

THE CROATIAN PARLIAMENT

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Pursuant to Article 88 of the Constitution of the Republic of Croatia, I hereby issue the

DECISION

PROMULGATING THE ANTI-DISCRIMINATION ACT

I hereby promulgate the Anti-discrimination Act, passed by the Croatian Parliament at its session on 9 July 2008.

Class: 011-01/08-01/89

Reg. No.: 71-05-03/1-08-2

Zagreb, 15 July 2008

The President
of the Republic of Croatia
Stjepan Mesić, m. p.

THE ANTI-DISCRIMINATION ACT

I GENERAL PROVISIONS

Article 1

Subject matter of the Act

(1) This Act provides for the protection and promotion of equality as the highest value of the constitutional order of the Republic of Croatia, creates prerequisites for the realisation of equal opportunities and regulates protection against discrimination on the grounds of race or ethnic affiliation or colour, gender, language, religion, political or other belief, national or social origin, property, trade union membership, education, social status, marital or family status, age, health condition, disability, genetic heritage, native identity, expression or sexual orientation..

(2) Placing of any person, or a person related to that person by kinship or other relationship, in a less favourable position on the grounds referred to in paragraph 1 of this Article shall be, within the meaning of this Act, deemed to be discrimination.

(3) Placing of a person in a less favourable position based on a misconception of the existence of the grounds referred to in paragraph 1 of this Article shall also be, within the meaning of this Act, deemed to be discrimination.

II FORMS OF DISCRIMINATION

Article 2

Direct and indirect discrimination

(1) *Direct discrimination* is a treatment based on any of the grounds referred to in Article 1 paragraph 1 of this Act whereby a person is, has been, or could be placed in a less favourable position than other persons in a comparable situation.

(2) *Indirect discrimination* shall be taken to occur when an apparently neutral provision, criterion or practice places or could place a person in a less favourable position on the grounds referred to in Article 1 paragraph 1 of this Act, in relation to other persons in a comparable situation, unless such a provision, criterion or practice may be objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

Article 3

Harassment and sexual harassment

(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.

Article 4

Encouragement to discrimination and failure to make reasonable adaptation

(1) Encouragement to discrimination, if conducted intentionally, shall be deemed to be discrimination within the meaning of Article 1 of this Act.

(2) A failure to enable disabled persons the following, in line with their specific needs, shall also be deemed to be discrimination:

- use of publicly available resources,
- participation in the public and social life,
- access to workplace and appropriate working conditions,

by adapting the infrastructure and premises, by using equipment and in another manner which does not present unreasonable burden for the person that is obliged to provide for it.

Article 5

Segregation

(1) Segregation shall also be deemed to be discrimination within the meaning of Article 1 of this Act.

(2) Segregation within the meaning of this Act is a forced and systematic separation of persons on any of the grounds referred to in Article 1 paragraph 1 of this Act.

Article 6

More serious forms of discrimination

(1) Discrimination against a certain person on more than one of the grounds referred to in Article 1 paragraph 1 of this Act (multiple discrimination), discrimination committed several times (repeated discrimination), discrimination which lasted a longer period of time (continued discrimination), or discrimination whose consequences are particularly harmful for the victim shall be deemed to be a more serious form of discrimination within the meaning of this Act.

(2) The court shall take into consideration the circumstances referred to in paragraph 1 of this Article when determining the amount of the compensation for non-proprietary damage and when deciding about the fine for misdemeanours defined by this Act.

Article 7

Protection from victimisation

No person shall be placed in a less favourable position because he/she has reported, in good faith, discrimination, witnessed discrimination, refused an instruction to discriminate or participated in any manner in proceedings based on discrimination in line with provisions of this Act.

Article 8

Scope

This Act shall apply to the conduct of all state bodies, bodies of local and regional self-government units, legal persons vested with public authority, and to the conduct of all legal and natural persons, especially in the following areas:

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

III PROHIBITION OF DISCRIMINATION

Article 9

Prohibition of discrimination and exceptions to the prohibition of discrimination

(1) Discrimination is prohibited in all its manifestations.

(2) As an exception to paragraph 1 of this Article, the placing in a less favourable position shall not be deemed to be discrimination in the following cases:

1. when such a conduct is set forth by law with the aim to preserve health and to prevent criminal acts and misdemeanours, and when the means used are appropriate and necessary for the aim to be achieved;

2. positive actions, i.e. when such a conduct is based on provisions of laws, subordinate regulations, programmes, measures or decisions with the aim to improve the status of ethnic, religious, language or other minorities or other groups of citizens or persons discriminated on the grounds referred to in Article 1 paragraph 1 of this Act;

3. granting of privileges to pregnant women, children, young people, older persons, persons with caring responsibilities who regularly fulfil their caring duties, and disabled persons with a view to their protection, when such a conduct is based on provisions of laws, subordinate regulations, programmes and measures;

4. in relation to a particular job, when the nature of the job is such or the job is performed under such conditions that its characteristics related to any of the grounds referred to in Article 1 of this Act present an actual and decisive condition for performing that job, provided that the purpose to be achieved is justified and the condition appropriate;

5. in relation to occupational activities, entering into membership and acting in conformity with the canon and mission of a church and religious congregation entered into the Register of Religious Congregations of the Republic of Croatia, and any other public or private organisation which acts in conformity with the Constitution and laws, if this is required by the religious doctrine, beliefs or objectives;

6. on the grounds of age and sex in the course of determining insurance premiums, insurance amounts and other insurance conditions in line with relevant and accurate statistical data and rules of actuarial calculations, in which case costs related to pregnancy and motherhood may not justify differences;

7. fixing of minimum conditions of age and/or professional experience and/or level of education limit for access to a certain employment or for acquiring other advantages linked to employment when it is provided for in separate regulations;

8. fixing of a suitable and appropriate maximum age as a reason for the termination of an employment and prescribing a certain age as a condition for acquiring the right to retirement;

9. on the grounds of nationality pursuant to separate regulations;

10. placing in a less favourable position when regulating the rights and obligations arising from family relations when it is stipulated by law, particularly with the aim to protect the rights and interests of children, which must be justified by a legitimate aim, protection of public morality and favouring marriage in line with Family Act provisions.

(3) All the exceptions laid down in paragraph 2 of this Article shall be interpreted in proportion to the aim and purpose for which they are determined.

Article 10

Obligation to report and provide information

(1) The bodies and persons referred to in Article 8 of this Act shall report a reasonable suspicion of discrimination to the Ombudsman or a special ombudsman, with the consent of the person who is allegedly a victim of discrimination.

(2) The bodies and persons referred to in Article 8 of this Act shall, within 15 days, provide all the information and requested documents related to discrimination at the request of the Ombudsman or a special ombudsman.

Article 11

Right to damage compensation

(1) Pursuant to provisions of this Act, a victim of discrimination shall be entitled to damage compensation pursuant to regulations from the area of obligatory relations.

IV INSTITUTIONAL FRAMEWORK

Article 12

Central body responsible for the suppression of discrimination

(1) Activities of the central body responsible for the suppression of discrimination shall be carried out by the Ombudsman.

(2) Within the scope of his/her work, the Ombudsman shall:

1. receive reports of all the natural and legal persons referred to in Article 10 of this Act;
2. provide necessary information to natural and legal persons that have filed a complaint on account of discrimination with regard to their rights and obligations and to possibilities of court and other protection;
3. if the court proceedings have not yet been initiated, examine individual reports and take actions falling within his/her competence required for elimination of discrimination and protection of rights of discriminated persons;
4. warn the public about the occurrence of discrimination;
5. with the parties' consent, conduct mediation with a possibility of reaching an out-of-court settlement;
6. file criminal charges related to discrimination cases to the competent state attorney's office;

7. collect and analyse statistical data on discrimination cases,
8. inform the Croatian Parliament on the occurrence of discrimination in his/her annual and, when required, extraordinary reports;
9. conduct surveys concerning discrimination, give opinions and recommendations, and suggest appropriate legal and strategic solutions to the Government of the Republic of Croatia.

Article 13
Special ombudsmen

Certain activities referred to in Article 12, paragraph 2, items 1 to 6 of this Act shall be performed by special ombudsmen when this is regulated by a special law.

Article 14
Keeping records

- (1) All judicial bodies shall keep records of court cases related to discrimination and of discrimination grounds for conducting the proceedings, and submit them to the ministry competent for judicial affairs.
- (2) Special ombudsmen shall keep records of discrimination cases falling within their competence.
- (3) The ministry competent for judicial affairs and the special ombudsmen referred to in paragraph 2 of this Article shall submit records and statistical data on court cases related to discrimination to the Ombudsman by 1 February for the previous calendar year.
- (4) The Ombudsman and special ombudsmen shall classify by gender all the records of discrimination cases falling within their competence.

Article 15
Social dialogue and co-operation with civil society organisations

- (1) When drawing up regular reports, opinions and recommendations on the occurrence of discrimination, the Ombudsman shall consult social partners and civil society organisations dealing with the protection and promotion of human rights, organisations dealing with the protection of groups exposed to a high risk of discrimination, churches and religious organisations entered in the Register of Religious Congregations of the Republic of Croatia on the basis of the Act on the Legal Position of Religious Congregations, and the National Minorities Council.
- (2) Within the meaning of this Act, social partners shall be representative associations of trade unions and employers of a higher level.

V PROCEEDINGS BEFORE THE COURT

Article 16
Common provisions

(1) Any person who considers that his/her right has been violated on account of discrimination may request protection of that right in the proceedings deciding upon that right as the main issue, and he/she may also request protection in special proceedings laid down in Article 17 of this Act.

(2) Special proceedings for the purpose of protection against discrimination in the area of work and employment shall be deemed to be litigations arising from labour relations.

(3) The court and other bodies conducting the proceedings shall urgently undertake actions within the proceedings, endeavouring to investigate discrimination-related statements as soon as possible.

Article 17

Special legal actions for the protection against discrimination

(1) A person claiming to be a victim of discrimination pursuant to provisions of this Act shall be authorised to bring a legal action and request the following to be performed:

1. to establish that the defendant has violated the plaintiff's right to equal treatment or that the action the defendant has undertaken or failed to undertake may directly result in the violation of the right to equal treatment (action for determination of discrimination);
2. to prohibit the undertaking of activities which violate or may violate the plaintiff's right to equal treatment, or to carry out activities which eliminate discrimination or its consequences (action for prohibition or elimination of discrimination);
3. to compensate for proprietary and non-proprietary damage caused by the violation of the rights protected by this Act (action for damages);
4. to publish in the media the ruling establishing the violation of the right to equal treatment, at the defendant's cost.

(2) The court shall decide on the claims referred to in paragraph 1 of this Article by applying provisions of the Civil Procedure Act, unless otherwise provided by this Act.

(3) The claims referred to in paragraph 1 of this Article may be brought before the court together with claims for the protection of other rights to be decided upon in legal proceedings if all the claims are interrelated and if the same court has the subject-matter jurisdiction over them, irrespective of whether these claims are prescribed to be settled in regular or special legal proceedings, except in cases of trespass litigations. In such cases, regulations relevant for the type of litigation in question shall apply, unless otherwise provided by this Act.

(4) The claim for publishing the ruling referred to in paragraph 1, item 4 of this Article shall be granted if the court establishes:

1. that the violation of the right to equal treatment took place through the media, or
2. that information on the conduct violating the right to equal treatment were published in the media, and that the publishing of the ruling is necessary for the purpose of complete damage compensation or protection against unequal treatment in future cases.

(5) If the court grants the claim for publishing the ruling, it shall order that the ruling be published in its entirety. In exceptional cases, the court may decide that the ruling be published partially or that certain personal data be removed from the text of the ruling if this is necessary for the protection of

privacy of the parties and other persons, and if it does not jeopardise the purpose of the provided legal protection.

(6) The ruling which imposes the publishing in the media shall oblige the publisher of the medium in which the ruling is to be published, regardless whether the publisher was a party to the procedure or not.

Article 18 **Jurisdiction**

(1) Unless otherwise provided by this Act, a municipal court has the subject-matter jurisdiction in the first instance over the litigations based on the legal action referred to in Article 17, paragraph 1 of this Act.

(2) The litigations based on the legal action referred to in Article 17, paragraph 1 of this Act shall be under jurisdiction not only of the court which has the general territorial jurisdiction, but also of the court in whose territory the plaintiff has permanent or temporary residence and of the court in whose territory the damage took place or discrimination occurred.

Article 19 **Temporary measures**

(1) Prior to the institution or in the course of proceedings based on the claims referred to in Article 17, paragraph 1 of this Act, the court may, at the request of the party, order temporary measures.

(2) Provisions of the Execution Act shall accordingly apply to the temporary measures referred to in paragraph 1 of this Article. As an exception, prerequisites for ordering the temporary measures referred to in paragraph 1 of this Article are the following:

1. that the claimant has made it plausible that his/her right to equal treatment was violated, and
2. that it is necessary to order a measure with a view to eliminating dangers of irreparable damage, particularly of serious violations of the right to equal treatment, or with a view to preventing violence.

Article 20 **Burden of proof**

(1) If a party in court or other proceedings claims that his/her right to equal treatment pursuant to provisions of this Act has been violated, he/she shall make it plausible that discrimination has taken place. In this case, it shall be for the respondent to prove that there has been no discrimination.

(2) The provision of paragraph 1 of this Article shall not apply to misdemeanour and criminal proceedings.

Article 21 **Participation by third parties**

(1) In a litigation based on the legal action referred to in Article 17, paragraph 1 of this Act, a plaintiff may be joined by an intervenor, being a body, organisation, institution, association or another person

that, within its scope of activities, deals with the protection of the right to equal treatment in relation to groups whose rights are decided upon in the proceedings. The court shall decide on the participation of an intervenor by applying accordingly the provisions of the Civil Procedure Act.

(2) The court shall allow participation of the intervenor referred to in paragraph 1 of this Article only with the plaintiff's consent.

(3) The intervenor referred to in paragraph 1 of this Article may undertake activities in the proceedings and shall have all the rights belonging to an intervenor in the proceedings.

Article 22

Deadline for fulfilling obligations, enforceability

On the basis of the claims referred to in Article 17, paragraph 1, items 2 and 4 of this Act, the court may decide that an appeal shall not withhold enforcement or it may determine a shorter deadline for complying with obligations imposed on the defendant.

Article 23

Extraordinary legal remedies

In the proceedings referred to in Article 17, paragraph 1 of this Act, audit shall always be allowed.

Article 24

Joint legal action for the protection against discrimination

(1) Associations, bodies, institutions or other organisations set up in line with law and having a justified interest in protecting collective interests of a certain group, or those which within their scope of activities deal with the protection of the right to equal treatment, may bring a legal action against a person that has violated the right to equal treatment, if they make plausible that the defendant's conduct has violated the right to equal treatment of a larger number of persons who predominantly belong to the group whose rights the plaintiff defends.

(2) In the legal action referred to in paragraph 1, the following claims may be brought before the court:

1. to establish that the defendant's conduct has violated the right to equal treatment in relation to members of the group;
2. to prohibit the undertaking of activities which violate or may violate the right to equal treatment, or to carry out activities which eliminate discrimination or its consequences in relation to members of the group;
3. to publish in the media the ruling establishing violation of the right to equal treatment, at the defendant's cost.

(3) The legal action referred to in paragraph 1 of this Article shall be decided upon in the first instance by the county court which has general territorial jurisdiction over the defendant, or by the county court of the place where discrimination took place, or by the Zagreb County Court.

(4) Other procedural provisions of this Act pertaining to the legal actions referred to in Article 17, paragraph 1 of this Act shall accordingly apply to the legal action referred to in paragraph 1 of this Article.

V PENALTY PROVISIONS

Article 25

(1) Whoever, with the aim to intimidate another person or to create a hostile, degrading or offensive environment on the grounds of a difference in race, ethnic affiliation, colour, gender, language, religion, political or other belief, national or social origin, property, trade union membership, social status, marital or family status, age, health condition, disability, genetic origin, native identity or expression, and sexual orientation, hurts another person's dignity, shall be charged a fine for misdemeanour amounting from HRK 5,000.00 to HRK 30,000.00.

(2) The responsible person in a legal person, state body, legal person vested with public authority, and local and regional self-government unit shall be charged the fine for misdemeanour referred to in paragraph 1 of this Article.

(3) If a sole trader or a self-employed person performing any other independent activity commits the misdemeanour referred to in paragraph 1 of this Article in relation to his/her craft or activity, he/she shall be charged a fine of HRK 10,000 to HRK 200,000.00.

(4) A legal person shall be charged a fine of HRK 30,000.00 to HRK 300,000.00 for the misdemeanour referred to in paragraph 1 of this Article.

Article 26

(1) Whoever, with the aim to intimidate another person or to create a hostile, degrading or offensive environment, hurts another persons' dignity by performing an act of sexual nature, shall be charged a fine of HRK 5,000.00 to HRK 40,000.00.

(2) The responsible person in a legal person, state body, legal person vested with public authority, and local and regional self-government unit shall be charged the fine for misdemeanour referred to in paragraph 1 of this Article.

(3) A sole trader or a self-employed person performing any other independent activity shall be charged a fine of HRK 10,000 to HRK 250,000.00 for the misdemeanour referred to in paragraph 1 of this Article.

(4) A legal person shall be charged a fine of HRK 30,000.00 to HRK 350,000.00 for the misdemeanour referred to in paragraph 1 of this Article.

Article 27

(1) The responsible person in a state body or local and regional self-government unit who, at the request of the Ombudsman or a special ombudsman, does not submit declarations, data and documents related to discrimination and does not provide insight into them within 30 days from the day of the receipt of the request, shall be charged a fine of HRK 1,000.00 to HRK 5,000.00.

(2) The responsible person in a state body or local and regional self-government unit who, at the request of the Ombudsman or a special ombudsman, does not provide insight into the file within 30 days from the day of the receipt of the request, shall be charged the fine referred to in paragraph 1 of this Article.

Article 28

(1) Whoever intentionally places in a less favourable position a person who reported discrimination in good faith or who participated in any manner in proceedings based on discrimination in line with provisions of this Act, shall be charged a fine of HRK 1,000.00 to HRK 20,000.00.

(2) The fine referred to in paragraph 1 of this Article shall be charged to the person who intentionally places in a less favourable position a person who witnessed discrimination or who rejected an instruction to discriminate.

(3) The perpetrator shall be fined for the attempt referred to in paragraphs 1 and 2 of this Article.

(4) The responsible official in a legal person, state body, legal person vested with public authority, and local and regional self-government unit shall be charged the fine for misdemeanour referred to in paragraph 1 of this Article.

(5) A sole trader or a self-employed person performing any other independent activity shall be charged a fine of HRK 5,000 to HRK 150,000.00 for the misdemeanour referred to in paragraphs 1 and 2 of this Article.

(6) A legal person shall be charged a fine of HRK 20,000.00 to HRK 200,000.00 for the misdemeanour referred to in paragraphs 1 and 2 of this Article.

Article 29

A proposal for charges based on the misdemeanours laid down in this Act may be brought not only by authorised plaintiffs stipulated in Article 109, paragraph 1 of the Misdemeanour Act, but also by the Ombudsman or special ombudsmen.

VII TRANSITIONAL AND FINAL PROVISIONS

Article 30

The ministry competent for judicial matters shall publish the forms for statistical monitoring in relation to Article 14 of this Act in the Official Gazette, within 30 days from the date of the entry into force of this Act.

Article 31

This Act shall be published in the Official Gazette and it shall enter into force on 1 January 2009.

Class: 004-01/08-01/02
Zagreb, 9 May 2008.

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