



european network against racism

ENAR Shadow Report 2009-2010

ENAR SHADOW REPORT 2009/2010

Racism and Discrimination in the Republic of Croatia

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Racism is a reality in the lives of many ethnic and religious minorities in the EU. However, the extent and manifestations of this reality are often unknown and undocumented, especially in official data sources, meaning that it can be difficult to analyse the situation and to establish solutions to it.

The ENAR Shadow Reports are produced to fill the gaps in the official and academic data, to offer an alternative to that data and to offer an NGO perspective on the realities of racism with the EU and its Member States. NGO reports are, by their nature, based on many sources of data, official, unofficial, academic and experiential. This allows access to information which, while sometimes not backed up by the rigours of academic standards, provides the vital perspective of those that either are or work directly with those affected by the racism that is the subject of the research. It is this that gives NGO reports their added value, complementing academic and official reporting.

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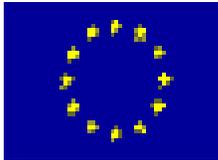
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I. Executive summary

The Republic of Croatia has signed and ratified most of the international agreements on the protection of human rights. In the context of the process of joining of the Republic of Croatia to the European Union, the Croatian Parliament has enacted numerous laws on the protection of human rights and the Croatian Government is ready to accept high standards that are expected from it in that regard.

The Croatian Government is composed of two parties which represent the most threatened ethnic groups regarding discrimination and racism (Serbs and Roma). The vice president of the Government is a member of a Serb national minority, and the president of the Government (although she is from the political party most responsible for chauvinism and discrimination in the nineties) is a woman who has many times publicly declared herself as an activist for women's rights. The actual President of the Republic of Croatia has been cooperating with NGOs for years and shares their attitude against racism and discrimination. NGOs focused on campaigns against different forms of discrimination are active in Croatia for some 20 years now. They cooperate in dealing with concrete problems and have increasing influence on the formation of public opinion.

One of the conclusions of the report is that now, when Croatia is in the final phase of the joining process to the EU, what certainly has contributed to the favourable political situation, is the right moment for positive changes. Concrete actions, from education to redressing committed wrongs, are suggested in recommendations.

Judiciary

There have been numerous and convincing examples¹ that clearly show the bias of some verdicts brought by courts in Croatia, verdicts that depended on the ethnicity of perpetrators and victims, especially in war crime trials. The consequences² are felt even today. The situation with impartiality of judiciary is certainly better today than it was 10 or 15 years ago but old injustices³ haven't been redressed and there are still cases of such biased verdicts⁴.

Racism as a Crime

The Constitution of The Republic of Croatia as well as enacted laws present a strong enough legal framework to sanction racism and racism based discrimination. Nevertheless, cases of discrimination on racial or ethnic grounds persist and often they are not adequately sanctioned in spite of the existing legal

¹ Policing and ethnic profiling, p.21.
Monitoring of War-crime trials. Reports for 2007,2008,2009.

² Racist violence and crime, p.21

³ e. Counter terrorism, p.32

⁴ Čančarević case, p.21

framework. Racism is still present in Croatia. For example, there have been incidents at events organized by football fans, anti-gay demonstrators, as well as assaults by skinheads against Roma and other minority groups or on the websites of some fascist and homophobic groups rather than it being a systematic phenomenon. Again, if we compare situation of today with the one of 10 or 15 years ago when we were faced with racist statements of highly ranking politicians, journalists, university and high school professors, popular singers etc. almost on daily basis, we are inclined to conclude that there are not structural racism in Croatia of today. However, the above mentioned examples are maybe just the tip of the iceberg; under the surface of the society, there is a less visible and unknown potential for discrimination and racism that can explode again in conditions of fear and insecurity⁵.

Counter Terrorism

A certain number of Croatian citizens of Serbian nationality were the victims of terrorism, mainly in the period between 1991 and 1995. Some people have been killed in these terrorist attacks and most of their property was destroyed, mostly by blowing up their homes with explosives⁶. At that time, the Croatian government did nothing to stop, prevent or fight that terrorism and the consequences of such a policy, was the severe violation of human rights are still felt today⁷.

Social inclusion and education

Groups that have been main victims of racial discrimination have been also the most endangered by the social exclusion. Today there is less ethnically based discrimination⁸ but a high rate of unemployment in the country. There are not enough positive measures to stimulate the employment of disabled persons⁹ so they are also a group endangered by social exclusion. In addition, an independent research report (in 2010) about the level of intolerance and racism among schoolchildren gave worrying results¹⁰.

Media

Cases of intolerance, negative reporting and sensationalism are still considerably present in media at all the levels. National minorities, homosexuals and football supporting groups are frequently reported upon topics for the media and where hate speech has been the most present¹¹.

Conclusion

An inclination towards racism and discrimination of 'the others' that are in a way different from us is inherent to human societies and obviously have deep roots.

⁶ - e. Counter terrorism, p.32

⁷ - e. Counter terrorism, p.32

⁸ Conclusion based upon work of CCHR and its office for free legal aid.

⁹ From the report of representative of Organization of invalids at the Council for Social Justice

¹⁰ Research did by GONG

¹¹ V.viii Media, including internet, p.24

Nevertheless, the fight against racism and opposition to the often dominant, majority and aggressive persuasion has always been the core of the fight for a righteous society. The situation in Croatia concerning racism and discrimination has been improving for the last 10 years, due also to the pro EU integration policy of most political parties. How stable those positive changes are and how resistant will they be to challenges and problems of today's Europe when confronted? These are open questions but also guidelines for future activities of NGOs.

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III. Introduction

After elections in 2007 Croatian Government was constituted of Croatian Democratic Union (Hrvatska Demokratska zajednica – HDZ) in coalition with Croatian Peasant Party (Hrvatska seljačka stranka - HSS), Croatian Social-Liberal Party (Hrvatska socijalno liberalna stranka - HSLs), Independent Democratic Serbian Party (Srpska demokratska samostalna stranka - SDSS) and was supported by representatives of Roma Nazif Memedi.

Croatian Democratic Union was in power from 1990 to 2000 and is most responsible for violations of human rights and mass discrimination on ethnic grounds during the said period. Independent Democratic Serbian Party represented voters which were, probably exclusively Serbs in Croatia, while Mehmedi's voters were members of Roma minority. Therefore, these two political parties represented two groups of citizens which were major victims of discrimination on ethnic ground.

The President of the Government and the Croatian Democratic Union resigned in the middle of the 2009 (July 1st 2009). The new president of the Government became Jadranka Kosor, his former deputy. One of Government's vice presidents became Slobodan Uzelac from Independent Democratic Serbian Party.

Therefore, the Croatian Government today is composed of two parties which represent the most threatened ethnic groups regarding discrimination and racism. The vice president of the Government is a member of a Serb national minority, and the president of the Government is a woman who has many times publicly declared herself as an activist for women's rights.

2009 was the last year of Stjepan Mesić 10-years mandate (two times five years) as a president of the Republic of Croatia. During his entire mandate president Mesić collaborated with NGO's and supported many NGO's initiatives against discrimination and ethnic intolerance (racism)¹².

The elections for the new President of Croatia were held in early 2010. Ivo Josipović, a law professor and a member of the Social Democratic Party was elected, a man who has been collaborating with NGOs in Croatia for years. His opinion about discrimination and racism does not differ significantly from the one of NGO who were condemning various appearances of discrimination and racism in Croatia for years¹³.

¹² For example see www.golip.hr

¹³ Direct experience before and after Ivo Josipović became President, from his public statements and his statements as participants at conferences organized by NGOs.

Croatia during 2009 and 2010 are at the stage of eligibility for admission to the EU, and this is particularly appropriate time to impose higher standards in protection against discrimination and in combating various forms of racism.

However, these positive developments should be accepted with certain amount of caution. Long periods of time when open chauvinism was treated as little more than a radical form of patriotism, when such attitudes could be heard on a daily basis from leading politicians and found in most media has deeply poisoned part of the public opinion. Years are needed to change this and any extraordinary situation, like the great depression or the massive arrival of immigrants could show that the current, relatively good situation is far from stable.

This report particularly highlights some specifics in Croatia: a) chauvinism as the dominant form of racism, b) effects of the politics from the 90s which encouraged and tolerated chauvinism, c) the consequences of the war, d) war crimes, e) numerous examples of ethnic discrimination in judicial proceedings.

IV. Communities vulnerable to racism and discrimination

Of all minorities in Croatia¹⁴, the Serbian community over the past 20 years has been one of the most most vulnerable groups to discrimination. The number of Serbs in Croatia in 2001 was only one third of their number in 1991¹⁵. The majority of Serbs have lived in bigger towns which were not in the seceded part of Croatia (where was proclaimed so called Republic of Serbian Kraina). The reasons for this are complex and multi-layered, some are rooted in historical events in this region during the first half of the 20th century, and some, which are in my opinion most important, are a consequence of the policies of the late 1980s and early 1990s, and especially of the war in Croatia and Bosnia which ended in 1995¹⁶.

Some of the crucial factors that contributed to the rise of racism and discrimination in Croatia during the 1990s are the following:

- Milosevic's regime in Yugoslavia in the late 1980s which generated Serbian and Croatian nationalisms and contributed significantly to the take-over of power by the nationalist parties;
- The war in Croatia from 1991 - 1995 during which the opposing parties identified themselves as Croats or Serbs;
- Down-playing the criminal policies of the Ustasha authorities during the World War II, which persecuted Serbs, Jews and the Roma;
- Open hostility towards Serbs in Croatia, in fact racism, has been, during the entire 1990s, represented and accepted as a bit more radical form of patriotism. It takes time for a society to undergo a catharsis of such negative sentiments, and racism directed towards one group can easily be redirected towards another. In Croatia, Serbs were mainly victims of discrimination but, depending on the requirements of daily politics or just because chauvinism became society and politically acceptable, racial assaults were committed against Jews, Muslims, and Roma.

Racism against Roma and discrimination against them is an age-old tradition of almost all European countries. In today's Croatia, it appears mostly in smaller towns and in some municipalities where Roma live in larger numbers. In cities, a threat to Roma are groups of skinheads¹⁷. During the 1990s, racism against Roma was more pronounced because ethnic intolerance, primarily towards Serbs, was accepted as a legitimate political stance. (During the presidential campaign in 1990, F. Tudjman, a Croatian President from 1990 to 1999, publicly said: "I am happy that my wife is neither Serb nor Jewish." In 1993, the Justice Minister B. Mišetić declared: "Children should be taught to hate Serbs from their

¹⁴ Annex II, p.42

¹⁵ Annex II

¹⁶ An article about political situation in Yugoslavia at the beginning of nineties and about some aspects of the war is added as an appendix.

¹⁷ V.vi Racism, violence and crime, p.21

childhood." There are hundreds of similar statements from that time, given by the most influential politicians and public figures of the day, which contaminated the public opinion over long term)¹⁸.

The specific rights of minorities are guaranteed by the Constitution and other relevant laws of the Republic of Croatia. This, as well as some shortcomings of these laws, will be discussed in the Chapter VI, but in theory, existing Croatian laws do not offer less protection against racism and discrimination than legislation in EU countries. In fact, specific rights of minorities are more pronounced than in most EU states. The problem is that in practice, especially in smaller towns and at local level, the rights of some minority groups are not respected¹⁹, and the public opinion, for the above mentioned reasons, is far below proclaimed standards while sanctions for racism and discrimination prescribed by existing laws are often not implemented²⁰.

Asylum seekers in Croatia are perceived by part of the public as potential criminals, and the authorities' stance is in practice (despite the adoption of European conventions on the legislative level) not significantly different. In 2009 only 3 requests for asylum out of 147 have been approved.

¹⁸ P. Lucić: Greatest shits; one of the most comprehensive collection of such quotations.

¹⁹ V. Manifestations of racism, p.11

²⁰ V. Manifestations of racism, p.11

V. Manifestations of racism and religious discrimination

V.i Employment

Besides discrimination in the judiciary system, the area of work and employment is one in which discrimination is the most widespread in Croatia, according to 1,300 respondents of the research on the attitudes and level of discrimination, implemented last year by the Center for Peace Studies, the Office for Human Rights of the Government of Croatia and the Ombudsman's Office. 58% of respondents believe that discrimination is the highest in the area of employment. In 2009, the Ombudsman's Office received 170 complaints, among which many were unjustified. Still, most complaints, for which it was established that they were justified, was in the area of work and employment as well as judiciary system, and they pertained to discrimination based on race and ethnic belonging, sex and union membership²¹.

Both unemployed persons and employers regard age discrimination to be the most prominent in the employment market in Croatia, followed by discrimination based on disability and sex discrimination. Discrimination on other grounds (ethnic, religious and based on sexual orientation) is considered to be less widespread. In regards to various aspects of the employment market, both unemployed persons and employers consider discrimination to be most present in the process of employment, and later, to smaller extent, in the area of ensuring equal pay and promotions²². When considering these results, we should keep in mind that there are more unemployed persons today than there are Serb and Roma populations combined.

The adoption and implementation of adequate measures with the aim of promoting equality between members of national minorities and members of majority population, appears to be the most important in the area of employment. Special affirmative measures have been constituted that give advantage to persons who are members of national minorities in administrative bodies and the judiciary system. However, there are no specific measures in the area of employment for members of national minorities in public companies and institutions. In some areas, which have traditionally been home to a greater percentage of members of national minorities, members of national minorities are significantly underrepresented and lack adequate access to employment in public companies and institutions.

²¹ „Research on Attitudes and Level of Awareness about Discrimination and Existing Forms of Discrimination“, conducted by the Agency Puls for the Office for Human Rights of the Government of Croatia, Center for Peace Studies and Ombudsperson's Office, available at www.suzbijanjediskriminacije.hr.

²² „Research: Prevalence and Characteristics of Discrimination on Croatian Labor Market – survey among unemployed persons and employers“, Croatian Bureau for Employment and Institute for Social Sciences „Ivo Pilar“.

There are numerous references to employment discrimination of Serbs. As noted by the ECRI: "Discrimination apparently occurs at several levels, both when it comes to passing a competitive examination for entry into the civil service and when a person is to be reinstated in their post following unfair dismissal. Some ethnic Serbs who applied for a post for which they were fully qualified did not obtain it, even where no one else met the requirements for the post. In such cases, the post remained vacant. In other cases it would appear that ethnic Croat candidates are given preference over better qualified ethnic Serb candidates."²³ Furthermore, information has reached the public about discrimination in the recruitment of Serbs into police forces: "Athletes fail tests of physical competence, during the security check process some candidate's grand grandmothers are asked what they did during the previous war and in other cases candidate's fathers are asked about their involvement in the political party. At the end, they do not receive a written explanation with reasons as to why they failed their education test for police officers with the Ministry of the Internal Affairs. All these candidates wrote they were of Serbian nationality in their applications."²⁴

Provision of the Article 22 of the Constitutional Law on National Minorities ensures employment of members of national minorities in judiciary and state bodies. When asked why no members of Roma national minority have been employed during 2009 in compliance with that provision, the Office for Human Rights of the Government of Croatia replied that, during 2009, due to the economic crisis, there was no employment in state bodies. However, this information is not correct, which is evident through open positions in state bodies, published in the official publication "National Gazette". In 2009, members of the Roma nationality were mostly employed through the self-employment system and in public works.

Under the current Law on Asylum, adopted in 2007, person granted asylum and subsidiary protection have a right to work in Croatia, in accordance with provisions of the Law on Foreigners, which regulate work for foreigners in Croatia. Asylum seekers are granted the right to work one year after they submit their application for asylum, in cases when the process has not been completed. Due to various reasons, including the high rate of unemployment in Croatia, distrust of employers, lack of access to adequate jobs in line with their qualifications, the weak development of the sector of social and ethnic entrepreneurship, the situation regarding employment of persons granted asylum is highly unsatisfactory²⁵.

²³ ECRI: Third Report on Croatia, Paragraph 74.

²⁴ News (Novosti) – Serbian Independent Weekly, February 12, 2010, pages 6 and 7.

²⁵ Information given by Center for Peace Studies, www.cms.hr

Examples of NGOs' Good practice

Non governmental organization Center for Peace Studies from Zagreb has been providing direct assistance through information provision and social assistance when looking for employment as well as contacting and negotiating with employers. Unfortunately, due to the above-mentioned reasons, the search for adequate jobs was not completely successful, apart from one case of self-employment of a person granted asylum. Based on this experience, the Center for Peace Studies decided to apply for project resources in order to create an info-booth for persons granted asylum in Zagreb, where one person granted asylum would be employed, and provided professional assistance and supervision by persons from the organization who already worked on providing direct assistance. Their task would be to help persons who will be granted asylum with information about their rights and responsibilities, direct contact with competent institutions and agencies as well as with other needed forms of help and assistance²⁶.

V.ii Housing

The issue of returning houses to refugee and displaced Serbs has been resolved to a great extent, but not entirely. During 2009, the state continued to implement discriminatory practices towards refugees and displaced Serbs in whose housing facilities displaced persons are temporarily placed, and even the ones that were not displaced, members of the majority nation. Namely, in processes regarding the return of seized property, authorities gave preference to persons other than Serb owners. During 2009, Ombudsperson received seven new complaints by owners who were unable to return to their occupied houses due to the fact that their property was temporarily seized and given to temporary users who still inhabit it. In addition, some cases from previous years have not been solved... In addition, there are cases in which temporary tenants are requesting reimbursement for investments made to property.²⁷

The issue of securing housing for former holders of tenancy right of Serb nationality, who have been displaced and decided to return to Croatia, has started to be resolved only in 2007/2008. Implementation of the program of housing access for these categories of people was still characterized by insufficient transparency and certain administrative-legal-political obstacles. In

²⁶ Information given by Center for Peace Studies, www.cms.hr

²⁷ Government of the Republic of Croatia adopted National Plan for Combating Discrimination for the period from 2008 through 2013, which states the following: „Croatian government has solved the problem of compensation for unauthorized investment in occupied properties by taking responsibility for payment of compensations instead of the owners for all cases in which the process through out-of-court negotiation is pending. According to the Conclusion of the Government of the Republic of Croatia from December 7, 2006 on compensation of investment in occupied property, the Ministry is applying procedure according to which all temporary tenants and owners are offered out-of-court settlement, and according to the initial list of 24 such cases. Identification and analysis of remaining cases is in the process. “

this regard, at the beginning of 2009, CERD stated that they “continue to be concerned about the substantial number of unresolved cases of returnees, in particular with regard to the restitution of property and tenancy rights“. They noted that the state “should ensure the implementation of its policies and laws to solve all outstanding housing issues faced by property owners and former tenancy rights-holders, by the end of 2009 as envisaged.”²⁸ At the end of 2009, the HRC expressed regret regarding the paucity of data provided regarding access to housing by former tenancy rights holders, disaggregated by ethnic origin and gender.²⁹ The Government is slow solving requests by persons, mainly ethnic Serbs, who held tenant's rights in social apartments before the war, but lost this right during the war.³⁰

Granting established (property) rights to purchase apartments under more favourable conditions and creating possibilities for free and unconditional decision-making by former displaced holders of tenant rights regarding the return to the Republic of Croatia remained problematic during 2009. An individual challenged these practices and lodged an individual petition to the CHR. They found that in the specific case related to the cancellation of tenant rights, that there was a violation of Article 17 and Article 2(1), of the International Covenant on Civil and Political Rights.³¹ The CHR stated: “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.”

Further problems related to private property of Serbs who do not live in Croatia were caused by the Law on Agricultural Land, adopted in December of 2008. This law restricts the right to ownership for owners of agricultural land. Furthermore, it restricts the right of free decisions in regards to concession and selling of the agricultural land because the process of sale and leasing is implemented by the local self-government body, Furthermore, if the owner is unknown, he/she loses the right to compensation after one year. All of this is justified by the legislator as “public interest“, but it does not define it anywhere within the law. An additional problem is the fact that due to the disorder of the

²⁸ CERD: Concluding observations regarding Sixth, Seventh and Eight Periodic Report submitted by the Republic of Croatia, Paragraph 19.

²⁹ HRC: Concluding observations regarding Second Periodic Report submitted by the Republic of Croatia, Paragraph 6.

³⁰ US Department of State: Human Rights Report, March 2010.

³¹ Case Vojnović against Croatia, Application no. 1510/2006; CHR Views, March 30, 2009.

land registry, in many cases, it cannot be determined who the owner of the land is, and we should bear in mind the fact that around 70,000 of Croatian citizens have refugee status and reside in neighboring countries, 60,000 of them in Serbia.³² Because of the above-mentioned, the Serbian Democratic Forum has submitted a proposal for the opinion of compliance of this Law with the Constitution of the Republic of Croatia to the Constitutional Court of the Republic of Croatia.

The process of return of property to religious communities, primarily to the Serbian Orthodox Church and Jewish community, is extremely slow. When considering the problem of return of property to religious communities, more specifically to Serbian Orthodox Church, one of its representatives stated that key problems are “endless administrative proceedings and lack of political will”.³³

V.iii Education

Despite certain improvements, access to education and the education of students of the Roma national minority deserves special attention.

On March 16, 2010, the European Court for Human Rights has, after hearings before the Grand Chamber, announced its decision in the case *Oršuš and Others v. Croatia*.³⁴ The case concerned fourteen pupils of two elementary schools in Međimurje (Macinec and Podturen) who complained, that the court proceedings they initiated in Croatia against these two schools was excessive in length (Article 6 of the Convention), and that their right to education has been denied (Article 2 of the Protocol no. 1 of the Convention on Protection of Human Rights and Fundamental Freedoms), and that they were discriminated in enjoying the right to education because of their Roma nationality. They argued that due to the fact they were allocated, throughout their elementary school education, for certain period of time or the whole duration, in so called „Roma classes“(Article 14 of the Convention in conjunction with the Article 2 of the Protocol no. 1).

The court unanimously found that the applicants' right to a trial in a reasonable time was violated because the Constitutional Court of the Republic of Croatia took four years to hear this case. Regarding the applicants' complaint regarding discrimination in education, the Court, with a tight majority (9: 8 votes), found there was indirect discrimination of applicants while they attended elementary school. The Court also noted efforts which the Republic of Croatia undertook to provide education to Roma children, the fact that Croatian bodies did not have a discriminatory intent, and that other positive measures were in place, such as

³² Data published on July 13, 2010 by www.tportal.hr, received from Raquel Rolnik, UN Special Reporter for Adequate Housing

³³ Note of the Center for Peace, Legal Advice and Psychosocial Assistance – Vukovar; conversation with representatives of two religious communities broadcasted by Croatian Radio-Television in the show „Prizma“ on February 6, 2010.

³⁴ Ruling from March 16, 2010, Application no. 15766/03.

ensuring free education after completion of elementary school. However, a tight majority of judges of the Grand Chamber concluded that despite this, during the time when applicants attended school, there were no appropriate safeguards put in place, which would ensure a reasonable relationship of proportionality between the means employed and the aim sought to be realized. In the context of this case in which only members of one ethnic group were placed into separate classes, relating that to the fact that parents of other children were opposed to the inclusion of Roma children into mixed classes, the Court considers that state bodies should have made their practice objective. A violation was found because of the lack of a clear and specific legal ground for the allocation of pupils who did not have command of the Croatian language into separate classes, and because of the lack of transparency and clear criteria for the transfer of children from Roma into mixed classes. Based on the above, nine judges of the Grand Chamber of the European Court concluded that the allocation of applicants into mixed or exclusively Roma classes, during their elementary education, had no objective or reasonable justification.

Example of NGO good practice

The Center for Peace Studies, along with the Ombudsman's Office and the Office of the Government of the Republic of Croatia in the area of education of citizens about discrimination, started a national antidiscrimination campaign, which was carried out in December of 2009. The aim of the campaign was to raise awareness of citizens of the Republic of Croatia about the unacceptability of discriminatory behavior and inform them about the existence of the Antidiscrimination Law, as well as of the central body for combating discrimination – the Ombudsman's Office. The campaign consisted of two parts: the first one covered print media (jumbo posters and billboards), implemented by the Center for Peace Studies and Ombudsman's Office, and the second part included broadcasting television and radio spot, responsibility of the Office for Human Rights and Ombudsman's Office³⁵.

In regards to education of asylum seekers and persons granted asylum, the Ministry of Internal Affairs, which is responsible for the accommodation in the Reception Center for Asylum Seekers in Kutina, together with the Ministry of Science, Education and Sport, is responsible for inclusion of children of asylum seekers into elementary and secondary school system in Croatia. This is achieved through cooperation between employees of the Ministry of Internal Affairs and local elementary and secondary schools, and the same practice is also used in some other cities where children of the asylum seekers are placed after they have received their status (for example, Zagreb, Dugo selo). However, in regards to the education of adults, so far, the practice has been that only in Zagreb and only for adult persons granted asylum, Ministry of Internal Affairs as "competent ministry" sponsors the course of Croatian language in one of the Zagreb centers for learning Croatian as a foreign language.

³⁵ Information given by Center for Peace Studies, www.cms.hr

We are of the opinion that the Ministry of Science, Education and Sport should be more involved in this matter, and fulfill legal obligations of adopting a program of learning Croatian language for adult persons granted asylum. Hence, this course is not available to asylum seekers nor those persons granted asylum that live outside of Zagreb, and sometimes there are problems with adjusting schedule and levels of prior knowledge of course participants with their daily work schedule, responsibilities and motivation. Furthermore, another problem that arose in practice is the insufficient involvement of the Ministry of Science, Education and Sport in ensuring assistants for courses, in order for experts to assist children of persons granted asylum with their initial adaptation to new school environment, as well as assistance in learning language, integration into peer group and commanding the course material.

Example of NGO good practice

The Center for Peace Studies, continuously organizes courses of the Croatian language for asylum seekers since 2004. Since the middle of 2006, the course has been provided regularly one to two times per week by volunteers, mostly students of the Peace Studies, members of the Center for Peace Studies and interested citizens. Prior to work with asylum seekers, volunteer's complete an intensive education course and their work is monitored and supervised. So far, over 1,000 hours of Croatian language course have been provided to approximately 200 asylum seekers and persons granted asylum. The course had been organized in the previous reception center in Šašina Greda, while today it is organized in the reception center in Kutina and very often represents not only a course of the Croatian language, but also culture, history and provides additional general and practical information which can help asylum seekers in everyday life inside and outside of the reception center.

Furthermore, the Center for Peace Studies began providing direct services of teaching Croatian language and Latin script to some persons granted asylum that live in the city of Zagreb but who, for various reasons, were not able to complete the program of the center for learning Croatian language. A team of volunteers working with persons granted asylum implement the program assisting children of persons granted asylum. However, this type of additional education and assistance does not delay the need for efficient and systematic solution to mention issues as well as the issue of education of adults, i.e. additional education of those persons granted asylum that need and want to find more adequate employment in Croatia.

V.iv Health

Research conducted by the Centre for Peace Studies, the Office for Human Rights of the Government of Croatia and the Ombudsman's Office reveals that out of 1.300 respondents, 22% believe that discrimination is the highest in the health care, and overall is the fourth most discriminated field, according to this research.

There are still cases (fortunately, less frequent) of severe discrimination and even racism towards Serb and Roma patients.

At the beginning of September 2009, almost every Croatian media reported about a case of a doctor who refused to provide urgent medical assistance to a patient of Serbian nationality. Following this incident, authorities of the municipality Vrhovine accused the medical doctor Esad Mujkanović, general practitioner in the Health Centre Otočac, of a breach of the Hippocratic Oath, because he refused to provide urgent medical assistance to a patient of Serbian nationality Boško Radić from Vrhovine, who was brought by his neighbours to the Health Centre Otočac with symptoms of a stroke. Radić was later diagnosed with stroke in the Ogulin Hospital.³⁶ Regarding this case, a Facebook group was formed "Support doctor Mujkanović – we refuse to provide medical assistance to Serbs". In May 2010, the group had 321 members, and messages of the group are dominated by hatred and national intolerance.

According to the Asylum Act, person granted asylum and vulnerable groups of foreigners who are under subsidiary protection are granted a right to health care equivalent to all persons insured through mandatory health care in the Republic of Croatia. Health care, in the scope of basic health and hygiene exam, is provided to asylum seekers upon arrival to the Reception Centre. Furthermore, employees of the Red Cross in the Centre care for their health and provide them with social care. Asylum seekers are also provided with access to a dentist, a gynaecologist, and urgent medical assistance. If granted asylum, their health protection and care is transferred to competent services in places of their relocation i.e. residence.

An issue that was revealed in practice is that a large proportion of the population need psychological and psycho-social assistance, which are not provided adequately or systematically. Namely, as a category of displaced persons who experienced numerous dangers and traumas, many of them suffer from various types of psychological problems (posttraumatic stress, paranoia, depression, fears, insomnia), but it seems that the attempt exists only to mitigate symptoms, and not to heal the causes of such conditions. Additionally, some asylum seekers and persons granted asylum already belong to vulnerable groups (incapacity to

³⁶ <http://dnevnik.hr/vijesti/hrvatska/otočac-odbio-liječiti-pacijenta-je-je-srbini.html>

work, youth, older persons, seriously ill, disabled, pregnant women, single parents with underage children, and victims of torture, rape or other psychological, physical or sexual violence), who require additional assistance for integration into a new environment and gaining a sense of competence, usefulness and equality. Unfortunately, competent services failed in this segment of providing adequate psychological assistance and rehabilitation care, especially to those who had received protected status.

Examples of NGO good practice

A positive example is the work and engagement of two local organizations from Kutina, which care for asylum seekers with difficulties and special needs in the Reception Centre's premises. The association for the Promotion of Rights and Socialization of Children and Youth Infected with HIV – Izazov (Challenge), Association of Persons with Disability, and Association of Blind Persons of the City of Kutina are active in the Reception Centre and, together with the Red Cross, implement program of rehabilitation, help, assistance, educational workshops and other, for vulnerable groups within the asylum seekers population. Also, OSI is involved in services for the transportation of persons with disabilities from the Reception Centre, located on the periphery, to the centre of the city of Kutina, where part of these programs take place. This association also assisted obtaining prosthesis for one person with a disability who was granted asylum. We believe that it is especially good practice when part of the activities is located outside of the Reception Centre and is integrated into the local community as it decreases feelings of segregation and increases the level of participation, inclusion, cooperation and exchange with the asylum seekers³⁷.

V.v Policing and ethnic profiling

In regards to discrimination and racism, Croatia has its specificities, conditioned by recent and past history. On one hand, it has a relatively small number of immigrants, and consequently there is less xenophobia and classic examples of racism than in some other EU countries. However, racism does exist, and so far, the most drastic cases were connected to soccer fans and marginal groups such as skinheads, but with a change of circumstances, it can be expected that such cases will be on the rise.

On the other hand, Croatia has (had) serious problem with court verdicts, which were extremely biased in regards to the ethnic membership of the victim or the perpetrator. Finally, one of the reasons why the International Court in the Hague (ICTY) was founded in the first place was the unreadiness of governments to conduct unbiased trials for perpetrators of war crimes. Most of such trials occurred in the period before 2009-2010, but the consequences they had on the judiciary system and the public opinion are still present. Below, we are providing only two cases that are connected to the period covered by this report.

³⁷ Information given by Center for Peace Studies, www.cms.hr, www.izazov-hiv.hr

1. Glavaš Case

In 2009, the general of the Croatian Army and member of the Parliament, B. Glavaš, was convicted to 10 year imprisonment. During the trial, which was monitored by NGOs, it was proved that in 1991, he directly ordered his paramilitary unit that specialized in killings, executed many civilians, citizens of Osijek of Serbian nationality. One day before the verdict was announced, Glavaš escaped to Bosnia and Herzegovina, where he currently lives. By its decision from summer 2010, the Supreme Court of the Republic of Croatia decreased Glavaš's sentence to eight years, and sentences of perpetrators of multiple murders, from five to three years.

2. Čančarević Case

In 2009, D. Čančarević finished serving his sentence. In 2000, the Supreme Court gave him 10 years imprisonment, based on the indictment that stated he has, as a police officer of the Republic Srpska Krajina, slapped the face of a prisoner of Croatian nationality. This is the only concrete accusation stated in the indictment.

V.vi Racist violence and crime

Examples:

1. In 2009, two attacks by skinheads were reported on Roma persons in Zagreb. On January 17, 2009, in Zagreb, nearby a train station, a seventeen-year old Roma person and his friend, who tried to assist him, were beaten up. Police detained four young men, ages from sixteen to twenty-seven, who declared themselves as skinheads.

2. On February 21, 2009, a group of skinheads in Zagreb also physically assaulted another seventeen-year old Roma person. They stated during the police hearing "We are skinheads and we were beating him because he is Gypsy" and announced that the "clean-up" of Zagreb will continue. Skinheads use closed Internet forums in order to plan attacks. There, they apparently publish newspaper articles that refer to them, and they praise their actions.³⁸

3. At the beginning of February 2010, the media reported that on the counter of the bus station in Zagreb, the following sign was found "Don't touch Roma people – they have been infected". The manager of the station condemned the incident, but at the same time he justified it by condemning the behaviour of Roma persons, who "pull the passengers, spit, beg and curse". It was also announced

³⁸ See <http://www.jutarnji.hr> and <http://www.vijesti.gorila.hr>

that the employee who was on duty at the time when the sign was posted, will receive warning before dismissal.³⁹

4. Racism is present among part of (the loudest) of soccer fans. Racist slurs are being shouted out during international games when one of the opponent's players is black or of darker skin complexion. Up until 2010, Croatia paid over 2.5 million Euros in penalties, because of racist incidents of some fans at such games. In the past few years, since there are few players of darker skin in Croatian clubs, racist incidents occur during local games. Racist incidents, such as shouting "Kill, kill Serb", have been a part of the standard folklore at games for the past twenty years.

Example of Good Practice

A positive example related to soccer fans was the formation of a group comprised of fans of the soccer club Zagreb, "White Angels". They appear at games with messages against racism and violence at the stadiums. They started coming to games in 2009.

Results of the research conducted by the Centre for Peace Studies, Office for Human Rights of the Government of the Republic of Croatia and the Ombudsman's Office, showed that 24% out of 1.300 respondents consider discrimination to be the most prominent in police conduct (labour and employment were first, judiciary held the second place).

V.vii Access to goods and services in the public and private sector

Members of national minorities are not proportionally represented in bodies of the executive and judiciary powers, and bodies and public service of units of local and regional self-government. The statutes of specific units of local self-government are not harmonised with the Constitutional Act on the Rights of National Minorities, which represents obstacles for ensuring their rights. The lack of a proactive approach of state and local bodies in regards to this problem is evident, because they have not undertaken all necessary measures in order to improve implementation of existing regulations, national policies and programs, with the aim of realising mentioned rights.⁴⁰

In regards to the access to judiciary, the law on Free Legal Aid came into force at the beginning of 2009.⁴¹ This law, apart from lawyers, includes civil society

³⁹ See http://www.javno.com/hr-zagreb/ne-dirajte-rome---zarazeni-su_292820

⁴⁰ Data from the Universal Periodic Review on the Status of Human Rights in Croatia, Ombudsman's Office, April 19, 2010.

⁴¹ Published in „National Gazette“ number 62/08 on May 30, 2008, came into force eight days after adoption, except for provisions from Articles 15 and 16 that came into force on February 1, 2009 and provisions contained in Articles 45 – 52 which will come into force on the day of accession of the Republic of Croatia to the European Union.

organizations, unions and legal clinics as providers of legal assistance, but it establishes a system that is too complex for citizens, because it mandates a range of administrative obstacles when trying to gain access to the judiciary.

Numerous Roma persons, whose citizenship status is not resolved, and who do not have an otherwise regulated status, do not have access to free legal aid because one of these two statuses is needed in order to obtain Free Legal Aid.

In regards to asylum seekers, an Act on changes and amendments of the Asylum Act has even further limited the definition of legal aid, by reducing it to proceedings before the Constitutional Court. In addition, we deem it an unacceptable restriction of freedom of movement by which asylum seekers are detained in the Ježevo Aliens Reception Centre, due to reasons listed in the Article 74 of the Asylum Act⁴², and specially the possibility of detention based on discretionary assessment of the body of state authority that application for asylum is fraudulent or misused, or if they leave or attempt to leave the Republic of Croatia before the completion of the procedure (an asylum seeker has a right to freedom of movement, which includes the right to cross the state border), or because of the intent of obstructing the procedure of forced removal. It is especially alarming that another reason for detention in the Reception Centre is the danger of spreading infectious diseases.

At some local levels there are some obstacles in place which prevent minorities from effective participation in public life and keeping them from decision-making processes. The provision to use your own alphabet and language (Cyrillic writing, street names and signs, etc.) is rarely respected, and there is a chronic lack of reliable and detailed information relating to the exercising of certain rights - the

⁴² Article 74 of the Asylum Act („National Gazette“79/07) states:

The movement of an asylum seeker may be restricted for the following reasons:

1. reasons stipulated in Article 6 and Article 8 of this Act,
2. determining his/her identity,
3. preventing the spread of infectious diseases,
4. suspecting that submission of the application for asylum represents a fraud and misuse of the asylum procedure,
5. his/her leaving or attempting to leave the Republic of Croatia before the completion of the procedure,
6. preventing situations where lives and possessions of other persons are put in danger,
7. protecting the national security and legal order of the Republic of Croatia.

The movement may be restricted by:

1. the prohibition to move outside the Reception Centre,
2. the prohibition to move outside a specific area, or
3. the prohibition to leave a specific address.

The movement of the asylum seeker referred to in paragraph 1 points 5 and 6 of this Article and of the asylum seeker who does not comply with the provisions of this Article on the restriction of movement, shall be restricted by accommodating the asylum seeker into the Aliens Reception Centre.

The movement may be restricted for a period of up to three months, and due to justified reasons it may be extended by another month.

As an exception from paragraph 3 of this Article, the restriction of movement for the reasons referred to in paragraph 1 point 3 of this Article shall be valid as long as reasons for the restriction exist.

The Ministry shall determine the restriction of movement by a decision.

An asylum seeker may lodge a complaint to the Administrative Court against the decision from paragraph 6 of this Article.

The complaint does not postpone the enforcement of the decision.

right to employment, appropriate representation and sustainability of return. Examples of ethnic intolerance in some communities still exist, and perpetrators are rarely sanctioned. The statutes of some local units do not comply with the Constitutional Law on National Minorities, which causes the inadequate representation of minorities.

V.viii Media, including the Internet

When compared to previous years, it appears that the level of negative stereotypes about national minorities has somewhat decreased. However, cases of intolerance and negative reporting as well as sensationalism are still significantly present in the media on all levels.⁴³ Hate speech is equally represented in all types of media, whether print or electronic, but lately it has been occurring mostly on different websites, forums and blogs.⁴⁴ Topics of hate speech are predominantly focused on national minorities, homosexuals and soccer fans.

There are almost no sanctions for authors and the media that use hate speech, although this possibility is stipulated by law. However, there are numerous cases of journalists' disapprovals of hate speech, in which they stress its negative consequences.

Examples:

1. One of the blatant examples of spreading hate speech, which evoked condemnation by politicians and the public was a statement of the Mayor of Split, Željko Kerum, in September 2009 on the Croatian Radio television show "Sunday at 2". On this occasion, Kerum stated he is against the entrance of the Serbian commercial company, owned by Miroslav Mišković, into the Croatian market, because he believes that "Serbs never brought anything good, so they will not bring anything good now, and this also applies to Montenegrins" and that "they should know where their place is". On this occasion he also said that he "would never allow for his son-in-law to be Serbian". The Government of Serbia has also condemned such statements. The Croatian State Attorney's Office did not issue an indictment after Kerum stated in a letter that he "was provoked".

2. A Recent incident of hate speech occurred when Žarko Domljan, the first president of the Croatian Parliament, as a guest in the show "Sunday at 2", provided an explanation on why he fired the chef of the Parliament's restaurant Milan Škorić. Domljan stated that was because Škorić was supplying meat for members of the Parliament from a butcher Mihael Zec, whose butcher shop was,

⁴³ Also reported by the European Commission, Croatia 2009 Progress Report, October 14, 2009, page 14.

⁴⁴ The Ombudsman classifies it as a promotion of discriminatory behavior and hate speech via Internet.

he said, a "well-known gathering place of KOS and UDBA members⁴⁵, and there existed a danger that he would poison members of the Parliament". Croatian soldiers killed Mihael Zec, his wife Marija and their twelve-year old daughter Aleksandra in 1991 on Sljeme. Criminal proceedings that were initiated against the perpetrators who confessed to a crime were discontinued, because their confession took place without the presence of lawyers.

In research conducted by the Centre for Peace Studies, Office for Human Rights of the Government of the Republic of Croatia, and the Ombudsman's Office, 18% out of 1,300 respondents stated that discrimination is the most present in the media.

⁴⁵ UDBA – secret police organisation of SFRY; KOS - Counterintelligence Service of the Yugoslav People's Army

VI. Political and legal context

After elections in 2007 the Croatian Government constituted of the Croatian Democratic Union (Hrvatska Demokratska zajednica –HDZ) in coalition with the Croatian Peasant Party (Hrvatska seljačka stranka-HSS), the Croatian Social-Liberal Party (Hrvatska socijalno liberalna stranka-HSLS), the minority Independent Democratic Serbian Party (Srpska demokratska samostalna stranka-SDSS) and was supported by representatives of Roma Nazif Memedi.

The Croatian Democratic Union was in power from 1990 to 2000 and is most responsible for breaches of human rights and mass discrimination on ethnic grounds during the said period. The Independent Democratic Serbian Party represented voters which were, probably exclusively Serbs in Croatia, while Mehmedi's voters were members of the Roma minority. Therefore, these two political parties represented two groups of citizens which were major victims of ethnic discrimination.

The President of the Government and Croatian Democratic Union resigned in the middle of the year 2009 (July 1st 2009). The new president of the Government became Jadranka Kosor, his former deputy. One of Government's vice presidents became Slobodan Uzelac from the Independent Democratic Serbian Party.

Therefore, the Croatian Government today is composed of two parties which represent the most threatened ethnic groups regarding discrimination and racism, the vice president of the Government is a member of a Serb national minority, and the president of the Government is a woman who has many times publicly declared herself as an activist for equality of sexes.

2009 was the last year of Stjepan Mesić 10-years mandate (two times five years) as a president of the Republic of Croatia. During his entire mandate president Mesić collaborated with NGO's and supported many NGO's initiatives on discrimination and ethnic intolerance (racism).

In 2003 the Croatian Government passed the National Programme for Roma in order to make the Constitution and legal system of guaranteed rights work and to abolish all forms of discrimination.

The Act on Combating Discrimination was passed in early 2009. This law was passed in the process of harmonization of Croatian legal system with EU regulations⁴⁶.

⁴⁶ The Act on Combating Discrimination, National Gazette, 85/2008.

The Labor Act was passed in the late 2009. Unions had serious objections to that Act, considering it discriminates workers. They organized a mass signing of a request for a referendum on the Labor Act. The Government tried to avoid it even though Unions have gathered over 700 000 signatures, the President of Croatia supported the referendum, the Government gave up on passing the Labor Act in September 2010, and it is still an open question whether the referendum would be conducted.

VI.i. Anti-discrimination

Anti-discrimination framework includes: the Constitution, the Constitutional Law on National Minorities (2002), Anti-Discrimination Act (2009), The Law on Gender Equality (2008), Same-Sex Unions Act (2003), Criminal Code that sanctions discrimination and hate crimes, Law on Civil Servants (2005) and Labor Act (enacted in 2009, withdrawn in September of 2010). In broader sense this framework also includes the Media Act (2003), the Electronic Media Act (2003) and the Law on Croatian Television.

Prohibition of discrimination is a constitutional category. Art. 3 of the Constitution specify states that freedom, equality, national equality and gender equality, peace, social justice and respect for human rights are the highest values, Art. 14 guarantees equality for all and declares the enjoyment of rights and freedoms regardless of the different bases: race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, education, social status, etc., Art. 15 guarantees the equality of all members of national minorities, and Art. 39 says that any invitation or incitement of racial or religious hatred or any form of intolerance is punishable⁴⁷.

In early 2009 the Anti-Discrimination Act entered into force, which Croatia has passed in the process of harmonization of its legal system with EU regulations. One of the advantages of the Anti-discrimination Act is that the burden of proof in employment disputes is transferred to the employer, wherefore it protects the weaker party.

The quality of the law will be best considered in its application in practice. This review is still impossible to execute properly because of the fact it just was enacted. However, previous case law related to the number of complaints and conduct of proceedings for discrimination is very poor.

General provisions of the Constitution are transformed into specific articles of the Criminal Code which provides punishment for discrimination and racism. These are Art. 106 and Art. 174. Art. 174, which states "anyone who for the purpose of

⁴⁷ National report regarding paragraph 15(A) of Annex to the resolution on Council for Human Rights 5/1, www.mmb.hr

spreading racial, religious, sexual, national, ethnic hatred or hatred based on skin color ... shall be imprisoned from three months to three years" proved problematic. In specific cases of discrimination or racial remarks it is very difficult to prove that perpetrator(s) violated human rights for these purposes⁴⁸.

The Government in collaboration with the Office of the Ombudsman and the Centre for Peace Studies implements the project "Support to the Implementation of the Anti-Discrimination", which is co-funded by the European Commission. Training on combating discrimination was organized for media representatives, civil society and employers as well as a public campaign to inform the public about their rights under the Act. The Office for Human Rights in cooperation with the Office of the Ombudsman submitted a proposal for the project "Establishing a Comprehensive System for Anti-discrimination Protection" of the IPA programme 2009, the components and transition assistance and institution building (ova rečenica mi je na hrvatskom nerazumljiva u dijelu „u sklopu pprograma IPA 2009, komponente i pomoć u tranziciji i izgradnja institucija). The three-year project implementation will begin at the end of 2010.

National plans to tackle discrimination 2008-2013 were passed following Croatia's obligations arising from the Durban Declaration. The Action Plan includes specific measures designed to promote awareness of non-discrimination, participatory democracy of the representative of discriminated groups, education of professionals and the mutual respect and tolerance.

The Ombudsman has received 172 complaints of discrimination, the most common form of discrimination is based on ethnicity (31%), followed by discrimination based on sex, social status, social origin and disability. Most common complaints are in the area of labor and employment, settlement of administrative cases (reconstruction and housing, residence, nationality), and the area of access to goods and services. Members of ethnic and national, as well as other minority groups are exposed to various forms of verbal and (occasionally) physical violence, and there were reports of discriminatory treatment and the promotion of hate speech via the Internet. Although the legislature knows the criminal acts of discrimination and hate speech and hate crime, there are small number of trials and convictions for these offences. According to the Ministry of Justice in 2009, three criminal complaints were initiated on discrimination, thirteen civil proceedings and one misdemeanor procedure⁴⁹.

VI.ii. Migration and integration

The legal framework of the migration policy is regulated by the Aliens Act, which regulates the conditions of entry, movement and residence of aliens in the

⁴⁸ Criminal Code (National Gazette 110/97, 27/98, 129/00,51/01110/07,152/08)

⁴⁹ Ombudsman's Report for 2009

Republic of Croatia and Asylum Act. The Constitution stipulates that foreign citizens and stateless persons may obtain asylum in the Republic of Croatia, unless they are prosecuted for non-political crimes and activities contrary to the fundamental principles of international law.

The exercise of rights guaranteed by the Constitutional Law on National Minorities⁵⁰ does not apply to persons who are not Croatian citizens. At the same time, a certain number of Serbs, Roma and Bosnians, who have been Croatian residents for many years, have difficulties in exercising their rights to Croatian citizenship and, therefore, to achieve economic, social and political rights guaranteed to citizens. These people, related to the acquisition of Croatian citizenship, are discriminated against in relation to non-citizens of Croatian origin. This problem was emphasized by the UN Committee on the Elimination of Racial Discrimination (CERD)⁵¹. The UN Committee for Human Rights (CHR) in late 2009 urged Croatian authorities to make additional efforts to facilitate equal access to citizenship for minorities⁵². It is unclear whether the provisions of the new Anti-Discrimination Act apply to people who are not Croatian citizens.

It seems that the collection, recording and presentation of data on minorities, and the data divided according to nationality, remain a serious problem. Reliability and up-date of the existing data also seems questionable. CERD in early 2009 recommended to Croatia “that it should provide information about the methods used to collect data, including information on whether these methods reflect the principle of self-identification and how”.⁵³

VI.iii. Criminal justice

In 2009 Croatia was preparing to open chapter on justice (chapter 23) in accession negotiations, when it comes to criminal law, it is primarily characterized by the entry into force of the new Code of Criminal Procedure. The Act introduces many novelties and brings Croatian criminal legislation closer to the Anglo-Saxon model. The investigation in its entirety is transferred from the courts jurisdiction to the jurisdiction of the State Attorney's Office. By introducing the concept of a victim in the new Criminal Procedure Act a step forward was made in promoting the rights of victims⁵⁴. Victims and injured parties are guaranteed the right to effective psychological and other assistance, regardless of the needs of the criminal proceedings, and regardless of the role of the victim as a witness in the proceedings. It prescribes the obligations of the body

⁵⁰ Official Gazzete No 155/02 and 80/10

⁵¹ CERD Concluding observations of the sixth, seventh and eighth periodic report of the Republic of Croatia, March 5th 2009, point 17

⁵² CHR Concluding observations of te second periodic report of the republic of Croatia, October 29th 2009, point 16

⁵³ Same as the footer No. 13, point 10

⁵⁴ The old Criminal Procedure Act only knew the term injured person what is not identical to the concept of a victim

conducting proceedings to treat the victim with more compassion and respect (so far, victims were seen primarily as an instrument of evidence). Novelty or significant improvements were introduced in terms of free legal aid, protection of identity and privacy, protection from intimidation, the right to social support, compensation from the offender, as well as compensation by the state in cases serious criminal acts with elements of violence.

However, the mentioned law has not entirely entered into force, since it will become fully effective on September 1st 2011. Provisions of this Act regarding the reopening of criminal proceedings became applicable on September 1st 2009, and entire Act became applicable on July 1st 2009 but only in proceedings for crimes of corruption and organized crime, prosecution of which is in jurisdiction of the Office for Combating Corruption and Organized Crime.

In relation to war crimes, 2009 has been a year for clean-up. In the sense that it came the time to correct the errors of the judiciary in the nineties, when the large number of ethnically biased and unprofessional actions led to a large number of persons being convicted in absentia⁵⁵. Criminal proceedings and trials in progress are also being reviewed from the aspect of unsubstantiated charges and are being updated. The State Attorney's Office completes a database on war crimes. The exchange for evidence, documents and information between prosecutors from Croatian, Serbia and Montenegro in the past few years have led to investigations, indictments and adjudication. However, these efforts have been realized slowly and are insufficient as a whole. What we consider as irresponsible towards the victims of war crimes, and towards the defendants in cases in which indictments were legally unfounded and/or insufficiently substantiated. None of the above encourages social catharsis.

VI.iii.i Racism as a crime

Art. 89 paragraph 36 of the General part of the Criminal Code defines a hate crime as "any criminal offence under the law, committed out of hatred against a person because of her race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth, education, social status, age, health status or other characteristics⁵⁶." Thus, a hate crime in the Croatian legal system is not a criminal offence of itself, instead needing to be committed in conjunction with another offence. The present solution as the hate crime is defined in the general part of the Criminal Code, is not adequate for the proper qualification of the crime, nor for statistical monitoring. Specifically, it is very difficult to track the number of crimes committed out of hatred, because the

⁵⁵ In 118 war crime trials held in absentia, 464 persons were convicted, which is about 70% of all persons who have been convicted for war crimes in Croatia in the period from 1991 until 2009 (data from the Annual monitoring reports of war crime trials in 2009-Centre for Peace, Nonviolence and Human Rights, Documenta, Civic Committee for Human Rights)

⁵⁶ Art. 14 paragraph 2 of the Law on the amendments of the Criminal Code (Official Gazette No. 71/2006- entered into force on October 1st 2006)

Ministry of Justice records judicial statistics for individual criminal acts and because hate crime is not a separate criminal offence, therefore, the disposition does not include Art. 89 paragraph 36 of the Criminal Law. Therefore, the Ministry of the Interior introduces to the information system a text description of every event for which it is established or is reasonably suspected of being motivated by hatred on the grounds of Art. 89 paragraph 36 of the Criminal Code⁵⁷.

In January 2010 the Croatian Government adopted a decision establishing a Working Group to monitor hate crimes⁵⁸ prosecuted at the national level, and it consisted of ten members⁵⁹. Tasks of the Working group are to analyze the application of anti-discrimination legislation in relation to cases of hate crimes, to analyze the need to introduce amendments to legislation relating to misdemeanour offences motivated by hatred and intolerance, to coordinate the activities in collection of statistical indicators of the criminal acts of discrimination and criminal acts in connection with hate crimes, coordinate inter-institutional cooperation in the monitoring of criminal offences in connection with hate crimes and analyse problems of treatment by the relevant authorities.

Based on information obtained from the Office for Human Rights of the Government we have learned that the Zagreb Municipal Court-Criminal Department issued five judgements for hate crimes in 2009. It is significant that in the Republic of Croatia not one conviction was issued for incitement to racial hatred⁶⁰. This is partly the result of a wording in Art. 174 of the Criminal Code, which requires "the existence of spreading racial hatred as an aim."

VI.iii.ii Counter terrorism

After the war, in the summer of 1995 there was no violence against state institutions in Croatia that would fall into the classic definition of terrorism. This absence of terrorism resulted in the Government taking no special anti-terrorist measures which would then, if applied selectively affect some ethnic or religious groups. (A few months after the end of the war there was terrorism against Croatian citizens of Serbian nationality who remained in Krajina, 400 hundred people were killed, and more than 20,000 houses burned. It took years to initiate serious court proceedings against the perpetrators which are still pending today.) However, from the standpoint of discrimination in Croatia there is a reverse

⁵⁷ Information given by Croatian Government, Office for Human Rights

⁵⁸ Decision of the Government of the Republic of Croatia, Office for Human Rights, Class: 011-02/10-01/1, No.:50431-05/1-10-01, January 25th 2010

⁵⁹ Representatives of the Ministry of Foreign Affairs and European Integration, Ministry of Internal Affairs, Police Academy, Ministry of Justice, the High Court of Misdemeanor, the Zagreb Municipal Court- Criminal Department, Croatian State Attorney's Office, The Office for Human Rights of the Croatian Government, the Office of the Ombudsman of Croatia, and the Faculty of Law University of Zagreb. Head of the Working Group is the representative of the Office for Human Rights of the Croatian Government.

⁶⁰ Data from the Office for Human Rights of the Croatian Government

problem. A certain number of Croatian citizens of Serbian nationality were the victims of terrorism, mainly in the period between 1991 and 1995. Some people were killed in these terrorist attacks and most of their property was destroyed, mostly by blowing up their homes with explosives.

The State was under the existing laws obliged to pay compensation to victims of terrorism and their families (these terrorist attacks took place away from the military actions and conflicts). After the claims for damages were filed, the Parliament changed the law. The result of this dishonorable and unprecedented procedure was that the victims of terrorism not only did not receive compensation but they were convicted by the courts, to which they filed the claim, to pay high litigation costs to the state. During 2009 until 2010 these people, victims of terrorism, turned to the Ministry of Justice, the European Commission and certain institutions of the Council of Europe. There were more than 1000 cases where the victims of terrorism were almost exclusively Serbs. Croatian citizens of Croatian nationality who were victims of terrorism (in the occupied part of Croatia), received some form of compensation from the state.

VI.iii.iii Ethnic profiling

Discrimination based on ethnicity in Croatia for the last 20 years was mostly directed against the Serbs and Roma. In doing so, the Roma, who are by darker color of their skin and characteristic facial features easily recognizable, were often the victims of violent, unprovoked attacks by skinheads. There were no attacks with serious consequences, as far as the public is aware, in the period of 2009 - 2010. Here it should be taken into account that the Roma often do not report minor attacks because they have not gotten any support in the past from the institutions that were supposed to protect them.

Two examples:

1. In late spring of 2010 Zemunik locals (the place near Zadar) organized a protest against the Roma who arrived in the vicinity of their town and settled in abandoned houses. They did not want Roma neighbours because they are 'dirty, collect garbage, burn tires and poison fruit and vegetables with the smoke'. The Roma fled before the demonstrators reached them, and later returned.

Some Roma women and children are the typical example of victims of multiple discrimination. They are often discriminated in their closed communities in the way that state institutions would not tolerate outside the Roma community, and, moreover, are often victims of prejudice and discrimination as Roma.

Discrimination against the Serbs in general is still present as in the 1990s when the racist behaviour towards all Serbs was a daily occurrence, and discrimination was more the rule than the exception. Discrimination against the Serbs as an

ethnic group was particularly present in (some) court rulings. For example, if the Serbs were the victims of terrorism, the courts have generally refused their claims for compensation and obliged them to pay court expenses. Such decisions of the courts were ruled also during 2009 and 2010.

VI.iv. Social inclusion

The causes of social exclusion in Croatia are associated with limited employment opportunities, low educational levels, or outdated knowledge and skills. The common consequence of this is long-term unemployment and dependency on social welfare. An increased risk of social exclusion exists for those people with special needs (disabilities), the homeless, elderly, women, victims of domestic violence, Roma, former prisoners, addicts, refugees and displaced persons, and residents of the areas of special state concern⁶¹.

Croatian Employment Service does not track the unemployed by ethnicity, but it is estimated that about 4.400 Roma were recorded as unemployed in the beginning of 2009. Poverty among Roma is much more widespread than in the rest of the society, so that 76% of Roma and 20% non-Roma, who live in the vicinity of Roma settlements, live in absolute poverty. Roma poverty is often deep and permanent, and affects almost all aspects of life (housing, education, health, etc.). A significant number of Roma children are not involved in the education system or leave school early so that poverty and social exclusion are transferred to next generations.

Effective participation and involvement of members of some national minorities in economic life are still problematic. Allegations of discrimination in employment, especially in war affected areas, are still frequent. Constitutional Law on National Minorities does not warrant the taking of positive measures for employment, and achieving adequate representation of ethnic minorities in, for example, public enterprises and institutions⁶².

⁶¹ www.socijalna-uključenost.net/hr/o-projektu

⁶² www.socijalna-uključenost.net/hr/o-projektu

VII. National recommendations

VII.i. General

- to enact different measures (such as legal acts and the education of different social groups – from judges to high school students) to have a future with less discrimination, where people will be able to recognize policies, movements and groups that encourage racism and where such ideas will be less attractive;
- to assure some sort of compensation for the victims of discrimination; this will have bigger impact on the shift of the public opinion than any declaration of politicians that they are willing to adopt higher European standards.

The following recommendations should be sent to President of the Republic, Prime Minister, Parliament Committee, Ministers of Judiciary, of Internal Affairs, of EU integrations, to Presidents of Supreme and Constitutional Courts, General Attorney and, most important, the media should be informed about the recommendations and that they have been sent to all mentioned addresses.

VII.ii. Anti-discrimination

- To plead for the systematic education of judges, state officials and officials of local governments regarding the concrete judgments of the European Court for Human Rights and the application of the common European legal acts.
- To research how much schools are teaching on the dangers of racism and discrimination, with the long term aim being implementing such a program in the state educational programs.
- To plead for a weekly human rights related program on the public television.
- To continue to provide the victims of racism and discrimination the possibility of reporting the relevant cases to the NGOs and to harmonize the system of respective reports in order to achieve more efficient legal assistance to the victims as well as more efficient actions towards Government, Police and the public.
- Racism related violence should be punished more severely. The legal basis already exists but the perpetrators of racism related crimes are often punished with mild sentences.
- To establish as soon as possible in all courts support and assistance for witnesses and victims.

VII.iii. Criminal justice

- The victims of discrimination from the previous period from 1991 till 2009 should achieve some sort of the compensation, at least moral compensation, through a public apology from the Government and admit that some of the

cases of fired workers and also some of the sightless judgments from that period were the unacceptable examples of discrimination. (For the time being it is hard to expect that the Government would do such steps. Nevertheless NGOs pressure on the Government in that regard should be maintained).

VII.iii.i Racism as a crime

- To establish 'hate crime' as a special crime regulated by the Criminal Code having the hate motive as one of the aggravating circumstances.

VII.iii.ii Counter terrorism

- The Government should give up claiming the litigation costs from the victims that were suing the Government in order to achieve the compensation for damages from terrorist acts for which the State was responsible.
- The Government should find the way to compensate the long term damage victims of terrorism suffered between 1991-1995.

VII.iii.iii Ethnic profiling

- Aside from measures proposed special attention should be paid to the education of policemen on the dangers of racism and discrimination.

VII.iv. Social inclusion

- To enact laws that will facilitate employment for disabled persons and Roma. These two groups are the most endangered by the social exclusion. (Having in mind the high rate of unemployment in Croatia, this positive discrimination could be considered as a real discrimination by other unemployed persons.)

VIII. Conclusion

Croatia is the first country that will join the EU which lived through a war in its recent history (the armed conflict in Slovenia lasted for 8 days, in Croatia for 4 years). That war being a mixture of aggression and civil war, together with the Government's policy from 1991 till 2000, left grave and long-lasting consequences. In the period 1991-2000 ethnic discrimination had political legitimacy, and a hate encouraging mainstream discourse from the political leaders as well as of the dominant media. This was compounded with the questionable proceedings of the police and judiciary system, multiple violations of human rights of vulnerable ethnic groups who were left with no protection by the police or other institutions that should have granted them protection.

The surprising and the frightening moment in this development was the intensity and the velocity of the process imposing ethnic intolerance as the dominant and for many even patriotic attitudes. Discrimination was established as necessary and therefore justified. It seemed that the 40 years of coexistence in ethnically mixed environments, cherishing the spirit of solidarity and creating a legal practice where the chauvinistic discourse was punished and discrimination on ethnical or racial basis was less present than in the majority of European countries, vanished over night and from then on presented as a relic from an abandoned, non democratic, one party regime.

The situation in Croatia at present is much better; the legal framework set by the Constitution and enacted laws is strong enough to sanction racism and racism based discrimination. (This legal framework existed in the previous period but it was worthless without the political will supported by the dominant public opinion to enforce laws and apply them in practice). Cases of discrimination on racial or ethnical grounds still exist and often they are not adequately sanctioned. One of the main missions of NGOs that deal with human rights is to register those excesses, to inform the broader public, to assure protection for the victim and to monitor legal proceedings against the perpetrator.

The percentage of immigration in Croatia is still low therefore, the popularity of the far right political parties which tend to disguise their racism with the gown of patriotism is decreasing (unlike the situation in the majority of the EU countries). Racism in Croatia is present today in incidents organized by football supporters, on the web pages of some fascist and homophobic groups and attacks of skinheads on Roma and others that can be easily, by the color of their skin, face characteristics or other features, recognized as 'the others'. This situation can be seen as the tip of the iceberg: underneath the surface of the society there is a less visible and unknown potential for discrimination and racism that can explode again in conditions of fear and insecurity.

An inclination towards racism and discrimination against 'the others' that are somehow different from ourselves is inherent to human societies from the early days and it is deeply rooted in history. Nevertheless, the fight against racism and opposing the often dominant, majority and aggressive attitudes has always been the core of the fight for a fairer society.

Today in Croatia we face much more favorable political circumstances³⁸ for creating the stronger obstacles to racism and racism based discrimination. The same can be applied to issues related to the sexual orientation discrimination. However, the increasing rate of unemployment and the economic crisis will make social exclusion for years one of the main social problems and the sources of new injustices as well as the obstacle for resolving the old injustices and healing their consequences.

³⁸ General consensus of political parties that conditions for joining the EU should be fulfilled. The President of The Republic of Croatia has repeatedly expressed his clear attitudes against racism and discrimination. The existence of the experienced NGOs that have an increasing impact on the formation of the public opinion

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X. Annex 1: List of abbreviations and terminology

CERD – Committee on the Elimination of Racial Discrimination

CHR – Commission on Human Rights

ECRI – European Commission against Racism and Intolerance

EU – European Union

HRC – Human Rights Center

ICTY – The International Criminal Court for the former Yugoslavia

IPA – Instrument for Pre-Accession Assistance

OSCE – The Organization for Security and Cooperation in Europe

UN – United Nations



european network against racism

ENAR Shadow Report 2009-2010