

OMBUDSPERSON FOR GENDER EQUALITY OF THE REPUBLIC OF CROATIA

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Seeking effectiveness: remedies and sanctions in sex discrimination cases

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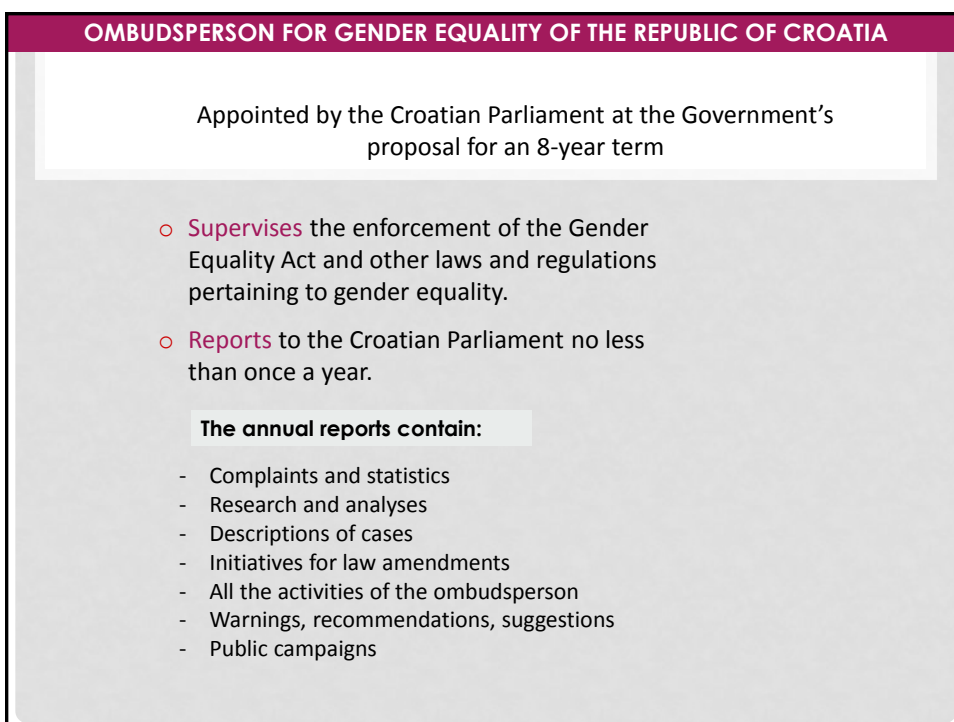
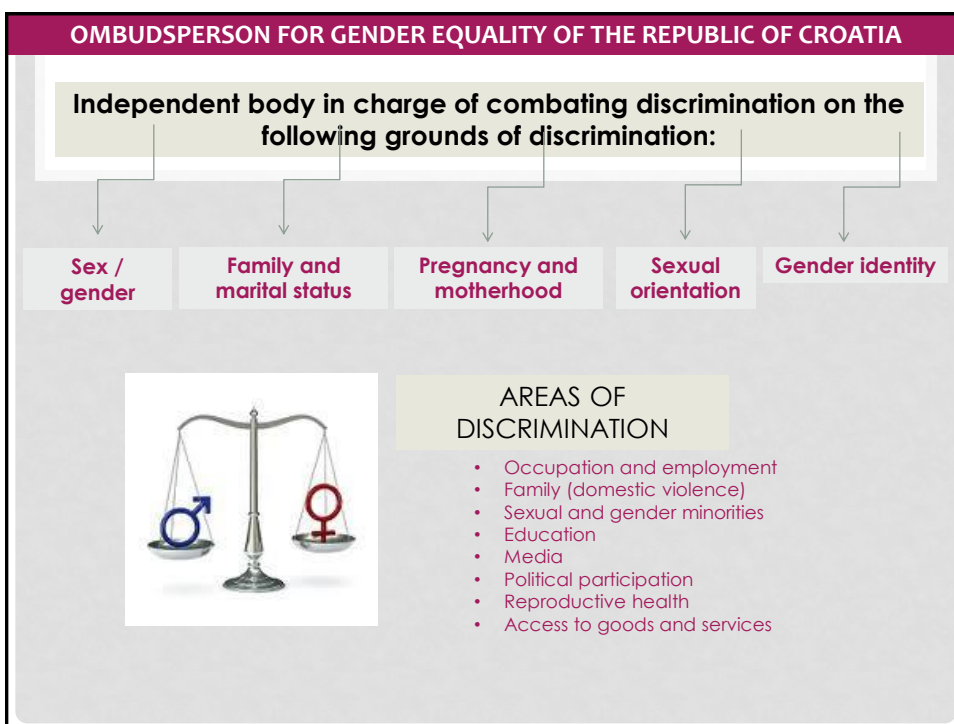


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OMBUDSPERSON INSTITUTIONS IN THE REPUBLIC OF CROATIA

4 INDEPENDENT OMBUDSPERSON INSTITUTIONS IN THE
REPUBLIC OF CROATIA:

- OMBUDSPERSON
 - OMBUDSPERSON FOR PERSONS WITH DISABILITIES
 - OMBUDSPERSON FOR CHILDREN
 - OMBUDSPERSON FOR GENDER EQUALITY



OMBUDSPERSON'S ROLES AND RESPONSIBILITIES

Under the Gender Equality Act, the Ombudsman:

1. **Receives complaints** from any natural persons or legal entities regarding discrimination in the area of gender equality,
2. **Provides assistance to natural and legal persons** who filed a complaint of sexual discrimination when instituting legal proceedings,
3. **Takes legal steps to investigate individual complaints** prior to the legal proceedings,
4. With the consent of the parties involved, **conducts a mediation process** with the possibility of reaching an out-of-court settlement,
5. **Collects and analyses statistical data** on cases of sexual discrimination,
6. **Conducts independent surveys concerning discrimination**, publishes independent reports and exchanges available information with corresponding European bodies.

OMBUDSPERSON'S ROLES AND RESPONSIBILITIES

The ombudsman is authorised to act in cases of discrimination on the grounds of:

- Sex/gender (including domestic violence and violence against women, sexual harassment, pregnancy and motherhood);
- Marital status;
- Family status;
- Sexual orientation;
- Gender identity.

OMBUDSPERSON'S ROLES AND RESPONSIBILITIES

The ombudsperson is authorised to act in cases of sexual discrimination in all areas of life that it occurs in, in particular:

- ▣ **Occupation and employment (2/3 of all complaints)**
 - Sexual harassment and harassment
 - Sexual and gender discrimination in the area of employment and occupation
- ▣ **Family (1/3 of all complaints)**
 - Domestic violence and violence against women
 - Supervises the implementation of the National Strategy for Protection against Domestic Violence
 - Supervises the implementation and application of the Protocol on the Procedure in Cases of Domestic Violence
 - Intimate partner violence
 - Maternity and parental care
 - Supervises the application and enforcement of the Free Legal Aid Act

OMBUDSPERSON'S ROLES AND RESPONSIBILITIES

The ombudsperson is authorised to act in cases of sexual discrimination in all areas of life that it occurs in, in particular:

- ▣ **Gender and sexual minorities (LGBT)**
- ▣ **Education**
 - Analyses of women's and men's participation in different levels of education
 - Analyses of schoolbook texts
- ▣ **Media** (analyses of media content)
- ▣ **Health – reproductive rights**
- ▣ **Political participation** – supervision of electoral processes in terms of the representation of sexes in different positions of political power and in decision-making bodies.
- ▣ **Goods and services** – supervision of the enforcement of relevant EU directives and legislation that provide for equal access to goods and services (public and private) regardless of sex/gender.

OMBUDSPERSON'S ROLES AND RESPONSIBILITIES

ADOPTION OF THE OMBUDSPERSON'S RECOMMENDATIONS, WARNINGS AND PROPOSALS

- OVER 90 %
COMPLETELY
- UNDER 10 %
PARTIALLY
- LESS THAN 3 %
NOT ADOPTED

GENDER EQUALITY – LEGAL FRAMEWORK

GENDER EQUALITY AND THE CROATIAN CONSTITUTION

The Croatian legal system has incorporated the fundamental principles of human rights and gender equality into its Constitution and legislation.

Article 3 of the Constitution defines that freedom, **equal rights**, national and **gender equality**, peace-making, social justice, respect for human rights, inviolability of ownership, conservation of nature and the environment, rule of law and a democratic multiparty system **are the highest values of the constitutional order of the Republic of Croatia and the basis for interpreting the Constitution.**

With regard to the above, Article 14 of the Constitution stipulates that all persons and citizens in the Republic of Croatia shall enjoy rights and freedoms, regardless of their race, colour, **gender**, language, religion, political or other opinion, national or social origin, property, birth, education, social status **or other status.**

GENDER EQUALITY – LEGAL FRAMEWORK

GENDER EQUALITY ACT – ORGANIC LAW

Article 83 of the Constitution stipulates that organic laws are those elaborating constitutionally established human rights and fundamental freedoms, the electoral system, the organization, remit and operation of state bodies and the organization and remit of local and regional self-government, and that the Croatian Parliament adopts them by a majority vote of all members.



GENDER EQUALITY – LEGAL FRAMEWORK

GENDER EQUALITY ACT – FOUNDATIONS AND PROTECTION FROM REVICTIMIZATION

Article 1

- This Act lays down a **general framework for the protection and promotion of gender equality as a fundamental value of the constitutional order of the Republic of Croatia**, and it defines and regulates the method of protection from discrimination on grounds of sex and establishment of equal opportunities for women and men.

Article 2

- No one shall be put at a disadvantage or suffer adverse effects, including being sued or exposed to other legal proceedings, for reporting discrimination in good faith, officially or unofficially**, witnessing discrimination, refusing an instruction to take discriminatory action, in any way bearing witness in a procedure given rise to by discrimination on the grounds of sex or alerting the public about a case of sexual discrimination.

GENDER EQUALITY – LEGAL FRAMEWORK

GENDER EQUALITY ACT – FORMS OF DISCRIMINATION AND SEXUAL HARASSMENT

Article 7

- (1) Direct discrimination is any treatment where, on the grounds of sex, one person is treated or has been treated or might be treated less favourably than another in a comparable situation.
- (2) Indirect discrimination occurs when a neutral legal provision, criterion or practice puts persons of one sex at a disadvantage compared to persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

Article 8

- (1) Harassment and sexual harassment shall be deemed to be discrimination within the meaning of this Act.
- (2) Harassment is any unwanted conduct related to the sex of a person that occurs with the purpose or effect of violating the dignity of a person and of creating an unpleasant, hostile, degrading or offensive environment.
- (3) Sexual harassment is any form of unwanted verbal, non-verbal or physical conduct of a sexual nature that occurs with the purpose or effect of violating the dignity of a person, in particular when creating an unpleasant, hostile, degrading or offensive environment.

GENDER EQUALITY – LEGAL FRAMEWORK

International legal framework (EU/UN)

- Convention 190 concerning the elimination of violence and harassment in the world of work, from 2019 – not yet signed by any country.
- Council of Europe Convention on preventing and combating violence against women and domestic violence (so called Istanbul Convention, from 2011)
- DIRECTIVE 2006/54/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation
- Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime
- Recommendation Rec(2002)5 of the Committee of Ministers to member states on the protection of women against violence of 30 April 2002

GENDER EQUALITY – LEGAL FRAMEWORK

International legal framework (UN/EU)

- ✓ United Nations Security Council resolution 1325 (2000) on women and peace and security, and related resolutions
- ✓ The Beijing Declaration and Platform for Action were adopted at the Fourth World Conference on Women, which took place on 15 September 1995
- ✓ Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) from 1979
- ✓ UN Millennium Declaration from 2000
- ✓ UN Declaration on the Elimination of Violence against Women (DEVAW) from 1993

ANTI-SEXUAL HARASSMENT LEGAL FRAMEWORK IN CROATIA

MISDEMEANOUR LEGISLATION – ANTI-DISCRIMINATION, ORGANIC LAWS

- **1. The Gender Equality Act stipulates in Article 8:** (1) Harassment and sexual harassment shall be deemed to be discrimination within the meaning of this Act. (2) Harassment is any unwanted conduct related to the sex of a person that occurs with the purpose or effect of violating the dignity of a person and of creating an unpleasant, hostile, degrading or offensive environment. (3) Sexual harassment is any form of unwanted verbal, non-verbal or physical conduct of a sexual nature that occurs with the purpose or effect of violating the dignity of a person, in particular when creating an unpleasant, hostile, degrading or offensive environment.
- **2. The Anti-Discrimination Act stipulates in Article 3:** (1) Harassment is any unwanted conduct caused by any of the grounds referred to in Article 1 paragraph 1 of this Act with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading or offensive environment. (2) Sexual harassment is any verbal, non-verbal or physical unwanted conduct of sexual nature with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading or offensive environment. (3) Provisions of this Act referring to discrimination shall apply accordingly to harassment and sexual harassment.

ANTI-SEXUAL HARASSMENT LEGAL FRAMEWORK IN CROATIA

MISDEMEANOUR LEGISLATION – MATTERS OF OCCUPATION

- **3. The Labour Act stipulates in Article 134:** "(1) The measures for the protection of workers' dignity from harassment and sexual harassment shall be regulated by a special law, the collective agreement, the agreement between the workers' council and the employer or employment rules. (2) **An employer employing no less than 20 workers shall appoint a person who would, in addition to him, be authorised to receive and deal with complaints related to the protection of workers' dignity.** (3) The employer or person referred to in paragraph 2 of this Article shall, within the timeline prescribed by the collective agreement, the agreement between the workers' council and the employer or employment rules, and within a maximum of eight days from the day of filing the complaint, examine the complaint and take all the necessary measures appropriate for a particular case, to stop the harassment or sexual harassment, if he or she has established the harassment has occurred."

ANTI-SEXUAL HARASSMENT LEGAL FRAMEWORK IN CROATIA

MISDEMEANOUR LEGISLATION – MATTERS OF FAMILY

4. Protection from Domestic Violence Act:

Domestic violence is:

1. Use of physical force not resulting in bodily injury
2. Corporal punishment or other forms of degrading treatment of children
3. Psychological violence which has caused a violation of dignity or distress in the victim
4. Sexual harassment **(but there is no definition or modalities for perpetration)**
5. Economic violence such as banning or preventing the use of joint or personal property, having personal income or property acquired by personal work or inheritance at one's disposal, exclusion from employment, denial of funds for maintenance of the common household and care for children
6. Neglecting the needs of a person with disability or an elderly person which results in the person's distress or insults the person's dignity thus inflicting physical or mental suffering.

ANTI-SEXUAL HARASSMENT LEGAL FRAMEWORK IN CROATIA

MISDEMEANOUR LEGISLATION – SANCTIONS AND THE PROTECTION OF VICTIMS

Gender Equality Act – judicial protection subject to private prosecution and the burden of proof (problem – slowness and lack of experience of the courts):

ARTICLE 30

- (1) Any persons who consider that as a result of discrimination referred to in Articles 6, 7 and 8 of this Act their right has been infringed upon may lodge a complaint to a regular court of general jurisdiction.
- (2) In cases of discrimination referred to in Articles 6, 7 and 8 of this Act, persons who consider themselves wronged may demand compensation pursuant to the provisions of civil obligations law on tort liability.
- (3) A joint claim may be filed in discrimination cases.
- (4) Where parties to the proceedings claim that they have been wronged because the principle of equal treatment has not been applied, **they have the obligation to establish facts from which it may be presumed that there has been discriminatory treatment. In such a case the burden of proof shall be on the respondent to prove that there has been no discrimination.**
- (5) Legal proceedings in discrimination cases shall be conducted as expeditious proceedings.

ANTI-SEXUAL HARASSMENT LEGAL FRAMEWORK IN CROATIA

MISDEMEANOUR LEGISLATION – SANCTIONS AND THE PROTECTION OF VICTIMS

Gender Equality Act – ex officio misdemeanour protection (but the problem is a lack of clear provisions on the authorised complainant):

ARTICLE 31

- (1) Any person who, with the aim of causing fear in the other or creating hostile, degrading or offensive environment on the grounds of difference in gender, marital or family status, or sexual orientation, violates the dignity of a person, shall be punished with a fine amounting to HRK 5,000.00 to 30,000.00.
- (2) The fine referred to in paragraph 1 of this Article shall be imposed for a violation on a responsible person in a legal person, public body or unit of local or regional self-government.
- (3) A craftsman or a person pursuing other self-employed activity shall be punished for a violation referred to in paragraph 1 of this Article with a fine amounting to HRK 10,000.00 to 200,000.00.
- (4) In case of a violation referred to in paragraph 1 of this Article, a legal person shall be punished with a fine of HRK 30,000.00 to 300,000.00.

ANTI-SEXUAL HARASSMENT LEGAL FRAMEWORK IN CROATIA

MISDEMEANOUR LEGISLATION – SANCTIONS AND THE PROTECTION OF VICTIMS

Gender Equality Act – ex officio misdemeanour protection (but the problem is a lack of clear provisions on the authorised complainant):

ARTICLE 32

- (1) Any person who, with the aim to cause fear in the other or to create a hostile, degrading or offensive environment, violates the dignity of a person through actions of sexual nature shall be punished with a fine of HRK 5,000.00 to 40,000.00.
- (2) The fine referred to in paragraph 1 of this Article shall be imposed for a violation on a responsible person in a legal person, public body or unit of local or regional self-government.
- (3) A craftsman or a person pursuing other self-employed activity shall be punished for a violation referred to in paragraph 1 of this Article with a fine amounting to HRK 10,000.00 to 250,000.00.
- (4) In case of a violation referred to in paragraph 1 of this Article, a legal person shall be punished with a fine of HRK 30,000.00 to 350,000.00.

ANTI-SEXUAL HARASSMENT LEGAL FRAMEWORK IN CROATIA

MISDEMEANOUR LEGISLATION – SANCTIONS AND THE PROTECTION OF VICTIMS

Gender Equality Act – ex officio misdemeanour protection (but the problem is a lack of clear provisions on the authorised complainant):

ARTICLE 33

- (1) Any person who intentionally puts at a disadvantage a person who, in good faith, reported discrimination or was in any manner involved in the proceedings for discrimination pursuant to the provisions of this Act, shall be punished with a fine of HRK 1,000.00 to 20,000.00.
- (2) The fine referred to in paragraph 1 of this Article shall be imposed on a person who puts at a disadvantage a person who witnessed discrimination or who refused an instruction to take discriminatory action.
- (3) Any attempted actions referred to in paragraphs 1 and 2 of this Article shall be punished.
- (4) The fine referred to in paragraph 1 of this Article shall be imposed for a violation on a responsible person in a legal person, public body or unit of local or regional self-government.
- (5) A craftsman or a person pursuing other self-employed activity shall be punished for a violation referred to in paragraph 1 of this Article with a fine amounting to HRK 5,000.00 to 150,000.00.
- (6) In case of a violation referred to in paragraph 1 of this Article, a legal person shall be punished with a fine of HRK 20,000.00 to 200,000.00.

ANTI-SEXUAL HARASSMENT LEGAL FRAMEWORK IN CROATIA

MISDEMEANOUR LEGISLATION – DEFINITION, CONDITIONS FOR PROSECUTION AND PROBLEMS IN PRACTICE

Not every conduct of a sexual nature or on the grounds of a person's sex is necessarily sexual harassment. Namely, in order for certain conduct to be deemed as sexual harassment, three conditions must be fulfilled cumulatively:

- 1) The conduct must be **unwanted** by the person to which it is directed;
- 2) It must be **on the grounds of sex or of a sexual nature;**
- 3) It must be such as to **violate the dignity of the victim and create an unpleasant, hostile or offensive environment** (for an offence to occur, a fourth condition must be fulfilled – there must be a relationship of superiority or dependence, i.e. the victim's particular vulnerability in relation to the perpetrator).

ANTI-SEXUAL HARASSMENT LEGAL FRAMEWORK IN CROATIA

MISDEMEANOUR LEGISLATION – DEFINITION, CONDITIONS FOR PROSECUTION AND PROBLEMS IN PRACTICE

Such a legislative framework has been shown not to offer adequate protection, for several reasons:

1. Firstly, **several acts and regulations contain the same or very similar definition** of sexual harassment, whereas the levels of punishment and sanctions of harmful conduct vary. In some pieces of legislation, the act is punishable even though there is no definition (Protection from Domestic Violence Act).
2. Secondly, some pieces of legislation **do not clearly define the authorised complainants** (e.g. Gender Equality Act), hence efficient and deterring sanctioning of perpetrators is mostly absent.
3. And thirdly, perhaps most importantly, **judicial practice is not gender sensitive, judges are not sufficiently trained** for such proceedings and consequently the laws are interpreted either literally, i.e. grammatically, without understanding the spirit of a certain normative solution and without providing the necessary protection of the victim, so it is not uncommon for the case to be resolved in favour of the perpetrator.

ANTI-SEXUAL HARASSMENT LEGAL FRAMEWORK IN CROATIA

MISDEMEANOUR LEGISLATION – DEFINITION, CONDITIONS FOR PROSECUTION AND PROBLEMS IN PRACTICE

On the other hand, judicial protection by means of the victim's private action against the employer who has failed to eliminate illegal and discriminatory conduct, and pursuant to Art. 17 of the Anti-Discrimination Act, and Art. 30 of the Gender Equality Act, has been shown to be **too slow an option with a very uncertain outcome for the victim.**

ANTI-SEXUAL HARASSMENT LEGAL FRAMEWORK IN CROATIA

CRIMINAL LEGISLATION – DEFINITIONS, CASE LAW, SANCTIONING, AND THE PROTECTION OF VICTIMS

Criminal Code, Article 156 – SEXUAL HARASSMENT

(1) Whoever sexually harasses another **person who is his or her subordinate or who is in a situation of dependence with respect to him or /her** or who is especially vulnerable due to age, illness, disability, addiction, pregnancy, a severe physical or mental disability, shall be punished by imprisonment not exceeding one year **(increased to a maximum of 2 years with the latest amendments).**

(2) Sexual harassment shall mean any form of unwanted verbal, non-verbal or physical conduct of a sexual nature which aims at or effectively constitutes a violation of the dignity of a person, which creates an intimidating, hostile, degrading or offensive environment.

(3) The criminal offence referred to in paragraph 1 of this Article **shall be prosecuted upon request.**

ANTI-SEXUAL HARASSMENT LEGAL FRAMEWORK IN CROATIA

CRIMINAL LEGISLATION – DEFINITIONS, CASE LAW, SANCTIONING, AND THE PROTECTION OF VICTIMS

Criminal Code, Article 153 – RAPE (Article 152 – NON-CONSENSUAL SEXUAL INTERCOURSE – DELETED and the principle of 'no means no' introduced, use of force is subject to severe punishment).

- **(1) Whoever engages in sexual intercourse or an equivalent sexual act with another person without this person's consent,** or whoever induces another person to engage without his or her consent in sexual intercourse or an equivalent sexual act with a third party or to perform without his or her consent a sexual act equated to sexual intercourse upon himself or herself, shall be punished by imprisonment **from one to five years.**
- **(2) Whoever commits the offence referred to in paragraph 1 of this Article by the use of force or by threat of an imminent attack on the life or limb of the raped or other person, shall be punished by imprisonment from three to ten years.**
- (3) A perpetrator who is avoidably mistaken as to the existence of consent referred to in paragraph 1 of this Article shall be punishable by imprisonment of up to three years.
- (4) A perpetrator who is avoidably mistaken as to the existence of consent referred to in Article 2 of this Article shall be punishable by imprisonment from one to five years.
- **(5) Consent referred to in paragraph 1 of this Article shall exist if the person decided of his or her own free will to engage in sexual intercourse** or an equivalent sexual act and was capable of making and expressing such a decision. It shall be deemed that no such consent exists in particular if the sexual intercourse or the equivalent sexual act was performed by the use of force or threat, by fraud, by abusing one's position towards a person who is in a situation of dependence with respect to the perpetrator, by exploiting a person's condition due to which the person was unable to express his or her refusal or if it was performed against a person unlawfully deprived of liberty.

ANTI-SEXUAL HARASSMENT LEGAL FRAMEWORK IN CROATIA

CRIMINAL LEGISLATION – DEFINITIONS, CASE LAW, SANCTIONING, AND THE PROTECTION OF VICTIMS

Rules of procedure in cases of sexual violence

Aim – to introduce a standard procedure for the victims of sexual violence, regardless of their age, the place where the violence occurred, their gender, and/or other personal characteristics. The standard procedure provides for a harmonised practice of all competent authorities and institutions in the Republic of Croatia, and the provision of quality and efficient victim-centered assistance and support.

ANTI-SEXUAL HARASSMENT LEGAL FRAMEWORK IN CROATIA

CRIMINAL LEGISLATION – DEFINITIONS, CASE LAW, SANCTIONING, AND THE PROTECTION OF VICTIMS

The protection of victims under the Criminal Code (Art. 156), provided that there is a situation of dependence (or of superiority and subordination), i.e. if a superior is sexually harassing his/her subordinate or the victim is especially vulnerable due to age, illness, disability etc., punishable by imprisonment not exceeding one year, **suffers from deviant interpretation of this norm in the case law.**

ANTI-SEXUAL HARASSMENT LEGAL FRAMEWORK IN CROATIA

CRIMINAL LEGISLATION – DEFINITIONS, CASE LAW, SANCTIONING, AND THE PROTECTION OF VICTIMS

The case law is of the view that the commitment of a criminal offence of sexual harassment requires **for the act featuring its characteristics to be repeated.** And this view is not disputable.

However, the view and interpretation of some courts to the effect that **repetition does not occur after the victim has made it known that the conduct of a sexual nature is unwanted** and the perpetrator has continued it, **but rather only after the act has been terminated and repeated under new circumstances of perpetration time and location, is completely unacceptable and condemnable.**

ANTI-SEXUAL HARASSMENT LEGAL FRAMEWORK IN CROATIA

CRIMINAL LEGISLATION – DEFINITIONS, CASE LAW, SANCTIONING, AND THE PROTECTION OF VICTIMS

Thus in a case in which the court had taken the said view, the president of the Supreme Court **addressed an apology to all the citizens for such a view of the lower court** and for the acquittal which had ensued. Although with the latest amendments to the Criminal Code, the maximum punishment was raised to 2 years, the provision on the offence being prosecuted upon the request of the injured party was not changed.

The case of sexual harassment of a female police officer by her superior at a Croatian border crossing.

ANTI-SEXUAL HARASSMENT LEGAL FRAMEWORK IN CROATIA

CRIMINAL LEGISLATION – DEFINITIONS, CASE LAW, SANCTIONING, AND THE PROTECTION OF VICTIMS

The Ombudsperson's view is that **when at the first attempt of sexual harassment the victim says "no", i.e. expresses their opposition – unwantedness, any further continuation of the adverse act is to be deemed repeated sexual harassment** and is to be subject to the instigation of criminal prosecution if there is a relationship of superiority and subordination or dependence between the victim and the perpetrator. In addition, the Ombudsperson holds that the case law should move in the direction of understanding that the criminal quantity of an individual act can in reality have such weight as to justify the event being qualified as a criminal offence of sexual harassment, sometimes even regardless of the dependency relationship between the perpetrator and the victim, as well as that such offences should be prosecuted ex officio, and not upon the victim's request.

CHALLENGES IN THE IMPLEMENTATION OF THE LEGAL FRAMEWORK IN CASES OF SEXUAL HARASSMENT

SIMILARITIES AND DIFFERENCES IN RELATION TO THE PROSECUTION OF CASES OF GENDER BASED AND DOMESTIC VIOLENCE

- **Chronology and context of sexual harassment** – unlike domestic violence, in cases of sexual harassment very often consideration is given to the context and chronology of the relationship. Unfortunately, however, it is not uncommonly done to the detriment of the victim (their previous conduct, what they were doing, where they were, what they do, whether and how they "provoked" etc.);
- **The courts regularly release the perpetrators on bail pending trial** and this practice is also prevalent in cases of domestic violence;
- When protective measures are ordered, **persons on whom the measure was imposed are rarely supervised by the police**, they are mostly in contact with the victim – the same as in cases of domestic violence.

CHALLENGES IN THE IMPLEMENTATION OF THE LEGAL FRAMEWORK IN CASES OF SEXUAL HARASSMENT

IN CONCLUSION

- Practice has shown that **this kind of legislative framework does not provide a sufficient level of protection** for several reasons:
- 1. Several laws and regulations contain **the same or a very similar definition of sexual harassment**, while the levels of punishment and sanctioning of harmful conduct differ;
- 2. **Authorised complainants are not clearly established** (e.g. in the Gender Equality Act), hence efficient and deterring sanctioning of the perpetrator is mostly absent, while some pieces of legislation do not even offer a definition of the modalities of perpetration.
- 3. **The judicial practice is not gender-sensitive, judges are not sufficiently trained** to conduct these proceedings and consequently the laws are mostly interpreted either literally, i.e. grammatically, without understanding the spirit of a given normative solution and without providing the victim with the necessary protection, so it is not uncommon for cases to be concluded in favour of the perpetrator.
- 4. Judicial protection subject to the victim's private action against an employer who has failed to eliminate the illegal and discriminatory conduct, pursuant to Art. 17 of the Anti-Discrimination Act, and Art. 30 of the Gender Equality Act, has proven to be **too slow an option with a very uncertain outcome for the victim.**

CHALLENGES IN THE IMPLEMENTATION OF THE LEGAL FRAMEWORK IN CASES OF SEXUAL HARASSMENT

IN CONCLUSION

5. The said legislative framework and the protection it affords to the victims, in addition to being confusing, **is extremely lenient towards the perpetrators**, both in terms of the impossible punishment and in terms of the interpretation of legal definitions, efficiency of protection and expeditiousness.

6. Over the years, the case law has seen **distinctly low numbers of judicial proceedings for this type of discriminatory conduct that constitutes a misdemeanour**, and the ones that have been instigated are conducted mostly without the necessary understanding of sexual discrimination, or sensitivity for the victims. When this problem is considered from the point of view of poor legislative solutions and practically non-existent case law, it becomes clear why victims are afraid to reveal their identity.

SOLUTIONS

EU PROJECT: BUILDING MORE EFFECTIVE PROTECTION: TRANSFORMING THE SYSTEM FOR COMBATING VIOLENCE AGAINST WOMEN

- The project is implemented in cooperation with the partner NGO Women's Room – Centre for Sexual Rights, and with associated partners the Judicial Academy, the Police Academy, and the Croatian Journalists' Association.
- The aims of the project are:
 1. To identify, describe empirically and bring into public focus the existing legal practices constituting **barriers to effective legal prosecution and punishment of violence against women**;
 2. **To raise awareness of femicide** and violence against women in the family;
 3. The focus was also on **advocating for a more efficient cooperation between the institutions and key stakeholders** participating in the prevention, legal prosecution and punishment of violence against women.
 4. Work with media representatives and analyses of media content resulted in the **Media Code**, a guide for professional and sensitive media reporting on cases of violence against women.
 5. The project helped strengthen **institutional assistance and support to women victims of violence**.

SPECIFIC CASE EXAMPLES

A RAPE CASE

- A group of three young men brutally raped a young girl in the toilet of a nightclub on the coast.
- The case was concluded in court with 1-year imprisonment, a 5-year suspended sentence and a fine to be paid by each of the perpetrators.

SPECIFIC CASE EXAMPLES

A CASE OF SEXUAL HARASSMENT OF A NURSE

In the case **PRS-01-02/19-11**, the Ombudsperson was contacted by a nurse with the complaint that during surgery a doctor had treated her in a discriminatory, degrading and offensive manner on the grounds of her sex, and that the hospital failed to protect her after she had reported it. From the analysis of the complaint and the hospital's statement which the Ombudsperson had requested, it arose that the doctor had apologised to the complainant for using certain terms, but also stated that there had been no elements of sexual harassment in his conduct, or any intention to humiliate or threaten the complainant. From the statement submitted by the hospital it also arose that the hospital's responsible persons, when implementing the procedure to protect the worker's dignity, had not checked the allegations from the complaint with the persons who had been present at the surgery, **but rather that the circumstances from the complaint were checked with a person who was not even present in the operating room at the given time.** Consequently, the Ombudsperson issued the hospital with recommendations on the need to train the staff on the relevant regulations and anti-discrimination guarantees arising from them, and the director was recommended to warn the entire staff of professional conduct among colleagues – in particular with regard to male conduct towards women, who are considerably more exposed to unprofessional, patronizing or sexist attitude and treatment by their male colleagues, than vice versa.

SPECIFIC CASE EXAMPLES

A CASE OF SEXUAL HARASSMENT AND ATTEMPTED RAPE

In the case **PRS 01-01/19-13**, the Ombudsperson received a complaint from a woman, employed in a trade union in the healthcare system, who complained that the director of a community healthcare centre **did not want to dismiss a worker who had been definitively convicted in criminal proceedings for acts against sexual freedoms, which acts he had committed at work and to the detriment of his female colleague.** In his statement to the Ombudsperson, the director explained his decision not to dismiss referring to the legal department of the community healthcare centre which had pointed to him that in this particular case there were no grounds for extraordinary termination of the employment contract given that more than 4 years had elapsed since the perpetration of criminal offences, and that no new report had been received in the meantime with regard to the perpetrator's abusive behavior, as well as that the judgment itself did not state anywhere that the perpetrator should be dismissed, and that the punishment of 10-months imprisonment was commuted to community service. With regard to this, the Ombudsperson warned the director of Art. 134 paragraph 9 of the Labour Act, which stipulates that a worker's conduct which constitutes harassment or sexual harassment represents a violation of employment obligations, and recommended the perpetrator to be dismissed.

SPECIFIC CASE EXAMPLES

A CASE OF SEXUAL HARASSMENT AT THE POLICE ACADEMY

- In the case **PRS-01-01/19-06**, the Ombudsperson received an anonymous report on the sexual harassment of female students of the Police Academy by two professors at the academy, which took place through blackmail and threats to the students of ending up in the worst jobs if they did not consent to sexual intercourse with them, or by promising better positions if they did, then through grades etc. From the report and the submitted documentation it was evident that a very poor evaluation of one of the professors by the students of the Police Academy was indisputable, and referred primarily to his inconsistency in grading over a period of several generations of academy students, and it was precisely the complaint that pointed to the fact that sexual harassment had taken place through the professor's blackmailing of the academy's female students with respect to grading, and through his 'threats' that later on he would make their life miserable in the police forces. As for the other professor, the complaint of his inappropriate conduct, i.e. groping of female students of the academy, the Ombudsperson found her confirmation in a concrete, but also anonymous complaint of a female student that her professor had fixed her belt in the same way, of which the student had complained to the academy psychologist, who then verbally reported it to her superiors. From the report and the documentation it also arose that even before the anonymous complaint was received by the Ombudsperson, all of this had already been the subject of a meeting held at the Police Academy, and that it was precisely the designated professors who had already been warned once of their conduct. Consequently, and bearing in mind the fact that without the victims' identity it is not easy to reach a founded conclusion on the culpability of the officers to which the anonymous complaint pertains, the Ombudsperson, without establishing sexual discrimination, **issued a proposal to the Ministry of the Interior to remove the professors from their positions at the academy, which the MoI refused so the Ombudsperson filed criminal charges with the State Attorney' Office for the suspected offence of sexual harassment from Art. 156 of the Criminal Code, in view of the fact that there was a relationship of superiority between the perpetrators and the victims.**

OMBUDSPERSON'S RECOMMENDATIONS

- 1) Provision of **training on sexual harassment and the institute of protection of workers' dignity on all social levels**, in the government and private sector (in the systems of government and public administration, among businessmen, but also in education), including systematic training of commissioners for the protection of workers' dignity.
- 2) **Raising awareness of the issue and its consequences on the position of women in the labour market, and consequently on the general economic and demographic situation.** Implementation of campaigns with the aim of educating and raising public awareness of this issue, along with the launch of a legislative reform.
- 3) Implementation of **continuous and systematic training of the police, army, state attorney's office and the courts** in order to sensitise to all forms of sexual and gender-based violence.

OMBUDSPERSON'S RECOMMENDATIONS

- 5) **Involvement of the male population in the active suppression** of these (and all other) forms of discrimination against women.
- (6) **Obligation for all enterprises** where the Republic of Croatia and/or local and regional self-government units are the sole or majority founder **to publish regularly on their websites data on the number of procedures carried out in response to a request for the protection of dignity.**
- (7) Ratification of the international **Convention 190 concerning the elimination of violence and harassment in the world of work**, instructing member states to undertake a series of measures with the aim of preventing gender-based violence and harassment in the area of employment and occupation, highlighting that the victims of these forms of violence are most frequently girls and women.

OMBUDSPERSON FOR GENDER EQUALITY

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THANK YOU FOR YOUR ATTENTION

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