REPUBLIC OF CROATIA
OMBUDSMAN

REPORT
OF THE OMBUDSMAN

TO THE UN HUMAN RIGHTS COMMITTEE
UNDER THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

ZAGREB, February 2015

The Ombudsman submits this Report to the UN Human Rights Committee for consideration of the third periodic report of the Republic of Croatia under the International Covenant on Civil and Political Rights in cooperation with the Ombudsman for Children, Ombudswoman for Gender Equality and Ombudsman for Persons with Disabilities.

General information on the national human rights situation, including new measures and developments relating to the implementation of the Covenant

(1) The Republic of Croatia joined the EU in July 2013 and its process of accession raised the standards of human rights protection and combating discrimination. Although a relatively good legal and institutional framework in the field of human rights was established, the implementation of legislation and strategic plans is still lagging behind.

The new Free Legal Aid Act, which entered into force in early 2014, has de-bureaucratised the system, expanded the scope of beneficiaries and legal matters for which the aid is granted. However, the funds allocated for this purpose at the time when a growing number of citizens are stricken by poverty are insufficient. Especially primary legal aid should be sufficiently secured, primarily by supporting the work of CSOs and legal clinics. Victims of domestic violence are still not provided legal aid during criminal and misdemeanour proceedings.

The Anti-Discrimination Act, an innovative general law prohibiting discrimination on 18 different grounds and in a wide number of areas is in force since 2009, with some amendments introduced in 2012. In practice there are however still some uncertainties about the limits and interpretation of individual grounds of discrimination. Problems are also present in collecting statistical data on court cases related to discrimination, which prevents a comprehensive analysis of the system's efficiency and the incidence of discrimination.

In 2009 the Ombudsman became the central institution for combating discrimination and in 2011 it also became the National Preventive Mechanisms against Torture (NPM) pursuant to the OPCAT. The new Ombudsman's Act from 2012 expanded the institution's mandate to judiciary, promotion of human rights and cooperation with various stakeholders. In 2008 the Ombudsman was accredited as an “A” status NHRI and this accreditation was confirmed in July 2013.

The Government should appoint a coordination body with sufficient capacity to monitor regular reporting under the UN conventions, while all assessments and recommendations of international bodies with regard to respect of human rights in Croatia should be duly translated and made available to citizens.

Specific information on the implementation of Articles 1 to 27 of the Covenant, including with regard to the previous recommendations of the Committee

(2) Regarding question 5 of the Committee and the position of foreigners under the Covenant, the implementation of the Aliens Act concerning temporary or permanent residence, remains to be inadequate and prolonged. Pursuant to the Aliens Act, foreign citizens who submitted an application for extension of their temporary residence may stay in the country until the decision is enforceable, but not in the case of further court proceedings. At the same time, his/her previously acquired rights are not recognised during the long administrative procedure for extending residence. Decisions under which a foreigner's residence stay is rejected or terminated or he/she is expelled from the country for the reasons of national security are not required to provide a justification.

Additionally, the police has changed its practice regarding procedure for extending temporary residence, although there have been no amendments to the Aliens Act. For example, in procedures of residence extension for humanitarian reasons, foreigners located in Croatia are now required to submit "valid foreign travel documents", although the Aliens Act prescribes the submitting of "foreign travel documents", which also includes invalid documents (while foreigners were not subject to this requirement during previous residence extensions). In this way foreigners, especially if diplomatic missions of their countries in Croatia do not issue travel documents, are forced to leave the country. Additionally, persons without foreign travel documents (valid or invalid) who have lived in the Republic of Croatia continuously since its independence and have never left its territory also cannot regulate their status. In these cases, they are issued official decisions ordering them to leave the country.

(3) The strengthening of the institution of Ombudsman was facilitated by special recommendations of the accreditation subcommittee of the International Coordinating Committee of National Human Rights Institutions (ICC NHRI) in April 2008, constitutional amendments in 2010, and the EU accession process (benchmark for Chapter 23 – Judiciary and Fundamental Rights). The new Ombudsman Act from 2011 planned to merge specialized ombuds with the Ombudsman, but this was repealed by the Constitutional Court due to procedural reasons (the Act was not adopted by a qualified majority). After the Constitutional Court's decision, a new Ombudsman Act was adopted in 2012, but it did not merge specialized ombuds; only the Centre for Human Rights was merged with Ombudsman as a wider social consensus was achieved on that topic. The Act, instead of mergers, prescribed the obligation of cooperation between the Ombudsman and specialized ombuds in the field of human rights protection and promotion in accordance with the principles of compatibility, mutual respect and efficiency, which led to the signing of the Agreement on mutual cooperation between all ombud institutions in December 2013. The 2012 Act expanded the Ombudsman’s mandate to promotion of human rights and intervention in court proceedings which are being unnecessarily delayed or when judicial powers are manifestly abused, and prescribed stronger cooperation with civil society organisations, including the establishment of the Ombudsman's Council for Human Rights, which has been operational since 2013.

However, sufficient strengthening of financial and personnel capacities of the Ombudsman was achieved only in the second half of 2014 and in 2015, especially with the opening of regional offices in Osijek, Rijeka and (expected in the second part of 2015) Split.

Non-discrimination and equality (Article 2 paragraphs 1, 3, 7, 22 and 26)

(4) The Government's strategic document in the field of human rights protection (*National Programme for the Protection and Promotion of Human Rights for the period 2013 – 2016*) defines activities in the field of combating discrimination, which are mostly training courses for different stakeholders, but provides no measures aimed at raising the wider public's awareness. As regards the implementation of the measures contained therein, the report on their implementation shows that they are not being implemented completely as they were foreseen.

On the other hand, the strategic document specifically aimed at combating discrimination, *the National Anti-Discrimination Plan 2008 – 2013*, did not yield the expected results due to poor definition of issues and objectives, while measure holders were not aware of their obligations. The Government is currently preparing a new National Anti-Discrimination Plan, a positive fact being that this time representatives of ombud institutions and non-governmental organisations are involved in its preparation. Other than independent institutions and non-governmental organisations pointing out actual problems, thus adding to the practicality and quality implementation of this document, it is also important to secure funds for implementing the measures from the Plan.

Furthermore, the Anti-Discrimination Act (hereinafter: the ADA) was adopted in 2008 and entered into force in 2009. The 2012 amendments to the Act brought improvements to the definitions of indirect discrimination and sexual harassment as well as the provisions on encouraging discrimination and on exceptions to the prohibition of discrimination.

The number of discrimination-related court proceedings has gradually increased from 2009 but it is, in general, still very low[1]. The research on attitudes and awareness on discrimination and discriminatory manifestations carried out by the Ombudsman in 2012 brought forth very troubling information that only 1% of citizens would turn to court if they or members of their immediate family would experience discrimination. Education of judges on anti-discrimination legislation is not part of the mandatory education programme and a large majority of judges are unfamiliar with specific aspects related to applying the ADA.

Joint legal actions under the ADA were, according to the available information[2], filed only by non-government organisations focused on the rights of LGBT persons, while at present only one joint

[1] According to the Ministry of Justice data 36 civil proceedings were filed in 2010 and 52 in 2013.

[2] Under the ADA, all judicial bodies shall keep records of court cases related to discrimination and of discrimination grounds and submit them to the Ministry of Justice which then forwards them to the Ombudsman. However, in previous years we have noted many issues concerning court cases and discrimination, which prevented a systematic and comprehensive analysis of discrimination cases and efficiency of the anti-discrimination protection system, particularly with regard to forms of discrimination, areas, specification of misdemeanour and criminal offences, etc. We have therefore in 2013 together with the Ministry of Justice established a new statistical monitoring model and new data collection forms (OG 151/13). Furthermore, the Ministry also provided courts with instructions on data collection, which was planned to start on 1 Jan 2014. However, at this time we have no information on the dynamics of data collection or any related issues. Moreover, in order to get a clearer picture, the Ministry accepted the Ombudsman's recommendations and assumed the obligation to provide continuous support to courts in their data collection process.

legal action has been ruled in favour of the plaintiff at first instance, while other actions were either finally ruled in favour or against by the Supreme Court. Additionally, in discrimination-related court proceedings based on individual claims, there is a significantly larger percentage of rulings against than in favour of the action.

Unlike the court proceedings to determine discrimination, in misdemeanour proceedings under the Anti-Discrimination Act and the Gender Equality Act, most often filed as indictment proposals by the competent police station, defendants are in almost 100% of cases sanctioned by a fine below the legal minimum. Very often it is the amount of several hundred kuna (which is almost a symbolic sanction considering the legal minimum of fines for this type of misdemeanour offences). The question remains whether this kind of sanctioning actually achieves its purpose and whether it indeed acts as a deterrent with regard to defendants and other citizens, and what are the effects on the citizens' willingness to report discrimination in the future or to seek judicial relief as victims of discrimination.

According to the Ombudsman's 2012 research[3], a large number of citizens' claims that they experienced discrimination, most frequently in the area of labour and employment. The difference between the number of discrimination cases in courts and number of complaints made to the Ombudsman when compared to the research data on the occurrences of discrimination indicate the trend of underreporting of discrimination. The reasons for this are insufficient knowledge of citizens on what is discrimination and who to turn to in order to report it, fear of victimization, distrust in institutions and lack of financial means for lengthy and expensive court proceedings.

Citizens' complaints made to the Ombudsman show that the most widespread discrimination is that on the grounds of race or ethnic origin or skin colour and national belonging. The aforementioned 2012 research also shows that almost a quarter of citizens find it is unacceptable for their child to marry a person of different nationality, skin colour or religion. Research on racist and xenophobic manifestations shows that citizens have the most negative attitudes against minorities they are most in contact with (Roma, Serbs) as well as those they are less frequently in contact with (Chinese, Arabs)[4].

Roma and Serb ethnic/national minorities are particularly exposed to discrimination, while the Roma national minority, even though strategic documents aimed at improving their position have been prepared and adopted in Croatia for more than 10 years, is still the most discriminated group. They are both socially and economically excluded, live in extreme poverty, some with unregulated status, many of them with unfinished elementary school, certain number without health care insurance, their living conditions are inadequate and many of their settlements are illegal.[5]

(5) Additionally, the Ombudswoman for Gender Equality (GEO) considers it useful to point out several problematic aspects of sanctioning hate crimes described in the Government's reply to issue no. 7 (para. 45-46). The GEO finds that to legally qualify offences against bodily integrity or safety of

[3] Research on attitudes and awareness on discrimination and discriminatory manifestations, Ombudsman, 2012
[4] Representation and indicators of discriminatory and xenophobic attitudes in the Republic of Croatia, CMS, 2013
[5] Daily Life of the Roma People, UNDP

Croatian citizens or, in cases like Gay Pride, restrictions of their fundamental human rights caused by prejudice and/or hatred motivated by their sexual orientation as misdemeanours (of any kind) is irrational and inappropriate. In general, by their (1) motive, (2) effects on specific victims and (3) harmfulness for the stability of social relations, such acts represent offences which undoubtedly fall within the scope of criminal law and not misdemeanour protection.

The GEO understands that, from the perspective of institutions of justice which are competent and obligated to initiate misdemeanour or criminal proceedings, it is more convenient to process this type of offence in misdemeanour proceedings as its rules of procedure are less complex and the police may initiate and manage misdemeanour proceedings without the state attorney's office. However, the GEO stresses that, despite the convenience of avoiding the use of legal criminal protection as the more efficient system for sanctioning and preventing further similar offences, this group of citizens is discriminated against in the legal order of the Republic of Croatia, as they cannot rely on equal protection provided by Croatian system of justice to other social groups. This claim is also confirmed by the fact that competent justice and judicial authorities not only view these specific offences as not being hate-motivated criminal offences, but also qualify them as mere misdemeanours against public order and peace, although the Gender Equality Act also contains provisions on sanctioning discrimination on the grounds of sexual orientation and would, as such, at least partially compensate for the fact that non-application of criminal provisions related to the sanctioning of different forms of hate crimes fails to send a clear message on social condemnation of such offences.

Additionally, the fact that Croatian courts fail to publish their decisions and they are hard to find should be noted. In view of that, the GEO cannot effectively comment on statistical data provided by the Ministry of Justice with regard to the number of criminal and misdemeanour proceedings for hate crimes and the efficiency of decisions made in those proceedings. It is also noted that since 2011 the number of proceedings and decisions has significantly declined. The question is whether this is an actual decline in committed hate crimes in Croatian society or a decline in recognising and processing those types of offences.

(6) In her annual reports to the Croatian Parliament, the GEO consistently warns about the systematic discrimination against women in the labour market in Croatia. In doing so, the GEO emphasized in particular: 1) extremely low labour force participation of women in Croatia (among the lowest in EU); 2) high horizontal labour market segregation with a large number of sectors where either men or women are substantially underrepresented (below 40%); 3) persistent salary gap between female and male labour force in line with the horizontal market segregation, whereas sectors dominated by men have higher average wages; 4) vertical labour market segregation where women are significantly underrepresented in management positions, despite the fact that since 1995 women make up for more than 50% of highly-qualified labour force entering the market. The measures indicated in the Reply as measures aimed at improving the women's position in the labour market are insufficient to successfully prevent or correct the listed indicators of systematic discrimination against women in the labour market. Furthermore, in her 2013 report to the Croatian Parliament, the GEO pointed out that certain measures of the National Gender Equality Policy related to the labour market equality were implemented only partially. For example, it may be concluded from responses of some holders that general data on unemployed persons is collected, but not separate data on the

position of women in the labour market based on the effects of implementing measures of the National Employment Action Plan (as provided by the measure 2.1.1); that research on the impact of women's entrepreneurship on the quality of life in particular regions (measure 2.2.4) was not carried out in 2013; that the planned education of male and female athletes on sexual violence (5.1.7) was not carried out; and that the Guide for male and female public servants in state administration and local and regional self-government units on gender equality issues (7.1.1) was not prepared. Furthermore, there was no promotion of women's employment in the IT sector (as provided by the measure 2.1.5).

With regard to women's participation in political decision-making, the GEO points out that statistical data clearly show that, in this aspect of participation in public life, women are substantially underrepresented considering the fact that the Gender Equality Act, as an organic act, defines underrepresentation as a share below 40% of representatives. Further, it should be mentioned that the issue of women's underrepresentation in political decision-making bodies is particularly worrying at the local government level, amounting to only 16%, although this level of political decision-making is, due to its authorities (e.g. functioning of health institutions, schools and kindergartens), especially relevant for the issue of balance between family and professional life of women and men. In this respect, the GEO emphasizes that the Republic of Croatia has yet to implement political quotas which, according to our interpretation of the Gender Equality Act, should have been already applied during local elections in May 2013. Considering that data show women's underrepresentation in political decision-making bodies within the central government, it should be noted that administrative bodies and bodies with public authorities in general do not comply with the obligation to introduce affirmative action aimed at achieving a gender-balanced representation prescribed in Articles 9 – 12. of the Gender Equality Act.

In respect of measures implemented under the National Gender Equality Policy, in her 2013 report to the Croatian Parliament the GEO noted that, in principle, most of the measures from the National Gender Equality Policy for the period 2011 – 2015 were in 2013 implemented on a satisfactory level by the majority of measure holders. However, certain measures were not implemented or were implemented only partially, primarily because of some holders' shortage of funds, and in some cases because of their lower activity level in relation to certain measures. For instance, although measures related to improving the social position of women with disability as well as measures related to the position of women in rural areas were implemented in principle, the GEO's view is that their implementation should be improved, taking into account that this is a category of women at risk of multiple discrimination. Similarly, this applies to the measures aimed at balancing private and professional life, which are specifically important for applying the principle of gender equality in the field of parental care. Further, it is clear that in 2013 some measures have not been implemented at all. For instance, (statistical) publications based on the data collected on women in rural areas in the field of education, employment and self-employment, health care, cultural heritage and economic development (measure 1.4.2) were neither printed nor published in 2013. Additionally, the budget analysis from the gender perspective in order to determine different budget impacts on women and men (measure 7.3.2) was not carried out.

For the Decision on experimental implementation and monitoring of the civic education curriculum in 12 elementary schools during 2012/13 and 2013/14, it should be noted that the GEO monitored the curriculum's implementation and efficiency which were tested through a research described in the 2013 report to the Croatian Parliament. The research results show that the most significant issue is related to the fact that 38% of elementary school teachers and 52% of high-school teachers stated that they were not sufficiently prepared to perform the civic curriculum, although most of them received professional training. However, despite insufficient preparedness, about 2/3 of teachers stated that they were mostly satisfied with their performance of the civic curriculum in the academic year 2012/2013. That research confirmed the GEO's view that the civil curriculum in elementary and high schools is a significant contribution to efficient prevention of gender discrimination and sexual orientation-based discrimination in Croatian society. Therefore, the fact that in 2014 the Ministry of Science, Education and Sports has on several occasions mentioned the possibility of (temporarily) suspending the introduction of the civil curriculum in elementary and high schools is worrying.

(7) Ombudsman for Persons with Disabilities states that in the *National Strategy for Equalization of Opportunities for Persons with Disabilities* from 2007 to 2015 deadlines for carrying out many measures were marked as ongoing. Apart from legislative activities the results of many other measures were presented through funds expended. That made it difficult to measure their impact on the quality of lives of persons with disabilities. The Ombudsman for Persons with Disabilities expects that the measures in the new strategy will be more specific with more realistic and defined deadlines and measurable outcomes.

The new Act on the Protection of Persons with Mental Disorders, which entered into force on 1 January 2015, contains stronger control mechanisms which should significantly reduce any potential abuse of the institute of involuntary placement. For example, placement of persons with mental disorders who are unable to give their consent is returned back under judicial control, so written consent is given by their legal guardian or trusted person, while the possibility of independent supervision over the decision of the legal guardian was introduced. Because of the importance of these standards for protecting the rights of all involuntarily committed or detained persons with mental disorders, the systematic application of the provisions of the Act and supervision of their implementation is of extreme importance. Therefore, it is urgently required to also establish efficient functioning of the Commission for the Protection of Persons with Mental Disorders.

Additionally, the types, purpose and conditions for the use of means of coercion on persons with severe mental disorders who are placed in a psychiatric institution, as well as any restrictions on the use of means of coercion on particular categories of persons with mental disabilities (e.g. children, pregnant women and the like) should be prescribed by the Act, and not by a subordinate act, while the method of use may be prescribed by an ordinance, as this complies with the principle of legal security.

The Family Act regulating guardianship for adults which was supposed to enter into force in January 2015 has been suspended by the Constitutional Court. Although it introduced certain improvements in the guardianship system by abolishing plenary guardianship and introducing advance directives it failed to introduce any legal basis for supported decision making in line with the UN Convention on

the rights of persons with disabilities. The Ombudsman for persons with disabilities submitted to the Government a detailed proposal aimed at introducing the institute of an assistant in supported decision making. The proposal took into consideration limitations of organisational and other resources and proposed a solution which would not require additional resources but would create legal preconditions for gradual introduction of supported decision making in practice and enable various segments in the society to get used to it. The proposal was rejected.

The family law reform should be more directed at greater judicial protection of persons under guardianship, which involves a transfer of authorities from social welfare centres to courts. Additionally, in proceedings on depriving or restoring legal competence, a down payment for the costs of the forensic expert should be paid from the resources of the court since it happens that a court suspends the proceedings because a party (social welfare centre or ward i.e. person under guardianship) lacks the funds for this purpose. Such situations are discriminating against wards with lower income because they cannot afford the forensic expert's costs if they are initiating the proceedings of restoring legal competence by themselves.

As it is prescribed under the 2014 Family Act that a person may not be declared fuly legally incompetent, the transitional provisions of the 2014 Family Act provided that social welfare centres will, from 1 Jan 2015 to 1 Jan 2020, *ex officio* instigate non-litigation proceedings for the restoration of legal competence (restoration of partial legal competence for wards who were declared fuly legally incompetent or restoration of their complete legal competence), the costs of which will be covered from the state budget. After the Family Act was suspended, the 2003 Family Act is back in force, thus returning the institute of full legal incompetence.

Violence against women (Articles 3 and 7)

(8) Regarding the legislation aimed at preventing and sanctioning domestic violence, in her 2013 report to the Croatian Parliament the GEO noted that, according to the existing systematisation of domestic violence offences, both mental and economic violence fall outside the scope of the Criminal Code. From previous work on women's complaints regarding police conduct it is well-known that domestic violence is rarely only physical and that women are most often exposed to a combination of several forms of violence - physical, mental and economic. However, it is also frequent that women are exposed to only mental and/or economic domestic violence and that such violence has equally destructive effects on the victim as physical force. Therefore, the GEO finds the fact that the Criminal Code failed to cover both mental and economic violence as a form of criminal offence, but those two forms of violence remained within the scope of misdemeanour offences to be an oversight. Additionally, the GEO welcomes the competent ministry's indications that amendments to the Criminal Code will include the introduction of violent behaviour and mental violence as a qualified form of domestic violence, while economic violence still remains outside the legal criminal protection.

It should also be mentioned that judicial authorities do not have the system of statistical tools which would enable monitoring of data on criminal cases or according to articles of the Criminal Code nor

they are able to monitor data on misdemeanour cases according to the type of misdemeanour or articles of the Misdemeanour Act.

The GEO also wants to point out that, after the entry into force of criminal provisions on sanctioning domestic violence, serious issues related to their implementation in practice have arisen. In her annual report to the Croatian Parliament, the GEO commented that the data on a relatively high number of women charged with violent behaviour, detained and brought before the misdemeanour court, is cause for concern. Women make as much as 43.2% of all persons reported for domestic violence, which is a significant deviation compared to relevant international indicators from which it arises that family and partner violence is the most frequent form of violence against women, affecting 30% of women worldwide. Through cases within her competence, the GEO concluded that, in cases of domestic violence, police officers on the scene often record that both persons who participated in the event were injured, conclude that it is a family dispute and charges both spouses with misdemeanour, making no difference between defence and attack, which is left for the court to decide.

The GEO also noted the issue of domestic violence victims' access to free legal aid, which the Republic of Croatia provides to its citizens pursuant to the Free Legal Aid Act. In 2013, only 203 women, victims of domestic violence, applied for free legal aid, which when compared to the total number of applications – 5,476 – makes for only 3.7%. It is a fact that all accepted applications are relating to longer and more complex proceedings, but it remains unclear why free legal aid is denied to women involved in shorter misdemeanour and criminal proceedings at the time when women victims of violence require professional help, although it is known that quality statements of directly injured parties may substantially contribute to a faster conclusion of criminal/misdemeanour proceedings.

Ombudsman for Persons with Disabilities states that the number of reports on domestic violence against women with disabilities to authorities remains very low. Some of the causes of the dark figure of violence against women with disabilities are deficient networks of disability support services and inaccessible shelters leading to lack of trust in institutions and underreporting. In 2012 the Disability Ombudsman conducted research on the accessibility of all 19 shelters for victims of violence in the Republic of Croatia. Only 5 of the shelters reported that they are accessible for victims of domestic violence who are persons with disabilities.

(9) With regard to protective measures, the GEO emphasises serious problems observed in their implementation. In her 2012 report to the Croatian Parliament, the GEO stated that, from the Ministry of Justice's data on final decisions of misdemeanour courts, it arises that appropriate protective measures are requested at the beginning of proceedings, but the number of issued and implemented measures is drastically reduced in the next two phases of proceedings. For example, in 2012, the number of proposed measures was 8,128, while at the end only 1,703 were implemented.
Furthermore, in 2012, the GEO performed a study aimed at gaining insight in how the protective measures under Article 11 of the Act on Protection against Domestic Violence are implemented in misdemeanour case law for the purpose of prevention of domestic violence, and reported the results in the 2012 report to the Croatian Parliament. The analysis of 500 misdemeanour cases related to

domestic violence shows that, although protective measures are accepted as a very efficient tool for protection of victims of domestic violence, judicial authorities have not even begun to use this instrument sufficiently.

Out of the total number of analysed misdemeanour court rulings, the measure for protecting a victim of domestic violence was issued in only 10.5% cases. When the number of cases where protective measures were expressly sought is compared with the number of cases where protective measures were imposed, it is evident that protective measures were imposed in 25% of domestic violence cases in which they were sought. In only 2% of cases, protective measures were sought by the victim. This troubling fact clearly shows the need to raise awareness of persons at risk of domestic violence about their rights and possibilities for protection. Furthermore, considering that victims of domestic violence are often persons with a low economic status, there is a clear necessity for their effective access to free legal aid, within which their rights would be properly explained to them. Additional, the study showed that protective measures were initiated by the court of its own motion, after hearing the case, in only 9% of the analysed cases, which indicates the need for a more proactive role of judges with regard to this form of protection of domestic violence victims. The most frequently sought measures are: compulsory psychosocial treatment with 41%, restraining order protecting the victim of domestic violence with 20% and compulsory addiction treatment with 19.7% of all claims. Police much more rarely uses the two potentially most effective protective measures - prohibition of any form of harassment and/or stalking with only 9.5% of claims and removal from an apartment, house or other dwelling with 7.5% of submitted claims.

Public emergencies (Article 4)

(10) With regard to Article 4 of the Covenant, the previous conclusive remarks of the Committee (2009) and the General Comment of the Committee no. 29 (2011), the Constitution of the Republic of Croatia, in its Article 17, does not explicitly list all rights and freedoms (like Article 4 of the Covenant) which even in cases of emergency are not to be restricted, namely: Article 8 (prohibition of slavery and slave-trade), Article 11 (no one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation) and Article 16 (everyone shall have the right to recognition everywhere as a person before the law). The principles of proportionality and non-discrimination were applied in Article 17 of the Constitution.

However, the Croatian Constitution, in its Article 3, defines the highest values of the constitutional order of the Republic of Croatia which serve as the basis for interpreting the Constitution, namely: freedom, equal rights, national and gender equality, peace-making, social justice, respect for human rights, inviolability of ownership, protection of nature and the environment, the rule of law and a democratic multiparty system. Articles 14 paragraph 2 of the Constitution prescribes equality before the law; Article 22 paragraph 1 prescribes the inviolability of human liberty and personality, while Article 23 paragraph 2 prohibits forced and compulsory labour.

Liberty and security of person and security and treatment of persons deprived of their liberty (Articles 7, 9 and 10)

(11) The number of complaints submitted to the Ombudsman from persons deprived of their liberty stands at the 2009 level (in average 215), but precise statistical data on the sex, age and ethnic origin of complainants are not available. No complaints of torture and other cruel, inhuman or degrading treatment or punishment were reported among them.

(12) The trend of decline in the prison system overcrowding rate was noted, resulting from amendments of criminal legislation. However, the average occupancy rate in high security conditions of prisons and penitentiaries was 150% in 2013 and 106 % in 2014 and it is expected to increase again. In some prisons the occupancy rate is higher than 140%: Osijek County Prison – 157 %, Požega County Prison – 142 %, Varaždin County Prison 140% (data updated on December 30, 2014). For example, up to seven prisoners are placed in 16m2 dormitories in Zagreb County Prison. The table on which they eat is located next to the toilet, which is inadequately separated from the rest of the room by a barrier not reaching the ceiling and, because of the insufficient number of chairs, they eat on their beds. Prisoners spend 22 hours a day in such conditions. Despite the Constitutional Court decision of 17 March 2009, by which the Government was ordered to, within no longer than five years, adjust the capacities of Zagreb County Prison to the needs for accommodation of detained persons in conformity with the standards of the Council of Europe and case law of the European Court of Human Rights, and despite the adoption of the *Act on the Ratification of the Loan Framework Agreement No F/P 1725 (2010)* between Croatia and the Council of Europe Development Bank, the works have not even begun.

The fact that the accommodation conditions are a systematic problem is also confirmed by the Office of the Representative of the Republic of Croatia before the European Court of Human Rights' Report for 2012, where it is stated that Croatian cases related to execution of prison sentences are characterised by a high share of repetitive cases and that, in 2012, among 46 Croatian cases which were marked as "leading cases", there is also the so called Cenbauer group i.e. the group of judgments related to conditions in the prison system.

Other than accommodation conditions, the quality of health care provided in the prison system is the most frequent reason why persons deprived of liberty submit complaints to the Ombudman. Under the Constitutional Court decision from 2010, the Government of the Republic of Croatia was, *inter alia*, ordered to establish and carry out efficient supervision of the quality of health care in the entire prison system which, according to the available information, is yet to be established. In view of the current situation regarding health care provision for prisoners, the quality would be improved if health care would be organisationally separated from the prison system under the Ministry of Justice and placed under the authority of the Ministry of Health, as an optimal way to ensure the professional independence of physicians and the privacy of patients. Despite the prison system's efforts to hire additional health care workers, in general there are still fewer employed than it is required and, therefore, it is not possible to ensure 24-hour coverage of on-duty health care workers. As a result, in some penal institutions medical therapy is still administered by judicial police officers

after being prepared by a medical nurse or technician, while in others that occurs only exceptionally during the weekends when there are no on-duty health care workers.

In a majority of prisons and penitentiaries, a judicial police officer is present in the infirmary during medical examinations of prisoners, excluding psychiatric evaluations, which is, unless required for security reasons, a violation of the prisoner's right to privacy.

Although alternative sanctions are more frequently imposed, their number is still not sufficient and further efforts should be invested in strengthening the existing capacities of the probation services system in order to be able to perform the full scope of its legal tasks.

At the same time, detention in custody is still imposed not as a last measure, but as a normal practice, caused by the lack of systematic supervision over the execution of detention at home. Since the Ordinance on the supervision over execution of detention at home entered into force near the end of December 2014, it is expected that the courts will more frequently impose this measure, which should substantially contribute to humanisation and respect of human rights of persons deprived of liberty as well as to reducing the prison system's overcrowding rate.

Regarding of execution prison sentences at home, the Criminal Code prescribes that a prison sentence up to one year can be executed at home. As the Execution of Prison Sentences Act contains no provisions in this regard and implementing regulations are yet to be adopted, this form of executing prison sentences is not applied in practice.

Based on visits to penal institutions and handling complaints of prisoners with disability throughout 2011, 2012 and 2013 the Ombudsman for Persons with Disabilities found violations of the rights of prisoners with disabilities considering the conditions of their accommodation which is inaccessible and availability of adequate health care which is mostly related to insufficient physical therapy. The Constitutional Court ordered the government to enable unhindered movement of prisoners with disabilities in the prison hospital within an adequate deadline period of no longer than three years, as well as to establish and efficiently monitor the quality of healthcare in the entire prison system. Since the elevator has not been built yet, the Government failed to meet the obligation ordered by the Constitutional court in the assigned period. While visiting the newly refurbished penal institutions the Ombudsman for Persons with Disabilities noted that insufficient attention is paid to making them accessible for persons with disabilities.

According to the knowledge of the Ombudsman for Children and her visit to the Turopolje Correctional Institute, even one year after writing the reply, the improvement of living surroundings for the purpose of rehabilitation of minors at the CI Turopolje has not yet begun. In 2014 it was only indicated that works will start in 2015.

(13) According to the Ministry of Justice's data, the four largest county courts (Osijek, Rijeka, Split and Zagreb), in the 3-year period (2010 - 2012) had a total of 1,003 cases of involuntary hospitalisation of adults, and, according to the Ministry of Health's data, psychiatric institutions and hospital wards

in Croatia have on 20 May 2013 accommodated 3,228 persons voluntarily, 720 without consent (consent given by the legal guardian) and 410 involuntarily, based on a court ruling.

The health care system should be more involved in order to provide psychosocial support and additionally strengthen families to which persons with mental disorders return to after being released from hospital treatment. In this case, there is an obvious lack of appropriate mental health care services at the local level, whose activities would, *inter alia*, reduce the rate of institutionalisation of persons with mental disorders and facilitate their staying with their own families. Moreover, without appropriate community-based outpatient mental care services, there is a high risk that the health of a large number of patients may worsen quickly after leaving the hospital.

Until December 2011, the Special Hospital for Chronic Diseases of Children in Gornja Bistra had 3 closed beds (the so called cage-beds), which were removed at the order of the Ministry of Health's commission. New fittings for three standard children's beds were made, trying to more humanely prevent a child falling from bed in order to avoid the use of any chemical or physical restraint.

The Ombudsman for Persons with Disabilities continuously warns about the grave situation of persons with psychosocial disabilities due to a complete lack of outpatient treatments and any form of community-based services. As a result of that, persons with psychosocial disabilities are the most numerous group of persons with disabilities who are institutionalised. (According to the Ministry of Social Policy and Youth's data, 3,182 children with disabilities and adults with physical, intellectual and sensory impairment and 3,830 persons with psychosocial disabilities ("mentally ill adults") are placed in social care institutions. In addition, 251 children with disabilities, 423 persons with physical, intellectual and sensory impairment and 863 persons with psychosocial disabilities are placed in foster families.) Private family homes with 5 to 20 users and foster families with up to 3 children with disabilities or 4 adults with disabilities as well as foster parenting for adults are not covered by the deinstitutionalisation plan. Moreover, they are seen as an adequate form of living in the community which is encouraged. Not only are community-based rehabilitation and support services as well as alternative outpatient forms of treatment non-existent, but their planning is also absent from the National Mental Health Strategy for the Period 2011-2016, which mostly focuses on prevention of mental illness, combating stigmatisation and improving the quality of hospital care. In 2011 the Ombudsman for Persons with Disabilities conducted a survey of mental health protection and addiction prevention activities which were introduced at county public health institutes in accordance with the Healthcare Act and the Network of Public Health Services. The survey showed that teams have not been fully formed and that they mostly focus on addiction prevention activities. They do not provide any form of outpatient support or services for persons with psychosocial disabilities. It is particularly concerning that development of outpatient programmes for community-based mental health is again left to the non-government sector since the only outpatient programme the Government mentions in its Reply to the List of Issues is a project proposal submitted by an association of health care professionals *Developing a Network of Outpatient Programmes for Community-Based Mental Health*. The Ombudsman for Persons with Disabilities person has not seen cage beds in any of the institutions visited.

Freedom of movement (Article 12)

(14) The average length of the housing care process from entry into the Republic of Croatia until having a roof over one's head is around 8 years, while the average cost for a four-member family is about EUR 4,500. For 2012, UNHCR states that implementation of the housing care programme has been slowed dramatically, so in 2012 a total of 177 families moved into apartments or houses received through this programme, while in 2013 only 81 returnee families were provided housing, which represents only 4% of housing units approved for housing care in 2011.

In 2013, a new body competent for planning, preparation, organisation and control of housing care for refugees, displaced persons and returnees, former tenancy right holders and other housing care beneficiaries was established - the State Office for Reconstruction and Housing Care, which on 1 May 2013 assumed competence for activities that were previously within the scope of the Ministry of Regional Development and EU Funds. The establishment of the State Office for Reconstruction and Housing Care resulted in additional prolongation of procedures since the new regulations on internal organisation, as a prerequisite for the State Office's functioning, were not adopted by August 2013. This also contributed to the increase of the number of housing care complaints received by the Ombudsperson during 2013 by 115%.

The Areas of Special State Concern Act has until now been amended almost 15 times, after first regulation under that name entered into force in 1996, introducing incentive measures for settlement and development of the areas of special state concern through allotment of houses and apartments. Through this Act, Republic of Croatia encourages the return and stay of the population who lived in the areas of special state concern before the Homeland War and the settlement of citizens of the Republic of Croatia of all occupations and professions, particularly those who are able to contribute to the economic and social development of the areas of special state concern, through several forms of incentive measures, including housing care.

From the number and complexity of regulations, it is clear that beneficiaries of the housing care programme find it hard to discern which regulation is in force or which applies to their application. The duration of procedures is excessive while the introduction of new bodies and harmonised proceedings i.e. application of the General Administrative Procedure Act in the first instance of decision making, however welcome, only contributed to the duration of procedures.

With regard to item 117 of the Government's reply, when the number of housing care applications that were processed by administration, but no housing was provided, is compared to the number of available housing units delivered in early 2014 by the State Office for Reconstruction and Housing Care (339 units in the areas of special state concern and 67 units outside the areas of special state concern), it becomes clear that the expectations of beneficiaries as regards the allotment of a housing unit for housing care will not be met within a foreseeable time.

Although the amendments to the Areas of Special State Concern Act prescribe that applications for housing care in an area of special state concern may be submitted in the period 1 Jan – 15 Feb of the current year, from the number of pending applications and cases as well as the extremely low

number of available housing units, it may be concluded that a very low number of housing care applications is likely to be solved in the current year. In that case, pending applications will be placed on the housing care list for the next year, which will only perpetuate the issue of inefficiency of the housing care system, possibly until it reaches the level that will have a deterring effect on potential housing care beneficiaries. At the same time, this contradicts the proclaimed purpose of the Act – to encourage the return and stay of the population who lived in the areas of special state concern before the Homeland War and the settlement of citizens whose activities can contribute to the economic and social development of these areas.

Concerning the persons residing in organised accommodation (item 118 of the Government's reply), according to the available data, nearly 500 persons still reside in various forms of organised accommodation, ranging from highly inadequate and poorly maintained collective accommodation facilities (e.g. former elementary schools or settlements of prefabricated houses) to homes for elderly persons and hospitals. Despite elaborated and available plans for providing permanent housing for them, they still have not moved in facilities or institutions where, depending on their status and needs, they would have permanent accommodation, but the conclusion of this process is expected in the course of or at the end of 2015.

Children's rights (Articles 7, 13 and 24)

(15) Despite some progress, such as the training for special guardians, problems in the guardianship system for unaccompanied minors - foreign citizens still persist. Criteria for performing the function of guardian are not clearly established; instead, the general criteria for guardians pursuant to the provisions of the Family Act are used, which fail to consider the particularities of guardianship for unaccompanied minors - foreign citizens and the required additional qualification and knowledge that a guardian for this category of children should have according to international standards, in order to be able to protect the child's legal, social, health, psychological, material and educational needs.

The Asylum Act designates children as a special vulnerable group, but fails to define any special rights for them, so they are subject to the same procedure as other (adult) asylum seekers. Therefore, free legal aid to children who are asylum seekers is limited to the preparation of a claim to the administrative court, as a remedy to the Ministry of the Interior's decision, and representation before the administrative court, which is certainly inadequate.

Rights of national minorities (Articles 2, 24, 26 and 27)

(16) Persons who are not of Croatian nationality but have a valid link with the Republic of Croatia (e.g. adult descendants of national minority members who did not acquire their citizenship as minors, "informal" members of national minorities recognised by the Constitution) are still acquiring the Croatian citizenship in procedures prescribed for any other foreign citizen. Exceptionally, these persons are able to acquire the citizenship under privileged conditions, which may also be, exceptionally, granted to any other foreign citizen. Compliance with these requirements is, however, more difficult than for applicants subject to the procedure of granting citizenship to a member of the Croatian people who does not have permanent residence in the Republic of Croatia.

The low number of approved applications for granting the Croatian citizenship of returnees to the Republic of Croatia (2 approved applications in 2013) is noticeable, although the law prescribes more favourable conditions for acquiring the Croatian citizenship for returnees to Croatia, that is, persons who on 8 October 1991 had residence in Croatia and their permanent residence was approved, which is deemed as fulfilling the requirement related to the length of the formally registered residence under prescribed legal grounds for granting the Croatian citizenship. The reason for this is, *inter alia*, the observed excessive duration of procedures for approving permanent residence caused by the excessive duration of procedures for regulating the status of returnee to the Republic of Croatia.

The implementation of measures planned under the *Constitutional Act on the Rights of National Minorities* did not bring the desired results in relation to some rights, namely to the official and public use of the language and script of national minorities, to access to the public media and to employment of public servants in public administration bodies.

More specifically, in relation to minority right 2013 and 2014 were marked by the initiative of a group of citizens joined in the *Headquarters for the Defence of Croatian Vukovar* (established after the placement of Latin-Cyrillic signs on public administration buildings in Vukovar) seeking a referendum that would raise the threshold for exercising the right to equal application of the language and script of a national minority in the territory of a local self-government unit, from the current one third to one half of the population. Although the Constitutional Court in August 2014 declared the referendum question to be unconstitutional, the decision is differently interpreted and has not completely resolved the tensions, so the destruction of bilingual signs has continued even after its adoption. Local authorities and the Government still have to calm the tensions and fulfil the tasks ordered by the Constitutional Court.

Despite the increasing number of applications from members of national minorities for issuing bilingual personal identification cards, the fact that they show a low interest in using their language in the proceedings before state authorities and legal persons with public authorities indicates the need for proactive measures aimed at encouraging national minority members to use minority languages before the public administration bodies and measures aimed at raising the awareness of the majority population on minority languages.

With regard to the national minorities' right to access to the public media, radio shows mostly, but still inadequately, comply with their obligations, while the television programme fails to meet the obligation of broadcasting shows in minority languages. Members of national minorities often emphasize their dissatisfaction with the fact that dedicated television shows do not adequately address the issues relevant to minority communities, but primarily deal only with their culture and tradition. Besides, media are also required to condemn any public manifestations of intolerance and xenophobia, which is especially problematic in relation to sporting events, particularly broadcasting of soccer matches, where incidents related to national/ethnic intolerance are frequent.

With regard to political representation and participation of members of national minorities in representative and executive bodies of the central and local government, an adequate level of representation of national minority members has been achieved.

However, underrepresentation of national minority members is still present in employment in state administration bodies, judicial bodies and bodies of local and regional self-government units. The *Plan for civil service employment of national minorities in public administration bodies for the period 2011 – 2014*, adopted with the goal to achieve the representation level of 5.5%, did not bring the desired effect. Namely, the 2009 *Decision prohibiting any new employment of civil servants and employees* is still in force, having a general effect on the reduced number of new employees. On 31 December 2013, the representation of national minority members stands at 3.51%. The total number of Serbs in state administration bodies is 2.38%, while there is only 0.01% of Roma.[6] On 31 December 2013, administrative bodies of local and regional self-government units employed 4.27% members of one of 22 national minorities, of which 2.37% Serbs and 0.03% Roma.

(17) Although the Republic of Croatia is implementing certain measures to increase the attendance rate of Roma children in the education system, these measures are insufficient. For more quality integration, it is required to introduce a compulsory two-year preschool programme for all children members of the Roma national minority. The education policy measures should be directed more on achieving short-term plans than the long-term objectives of desegregation in education. The focus on short-term plans is related to the need for clearer definition and operationalisation of measures that will bring direct changes in the lives of Roma children, such as:

- provision of funds for projects focused on preschool education;
- introduction of a compulsory two-year preschool programme for all Roma children;
- provision of Roma assistants/mediators in kindergartens and schools;
- provision of transport for Roma children to schools and kindergartens (if educational institutions are further away from Roma settlements);
- introduction of the Croatian language programme for Roma children who require it;
- provision of extended day programmes in schools;
- provision of schoolbooks in Roma language;
- provision of support to Roma students looking for employers to attend the practical part of classes in high-schools;
- provision of support to Roma children after they finished school.

In addition to insufficient availability of education for Roma children, there is also a need to introduce courses and training for education workers which must include topics on cultural particularities of the Roma community, children's rights and implementation of legal acts related to the rights of Roma children in all systems. In addition to the training focused on education workers, it is required to invest more efforts in raising the awareness of the majority population (parents, children's peers, other stakeholders in the local community) for the purpose of reducing the segregation of Roma children.

[6] According to the 2011 population census, the share of Serbs in the total population of the Republic of Croatia is 4.36% and of Roma 0.40%.

To raise the level of quality of the Roma children's integration into the regular education system, it is also required to raise the level of efficiency of measures related to Roma parents who neglect their children's educational needs and regular school attendance. To this end, it is required to invest more efforts in forging relationships between service providers, primarily social workers, and Roma families.