholders (ombudsman's offices and NGOs), although additional state funds were not allocated to improve implementation of the Act.

- b) *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) and*

Article 15 of the Anti-discrimination Act states that the Ombudsman 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. Accordingly, in February 2010 the Ombudsman's Office invited all the NGO stakeholders listed above to submit their (written) feedback on the implementation of the Anti-discrimination Act, obstacles to implementation and suggestions for improving the anti-discrimination system. A series of meetings/consultations dedicated to different grounds of discrimination are expected with different NGOs and human rights institutions. According to Article 15, the Ombudsman has to consult the stakeholders mentioned when submitting his/her Annual Report to the Croatian Parliament, as well as when drafting his/her Opinions and Recommendations.

- c) *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)*

In accordance with Article 15 of the Anti-discrimination Act, in February 2010 the Ombudsman's Office, as the central anti-discrimination body, invited the main (*reprezentativne*) trade unions and Croatian Employers Association to provide feedback on the implementation of the Anti-discrimination Act as part of the preparation of his annual report to Parliament. Further consultations as well as concrete outcomes of these consultations are expected.

d) *to specifically address the situation of Roma and Travellers*

Apart from the activities described in 7. h) which give the Roma special attention within the Ombudsman's scope of work, there is no information that measures have been taken to specifically inform or train Roma about the provisions of the Act. However, Roma NGOs are among the stakeholders consulted, and the mobile team working with the Roma in their settlements inform them regularly about all legal provisions, including the Act.

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

a) *Are there mechanisms to ensure that contracts, collective agreements, internal rules of undertakings and the rules governing independent occupations, professions, workers' associations or employers' associations do not conflict with the principle of equal treatment? These may include general principles of the national system, such as, for example, "lex specialis derogat legi generali (special rules prevail over general rules) and lex posterior derogat legi priori (more recent rules prevail over less recent rules).*

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 laws or the morals of society is null and void¹⁶¹. Contracts can be subject to judicial review if the case is brought before court. When a contract (or part of a contract) is in conflict with the principle of equal treatment, a party to that contract is entitled to initiate court proceedings requesting the court to rule the contract or part of the contract null.

Internal rules of undertakings and the rules governing independent occupations, professions, workers' associations or employers' associations which 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 general nature and adopted by a competent body of state or local authority or a legal person with public authority.

¹⁶¹Article 322 of the Civil Obligations Act



It is not always clear if a rule would be considered a regulation or not (e.g. the Constitutional Court found itself competent to review the legality of the articles of association of the Architects' Association but not to review the legality of the code of ethics of the same organisation¹⁶²). If internal rules or rules governing various associations are not considered regulations, they may be subject to judicial review as contracts.

b) *Are any laws, regulations or rules that are contrary to the principle of equality still in force?*

We cannot state that laws, regulations or rules contrary to the principle of equality do not exist. On the other hand, it is impossible to detect, in a short time, laws, regulations or rules that are contrary to the principle of equality, especially if their result is indirect discrimination.

¹⁶²

Constitutional Court decision number U-II/544/2001 of 1 June 2006



9 CO-ORDINATION AT NATIONAL LEVEL

Which government department/ other authority is/ are responsible for dealing with or co-ordinating issues regarding anti-discrimination on the grounds covered by this report?

Is there an anti-racism or anti-discrimination National Action Plan ? If yes, please describe it briefly.

At government level, the main responsible body is the Ministry of the Family, Veterans' Affairs and Intergenerational Solidarity, but the Government Office for Human Rights is responsible for the practical coordination of anti-discrimination activities and communication with experts and civil society stakeholders. Responsibility in this field is actually divided between these two government bodies.

In 2008, the Croatian Government adopted the Anti-discrimination National Plan for 2008-2013 but it remained passive in that respect since (e.g. the last action plan was for the period of 2008-2009).



ANNEX

- 1. Table of key national anti-discrimination legislation**
- 2. Table of international instruments**



ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

Name of Country: Hungary

Date: 1 January 2011

Title of Legislation (including amending legislation)	Date of adoption:	Date of entry in force from:	Grounds covered	Civil/Administrative / Criminal Law	Material Scope	Principal content
This table concerns only key national legislation; please list the main anti-discrimination laws (which may be included as parts of laws with wider scope). Where the legislation is available electronically, provide the webpage address.		Please give month / year			e.g. public employment, private employment, access to goods or services (including housing), social protection, social advantages, education	e.g. prohibition of direct and indirect discrimination, harassment, instruction to discriminate or creation of a specialised body
Anti-discrimination Act	9/7/2008	01/01/2009	race/ethnicity; religion or belief; disability; age; sexual orientation (and some other grounds not covered by the	Civil, administrative, misdemeanour	All areas covered by the Directives	Prohibition of direct and indirect discrimination; harassment and sexual harassment; instruction to discriminate; reasonable accommodation in respect of

Title of Legislation (including amending legislation)	Date of adoption:	Date of entry in force from:	Grounds covered	Civil/Administrative / Criminal Law	Material Scope	Principal content
			Directives)			disability; segregation; multiple discrimination; victimisation; central body for anti- discrimination activities; special civil procedural rules; shift of the burden of proof; participation of third parties in civil proceedings; definitions of and sanctions for misdemeanour offences
Same-sex Relationships Act	14/7/2003	30/7/2003	Sexual orientation			Prohibition of direct and indirect discrimination; instruction to discriminate

Title of Legislation (including amending legislation)	Date of adoption:	Date of entry in force from:	Grounds covered	Civil/Administrative / Criminal Law	Material Scope	Principal content
Criminal Code		01/01/1998	Race/ethnicity; religion or other belief; disability; age; sexual orientation (and any other characteristic)	criminal	Freedoms and rights laid down in the Constitution or legislation (Art.106 of the Criminal Code); fundamental human rights and freedoms recognised by the international community (Art.174 of the Criminal Code)	Prohibition of discrimination; hate speech; sanctions
Labour Act	4/12/2009	01/01/2010	(general prohibition of discrimination, grounds not mentioned)		Work and working conditions; criteria and conditions for recruitment, promotion, vocational training, advanced vocational	Prohibition of direct and indirect discrimination; protection of the dignity of workers from the conduct of other employees



Title of Legislation (including amending legislation)	Date of adoption:	Date of entry in force from:	Grounds covered	Civil/Administrative / Criminal Law	Material Scope	Principal content
					training and retraining;	

ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Name of country: Hungary

Date: 1 January 2011

Instrument	Date of signature (if not signed please indicate))	Date of ratification (if not ratified please indicate)	Derogations/ reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
European Convention on Human Rights (ECHR)	6/11/1996	5/11/1997	No	Yes	Yes
Protocol 12, ECHR	6/3/2002	3/2/2003	No	Yes	Yes
Revised European Social Charter	6/11/2009	Not ratified		Ratified collective complaints protocol? No	No
International Covenant on Civil and Political Rights	(succession)	12/10/1992	No	Yes	Yes
Framework Convention for the Protection of	6/11/1996	11/10/1997	No		Yes

Instrument	Date of signature (if not signed please indicate))	Date of ratification (if not ratified please indicate)	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?
National Minorities					
International Convention on Economic, Social and Cultural Rights	(succession)	12/10/1992	No	No	Yes
Convention on the Elimination of All Forms of Racial Discrimination	(succession)	12/10/1992	No	No	Yes
Convention on the Elimination of Discrimination Against Women	(succession)	9/9/1992	No	No	Yes
ILO Convention No. 111 on Discrimination	(succession)	8/10/1991	No	No	Yes
Convention on the Rights of the Child	(succession)	12/10/1992	No	N	Yes
Convention on the Rights of Persons	30/3/2007	15/8/2007	No	No	Yes



Instrument	Date of signature (if not signed please indicate))	Date of ratification (if not ratified please indicate)	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?
with Disabilities					