

One Step Forward, Two Steps Back

Anti-discrimination policy in Croatia

2011 - 2016

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This report presents the results of the analysis of the effectiveness and the impact of anti-discrimination policy in Croatia in the period 2011-2016. The analysis includes the assessment of the adequacy and the effectiveness of the legal, institutional and *policy* frameworks, and then analyses the progress made in relation to the part of the discrimination grounds: sex, sexual orientation, gender identity and expression, ethnicity/nationality/race, disability, health status and age. At the same time, it should be noted that the findings of this analysis should only be considered as an overview of the most important advances or backsliding in the observed period. With regards to the methodological approach, the analysis relies on secondary sources (document analysis) complemented by insights from key stakeholders in anti-discrimination policy in Croatia.

The starting point for the analysis was the assumption behind the closing of Chapter 23 - that Croatia demonstrated readiness and capacity, at the level of irreversible positive changes, for a high level of respect for fundamental rights, including the right to non-discrimination. The final point of the analysis is the end of 2016, as the year in which a significant setback in the area of observing the fundamental rights has occurred, as noted in the report of the Human Rights Commissioner of the Council of Europe²¹⁵ and the Ombudsperson in her 2016 report²¹⁶. In general terms, the analysis has shown stagnation or regression in the field of anti-discrimination because as a society we do not deal with it, resulting in an increase in the level of prejudice and stereotypes, hence, the basis for the discrimination of any Other and/or Different.

215 Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe Following his Visit to Croatia from 25 to 29 April 2016, available at: <https://rm.coe.int/16806db766>, p. 5

216 Ombudsperson's Report for 2016, available at: <http://ombudsman.hr/hr/component/jdownloads/send/76-izvjesca-2016/854-izvjesce-pucke-pravobraniteljice-za-2016>, p. 29

Context

Due to the pronounced social polarization based on ideology and liberal / conservative value determinations, the issue of anti-discrimination policy and, in general, the issue of the protection of human rights is a first-class political issue in contemporary Croatia. The attempts to redefine the concept of human rights and the relativisation of what they entail in relation to certain social groups (women, ethnic groups, gender and sexual minorities) are, in Croatian conditions, partly indigenous and related to a specific historical context and divisions from which we, as a society, are unable to make a step forward (World War II, the ruling period of the Communist Party, the Homeland War). The other part is influenced by global events caused by socio-economic disparities and an increasing social inequality²¹⁷. In such conditions, parts of society easily fall under the influence of manipulative discourses on the need to return to traditional values - the traditional family, morality, complementary instead of equal roles of men and women, cultural authenticity²¹⁸ and the dangers of the so-called “gender ideology”, a term used as an empty signifier to limit women’s human rights and the rights of the LGBT community, for the purpose of challenging “marriage equality, abortion, reproductive technologies, gender mainstreaming, sex education, sexual liberalism, transgender rights, antidiscrimination policies and even to the notion of gender itself”²¹⁹. The success

of such efforts in Croatia in the observed period is visible not only in the constitutional heteronormative definition of a marriage, but also in their partially successful political positioning at decision-making positions (for example, HRAST’s entry into the Croatian Parliament on the list of the Croatian Democratic Union), as well as within the state administration²²⁰.

Therefore, in recent years, debates between the liberal and conservative parts of society have been held over a series of strategic documents and normative acts, including: the definition of marriage as an exclusively heteronormative union, the introduction of sex education into the formal education system, the Curricular Reform, the Same-Sex Civil Partnership Law, the Family Law, the *Istanbul Convention*, the Act on Health Measures for the Realization of the Right to Free Decision-Making on Giving Birth to Children and, finally, on the key strategic document for this assessment - the National Anti-discrimination Plan, discussed in more detail below,

Due to ideologically motivated obstacles and several changes of the government in a very short time, the adoption of the new *National Anti-Discrimination Plan for the period 2017-2022*, and the accompanying *Action Plan for the period 2017 - 2019* is still uncertain at the time of writing this report. The first draft of the new National Plan was made and publicly discussed in June 2016, but due to the unstable political circumstances and the change of government, it has never been adopted, although its adoption by the end of 2016 was part of the activities to meet *ex-ante* conditionality from the

217 Comp. Observatory on the Universality of Rights (2017). *Rights at Risk: Trends Report 2017*. pg. 10, available at: <https://www.oursplatform.org/wp-content/uploads/Rights-At-Risk-OURs-Trends-Report-2017.pdf>

218 Ibid. pg. 12

219 Kuhar R. and D. Patternote (ed.). (2017). *Anti-Gender Campaigns in Europe: Mobilizing against Equality*. London: Rowman and Littlefield International, see at: https://www.rowmaninternational.com/book/antigender_campaigns_in_europe/3-156-7734fc12-00e3-47fc-8478-05897740ac19

220 <http://faktograf.hr/2017/05/24/kako-sukonzervativci-preuzeli-kurikularna-reforma/>

EU's Operational Program *Competitiveness and Cohesion* 2014-2020.²²¹

Upon forming a new coalition government of HDZ and MOST headed by Andrej Plenković, in October 2016, the Deputy Prime Minister Davor Ivo Stier and his Special Adviser for Human Rights, Ladislav Ilčić²²², refused to give consent to the draft of the Plan because of its “inadequate transparency and inclusivity”²²³. In February 2017, The Office for Human Rights and the Rights of National Minorities of the Government of the Republic of Croatia published a *Public Call for Proposals for the Appointment of Members of the Working Group for the Development of the National Anti-Discrimination Plan for the period 2017-2022*²²⁴. The purpose of the public call was to select five representatives of civil society organizations dealing with protection and promotion of human rights.²²⁵ Their selection²²⁶, however, has caused numerous discussions in the public because, despite of applications from organizations that have been continuously involved in anti-discrimination and protection and promotion of human rights for more than a decade²²⁷, some of the selected organizations lacked such credentials. Although the Office states in its explanation that the selection sought to “ensure the participation of civil society organizations with different foci on discrimination and the corresponding competences of the Working Group in order to define an effective strategic and operational approach to strengthening the existing anti-discrimination system”²²⁸, a number of non-chosen organizations had a far greater number and more relevant references. Therefore, by the selection of members of the working group, unfortunately, the Office failed to

provide the strongest possible competence of the working group members, but managed to satisfy the very groups under whose pressure the initial Plan was rejected.²²⁹

In the meantime, Stier and Ilčić lost their positions in the cabinet after the split of the HDZ-MOST coalition, while the new working group adopted a new draft of the National Plan. Though somewhat less accurate than the non-adopted one, it managed to prevent the initial deliberate expulsion of “the right to non-discrimination” from the text, as well as any reference to the LGBT community and their rights, gender identity, and the protection of reproductive rights, including the right to abortion²³⁰. The public consultation on the National Plan for the period 2017-2022 and the accompanying Action Plan for the period 2017 - 2019 finished on 03 June 2017, but the draft plan at the time of writing the final version of this report (October 2017) has still not been adopted by the Government.

We considered this brief overview of the political context and consequences of such a context an important introductory part of the analysis. Namely, in such circumstances, the assessment of the effects of anti-discrimination policy at the level of only “technical” criteria and indicators in relation to objectives and measures would result in an analysis outside of the context, and hence, especially for advocacy purposes, inapplicable. On the contrary, in an ideologically polarized and additionally unstable political circumstances in which decisions on politically sensitive topics are made, it is impossible to analyse them properly without considering the political and social context. Moreover, the role of individual stakeholders, their political or social, formal or informal power and influence can have a significant impact on solutions within the legal, institutional and/or strategic frameworks, as demonstrated precisely at the National Anti-Discrimination Plan.

221 The Operational Program *Competitiveness and Cohesion* 2014-2020, 9.2. Description of activities for meeting ex-ante conditions, competent bodies and deadlines, Table 25, p. 312; available at: <http://www.strukturifondovi.hr/UserDocImages/Documents/01%20OPKK%202014-2020%20hrv%2027112014.pdf>

222 The president of the Hrast Party and one of the leading activists of the conservative movement in Croatia

223 <http://faktograf.hr/2017/04/20/5179/>

224 <https://ljudskaprava.gov.hr/vijesti/javni-poziv-za-dostavu-prijedloga-za-imenovanje-clanova-radne-skupine-za-izradu-nacionalnog-plana-za-borbu-protiv-diskriminacije-za-razdoblje-od-2017-do-2022-godine/698>

225 In addition to representatives of civil society, the representatives of state institutions and representatives of social partners were also appointed to the Working Group.

226 <https://ljudskaprava.gov.hr/vijesti/obavijest-o-odabiru-predstavnika-organizacija-civilnog-drustva-u-radnu-skupinu-za-izradu-nacionalnog-plana-za-borbu-protiv-diskriminacije-za-razdoblje-od-2017-do-2022-godine/705>

227 E.g. see: http://www.kulturpunkt.hr/sites/default/files/KP_info_230317.pdf

228 <https://ljudskaprava.gov.hr/vijesti/obavijest-o-odabiru-predstavnika-organizacija-civilnog-drustva-u-radnu-skupinu-za-izradu-nacionalnog-plana-za-borbu-protiv-diskriminacije-za-razdoblje-od-2017-do-2022-godine/705>

229 <http://narod.hr/hrvatska/ukljucite-se-javnu-raspravu-zaustavite-ideoloske-mjere-suzbijanje-diskriminacije-rh>; <http://narod.hr/hrvatska/potpisite-peticiju-zaustavite-zloupotrebu-suzbijanje-diskriminacije-progon-neistomisljenika>; <https://narod.hr/hrvatska/uspjeh-uo-najavljenom-izradu-novog-nacionalnog-plana-borbu-diskriminacije>

230 See: <https://dnevnik.hr/vijesti/hrvatska/novi-nacrt-plana-protiv-diskriminacije-regresivan-je-i-opasan---471231.html>; <http://faktograf.hr/2017/05/19/stier-diskriminacija-strategija/>; <https://www.portalnovosti.com/ekskluzivno-vlada-borbu-protiv-diskriminacije-skorjila-po-mjeri-klерikalne-desnice>

Conclusions

The analysis found that the logic of the legal and institutional set-up at the state level is well-conceived. However, shortcomings in the implementation of the legal framework are significant in relation to the lack of financial and human resources as well as capacities in terms of knowledge, understanding and application of anti-discrimination provisions.

The research further identified the inadequate levels of independence of special ombudsperson offices as a significant problem, due to legislative solutions that do not guarantee the continuity of human rights protection. At the same time, the failure to adopt the Ombudsperson's report for 2015 demonstrated the inadequacy of the provision on parliamentary (non)acceptance of the report, which should certainly be changed in the direction of parliamentary "acknowledging", if there were real political will to ensure the independence of the institution of the ombudsperson.

In the observed period, the the Office of the Ombudsperson and those of specialized ombudspersons handled a total of 3,779 cases related to the protection from discrimination. It should be noted that between 2011 and 2016, the number of such cases increased from 387 to 975 (an increase of around 250%), while their budgets did not increase proportionally to the increase in the scope of work, and apart from the Ombudsperson, a lack of human resources was also identified.

In assessing the effects of the government offices - the Office for Gender Equality and the Office for Human Rights and Rights of National Minorities, which are in charge of coordinating implementation and reporting on substantially relevant national strategic documents, the criticism from mostly non-institutional stakeholders

was related to their lack of human resources, which in their opinion is negatively reflected in the possibility of their stronger influence on decision-makers and better quality of work and coordination.

As far as the Anti-Discrimination Act itself is concerned, the grievances related to its implementation concern poor public information on the rights arising from it and the possibilities of judicial protection, particularly in relation to the groups in risk of discrimination, a very small number of court proceedings and an even smaller number of judgments, inadequate statistical monitoring and reporting on the part of the courts, unavailability of court judgments, low levels of education of judges, state attorneys and police officers on the provisions and procedures in application of the law, low levels of education of lawyers representing parties in civil litigation, and ignorance with regards to the Act among civil servants.

An additional obstacle to the implementation of the law is also the general mistrust of the legal system and the fairness of court proceedings, as well as the length of court proceedings. The analysis of statistical data on settled civil proceedings in the period 2011-2016 shows that 39% of the tabled indictments were refused, and only 18% were upheld. The remaining 43% of cases have been terminated for procedural reasons without deciding on the merits of the matter. The statistics also confirms the problem of longevity of procedures, thereby rendering the lawsuits meaningless both in terms of wider social impact and in terms of the right of victims of discrimination to timely reparation or termination of discriminatory practices. Namely, at the aggregate level of all initiated proceedings in the period 2011-2016, only 33% of them were solved, which is certainly not encouraging for citizens seeking protection from discrimina-

tion by court actions. Furthermore, the problem of unavailability of court decisions is extremely pronounced because it prevents a systematic analysis of the reasoning behind the court decisions, with a negative effect on the capacities of civil attorneys in civil proceedings, state attorneys in criminal and misdemeanour proceedings, and, in relation to judges the harmonization of court practice.

In the current period, the problem also lies in unavailable reports on the implementation of strategic documents, delays in the adoption of strategic documents, and the absence of follow-up to the recommendations from the Ombudsperson's report for 2015, due to its non-adoption in the Parliament. For almost four years, the Republic of Croatia has no effective main anti-discrimination strategic and enforcement documents, while the other strategic documents are on average one and a half years late, with the latest official data on their implementation dating back to 2014 and 2015. The delay in the adoption of strategic documents has also caused delays in reporting on the implementation and effects of continuous measures as well as inconsistent practices across different bodies.

Furthermore, the analysis concluded that the system of protection against discrimination lies with enthusiastic individuals. The lack of political will at the highest state level, accompanied by the relativisation of the notion of "discrimination" on part of some in the highest levels of governance who publicly speak about discrimination of the majority population in relation to minority rights, does not help in changing attitudes and approaches of civil servants to anti-discrimination issues. The proportion of those educated in antidiscrimination issues is 0.68%. Furthermore, in 2016, within the relevant institutions in Croatia, the issue of antidiscrimination and protection of human rights was tackled actively and on daily basis by only 110 persons in state level institutions, accompanied by approximately 100 activists employed in civil society organizations and those 300 educated enthusiasts in public bodies. It is therefore crucial to include the content of the anti-discrimination legislation in the general part of the state exam as well as for the civil servants in direct contact with the citizens.

In relation to the analysed grounds for discrimination, that on **the grounds of sex** is by far the most prominent form of discrimination that the citizens report to the ombudsperson offices. The analysis of trends suggests a decrease of complaints within the social security, stagnation (with some oscillations) in the field of work and

working conditions, significant oscillations in the area of administration and justice, and a significant growth in media and public information. The latter is particularly worrying given the role of the media in creating public opinion. Moreover, the area of media and public information is the only area showing a trend of growth throughout the observed years, from 2.6% in 2011 to 27.6% in 2016 and with the highest growth recorded between 2015 and 2016. The highest percentage of people discriminated on the grounds of sex are women, in the field of work and social security; they are also underrepresented in positions of political and business decision-making and have lower salaries than men. In the area of education, the problem of the presence of gender stereotypes in educational materials is not solved, and regression is also present in the field of political participation. In addition, in the area of access to health services, the doctor's/gynaecologist's conscientious objection is increasingly associated with refusals to engage in legally induced abortion in public health institutions as well as by pharmacists who refuse to sell contraceptives. In order to ensure the availability of legally induced abortion on the one hand, and on the other, the realization of the right of individuals to conscientious objection based on religious beliefs, there is an urgent need to regulate the issue of conscientious objection in public hospitals. Finally, one of the most problematic areas is the area of family violence, with a noted increase in the number of criminal offenses with elements of violence among close relatives. In that context, ratification of the so-called *Istanbul Convention*, becomes even more important, despite the strong efforts against the ratification made by the Catholic Church in Croatia and the conservative civil society, media and politicians which increased in 2017.

If we speak of discrimination based on the **gender identity and expression**, a small number of complaints does not, by any means indicate a small number of discriminatory practices against transgender persons, but rather points to their reluctance to report discrimination. Likewise, although with a small absolute number, there is a pronounced sudden increase in reporting discrimination based on gender identity or expression in 2016. In addition to the discrimination that transgender people experience in their work or educational environment, they still face the problems of an un(der)regulated legal framework that they would use to further regulate their legal and medical status. Therefore, the adoption of the normative framework related to the achievement of the status rights and rights from health insurance is imposed as an important and urgent

recommendation for the elimination of discrimination of transgender persons by state and public bodies. A coherent and adequate legal framework that would be implemented without unnecessary obstacles would be a powerful signal to society about the non-acceptance of discrimination based on gender identity or expression in all other spheres of life.

Regarding the protection of the right to non-discrimination due to **sexual orientation**, the members of the LGBTIQ community in Croatia state that the referendum on marriage, held on 01 December 2013, was a milestone that reversed LGBT rights and caused fear, feelings of insecurity and distrust in the judicial system. According to conducted interviews, discrimination of LGBT community is present in all spheres of life, from access to housing, work and working conditions, education, family status to administration and justice, and a particular problem is the inadequate prosecution of hate crimes. With respect to education, with the perseverance of discriminatory content in textbooks, primarily in religious education, the systematic problem is the absence of any form of sensitization of children and youth about the rights of LGBT people. An increase in the level of prejudice against the LGBT community is also confirmed by longitudinal research of attitudes of secondary school students and that conducted on the general population. One of the few advances in the area of the rights of sexual minorities is the adoption of the Act on Lifelong Partnership of Same-Sex Persons in July 2014, as the response of the social-democratic government led by Zoran Milanović, to the successful citizens' referendum initiative incorporating the heteronormative definition of marriage into the Constitution.

The most vulnerable social groups potentially exposed to **discrimination based on ethnicity** are members of the Roma and Serb national minorities, and since the refugee wave that occurred in Croatia, also immigrants and asylum seekers. Extreme hate speech towards the members of minority groups in 2016, especially the Serbs, but also members of the Muslim religion should also be noticed, since it not only lacked proper government response, but rather, on occasion, directly involved some of the highest state officials. Problems are also present in the failure to implement Article 22 of the Constitutional Act on the Rights of National Minorities in regard to their employment in public service, the implementation of the right to equal use of languages and script of national minorities in units in which they make up more than 30% of the population, and in relation to

the Roma minority also with regards to the still present segregated education and housing. The rights of Serb returnees are still partly unresolved.

In the case of **persons with disabilities**, discrimination occurs most frequently in the area of labour and employment, access to goods and services, and the consequent denial of reasonable adjustment. In relation to the state's obligations in the context of reasonable adjustments, only the awareness of removing the architectural and other barriers that prevent the interaction between the disabled people and the public services has been brought into existence so far. In the field of education, the absence of reasonable adjustments of the physical environment are also notable, while the right to inclusive education is still largely dependent on whether there is a civil society organization providing a teaching assistant service and whether it has sufficient knowledge and capacity to write a good quality project which would guarantee financing. The model as such needs to be changed urgently, so that this fundamental service is systematically funded and implemented through independent community service centres. Civil society should be providing services with an added value and/or piloting innovations in the system through funding competitions. In addition, other necessary forms of support and adaptation of the education system should be developed, in particular with regards to the teaching methods and the increased need for educating teachers and students for teaching professions. One of the few areas where positive shifts were recorded during 2016 at the level of implementation and real advances in life is the increased employment of people with disabilities, although in absolute numbers we speak of only 2,853 newly-employed persons with disabilities; even with that increase, the percentage of employed persons with disabilities in active working age it is only 5%.

Regarding the discrimination based on **health status**, this is an extremely under-researched area, but the analysis has identified several sources of discrimination: territorial affiliation, diagnosis and age, while in the case of persons with disabilities, it happens by non-procurement of necessary and appropriate aids. An additional problem in the context of exercising the right to health care is the key criterion for the choice of a therapy in Croatia, which is the price instead of the most effective therapy.

When we speak of discrimination based on **age**, we tend to think of the discrimination of the elderly, but young

people, and sometimes children also tend to be discriminated on this ground. The problem is, however, that there is almost no data for age discrimination. According to available data, discrimination against older persons is mostly present in the area of social security and social welfare, health care, access to goods and services, and public information and media. With young people, it is most often present in the field of education as well as labour and employment. It should also be pointed out that these groups often face multiple discrimination - apart from the age, multiple discrimination based on sex, ethnicity, religious beliefs, health status, disability, social, property or family status can also occur. In the case of children, discrimination is present in the area of education, especially with children with disabilities, but also with children of different religious beliefs in comparison to the majority of population. Finally, unsystematically present contents, and therefore unequal access to educational content related to civic education, as well as health education in the part related to sexual education, have a discriminatory effect on children who do not have access to such contents.

In the introductory section of the analysis it was stated that the starting point of the analysis is the year 2011, in which we as a state and society, by closing the negotiation chapter on Justice and Fundamental Rights with the EU, supposedly showed that we are ready to join “mature democracies”. The benchmarks for closing the Chapter 23, specifically in the field of anti-discrimination, were the following: (1) a quick and just judicial process, (2) effective implementation of the Anti-Discrimination Act and punishment of hate crime, (3) strengthening of the ombudsperson offices. In addition to these “general” anti-discrimination measures, a part also referred to (4) rights of Serbian returnees and (5) to the application of Art. 22 of the Constitutional Law on the Rights of National Minorities. **Looking at the analysis from the perspective of these benchmarks, today, six years later, it is clear that, unfortunately, we did not move far.**

Quick and fair judicial proceedings are still not part of the life of Croatian citizens. Although the analysis did not deal with judicial proceedings in general, but only those related to discrimination, their multi-year duration, although they should be resolved at an accelerated pace, as well as the fact that only 33% were solved, is a clear indicator of non-existence of quick judicial proceedings against discrimination in Croatia. Regarding judicial proceedings in general, the Supreme Court needed

an average of 867 days in 2015 to make its decision²³¹, while according to figures from the Annual Report of the European Court of Human Rights for 2016²³², out of a total of 349 judgments against the Republic of Croatia, 92 (26%) of them refer to the right to a fair trial and 96 (28%) of them refer to the speed of court proceedings. In other words, as many as 54% of the verdicts against the Republic of Croatia in this Court is precisely about the issue of a speedy and just procedure.

There is also a lack of positive indicators for the effectiveness of the implementation of the Anti-Discrimination Act and punishing hate crime. Eight years after its adoption, it is evident that not only are the **citizens insufficiently familiar with the Act but even more importantly, judicial officials** (including judges and state attorneys), **and civil servants. Since they are not familiar with it, they are not able to apply it effectively**, including lawyers in civil lawsuits. Concerning the punishment of hate crimes, the analysis has shown that **authorities rarely qualify hate crime or hate speech as such, and even if they do, instead of criminal prosecution, they raise misdemeanour proceedings, without the basis for it in the Misdemeanour Act.** In the case of a group of citizens who use hate speech in the public (for example, in sporting events, as well as in protests), the police do not take sufficient action to identify the perpetrators, as reflected in the statement by the Zagreb Police Administration that *“due to a large number of protesters who shouted “For Homeland Ready”, the persons were not identified.*²³³ **Hate crimes and hate speech are still predominantly used against the members of the Serbian and Roma national minorities, as well as sexual and gender minorities.** Since 2016, civil society organizations of the left-liberal worldview, journalists who critically write about the increase of intolerance in society and even the ombudsperson’s office have become targets of unacceptable and sometimes hateful public statements or actions. , to a larger extent, become . It is particularly worrying that such statements, apart from “ordinary” citizens, are also used by state officials, with

231 Ministry of Justice of the Republic of Croatia (2016), *Statistical Survey for 2015*, p. 21, available at: https://pravosudje.gov.hr/UserDocImages/dokumenti/Strategije,%20oplanovi,%20izvje%C5%A1%C4%87a/Statisti%C4%8Dki_pregled_za_2015.pdf

232 Annual Report European Court of Human Rights 2016, str. 202, available at: http://www.echr.coe.int/Documents/Annual_report_2016_ENG.pdf

233 <https://www.tportal.hr/vijesti/clanak/previsje-ih-je-vikalozadom-spremni-pa-nikoga-nismo-prijavili-20160127>

almost complete absence of distance and condemnation of such speech on part of state leadership.

With regards to the **empowerment of the ombudspersons' offices, it is evident with the Ombudsperson's Office, but is absent in the case of specialised ombudspersons' offices**, both in terms of human as well as financial and material resources. This is particularly true for the Ombudsperson for Gender Equality, who receives and processes more than 50% of the grievances for discrimination. In addition, the legal framework for special ombudspersons does not guarantee them any independence from politics, and in this respect the only positive thing is that all current ombudspersons are taking their jobs very seriously, and despite the unfavourable political circumstances, they are not refraining from criticism towards the authorities. Unfortunately, the Ombudsperson for Children, Ivana Milas Klarić, paid this criticism with the loss of her position.

The rights of Serb returnees are still partly unresolved, which is inexplicable in the context of the fact that they have been in the process since 1996, when the first Decree on Returnee Rights was adopted. **The fact that a total of 21 ordinances, regulations, programmes, decisions or conclusions²³⁴ regulating their rights had been adopted until the end of 2013, suggests posing of administrative barriers, rather than a sincere desire to solve their life problems.**

The Application of the Article 22 of the Constitutional Act on the Rights of National Minorities shows serious deficiencies and a decline in the number of members of national minorities employed in state administration bodies, judicial bodies and bodies of local self-government units. Although there are more than 7% according to the last population census, the Reception Plan anticipated only a 5.5% share, and even such share has never been achieved; at the end of 2016, it was still at the level of 3.40%. The Roma citizens are in a particularly disadvantaged position, with only 0.01% of employed in these services, although they represent 0.40% of the total population.

From these conclusions, it is evident that the assessment of the civil society organizations gathered around Platform 112 dating from May 2011 was correct²³⁵,

namely, that the decision to close the negotiations with the EU was primarily a political decision, not based on an objective assessment of the quality of public policies and implementation capacities. A demand to Croatia and the EU to establish a formal independent monitoring mechanism to monitor the implementation of the undertaken commitments and their real effects on citizens made on the same occasion, proved to be founded, but was, unfortunately, declined.

Considering the aforementioned, and putting it into the context of political events in 2016, which challenged minority rights as well as the values of liberal democracy as such, it is not surprising that the dominant attitude of our stakeholders is that despite the improvements concerning “minor issues”, **generally speaking, we have stagnation or regression.**

Our stakeholders see small advances in the partial construction of institutions and legislation, yet with an omnipresent remark on the obvious deficiencies in implementation. They also give a positive assessment for the stronger linkage of civil society organizations with the Ombudsperson. With regards to the anti-discrimination policy, there was “some fervour and enthusiasm” until 2013, considering that the topic was at least present on the political agenda and that calls for tenders that enabled the implementation of anti-discrimination activities were at least made by inertia. But in their words, “*in 2016, everything collapsed*”, because “*in general, as a society, we do not deal with discrimination as a problem*”, and **this not tackling discrimination results in an increased level of prejudice and stereotypes, forming the basis for the discrimination of any Other and Different.**

234 <http://narodne-novine.nn.hr/search.aspx?upit=povratnik&naslovi=da&sortiraj=1&kategorija=1&rpp=50&qtype=3&pretraga=da>
235 <http://www.gong.hr/media/uploads/dokumenti/Clanci/20110524ZajednickomisljenjeoPoglavljuz3finalno.pdf>

Recommendations

Given such conclusions, **the key recommendation of this report is that the highest political officials in the Republic of Croatia, as well as all those who will inherit these functions in the future, should bring about and publicly expose an unambiguous political decision on whether the Republic of Croatia remains true to for the values of human rights and liberal democracy. Only under this condition, all the**

further recommendations of this report make sense. Otherwise, as citizens of this country, we have the right to be informed about the initiation of changes to the Constitution aimed at returning to a political system that deviates from the principles of secularism and pluralism. It will then be up to us to will agree or oppose it with all democratic means at our disposal. With the hope that the latter scenario will not happen, following are the recommendations resulting from this analysis:

1. In relation to the offices of the ombudspersons, the following is necessary:

- » To equalize the levels of independence of specialized ombudspersons' offices, with that of the People's Ombudsman, and to change the provisions of the relevant laws whereby the non-acceptance of the annual report is a basis for termination of duty;
- » To amend the relevant provisions of the "adoption/non-adoption" of the ombudsman's reports in the Parliament, in the way that the Parliament "acknowledges it";
- » To increase the capacities of the specialized ombudsperson's offices - in financial, human and material sense, regardless of the general prohibition of employment in the public sector (to make a Government decision similar to the decision granting additional employment to the Office of the People's Ombudsman); Continue strengthening the Office of the General Ombudsperson;
- » To increase the powers of the ombudspersons' offices and provide them with adequate human and financial capacity to initiate court proceedings on behalf of the parties, when they assess them as litigations of strategic importance;
- » To ensure consistent application and action following all recommendations of all ombudspersons' offices;
- » To ensure the election of a new Ombudsperson for children, exclusively based on their expertise and demonstrated commitment to the values of liberal democracy and pluralism;
- » To make an agreement with interested and capacitated civil society organizations regarding the coordinated approach to raising and financing strategic litigation in the field of anti-discrimination.

2. In relation to hate crime and hate speech, the following is necessary:

- » To extend the definition of hate crimes in the Criminal Code in accordance with the grounds mentioned in the criminal offense of incitement to violence and hatred, which, apart from listing certain discrimination grounds, ends with the phrase “or any other characteristics”. Alternatively, the definition should be extended to other grounds recognized in the Anti-Discrimination Act;
- » Consistently, to investigate and prosecute, ex officio, all forms of hate speech and public incitement to hatred;
- » To harmonize the Protocol on the Treatment of Hate Criminal Actions with the amendments of the Criminal Code from 2012 and improve it in line with the recommendations of the Task Force for Monitoring Hate Crime;

3. In order to ensure the effective application of the Anti-Discrimination Act, the following is necessary:

a/ *To raise capacity*

- » To provide systematic training of judicial staff and attorneys and police officers on anti-discrimination legislation and hate crime within the Judicial Academy, by regular financing of annual education cycles through the state budget; education should not be project-dependent;
- » To make anti-discrimination legislation a mandatory part of the state professional exam;
- » State and local officials and public employees should be encouraged to attend educational programmes on anti-discrimination legislation offered in the State School for Public Administration;
- » To increase the capacities of all local and county bodies prescribed by the legislation, which monitor or implement measures related to anti-discrimination or exercising citizens’ rights, and to introduce obligatory regular reporting and publication of reports; otherwise - to remove the obligations of their establishment from the law and leave the possibility of voluntary organization - the current model does not justify the costs it requires.

b/ *For the purpose of ensuring a quick and fair trial*

- » To provide adequate funding for adequate implementation of the Free Legal Aid Act, which will provide citizens of the lowest income status with equal access to justice; it is necessary to provide the fees for attorneys for the entire duration of the court proceedings;
- » To impose sanctions for judges whose resolution of anti-discrimination proceedings exceeds one year;
- » To impose an obligation that state attorneys or judges who have not completed training on the state and anti-discrimination legislation of the EU cannot participate in antidiscrimination proceedings and hate crime-related proceedings;

c/ *For the purpose of adequate monitoring of the implementation of the Law:*

- » To ensure systematic and up-to-date monitoring of discrimination procedures in all courts, in a manner that will show the grounds, area, the type of perpetrator, gender and age of victim and other information that the ombudspersons’ offices consider necessary;
- » Provide real-time information from the courts to the Ministry of Justice;
- » To publish information in the form of an open database on the website of the Ministry of Justice, that will allow further statistical processing of all data (a machine-readable format that allows reuse in accordance with the Right of Access to Information Act);
- » To ensure urgent publication of all anonymized judgments in anti-discrimination and hate crime proceedings, in a machine-readable format, in the form of a searchable database, based on the grounds and area of discrimination, the type of offender and all other parameters that the ombudspersons’ offices consider necessary; as a transitional solution, to ensure delivery of all judgments to all ombudspersons’ institutions;
- » To prevent law suits against journalists and human rights activists for insult and slander when they present facts in their work.

4. In relation to the policy framework and the monitoring of the effects of the anti-discrimination policy, the following is necessary:

- » To increase the human and financial capacities of the Office for Human Rights and Rights of National Minorities and the Office for Gender Equality by granting employment at the positions of experienced civil servants in the field of human rights protection;
- » Within these offices, to increase the operational autonomy of experienced officials, while directing the efforts of the heads of institutions to ensuring stronger sensitivity of decision-makers on the needs within the area of human rights protection and anti-discrimination;
- » To make and/or publish reports on the implementation of national plans/programmes/strategies that have expired in the past period;
- » To adopt new strategic documents in a participatory process, based on the values of liberal democracy;
- » To ensure adequate monitoring of the implementation of new strategic documents, with defining clear indicators of implementation and impact; Reports on implementation should be based on the analysis of the changes made and not on the description of the activities carried-out;
- » To ensure the possibility of monitoring financial allocations for the implementation of anti-discrimination policy in the plans and the reports on execution of the state budget and the budgets of regional and local units;
- » To make urgent calls for tenders of ESI Funds for Civil Society Organizations in the Field of Anti-Discrimination, with the provision of independent and expert commissions for their assessment;
- » To ensure the education of teaching and professional staff in schools and preschool institutions on the obligations arising from anti-discrimination legislation;
- » To remove discriminatory content on all grounds from the textbooks in official use;
- » To ensure systematic and consistent implementation of civic and health education at all levels of education in accordance with scientific knowledge.

In addition to these general recommendations, we are also making specific recommendations for improvements based on analysed discrimination grounds, with the full understanding that on every ground, there are certainly a number of other challenges to be addressed, but that were beyond the reach of this analysis:

Discrimination based on sex

- » To increase sanctions for political parties failing to respect the quota in the lists of candidates to the extent that it would make it financially burdensome;
- » To urgently ratify the *Istanbul Convention*;
- » To ensure equal access to health care in the area of protection of reproductive rights, exercise of rights to legally induced abortion and access to contraception;
- » To regulate the issue of conscientious objection of gynaecologists in public health institutions, while respecting the autonomy of each individual to act upon his/her conscience, but also with provision of legally granted services;
- » To regulate the issue of the conscientious objection of pharmacists in pharmacies within the public health system, while respecting the autonomy of each individual to act upon his/her conscience, but also with provision of legally granted services;

Discrimination based on gender identity and/or expression of sexual orientation

- » To harmonize the Gender Equality Act with the Anti-Discrimination Act by equally defining discrimination based on gender identity and/or expression;
- » To accelerate the work of the National Health Council so that transgender people can easily live in a chosen gender identity;
- » To arrange the legal framework for solving the legal and medical status of persons in gender transitions, in a way that will:
 - » allow the submission of an appeal to the opinion of the National Health Council and ensure judicial control of legality;
 - » enable the person on whom the decision is made to participate in the proceedings;
 - » set the obligation to explain the opinion of the National Health Council;
 - » provide mechanisms to protect the rights of transgender persons in the event of inaction by the National Health Council and/or public institutions
- » To make clear and transparent conditions in the Croatian Health Insurance Institute that will clearly state which part of the costs of the sex change is covered by the Croatian Health Insurance Fund (HZZO), and which is covered by the policy holder, thus indirectly allowing sex change procedures in the Republic of Croatia;
- » to allow adoption of children to same-sex couples without discrimination;
- » in cooperation with CSOs, local and regional self-government and educational institutions, to design content and provide funding for support centres for young people of alternative sexual orientation at local levels;

Discrimination based on ethnic identity/race/national affiliation

- » To ensure a proper level of informing of members of national minorities on the rights arising from the Constitutional Law on the Rights of National Minorities, with special emphasis on Art. 22 and obligation to emphasize information on nationality in case of referral to the Law in employment applications;
- » To impose sanctions for non-compliance with the provisions of Art. 22 following the model of sanctions relating to the employment of persons with disabilities and Croatian veterans and members of their families;
- » To impose the obligation on national councils of national minorities at the state level that a certain percentage of their own budget must be invested in raising the capacities of the councils at local and regional levels regarding the rights of national minorities and specific anti-discrimination legislation;
- » To amend the Act on the Use of Language and Script of National Minorities in accordance with the decision of the Constitutional Court and apply it consistently throughout the territory of the Republic of Croatia;
- » To dismiss segregated Roma classes and ghettoization of Roma minority in settlements;
- » To enable Roma minority education by model C in both Romani languages;
- » To provide Croatian language courses for refugees, immigrants and asylum seekers for the purpose of their quick and successful integration and to enable education and employment;
- » To urgently resolve all remaining cases of returnees' care.

Discrimination based on disability

- » To undertake urgent measures to accelerate the deinstitutionalisation process, which would eliminate the discrimination of a large number of people with disabilities by their segregation into social welfare institutions;
- » At the state, regional and local level, ensure and show effective examples of sanctions for non-compliance with accessibility regulations for people with disabilities;
- » To impose sanctions for non-compliance with the provisions of the Ordinance on ensuring accessibility of buildings for persons with disabilities and reduced mobility;

- » To systematically resolve the issue of assistants in teaching and personal assistants for persons with disabilities in a way that the realization of the fundamental right does not depend on the project resources and the existence and capacities of civil society associations;
- » In order to encourage people with disabilities to enter into the labour market, ensure that they do not lose social welfare rights due to earning income on the labour market;
- » Improve and continue to implement educational programs for people with disabilities in line with the needs of the labour market.

Discrimination based on health status

- » To prevent simultaneous performing of doctors' activities in the public health system and in private offices/clinics;
- » To prevent the administrative limitation of patients' rights based on professional medical judgment;
- » Introduce the highest level of drug efficacy as the basic criterion for prescribing therapy for rare and/or extremely lethal diseases;
- » Develop outpatient services and rehabilitation services as well as mobile mental health teams;
- » Educate health care professionals at all levels on providing health care services to persons with various disabilities;
- » Carry out a research on health-based discrimination, including a comprehensive policy analysis, as well as a field research;
- » Based on the research, define and begin to implement anti-discrimination measures;

Discrimination based on age

- » Carry out age-related discrimination research, including a comprehensive policy analysis, as well as a field research on specific risk subgroups: older people, children, and young people. In the new national programs for children, young people and the elderly, include the measures to combat discrimination of these groups on all grounds and on the basis of the conducted research.