

*— Report on
implementation
of the Anti-
discrimination
Act in 2011*



[Centar za]mirovne[studije]

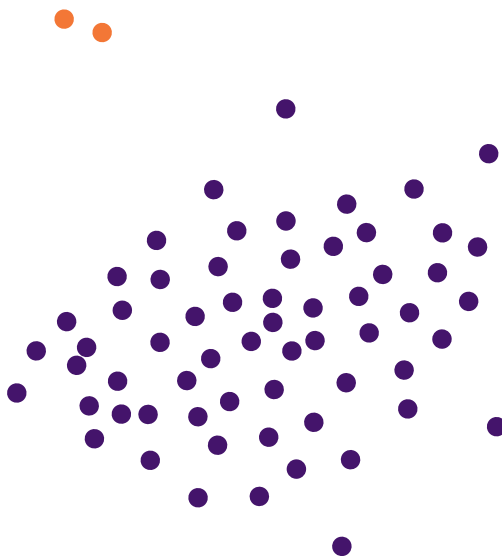
**CENTRE FOR PEACE STUDIES
ZAGREB, APRIL 2012**

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Centre for Peace Studies /CMS - original acronym in Croatian/ is a non-profit association of citizens whose mission is promoting non-violence, human rights, and social change through different approaches that include research, education, activism, and work on public policies.

Centre for Peace Studies grew out of various direct forms of peace-building in Western Slavonia (such as The Voluntary Project Pakrac, 1993 – 1997).

Centre for Peace Studies deems the following activities to be fundamentally essential for reducing unjust distribution of power within the society, and for the active transformation of conflicts:

- Education for peace, non-violence, and on human rights
- Advocating peace education within the system of formal education
- Specialised education for implementing the standards for the protection of human rights, and for the implementation of anti-discriminatory norms
- Transforming traditional concepts of security policies into concepts of the individual’s security
- Fight against xenophobia and racism, advocating global human solidarity through the affirmation of asylum rights, as well as the support the integration of foreigners based on the principles of interculturalism
- Advocating intercultural dialogue, and re-examining the traditional concepts of dominant identities
- Individual work with victims of human-rights violations, and helping them to create a normal life as fulfilled members of our society
- Reducing social-economic injustice and exclusions of certain groups within society

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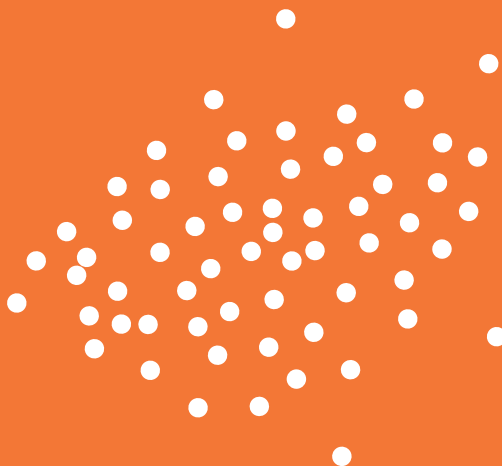
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—1.

Introduction

AUTHOR — Sara Lalić



The long expected Anti-discrimination Act¹ (ADA) was, even before it was passed, an object of lively discussions between various social actors. After it came into force in 2009, it became evident that much more than the legislative arrangements of this Act would be needed to assure the quality of implementation of the whole anti-discrimination policy in the Republic of Croatia, and that the devotion of various social actors will be necessary for the creation and implementation of this policy.

Centre for Peace Studies has recognized the significance of the work on the anti-discrimination policy and has tried to contribute to its development in the recent years through various activities. The report that you are about to read is one of those activities, and it was developed as a part of a project *Stronger civil society for efficient implementation and monitoring of anti-discrimination policies in Croatia*, financed under the IPA component I², call for project proposals under the name *Enhancing the capacities / roles of the CSOs in monitoring of the implementation of the EU Acquis in field of the comprehensive anti-discrimination strategy*, financed by the European Union, that is being implemented by Centre for Peace Studies in co-operation with the Faculty of Law of the University of Zagreb and Croatian Society for European Law (CROSEL).

One of the activities that the Center for Peace Studies is implementing as a part of that project and other activities in the field of combating discrimination is monitoring of anti-discrimination policy implementation by the state institutions and civil society organizations. We presume that the creation and the quality of implementation of that policy is not possible if we do not know enough about the phenomenon of discrimination in Croatian society and if we are not aware of the ways in which various actors fight against the occurrence of discrimination. Therefore, only knowledge about the current situation can help us with our future actions in this field.

In the report about the implementation of the Anti-discrimination Act in 2009 that was published in *How to Combat Discrimination - Report on Monitoring the Implementation of the Anti-Discrimination Act in Croatia in 2009 and European Court of Human Rights Case-Law*³ we tried to make the first step towards mapping the activities implemented by the civil society organizations, ombudspersons' institutions and the courts

in the framework of anti-discrimination policy, and to analyze the structure of the discrimination cases received by the organizations and the institutions. This Report is the continuation of these efforts and it gives the insight into the ways in which the implementation of the anti-discrimination policy has changed. By comparing these two reports it is possible to determine whether any progress has been made in this field.

However, it is clear that the data from this Report do not encompass the problem of the occurrence of discrimination in the Croatian society in its entirety. It is not visible from the results how discrimination is spread and how many cases of discrimination actually exist in the Croatian society. Such information is impossible to get, as not all of the discrimination cases are reported to the civil society organizations or the state institutions competent for combating discrimination. Also, not all of the organizations are covered by this research, so it is not possible to determine the complete number of the discrimination cases received by the CSOs. Therefore, this research is not aiming at quantitatively covering all the occurrences of discrimination that happened in 2011, but instead to cover only those cases that the actors recognized as the cases of discrimination under the ADA. However, we believe that this report clearly marks the main tendencies that can be used as a basis for developing anti-discrimination policies. This research is aimed primarily at the implementation of the Anti-discrimination Act. However, the anti-discrimination policy also includes other parts of the legislation out of which some, but not all, are mentioned here. For example, some of the labour cases that appear before the courts under the Labour Act, actually have discrimination as its prior issue. Whereas, the family violence cases are not brought to court under the Anti-discrimination Act, but they definitely do result from a generally unequal position that women have compared to men (the official statistics and the researches have shown that in the cases of family violence, women are prevalently being the ones who are victimized by this form of violence). In this sense, family violence could be seen as discriminatory, and is as such defined by certain institutions and international and domestic legal mechanisms for human rights protection. However, as family violence is not an object of ADA, it is not included in this report.

Except of the before mentioned limitations of this research, there are also some other aspects that are not covered here. These are, for example, the media coverage on discrimination and the reporting of the media that might be discriminatory or might encourage discriminating.

However, on the basis of media monitoring (CPS has been subscribed to the media coverage of the term "discrimination" and the related terms in 2011), it

¹ Anti-discrimination Act, NN 85/08
² Instrument for Preaccession Assistance
³ Novak, J. (ed.), *How to Combat Discrimination - Report on Monitoring the Implementation of the Anti-Discrimination Act in Croatia in 2009 and European Court of Human Rights Case-Law*, Centre for Peace Studies, Zagreb, 2010





seems the media have started to report on discrimination as an occurrence more frequently. It is noticeable, however, that a large part of these reports are focused on certain public events - organized by the civil society organizations dealing with combating discrimination, or reported the civil society organizations' reactions on the instance of discrimination. One of these examples is certainly the case in which a series of articles by the priest from Kastav, Mr. Franjo Jurčević, were published on the web site www.zupnik.blog.hr and where the persons of LGBT orientation were called sick, perverted, miserable, shameless, persons with sick orientation, abnormal and deviant. Centre for Peace Studies and partner organizations (Domino – Queer Zagreb, Zagreb Pride and Lesbian Organization Rijeka LORI) filed an associational action, according to the ADA, that resulted in a ruling on the side of the plaintiffs. This case and the civil law suits by the aforementioned CSOs against the executive president of the football club Dinamo (Zagreb) Mr. Zdravko Mamić and the president of the Croatian Football Association Mr. Vlatko Marković received a lot of attention in the media, which has, in turn, made the problem of discrimination more pronounced in the public sphere.

However, there are a few notable examples of quality research journalism on the topic of discrimination. One of such examples is definitely an article published on November 19th, 2011, in the daily newspapers *Jutarnji list*, with a title “Discrimination in Croatia: Merisha? I am sorry, the apartment is rented!” by Mrs. Barbara Matejčić. The author was looking for an apartment to rent with two more young women, a Roma and a Muslim. They talked to 100 landlords and everyone wanted to rent an apartment to the journalist (Croatian woman), while most of them did not want to rent it to Merisha and Dilfa. We hope, that in time, this positive example of investigatory journalism will occur more frequently, and that the media will become more responsible when reporting on vulnerable social groups and less keen to report sensationalistic news in a way that enforces stereotypes about certain social groups which ultimately leads to discrimination.

In order to show the most relevant cases of discriminatory behavior towards certain social groups in 2011, no matter if they were prosecuted under the ADA or whether they were reported to us by the questioned entities, in addition to the analysis of implementation of the ADA by the CSOs, ombudsman institutions and the courts, we also analyzed two cases that we hold to be the best illustrations of society's and institutions' attitudes towards certain social groups, and represent discrimination caused by long-existing prejudices and stereotypes against which we have to fight with legal but also extra-legal measures.

We would like to thank everyone that participated in this research. First of all, we would like to thank to

Ms. Suzana Kunac for developing the design of this research and who, by doing this, has greatly contributed to the realization of this Report. In addition, we are thankful to the civil society organizations that shared the information about their work in the field of combating discrimination with us by completing the questionnaire or the protocol which we sent them. We would also like to give our thanks to the Office of the Ombudsman, Office of the Ombudswoman for Gender Equality, Office of the Ombudswoman for Persons with Disabilities and Office of the Ombudswoman for Children, and the Ministry of Justice for the information they delivered.

We hope that this Report will contribute to raising citizens' awareness about the problem of discrimination in the society, and that the data from this report will be a useful source of information and motivation for some other researches, and that it will serve to the creators and those who implement the anti-discrimination policies – both state institutions and civil society organizations – as a guide to implementation of these policies and the development of some new, more successful, policies.

—2.

Legislative framework⁴

⁴ This chapter has been written as a shorter version of texts from the next two publications: Šimonović Einwalter, T. (ed.), *A Guide to the Anti-discrimination Act*, Human Rights Office of the Government of Croatia, Zagreb, 2009 and Novak, J. (ed.), *How to Combat Discrimination - Report on Monitoring the Implementation of the Anti-Discrimination Act in Croatia in 2009 and European Court of Human Rights Case-Law*, Centre for Peace Studies, Zagreb, 2010. For more detailed information about anti-discrimination legislation in Croatia, please consult these two publications.

2.1

Sources of Anti-discrimination law until the Anti-discrimination Act came into force

Even prior to the passing of the Anti-discrimination Act, the Croatian legal system contained legal provisions on the prohibition and sanctioning of discrimination. The provisions can be divided into national legal provisions and provisions arising from the international agreements that are a part of the internal legal order of the Republic of Croatia and are above the law in terms of legal effects.

- A) The anti-discrimination provisions are included in the following laws in the Republic of Croatia:
 - Constitutional Act on the Rights of National Minorities
 - Labour Act
 - Gender Equality Act
 - Same-Sex Communities Act
 - Civil Service Act
 - Criminal Code

- B) The international agreements in force in the Republic of Croatia that include anti-discrimination provisions:

| UN Documents | Council of Europe Documents | European Law |
|--|--|---|
| <ul style="list-style-type: none"> – The Universal Declaration of Human Rights – International Covenant on Civil and Political Rights – International Covenant on Economic, Social, and Cultural Rights – Convention on the Elimination of All Forms of Racial Discrimination – Convention Against Torture and other Cruel Inhuman or Degrading Treatment or Punishment – Convention on the Rights of the Child – Convention on the Rights of Persons with Disabilities – International Labour Organization Equal Remuneration Convention (no. 100) on equal remuneration for men and women workers for work of equal value – International Labour Organization Convention (no. 111) on Employment and Occupation | <ul style="list-style-type: none"> – Convention for the Protection of Human Rights and Fundamental Freedoms (ETS no.5) – European Charter for Regional or Minority Languages (ETS no.148) – Framework Convention for the Protection of National Minorities (ETS no.157)/ Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine. (ETS No. 164) | <ul style="list-style-type: none"> – Council Directive 2000/43/EC of 29 June, 2000 on applying the principle of equal treatment regardless of racial or ethnic origin – Council Directive 2000/78/EC of November 27th, 2000 on the general framework for equal employment and occupation treatment – refers to age, disability, sexual orientation, and religion |

Next to the before mentioned European Law sources, it is necessary to closely follow the practice of the European Court of Justice in Luxembourg in order to entirely harmonize our court practice, or in other words, our interpretation of certain concepts and recognition of discrimination has to be in accordance with the *Acquis communautaire*.

2.2

The Anti-discrimination Act as an innovation

The Anti-discrimination Act introduces several important novelties into the domestic anti-discrimination law in terms of subject-matter and procedural law. Primarily, the ADA contains a much wider scope of discrimination grounds than the European positive

law⁵. It contains as much as 17 grounds of discrimination (distinguishing criteria): *race or ethnic affiliation or color, gender, language, religion, political or other belief, national or social origin, property, trade union membership, education, social status, marital or family status, age, health condition, disability, genetic heritage, gender identity and expression and sexual orientation*. Despite a very extensive list of grounds, a large number of CSO experts and other partakers believe that the list of grounds should be left open, in order for the courts to be free to identify, through its

5 The EU directives on anti-discrimination prohibit discrimination on 6 grounds: gender (including gender identity and expression), racial or ethnic origin, disability, sexual orientation, religious belief and age.

practices, those grounds of discrimination that were not recognized at the time when the ADA was tailored.

Regulatory areas in which Croatian courts will have to harmonize with the decisions of the European Court of Justice are labour relations according to the discrimination on the grounds of race and ethnic affiliation, gender, sexual orientation, age, disability and religious belief; race or ethnic affiliation and gender as regards social security and market regulations; race or ethnic affiliation as regards education.

In all other instances, except for the regulatory areas in which Croatian courts are under the obligation to render decisions in accordance with the decisions of the European Court of Justice only as regards market services (discrimination on the grounds of race/ethnicity affiliation and gender in the scope of health care, sports, housing and public information), the ADA will have legitimacy over it, independently from the European Court of Justice. Forms of discrimination recognized by the ADA are: **direct and indirect discrimination, sexual harassment, harassment, failure to make reasonable adjustments, encouragement to discriminate and segregation.** The ADA further extends the European directives including the concepts: **multiple discrimination** and discrimination **based on association or assumption.** It is important to note that Croatian ADA prescribes two additional instruments supporting the prohibition of discrimination: **victimization** and **severe forms of discrimination.** The protection from victimization is a guarantee that includes everyone and not just direct victims of discrimination. For instance, it protects persons who have provided the victim with some form of support and those who have advised the victim on his/her rights and possible ways of protection; **this category is particularly important for protection of the rights of whistle blowers and civil rights activists.** The severe forms of discrimination include: multiple discrimination, repeated discrimination and continued discrimination.

In the sense of procedural law and implementation of anti-discrimination policy, the ADA introduces the following novelties in relation to other laws that contain anti-discrimination provisions: it introduces legal action and associational action in cases of special discrimination, the special provisions on the burden of proof (the shift of the burden of proof on the defendant under certain conditions⁶), the legal instance of the

intervener, elaborates the misdemeanor provisions aiming to sanction some of the actions in conflict with the provisions of this Act and the central body responsible for the suppression of discrimination is also introduced - the Office of the Ombudsman. The novelties concerning judicial practice are the broad-scale procedural possibilities for the participation of civil society organizations in anti-discrimination judicial proceedings (either as interveners or as plaintiffs in the associational action), as well as the provisions on the burden of proof. Associational action is the most far-reaching example of public-interest court action in Croatian law so far.

THE TYPES OF INDIVIDUAL COURT PROCEEDINGS FOR PROTECTION OF THE RIGHT TO EQUAL TREATMENT ARE:

A) Incidental anti-discrimination protection: filing a lawsuit seeking the protection of an individual right (e.g. a right from the labour relations or civil obligations), claiming that the right has been violated on account of discrimination.

B) Special individual anti-discrimination action: filing a lawsuit seeking that the instance of discrimination be decided on as the main issue.

In addition to individual anti-discrimination court proceedings where the civil society organizations can participate as interveners (under certain conditions), the ADA introduces the collective anti-discrimination court proceedings via the associational action for protection against discrimination. The specificity of associational action lies in the possibility that judicial proceedings can be initiated by persons and organizations as the plaintiff even though they do not themselves claim to be a victim of the violation of right, but bring the claim in the name of the protection of the right of a group or class of persons not identified by name. The instigators of the associational action can only be “associations, bodies, institutions or other organizations”, set up in accordance 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. Considering that in this type of joint legal claims, the legal proceedings are initiated by the organizations or bodies that have the status of a party, they do not depend on the consent of potential victims to file the suit. However, the plaintiffs need to prove to a level of probability that the de-

6 The provision on the shift of the burden of proof – the plaintiff claiming to be a victim of discrimination needs to prove to a level of probability and not certainty that he/she was discriminated against. If that condition is fulfilled, the defendant, in turn, has to provide sufficient evidence that no discrimination took place. If that does not occur, the legal body conducting the proceedings is obligated

to consider it as the principle of equal treatment has been violated. If it is not proven that the grounds of a particular decision to put someone in a less favorable position were other than discriminatory, it will have to be assumed in the ruling that the discrimination did in fact took place.

defendant's actions could have discriminated against a greater number of persons most of which belong to a specific group which can be associated with one of the distinctive characteristics. Claims that can be brought in associational anti-discrimination action are mostly the same as the ones in individual action, except the claim for damages. The county courts have jurisdiction over associational action claims, while as far as the territorial jurisdiction is concerned, the competent judicial body is the court that has jurisdiction over the territory where the act of discrimination took place or the Zagreb County Court. On the matter of other issues, such as the pronouncement of interim measures, eliminating the suspensive effect of appeals, burden of proof, audit etc., the same rules apply as for the individual anti-discrimination action.

The scope of the ADA is determined by the Article 8, in which it states that the Act shall apply to all state bodies, to all legal and natural persons and to all areas of social life. Taking into account its wide scope and width, it is open to various interpretations.

The Article 9 of the Act determines exceptions to the enforcement of the ADA. The greatest number of exceptions has been taken over from EU anti-discrimination directives, and those exceptions are:

- Genuine professional qualification exception: the purpose of this exception is to allow employers to give precedence to members of certain social groups if their belonging to that group is necessary for performing a particular type of work.
- Public health and safety exception: when such a conduct is set forth by law with the aim to preserve health and to prevent criminal acts and misdemeanors, and when the means used are appropriate and necessary for achieving that aim.
- Exception aimed at the protection of the ethos of religious communities: the primary aim of this exception is to allow religious organizations and related associations to employ or accept members who share their beliefs.
- Exceptions concerning insurance services: this exception is allowed to the providers of insurance services when, in the course of determining certain types of risks such as susceptibility to illness, danger from traffic accidents or death, they consider statistical data concerning the members of a certain gender or age group.
- Exceptions concerning treatment on the basis of age in labour relations: the employer is allowed to determine the minimum age, professional experience or level of education as a criteria for obtaining any benefits in a labour relation, including employment as such.
- Measures of positive action: those measures, including those based on one of the prohibited criteria, are aimed at removing the obstacles to equal participation for members of groups that have been or still are in a subordinate position in the society.

Considering the scope of the ADA legislative basis, it would be advised that the courts' decisions are rendered in accordance with the case law of the European Court of Human Rights or the European Court of Justice.

Apart from the before mentioned exceptions taken over from the European law, there are a few exceptions specific to the ADA:

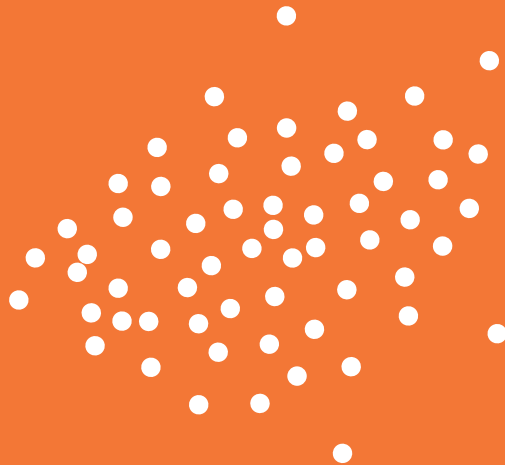
- granting privileges to pregnant women, children, young people, older persons, persons with caring responsibilities who regularly fulfill their caring duties, and disabled persons in order to protect them, when such a conduct is based on provisions of laws, subordinate regulations, programs and measures;
- on the grounds of nationality pursuant to separate regulations;
- ensuring that only the citizens of the Republic of Croatia can fulfill certain positions of delicate state matters;
- placing in a less favorable position when regulating the rights and obligations arising from family relations when it is stipulated by law, particularly with the aim to protect the rights and interests of children, which must be justified by a legitimate aim such as protection of public morality or favoring marriage in line with the Family Act provisions.

Considering the wide scope of exceptions to the prohibition of discrimination, some of which can be considered absolute, the civil society organizations are asking that the before mentioned exceptions be limited only to specifically justified situations, and for some exceptions to be annulled.

—3.

Research methodology

AUTHOR — Sara Lalić





The methodology used in this report was created for the purpose of a study on the implementation of the Anti-Discrimination Act during the year 2009, which was published in 2010 by the Centre for Peace Studies under the title “*How to Combat Discrimination: Report on Monitoring the implementation of the Anti-Discrimination Act in Croatia in 2009 and European Court of Human Rights Case-Law*” and was further modified for the needs of this year’s report.⁷

The goal of the research is to assess the level to which the Anti-Discrimination Act in Croatia has been successfully implemented and to map the activities of institutions and civil society organizations in order to raise the quality of the existing and future Anti-Discrimination Policies, and to facilitate strengthening the capacity of various civil society organizations as active participants in the anti-discrimination framework.

THE RESEARCH HAS THESE SPECIFIC GOALS:

- Establishing the number and structure of the discrimination cases reported to various civil society organizations depending on the area of social life⁸ and the grounds of discrimination
- Determining the type of activities of civil society organizations operating in the anti-discrimination field
- Establishing the number and structure of discrimination complaints reported to the Office of the Ombudsman, the Office of the Ombudswoman for Gender Equality, the Office of the Ombudswoman for Persons with Disabilities and the Office of the Ombudswoman for Children

- Determining the working model of the Office of the Ombudsman, the Office of the Ombudswoman for Gender Equality, the Office of the Ombudswoman for Persons with Disabilities and the Office of the Ombudswoman for Children with a special focus on their internal cooperation and cooperation with civil society organizations, as well as with other state bodies
- Establishing the structure and number of cases that appeared before Croatian courts processed in accordance with the ADA

Due to the aforementioned specific goals, this research had several target groups, that is, several groups were a focus of this study: the civil society organizations, the Office of the Ombudsman and the special Offices of the Ombudspersons, as well as the Ministry of Justice which delivered a report on the cases processed in accordance with the Anti-discrimination Act in Croatian courts.

THE RESEARCH INSTRUMENTS INCLUDED:

- A questionnaire on Civil Society Organizations’ activities in the anti-discrimination field and the discrimination cases processed by CSOs in 2011
- A protocol form for monitoring individual discrimination cases in 2011 with CSOs’ recommendations in how to improve the implementation of the ADA and how to ensure more appropriate responses from the competent institutions and the CSOs acting within the anti-discrimination framework
- A questionnaire on discrimination complaints reported to the Office of the Ombudsman, the Office of the Ombudswoman for Gender Equality, the Office of the Ombudswoman for Persons with Disabilities and the Office of the Ombudswoman for Children in 2011
- Reports and statistics from the Ministry of Justice on court cases processed according to the ADA in 2011

⁷ Research methodology for the publication *How to Combat Discrimination - Report on Monitoring the Implementation of the Anti-Discrimination Act in Croatia in 2009 and European Court of Human Rights Case-Law* was designed by Suzana Kunac. For the purposes of this research, it was slightly modified by Sara Lalić, the author of this report.

⁸ The areas of social life which the Anti-Discrimination Act especially addresses are:

1. work and working conditions; access to self-employment and occupation, including selection criteria, recruiting and promotion conditions; access to all types of vocational guidance, vocational training, professional improvement and retraining;
2. education, science and sports;
3. social security, including social welfare, pension and health insurance and unemployment insurance;
4. health protection;
5. judiciary and administration;
6. housing;
7. public informing and the media;
8. access to goods and services and their providing;
9. membership and activities in trade unions, civil society organizations, political parties or any other organizations;
10. access to participation in the cultural and artistic creation.

The Questionnaire on Civil Society Organizations’ activities in the anti-discrimination field and the discrimination cases processed by CSOs in 2011 was targeted at a wide group of CSOs which were put into a sample of 64 organizations that received the questionnaire via e-mail. **The organizations for the survey were selected according to the following four criteria:**

1. Organizations which cooperated on an IPA project *Stronger civil society for efficient implementation and monitoring of anti-discrimination policies in Croatia*, led by the Centre for Peace Studies in cooperation with the Faculty of Law of the University of Zagreb and Croatian Society for European Law (CROSEL)
2. Organizations which cooperated with the CPS or participated in activities related to combating discrimination organized by the CPS, and which do not fall into the first category of organizations

3. Organizations which participated in the 2010 research and other organizations recognized for their work within the anti-discrimination field that do not belong to either the first or the second category
4. Organizations which are registered for providing legal aid, and do not fall into any of the previously mentioned categories.

Twenty organizations responded to the questionnaire, one institution (Human Rights Center) and one coalition of organizations (Centre for LGBT Equality, which consists of Zagreb Pride, LORI and Domino - Queer Zagreb). **The Questionnaire on Civil Society Organizations' activities in the anti-discrimination field and the discrimination cases processed by CSOs in 2011** was completed by: Amnesty International Croatia, BaBe! - Be Active. Be Emancipated., Centre for LGBT Equality (Zagreb Pride, LORI and Domino - Queer Zagreb), Centre for Peace, Non-violence and Human Rights Osijek, CESI – Centre for Education, Counseling and Research, Centre for Civil Initiatives Poreč, Human Rights Center, Centre for Peace Studies, Documenta - Centre for Dealing with the Past, Croatian Association of Deaf-blind Persons “Dodir”, GONG, Civic Committee for Human Rights, Croatian Association of Treated and Ill with Hepatitis, Human Rights House, Center for Human Rights and Civil Liberties Protection – HOMO, Croatian Law Centre, Shine – Association for Social Affirmation of People with Mental Disabilities, Association “Hoću kući” (“I Want to go Home”), Women’s Association Vukovar, The Association for Promotion of Equal Opportunities (APEO), Women’s Association “Izvor” (Source).

The protocol form for monitoring individual discrimination cases with CSOs' recommendations in 2011 was sent via e-mail to ten associations that responded to the questionnaire. These associations were chosen by two criteria: (1) the number of complaints they received during 2011, (2) by taking into account the types of discrimination and the target groups they work with in battling discrimination. The protocol was answered by seven organizations: Shine – Association for Social Affirmation of People with Mental Disabilities, BaBe! - Be Active. Be Emancipated., Centre for LGBT Equality (Zagreb Pride, LORI and Domino - Queer Zagreb), Centre for Peace Studies, The Association for Promotion of Equal Opportunities (APEO), Women’s Association “Izvor” (Source) and the Association for Self-representation. The goal of these protocols was not only to collect the quantitative data on discrimination cases received by the CSOs for the needs of this report, but also to include sample cases on the violations of the right to be free from discrimination. These examples are incorporated in order to bring the issues that victims of discrimination have to deal with closer to the readers of this report. The associations delivered 19 of such cases in these protocols.

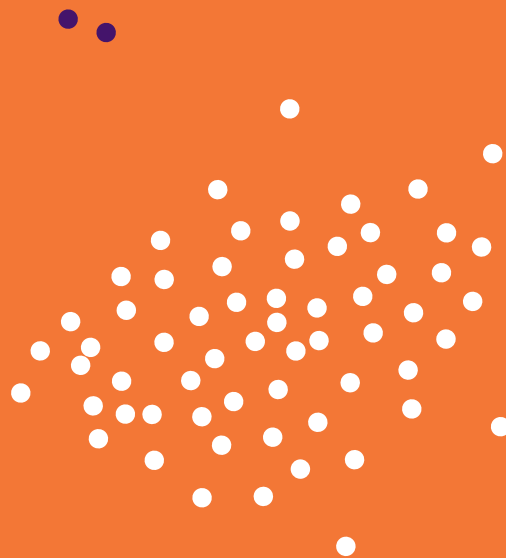
The questionnaires on the Anti-discrimination Act for the offices of the Ombudspersons were sent via e-mail to the Office of the Ombudsman (the central body responsible for anti-discrimination defined in the ADA), the Office of the Ombudswoman for Gender Equality, the Office of the Ombudswoman for Persons with Disabilities and the Office of the Ombudswoman for Children, all of which deal with specific types of discrimination outlined in the ADA. All four offices responded.

The Ministry of Justice responded in March 2012, which constituted a delay according to the Law on the Right of Access to Information. In their response they delivered tables, the content of which was **the court record on the criminal, misdemeanor and civil anti-discrimination court cases.**

—4.

Study results collected from the civil society organizations

AUTHOR — Sara Lalić



As mentioned in the research methodology section, out of 64 organizations that received the Questionnaire on Civil Society Organizations' activities in the anti-discrimination field and the discrimination cases processed by CSOs - 20 organizations, one institution (Human Rights Centre) and one coalition of organizations (Centre for LGBT Equality, which consists of Zagreb Pride, LORI and Domino - Queer Zagreb) responded to it. So, we are dealing here with the data collected from more than a third of the organizations that were invited to take part in the survey, that is, 35% organizations to which the questionnaire was sent. The quantitative data presented in this report refers to these 22 before mentioned CSOs. Not to further complicate things, the term *the civil society organization* (CSO) shall be used when referring to these organizations.

Regarding the regional distribution of organizations that participated in the study, more than a half of them are located in Zagreb, as many as 15 out of 22. Also, most of these 22 organizations operate on a national level, or in other words, they cover multiple areas of Croatia, as 12 of these organizations specifically noted. The organizations operating on a local level were also included in the research and they are enumerated per county as following: Istria County (2 organizations), Lika-Senj County (one organization), Primorje-Gorski Kotar County (one organization), Osijek-Baranja County (one organization), Split-Dalmatia County (2 organizations) and Vukovar-Srijem County (2 organizations). The territorial distribution of these organizations does not represent a sample that could enable us to draw a conclusion on the structure of geographical distribution of discrimination. However, it is clearly visible that the basic regions of Croatia are represented, and this can provide some insight into local state of affairs.

4.1

Activities of the civil society organizations in the field of combating discrimination

According to the questionnaires completed by the 22 organizations, activities of these organizations in the field of combating discrimination are diverse. Considering the nature of the organizations sampled for this research and that the sole act of responding to this questionnaire shows interest and a wish to contribute on the subject matter, it is not surprising that only one organization stated that it was in no way actively engaged in furthering the implementation of anti-discrimination policies. The questionnaire was aimed at discovering what types of activities of CSOs are most common and which are less common in order to detect the fields of action in which additional strengthening of the organizations' capacity for promotion,

implementation and monitoring of the efficiency of ADA implementation. Presence of the following type of activities in the CSOs' work was researched:

- A) Processing individual discrimination cases and providing citizens with free legal aid
- B) Referring reported cases to other relevant institutions (the special ombudspersons, Ombudsman)
- C) Participation in solving reported cases as an intervener on the side of the plaintiff
- D) Filing joint/associational action for protection against discrimination
- E) Monitoring implementation of anti-discrimination policies (the work of the Ombudsman, courts, organisation, etc.)
- F) Working on increasing citizen awareness about the existence of Anti-discrimination Act and bodies in charge of implementation of anti-discrimination policies

Additional options given in the questionnaire were: *We do not undertake any concrete activities connected to implementation of anti-discrimination policy and we work on some other activities.*

Most of the CSOs, all together **15 of them, stated that they referred the reported cases to the competent bodies** (to the offices of the ombudspersons), which can be explained through several not mutually exclusive factors; firstly, this information leads us to the conclusion that the organizations recognize the Office of the Ombudsman and special ombudspersons as institutions which have the authority and the legal capacities, as well as the influence in dealing with the discrimination complaints in an adequate manner. Also, this result, and also the information that only 10 out of 22 respondent organizations process individual discrimination cases and provide citizens with free legal aid shows that the most of CSOs don't have sufficient human and financial resources for providing permanent legal aid, primary (that can be given directly) or secondary through engaging attorneys.⁹

A large number of organizations participating in the study also deal with **monitoring the implementation of the Anti-Discrimination Act, overall 14 of the 22 organizations**. The same number of organizations also stated that they are engaged in **increasing citizen awareness of the Anti-discrimination Act and of**

⁹ Article 4 Paragraph 2 of Free Legal Aid Act: „Primary legal aid includes: legal advice, writing petitions in front of public bodies, representation in processes in front of public bodies, legal aid in peaceful extra-judicial settlement of disputes.“ Article 4 Paragraph 3 of Free Legal Aid Act: „Secondary legal aid includes: Legal advice, writing petitions in the court processes, representation in court processes, legal aid in peaceful settlement of disputes.“





the existence of the competent bodies. It is obvious then, that these organizations consider crucial to encourage the utilization of this relatively new anti-discrimination policy framework and its mechanisms, combined with the monitoring of the ADA's implementation during these first years since the passing of the Act.

A smaller number of organizations, in all 10 of 22 that responded to the question at hand, **process individual discrimination complaints and provide citizens with free legal aid.** Few organizations have the capacity to provide this sort of services to the victims of discrimination, which is largely the fault of an inadequacy of the Free Legal Aid Act.

The smallest number of organizations reported experience in the following two types of activities: only three organizations stated that they had experience as interveners for the plaintiff in civil court cases, while only two had experience with anti-discrimination associational action. It is easy to come to a conclusion that the organizations do not use these relatively new judicial mechanisms defined in the ADA often enough, and that extra effort should be put in educating and encouraging organizations to utilize these mechanisms.

Except of the activities that were provided as available options in the questionnaire, the CSOs have reported to be engaged in other activities in the field of combating discrimination that we can see as a part of the following categories:

A) Education of key actors of implementation of anti-discrimination policy: two organizations have engaged in educational activities of CSOs, judges, lawyers, police officials, officials in ombudsman institutions and others in 2011. These activities have been especially important in the first few years of the Anti-discrimination Act implementation. Although discrimination has been a subject framework of various state institutions before the ADA came into force and the anti-discrimination provisions were already a part of the Croatian legislation system, it was still necessary to educate officials on the Act itself in order for it to be adequately implemented. Civil society organizations have played an important role in that by giving support to the state institutions in enhancing their expert capacities for the implementation of anti-discrimination policies.

B) Education of high school, university, and higher grades of primary school students: two organizations have been carrying out educational activities on recognizing discrimination and extra-judicial and judicial mechanisms available for combating discriminating. One of the organizations tailored an anti-discrimination education program especially for the students of Osijek-Baranja County.

C) Monitoring of discriminatory practices of judicial and/or administrative bodies regarding exercise of fundamental human and/or civil rights: The total of three organizations respondents reported that they regularly monitor discriminatory practices, if they are related to the exercise of fundamental rights that fall within the organizations' subjects' framework. For example, Documenta – Centre for Dealing with the Past monitors war crime trials as their primary activity, while simultaneously monitoring treatment and practices of judicial and administrative bodies on the matter of the equality of right to access to judiciary and right to fair trial, concerning ethnic affiliation. Amnesty International Croatia had been monitoring the work of state institutions before and during the Pride March of LGBT persons Zagreb, while GONG monitored the exercise of voting rights of persons with disabilities without legal capacity.

D) Public campaigns directed at raising public awareness on discrimination and models of combating discrimination: Three of the organizations have launched some kind of public campaign in 2011. Centre for LGBT Equality and Centre for Peace Studies have organized a campaign named "Because we care!" (see: <http://www.youtube.com/watch?v=Cq4TdRttniU>), and Amnesty International Croatia organized various cultural events through which they have promoted the ways of combating discrimination. Additionally, Amnesty International Croatia has been monitoring the implementation of the European Court of Human Rights ruling on the case of *Oršuš v Croatia*, a paramount case for the Croatian anti-discrimination policy implementation dealing with the discrimination of Roma in the area education.

From the analysis of the data on the activities of civil society organizations in the field of combating discrimination, it is obvious that the CSOs are engaged in diverse activities that contribute to the implementation of anti-discrimination policy. However, it is necessary to enhance organizations' capacities to engage more actively as interveners on the side of plaintiff in court cases under the Anti-discrimination Act and to file more associational actions before Croatian courts. Additionally, it is necessary to change the Free Legal Aid Act and the system of its implementation in order to provide citizens with an equal access to judiciary and right to free legal aid in the cases of discrimination.

| CSO | WE PROCESS INDIVIDUAL DISCRIMINATION CASES AND PROVIDE CITIZENS WITH FREE LEGAL AID | WE REFER REPORTED CASES TO OTHER RELEVANT INSTITUTIONS (THE SPECIAL OMBUDSPERSONS, OMBUDSMAN) | WE INTERVENE IN REPORTED CASES ON BEHALF OF THE PLAINTIFF | WE FILE JOINT/ASSOCIATIONAL ACTION FOR PROTECTION AGAINST DISCRIMINATION | WE MONITOR THE IMPLEMENTATION OF ANTI-DISCRIMINATION POLICIES (THE WORK OF THE OMBUDSMAN, COURTS, ORGANISATIONS, ETC.) | WE WORK ON INCREASING CITIZENS' AWARENESS ABOUT THE EXISTENCE OF ANTI-DISCRIMINATION ACT AND BODIES IN CHARGE OF IMPLEMENTATION OF ANTI-DISCRIMINATION POLICIES | WE DO NOT UNDERTAKE ANY CONCRETE ACTIVITIES | OTHER |
|--------------|---|---|---|--|--|---|---|-----------|
| 1. | | X | | | X | X | | X |
| 2. | X | X | X | X | | X | | |
| 3. | X | X | | | X | X | | |
| 4. | | | | | | X | | X |
| 5. | X | | | | X | X | | X |
| 6. | | | | | X | X | | |
| 7. | X | X | X | X | X | X | | X |
| 8. | | X | | | X | X | | X |
| 9. | | X | | | | X | | X |
| 10. | | X | | | X | | | X |
| 11. | | X | | | X | | | |
| 12. | X | | | | | X | | |
| 13. | X | X | | | X | | | X |
| 14. | X | X | | | X | X | | |
| 15. | | X | | | | | | |
| 16. | | | | | | | X | |
| 17. | X | X | | | X | | | |
| 18. | | | | | | X | | |
| 19. | X | X | | | | | | X |
| 20. | | X | | | X | X | | |
| 21. | | | | | X | | | |
| 22. | X | X | X | | X | X | | X |
| TOTAL | 10 | 15 | 3 | 2 | 14 | 14 | 1 | 10 |

TABLE 1 ACTIVITIES OF THE CSOS IN THE FIELD OF ANTI-DISCRIMINATION POLICY

4.2

General results relating to the number of discrimination complaints received by civil society organizations

According to the data delivered by the CSOs, 16 organizations received at least one case during the year 2011. Combined, the 16 organizations received a total of 118 cases in which citizens directly claimed discriminatory practices. Several organizations received only one complaint, while one of the organizations received as much as 40 discrimination complaints. This imbalance is directly linked with the difference in activities in battling discrimination that organizations engage into: those organizations that provide legal aid and counseling to citizens and are known for

such activities in the general public receive the most complaints. There were also a large number of organizations which stated that they received cases of discrimination complaints, but since they do not provide legal aid for the victims, they did not keep a record of such cases.

It is important to note that not all of the citizen discrimination complaints received by the CSOs, actually had an element of discrimination as defined by the ADA. That is, the CSOs could not find reasonable doubt as to the existence of discrimination in all of the complaints. The CSOs which participated in the research estimate that of the 118 complaints, 84 had elements of discrimination according to the ADA, while the other 34 did not. Although the final judgment on whether there was discrimination in a certain case



| CSO | NUMBER OF INDIVIDUAL COMPLAINTS OF DISCRIMINATION RECEIVED BY THE CSOS |
|--------------|--|
| 1. | 0 |
| 2. | 40 |
| 3. | 11 |
| 4. | 1 |
| 5. | 3 |
| 6. | 0 |
| 7. | 8 |
| 8. | 0 |
| 9. | 0 |
| 10. | 1 |
| 11. | 2 |
| 12. | 13 |
| 13. | 1 |
| 14. | 1 |
| 15. | 0 |
| 16. | 0 |
| 17. | 5 |
| 18. | 1 |
| 19. | 5 |
| 20. | 4 |
| 21. | 1 |
| 22. | 21 |
| TOTAL | 118 |

TABLE 2 NUMBER OF INDIVIDUAL COMPLAINTS OF DISCRIMINATION

| CSO | NUMBER OF COMPLAINTS WITH THE ELEMENTS OF DISCRIMINATION RECEIVED BY THE CSOS |
|--------------|---|
| 1. | 0 |
| 2. | 40 |
| 3. | 11 |
| 4. | 1 |
| 5. | 3 |
| 6. | 0 |
| 7. | 8 |
| 8. | 0 |
| 9. | 0 |
| 10. | 1 |
| 11. | 2 |
| 12. | 13 |
| 13. | 1 |
| 14. | 1 |
| 15. | 0 |
| 16. | 0 |
| 17. | 5 |
| 18. | 1 |
| 19. | 3 |
| 20. | 1 |
| 21. | 1 |
| 22. | 15 |
| TOTAL | 84 |

TABLE 3 NUMBER OF COMPLAINTS WITH THE ELEMENTS OF DISCRIMINATION RECEIVED BY THE CSOS

rests upon the courts, the experts from various CSOs often have to give citizens legal advice as to whether or not their case has any grounds according to the ADA. The misbalance between the number of cases in which citizens complain about discrimination and the number in which the CSOs estimate that there really is an element of discrimination can be explained by the fact that the citizens do not adequately and fully understand the term discrimination, and even more so with its legal definition. Therefore, they see as a discriminatory behavior some actions which might be considered a violation of some other human and/or civil, economic and social rights, and which are not necessarily related to discrimination.

4.3

The structure of the discrimination complaints received by the CSOs according to the areas of discrimination

It is easy to notice that **most of the complaints with the elements of discrimination, received by the CSOs, are related to discrimination in the area of labour and labour conditions**; ability to perform independent or non-independent activities, including selection criteria, as well as hiring and promotion conditions; access to all types of professional guidance, professional training, education, and occupational retraining. There are in all 24 such cases, which constitute more than a quarter of all the discrimination complaints received by the CSOs and which had elements of discrimination.

A smaller number, **in all 17 discrimination complaints with elements of discrimination relate to the area of justice and administration**, while **12 are in the area of housing and 10 in the area of social security**, including the areas of social care, health protection, pension security and unemployment security. These areas are followed by **access to goods and services and their provision with 9 cases and the area of education, science and sport with 6 discrimination complaints. The areas with the smallest number (two each) of complaints are: health protection; public information and media; membership and participation in trade unions**, CSOs, political parties or any other organizations. The CSOs did not receive **even one complaint in the area of access to participation in cultural and creative production.**

The area of work and working conditions is clearly the most problematic, that is, it is the area in which discrimination has most presence. There is a very real problem of unemployment in Croatian society, but these results show that there are minorities that have even more problems in finding work, and even their working conditions seem worse than those of the gen-

eral public. The right to work, or rather the lack of the same, is fundamental to achieving other rights and self-realization of every individual, which makes the fact that this is the most problematic area even more of an issue than it seems at first glance.

Similarly, the fact that the number of discrimination cases in the area of justice and administration is also very high is alarming, since this area is strictly under the control of government bodies; that is, in this area, government institutions are responsible for violating

the right to equal treatment. Furthermore, the judicial system is supposed to allow citizens to secure their basic rights, which makes it paramount that all citizens are equal before the law. In order for Croatia to become a state of law, the judicial system must be independent and should treat equally all that find themselves in it in any capacity. Therefore, it is important to pay attention to the education of state officials, and there is a need for a more effective way of monitoring their work related to minority groups.

| CSO | WORK AND WORKING CONDITIONS | EDUCATION, SCIENCES AND SPORT | SOCIAL SECURITY | HEALTH PROTECTION | JUDICIARY AND ADMINISTRATION | HOUSING | PUBLIC INFORMING AND THE MEDIA | ACCESS TO GOODS AND SERVICES AND THEIR PROVIDING | MEMBERSHIP AND ACTIVITIES IN TRADE UNIONS, CSOS, POLITICAL PARTIES OR ANY OTHER ORGANIZATIONS | ACCESS TO PARTICIPATION IN THE CULTURAL AND ARTISTIC CREATION |
|--------------|-----------------------------|-------------------------------|-----------------|-------------------|------------------------------|-----------|--------------------------------|--|---|---|
| 1. | | | | | | | | | | |
| 2. | 2 | 1 | 1 | | 7 | 3 | 2 | 5 | 1 | |
| 3. | 3 | 2 | | | | | | | | |
| 4. | 1 | | | | | | | | | |
| 5. | | | 3 | | | | | | | |
| 6. | | | | | | | | | | |
| 7. | 1 | 3 | | | 1 | | | 3 | | |
| 8. | | | | | | | | | | |
| 9. | | | | | | | | | | |
| 10. | | | | | | | | | 1 | |
| 11. | 2 | | | | | | | | | |
| 12. | 2 | | | | 4 | 5 | | | | |
| 13. | 1 | | | | | | | | | |
| 14. | | | | | 1 | | | | | |
| 15. | | | | | | | | | | |
| 16. | | | | | | | | | | |
| 17. | 2 | | 3 | | | | | | | |
| 18. | | | | | 1 | | | | | |
| 19. | | | | 1 | | 1 | | 1 | | |
| 20. | | | 1 | | | 3 | | | | |
| 21. | 1 | | | | | | | | | |
| 22. | 9 | | 2 | 1 | 3 | | | | | |
| TOTAL | 24 | 6 | 10 | 2 | 17 | 12 | 2 | 9 | 2 | 0 |

TABLE 4 STRUCTURE OF THE DISCRIMINATION COMPLAINTS RECEIVED BY THE CSOS ACCORDING TO THE REGULATORY AREAS

4.4 The structure of the discrimination complaints received by the CSOs according to the grounds of discrimination

According to the research, **the most cases of discrimination were based on the grounds of sexual orientation (18 cases). Complaints with the discrimination**

ground of race and/or ethnicity were also numerous amongst the cases received by the CSOs – 17. Ten complaints were made on a disability ground, while a slightly smaller number, only 9, were related to the discrimination ground of sex. Five discrimination complaints were related to health condition, while there were four cases of discrimination on the grounds of language, national or social background and gender identity. There were two complaints on





religious, political or other beliefs grounds, and two complaints relating to social status while **there were no complaints on the grounds of membership in a union, education and genetic heritage.**

It is important to mention that the number of discrimination complaints received by the CSOs was greatly influenced by the nature of the organizations that responded and took part in the research, since some of these organizations deal with discrimination on some specific ground or have specific target groups. For ex-

ample, the fact that the most cases reported to the CSOs dealt with sexual orientation, reflects the fact that the discriminated individuals recognized the organizations that work in this field as well as the fact that the CSOs' legal teams are very active in receiving and processing complaints. As it was stated at the beginning of this report, the data we received from the civil society organizations, concerning the exact number of discrimination cases, is not to be taken as an exact representation of what is happening in the society, but more as a clear reflection of tendencies

| CSO | RACE, ETHNICITY 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 | MULTIPLE DISCRIMINATION |
|--------------|---------------------------|--------|----------|----------|---------------------------|---------------------------|----------|------------------------|-----------|---------------|--------------------------|-----|------------------|------------|------------------|--------------------------------|--------------------|-------------------------|
| 1. | | | | | | | | | | | | | | | | | | |
| 2. | | | | | | | | | | | | | | | | 4 | 18 | 3 |
| 3. | 2 | 1 | | | | | | | | | | | 1 | | | | | 1 |
| 4. | | | | | | | | | | | | | | | | | | |
| 5. | | 1 | | | | | | | | | | | | | | | | |
| 6. | | | | | | | | | | | | | | | | | | |
| 7. | 2 | | | 1 | | | | | 1 | 1 | | 1 | 2 | | | | | |
| 8. | | | | | | | | | | | | | | | | | | |
| 9. | | | | | | | | | | | | | | | | | | |
| 10. | | | | | | | | | | | | | | 1 | | | | |
| 11. | | | | | | | | | | | | | 2 | | | | | |
| 12. | 7 | | | | | 4 | | | | | | | | | | | | |
| 13. | 1 | | | | | | | | | | | | | | | | | |
| 14. | | | | | | | | | | | | | 1 | | | | | |
| 15. | | | | | | | | | | | | | | | | | | |
| 16. | | | | | | | | | | | | | | | | | | |
| 17. | | | | | | | | | | | | | | 5 | | | | |
| 18. | | | | | | | | | | | | | | 1 | | | | |
| 19. | 1 | 2 | | | | | | | | | | | | | | | | |
| 20. | 4 | | | | | | | | | | | | | | | | | |
| 21. | | 1 | | | | | | | | | | | | | | | | |
| 22. | | 4 | 4 | 1 | 2 | | | | | | 1 | | | 1 | | | | 2 |
| TOTAL | 17 | 9 | 4 | 2 | 2 | 4 | 0 | 0 | 0 | 1 | 2 | 0 | 5 | 10 | 0 | 4 | 18 | 6 |

TABLE 5 STRUCTURE OF THE DISCRIMINATION COMPLAINTS RECEIVED BY THE CSOS ACCORDING TO THE GROUNDS

within it. The data received from the CSOs also shows that the most common grounds of discrimination seem to be the ones that we might even call the traditional grounds for unequal treatment and violation of human rights, and those are of course: race, ethnicity, sexual orientation, sex and disability. Discrimination therefore, affects the hardest those groups that differ from the general population on one of these grounds, or, in the case of sex, it victimizes women, who have

been throughout history and still apparently are discriminated against.

—5.

*Description
of specific
discrimination
complaints
received by
civil society
organizations with
recommendations*

EDITOR— Sara Lalić



Considering that the data collected from the civil society organizations, Ombudspersons' offices and Ministry of Justice is mostly quantitative in nature, in this chapter we will attempt to demonstrate what types of cases are usually received by the civil society organizations. As it is stated in the second chapter of this report - Research Methodology, seven organizations delivered completed protocols through which they have described 19 discrimination complaints received in 2011. The goal of this chapter is to illustrate what it means to be discriminated against, what forms discrimination can take, and what we can do to fight against it. Therefore, all of these cases are discrimination complaints that the civil society organizations received and acted upon. The purpose of these cases is not to be quantitatively representative, but to depict some situations CSOs deal with in their practices. For easier overview, we have categorized the cases according to the areas of discrimination, defined by the ADA. Unfortunately, the organizations in the protocols have not delivered a single case concerning the areas of health protection, access to public information and media and access to participation in the cultural and artistic creation.

5.1

Area of work and working conditions

CASE NO. 1

P.O. (30), an employee of the Croatian Post, found herself in a situation where the father of her non-marital partner was terminally ill, so she asked her supervisor for a paid leave of absence in case of his death. Based on discussions with the Department of Human Resources, her supervisor informed her that she was not entitled to take days off work because in accordance with the Collective Agreement for workers of the HP - Croatian Post Inc. release from the obligation to work (paid leave) is granted to an employee only in the event of death of marital partner's parent in duration of two days. So, people living in non-marital partnerships are put in a disadvantaged situation and they are denied the right enjoyed by people in marital unions. P.O. has been living in a cohabitation union with her non-marital partner for more than three years which is, by its effect, a union equal to the marital one. Therefore, this Collective Agreement provision discriminates against people on the basis of their marital status. The Centre for Peace Studies, which P.O. approached, wrote a memo on behalf of P.O. which explicates on the direct normative discrimination and seeks a reply on the matter of paid leave of absence. P.O. received a written response in which it states that she would be granted a paid leave. She also reported the case to trade union of the Croatian Post that said it would demand changes of the discriminatory provisions of the Collective Agreement.

RECOMMENDATIONS

Recommendation of the Centre for Peace Studies is that the Ministry of Economy, Labour and Entrepreneurship should issue a revision order for the state legal entities to harmonize its collective agreements or employment regulations with the Anti-discrimination Act and Labor Act, while for the other legal entities this should be accomplished via authorized chambers.

CASE NO. 2

A.B. (44) had turned to the Babe! - Be active, Be emancipated. association in January 2011, asserting she was discriminated against on the basis of her political affinities, namely, on the basis of her political party membership which was not in power at the time, and that she was for that reason removed from her police office job in May 2007. Before she was removed from the office, the disciplinary proceedings had been initiated against her for serious breaches of official duties defined under Article 122 Paragraph 1 Subparagraph 1 of the Police Act (NN, 129/00). However, what is contested in this case are the methods the police used to gather information on which they have based their accusations (in her disciplinary proceedings the presented evidence was gathered by surveillance and wiretapping the phone calls that the investigating judge of Split County Court authorized for the third party member). During the disciplinary proceedings against A.B. telephone call transcripts were used as evidence, which poses an issue of protecting fundamental human rights defined in Articles 3 and 37 of the Constitution of the Republic of Croatia, as well as the question whether the police violated those right.

RECOMMENDATIONS

The association Babe! believes that the beneficiary was not given adequate legal assistance. In fact, it was only after the proceedings were well on its way that the beneficiary was assigned an attorney adequately skilled for the matter at hand.

CASE NO. 3

S.N. is a scientist, a theoretical and mathematical chemist, and for more than 32 years, a permanent employee of one scientific institute as a research associate. According to the Act on Scientific Activity and Higher Education one can stay in one salary grade for no longer than ten years. In her address to the Babe! Association, the beneficiary states that since 2002 she has been applying for promotion but has been turned down on an unsound basis. For nine years she has been hindered from reaching the position that should be rightfully hers by law and by scientific results she accomplished. Allegedly, staff of the scientific institute is lobbying against her, giving negative reviews, diminishing everything she has ever done; although her work has been published in international journals and books. All her work has been credited to the Professor Emeritus and Academic N.T., the project leader with whom, as she is a research as-

sociate, has to cooperate with on the same project. In April 2010, during the session of the Scientific Council, her application for a higher ranking position was turned down, while the motion to promote B.N.'s to a higher scientific rank was adopted. During the procedure of electing B.N. to a higher scientific rank, the Head Commission established that he did not meet the necessary requirements for promotion. The Scientific Council voted in favor of B.N, even though they must have known that he did not meet the necessary requirements. She pointed out that this was yet another example that contributes to her claim that she has been systematically discriminated against, in comparison to other research scientists, on the basis of her gender. The beneficiary thinks that she has been discriminated against in her applications for a higher ranking position compared to other applicants who started off their scientific careers at the same time she did but have been promoted a long time ago. This is a case of deliberate discrimination in order to put her in a disadvantaged position compared to other candidates, especially those of opposite gender; while the proceedings were held contrary to regulations and general acts of the institute involved in this matter. The tendering procedures were not respected and carried out appropriately. They were deliberately stalled with a sole purpose to keep the beneficiary from further advancing in her career and to discredit her as a scientist. The beneficiary thinks that she has been pushed into a situation where she is forced to fight for her job and bare existence, which severely affects her scientific research, diminishes her quality of life and health. She feels she is a victim of persistent hostile and moral abuse coming from A.S. She also feels she is put under intense pressure and that her personal dignity and her dignity as a scientist are being threatened, together with her privacy rights. Because A.S. constantly bullies and harasses her, she is put in a position where she feels helpless, unable to defend herself and suffers from constant fear, stress and psychological pain. With 121 published scientific researches, with 2000 citations in international scientific journals, 27 held presentations and eight bilateral scientific projects in the last seven years, she believes she has by far exceeded the necessary requirements, and also her colleague's credentials who was, without any hindrance, elected to the same position of the scientific advisor for which she was also tending. She asked BaBe! to join the dispute as an intervener on the side of the plaintiff. In 2010, she filed a lawsuit asking for legal protection from discrimination, violation of personal dignity and privacy rights.

RECOMMENDATIONS

The Babe! association holds an opinion that from the legal aspect, everything in their power was done to protect the beneficiary, to the extent one organization could do. It considered her claims and joined the dispute as an intervener.

CASE NO. 4

The Association for Promotion of Equal Opportunities (APEO) received a complaint from a young police officer V.B. who got injured in a motorcycle accident. He spent a year in rehabilitation, and yet another half a year rehabilitating at home. His condition noticeably improved, although the diminished mobility of his left arm and leg remained as a permanent result of the accident. Taking into account his profession and his education in criminal science, he was under the impression that he would be allowed to return to work. However, there were some complications in the work organization and the procedure for retirement was initiated. His superior said that the protocol did not allow him to return to work, which the Human Recourses confirmed not long after. For him, this was a tragedy and he got severely depressed. He was faced with discrimination based on disability and he was not accustomed to cope with it. His mother was persistent in finding a solution so she approached the APEO. The APEO made an effort to empower and encourage him; assuring him that not all was lost, and finally managing to convince him that he should continue to fight, which earned his trust and reawaked a hope that things could change for the better. The pension commission finally reinstated him in his old job. The APEO thinks that this was a case of discrimination because a person can, regardless of his/her disability, continue to perform certain tasks within his/her profession.

RECOMMENDATIONS

The Association for Promotion of Equal Opportunities (APEO) thinks that the biggest problem is that disabled persons lack information on their human rights - which diminishes their will to fight and leads to depression and feeling stranded in a hopeless situation. Employers often do not know what to do when they are faced with a disabled employee and due to their lack of information on the matter; they resort to solutions that are detrimental for the disabled person as well as for the institution in this case. Croatian regulations and binding international documents such as the UN Convention on the Rights of Persons with Disabilities have supremacy over internal regulations of all other institutions.

5.2

Area of education, science and sport

CASE NO. 1

Based on her class mistress's referral, a secondary school of economics student L.I. (17) had contacted a privately owned shop in connection with doing her student internship there. Her application was turned down under the pretext that the shop had already accepted new student interns just a day before. As she later learned, the shop owner had said the same thing to her friend Ž.B. (18) when she applied a couple of





days earlier, so L.I. suspected that they had been discriminated against. She complained to her class mistress who contacted the shop owner confirming her suspicions that she had been refused internship on the basis of her being a Roma. After a talk with the school's headmistress, the class mistress informed the student that she would be doing her student internship in her husband's store. The student approached Mr. Bajro Bajrić from the Roma for Roma Association with her grievances who, in turn, contacted the Centre for Peace Studies. On April 1st, 2011, L.I. together with Ž.B. filed an anti-discrimination lawsuit on the claim of direct discrimination on the grounds of ethnic origin in the field of education against the shop owner and the store as a legal entity. Centre for Peace Studies provided them with free legal representation and immediately joined the plaintiffs as an intervener in the litigation process and wrote *an amicus curiae* brief on the principles of anti-discrimination, International and Croatian anti-discrimination standards focusing on discrimination against Roma when applying for internships. The Roma for Roma Association and the Office of the Ombudsman, who also wrote *amicus curiae*, subsequently intervened. On February 7th, 2012, the court issued a ruling pending appeal determining that discrimination did occur, prohibiting any future discriminatory treatment and obligating that damage compensation be paid. Before taking legal action, the CPS informed the Ministry of Science, Education and Sports (MSES) on the issue at hand, which carried out an investigation determining that no discrimination of Roma students occurred in the case of internship, also adding that unfounded reports do nothing to further the successful implementation of educational programs aimed at integrating Roma people in social life.

RECOMMENDATIONS

In this case, the educational system exhibited a lack of awareness regarding discrimination. The school failed to notify the competent institutions on the case at hand (the Office of the Ombudsman, MSES, and the Chamber of Commerce) and no sanctions were used to condemn such behavior. Based on this, the recommendation is to introduce a system in schools where protocol procedures in the cases of discrimination would be known. It would entail educating students, school staff members and the existence of a referent person (i.e. a school counselor) to whom students could turn to. This referent person should be the one reporting to the Office of the Ombudsman - the Central Equality Body and Ministry of Science, Education and Sports. Acting on the grounds of the information received (whether it is from the school, directly from a victim of discrimination or from civil society organizations), the Ministry should take an active stance against the ones who discriminate. In this case, it should end all further cooperation with the legal entity where the students applied for internship, report the illegal conduct to their competent chambers and

demand sanctions to be imposed on the legal entity. The Chamber of Economy and the Croatian Chamber of Trades and Crafts should work on preventing their members to discriminate against others, familiarize them with the Anti-discrimination Act and the principles they have to abide. They should also anticipate in their statutes or regulations the violations of principle of equality and clearly define sanctions for those kinds of violations.

CASE NO. 2

Elementary school students in Zagreb (1st, 5th and 6th grade), asylees of Muslim religion, had experienced direct religious discrimination concerning their religious dietary requirement in the school cafeteria. As the school diet is mainly based on pork, which means that three meals a week consist of pork meat, the children complained to the school chef that they have nothing to eat on those days. The chef answered that in that case they should eat bread. Their father informed the Centre for Peace Studies on the matter, so CPS contacted the City Office for Education who made it clear that this falls under the supervision of the school's team consisting of, among others, the school counselor and the chef. This is usually handled in a way that the school comes through for the students with certain dietary requirements and adjusts the menu. Centre for Peace Studies contacted the school counselor who was visibly upset that the Centre was on the case and was not open for cooperation. CPS had later found out from the students' parent that the class mistress publicly called out the students and said that the school was doing all it could to help them fit in and this was how they repaid them, which she proclaimed on a parent-teacher meeting. As the parent was shaken up by the turn of events, he asked us not to take any further actions so we do not know if the dietary issue was resolved in that school.

RECOMMENDATIONS

Recommendation for civil society organizations is that in the case of discrimination against vulnerable groups (the category asylee minors definitely fit into) one should check every move before taking any action because those in charge can act inappropriately making life harder for the vulnerable groups.

CASE NO. 3

The president of the Croatian Football Federation (CFF), Mr. Vlatko Marković said in an interview for the newspaper Večernji list, on November 7th, 2010 that the gays were not welcomed on the national football team while he is presiding over the Federation, adding that "luckily, only healthy people play football." Considering CFF's president has been known before to take this discriminatory stance in the media, it can be concluded that these discriminatory practices are becoming a common occurrence for him. Soon after, the executive chairmen of the football club Dinamo (Zagreb), Mr. Zdravko Mamić gave a statement to the

media issued on November 16th, 2010, that “gay football players can’t play for the national team”, adding that gay men are free to engage in other vocations, for example, becoming “ballet dancers, writers and journalists.” With this statement, Mr. Zdravko Mamić sided with the president of the Croatian Football Federation, Mr. Vlatko Matković. The Zagreb Pride Association, Lesbian Association Rijeka “LORI”, Centre for Peace Studies and Domino - Queer Zagreb had initiated, in an associational action, an anti-discrimination judicial proceedings. The associations in the associational action demanded that Mr. Zdravko Mamić be prohibited from further giving discriminatory media statements on the grounds of sexual orientation, and that he, at his own expense, in the daily papers issues an apology for previously giving such statements. The lawsuits were dropped on March 3rd, 2011 and on March 23rd, 2012, respectively, while the appeal has been immediately filed to the Supreme Court. The verdict has not yet been reached at the time of publishing this report. The reason of the court ruling pending appeal of the associational action taken against Mr. Vlatko Marković is that Mr. Marković was not in a position to take any discriminatory actions because it is the Croatian Football Federation that makes the final call when hiring football players, while the judge in the Mr. Mamić’s case determined that his statements fall under freedom of speech and that no discrimination had occurred.

RECOMMENDATIONS

Although the Ombudsman asked the Ministry of Science, Education and Sports to submit a declaration, it failed to do so. Monitoring the judicial proceedings found a general lack of understanding of the Anti-discrimination Act. The biggest problem the attorneys representing the plaintiffs had to face was gaining insight into “the Mamić file” which was sometimes deliberately kept from them. These decisions were not rendered in accordance with the decisions of the European Court of Justice in the *Feryn* case, which should have been, in the opinion of Zagreb Pride Association, the guiding principles in these rulings. The competent ombudspersons institutions should have joined the first instance proceedings, and not only in the appeal.

5-3

Area of social security

CASE NO. 1

In 2011, R.M. (46) was placed in a shelter in the city of Vukovar during the divorce proceedings from her violent husband. At the time of the divorce proceedings, the husband had been previously sentenced to prison by a final and binding ruling for domestic violence, and was waiting to be summoned to serve his sentence. When they were still married, their parental rights were taken away in a joint proceeding be-

fore the Family Court. His parental rights were taken because he abused his wife and children, while hers were taken because of failing to take action to protect herself and the children. R.M. is a Roma woman who claims that the institutions were prejudiced against her on the basis of her ethnic affiliation. In fact, during her marriage when she and the kids were under constant abuse, according to her statement, no advisory guidance or any assistance with employment was provided, but in turn, she was only criticized for not protecting her children. She notes that she did not even finish elementary school and that she was not found eligible for social welfare, adding that her ethnic affiliation was held against her. In the institutional proceedings she felt she was treated as less worthy because of her being a Roma woman. R.M. also mentioned that she is familiar with a number of cases in her neighborhood where the women were victims of domestic violence but did not have their children taken away from them because of it. In the meantime, she initiated the divorce proceedings, left her violent husband and initiated the proceedings of reinstating her parental rights. In this last proceeding, she is being criticized for not having an apartment or a job, while still under the impression that nobody wants to help her. She is aware how hard it is to help someone like her under the existing circumstances because nobody wants to hire a Roma. She feels she is “going in circles”. She also notes that she recently borrowed money from her family to pay for an attorney, but that nobody wanted to represent her. She later heard that one attorney said that he “does not want anything to do with Gypsies.”

RECOMMENDATIONS

Assistance was offered to Mrs. R.M. in accordance to the Anti-discrimination Act, but she refused it aware that it would be difficult to prove discrimination on legal grounds. The beneficiary states that nobody directly said to her the word “Gypsy” or anything similar, but considering how she has been handled and the way people look at her and treat her, she feels that people are prejudiced against her on the basis of her ethnic affiliation. Maybe such severe measures as revoking her parental rights would not have been taken if she had valid legal representation. Maybe her attorney would not have let this happen without problematizing essential circumstances of the case at hand (her poverty, lack of education, informing her about the rules of the proceedings, advising her on the possibility of receiving accommodations for her and the children and etc.).

CASE NO. 2

Đ.L. (69) lived in an area that was outside of the constitutional and legal system of the Republic of Croatia until the peaceful reintegration. As a civilian, he was wounded in June 1994 in a town Paulin Dvor, while he was going fishing (this was the method he used to feed his family since he had no other income). At that





time he stepped on an explosive device, specifically a land mine, which was placed there during the war, and was not removed after the end of military operations. After this event, he was transported to the General Hospital in the city of Vukovar, which is supported by documentation and witnesses. The witnesses made a written statement which was to be used in the legal procedure. A request for determining the status of a civilian victim of war, and the right to a personal disability pension was submitted in 2003. The beneficiary states that the person in charge at the State Administration Office made it clear to the beneficiary, in what he describes as a demeaning and discriminatory manner, that his request would not be successful, thereby influencing the beneficiary to the point at which he almost withdrew the request. Soon after the beginning of the procedure, it was halted due to a lack of written evidence. In July 2009, the Regional Court proclaimed the First Instance Court's decision invalid, and returned the case back to the First Instance Court. To this day, the Municipal Court has not reached a decision. An administrative complaint was made. The Woman's Association "IZVOR", to whom this case was also reported, believes that the grounds of discrimination are dubious in this case. They believe that this case cannot be applied under any of the legally determined grounds of discrimination as described in the Article 1 of the Anti-discrimination Act. They believe that the cause of the discrimination comes from the fact that the beneficiary was in an area that was outside of the constitutional and legal system of Croatia at the time of the event. If the ground for the accusation of discrimination was the ethnicity of the discriminated person, the association believes that the procedure would be successful considering that the beneficiary's family identifies itself as part of the Roma minority, even though the beneficiary himself does not.

5-4 Area of judiciary and administration

CASE NO. 1

D. Đ. (35) from Zagreb is mentally disabled and suffers from serious health problems described as arrested psycho-physical development. He is entirely dependent on his mother's care and assistance. She is also his legal guardian and the one who filed the report, considering that the afflicted person lacks legal capacity. The beneficiary is a very peacefully, sensitive and a well socialized individual. He attends a work group for adults in one elementary school in Zagreb where he spends twelve hours a week, while in the remaining time his mother R.Đ (57), a Croatian citizen of Serbian nationality, takes care of him. The beneficiaries are victims of harassment and abuse of several minors. They live in Zagreb's neighborhood of Špansko, in a ground floor apartment located in the immediate vicinity of an elementary school. The mi-

nors who abuse the beneficiaries are students of the before mentioned school, and are also the residents of Špansko. The abuse and harassment happens several times a day, usually when the minors return from school in groups, and in the late afternoon and evening, when they gather around, without parent supervision, on the bench situated under the beneficiaries' balcony on the ground floor of the apartment building. The abuse and harassment has been going on for years and it is motivated by the beneficiary's mental and physical disability, as well as by the nationality of both beneficiaries. The abuse entails of a larger group of minors aged from 10 to 14, who come every day to the park in front of the beneficiaries' apartment building, yelling at the beneficiary, who used to spend time in the park until recently, words such as "moron", "faggot", "stupid", "retard", "monkey" and other insults, while they yell after the beneficiary's mother the words "whore", "Serbian", and write insults on the pavement such as "D's mother is a whore", "D. is a fagot", and so on. In April 2009, the abuse culminated when the two boys violated the physical integrity and personal dignity of the beneficiary extinguishing burning cigarette butts on his arms. The police, the competent Social Welfare Centre, the Ombudswoman for Disabled Persons and the Municipal State Attorney Office in Zagreb had all been notified. The beneficiary also reported to his general medical practitioner who states: *"Psychophysical abuse on the street from known and unknown individuals threatens the integrity of the health insurance policy holder. The medical policy holder is an individual with a SMR (Severe Mental Retardation). His mother is his caretaker. D. has burns on both his hands, vrs. cigarette butts. The bullies ride on their bikes and extinguish cigarettes on the patient. The mother is afraid for her son's safety. She requested the Social Services to initiate proceedings for protecting persons with heavy mental disabilities. Otherwise, D. is a calm and good-natured person who does not know how and cannot defend himself against his abusers."* The medical report also stated that the beneficiary had been pushed onto an iron fence in the park by a group of kids in May 2010. The subsequent fall left the beneficiary disoriented and unresponsive for three days, and for days after he cried repeating the words "P. did this to me." In that incident, the beneficiary had suffered a blow to the head and so severely hurt his leg due to the fall that his mother had to borrow a wheelchair for a couple of days. The violence inflicted upon the beneficiaries had been going on for several years. In that time period, the minors have physically assaulted D.Đ. for at least ten times. On several occasions, the mother had contacted the police, the competent Social Welfare Centre, the school guidance counselor, the headmaster of the school that perpetrators attend and the Ombudswoman for disabled persons. Despite the occasional kindness and understanding received from certain individuals within the institutions, the situa-

tion of the Đ. family has not changed for the better and the harassment and the abuse pursues.

RECOMMENDATIONS

The organization familiar with the case believes it would be possible to file an anti-discrimination lawsuit against the Republic Of Croatia; however considering the lack of court practice they are not sure what would be the outcome of such a lawsuit.

CASE NO. 2

A report was filed to the Zagreb Pride Association in connection with the issue of determining citizenship and problems related with issuing personal documents to a transgender person M.B. (46) born in Croatia but who is no longer a resident of the Republic of Croatia. This is a person without any material belongings, unemployed and living in extremely poor conditions. This person left Croatia in 1990, lived for a couple of years in countries outside the region, and came to Serbia in 1997 where, soon after arrival, began the gender transition and underwent gender reassignment surgery. According to the report given to the Zagreb Pride Association, the person has been consistently harassed on the bases of gender identity, and it is also likely that this person has been a victim of human trafficking. When she contacted the Zagreb Pride Association, she was staying in a “safe house” in Montenegro, where she was placed with the assistance of the Juventas Association. During the signing in process required by the safe house, it was determined that she was staying illegally in Montenegro and that she did not have any valid papers. According to the information we received, she is not sure herself of which country she is a citizen of, but thinks she should be granted a Croatian citizenship since she was born in Split. She also expressed a wish that upon determining her citizenship, the newly issued documents have information corresponding to her gender identity and her personal name she has been using since 1997. M.B. currently possesses only an identity card issued by the Ministry of the Interior of the Federal Republic of Yugoslavia in 2003. The name and sex on the identity card correspond to the gender identity and the name of the beneficiary, but they do not match the ones listed in the birth certificate issued by Split’s Register Office in 1981, the copy of which the beneficiary possesses. M.B. never possessed a certificate of nationality or any other document determining citizenship of any other country. The Zagreb Pride Association consulted the Office of the Ombudsman when it was determined that the Office can take action only after the citizenship of the beneficiary is confirmed, and after the process of changing the records in the birth register has been initiated. The person was asked to grant authorization for gaining access to the records in the register of citizens, in order to potentially file a request for entry into the book of citizens as well as changing the gender in the records. Although the officials in the Split’s Register Office have entered M.B. into the register of citizens on the basis of one

of her parents being born in the Republic of Croatia, the Register Office agreed on issuing a certificate of nationality only if it contained the gender determined by birth and the personal name M.B. does not use any more. In short, the Register Office in Split issued a certificate of nationality with the name and surname M.B. does not use any longer, while changing the gender records in the register could not be carried out. Via diplomatic offices in Montenegro, since March 2012, M.B. is fighting an administrative battle and persists that her name and gender records be changed.

RECOMMENDATIONS

While waiting for the State Register Act to be altered, as a measure to protect transgender persons from publicly accessible information on their gender change, the Republic of Croatia should as soon as possible draw up a clear protocol on acknowledging gender transition. The present practice has been inconsistent and non-transparent.

CASE NO. 3

During May 2011, The Shine, an Association for Social Affirmation of People with Mental Disabilities received several anonymous reports from persons which complained that police official had asked them if they are suffering from mental diseases during security check related to the arrival of the Pope to the area of the city of Zagreb. In response to these reports, on May 30th, 2011, Shine demanded a response from the Police department to the question if these allegations were true and citizens were questioned about their mental status during security checks. On the June 2nd, 2011, Zagreb Police department delivered a written statement via e-mail to Shine, reporting that during field checks of objects and residents in proximity to the route that the Pope was supposed to take upon his arrival, amongst other things they collected “information about mental patients, especially those previously recorded as perpetrators of criminal or violent acts”. This data, according to the Zagreb Police department, were collected solely for the purpose of predicting and planning procedures during the stay of the Pope and for the purpose of ensuring his unobstructed movement. The response does not clarify how the “information about mental patients“ was collected. Considering that the complaints that Shine received were related to police questioning, and the response they received from the police suggests that the method used was much wider, the possibility that this data was also collected from psychiatric institutions, the Croatian National Institute of Public Health or even the register of psychosis which is kept in the Croatian National Institute of Public Health, arises. It is evident from the reply of the Police department that they collected data about people with histories of mental illness, especially those who committed criminal acts, or had a history of violent conduct. Also, even here it is not clear if the police collected data on everyone who had a criminal record, or just those with a history of mental illness, that is, whether they were





collecting data about people who were unaccountable or even slightly unaccountable for any criminal or violent conduct. Shine believes that this action against people with a history of mental illness is a case of direct discrimination according to article 9, paragraph 1 of the Anti-discrimination Act, since this action is similar to racial profiling. It cannot be defended even through the article 9, paragraph 1, and subparagraph 1 of the Anti-Discrimination Act since this action is not appropriate for the desired goal, considering that there is an automatic assumption that people with mental disabilities might commit criminal acts, that is, that they might compromise the security of the Pope during his visit. It also remains unclear which measures the police took when they found out someone had a history of mental illness, whether through the persons confession or through other sources. The existence of mental illness, or disabilities, by itself, cannot have any impact on the way in which police officials estimate the level of security of various objects and citizens, that is, on the way they prepare their interventions. During security checks, police officials could have taken into account all citizens who committed criminal acts or misdemeanors if they never went through any process of rehabilitation, but this has nothing to do with various health issues of those citizens. By proceeding this way, not only were people with mental illness put in an unequal position in relation to other citizens, but their privacy was also compromised, especially when it is taken into account that the information about their health status was gathered without their consent, that is, that information was asked about in an official capacity within the scope of police authority.

RECOMMENDATIONS

The Shine association believes that the Ombudsman should have a legal obligation to solve a case of discrimination presented to him and decide if there was indeed discrimination. The Ombudsman is not just a role whose jurisdiction is used to facilitate communication between citizens and the government, but also has to suppress discrimination which makes it crucial that he deals with cases of determining the existence of discrimination, even though his decision does not hold the same weight as a court decision about the existence of discrimination in a case.

CASE NO. 4

The active participation of citizens in the political life, and political equality of all citizens are the basis of democracy. In 2007, the Republic of Croatia signed and ratified the Convention on the Rights of Persons with Disabilities. By doing this, it was obligated to protect the right of persons with disabilities to a functional and complete inclusion in the political life on an equal footing with others. The convention prescribes persons with disabilities the right to a secret vote during elections and public referendums, without deterrence, as well as the right to become candidates in various elections. Article 29 of the Convention is addi-

tionally reinforced by the Revised Interpretative Declaration to the Code of Good Practice in Electoral Matters on the Participation of People with Disabilities in Elections (ratified at the 39th meeting of the Council for Democratic Elections in Venice, on the December 15th 2011, and at the plenary session of the Venice Commission held in Venice, on the December 16-17th 2011) which states that the electoral procedure must be accessible to persons with disabilities in order for them to be able to use their democratic rights. Promoting equal condition for participating in the civil society is an important part of the Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society (Action Line 1: Participation in Political and Public life). In the Republic of Croatia, people who do not have legal capacity (according to the newest figures the number stands at around 17 000 people) cannot be entered into the electoral list (Article 2 of the Electoral List Act). The State Administration Office in Zagreb refused the request for entry into the electoral list with an explanation that the beneficiary was a person without the legal capacity to work. B.Č. submitted a complaint to the Zagreb Municipal Court, via his guardian. The court did not put B.Č. into the electoral list, but instead demanded that the complaint be submitted again without mentioning the administrative number present on the refusal from the State Administration Office. All of these steps were taken in agreement between the beneficiary's guardian, the Association for Self-representation, GONG and the Association for Promoting Inclusion.

RECOMMENDATIONS

The Association for Self-representation considers that it is necessary to change a part of the electoral laws which prevent persons who do not have legal capacity to work from being in the electoral lists. This is necessary if the Republic of Croatia is to fulfill the obligations which it agreed to with the ratification of the Convention on the Rights of Persons with Disabilities. It is also apparent that the judicial and administrative bodies either do not know of the Convention on the Rights of Persons with Disabilities or they are simply refusing to apply it even though it is legally above domestic laws. It is hard to tell what else could have and should have been done, since this is probably the first case of this type in our country. In some examples from other countries (Slovenia) it was necessary to go all the way to the Constitutional Court in order to secure the right to vote for people who don't have legal capacity to work. In some other countries (Hungary, for example) it was necessary to go all the way to the European Court of Human Rights. It should be noted that there is a significant difference between Croatia and Slovenia, because the Slovenian constitution guarantees equal right to vote to all citizens of age while the Croatian constitution guarantees a general and equal right to vote to all citizens of age but in accordance with the law. In the second article of the Electoral List Act it is stated that: "The electoral list is a state record in which all citizens of age are

enlisted, except for those who are declared unable to work by a final judicial binding.“ The Association for Self-representation therefore believes that the right to vote for people who do not have legal capacity to work should be included in the general reformation of the electoral laws in Croatia. They also hope that there will be enough good will and understanding so that this problem might be resolved through a dialogue between the involved parties in our country, therefore removing the need for opening a case at the European Court of Human Rights.

CASE NO. 5

After refusing his “romantic“ advances and informing him she has a girlfriend, the attacker brutally physically assaulted P.S. (25) while yelling insults based on her sexual orientation and gender. A friend rushed to her aid, but the attacker physically assaulted her as well, so a third friend finally intervened and, as to prevent further assault, fired a gas gun into the attacker. Receiving a report, the police came to the scene and conducted informative questionings of the participants and the witnesses of the event. Although the assaulted party, as well as all the witnesses, clearly stated to the police that the assault was motivated by hatred aimed against her lesbian identity, an indictment was issued against all persons involved to the Magistrate Court for public peace and order violation. In the offence proceedings, the attacker admitted to perpetrating the criminal acts and was fined 300.00 HRK for an *offence against public order and peace* by engaging into physical conflict (Article 13 *Offences against Public Order and Peace Act*). In accordance with the Arms Act, the person who prevented the attack was fined 1700.00 HRK for carrying an unregistered gas gun. Subsequently, criminal charges were filed against the attacker for committing a criminal act of assault with an intent of inflicting grievous bodily harm in connection to hate crime and violent conduct aimed towards several people (also in the context of hate crime; Article 331 Paragraph 2 and article 89 paragraph 36 of the Criminal Code) while the factual description of the indictment was expanded to include one additional person. However, in accordance with the ruling of the European Court of Human Rights in the case Maresti against Croatia, the criminal charges were dropped. The victim continued legal prosecution by submitting a proposal for indictment in the criminal proceedings. The plaintiff P.S. has filed a legal action under the Anti-discrimination Act, and the court hearing has been pending since January 2011.

RECOMMENDATIONS

Zagreb Pride Association thinks that the urgency of the proceedings should refer to all civil proceedings filed under the Anti-discrimination Act and not only to associational actions. The police officials often fail to recognize discriminatory actions, even when the victim explicitly asserts that this was the case. In 2011, almost no discrimination cases were recognized by

the police without the associations or the media having to intervene. The recommendation is to continue with the educational programs for the police officials.

5-5

Area of housing

CASE NO. 1

For years, Lj.L. (41) has been a victim of domestic violence. She left her husband when he also started to psychologically and physically abuse their daughter. She asked the city in which she lives for assistance in resolving her housing issue, an assistance which she nominally received with the recommendation that she should first produce evidence of the marriage being dissolved. Her ex-husband’s mother, the owner of the house where they all lived together until the final and binding ruling on their divorce, sent her a written notice that ending with March 31st, 2009, she should move out from the house and change her official residential address. Shortly after, the beneficiary was again physically assaulted by her ex-husband in the presence of their daughter and, in its effect, she suffered serious bodily harm. The husband was charged with a fine and was issued a measure of mandatory psychosocial treatment. Fearing for her life, the beneficiary again approached the competent city officials. She asked for immediate assistance with her housing issue, having in mind a specific apartment in the property of the city. She announced that she had no other options than to move into it, after which she received a reply from the (then) mayor stating that “no divorcee will ever be granted an apartment from the city.” The attitude of the mayor had substantially changed since the beneficiary got divorced, or in other words, since she lost the status of being the wife of a war veteran (before that, the city officials showed willingness to help her with the housing issue, in contrast to the situation when she approached them with the same problem as a divorced woman). The beneficiary was forced to move in with her children into an empty apartment, property of the city, lacking in any other available accommodations. The city filed a lawsuit against the beneficiary requesting that she surrenders the possession over the apartment. A ruling has been made ordering eviction. Her appeal was dismissed and the eviction was set for March 2009. Despite Mrs. Lj.L.’s pleadings to various institutions, her housing issue has not yet been resolved. The beneficiary has obtained information that the city, since she first asked the city officials for assistance, until the present day, has had empty apartments at its disposal.

RECOMMENDATIONS

The Woman’s Association “IZVOR” thinks it is necessary to introduce legal obligations for the local and regional governments for implementing policies of the National Strategy for Protection against Domestic



CASE NO. 2

A young Roma family approached the Women's Association "IZVOR" concerning their housing issue. The spouses are unemployed and they have a little girl (aged 3 at the time), with another child on its way. The family lived in the husband's mother's household. In fact, this family of three lived in a small room with no toilet facilities and without basic household utensils. The other rooms were off-limits to them. Because of the disagreements that arose between family members, they were forced to leave the premises where they, until then, lived. They had acquired information that there were available apartments in the town of Darda owned by the state and/or by the local government, so they had turned for assistance to the Municipality of Darda where they were told that there were no available apartments left. After that, they turned to the regional office where they filed an official request for the provision of housing. In the mean time, the beneficiaries had located an empty apartment in a town Mece and, considering that they were without housing and necessary accommodations, they had illegally entered the vacated apartment believing that this was only a temporary solution until the Regional Office answers their request on the provision of housing. They took care of the apartment, refurbished the area around it, maintained a very good relationship with the neighbors - who gave an official statement to the police that the family took care and attended to the apartment and that they had no objections to them staying there, regardless of the fact that the family, due to the events beyond their power, had to illegally enter the apartment. The Municipal State's Attorney Office at the town of Beli Manastir initiated the eviction process from the state-owned apartment. The Osijek Country Court upheld the first instance court's ruling and ordered the beneficiaries' eviction. Although the beneficiaries have submitted the request for the provision of housing to the Ministry of Regional Development, Forestry and Water Management in 2008, in 2009 to the mayor of Darda, and in 2010 filed a request on the same matter to the Directorate for Areas of Special State Concern, Regional office Osijek, based on the available documentation and the beneficiaries' statements, it is evident that the beneficiaries never received an official reply. On October 5th, 2010, the association "IZVOR", filed a petition addressed to the Directorate for Areas of Special State Concern, Regional Office Osijek also receiving no reply. On the matter of this case, the association "IZVOR" also contacted the Ombudsman who pointed out that one of the goals of the Action Plan of the Decade for the Inclusion of Roma People 2005 - 2015 is to improve housing conditions of the Roma population, focusing especially on the inclusion of Roma families in social housing programs (Paragraph 2.1). The carrier of this measure is a unit of local gov-

ernment, which should ensure the implementation of funds from its budget. He also noted that Central State Administrative Office for State Property Management, along with the Ministry of Regional Development, are the state bodies supervising the carriers of this measure. The Ombudsman concluded that these two state bodies should have ensured the allocation of the abandoned accommodation facilities in the property of the Republic of Croatia for the use of Roma families and recommended that the eviction notice be put on hold until their housing issue is resolved. The Ombudsman has requested a report from the Ministry of Environmental Protection, Physical Planning and Construction; the Ministry of Regional Development, Forestry, and Water Management and from the Central State Administrative Office for State Property Management on the matters regarding the implementation of housing measures in accordance with the Action Plan of the Decade for the Inclusion of Roma People for the year 2009 and on the implementation of the National program for Roma in 2007, 2008 and 2009, also regarding housing. Having examined the report, it was established that the country made progress in the field of housing; however, that this progress was related to spatial planning. The date on handling individual cases relating to the housing of Roma families with the goal of discrimination and poverty abolishment and improving housing conditions of the Roma population was not made available. The Central State Administrative Office for State Property Management said that the property in this particular case is not in the Office's register and that it was not competent to act regarding the housing for people living in areas of special state concern or regarding persons of poor material status. Since they did not specify whether they have acted in the individual cases in accordance to the measure stated in paragraph 2.2, in which they are listed as carriers of the measure, the Ombudsman again requested a statement in which they should explicitly give account on the number of such families, and if there is no data available that they should state the reasons why they have failed to act accordingly to these measure. The reply received from the Central State Administrative Office for State Property Management stated that they have not received a single request to act in accordance to the paragraph 2.2 - a measure "Creating the conditions for the integration of the Roma in terms of housing" aimed at fighting discrimination and poverty. The family left the apartment before receiving the notice on postponing eviction as they found alternative temporary accommodation with their relatives. The association "IZVOR" could not reach them for several months. Subsequently, they receive information from the president of the Council of the Roma community Darda that the family, unable to resolve their housing condition as well as find employment in Croatia, had sold all their movable assets to buy airplane tickets and that they had moved to Canada in late 2011, where they requested asylum.



RECOMMENDATIONS

The Women's Association "IZVOR" thinks that it is necessary to improve the coordination of competent state bodies for providing housing to citizens (in this case, they failed to do so on a horizontal, as well as on the vertical level). Also, it is necessary to exert pressure and surveillance over local governments in relation to the issues of housing (namely Roma) because the above mentioned case illustrates the administration's shortcomings and faulty handling of specific citizens' issues.

5.6

Area of access to goods and services, and their providing

CASE NO. 1

In late 2011, N.N. (23), accompanied by his friend, attempted to enter one night club. However, the bouncer prevented him to enter because the blind are not allowed in under the pretences that the club cannot guarantee for their safety. Also, the bouncer did not believe he was blind because he previously visited the club without his white cane. From the media report it was obvious that the club owner did not want to take responsibility for the bouncer's behavior, explaining that N.N. was known for causing trouble and therefore he was not allowed to enter (which the bouncer did not know or say). Centre for Peace Studies contacted N.N. and offered legal assistance regarding his case. There were two options considered: to file a private anti-discrimination lawsuit or to take associational action for protection against discrimination. In the end, N.N. withdrew his claims because he feared that this would anger the bouncers and he did not want to get on their bad side. As filing an anonymous anti-discrimination lawsuit is not a valid option, he did not want to take any legal action. In the course of consultations, Centre for Peace Studies worked together with the Croatian Association of the Blind.

RECOMMENDATIONS

Together with the Croatian Association of the Blind, the possibility of taking up "mystery shopping" was discussed which would entail a disabled person entering the club together with a few witnesses and thus testing the bouncers. The Croatian Chamber of Trades and Crafts should act to prevent and inform its members and familiarize them with the Anti-discrimination Act and the principles they have to abide. They should also anticipate in their statutes or regulations the violations of principle of equality and clearly define sanctions for those kinds of violations.

5.7

Area of membership and activities in trade unions, civil society organizations, political parties or any other organizations

CASE NO. 1

Members of one hiking club addressed the Zagreb Pride Association with the issue that a couple of their members come to the hikers' meetings with the neo-Nazi flag which they openly exhibit to other members, among whom are also LGBT persons. LGBT members of the hiking club were not informed how or where to report this kind of behavior, nor were they open about their sexual orientation with the other members. They suggested that Zagreb Pride Association gives a public statement in the media, and possibly to file a criminal report. They have also added that they have heard numerous homophobic remarks and jokes at the expense of LGBT persons from those particular members. When Zagreb Pride Association asked them how do the hiking guides or other people in charge of the hiking club react to this discriminatory behavior, they got an impression that they are afraid to say anything against it despite the fact that most of the members disapprove of it. The Zagreb Pride Association contacted the respective hiking club and received an answer that the club distanced itself from such individuals and that they are asked not to come any longer to the hiking club meetings. The persons who filed a complaint decided not to take legal action against their former "colleagues", nor did anybody find out that LGBT persons were members of the hiking club.

RECOMMENDATIONS:

Zagreb Pride Association believes that it is necessary to introduce and implement mandatory anti-discrimination policies in all sport and recreational associations, as well as imposing sanctions to the associations that do not abide or implement those policies.



–6.

*Analysis of
problematic
practices:
two cases of
discriminatory
acts in the
Republic of
Croatia in 2011*

AUTHOR — Sandra Benčić



Case no. 1: Discrimination on the grounds of sexual orientation - Split Pride

On June 11th, 2011, the first Pride March was held in Split, organized by Lesbian Group Kontra, Association Iskorak, both from Zagreb and Dominoes from Split. This event stands out as one of the worst instances of violence and discrimination of LGBT persons in 2011. The participants in the march were subjected to insults, discriminatory slurs, threats of violence and direct physical violence (throwing of rocks and various other objects, attack by tear gas etc.). During the attack, several activists, together with one reporter, were injured. Around 200 activists, who were protected by 400 police officers, participated in the march.

DESCRIPTION OF THE EVENT

Around 2 p.m., around 200 activists from Split, Zagreb, Ljubljana and Belgrade gathered around in Đardin Park. Around 2.20 p.m., the march headed towards Split promenade by a secured route. Just before their arrival to the promenade, an unidentified object was thrown at the participants of the march. A group of individuals was waiting for them and shouting “Kill the faggot!”. A few minutes later, an attack on the march ensued; upon entering the promenade, the activists were showered by rocks, and the sound of explosive devices going off could also be heard. The RTL television reporter, while shooting footage of the march, suffered a minor head injury caused by a rock throw to his head. A Pixell’s photographer was also hit in the head by a rock, while an explosive device went off next to the HINA’s (Croatian News Agency) reporter’s feet. A university professor, Mr. Miroslav Kukoč also got injured. The following quote depicts the gravity of the situation:

“This is a disaster, it’s worse than it was in Belgrade! The police let ashtrays and glasses from the cafes be thrown at people. Rocks, bottles, lighters, firecrackers, tear gas, it was all flying around... We have to show them that this can be done and we have to endure till the end of the march...” **Mima Simić, an activist**

The violence had not ceased, not even after the police attempted to stop the instigators and not even after a couple of them were apprehended because they refused to disperse. Therefore, the assembly ended with just activists’ speeches thanking the participants for their courage. The general opinion of the partici-

pants in the assembly is that the police failed to take all necessary security measures, failed to provide a sufficient number of police officers for the assembly and let the violent mob get too close to the march. It is important to note that the same thugs that verbally and physically assaulted the participant of the march simultaneously had fascist symbols on display (i.e. right-hand salute) and they have also in other ways glorified a fascist regime, thereby committing numerous criminal offences. The Dutch Green Party MP Mrs. Marije Cornelissen, who also attended the assembly, had asked, a few days earlier, the Croatian Minister of Justice, Mr. Dražen Bošnjaković, whether he could guarantee for her safety during the Split’s March. He replied with great certainty that he most definitely could. Following afore mentioned outbursts of violence, the MP addressed the participants:

“We had hoped that the country that is about to enter the EU would be able to recognize the reasons why it is important to have this march. It is a shame that the people who promote hatred were allowed to come so close to those who promote the right to love. You people here are those who make Croatia a better place.”

THE GOVERNMENT’S RESPONSE

The State Attorney’s Office of the Republic of Croatia had not issued an official statement containing information on the actions taken after the last year’s Pride March until April, 2012. It states that:

— The District Attorney’s Office in Split received criminal charges against 25 persons from the Split-Dalmatia County Police department for criminal offences committed on the occasion and during the event of Split Pride held on June 11th, 2011, in Split. Criminal charges were filed against 22 persons on the grounds of committing violent criminal offences by the Article 331 Paragraph 2 of the Criminal Code and violating the right to free assembly and public protest of the Art. 108, Par. 2 of the Criminal Code, all in connection to hate crimes by the Art. 89, Par.36, of the Criminal Code. Criminal charges were filed against 2 persons on the grounds of racial and other discrimination defined by the Art. 174, Par. 3, of the Criminal Code, and one person was charged with obstructing the public official in executing his/her by the Art. 317, Par. 1, of the Criminal Code.

— On the basis of filed criminal charges, the District Attorney’s Office submitted proposals for indictment of 16 persons to the Municipal Court of Split, while the



County Court of Split received proposals for additional inquiries against 2 persons. Criminal charges against 3 persons were rejected, two for committing criminal offence by the Art. 174, Par. 3 of the Criminal Code (CC), and one for committing criminal offence of the Art. 331, Par. 3, of the CC, and Art. 108, Par. 2 of the CC, all in connection with the Art. 89, Par. 36, of the same Code.

- Out of four criminal charges filed against minors for committing criminal acts by the Art. 331, Par. 2, and Art. 108, Par. 2, all in connection to Art. 89., Par. 36, of the Criminal Code, in two cases a proposal for implementing corrective measures was submitted to the Municipal Court of Split, in one case a request to initiate preliminary proceedings was submitted to the same Court, while in the case of one minor, the mediation proceedings have been initiated.
- Up to April 2012, in the aforementioned court cases, the Municipal Court of Split reached seven acquittals.
- The District Attorney’s Office in Split and the Split-Dalmatia County Police Department staff members held a coordination meeting in connection with the treatment of the events that happened on “Split Pride 2011”. They also discussed conducting an inspection on the matter of a new Facebook group that instigates intolerance towards the members of the LGBT population.

In addition, according to the Split-Dalmatia Police Department records, misdemeanor legal actions were taken against 65 persons on the accounts of disturbance of public peace and order. The Association Iskorak and the Lesbian Group Kontra state that only after the international and domestic public exerted their pressure on the authorities that the charges filed against the attackers that threw explosive devices, rocks, bags filled with excrement and ashtrays and who shouted “Kill the fagot” and “ You must die”, were changed from misdemeanor to criminal ones.

REACTIONS OF THE VICTIMS OF VIOLENCE / DISCRIMINATION:

The participants of the Split Pride, whose rights to public assembly, guaranteed by the Constitution of the Republic of Croatia and European Convention on Human Rights, have been violated, together filed individual anti-discrimination actions against the Republic of Croatia enforcing the Anti-discrimination Act seeking that the instance of discrimination be decided upon.

6.2

Case no. 2: Discrimination on the grounds of ethnicity in the field of housing and resolving the cases in the matter of unauthorized property investments of those whose property right was temporarily taken in accordance with the Temporary Takeover and Management of Certain Property Act

During 2012, the Serbian Democratic Forum (SDF) published an analysis of the difference in legal treatment of Serb returnees and Croats in the field of housing. Based on the recent legislative amendments to the Act on Areas of Special State Concern¹⁰ and the Act on Alterations and Amendments to Act on Areas of Special State Concern¹¹, Croatian veterans, the members of the Croatian Defense Council from Bosnia and Herzegovina and Croats who were allocated state-owned apartments in liberated areas (in accordance to the Act on the Lease of Apartments in Liberated Areas¹²) have a right to obtain permanent ownership over the houses or apartments where they live via a deed of donation, absolutely free of charge, providing that the property cannot be sold or abandoned in the next 10 years. An option for increasing the size of the living space, which previously applied only for housing care and reconstruction, was made available; for an apartment a maximum increase of 10 square meters, and for a family house - a 20 square meters increase per household member. On the other hand, Serb returnees, who were former tenancy rights holders, could not acquire housing under the same conditions. First and foremost, they do not have a right to a deed of donation, but rather their right to housing (the tenancy rights they had before escaping) is addressed in the Government’s Decision on the purchase of state-owned apartments adopted on September 1st, 2010, by which their only available option is to purchase the apartments where they are currently residing, or other housing care will be provided. The set conditions of the purchases were not equal to the conditions under which the non-refugee persons purchased their apartments during the nineties, so the SDF conclusion is that, considering high purchasing prices, this should be primarily regarded as buying an apartment and not providing housing care. The second problem that has to be addressed is 14 unresolved cases of unauthor-

¹⁰ Act on Areas of Special State Concern, NN 86/08
¹¹ Act on Alterations and Amendments to Act on Areas of Special State Concern, NN 57/11
¹² Act on the Lease of Apartments in Liberated Areas, NN 73/95

ized property investments. These cases involve property owners (majority of them are of Serbian nationality) whose property rights were temporarily abolished in accordance with the Temporary Takeover and Management of Certain Property Act and whose property was temporarily allocated to displaced persons or refugees predominantly of Croatian nationality. Despite the fact that the temporary occupants were allowed to engage only in necessary repairs, many of them have undertaken massive and unnecessary infrastructural interventions, while the courts have upheld their right to compensation of the invested funds from the property owners after the houses/apartments have been returned under their ownership. For that reason, the returnees were not able to move back into their houses (which were more often than not, devastated by the supposed infrastructural improvements, as in the case of Mrs. Milica Miladinović) because they were facing foreclosure (or the foreclosure has been already initiated) to reimburse the investments of the temporary occupants. Despite the fact that the property owners of such houses have been living under harsh conditions for years and that the government had not provided them with housing care, the Act on Alterations and Amendments to Act on Areas of Special State Concern only aggravated the structural discrimination of these people: now the government prescribed that it would give compensation to the temporary occupants, while the property owners would receive “a favorable” market loan at a bank to reimburse the government for fully protecting the rights of temporary occupants at the expense of the rightful property owners. This policy goes in favor of temporary occupants (who, in cases of unauthorized investments are not entitled to any compensation) who will receive payment immediately, while the property owners will have to, for years to come, repay the loan to get out of debt that they did not create nor had they authorized the interventions/ investments which are not necessary repairs. Given that the Temporary Takeover and Management of Certain Property Act states that the specified property passes under the temporary administration of the Republic of Croatia, we believe that the Republic of Croatia should be responsible for restoring the properties to their original shapes, and returning them as such to their owners. It should also take over the payment of debts to the temporary owners because it enabled them to make unhindered investments (or in some cases, devastation) in the properties allocated for their use, although they were well aware their investments were unauthorized.

REACTIONS OF THE VICTIMS OF DISCRIMINATION AND ASSOCIATIONAL RESPONSE

The Serbian Democratic Forum submitted a proposal to review the constitutionality of the provisions of the Act on Alterations and Amendments to Act on Areas of Special State Concern, while the Center for Peace Studies filed a request for protection of rights under

the European Convention on Human Rights to the European Court of Human Rights in the case of Mrs. Milica Mladinović. On the developments in the above mentioned cases, the associations regularly inform the European Commission within the Platform 112¹³.

THE GOVERNMENT’S RESPONSE

In June 2011, the changes and amendments made to the Act on Areas of Special State Concern¹⁴ (ASSC) entered into force which enabled the Republic of Croatia, via the State Attorney’s Office, to take the role of the indebted party – the property owner in the case of unauthorized investments and the one obligated to pay restitution to the temporary occupants by a final and binding ruling. Thereby, the state becomes indebted to the temporary occupant, and the foreclosure will be paid from the state budget rather than from the owner’s property. Furthermore, the foreclosure notice is removed from the owner’s property which furthers the case proceedings in respect of: property renovations or entering into an agreement to forfeit property ownership. The owner of the expropriated property has a right to choose between: the ownership over another property that in value corresponds to the value of his/her property prior to the investment alterations or to receive financial restitution that amounts to property market value prior to alterations. According to the aforementioned changes and amendments to the Act on ASSC, the specific relationship / options between the property owner and the Republic of Croatia will be defined via a legally binding contract. After the specified changes and amendments to the Act on ASSC had been implemented, in Mrs. Milica Miladinović’s case (the strategic case of the Centre for Peace Studies), we asked the Ministry of Regional Development, Forestry and Water Management (MRDFWM) to issue an urgent request to the competent state attorney’s office (the Municipal State Attorney’s Office in the town of Zlatar) to notify the courts authorized in this case that the Republic of Croatia is stepping in as the property owner, and to inform the competent municipal court to halt the foreclosure proceedings on the property (notification of foreclosure) of Mrs. Milica Miladinović. In July 2011, the MRDFWM sent a reply and a proof of the sent memo to the Municipal State Attorney’s Of-

¹³ Platform 112 is developed by 60 civil-society organisations that are continuously working on protection of human rights, democratisation, peace-building, combating corruption, and protecting public resources, especially the environment. Before the Parliamentary elections in December 2011, these civil society organizations directed a list of 112 demands to all political contestants defining priorities and specific measures for Croatia in which the rule of law represents the foundation of individual, institutional and political action.

¹⁴ Act on Alterations and Amendments to the Act on Areas of Special State Concern, NN 57/11





office in Zlatar requesting it to act in accordance with the Art. 9 and to enter the judicial proceedings as a property owner, but only before the Supreme Court (in the audit procedure). Due to the changes in the courts' system and the attorneys' offices, the authority over this case shifted and the request was not fulfilled until mid-September 2011, when Mr. Krunoslav Stjepan Rajačić took over Mrs. Milica Miladinović's case. The Centre for Peace Studies established an excellent cooperation with Mr. Rajačić who, in addition to entering the judicial proceedings in a legal role of a property owner before the Supreme Court, also requested the lifting of the foreclosure notification from the Mrs. Miladinović estate and transferring the debt to the state budget. At a meeting held on September 16th 2011 at the MRDFWM, initiated by Mrs. Milica Miladinović and the Centre for Peace Studies, and attended by Mrs. Milica Miladinović, the representative of the Centre for Peace Studies, Mr. Stanko Janić and Mrs. Mandica Zvirotić, acting on behalf of MRDFWM, it was determined that the Municipal State Attorney's Office (MSAO) is in the process of entering the judicial proceedings in the legal position of the property owner, and that the request has been filed to the court of Donja Stubica to lift the foreclosure notification. It had been noted that this was the prerequisite for concluding the agreement (concerning renovation or granting ownership rights over another residential unit that corresponds in value to the value of her property or receiving financial compensation in the amount of the market value of the property) between the owner Mrs. Milica Miladinović and the Republic of Croatia. It was also stated that the conclusion of the agreement was under the MRDFWM's authority and that the MSAO has the power to authorize the conclusion of such an agreement. When all the preconditions are fulfilled, the MRDFWM would draft the agreement proposal and invite Mrs. Milica Miladinović and her lawyer to look it through.

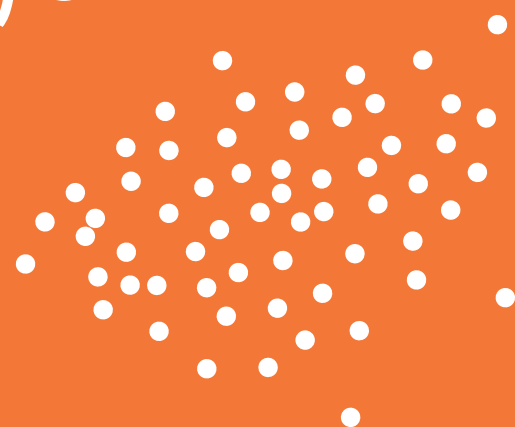
office for approval. Up to mid-April, 2012, this still has not happened, and Mrs. Milica Miladinović, after 11 years of fighting for the realization of her ownership rights, is still living as a tenant on 500.00 HRK social welfare checks.

During October/November 2011, all the prerequisites were met, and MSAO had done everything that was under its jurisdiction. However, the MRDFWM, or the new Ministry of Regional Development and EU Funds (MRDEUF) had done nothing on the matter of drafting the agreement despite our inquiries and the inquiries from the Delegation of the European Union to the Republic of Croatia which monitors how these type of cases have been treated. After the new ministry has been established, we tried to find out who was the new person in charge in dealing with the issue at hand. However, we still have not received an answer. Since there are no obstacles hindering the conclusion of the agreement between the property owner and the Republic of Croatia in accordance with the provisions of the Changes and Amendments to the Act of ASSC, we believe that the MRDEUF should immediately make a draft of the agreement and send it to Mrs. Milica Miladinović and to the competent state attorney's

—7.

*Data received from
the Office of the
Ombudsman, the Office
of the Ombudswoman
for Gender Equality,
the Office of the
Ombudswoman
for Persons with
Disabilities and
the Office of the
Ombudswoman for
Children*

AUTHOR — Sara Lalić



For the purpose of this research, we have sent a request to the Office of the Ombudsman, the Office of the Ombudswoman for Gender Equality, the Office of the Ombudswoman for Persons with Disabilities and the Office of the Ombudswoman for Children to complete our questionnaire on discrimination complaints reported to the Office of the Ombudsman, the Office of the Ombudswoman for Gender Equality, the Office of the Ombudswoman for Persons with Disabilities and the Office of the Ombudswoman for Children in 2011. In this chapter, we will focus on presenting the number and structure of discrimination cases reported to these institutions, the results of actions they have undertaken so far following the reported complaints and their recommendations for the improvement of the Anti-discrimination Act, the Ministry of Justice statistical forms, the cooperation between the special ombudspersons and the Ombudsman and the cooperation of these institutions with the civil society organizations.

7.1 The structure and number of citizens' discrimination complaints

In 2011, the Office of the Ombudsman received a total of 147 discrimination complaints. It is evident from the data provided by the Office that the greatest number of complaints, overall 51, were based on discrimination on the grounds of race or ethnicity, skin color and national origin. This number is followed by 28 discrimination complaints for which the Office of the Ombudsman believes they had no discriminatory grounds. The Office of the Ombudsman processed 11 discrimination complaints on the ground of gender, while 10 complaints were filed on the grounds of age and religious discrimination. Less than 10 discrimination complaints fall into discrimination on the grounds of: political or other belief (5), social status, disability and education (4 for each), marital or family status, trade union membership and property status (3 for each), sexual orientation (2), gender identity/expression and social origin (one for each).

As regards to the structure of discrimination complaints processed by the Office of the Ombudsman according to the regulatory areas defined by the Anti-Discrimination Act, the most frequently represented area is work and working conditions with 51 complaints, followed by the judiciary and administration area with 34 complaints. The area of education, science and sport is also notably represented with its 24 complaints. Somewhat less frequently occurring areas of discrimination are: social security (11 complaints), public information and media (7 complaints), housing and access to goods and services (4 complaints each), while the area with the least complaints is the participation in cultural and creative production with two complaints. In addition, the Office of the Ombuds-

| GROUND OF DISCRIMINATION | NUMBER OF COMPLAINTS |
|---|----------------------|
| Race or ethnicity, color, national origin | 51 |
| No ground | 28 |
| Gender | 11 |
| Age | 10 |
| Religion | 10 |
| Health condition | 7 |
| Political or other belief | 5 |
| Social status | 4 |
| Disability | 4 |
| Education | 4 |
| Marital or family status | 3 |
| Trade union membership | 3 |
| Property | 3 |
| Sexual orientation | 2 |
| Gender identity and expression | 1 |
| Social origin | 1 |
| TOTAL | 147 |

TABLE 6 DISCRIMINATION COMPLAINTS RECEIVED BY THE OFFICE OF THE OMBUDSMAN ACCORDING TO THE GROUNDS OF DISCRIMINATION

| AREA OF DISCRIMINATION | NUMBER OF COMPLAINTS |
|---|----------------------|
| Work and working conditions | 51 |
| Judiciary and administration | 34 |
| Education, science and sport | 24 |
| Social security | 11 |
| Discrimination in general | 10 |
| Public informing and the media | 7 |
| Housing | 4 |
| Access to goods and services and their providing | 4 |
| Access to participation in the cultural and artistic creation | 2 |
| TOTAL | 147 |

TABLE 7 DISCRIMINATION COMPLAINTS RECEIVED BY THE OFFICE OF THE OMBUDSMAN ACCORDING TO THE AREAS OF DISCRIMINATION

man received 10 complaints of general discriminatory practices.

The data on the complaints received by the civil society organizations matches those received by the Office of the Ombudsman, that is, the most frequent discrimination complaints are filed in the work and working conditions area and judiciary and administration area. Therefore, this is yet another proof that these are precisely the areas to which, when formulating and implementing anti-discrimination policies, one should pay special attention.

It is important to emphasize that, the same as with the complaints received by the civil society organizations, discriminatory elements could be found only in a part of citizens' discrimination complaints. Thus, as the Office of the Ombudsman states, after examining the facts of each individual complaint, it is determined whether there are grounds to act in accordance with the Anti-discrimination Act, and there were all together 71 of such complaints.

According to the information delivered to us by **the Office of the Ombudswoman for Gender Equality**, it received 308 discrimination complaints in 2011. Taking into account that the Office of the Ombudswoman for Gender Equality is specialized in only several grounds of discrimination, the structure of the discrimination complaints is obviously different from those processed by the Office of the Ombudsman. Thus, the Office of the Ombudswoman for Gender Equality processed discrimination complaints on four discriminatory grounds. As it was expected, the highest number of discrimination complaints processed by the Office of the Ombudswoman for Gender Equality involved discrimination on the grounds of gender, that is, 236 complaints. There were 16 discrimination complaints on the grounds of sexual orientation and only one discrimination complaint on the grounds of gender identity and expression was processed by this special Ombudsperson's office. Eleven discrimination complaints were processed on the grounds of marital or family status. According to the Office of the Ombudswoman for Gender Equality, in 44 complaints there were no grounds for anti-discriminatory action, or in other words, the Office assessed that out of 308 processed discrimination complaints, 264 complaints actually had discriminatory basis.

As for the areas of social life within which discriminatory actions occurred, the Office of the Ombudswoman for Gender Equality received the discrimination complaints that predominantly fall within the areas of social security, including social welfare, pension and health insurance and unemployment insurance (as much as 124 complaints). This is followed by 76 discrimination complaints in the area of work and working relations. Significantly fewer complaints were made in the following areas: education, science and

| GROUND OF DISCRIMINATION | NUMBER OF COMPLAINTS |
|--------------------------------|----------------------|
| Gender | 236 |
| Sexual orientation | 16 |
| Marital or family status | 11 |
| Gender identity and expression | 1 |
| No ground | 44 |
| TOTAL | 308 |

TABLE 8 DISCRIMINATION COMPLAINTS RECEIVED BY THE OFFICE OF THE OMBUDSWOMAN FOR GENDER EQUALITY ACCORDING TO THE GROUNDS OF DISCRIMINATION

| AREA OF DISCRIMINATION | NUMBER OF COMPLAINTS |
|---|----------------------|
| Social security, including social welfare, pension, health insurance and unemployment insurance | 124 |
| Work and working conditions; access to self-employment and occupation, including selection criteria, recruiting and promotion conditions; access to all types vocational guidance, vocational training, professional improvement and retraining | 76 |
| Education, science and sport | 19 |
| Judiciary and administration | 19 |
| Access to goods and services and their providing | 8 |
| Public informing and the media | 8 |
| Health protection | 7 |
| Membership and activities in trade unions, civil society organizations, political parties or any other organizations | 2 |
| Access to participation in the cultural and artistic creation | 1 |
| No ground | 44 |
| TOTAL | 308 |

TABLE 9 DISCRIMINATION COMPLAINTS RECEIVED BY THE OFFICE OF THE OMBUDSWOMAN FOR GENDER EQUALITY ACCORDING TO THE AREAS OF DISCRIMINATION





sport and judiciary and administration (19 complaints in each area); public information and media and access to goods and services (8 complaints in each area); health protection (7 complaints), membership and activities in trade unions, civil society organizations, political parties or any other organizations (2 complaints) and again last, with the least number of complaints, the area of access to participation in the cultural and artistic creation with only one discrimination complaint. The uneven distribution of discrimination complaints according to the areas of discrimination, based on the data received from the CSOs and the Office of the Ombudsman on one hand, and the Office of the Ombudsman for Gender Equality on the other, might suggest that some groups are more vulnerable, that is, that discrimination on certain grounds is more frequent within certain areas. So, we can conclude that extra attention should be given to the discrimination on the grounds of gender within the area of social welfare because this type of discriminatory practices most frequently occur within the specified area.

The Office of the Ombudsman for Persons with Disabilities has provided us with information according to which it received 25 citizens' discrimination complaints. The same as the Office of the Ombudsman for Gender Equality, the Office of the Ombudsman for Persons with Disabilities is a special ombudsperson's institution for protecting the persons with disabilities. Henceforth, the discrimination complaints that this office received were processed according to only two grounds of discrimination: disability (24 complaints) and health condition (one complaint). According to the areas of discrimination, the discrimination complaints most frequently featured the areas of social security, health and pension insurance and unemployment insurance, as well as the judiciary and administration area; six discrimination complaints for each of the areas were received. There were four reported discrimination complaints in the area of work and working conditions, three in the area of education, science and sport and two complaints in the area of goods and services. In 2011, the Office of the Ombudsman for Persons with Disabilities received one discrimination complaint according to the area of health protection, while there were three discrimination complaints reported according to the discrimination in general.

However, the Office of the Ombudsman for Persons with Disabilities assessed that not all of the complaints received by the Office actually have discriminatory elements. They have found the grounds for anti-discriminatory action in only 4 discrimination complaints.

The Office of the Ombudsman for Children received, in 2011, 21 discrimination complaints that claimed violation of rights on account of discrimination, or in

| GROUND OF DISCRIMINATION | NUMBER OF COMPLAINTS |
|--------------------------|----------------------|
| Disability | 24 |
| Health condition | 1 |
| TOTAL | 25 |

TABLE 10 DISCRIMINATION COMPLAINTS RECEIVED BY THE OFFICE OF THE OMBUDSWOMAN FOR PERSONS WITH DISABILITIES ACCORDING TO THE GROUNDS OF DISCRIMINATION

| AREA OF DISCRIMINATION | NUMBER OF COMPLAINTS |
|--|----------------------|
| Work and working conditions | 4 |
| Judiciary and administration | 6 |
| Education, sciences and sport | 3 |
| Social security | 6 |
| Health protection | 1 |
| Access to goods and services and their providing | 2 |
| Discrimination in general | 3 |
| TOTAL | 25 |

TABLE 11 DISCRIMINATION COMPLAINTS RECEIVED BY THE OFFICE OF THE OMBUDSWOMAN FOR PERSONS WITH DISABILITIES ACCORDING TO THE AREAS OF DISCRIMINATION

| GROUND OF DISCRIMINATION | NUMBER OF COMPLAINTS |
|--------------------------|----------------------|
| Religion | 3 |
| National origin | 1 |
| Health condition | 2 |
| TOTAL | 6 |

TABLE 12 DISCRIMINATION COMPLAINTS RECEIVED BY THE OFFICE OF THE OMBUDSWOMAN FOR CHILDREN ACCORDING TO THE GROUNDS OF DISCRIMINATION

| AREA OF DISCRIMINATION | NUMBER OF COMPLAINTS |
|---------------------------|----------------------|
| Education | 6 |
| Discrimination in general | 1 |
| TOTAL | 7 |

TABLE 13 DISCRIMINATION COMPLAINTS RECEIVED BY THE OFFICE OF THE OMBUDSWOMAN FOR CHILDREN ACCORDING TO THE AREAS OF DISCRIMINATION

which the word “discrimination” was used. The Office of the Ombudswoman for Children assessed that 7 of these complaints had actual grounds of discrimination, so, in the matter of these cases, the Office decided to take action according to the Anti-discrimination Act. Three out of seven complaints claim discrimination on the grounds of religion; health condition was the discriminatory ground in two complaints, while the national origin occurred as the grounds of discrimination in one instance. As for the areas of discrimination is concerned, six discrimination complaints are recorded for the area of education, while the area of general discrimination has one complaint. From the collected data, it is obvious that the children, the target group of this special ombudsperson’s office, are discriminated against mostly in the area of education, which is not surprising, considering that this area of social life is the one in which children are mostly involved in.

7.2

Present results of actions undertaken by the Office of the Ombudsman and the special Ombudspersons’ Offices following reported complaints

The ombudspersons’ offices have answered our inquiry on how would they evaluate the present results of complaint treatments of their respected offices, that is, whether or not they have noticed any changes in the nature of discriminatory acts or practices.

The Office of the Ombudsman emphasized several aspects that the Office considers are of the most importance. The first thing that the Office noted was that, since the Anti-discrimination Act came into force, due to public campaigns, educating the professional and general public and submitting reports on discriminatory practices, the society’s perception of discrimination was changing. This is certainly supported by the fact that the number of judicial proceedings under the Anti-discrimination Act increased, which proves the rise of individual awareness on discriminatory matters. The Office of the Ombudsman also notes that the number of complaints received by the Office balanced itself out in the first three years since the Act has been implemented, taking into account that the Office received the greatest number of complaints during the first year of the passing of the ADA, as it was the same year the Office launched its campaign for raising awareness. The Office of the Ombudsman also provided examples of its successful treatment of the received complaints which had a positive outcome. These are, for example, the amendments made to the sub-legislative act that was discriminatory on the grounds of health condition, and the deletion of

the age criteria from certain job applications, where it was deemed an unjustifiable requirement. Also, the Office points out that the Ministry of Interior has improved its recognition of harassment on all grounds, defined by the ADA, leading to a larger number of misdemeanor proceedings regarding harassment.

The Office of the Ombudswoman for Gender Equality mentioned that the largest number of complaints was filed on the ground of gender discrimination, adding that the number of received discrimination complaints on the ground of sexual orientation was “significantly lower than expected”, although it did slightly increase since the Anti-discrimination Act came into force. **The Office of the Ombudswoman for Gender Equality** believes that the people discriminated against on this ground are either reluctant to use available legal instruments for their protection, or that they have not been acquainted with the assistance that the Office has to offer. Also, the Office of the Ombudswoman for Gender Equality states that still very few people file complaints on the ground of indirect discrimination (only 6.4% of all reported cases claimed indirect discrimination), which would suggest that the citizens do not fully grasp the guarantee on the indirect discrimination prohibition. In addition, the Office of the Ombudswoman for Gender Equality states that citizens mostly report the discriminatory actions of state bodies and bodies of local and regional government and other legal entities under the authority of those bodies (70,7%), rather than reporting discriminatory behavior of private individuals (29,3%). These numbers can serve as indicators of how much more work has to be put in to eliminate discriminatory behavior / conditions on the side of public authorities.

The Office of the Ombudswoman for Persons with Disabilities described the way in which it acted on the received discrimination complaints and what the outcomes of these treatments were. In 2011, the Office received four cases in which, even after reviewing the statements, reports, documentation and records submitted on the side of the defendants, there were still suspicions of discrimination. Therefore, the Office of the Ombudswoman for Persons with Disabilities provided us with the results on the treatment of three out of four of these cases, while the discrimination claims in the fourth one are still being examined. In the first case, the Office believes that its actions achieved positive effect, considering that the plaintiff did not contact them again - in the sense that discrimination against him/her did not continue. In the second case, informal mediation proceedings were initiated. With regard to the third complaint, the defendant changed his/her discriminatory behavior on the matter of failing to make reasonable adjustments. Still, as to insure the full realization of the legal standard of reasonable adjustment, the Office sent one more recommendation notice to the defendant.





The Office of the Ombudsman for Children did not make a statement on the issue, explaining that the actions of the Office in the treatment of some complaints, received in 2011, are still in progress, and that some bodies and persons who received recommendations need to be monitored further.

7.3

Recommendations from the Office of the Ombudsman, the Office of the Ombudsman for Gender Equality, the Office of the Ombudsman for Persons with Disabilities and the Office of the Ombudsman for Children

RECOMMENDATIONS RELATING TO CHANGES AND AMENDMENTS TO THE ANTI-DISCRIMINATION ACT AND OTHER SUB-LEGISLATIVE ACTS IN ORDER TO IMPROVE IMPLEMENTATION

The Office of the Ombudsman and the Office of the Ombudsman for Persons with Disabilities stated that they have made recommendations for the changes and amendments to the Anti-Discrimination Act. The Office of the Ombudsman plans to state its initiatives, attitudes and opinions, concerning the changes, via the Working group for the preparation of changes and amendments to the Anti-Discrimination Act, while the Office of the Ombudsman for Persons with Disabilities plans to make recommendations based on its findings on the necessary changes to some ADA provisions in the proposal on the changes and amendments to the Act.

The Office of the Ombudsman for Gender Equality, in our questionnaire, did not explicitly state its stance on the changes and amendments to the ADA, but it did mention the acts and sub-legislative acts that the Office addressed in 2011:

- petitioned for the changes and amendments to the Act on Amendments to the Act on Employment Mediation and Unemployment Rights (NN 121/10);
- issued a recommendation for the interpretation of the Act on Special Taxes on Passenger Cars, other Motor Vehicles, Vessels and Aircraft (NN 136/02, 44/03, 95/04, 94/09, 21/10);
- made a request to amend Art. 4 of the Regulation on the employment book (NN 14/96);
- simultaneously began drafting a proposal to amend Art. 129, Par. 1, of the Rules of Procedure of the Croatian Parliament.

The Office of the Ombudsman for Children did not express its opinion on the matter.

RECOMMENDATIONS RELATING TO CHANGES AND AMENDMENTS OF THE MINISTRY OF JUSTICE STATISTICAL FORMS FOR MONITORING THE WORK OF COURTS IN THIS AREA AND WITH THE GOAL OF ESTABLISHING HIGHER QUALITY MONITORING OF ANTI-DISCRIMINATION POLICIES

The Office of the Ombudsman for Children and the Office of the Ombudsman for Persons with Disabilities did not supply an answer to this question. The Office of the Ombudsman noted that the new system of the Ministry of Justice statistical forms for monitoring is in the process of being developed and adjusted and that the Office, in cooperation with the Ministry, has agreed upon a new content of the forms for keeping the records, starting with 2012.

The Office of the Ombudsman for Gender Equality stated that the courts should commit to keeping internal statistics of discrimination cases, regardless of whether the anti-discrimination claims were explicit or implicit (the cases that were not filed directly under the ADA). In fact, according to the Office of the Ombudsman, in the majority of anti-discrimination court proceeding, the claims are not made under the anti-discrimination legislation nor the grounds of discrimination are stated. The Office of the Ombudsman for Gender Equality also notes that the courts should deliver their statistics to all the Ombudspersons' Offices and to the Ministry of Justice every three months.

RECOMMENDATIONS FOR FURTHERING COORDINATION AND COOPERATION BETWEEN THE OMBUDSPERSONS' OFFICES, THE CIVIL SOCIETY ORGANIZATIONS AND SOCIAL PARTNERS

The Ombudspersons' offices have in various ways cooperated between themselves, but also with the civil society organizations and social partners on the issue of combating discrimination. So, for example, the Office of the Ombudsman states that the cooperation between the Ombudspersons' Offices has been well established, and that all further actions will depend on the future regulation of these institutions' statuses. The Office of the Ombudsman for Children states that the Office forwarded the cases that did not fall under its authority to other ombudspersons. However, it also received complaints pertaining to discrimination against children from other ombudspersons' offices.

As for the cooperation with the civil society organizations is concerned, it mainly consists of participating on education seminars, conferences, round tables and other events organized by the CSOs, and holding meetings with the CSO representatives.

The Office of the Ombudsman for Gender Equality added that it cooperates with the civil society or-

ganizations and trade unions, and also with women's groups within the unions. However, as the office states, the number of discrimination complaints reported by those groups could be higher.

In order to improve cooperation between the ombudspersons' offices, the ombudspersons agree on the necessity to organize more meetings on various issues between the representatives of these respected offices. On those meetings, according to their opinion, they should exchange information, discuss keeping the records, display statistical data, organize joint action in launching promotional activities, etc. **The Office of the Ombudswoman for Gender Equality** mentioned that a shared internal database should be created and that once a year a joint conference should be organized. This Office also believes, and the **Office of the Ombudsman** agrees, that all the ombudspersons' offices should work together on forming a joint strategy in acting as interveners in court proceedings and filing joint actions.



—8.

*Data from the
Ministry of Justice
received from the
court registers and
statistical data on
the discrimination
judicial proceedings*

AUTHOR — Lucija Kuharić

As defined in the Art. 14 of the Anti-discrimination Act, all judicial bodies are obligated to keep court records on cases claiming discrimination and on which grounds of discrimination are they based; and subsequently, submit it all to the competent ministry. The Ministry of Justice has been collecting data since 2009, when the ADA came into force. Statistical forms for monitoring changed in 2010, thus enabling access to the data on the grounds of discrimination, which previously was not possible. Now, there are 20 grounds of discrimination under which discrimination is monitored, as some of the grounds defined in the ADA have been separated into different categories: ethnicity and race or skin color are considered separate discrimination grounds. Then, the grounds of national and social origin are separately monitored,

while, according to our and other interpretations, gender identity and expression have been mistakenly separated. Thus, a new ground for monitoring discrimination has been created: *expression (for all the grounds)*, which is actually an artificial category created by dividing a uniform discrimination ground. This makes monitoring of the real number of cases, according to a specific discrimination ground, impossible. Monitoring of the court cases is conducted according to case type, that is, before what kind of court do they appear on. Hence, there are monitoring forms for civil, criminal and misdemeanor cases. The Anti-discrimination Act provides for misdemeanor and civil liability. Criminal liability and criminal sanctions are provided by the Criminal Code, which makes it necessary to read the ADA together with the Criminal Code.

| discrimination grounds FROM THE ARTICLE 1 OF THE ADA | civil cases | | | | | | | | | | | | | | | |
|---|--|--|---|---|---|----------|----------------|--|----------|-----------------|----------------------|---------------------------------------|-------------------------------------|-----------------------------|-----------|---|
| | NUMBER OF UNRESOLVED CASES FROM PRIOR PERIOD | NUMBER OF NEW CASES ACCEPTED IN THE REPORTING PERIOD | CATEGORY OF ACTION | | | | | CASES RESOLVED BY BINDING AND FINAL RULING | | | TOTAL RESOLVED CASES | NUMBER OF WOMEN DISCRIMINATED AGAINST | NUMBER OF MEN DISCRIMINATED AGAINST | DURATION OF THE PROCEEDINGS | | NUMBER OF CASES THAT REMAINED UNRESOLVED AT THE END OF THE REPORTING PERIOD |
| | | | DETERMINATION OF DISCRIMINATION (ART. 17, PAR. 1, SUBPAR. 1 OF THE ADA) | PROHIBITION OR ELIMINATION OF DISCRIMINATION (ART. 17, PAR. 1, SUBPAR. 2) | REPARATIONAL DAMAGES (ART. 17, PAR. 1, SUBPAR. 3) | OTHER | CLAIM ACCEPTED | CLAIM REJECTED | OTHER | UP TO 12 MONTHS | | | | OVER 12 MONTHS | | |
| Race or skin colour | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | |
| Ethnicity | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| Gender | 4 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 1 | 0 | 0 | 1 | 4 | |
| Sexual orientation | 8 | 3 | 3 | 0 | 0 | 0 | 1 | 2 | 1 | 4 | 0 | 0 | 1 | 3 | 7 | |
| Language | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| Religion | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | |
| Political or other belief | | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | |
| National origin | 4 | 7 | 3 | 1 | 2 | 1 | 0 | 1 | 2 | 3 | 0 | 2 | 2 | 1 | 8 | |
| Social origin | | 1 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 1 | 0 | 1 | 1 | 0 | 0 | |
| Property | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 1 | 1 | 0 | 1 | |
| Trade union membership | | 6 | 2 | 1 | 2 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 6 | |
| Social status | 1 | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | |
| Marital or family status | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | |
| Age | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | |
| Education | 4 | 1 | 1 | 0 | 0 | 0 | 0 | 1 | 1 | 2 | 1 | 1 | 2 | 0 | 3 | |
| Health condition | 2 | 1 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 1 | 0 | 1 | 1 | 0 | 2 | |
| Disability | 3 | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 4 | |
| Genetic heritage | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| Gender identity | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| Expression (for all the grounds) | 5 | 5 | 3 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 10 | |
| total | 36 | 29 | 14 | 3 | 8 | 4 | 3 | 4 | 6 | 13 | 2 | 6 | 8 | 5 | 52 | |

TABLE 14 CIVIL CASES RELATED TO DISCRIMINATION IN 2011





8.1

Civil cases

According to the data received from the municipal and county courts for the 2011, there are 36 unresolved civil cases from the prior period (from a period before January 1st, 2011), which featured the following grounds of discrimination: sexual orientation (8), expression for all the grounds (5), gender, national origin, education (4 cases each), disability (3), health condition (2), race or skin color, religion, political or other belief, property, social status, marital or family status and age (one case for each ground). There were 29 new cases received in the reporting period, with 52 cases that remained unresolved, which means that in 2011 there were 13 civil discrimination cases

resolved by a final and binding ruling. In 3 cases the claims were accepted; in 4 cases the legal claims were rejected, while 6 cases were resolved in other ways. The accepted legal claims were based on 3 discrimination grounds: sexual orientation, social origin and health condition. In the reporting period, in civil cases appearing before the courts, it was determined that 2 women and 6 men had been discriminated against. Eight proceedings lasted up to 12 months, and 5 of them over 12 months. The cases reported in 2011 are distributed according to the following discrimination grounds: 7 were based on national origin, 6 on trade union membership, 5 on expression (for all the grounds), 3 according to sexual orientation and one for each discrimination ground of gender, political or other belief, social origin, property, social status, edu-

| discrimination grounds FROM THE ARTICLE 1 OF THE ADA | NUMBER OF UNRESOLVED CASES FROM THE PRIOR PERIOD | NUMBER OF CASES ACCEPTED IN THE REPORTING PERIOD | misdemeanor cases | | | | TOTAL RESOLVED CASES | NUMBER OF WOMEN DISCRIMINATED AGAINST | NUMBER OF MEN DISCRIMINATED AGAINST | NUMBER OF CONVICTED PERSONS | DURATION OF PROCEEDINGS | | NUMBER OF CASES UNRESOLVED AT THE END OF THE REPORTING PERIOD |
|---|--|--|--|-----------------|----------|-----------------|----------------------|---------------------------------------|-------------------------------------|-----------------------------|-------------------------|-----------|---|
| | | | CASES RESOLVED BY FINAL AND BINDING RULING | | | UP TO 12 MONTHS | | | | | OVER 12 MONTHS | | |
| | | | CONVICTION | RELEASE VERDICT | OTHER | | | | | | | | |
| Race or skin colour | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| Ethnicity | 6 | 8 | 8 | 0 | 0 | 8 | 3 | 5 | 8 | 8 | 0 | 6 | |
| Gender | | 16 | 4 | 3 | 0 | 7 | 3 | 0 | 3 | 7 | 0 | 9 | |
| Sexual orientation | 1 | 9 | 4 | 2 | 0 | 6 | 4 | 0 | 4 | 6 | 0 | 4 | |
| Language | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| Religion | | 1 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 1 | 0 | 0 | |
| Political or other belief | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| National origin | 1 | 10 | 4 | 0 | 0 | 4 | 1 | 2 | 4 | 4 | 0 | 7 | |
| Social origin | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| Property | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | |
| Trade union membership | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| Social status | | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | |
| Marital or family status | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| Age | | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | |
| Education | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| Health condition | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| Disability | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| Genetic heritage | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| Gender identity | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| Expression (for all the grounds) | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| total | 11 | 47 | 20 | 6 | 0 | 26 | 11 | 7 | 19 | 26 | 0 | 32 | |

TABLE 15 MISDEMEANOR CASES RELATED TO DISCRIMINATION IN 2011

cation, health condition and finally, disability. According to these indicators, the number of cases that claim discrimination on the ground of trade union membership (6) most visibly increased, if we compare it with the unresolved cases from the prior period when no such cases were reported. Discrimination based on national origin (7) is the leading discrimination ground, while as many as 5 received cases fell into the disputed category of expression (for all the grounds) which does not disclose the exact grounds on which the cases are based.

8.2 Misdemeanor cases

According to the misdemeanor court statistics, there were 11 unsolved cases from the prior period based on discrimination grounds of ethnicity (6), property

(3), sexual orientation (1) and national origin (1). In the reporting period, 47 misdemeanor cases were accepted, which is significantly greater than the number of civil cases (29) accepted in the same period. From those 47 cases accepted in the reporting period, 16 claimed discrimination on the ground of gender, 10 were based on the ground of national origin, 9 had sexual orientation as its discrimination ground, 8 claimed discrimination ground of ethnicity, 2 discrimination cases were made on the ground of social status, while religion and age as grounds for discrimination had each one case. Twenty-six cases were resolved by a final and binding ruling. In 20 cases, the court proceedings ended with a conviction, while 6 ended with a release verdict. All cases were resolved in a time span of 12 months. The courts established that 11 women and 7 men were discriminated against, while 19 persons were convicted. There are still 32 unresolved misdemeanor cases.

| discrimination grounds FROM THE ARTICLE 1 OF THE ADA | criminal cases | | | | | | | | | | | | |
|---|--|--|--|-----------------|----------|----------------------|---------------------------------------|-------------------------------------|-----------------------------|-------------------------|----------------|---|--|
| | NUMBER OF UNRESOLVED CASES FROM THE PRIOR PERIOD | NUMBER OF CASES ACCEPTED IN THE REPORTING PERIOD | CASES RESOLVED BY BINDING AND FINAL RULING | | | TOTAL RESOLVED CASES | NUMBER OF WOMEN DISCRIMINATED AGAINST | NUMBER OF MEN DISCRIMINATED AGAINST | NUMBER OF CONVICTED PERSONS | DURATION OF PROCEEDINGS | | NUMBER OF CASES THAT REMAINED UNRESOLVED AT THE END OF THE REPORTING PERIOD | |
| | | | CONVICTION | RELEASE VERDICT | OTHER | | | | | UP TO 12 MONTHS | OVER 12 MONTHS | | |
| Race or skin colour | 4 | 0 | 1 | 0 | 0 | 1 | 0 | 1 | 2 | 1 | 0 | 3 | |
| Ethnicity | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | |
| Gender | | 1 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 1 | |
| Sexual orientation | 2 | 2 | 3 | 0 | 0 | 3 | 0 | 2 | 4 | 3 | 0 | 1 | |
| Language | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| Religion | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| Political or other belief | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| National origin | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | |
| Social origin | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| Property | 1 | 0 | 1 | 0 | 0 | 1 | 0 | 0 | 1 | 0 | 1 | 0 | |
| Trade union membership | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| Social status | | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | |
| Marital or family status | 1 | 1 | 1 | 0 | 0 | 1 | 0 | 0 | 1 | 1 | 0 | 1 | |
| Age | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| Education | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| Health condition | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| Disability | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| Genetic heritage | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| Gender identity | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| Expression (for all the grounds) | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| total | 12 | 5 | 6 | 0 | 0 | 6 | 1 | 3 | 8 | 5 | 1 | 11 | |

TABLE 16 CRIMINAL CASES RELATED TO DISCIMINATION IN 2011





8.3

Criminal cases

According to the collected data on criminal cases, there were 12 unresolved cases from the prior period based on discrimination grounds of: race or skin color (4), ethnicity (3), sexual orientation (2), and one case for each discrimination ground of national origin, social origin and marital or family status. In 2011, only 5 cases were received: 2 claiming discrimination on the ground of sexual orientation, and the rest (3) claiming discrimination on the grounds of gender, social status and marital or family status, respectively. In the reporting period, 6 cases were resolved by a convicting final and binding ruling, namely, 3 on the grounds of sexual orientation, and one ruling for each of the discrimination grounds: race or skin color, property and marital or family status. Discrimination against 3 men and one woman was established in criminal court proceeding, while 8 persons were convicted. In 5 cases the judicial proceedings lasted up to 12 months, while in the matter of one case, over 12 months.

—9.

*Recommendations
for the
improvement of
anti-discrimination
policies in Croatia*

AUTHOR — Sara Lalić

In accordance with the results obtained in this research, we have made recommendations aimed at improving anti-discrimination policies in Croatia. Based on the results of this research, we have identified four groups of recommendations: (1) recommendations relating to the anti-discrimination policies in general, (2) recommendations relating to the work of the CSOs in the anti-discrimination field, (3) recommendations relating to the work of the ombudspersons' office in the anti-discrimination field, (4) recommendations relating to the monitoring of court proceedings in anti-discrimination cases.

In addition, the recommendations made in the 2009 research, published in the publication *How to combat discrimination? Report on Monitoring the Implementation of the Anti-Discrimination Act in Croatia in 2009 and European Court of Human Rights Case-Law*; those recommendations from the 2009 report that did not get fully realized; were included in the final recommendations of this report.

9.1

General recommendations regarding anti-discrimination policies in Croatia

- Continue with implementing educational programs, raising citizens' awareness on discrimination and Anti-discrimination Act and on the mechanisms the ADA offers
- Empower particularly vulnerable social groups to recognize and report discriminatory behavior/act. According to the results of this research, this specially applies to racial and national minorities, LGBT persons, persons with disabilities, women, etc.
- Work on raising the citizens' awareness on the matter of indirect discrimination, considering that very few complaints refer to this form of discrimination, and also educate people on the mechanism for the protection from indirect discrimination
- According to the results of this research, discrimination occurs primarily in the area of work and working conditions. So, accordingly, special attention should be paid to it and work on educating and raising employers' awareness on discrimination and their legal obligation to prevent discrimination in accordance with the ADA and other legislation of the Republic of Croatia
- In addition, special attention should be given to the judiciary and administration area of discrimination, considering that the discrimination cases in this area are also numerous
- It is necessary to work on achieving better coordination between the competent bodies for the implementation of housing care
- Carrying out of the mediation procedures in discrimination cases as frequently as possible and

with the consent of both parties

- The Vital Records Act should be changed so as to prohibit public access to transgender persons' personal information
- Continue working on strengthening and enlarging the capacities of the police and other bodies responsible for preventing and sanctioning hate speech, hate crimes and discrimination, in recognizing hate speech, hate crimes and discriminatory actions
- Changing the part of the election legislation that prohibits the persons without legal capacities to participate in the elections
- Introducing legal obligation for local and regional self-government units to implement policies under the National Strategy for Protection against Domestic Violence
- Using statistics as a reliable indicator and reference for assessment in discrimination cases
- Establish clear and implementable integration policies for asylum seekers and grantees in order to enable their easy and quick integration into society
- Develop programs for psychological and economic empowerment of discrimination victims
- Amend the Anti-discrimination Act to provide stricter sanctions for the inadequate behavior of institutions responsible for the implementation of anti-discrimination and human rights legislation and the protection of civil rights and interests
- Insist on the revision of the Free Legal Aid Act in order to make legal aid fully accessible to low income citizens. When assessing the need for free legal aid, adjust the Act to take into account actual life circumstances instead of privileging formal categories
- The Ministry of Justice should administer judgments of the European Court of Human Rights, particularly European Court of Justice, in cases dealing with the violation of the right to equal treatment
- The courts should apply the judgments reached by the European Court of Human Rights and European Court of Justice on the cases dealing with unequal treatment when interpreting the ADA

9.2

Recommendations relating to the CSOs

- Raise financial and professional capacities of the CSOs for providing free legal aid and advice in citizens' discrimination cases
- Amend the Free Legal Aid Act in order to simplify the requirements for providing legal aid
- Educate and encourage the CSOs employees to use the legal instruments of associational action and act as interveners on behalf of plaintiffs in anti-discrimination cases, in accordance with the ADA
- Encourage the civil society organizations to carefully keep the records and statistics on the discrimination cases they have received

- Establishing a universal system for monitoring discrimination complaints and methodology for monitoring the discrimination cases that a number of civil society organizations would share, and which would be consistent with the monitoring system used by the Ombudspersons' offices

9.3

Recommendations relating to the Ombudspersons' Offices

- Creating a unified internal database on discrimination complaints for all four Ombudspersons' offices
- More frequent meetings need to be organized for the representatives of the ombudspersons' offices, where they could share information on discrimination cases received by the ombudspersons' offices, and arrange joint projects, campaigns, conferences, etc.
- Create a joint strategy for the Ombudspersons' offices for acting in judicial proceedings as interveners and filing associational actions
- Intensify cooperation with the civil society organizations, as to hold regular meetings for the representatives of the Ombudspersons' offices and CSO representatives working on anti-discrimination policies
- Advocate for greater recognition and respect for the opinions of the Ombudsman and other ombudspersons' offices by government bodies

9.4

Recommendations relating to the monitoring of discrimination cases appearing before Croatian courts

- The Ministry of Justice should publish the records and statistical data on discrimination cases on its official website
- The Ministry of Justice should also make publicly available the final and binding rulings on discrimination judicial proceedings in order to facilitate the monitoring of judicial practices within this framework
- The courts should keep statistics of cases that are not filed under the ADA but are implicated as such.

