

UNIVERSAL PERIODIC REVIEW ON HUMAN RIGHTS IN THE REPUBLIC OF CROATIA

I - Introduction

This report was prepared by the Office of the Ombudsman as a coordinator of the *ad hoc* informal coalition of national human rights institutions, i.e. the **Ombudsman** (as NHRI with status A) together with special ombudspersons institutions - the **Ombudsperson for Children**, the **Ombudsperson for Persons with Disabilities** and the **Ombudsperson for Gender Equality** – and the **Human Rights Centre**. Contributions to the report were made by the **Union of Autonomous Trade Unions of Croatia**, a social partner to the Ombudsman in the implementation of the Anti-discrimination Act. The report relies primarily on evidence and assessments of human rights situation collected by the above mentioned institutions. During the report preparation, two conferences were organized by the Human Rights Centre and consultations were held with the representatives of the informal coalition of civil society organizations, which will submit its own report. We note that by the date of the report submission, government bodies have not organized or carried out consultations with independent stakeholders in the UPR reporting process.

II - Normative and Institutional Framework

The Republic of Croatia has signed and ratified most of the core UN treaties on human rights protection. In the process of association and harmonization of the national legislation with the EU *acquis communautaire*, the Republic of Croatia has passed numerous legal acts dealing with human rights protection; it has adopted action plans and programmes and set up a number of institutions to protect human rights.

III - Rule of Law – Implementation of Laws

Certain progress has been made in reducing the backlog of court cases, but the length of court proceedings in civil and administrative court cases remains a serious problem. The Ombudsman and the special Ombuds have in their annual reports to the Croatian Parliament pointed out that unreasonably long court proceedings violate the rights of citizens and proposed measures, especially related to strengthening and implementing supervision of the operations of the court and judicial administration.

A new Court Act was passed in 2005 and it was amended in 2007, 2008 and 2009, thus establishing the legal prerequisites for more efficient supervision of the orderly operations of the court administration as well as for the implementation of the right of citizens to efficient judiciary, by legal recourse of „protection of the right to a trial within a reasonable time-period“.

Amendments to laws on court proceedings have also been passed (Misdemeanours Act, Legal Proceedings Act, Criminal Proceedings Act) aimed at preventing abuse of the rights of participants in court proceedings and shortening the proceedings duration. A new Administrative

Dispute Resolution Act was passed in February 2010, meeting in full the requirements from Article 6 of the European Human Rights Convention.

While strengthening the court and judicial administration should be continued, it is also necessary to fully implement the rationalization of the court network aimed at even distribution of the volume of work, specialization of judges and introduction of fair criteria (expertise and capability) in appointing and promoting judges.

IV - Civil and Political Rights

Access to justice According to the Free Legal Aid Act, legal aid can be provided not only by attorneys at law but also by civil society organizations, trade unions and legal clinics. However, the system that has been established is too complex for citizens to use with a number of administrative hurdles that prevent them from realizing their right to access to justice.

Key difficulties: administrative procedure and a system of referrals, low income threshold set for the entitlement, low lawyer's fees as they do not motivate lawyers to provide the service, a considerable number of NGOs that have provided legal aid for years to thousands of citizens have not registered to perform the activity on the basis of the new law. The key purpose of the Act, which is to help low income citizens gain access to justice, has generally not been fulfilled according to the civil society organizations data¹.

With regard to lawyer's actions and their relatively high fees, there are justified complaints about the lack of efficient supervision of the public competencies entrusted by law to the Croatian Bar association.

Court processing of war crimes At the start of 2010, there were still 1889 persons listed as missing. Due to delays in processing war crimes, a considerable number of victims of war crimes or other serious criminal offences have not yet seen the start of investigative proceedings and have therefore not yet had the opportunity to present evidence of their suffering to competent judicial bodies. At the time of this report writing, 403 court cases were still at the pre-investigative stage, i.e. court proceedings had not yet started².

Minorities (provision of housing) Although the government has been investing considerable amounts into reconstruction of flats, houses and infrastructure destroyed during the war in order to enable all former inhabitants to return and live in war affected areas, the process has been made harder by adverse economic situation and growing unemployment. The worst hit, are war affected areas inhabited by the elderly living on low income. Unresolved issues include demining, reconstruction of roads, water supply and electricity infrastructure, access to health services, kindergartens and cultural events. In a smaller number of cases, return is impossible because owners have not had their assets returned, with some of them obliged to pay considerable amounts (defined by court rulings) to persons inhabiting and investing in these houses for years.

¹ The same can be concluded from the data of the Ministry of Justice: by 31 Dec 2009, 3913 requests were registered, of which 2604 were accepted, while others were rejected, refused, discontinued or are being processed.

² www.korekom.org

A large number of administrative proceedings deal with requests to provide housing and reconstruct houses. At the beginning of 2010, there were more than 7200 cases related to house reconstruction, with the administration unable to meet professional efficiency criteria. Due to the fact that numerous proceedings last for over ten years, human rights violations are even more threatened. The programme of providing for former tenancy-right holders has been slowed down due to lack of funds and disorganized land registers. Returnees, who have not regulated their status (citizenship and residence) and are entitled to housing provision, cannot have their rights respected as long as their citizenship remains unresolved in the Republic of Croatia.

Most of these cases involve members of Serbian national minority.

Anti-discrimination In 2009, the first year of the implementation of the Anti-discrimination Act, the Ombudsman, as a central equality body, received 172 complaints for discrimination, among which the most frequent form was discrimination based on nationality (31%), followed by gender, social status, social origin and disability. Most frequent complaints are related to the area of work and employment, resolutions in administrative cases (reconstruction and housing provision, residence, citizenship), and access to goods and services.

Members of ethnic, national and other minority groups are exposed to various forms of verbal and (less frequently) physical violence and promotion of discrimination and hate-speech has also been noticed on the Internet. Although the law recognizes crime of discrimination and hate-speech, as well as hate crime, there are only a small number of court cases and rulings for these crimes.

According to the Ministry of Justice data, 3 criminal proceedings, 13 civil proceedings and 1 misdemeanour proceeding were started for discrimination in 2009.

Members of national minorities are not proportionally represented in executive and judicial bodies, or in bodies and public services at local and regional government level. Legal acts of certain local self-government bodies have not been aligned with the Constitutional Law on the Rights of Minorities, which is a barrier to their rights enforcement. It has been noticed that state and local government bodies do not take a proactive approach to resolve these problems, as all the required measures have not been put in place to improve implementation of existing regulations, national policies and programmes and support enforcement of the said rights.

In spite of progress made over the recent years, **the Roma remain a minority discriminated** against in many areas of social life: housing, employment, education, access to goods and services. The Roma have difficulties in resolving their status (residence, citizenship), which is a prerequisite for the other rights. Numerous Roma, who have not resolved their citizenship status or have not made their stay legal in any other way, cannot access free legal aid, as a legal stay in the country is a prerequisite of access to the rights guaranteed by the Free Legal Aid Act.

Prison System Data collected during reviews carried out over the last five years show that overpopulation is the main problem of the prison system in the Republic of Croatia. Overpopulation in prisons is at the level of 160% and is the main cause of restrictions and violations of rights stipulated by national legislation and international treaties that the Republic of Croatia is a party to. Most frequent violation concern the right of person deprived of liberty to

accommodation guaranteeing human dignity and health standards, the right to work and a minimum 2-hour stay outdoors. Almost all the prison premises have been turned into dormitories, with a considerable impact on the quality and organization of prisoners' everyday life. As a result, many prisoners spend up to 22 hours in their cells without any clearly structured leisure time, and the problem is most pronounced with detainees, as was already pointed out by the Committee against torture in its concluding considerations in 2004. There is no possibility of separating certain categories of persons (for instance minors) deprived of liberty. The situation is made even more difficult by the fact that treatment wards do not have all the required specialists and all the planned job positions have not been filled. Special attention is paid to complaints about inadequate health care provision.

Police actions Ombudsmen receive a not negligible number of witnesses and complaints which are related to abuse of police authority and excessive use of force in police officers' actions. According to well-founded assessments, such cases are not always fairly and fully investigated. In order to improve human rights protection, it is necessary to strengthen the internal control department at the Ministry of Interior and provide prerequisites for its autonomous operations. The law should regulate the department's competence and its complaints investigating procedure, while ensuring that procedures are transparent and there is civil supervision of police officers' actions.

V - Gender Equality

Gender equality is an area where a lot of progress has been achieved in terms of antidiscrimination legislation, national policies and programmes, action plans, public awareness raising campaigns, data collection by gender, introduction of institutional mechanisms of gender equality at central and local government level. However, there are still more women among the unemployed (56%) and in underpaid industries, they are not as often promoted, there is a larger number of women temporarily employed (lower job security), women represent the majority of persons harassed at work due to their gender, there is clear horizontal and vertical segregation between men and women in the labour market, working women are still disproportionately burdened with family obligations compared to men. A considerable improvement has been noted in the labour market with the job vacancy advertising complying with stipulations of the Gender Equality Act. Employing Roma women is among the measures to co-finance employment of the unemployed persons of Roma national minority, but Roma women do not ask for protection against discrimination to the extent stipulated by law.

Improvements have been noted in enforcement of legislation on domestic violence, recently amended, and numerous victims of violence seek protection from family members' violence. Although the police have been providing protection to victims of violence in line with the Protocol on proceedings in case of domestic violence, there are differences in police actions in large cities and in smaller towns and rural areas where there are not enough women officers in police teams. Problems of victims are not only resolved by providing immediate protection from violence but also include providing for a living, employment, housing and dealing with court proceedings. A large number of reports indicate that preventive measures are inadequate in the area of domestic violence.

Women are still under-represented in legislative and executive government bodies (in 2007, there were 20.9% women in the Croatian Parliament). Political participation of women elected to representative bodies at local and regional self-government level shows a downward trend from county (27.2%) to town (26.1%) and municipality level (13.8%), on which it is the lowest. That is why a legal quota of 40% was set for the under-represented gender to be achieved on the lists of candidates by 2017 in local elections and by 2019 in parliamentary elections. Most of the key indicators in statistics are presented by gender, but data are incomplete on women from national minorities and on the position of women in rural areas.

As for the LGBT population, the anti-discrimination legislation in force provides only a limited number of legal effects related to recognition of same-sex partnership and is not adequate, while a broader social rejection of intolerant and homophobic behaviour is required.

VI - Economic and Social Rights

The right to work The Union of Autonomous Trade-unions of Croatia is particularly worried by the situation in the area of labour and social policy, covered by Articles 7, 8 and 9 of the Covenant on economic, social and cultural rights. This is due to the fact that delays in structural reforms, coupled with the impact of the global financial and economic crisis, have brought back the practice of non-payment of wages to workers (according to estimates, about 70,000 workers in Croatia are currently working and not receiving their wages)³.

According to the data available to the Unions, discrimination is present in the area of work and employment, although the same conclusion could not be drawn from the number of cases opened and closed at courts. Employment – related court proceedings last too long with omnipresent problem of inefficiency resulting in poor protection of rights by courts. Overall poor situation in the judicial system is also reflected in the increased number of cases opened by the State inspectorate for violation of labour related regulations that fall under the statute of limitations at misdemeanours courts. As a result, employers are not sanctioned for offences made. We also want to point out here that there are not enough labour and safety-at-work inspectors and implementation of laws is therefore not satisfactory.

As a rule, employers now offer their employees employment contracts for a limited period of time even when this is not in line with the law, thus creating insecurity as workers are afraid of not having their contract renewed upon expiry.

The right to and freedom of association in trade-unions and their organization is violated by direct employers verbal bans (especially by small, medium-sized and foreign employers) and is on the increase, according to the Unions, although not easily proved as workers are unwilling to start court proceedings for fear of losing their jobs. The issue of the allocation of trade-union assets remains unresolved and in spite of the legal obligation to return the assets registered as the ownership of the state in accordance with the Associations Act, the state continues registering the trade-unions' real-estate as its ownership.

Social rights We point out the problem of low pension benefits from the 2nd pillar for those with short saving period in the 2nd pillar (individual capitalized savings) although they had paid contributions for many years to the 1st pillar. Their pension benefits are considerably lower than

³ Estimates are based on the data of the Croatian Chamber of Commerce, Economic Developments, January 2010.

those received by persons who have contributed only to the 1st pillar. Inequalities of the reformed pension system are being corrected partially with the result that the constitutional right of citizens to equality is jeopardized. The Ombudsman⁴ (and various interest groups) has stressed the urgent need to resolve the problem.

Specific non-institutional programs for the elderly have been developed in local communities employing or engaging persons otherwise not easily employable. This is a successful model of prevention of institutionalization. However, results in the area of de-institutionalization of persons already in institutions, especially those with mental problems and with disabilities, are negligible.

Regarding social entitlements, it should be stressed that **most benefits are low**, especially pensions, unemployment benefits and social welfare benefits. The basis for the social rights entitlement can be raised only by the Government (up to 2001, it was only 350.00 kn, between 2001 and 2008 it was 400.00 kn, and since 1 November 2008 it has been 500.00 kn). Low benefits contribute to social exclusion of the elderly and the long-time unemployed⁵.

Hardest hit are the so called **homeless** persons (often also without residence)⁶, socially most excluded and living in extreme deprivation. They are not guaranteed rights by law so providing for them is left to the local community, its fiscal status and good will. Increasing poverty rates have been recorded over the last three years, (from 16.3 to 17.4%⁷), indicating a considerable fall in living standards in the Republic of Croatia.

VII - Protection of Persons with Disabilities

The Republic of Croatia has demonstrated its commitment to a proactive policy towards persons with disabilities (hereafter PWD) aimed at their full social integration into the community by signing and ratifying as the 4th country in the world the Convention on the rights of persons with disabilities. In order to improve legal protection of PWD, a special ombudsperson institution for PWD was established.

However, there is evidence of lack of information by the PWD and their families on rights, benefits and entitlements in the area of social welfare, health care and pension insurance. There is lack of equity in the criteria applied for the establishment of entitlements, and fragmentation in legal provisions regulating specific rights of PWD. **Benefits are too low** to cover basic costs due to disability. The process of de-institutionalization is facing difficulties because of lacking support network in the community and service providers.

Not enough is done to raise public awareness of the abilities and contribution of PWD and to fight prejudice and stereotype, especially in rural areas.

⁴ 2008 Annual Report on Work

⁵ At the end of February there were 317,625 unemployed recorded at the Employment Office, which was 8,063 persons (2.6 %) more than in the previous month, and 54,804 persons (20.9 %) more than in February 2009, www.hzz.hr

⁶ Since 2008, the Ministry of Health and Social Welfare has been recording statistical data obtained from social welfare centres on the number of homeless persons who have the right to accommodation in the shelter and food in the public kitchen.

⁷ State Bureau of Statistics Report. 14.1.2.

Ensuring physical access is one of the key prerequisites for social inclusion of PWD. Although a lot has been done by passing certain regulations, these are often violated, especially when public institutions are being reconstructed. Also, there is not enough inspection supervision, and sanctions are not harsh enough.

In order to include children with developmental difficulties (CWDD) and PWD in regular educational institutions, from preschool to higher and lifelong education, it is necessary to invest more in providing overall support (transport, teaching assistants, teaching aids), and eliminate architectural, communication, personnel and other barriers. It is not acceptable to have CWDD and PWD discontinue their education and be sent to special institutions because there is no possibility for them to continue their education in their local community.

Employment of PWD is closely related to the issue of their education, i.e. to the fact that many among them are not given the opportunity to be educated on an equal basis with others or are educated for professions not needed by the labour market. Related to employment, the Professional Rehabilitation and Employment of PWD Act, was passed and a fund was established. In spite of that, **employment quotas are not met by the public sector**, while such employment is more an exception than a rule in the private sector. In addition to that, the incentives procedure is complex and employers lack information.

Legal protection is slow and often inefficient, which is particularly true in cases of violence against CWDD and PWD. There is lack of adequate shelter for victims of violence.

Protection of persons with mental impairment In the course of review of psychiatric institutions, the Ombudsman noticed lack of adequate services to protect mental health at local level. Such services could, among other things, reduce the number of persons with mental disorders being institutionalized and could make their stay in their families easier. There are no maximum security wards in psychiatric institutions for mentally incompetent persons and no by-law specifies in detail the conditions to be met by premises, staff, and medical and technical equipment in health institutions providing accommodation and health care to mentally incompetent persons.

VIII - Protection of the Rights of the Child

At the time of this report writing, **the Republic of Croatia has not fulfilled its obligation to submit a periodic (combination of III and IV) report on the implementation of the Convention on the Rights of the Child.**

A large number of children do not enjoy all their rights because of inadequate functioning of the system of protection. Although improvement has been noted, it is necessary to continue aligning national legislation and practice with the principles and stipulations of the Convention.⁸

Inefficiency of the social welfare system is especially worrying. Due to an inadequate number of expert staff, inadequate training and professional support and supervision by the competent ministry, there are cases of superficial and wrong assessments, resulting in prolonged

⁸ CRC/15/Add.234 1 recommendation no. 10

institutionalization of children without adequate parental care. There are also worrying cases of questionable quality of care and treatment in institutions for children⁹, but also in foster families, resulting from inadequate quality of accommodation supervision. Institutions providing care for children should have their infrastructure upgraded (accommodation and sanitary facilities) as well as the quality of their professional services.

Judicial inefficiency and slowness is particularly intolerable in cases dealing with the rights of children, and the issue has been pointed out for years by the Ombudsperson for children, stressing the need for judicial reform and setting up of specialized courts. Lack of adequate primary prevention and unsatisfactory treatment of children with behavioural disorders is particularly worrying, as is the situation in institutions for children with behavioural disorders, where no investment in premises or professional staff has been made for years, so that they have not been providing a quality alternative to family life and do not meet the needs of children.

There is lack of efficient preventive programmes to protect children from all kinds of violence. Coordination between the systems and continued work with and treatment of both victims and perpetrators has not been organized.¹⁰ In spite of legal prohibition, corporal punishment¹¹ of children continues to be justified and tolerated with no adequate response by competent bodies. The problem of violence in educational institutions is not countered by a system of preventive protection measures, which we consider necessary. An inadequate number of health workers specializing in child protection are a reason for worry, as well as an inadequate number of wards for children in need of psychiatric support. The government should focus urgently on integrative prevention activities aimed at protecting children's physical and mental health, educating children and professional adults about prevention of alcohol abuse and other means of addiction, prevention of violence and protection of reproductive health¹². The decision made by the **Ministry of Science, Education and Sport not to introduce health education in schools**, which should have integrated all areas of risk to children's health, is particularly worrying.

IX - Education for Human Rights

Education for human rights and democratic citizenship is implemented in the Croatian educational system on a non-obligatory and unsystematic basis. In spite of the fact that there has formally been a *National programme for human rights education* since 1999, the findings of the survey "Human rights in primary schools – theory and practice", carried out at the national level by the Human Rights Centre in 2009¹³, confirm the above assessment.

Members of the Roma minority are not fully included in the educational system (very high drop-out rate from mandatory primary schools), the main reason being poor coordination between central and local government bodies in providing quality integrated educational services. The extremely bad financial position of Roma men and women, poor provision of preschool programmes for Roma children, inadequate quantity of additional content in the school

⁹ CRC/15/Add.234 1 recommendation no. 42

¹⁰ CRC/15/Add.234 1 recommendation 50

¹¹ CRC/15/Add.234 1 recommendation 50b

¹² CRC/15/Add.234 1 recommendation 54

¹³ www.human-rights.hr

curriculum and low parental motivation for education are due to many years of unequal treatment of the Roma community (not seldom Roma have been placed in separate classes, see ruling of the ECtHR, case *Oršuš and Others vs. Croatia*¹⁴) as well as due to a lack of the obvious link between education and employment. The position of Roma women is particularly difficult, as they are often unable to finish school for reasons of gender. Two important measures of the National programme for the Roma and the Action plan for inclusion of the Roma 2005-2015: free two-year preschool programme for Roma children and a clear policy of integration in primary schools, are not being implemented in a consistent manner in spite of a considerable increase in the funds made available from the Government and from donations.

X - Violence against Human Rights Defenders

An escalation of physical violence has been present in Croatian society over the recent years, with various kinds of threats or attacks made on journalists, „whistle-blowers“ and human rights defenders.

The violence reached a peak in 2008 with attacks by organized crime groups on journalists (the murder of Ivo Pukanić and Niko Franjić, attack on Dušan Miljuš and others), attacks on whistle-blowers (Igor Rađenović) and on human rights defenders (Ombudsperson for Gender Equality, Ms Gordana Lukač Koritnik, activists of *Eko Kvarner*, *The Right to a City Coalition* and *Green Action*). Attacks are continuing by extreme right-wing groups on members of the LGBTQ community, but also on members of other social groups (most frequently Roma).

XI RECOMMENDATIONS:

1. Croatia should sign and ratify the remaining core international treaties in the area of human rights (International Convention on the Protection of All Persons from Enforced Disappearance, International Convention on the Protection of the Rights of All Migrant Workers and Their Family Members, Optional Protocol of the Covenant on Economic, Social and Cultural Rights).
2. Obligations specified in the Convention against Torture and the Optional Protocol should be met without delay (designate National Preventive Mechanism).
3. Related to the rule of law, implementation of measures to improve the efficiency of courts should continue, especially by strengthening the role of the Supreme Court, the highest judicial body in the Republic of Croatia. It is also necessary to strengthen the autonomy and functionality of Internal Control Department in the Ministry of Interior, adopt rules of procedure in cases of citizens' complaints and introduce civil supervision of police officers' actions.

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<http://cmiskp.echr.coe.int/tkp197/view.asp?item=24&portal=hbkm&action=html&highlight=&sessionid=48930941&skin=hudoc-en>

4. It is necessary to establish an effective and comprehensive system of free legal aid on the basis of an evaluation of the first year of implementation of the Free Legal Aid Act which would be carried out by independent experts.
5. Coordination between various governmental bodies (ministries) responsible for implementation of citizens' rights (that often act in an uncoordinated manner) should be improved. Ombudsperson for Persons with Disabilities requests adequate solutions to ensure equality in rights provision procedures is found.
6. The base amount of social welfare benefits should be periodically adjusted to the increase in the cost of living, permanent singles' benefits should be increased, the concept of a homeless person and their social welfare rights defined by law. In order to eliminate inequalities in the pension system, the insured from the 2nd pillar of the pension insurance system should be given the choice of a more favourable option.
7. While passing of the economic crisis-related measures the Government should consider adoption of a plan of operations to protect the most vulnerable groups of children, with measures at central and local level. Ombudsperson for Children, considers the establishment of a special children's budget to be a measure of particular importance.
8. Ombudsperson for Gender Equality requests more efficient measures aimed at improving the position of women be created, especially in the area of the labour market. Methods of reporting on the position of women and men should be improved.
9. Introduction of mandatory human rights education in school curricula should be speeded up at all three levels of education in the form of a cross-curricular topic and as a specific subject¹⁵.
10. Ombudsmen's institutional capacities should be strengthened, in line with ICC NHRI¹⁶ recommendations, the Anti-discrimination Act and recommendations from the Study on rationalization of the human rights protection system¹⁷.
11. State party should be additionally obliged to timely translate, publish and make available to its citizens all the assessments and recommendations made by relevant international bodies related to respect for human rights in the Republic Croatia.

¹⁵ In line with the World Human Rights Education Programme (2005 – ongoing).

¹⁶ SCA REPORT_March 2009 Session_English_

¹⁷ Rationalization of the Croatian Human Rights System, UNDP Expert Group Report