

# briefing



## The Law on Combating Discrimination - A new framework, opportunities and challenges for the protection of the rights of national minorities in Croatia

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This briefing considers positive antidiscrimination legislative framework in Croatia. Further on, it addresses some cases of discrimination practices against persons belonging to national minorities, particularly to Serb and Roma communities.

The intention of this paper is to contribute raising wider awareness on the content and much needed implementation of anti-discrimination legislation in Croatia by focusing on challenges and opportunities for eliminating discrimination against persons belonging to national minorities and protecting their rights under the framework of 2008 Law on Combating Discrimination.

### Introduction

With the introduction of the multi-party system and the gaining of independence from the former Yugoslavia at the beginning of 1990s, the Croatian society set out towards self-development of democracy and building of national democratic institutions.

It should be noted that young Croatian democracy was being constructed in difficult times and environment. Overall political, social and economic transition of Croatian society in the last decade of 20<sup>th</sup> century and forthcoming years has been deeply affected by 1990s armed conflict in former Yugoslavia, but also negatively influenced by the legacy of the authoritarian regimes from further and recent past, when human rights violations and discrimination on

the basis of e.g. political or other beliefs, race, ethnic or national and religious affiliation occasionally appeared. Declaratory asserted commitment of the Croatian authorities to respect human and minority rights, rule of law and equality of all citizens before the law was often denied in practice. Accompanied by weak and politically influenced judiciary institutions and state administration many consequences of discrimination from previous period directed against members of certain ethnic minorities remain present today.

More significant steps and measures necessary for the promotion and development of national anti-discrimination legislation began to be taken in the early 2000. International organizations and so-called “*international community*“, as well as international and local NGOs had a major role in perceiving the situation of discrimination, encouraging this process and encouraging the authorities. For example, the European Commission against Racism and Intolerance (ECRI), in late 2004, pointed out that “*the current civil and administrative law provisions are not sufficient to prohibit discrimination in all areas of life*” and that “*there is no national body specialising in combating racism and racial discrimination, although people, notably those belonging to national minorities, still suffer from racial discrimination.*”<sup>1</sup>

Therefore, adjustment to the domestic legislation and development of practices began with the amendments of provisions of the existing regulations on the prohibition and

suppression of discrimination, as well as the adoption of new legislation that included anti-discrimination provisions.

## National minorities – Constitutional provisions and demography

With the promulgation of the Constitution on 22 December 1990, the Republic of Croatia was established as a national state of the Croatian nation and the state of others people and minorities as its citizens: Serbs, Muslims, Slovenians, Czechs, Slovaks, Italians, Hungarians, Jews and others, who are guaranteed equality with citizens of Croatian nationality and realization of national rights in accordance with the democratic norms of the United Nations Organization and the countries of the free world. In the meantime, this provision of the Preamble of the Constitution has been changed and stated that “...*the Republic of Croatia is established as the national state of the Croatian nation and the state of the members of autochthonous national minorities: Serbs, Czechs, Slovaks, Italians, Hungarians, Jews, Germans, Austrians, Ukrainians and Ruthenians and the others...*”<sup>2</sup>

As a result of a political compromise between minority and majority MPs, since the adoption of amendments to the Constitution in June 2010, the Preamble of the Constitution now explicitly lists all 22 national minorities<sup>3</sup> officially recognized in the Republic of Croatia. By these amendments Bosniaks (at the time listed as Muslims<sup>4</sup>) and Slovenians, the two minorities that were explicitly listed in the Preamble of the 1990 Constitution and were deleted from that list later, were re-included in the Preamble of the Constitution. Other officially recognized national minorities being listed before as “the others” got included in the Constitution by their names for the first time. Although perhaps these changes might be of just symbolic nature, they could positively affect additional identity affirmation of the persons belonging to different national minorities in the Republic of Croatia.

According to the 2001 State Census results<sup>5</sup> the most numerous national minority in Croatia is Serbian with 201.631 members or 4,54% of the total Croatia population. Serbs are followed by Bosniaks with 20.755 members or 0,5% of

the total population, Italians with 19.636 or 0,4%, Hungarians with 16.595 or 0,4%, Albanians with 15.082 or 0,3%, Slovenians with 13.173 or 0,3% and Czechs with 10.510 or 0,2%. The smallest in figures minorities are Bulgarians with 331 members, Turks – 300, Austrians – 247 and Vlachs – 12. The 2001 Census registered less than 10.000 Roma in Croatia, more precisely 9.463, while the Government estimates their number to up to 30,000- 40,000<sup>6</sup>.

The results of the 2001 Census show approx. 7,25% (from 4.784.265 to 4.437.460) decrease in total number of inhabitants of the Republic of Croatia between two Censuses, 1991 and 2001. According to 2001 results the number of persons belonging to majority population increased by approx. 11,53% (from 78,1% to 89,63%) while number of persons belonging to national minorities decreased by approx. 50% and came down to 7,47 % or 331.383 of the whole population of the country.<sup>7</sup> Changes in country's ethnic composition may primarily be attributed to demographic changes and migrations due to 1990s armed conflict and socio-economic reasons.

Members of various minority communities are dispersed all over the Croatia, with more significant concentrations in border areas and in larger urban centers. Most of border areas with Bosnia & Herzegovina, Serbia and Montenegro - in the East, Central and South Croatia - have been affected and devastated by 1990s armed conflict to the highest extent. These areas remain underdeveloped and are under the special State concern (known as Areas of Special State Concern).

## Positive anti-discrimination provisions within national legislation by 1 January 2009

Freedom, equal rights, national equality and equality of genders and the rule of law are some of the highest values of the constitutional order of the Republic of Croatia.<sup>8</sup> The Constitution stipulates that everyone in the Republic of Croatia shall enjoy rights and freedoms, regardless of race, colour, gender, language, religion, political or other belief, national or social origin, property, birth, education, social status or other characteristics and that all shall be

equal before the law.<sup>9</sup> The Constitution, specifically, guarantees the equality of persons belonging to all national minorities.<sup>10</sup>

International agreements concluded and ratified in accordance with the Constitution and made public shall be part of the internal legal order of the Republic of Croatia.<sup>11</sup> Such international agreements shall be above national law, thus constituting higher form of the law than national legislation (with exception of the Constitution) in terms of legal effects.<sup>12</sup> The Republic of Croatia is a party to key international human rights treaties, including anti-discrimination treaties concluded under the auspices of the United Nations (UN) and the Council of Europe (CoE).<sup>13</sup>

General protection of persons belonging to national minorities from discrimination on the basis of membership to a national minority is prescribed by the Constitutional Law on the Rights of National Minorities. The Constitutional law guarantees equality before the law and equal legal protection to members of national minorities.<sup>14</sup> Further on, it would be worth emphasizing that the Constitutional law also provide high level of protection of specific national minorities rights, including the exercise of special rights and freedoms (*affirmative / positive measures targeting national minorities*) of national minority members they enjoy individually or jointly with other members of the same national minority or, where so provided in this Constitutional Law or a special law, jointly with members of other national minorities.<sup>15</sup>

Furthermore, provisions on the prohibition of discrimination are contained in certain laws, namely the Labour Law (prohibition of discrimination in the field of labour and labour relations, obligation for employers who are employing 20 employees or more to prescribe measures which protect employees against discrimination in case this is not regulated by the Collective Agreement); the Law on Civil Servants (prohibition of discrimination on various grounds in the treatment of civil servants, equality of treatment of all civil servants and equal conditions for the promotion, awards and legal protection); the Law on Gender Equality (protection from discrimination based on gender, prohibition of harassment and sexual harassment, prohibition of discrimination based on marital and family status, as well as on the

basis of sexual orientation) and the Law on Same-Sex Unions (prohibition of discrimination on the grounds of same-sex unions and homosexual orientation). Violations of equality of citizens and racial or other discrimination have been prescribed as criminal acts by the Criminal Code.

Beside the anti-discrimination rules and regulations prescribed by laws, it should be noted that Croatian government has adopted a number of policies and strategies towards preventing and suppressing various forms of discrimination. The National Program for Roma (2003) and the Action plan of the Decade of Roma 2005 - 2015 (2005), National Program for Protection and Promotion of Human Rights 2008 - 2011 (2007) and the Action Plan for Implementation of the Constitutional Law on National Minorities (2008) may be considered as of particular importance to combating racial discrimination and discrimination against persons belonging to national minorities.

### Drafting, adoption and entry into force of the Law on Combating Discrimination

In the course of 2000s various international organizations and theirs' bodies specialized for the protection of human rights and combating discrimination have been recognizing certain progress of the Republic of Croatia in developing and in strengthening national anti-discrimination legislative framework. The same, however, continued to encourage the Croatian authorities to take further steps in the field of anti-discrimination legislation, as well as to establish an independent body to combat discrimination.

Thus, for example, the 2<sup>nd</sup> Opinion of the Advisory Committee on the Framework Convention for the Protection of National Minorities on Croatia adopted in October 2004 states:

*“Croatia has taken steps to develop its legal framework to combat discrimination following the recommendations by the Advisory Committee in the first monitoring cycle. In the light of the credible reports of discrimination in the field of employment, the amendments to the Labour Code, adopted in 2003, prohibiting direct and indirect*

*discrimination, are particularly important and their enforcement needs to be pursued and monitored vigorously. In order to improve further the implementation of Article 4 of the Framework Convention, the legislative work in this sphere needs to be continued and, taking into account the lack of reliable statistics, enhanced methods of monitoring developments in this field should be introduced.*"<sup>16</sup>

In 2004 ECRI, amongst other, recommended Croatian authorities to "continue tightening their civil and administrative law to combat racial discrimination"; „provide the Ombudsman's Office with the human and financial resources it needs to perform its tasks successfully"; as well as to "swiftly set up an independent body specialising in combating racism and racial discrimination, in particular to help victims in obtaining compensation for violations committed by the authorities or private individuals".<sup>17</sup>

The first concrete step towards the adoption of the Law on Combating Discrimination was taken with the adoption of the Conclusion of the Croatian Government of 31 May 2007. The Conclusion initiated the process of drafting the proposal of a uniformed anti-discrimination law. In the Proposal of the Law on Combating Discrimination was stated that Croatia, by signing the Stabilization and Association Agreement with the European Communities and the Member States, "formally assumed the obligation of its overall alignment of legislation with EU regulations."<sup>18</sup> Further on, the Proposal states that the Conclusion of the Government has launched the process of drafting of the Law "precisely for the purpose of harmonization of the Croatian legislation in the field of discrimination, and following the obligations arising from the Action Plan for harmonization of legislation and creation of necessary administrative capacities to adopt and implement the *acquis communautaire* in the field of negotiation's Chapter 19 - Social Policy and Employment."<sup>19</sup> This makes visible the significant impact of EU integration on the process of adoption of a uniform and comprehensive anti-discrimination Law at national level.

To some extent, a feature of this process was a participative and consultative role that numerous NGOs, religious groups and independent experts played in it. Since the transparency in drafting legislative proposals and consultations with NGOs in this course is not a common practice in Croatia, this feature deserves to be particularly emphasized as an example of a good practice.

The Law was adopted by the Croatian Parliament on 15 July 2008 and it came into force on 1 January 2009. Upon the adoption of the Law the Croatian Government adopted a National Plan to Combat Discrimination 2008 - 2013 and the Action Plan for the Implementation of the National Plan 2008 - 2009.

## The Content of the Law on Combating Discrimination

Through the process of aligning of national legislation with the EU regulations Croatian authorities harmonized the Law on Combating Discrimination with the Council of European Union Directives on Racial Equality and Equality in Employment (2000).<sup>20</sup> In some segments the Law provides and stipulates even broader framework for protection from discrimination than the one set in EU directives.<sup>21</sup>

By adopting the Law on Combating Discrimination in July 2008, Croatia obtained a complete and comprehensive legislation governing the issue of discrimination and the system of its elimination in a unique way.

Here follows a short overview<sup>22</sup> of the content of the Law provisions by sections and articles:

- The Section I "General Provisions" Article 1 lays down the purpose of the Law and the concept of discrimination in terms of the Law on Combating Discrimination.
- Article 1 prescribes that that the Law ensures the protection and promotion of equality as the highest value of the constitutional order of the Republic of

- Croatia, creates prerequisites for realization of equal opportunities and regulates protection against discrimination on a wide range of grounds (race or ethnic affiliation or colour, gender, language, religion, political or other belief, national or social origin, property, trade union membership, education, social status, marital or family status, age, health condition, disability, genetic heritage, gender identity, expression or sexual orientation). Placing of any person or a person related to that person by kinship or other relationship, in a less favourable position is deemed to be discrimination.
- Section II “Forms of discrimination”, Articles 2 – 8, establishes and defines in details the various forms of discrimination on one of the grounds from Article 1
    - Article 2 determines direct discrimination (treatment whereby a person is or has been or could be placed in a less favourable position than other persons in a comparable situation) and indirect discrimination (when an apparently neutral provision, criterion or practice places or could place a person in a less favourable position in relation to other persons in a comparable situation, unless such a provision, criterion or practice may be objectively justified by a legitimate aim and the means of achieving that aim and appropriate and necessary).
    - Forms of discrimination as stipulated in the Article 3 are harassment (any unwanted conduct with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading or offensive environment) and sexual harassment (any verbal, non-verbal or physical unwanted conduct of sexual nature with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading or offensive environment).
    - In accordance with the provision of the Article 4, encouragement to discrimination and a failure to make reasonable adaptation for persons with disabilities in the sense of enabling them the use of publicly available resources, participation in public and social life, access to work place and appropriate working conditions, adapted infrastructure and premises, the use of equipment and adaption in another manner which does not present unreasonable burden for the person that is obliged to provide for it, shall be deemed to be discrimination.
    - The Article 5 deems segregation as a form of discrimination, forced and systematic separation of persons, with the meaning of Article 1.
    - The Article 6 determines more serious forms of discrimination, which are considered to be discrimination towards a certain person on more than one of the grounds (multiple discrimination), discrimination committed several times (repeated discrimination), discrimination which lasted a longer period of time (continued discrimination) or discrimination whose consequences are particularly harmful for the victim. Courts have a duty to take into consideration these circumstances when determining the amount of the compensation for non-proprietary damage and when deciding about the fine for misdemeanours.
    - Article 7 stipulates that no one shall be placed in a less favourable position because he/she has reported, in good faith, discrimination, witnessed discrimination, refused an instruction to discriminate or participated in any manner in proceedings based on discrimination in line with provisions of this Law.
    - Provisions of the Article 8 provide the scope of the law enforcement. The law

applies to the conduct of all state bodies, bodies of local and regional self-government units, legal persons vested with public authority, and to the conduct of all legal and natural persons in a wide range of activities and exercise of rights, which are elaborated in detail in this Article.

- The Section 3 „Prohibition of discrimination“, articles 9 - 11, prescribes the prohibition against discrimination and the exceptions from the prohibition of discrimination and establishes reporting obligations and provision of data, as well as the right to damages.
  - Article 9 prescribes general prohibition of discrimination in all forms. Furthermore, it determines in details cases when the placing in a less favourable position shall not be deemed to be discrimination and prescribes that these exceptions shall be interpreted in proportion to the aim and purpose for which they are determined.
  - The Article 10 determines the obligation for the bodies and persons referred to in Article 8 to report a reasonable suspicion of discrimination to the Ombudsman or a special ombudsman, with the consent of the person who is allegedly a victim of discrimination. Bodies and persons referred to in Article 8 are obliged to provide all the information and requested documents related to discrimination at the request of the Ombudsman or a special ombudsman within 15 days.
  - Article 11 prescribes that, pursuant to provisions of this Law, a victim of discrimination shall be entitled to damage compensation pursuant to regulations from the area of obligatory relations.
- Provisions under Section 4 „ The Institutional Framework“, Articles 12 - 15, establish the institutional framework for combating discrimination
  - Article 12 determines the role and the scope of the work of Ombudsman as the central body responsible for the suppression of discrimination.
  - Article 13 prescribes that certain activities to combat the discrimination from the scope of the Ombudsman shall be performed by special ombudsmen when this is regulated by a special law.
  - Article 14 prescribes the obligation of all judicial bodies and special ombudsmen to keep records of cases related to discrimination falling within their competence and the obligation to submit records and statistical data on court cases related to discrimination to the Ombudsman for the previous calendar year in legally prescribed deadline.
  - Article 15 governs the social dialogue and cooperation with civil society sector, i.e. consultation in the process of drawing up regular reports, opinions and recommendations of the Ombudsman on the phenomena of discrimination.
- Section 5 „Proceedings before the court“, Articles 16 – 24, detail the manner and procedure governing the court protection from discrimination
  - Provisions of Article 16 establish the possibility of protection of rights in the proceedings deciding upon that right as the main issue or in special proceedings laid down in Article 17. The exceptions in relation to special proceedings are proceedings for the purpose of protection against discrimination in the area of work and employment which

shall be deemed to be litigations arising from labour relations. The court and other bodies conducting the proceedings are obliged urgently undertake actions within the proceedings.

- Article 17 establishes the finding of a complaint of discrimination, a claim for prohibition or elimination of discrimination and a complaint for damages as special legal actions for the protection against discrimination, as well as the manner of their focus and acting upon them. It also stipulates the plaintiff's right for the ruling establishing the violation of the right to equal treatment to be published in the media, at the defendant's cost.
- Articles 18 and 19 govern the litigation jurisdiction under the complaint from Article 17, as well as the possibility that, at the request of the parties, the court may order temporary measures in cases when prescribed conditions have been met.
- Article 20 determines that the party in a court or other proceedings, with the exception of a misdemeanour and criminal proceedings, shall make it plausible that discrimination has taken place, while the burden of proving the absence of discrimination lies on the defendant.
- Article 21 prescribes the possibility that, on the side and with the consent of plaintiff, a plaintiff may be joined by an intervener or a third person, according to the court's decision. Interveners may be a body, organization, institution, association or another person that, within its scope of activities, deals with the protection of the right to equal treatment in relation to groups whose

rights are decided upon in the proceedings.

- Articles 22 and 23 govern court's deadlines for fulfilling obligations or enforceability, and the possibility to use extraordinary legal remedies.
- Article 24 prescribes the possibility of filing a joint legal action for the protection against discrimination, claims that it may bring forward and the real and territorial jurisdiction of the courts. Joint legal action or collective action may be brought by associations, bodies, institutions or other organizations set up in line with law and having a justified interest in protecting collective interests of certain groups or those which within their scope of activities deal with the protection of the right to equal treatment, if they make plausible that the defendant's conduct has violated the right to equal treatment of a larger number of persons who predominantly belong to the group whose rights the plaintiff defends.
- Provisions of the Section 6 "Penalty provisions", Articles 25 - 29, lay down the misdemeanour offenses of natural and legal persons for discrimination and failing to act under the provisions of the Law, as well as specific fines for specific instances of discrimination or failure to act upon them. A proposal for charges based on the misdemeanours may also be brought by the Ombudsman or special ombudsmen.
- Section 7 "Transitional and Final Provisions", Articles 30 and 31, determine the commitment of the Ministry of Justice and the deadline for the disclosure of forms for statistical monitoring of cases related to discrimination, as well as the date of entry into force of the Law.

## Current situation and fields of discrimination against persons belonging to national minorities in Croatia

It is difficult to precisely determine the actual situation of exposure to discrimination of persons belonging to national minorities in Croatia. Specifically, the domestic case law is very poor. This too was indicated by the Ombudsman at the beginning of 2010.<sup>23</sup> In late 2004, when considering the problem of discrimination in employment, ECRI concluded that available sources of information indicate that the number of complaints was low and did not reflect the true extent of the problem of discrimination in employment.<sup>24</sup> UN Committee on the Elimination of Racial Discrimination (CERD) noted in March 2009 that, *inter alia*, "...only a few complaints have been submitted and eventually led to convictions under Article 174 of the current Criminal Code ...".<sup>25</sup> These cases primarily referred to criminal acts of racial and other forms of discrimination.

Problems of monitoring and analysing the state of discrimination against national minorities also refers to the collecting, processing and updating a wide range of relevant data disaggregated by ethnicity. In this regard, in reference to the collection of data on the ethnic composition of the population CERD states that the State "*should provide information on its methods of data collection, including whether and how they reflect the principle of self-identification*".<sup>26</sup>

In one survey on the opinions and level of discrimination carried out in 2009 participants in the research indicated (number or proportion of participants - members of national minorities is unknown) that labour and employment (58%), justice (30%), police conduct (24%), health (22%), education (20%), welfare (17%), media (18%), etc., are widespread areas of discrimination in Croatia.<sup>27</sup>

When in January 2010 asked to identify groups most exposed to discrimination the Ombudsman said:

*"The most of claims we receive relate to labour and employment, then health care, welfare, police conduct, while national origin, religion, disability, financial status, age and gender are the most frequently cited grounds for*

*discrimination. Serbs and Roma are still the most vulnerable groups. Even before the enactment of this Law, Serbs were the ones who addressed the highest number of claims of discrimination to the Office of the Ombudsman, not only because of the historical burden, but also due to the fact that a large number of them still did not access their rights in terms of return and reconstruction. Due to poor organization within the community, the Roma send less of their complaints to us... The unresolved status in Croatia poses a big problem for the Roma community, including citizenship, from which stems a multitude of cultural and sociological barriers towards achieving full equality."*<sup>28</sup>

When considering the annual progress of Croatia towards EU integrations in 2009, the European Commission concluded that the legal provisions regulating the fundamental rights were generally appropriate, but despite some progress many significant challenges in their implementation remain, particularly in regard to national minorities.<sup>29</sup> In 2010 Progress Report the European Commission stated that "Protection of fundamental rights has been strengthened but need to be improved in practice, especially for minorities and refugees".<sup>30</sup> CERD and the UN Human Rights Committee (HRC) reported in 2009 on certain advances achieved in the previous period, but also indicated on the existence of cases of *de facto* discrimination against Serbs and Roma.<sup>31</sup>

Both UN Committees encourage Croatian authorities to reinforce measures for combating and prosecuting all cases of crimes and other ethnically motivated violence, particularly in providing victims with effective and fair remedies.<sup>32</sup> Among other, acting of Croatian authorities upon these recommendations is of importance in ensuring preconditions for individuals to freely declare their affiliation to a minority. Namely, after publishing of 2001 Census results some suggested that many Serbs haven't declared their ethnicity due to fear of and the existing hostilities.<sup>33</sup> As regarding Roma, within the framework of the National Program for Roma of 2003 Croatian government estimated the number of Roma in Croatia at 30,000 to 40,000, while the official Census results indicated only 9.463.

ECRI<sup>34</sup>, CERD<sup>35</sup> and HRC<sup>36</sup> report on the specific problems of discrimination related to



attaining Croatian citizenship of long-time residents of the Republic of Croatia belonging to Serb, Roma and Bosniak communities. Some members of these minority communities are unfavourably treated in granting the citizen's status comparably to persons of ethnic Croatian origin. In this regard, in order to ensure non-discriminatory access to citizenship, CERD recommended Croatian authorities to remove administrative and other obstacles and to provide assistance to persons whose access to obligatory documentation remain limited.<sup>37</sup> Furthermore, HRC encourages Croatian authorities to devote more efforts to facilitate equal access to citizenship to persons belonging to minorities.<sup>38</sup> Finding practical and fair solution to problems in resolving long-standing status is of paramount importance for realization of the right to equality for all minorities in accessing a wide range of different rights and their full integration into wider society.

It can be concluded that the adoption and implementation of affirmative measures imbedded in Croatian laws and policies of 2000s e.g. in securing political representation of national minorities at different levels of authority contributed to some progress in protecting specific minority rights and in combating discrimination based on minority affiliation.

However, CERD expressed concern on discrimination faced by members of Roma minority in their enjoyment of human rights, particularly in fields of education, employment, housing, citizenship, and political participation.<sup>39</sup>

Members of Serb national minority, especially those displaced during 1990s armed conflict, still face problems related to repossessing their property, accessing state housing assistance, obtaining state assistance for reconstruction of devastated housing units, recognizing variety of acquired rights etc. Problem of sustainability of minority returns, including problems in accessing employment and reintegration in a broader sense remain on the top of a political agenda in the EU accession negotiation process. Thus, it can be elaborated that consequences of discriminatory practices in (non)application of relevant regulations and discriminatory treatment of primarily displaced ethnic Serbs by public administration and judiciary bodies as well as intolerance inherited from the 1990s still have a

negative impact on some members of the Serb minority nowadays.

Assessments of an independent study from 2007, produced by the UNHCR, show the disastrous results in sustainability of minority returns:

*"...we could conclude that between 44% and 50% of registered returnees do not permanently reside in Croatia. If we translate our findings to the whole population of 120,000 registered Serb (minority) returns, we arrive at a realistic estimate of 46,000 and 54,000 registered returnees living permanently in the country, of whom 42,000 to 49,000 reside in their place of origin".<sup>40</sup>*

Serious cases of intolerance and racism against Serbs and Roma are still present. In early September 2009 most of Croatian media reported on a case of a doctor who allegedly refused to provide emergency medical assistance to a patient of Serb nationality. Friends of the patient, who came to take him to a nearby hospital, argued with the doctor who told them that he was *"fed up with the Chetnik<sup>41</sup> vermin from Vrhovine<sup>42</sup>"*.<sup>43</sup> The police has filed claim against the doctor to the competent Magistrate Court referring to the case of violation of public order and peace.<sup>44</sup>

In early February 2010, media reported on a sign placed at a counter cash of the bus station in Zagreb saying *"Do not touch Roma – they are infected"*. The Manager of the bus station condemned the act but also justified it with an inappropriate behaviour of Roma who, according to him, *"are often pulling the travellers, spitting them, begging for money and cursing them"*. It was announced that the worker during whose shift the sign was placed will receive a cautionary note before possible dismissal.<sup>45</sup>

HRC<sup>46</sup> and CERD<sup>47</sup> also indicate the allegations of persistent differential treatment of Croatian authorities in prosecuting war crimes cases before domestic courts. In this regard, CERD recommends to Croatia to *"strengthen its efforts to ensure that all war crimes trials conducted at the national level are carried out fairly and in a non-discriminatory manner and that all cases of war crimes are effectively investigated and prosecuted, irrespective of the ethnicity of the victims and the perpetrators involved"*.<sup>48</sup> In April 2010, the Amnesty International, amongst other, *"continues to be*

*concerned that both case selection by prosecution, as well as an extensive use of mitigating circumstances in cases where the accused were members of the Croatian Army and police forces, provide for bias in the judiciary against Croatian Serbs”.*<sup>49</sup>

Relevant international institutions also considered individual cases of discrimination against members of national minorities in Croatia. For the purpose of this paper 3 cases recently considered before the European Court of Human Rights (ECHR) and HRC are selected:

### 1. The case of *Šečić vs. Croatia*, considered before ECHR <sup>50</sup>

Mr. Šemso Šečić submitted an application against the Republic of Croatia to ECHR on 12 November 2002. In the application is particularly noted that local authorities have failed to undertake serious and thorough investigation into his attack and that he has been a victim of discrimination on the grounds of his Roma origin.

While he was collecting old metal scraps on 29 April 1999, the applicant was attacked by two unidentified men, beating him all over his body with wooden planks shouting racial abuse. Shortly afterwards, a police patrol and an ambulance arrived at the scene and took the applicant to a nearby hospital. The hospital physicians concluded that no bones had been broken, provided the applicant with painkillers and sent him home to rest. During the night the applicant experienced severe pain and the next day he went to another hospital where he was again examined and found that, as a result of the assault, he had sustained multiple rib fractures. It was necessary to keep him in hospital for further treatment and he was released a week later. The applicant was under psychiatric treatment as a result of the incident and was diagnosed with post-traumatic stress disorder.

On 15 July 1999 the applicant's lawyer filed a criminal complaint with the Zagreb Municipal State Attorney's Office against unknown individuals and requested to be given by the police the information necessary for the institution of criminal proceedings. After that,

the lawyer actively and continuously contacted and communicated with the State Attorney's Office and the police undertaking other appropriate actions aimed at investigation of the case.

On 6 April 2001 the applicant lodged a constitutional complaint to the Constitutional Court of the Republic of Croatia seeking to order the Croatian State Attorney's Office to take all necessary steps to complete the investigation as soon as possible, no later than six months.

On 12 November 2002 the Constitutional Court declared that it had no competence to rule on cases involving prosecutorial inaction during the pre-trial stage of proceedings and took no formal decision on the complaint.

On the day the application was submitted to the European Court of Human Rights proceedings was still at the pre-trial stage.

In its application to the European Court of Human Rights, the applicant referred to violation of the Article 3 (*prohibition of torture, inhuman or degrading treatment*), Article 8 (*right to respect for private and family life*), Article 13 (*right to an effective remedy before national courts*) and Article 14 (*enjoyment of the rights and freedoms without discrimination on any ground*) together with the Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

On 31 May 2007, the Court unanimously ruled that there has been a violation of Article 3 and Article 14 together with Article 3 of the Convention in this case. In relation to Article 8 and Article 13, the court ruled that no separate issue arises under Article 8 or Article 13 of the Convention.

The finding related to the violation of Article 14 together with the Article 3 of the Convention, the Court, inter alia, explained with the opinion that “...when investigating violent incidents, State authorities have the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events“ and that „the Court considers it unacceptable that, being aware that the event at issue was most probably induced by ethnic hatred, the police allowed the investigation to last for more than seven years without undertaking any serious steps with a view to identifying or prosecuting the perpetrators“.

## 2. The case of Oršuš and others vs. Croatia, considered before ECHR <sup>51</sup>

The case of Oršuš and others refers to fifteen children of Roma origin born between 1988 and 1994, regular pupils of primary schools in villages of Međimurje County, north Croatian region, who were under the decision of school authorities grouped in specially formed Roma junior classes for alleged language difficulties and lack of knowledge of the Croatian language. They claim that their classification in the junior classes for Roma was obvious result of discrimination based on ethnicity and politics of the respective schools, supported by general negatively inclined attitude of the local people towards Roma.

On 19 April 2002 15 Croatian citizens of Roma origin (“applicants”) brought an action under section 67 of the Administrative Disputes Act in the Čakovec Municipal Court (*Općinski sud u Čakovcu*) against primary schools, the State and Međimurje County (“defendants”). They submitted that the teaching organised in the Roma-only classes formed in the schools in question was significantly reduced in volume and in scope compared to the officially prescribed curriculum. The applicants claimed that the situation described was racially discriminating and violated their right to education as well as their right to freedom from inhuman and degrading treatment. They requested the court to order the defendants to refrain from such conduct in the future.

On 26 September 2002 the Čakovec Municipal Court dismissed the applicants' action, accepting the defendants' argument that the reason why most Roma pupils were placed in separate classes was that they were not fluent in Croatian. Consequently, the court held that this was not unlawful and that the applicants had failed to substantiate their allegations concerning racial discrimination. Lastly, the court concluded that the applicants had failed to prove the alleged difference in the curriculum of the Roma-only classes.

On 17 October 2002 the applicants appealed against the first-instance judgment, claiming that it was arbitrary and contradictory.

On 14 November 2002 the Čakovec County Court (*Županijski sud u Čakovcu*) dismissed the

applicants' appeal, upholding the reasoning of the first-instance judgment.

On 19 December 2002, the applicants lodged a complaint with the Constitutional Court (*Ustavni sud Republike Hrvatske*). In their constitutional complaint the applicants reiterated their earlier arguments, emphasizing the violation of the constitutional right to education and consider that the deployment of Roma in special classes with inferior curriculum stigmatized the pupils as different, intellectually inferior and as children to be separated from other children so that they would not be corrupted. The applicants argue that due to a significant shortening of the curriculum in which they are being educated their opportunities for further education, secondary school enrolment, and thus further education and employment opportunities have been reduced.

On 7 February 2007 the Constitutional Court dismissed the applicants' complaint, finding the arguments unfounded and arguing that the Constitutional Court has no reason to doubt the facts established in the evidentiary proceedings before the competent court.

Proceedings before the ECHR in this case was initiated on the basis of claims against the Republic of Croatia lodged to the Court by 15 Croatian citizens on 8 May 2003 under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Applicants particularly objected to the excessive length of the proceedings before domestic courts, thus, a violation of the Article 6, Paragraph 1 of the Convention and claim they were denied the right to education and the right not to be discriminated against in the exercise of this right on account of their racial or national origin, thus a violation of the Article 14 of the Convention in conjunction with Article 2 of the Protocol 1 thereto.

On 17 July 2008 the Chamber of the First Section of the Court found unanimously that there had been a violation of Article 6, Paragraph 1 of the Convention on account of the excessive length of the proceedings, and that there had not been a violation of Article 2 of Protocol No. 1 taken alone or in conjunction with Article 14 of the Convention. The Chamber also found that the first applicant had withdrawn his application on 22 February 2007 and it therefore discontinued the examination of the

application in so far as it concerned the first applicant.

On 13 October 2008 the applicants requested that the case be referred to the Grand Chamber of the Court. On 1 December 2008 a panel of the Grand Chamber accepted that request.

After the conducted procedure the Grand Chamber of the ECHR issued its judgment on 16 March 2010. The Court unanimously determined that due to length of proceedings before the Constitutional Court of the Republic of Croatia, which amounted to little more than four years, there has been a violation of the right to a fair trial under Article 6, Paragraph 1 of the Convention.

In respect of the alleged violation of Article 2, paragraph 1 of Protocol 1 (right to education) in conjunction with Article 14 (non-discrimination in enjoyment of the rights and freedoms set forth in the Convention), the Court reiterated already known position that racial discrimination is a particularly severe form of distinction and that objective and reasonable justification of a different relationship must be very strictly construed.

Roma as a national minority with specific needs and lifestyle require special attention and protection by member-states. The Court states that discrimination exists in cases where a member-state, without discriminatory intent, takes certain measures that disproportionately affect members of one social group. In such cases of indirect discrimination, it is enough that the applicants present a *prima facie* evidence of the existence of different treatment and thereby the burden of proof will shift on to the respondent State, to whom it falls to provide reasonable and objective justification for the measures taken.

Examining objective and reasonable justification for the practice of making Roma children attend separate classes, the Court found such measure was not legally defined, that it disproportionately affected only Roma students, that the tests applied during the enrolment of children in primary school were not adapted to study the language but general psycho-physical abilities. The court found that lessons conducted in these classes was not adequate nor meet the needs of students to successfully learn Croatian language and rapidly integrate into the regular junior classes. The lack of clear criteria for the

transition of children in mixed classes and vaguely defined curriculum implemented in separate classes could not respond to the specific needs of Roma children to overcome language barriers and their full integration into the educational system. The measures taken by the Republic of Croatia in the field of Roma education were not adequate and effective, as evidenced by reports of international bodies on a very low level of regular school attendance and a very high percentage of drop-outs from regular education among Roma children. For all of the above, the ECHR found a violation of Article 2, Protocol 1 of the Convention in conjunction with Article 14 of the Convention.

ECHR unanimously ruled that it is not necessary to separately examine the complaint on the breach of Article 2 Protocol 1 of the Convention, the violation of the right to education.

### 3. The case of Vojnović vs. Croatia, considered by HRC <sup>52</sup>

On 23 January 2006, Mr. Dušan Vojnović submitted a communication to HRC against the Republic of Croatia claiming, among other things, violations of Article 17 in conjunction with Article 2, paragraph 1 of the International Covenant on Civil and Political Rights in the event of cancellation of a specially protected occupancy / tenancy right over public-owned (public property) apartment in Zagreb. He has lived in this apartment together with his family from 1986 until 1992. The individual submission to the HRC was circulated under the Optional Protocol to the International Covenant on Civil and Political Rights by which Croatia, as a state-party, recognizes the competence of HRC to establish whether a violation of the provisions of the Covenant had occurred in individual cases.

In his submission, amongst other, Mr. Vojnović stated that in June 1991 he and his son moved to Serbia, while his wife remained in the apartment until 2 October 1992. Mr. Vojnović claimed that his family was forced to leave the apartment in Zagreb because they had received death threats from unknown people and feared for their lives as Croatian Serbs. The author claims that he did not inform the authorities of the threats, as other inhabitants of the apartment building in the same situation had experienced

forced evictions following their reports to the police.

On 15 November 1995, the Zagreb Municipal Court, applying article 99 of the Law on Housing Relations, decided that the author and his wife who were represented by an appointed trustee (*guardian at litem*) were deprived of their tenants' rights since they had not used the apartment for longer than six months without "justified reasons". The author claims that, 44 days before this decision, the apartment had been taken over by another person, allegedly for free.

On 9 October 1998, the repatriation section of UNHCR Belgrade certified that the Croatian government had confirmed that the author and his family were able to return to Croatia however indicating that "*their possessions were in use*". In November 1998, the author and his family submitted a request to buy the apartment in Zagreb, which was refused.

On 13 November 2000 the author was allowed a review of the court proceedings which involved the loss of the right on the apartment over which he pertained acquired right, while the first instance court (Zagreb Municipal Court), without considering the allegations of discrimination and the fate of other Serbs in the same apartment building, decided on 12 April 2002 that the author's tenancy rights were terminated. Thereafter, the author exhausted all available legal remedies in the Republic of Croatia.

On 27 January 2004, the author addressed ECHR for the purpose of the protection of his rights but ECHR declared the submission inadmissible *ratione temporis* on 18 November 2005.

HRC has considered the submission and in its Views of 30 March 2009, amongst other things, found a violation of the Article 17 in conjunction with Article 2, paragraph 1 of the Covenant. The reasons for this conclusion state:

*" Taking note of the fact that the author and his family belong to the Serb minority, and that the threats, intimidation and unjustified dismissal experienced by the author's son in 1991 were confirmed by a domestic court, the Committee concludes that it appears that the departure of the author and his family from the State party was caused by duress and related to discrimination. The Committee notes that despite the author's inability to*

*travel to Croatia for lack of personal identification documents, he informed the State party of the reasons of his departure from the apartment in question. Furthermore, as ascertained by the Zagreb Municipal Court, the author was unjustifiably not convoked to participate in the 1995 court proceedings before the latter. The Committee therefore concludes that the deprivation of the author's tenancy rights was arbitrary... "*

### **Concluding observations: Some new opportunities and challenges for the protection against discrimination**

Just over a year and a half has passed since the entry into force of the Law on Combating Discrimination. This time distance seems too short to allow drawing serious and concrete conclusions on application and results achieved since the Law entry into force. The Ministry of Justice and special ombudsmen<sup>53</sup> had an obligation to submit records and statistics on court cases related to discrimination to the Ombudsman by 1 February 2010 for the previous calendar year. However, special Report on the implementation of the Law on Combating Discrimination for 2009 has not been completed by the Ombudsman at the time of finalizing this briefing in early August 2010. Thus, the official consideration and detailed analysis of the Report (to refer to the Law enforcement, reported cases of discrimination and court cases in 2009) by the Croatian Parliament will be possible once the Report is drafted and circulated to the Parliament.

It is known that in the course of 2009 the Office of Ombudsman received 167<sup>54</sup> citizens complaints and specific applications referring to cases of alleged discrimination. It should be noted that the Ombudsman has authority to act on complaints starting with January 1<sup>st</sup> 2009, therefore, the complaint must relate to events which have happened after January 1<sup>st</sup> 2009.<sup>55</sup> The Ombudsman states that all applicants, when their applications rated justified and grounded were assisted by his Office through provision of guidance, intervention and mediation in accordance with his established powers.<sup>56</sup> Namely, the Ombudsman is not authorized for submitting complaints on behalf of citizens to competent judicial bodies. So, that option is left

exclusively to those who believed to be exposed to or victims of discrimination.

It's worth to highlight that *"if you contact the Ombudsman before starting court proceedings and report discrimination, the Ombudsman will provide you with necessary information regarding your rights and obligations and possibilities of court and other protection, your complaint will be examined and the Ombudsman will take actions falling within his competence required for elimination of discrimination and protection of rights of discriminated persons. With the parties' consent, the Ombudsman has the power to conduct mediation with a possibility of reaching an out-of-court settlement. If you have already instigated court proceedings, the Ombudsman will not be able to handle your complaint, but can, in certain cases, become involved in the court proceedings as an intervener."*<sup>57</sup>

The adoption and entry into force of a special anti-discrimination law may affect the raising general public awareness on the problem. It can also affect better recognition of different forms of discrimination and encourage those exposed to discrimination to take concrete actions for protection of their rights. For example, while more than 80%<sup>58</sup> of participants in one research responded positively and welcomed the adoption of national anti-discrimination law, the practice shows that a number of persons believe that there are types of discrimination conducts that can not be assumed as discrimination in the way it is prescribed by the Law. Therefore, continuation and intensifying of activities launched by the Ombudsman, some Government's institutions and NGOs to raise public awareness and to educate wider public, including representatives of civil society and media, can be considered crucial for the prevention and combating various forms of discrimination. Also, keeping in mind the existence of anti-discrimination provisions in national legislation even before the entry into force of the new Law on one hand, and on the other hand a number of allegations of discrimination and very poor national judicial practice, information and education measures in particular will be required to include state and local officials and holders of judicial functions.

Civil society practice shows existing lack of confidence in the work of administrative bodies and the judiciary, and the rule of law in general among members of some national minorities, particularly those being evidently exposed to

discrimination over the last decade and more. Thus, real and not just cosmetic depoliticization and professionalization of administration and judiciary at all levels may be considered major challenges for the Croatian society in suppressing discrimination. This problem is particularly pronounced in the respect of fundamental human and specific minority rights. It still can be questionable, despite certain progress reported by the European Commission, whether and to what extent Croatia meets the political criteria for EU membership<sup>59</sup>. It appears that stability of institutions guaranteeing democracy, rule of law and respect for human rights, including respect for the minority rights and protection of minorities require their further development and reconstruction, and that remain important targets to be achieved in days to come.

Anti-discrimination legislation provides roles of an intervener and joint legal action claimant to NGOs. This provides a great opportunity for NGOs involvement in anti-discrimination judicial processes, which was not a case before, as well as a great challenge in protecting the rights of their beneficiaries. Further on, NGOs can certainly significantly assist and contribute in encouraging people exposed to discrimination to address the Ombudsman and to submit anti-discrimination complaints to competent courts.

Access to justice for all including protection against discrimination, particularly of those in need and exposed to discrimination will depend on conducting concrete measures towards removing administrative and other obstacles that impede the exercise of rights under the Law on Free Legal Aid. Implementation of this Law, applicable since 1 February 2009, proved to be extremely problematic in practice and overly-bureaucratized.

Exercise of the right to free legal aid proved to be very problematic, too complicated and insufficiently efficient. CERD, for example, *"with concern reports on difficulties in obtaining legal aid, especially for members of minorities, due to the complexity of the procedures and functioning of local administrative and judicial bodies"*.<sup>60</sup>

The legal framework for the provision of free legal aid has not established a possibility for NGOs to communicate with local courts and to represent individual clients in domestic court cases. Specifically, NGOs are not able to

become authorized providers of "secondary" legal aid referring to communication with local courts and representation of clients in domestic court cases. NGOs can only be registered as providers of "primary" legal aid,<sup>61</sup> meaning for providing legal aid in administrative procedures before the state and local administrative bodies.

As can be concluded from previous practices the biggest challenge in combating all forms of discrimination will be practical and effective application of relevant anti-discrimination

provisions and policies. Further, this will require a real commitment of authorities at all levels, including further development and sustainable financial, technical and other required support to respective institutions e.g. the Ombudsman and local courts. Strengthening mutual cooperation and efforts amongst all relevant stakeholders in Croatian society may provide necessary background for the Antidiscrimination Law to come to its full effect.

## Notes

**1** European Commission against Racism and Intolerance (ECRI): Third Report on Croatia, adopted 17 December 2004, see Executive Summary, available at [http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle\\_03/03\\_CbC\\_eng/HRV-CbC-III-2005-24-ENG.pdf](http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle_03/03_CbC_eng/HRV-CbC-III-2005-24-ENG.pdf)

**2** See the Constitution of the Republic of Croatia including all amendments, "Official Gazette" No. 56/90, 135/97, 8/98 – revised text, 113/00, 124/00 – revised text, 28/01, 41/01 – revised text, 55/01–correction, 76/10 and 85/10 – revised text), available at [www.nn.hr](http://www.nn.hr)

**3** This provision of the Preamble of the Constitution now reads: "...the Republic of Croatia is established as the national state of the Croatian nation and the state of the members of national minorities: Serbs, Czechs, Slovaks, Italians, Hungarians, Jews, Germans, Austrians, Ukrainians, Ruthenians, Bosniacs, Slovenes, Montenegrins, Russians, Bulgarians, Poles, Roma, Romanians, Turks, Vlachs, Albanians and the others..."; See Amendment of the Constitution, "Official Gazette" No. 76/10, available at [www.nn.hr](http://www.nn.hr)

**4** Bosniaks were given the opportunity to declare their nationality only after international recognition of Bosnia and Herzegovina, 1992. Until then, they have largely declared themselves as Muslims.

**5** Data by the State Institute of Statistics, available at: <http://www.dzs.hr/>

**6** The Government of the Republic of Croatia: National Program for Roma, adopted in October 2003. For more information on the Program see at <http://www.vlada.hr/nacionalniprogramromi/content/view/14/26/lang,english/>

**7** Center for Peace, Legal Advice and Psychosocial Assistance – Vukovar and the Community of Serbs – Rijeka: Shadow Report on the implementation of the Framework Convention in the Republic of Croatia for the period 1999 – 2004., pg.5, July 2004, available at: <http://www.center4peace.org/Various%20document%20for%20web/Web%20materijali%20septembar%202006/OKZNM%20izvjestaj%202004/Shadow%20Report%20on%20FCNM%20Croatia%202004.pdf>

**8** Article 3 of the Constitution of the Republic of Croatia, "Official Gazette" No. 85/10 – revised text

**9** Article 14 of the Constitution of the Republic of Croatia, "Official Gazette" No. 85/10 – revised text

**10** Article 15 of the Constitution of the Republic of Croatia, "Official Gazette" No. 85/10 – revised text

**11** Article 141 of the Constitution of the Republic of Croatia, "Official Gazette" No. 85/10 – revised text

**12** Ibid

**13** For example, the International Covenant on Economic, Social and Cultural Rights; International Covenant on Civil

and Political Rights; Convention on the Elimination of All Forms of Discrimination Against Women; International Convention on the Elimination of All Forms of Racial Discrimination; UN Convention Against Torture; Convention on the Rights of the Child; European Convention for the Protection of Human Rights and Fundamental Freedoms, including the Protocol 12 of the Convention; Framework Convention for the Protection of National Minorities; European Social Charter and revised European Social Charter...

**14** Article 4, paragraph 4 of the Constitutional Law on the Rights of National Minorities, "Official Gazette" No. 155/02, 47/10 and 80/10, available at [www.nn.hr](http://www.nn.hr)

**15** In particular with regard to: the use of their language and script, private and public, as well as official use; education in their language and script; the use of their insignia and symbols; cultural autonomy through the preservation, development and expression of their own culture, preservation and protection of their cultural heritage and tradition; practicing their religion and establishing their religious communities together with other members of the same religion; access to the media and public information services (receiving and disseminating information) in their language and script; self-organisation and association in pursuance of their common interests; representation in the Parliament and in local government bodies, in administrative and juridical bodies; participation of the members of national minorities in public life and local self-government through the Council and representatives of national minorities; protection from any activity jeopardising or potentially jeopardising their continued existence and the exercise of their rights and freedoms – See Article 7 of the Constitutional Law on the Rights of National Minorities

**16** Advisory Committee on the Framework Convention for the Protection of National Minorities: Second Opinion on Croatia, adopted on 01 October 2004, point 13

**17** Third Report on Croatia, points 38, 47 and 50

**18** Ministry of the Family, Veterans' Affairs and Intergenerational Solidarity: Draft Proposal of the Law on Combating Discrimination with the proposal of the Law and explanations, March 2008, page 5

**19** Ibid

**20** Council Directive 2000/43/EC applies the principle of equal treatment between persons irrespective of racial or ethnic origin (published in OJ L 180, 19 July 2000) and Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (published in OJ L 303, 2 December 2000)

**21** E.g. the Law prescribes protection against discrimination on wider range of grounds than two EC

## Directives

**22** Text of the Law published in the "Official Gazette" no. 85/08

**23** Interview with the Ombudsman published on 15 January 2010 in „News“ weekly, see at <http://www.novossti.com/2010/01/intervju-jurica-malcic-pucki-pravobranitelj/>

**24** Third Report on Croatia, point 36

**25** Concluding observations of the Committee on the Elimination of Racial Discrimination on the sixth, seventh and eighth periodic reports of the Republic of Croatia, 5 March 2009, point 12

**26** Ibid, point 10

**27** The survey was conducted by the Center for Peace Studies, Office of Human Rights of the government of the Republic of Croatia and the Office of the Ombudsman, on a sample of 1,300 participants. Information published on 5/2/2010 at <http://www.zamirzine.net/spip.php?article8812>

**28** Interview with the Ombudsman, published on 15 January 2010 „News“ weekly, see <http://www.novossti.com/2010/01/intervju-jurica-malcic-pucki-pravobranitelj/>

**29** European Commission: Croatia 2009 Progress Report, 14 October 2009, point 4.23

**30** European Commission: Croatia 2010 Progress Report, 9 November 2010, point 4.23

**31** See Concluding Observations of the Committee on the Elimination of Racial Discrimination on the sixth, seventh and eighth periodic report of the Republic of Croatia, point 14 and Concluding Observations of the Committee for Human Rights on the second periodic report of the Republic of Croatia, 29 October 2009, points 5 and 19

**32** See Concluding Observations of the Committee on the Elimination of Racial Discrimination on the sixth, seventh and eighth periodic report of the Republic of Croatia, point 12 and Concluding Observations of the Committee for Human Rights on the second periodic report of the Republic of Croatia, point 5

**33** Statement of Mr. Milorad Pupovac, president of the Serb National Council to the Institute for War and Peace Reporting, 14 June 2002

**34** Third Report on Croatia, points 15-20

**35** Concluding Observations of the Committee on the Elimination of Racial Discrimination on the sixth, seventh and eighth periodic report of the Republic of Croatia, point 17

**36** Concluding Observations of the Committee for Human Rights on the second periodic report of the Republic of Croatia, point 16

**37** Concluding Observations of the Committee on the Elimination of Racial Discrimination on the sixth, seventh and eighth periodic report of the Republic of Croatia, point 17

**38** Concluding Observations of the Committee for Human Rights on the second periodic report of the Republic of Croatia, point 16

**39** Concluding Observations of the Committee on the Elimination of Racial Discrimination on the sixth, seventh and eighth periodic report of the Republic of Croatia, point 14

**40** UNHCR: Sustainability of minority return in Croatia 2007, page 30

**41** Difficult to provide explanation that may be considered wide accepted. In order to avoid historical and political disputes, in the context of this statement – though Serb nationalist, follower of the ideology of Great Serbia, enemy of Croatian state etc. Term *Chetnik* was/is often indiscriminately used by e.g. some politicians and media to mark ethnic Serbs (rebels and civilians) in 1990s war

affected areas to mark ethnic Serbs (rebels and civilians) in 1990s war affected areas.

**42** Vrhovine, a municipality in Lika region (South-West Croatia) populated by the majority of Serb population

**43** See <http://dnevnik.hr/vijesti/hrvatska/90-posto-vrhovljana-zele-da-mujkanovic-vise-ne-lijeci.html>

**44** See <http://www.vecernji.hr/vijesti/protiv-doktora-mujkanovica-podnesen-optuzni-prijedlog-clanak-17349>

**45** See [http://www.javno.com/hr-zagreb/ne-dirajte-rome---zarazeni-su\\_292820](http://www.javno.com/hr-zagreb/ne-dirajte-rome---zarazeni-su_292820)

**46** Concluding Observations of the Committee for Human Rights on the second periodic report of the Republic of Croatia, points 10 and 11

**47** Concluding Observations of the Committee on the Elimination of Racial Discrimination on the sixth, seventh and eighth periodic report of the Republic of Croatia, point 15

**48** Ibid

**49** Amnesty International: Croatia – Briefing to the European Commission and member states of the European Union (EU) on the progress made by the Republic of Croatia in prosecution of war crimes, April 2010. See at:

<http://www.amnesty.org/en/library/info/EUR64/002/2010/en>

**50** See the application to the European Court of Human Rights no. 40116/0; the verdict of 31 May 2007

**51** See the application to the European Court of Human Rights no. 15766/03; the verdict of 16 March 2010

**52** See the submission to the UN Human Rights Committee, no. 1510/2006; Views of the the UN Human Rights Committee of 28 April 2009

**53** Ombudsmen for Children, for Persons with Disabilities and for Gender Equality

**54** Interview with the Ombudsman published on 15 January 2010 in „News“ weekly, see at <http://www.novossti.com/2010/01/intervju-jurica-malcic-pucki-pravobranitelj/>

**55** For more information on filling a complaint of discrimination see at <http://www.ombudsman.hr/en/prijava-diskriminacije.html>

**56** Interview with the Ombudsman published on 15 January 2010 in „News“ weekly, see at <http://www.novossti.com/2010/01/intervju-jurica-malcic-pucki-pravobranitelj/>

**57** Explanation quoted from Ombudsman's web-page. See at: <http://www.ombudsman.hr/en/prijava-diskriminacije.html>

**58** "Survey on the opinions and level of awareness on discrimination and forms of discrimination" conducted by the Center for Peace Studies, Office of Human Rights of the government of the Republic of Croatia and the Office of the Ombudsman, carried out during 2009. See <http://www.ombudsman.hr/hr/novosti-s-podrucja-suzbijanja-diskriminacije/142-konferencija-zanovinare.html>

**59** Copenhagen criteria adopted by the European Council in 1993

**60** CERD: See Concluding Observations on the sixth, seventh and eighth periodic report of the Republic of Croatia, point 13

**61** Pursuant to the Law on Free Legal Aid, organizations are authorized to provide only the primary legal aid, which includes general legal information aid, legal advice, legal assistance in drafting submissions before administrative bodies and legal persons vested with public powers, representation in administrative matters, legal assistance in the peaceful alternative dispute resolution and representation before the European Court of Human Rights and international organizations, if in accordance



with international agreements and procedural rules of these bodies. Organizations are not authorized to provide secondary legal aid, which includes representation before the court, legal assistance for the peaceful settlement of disputes in court, preparing submissions in judicial proceedings.

## Recommendations

1. After the adoption and entry into force of the new anti-discrimination Law, Croatian authorities should make further efforts (reform, de-politicization and professionalization of administration and judiciary; education of local and the state government officials, judges and other stakeholders, etc.) in providing all necessary resources (financial and technical support, human resources, etc.) necessary for its effective application in practice. Issues on provision of adequate resources should be discussed by all relevant stakeholders.
2. Authorities should constantly consider specific needs in regard of providing additional financial and other support for the work of the Ombudsman and for strengthening capacities of his office.
3. Raising public awareness on combating discrimination and education on the new anti-discrimination Law should specifically target geographical areas of higher concentration of persons belonging to national minorities and areas traditionally associated with allegations of discrimination (e.g. war-affected areas, areas of return, etc.). By undertaking concrete actions local and national authorities should encourage and provide all necessary support to persons being exposed to discrimination or considered victims of discrimination to seek protection of their rights before the courts.
4. Reported cases of discrimination should be urgently and effectively investigated. Measures for combating and actions of condemning cases of racism and intolerance should be constantly implemented by authorities at all levels in the most appropriate way.
5. System and methodology of collecting, managing and analyzing data disaggregated by ethnical background of persons exposed to discrimination should be enhanced in cooperation with all stakeholders in the Croatian society, including the representatives of national minorities.
6. Implementation and results of Government's policies and strategies affiliated with antidiscrimination e.g. the National Plan to Combat Discrimination 2008 - 2013 and the Action Plan for the implementation of the National Plan 2008 - 2009 should be considered in detail with participation of all relevant stakeholders, including representatives of national minorities (political but also NGO representatives) from various parts of the country. As a result, participation of all relevant stakeholders in developing new or in reshaping existing antidiscrimination policies should be secured.
7. Authorities should ensure effective implementation of regulations and programs that prescribe and envisage positive / affirmative measures in favour of persons belonging to national minorities, such as in the field of accessing preference in employment in the administration and the judiciary under the same conditions. Economic and infrastructural revitalization of war affected areas should be continued and intensified.
8. Law on Free Legal Aid should be amended and adjusted to the role of NGOs established by anti-discrimination law (e.g. the possibility of filing a joint legal action). Consultations with NGOs are required to eliminate administrative and other obstacles applicants for free legal aid encounter in practice.

**The Center for Peace, Legal Advice and Psychosocial Assistance** is a local non-governmental organization established in Vukovar, Croatia, in 1996. Its aim is to develop a democratic society by protecting and promoting human rights with an emphasis on refugees and displaced, and minorities; building a peaceful non-violent culture and developing inter-ethnic, inter-religious and inter-cultural tolerance and cooperation.

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