



The EU Mutual Learning Programme in Gender Equality

Tackling the gender pay gap

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Tackling the gender pay gap in Croatia

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1. Country context

1.1. Legal framework

On 18 June 2004, the Republic of Croatia was awarded candidate status and on 1 July 2013, it became the 28th Member State of the European Union. Croatia signed the Stabilisation and Association Agreement¹ on 29 October 2001, but it entered into force as late as 1 February 2005, which marks the beginning of a more pronounced and more intensive process of harmonisation of national legislation with the *acquis communautaire*. Constitutional amendments of 2001 promoted gender equality as one of the highest values of the constitutional order and the foundation of constitutional interpretation.² The first Gender Equality Act was passed in 2003,³ but due to difficulties related to its adoption that were identified later (lack of the required number of MPs), with minor nomotechnical and substantial changes and modifications, the new Gender Equality Act was adopted in 2008.⁴ Pursuant to Article 13(1)(4), the latter act, inter alia, prohibits discrimination in the public and private sectors, including public bodies, in the context of working and employment conditions, and all rights arising from and based on labour, including equal pay for women and men.⁵ However, the Act does not define equal pay for equal work and work of equal value, but only, just like the 2003 version of the Act, introduces the obligation that all statistical information must be expressed by gender. This will include earnings-related data for women and men, so that since 2004, the Croatian Bureau of Statistics has been publishing the data in question by gender. In the period from 2001 to 2003, the then Labour Act⁶ introduced a number of provisions pertaining to the prohibition of discrimination, the definition of direct and indirect discrimination, the legal basis of non-discrimination, harassment and sexual harassment, and equal pay for equal work and work of equal value.⁷ However, as a result of the necessary horizontal harmonisation of national regulations, i.e., the adoption of the Anti-Discrimination Act⁸ and a new Labour Act⁹, since 2008 most of

¹ Stabilisation and Association Agreement between European Communities and the Republic of Croatia.

² Constitution of the Republic of Croatia, Article 3.

³ Gender Equality Act (Croatian: Zakon o ravnopravnosti spolova), Official Gazette (Croatian: Narodne novine), No.116/2003.

⁴ Gender Equality Act, Official Gazette, No. 82/2008.

⁵ See 2008 Gender Equality Act, Article 13.

⁶ Labour Act, Official Gazette, No. 38/1995, 54/1995, 63/1995, 17/2001, 82/2001, 114/2003.

⁷ Cf. Vinković, M. Gender Equality and the Process of Harmonisation of the Croatian Labour Law (2005), Croatian Yearbook of European Law and Policy, Vol. 1, No. 1, pp.203-211.

⁸ Anti-Discrimination Act, Official Gazette, No. 85/2008, 112/2012.

⁹ In the last twenty-five years, labour legislation has been subject to frequent amendments or enactment of new laws. Thus, Labour Act (Official Gazette, No. 12/2009) was adopted in 2009, which was in the meantime replaced by the new, most recent Labour Act (Official Gazette, No. 93/2014).

these institutions have been regulated by the Anti-Discrimination Act. Moreover, only the issue of equal pay for equal work and work of equal value remained in the new Labour Act, while the definition and legal regulation of other institutions listed previously have mostly been transposed into the Anti-Discrimination Act.

1.2. Ombudsperson for Gender Equality

As from 2003, based on the first Gender Equality Act in the Republic of Croatia, the Ombudsperson for Gender Equality¹⁰ acts as an independent authority to combat gender inequality and discrimination, that receives reports of all natural and legal persons related discrimination based on gender, provides assistance to natural and legal persons who have lodged a complaint of sex-related discrimination when instituting legal proceedings, takes actions to investigate individual complaints before the case is taken to court, with the consent of the parties, it carries out a mediation process with the possibility of reaching an extrajudicial settlement, collects and analyses statistical data on gender discrimination cases, conducts independent surveys concerning discrimination, publishes independent reports and exchanges available information with corresponding European bodies.¹¹

1.3. Government Office for Gender Equality

Under the Regulation of the Government of the Republic of Croatia and on the basis of the Gender Equality Act, the Office for Gender Equality has been functioning since 2004 as a professional and government body performing professional and administrative tasks relating to the realisation of gender equality.¹² This body, inter alia, coordinates all activities aimed at gender equality, develops a comprehensive system of protection and promotion of gender equality and monitors its efficiency, develops the national policy on gender equality and monitors its implementation, cooperates with civil society organisations etc.

1.4. National statistics

According to Eurostat estimates for the year 2012, women employed in the Croatian economy earn 18 % less than men,¹³ which is 1.6 % more than the EU average (i.e. 16.4 %). According to the Croatian Bureau of Statistics (women's earnings as a percent of men's) suggests that in the fields of healthcare and social welfare women make 73.6 % of men's wages, in financial service activities and insurance 75.9 %, manufacturing 79.7 %, information and communications 88.5 %, agriculture, forestry and fisheries 87.6 %, while in mining and quarrying they make 107.3 % of men's wages, in construction 114.4 %, and in administrative, service and auxiliary activities 105.8 %.¹⁴ These data suggest that in construction, mining and service activities, women undoubtedly perform high-paying and managerial jobs, while in the manufacturing sector, information and communications and insurance, they mostly receive lower wages or get contracts with lower average earnings (insurance and communications).

¹⁰ For more details, see: <http://www.prs.hr/>.

¹¹ Pursuant to Article 19 of the Gender Equality Act.

¹² For more details, see: <https://ravnopravnost.gov.hr/>.

¹³ Tackling the gender pay gap in the European Union, 2014. See: http://ec.europa.eu/justice/gender-equality/files/gender_pay_gap/140319_gpg_en.pdf.

¹⁴ Women and men in Croatia 2015, Croatian Bureau of Statistics, p. 42. See: http://www.dzs.hr/Hrv_Eng/menandwomen/men_and_women_2015.pdf.

1.5. National definition of equal pay for equal work and work of equal value for women and men and problems of court practice

By introducing the definition of equal pay for equal work and work of equal value for women and men in legislation in 2001, the legislator only partially followed the provision given in Article 141(1) of the EC Treaty and adjusted it in accordance with the then practice of the Court of Justice. Article 91 of the recent Labour Act specifies that two persons of different sex perform equal work and work of equal value if: 1) *they perform the same work under the same or similar conditions or if they could substitute one another at the workplace*, 2) *the work one of them performs is of similar nature to that performed by another, and the differences between the work performed by them and conditions under which it is performed have no significance in relation to the overall nature of the work or they appear so rarely that they have no significance in relation to the overall nature of the work*, 3) *the work one of them performs is of equal value as that performed by another, taking into account criteria such as qualifications, skills, responsibilities and conditions under which the work is performed and whether the work is manual or not*.

Such legal stipulation should contribute to spotting problems in relation to a wage gap between women and men and it has a kind of instructive effect on judges who are not given a sufficient level of education in the fields of European law and European anti-discrimination law. Unfortunately, Croatia has not recorded any verdict related to workplace and employment discrimination that would have its interpretative capacity and reasoning based on a hypothetical comparator or a deeper statistical data analysis as an indicator of present discrimination. Moreover, to date, there has been no single case referring to a lawsuit filed for violation of the guaranteed equal pay for equal work and work of equal value.¹⁵ There are only four judgments in which the plaintiff referred to discrimination based on gender, including wages, but none of them were in favour of the plaintiff.¹⁶

2. Policy debate

Policy debates about the fight against the pay gap are usually not held in Croatia. We can sporadically come across articles in the media that deal with the subject matter, mostly as a result of statistical data previously reported by the Croatian Bureau of Statistics and Eurostat on this subject, or on some specific occasion. Within her authority, the ombudsperson for gender equality conducted a study in 2010 on the causes of the pay gap between men and women in the Croatian labour market. It was a small-scale research that shows and discusses the link between the unadjusted pay gap and the information on the structure of employees within a few larger Croatian companies by age, experience or education. This research

¹⁵ Searches of case law do not give a single result related to discrimination due to unequal pay for equal work of women and men. A telephone interview conducted on 30 September 2016 with Mrs Iris Gović Penić, LL.M., M.Sc, judge of the County Court in Zagreb and one of the most knowledgeable Croatian judges when it comes to discrimination in labour disputes, did not suggest either that such proceeding is currently pending before one of the courts. Judge Gović Penić leads education programmes focused on labour discrimination disputes for the needs of the Judicial Academy and provides regular judicial training to judges.

¹⁶ Supreme Court Revr-183/2005, Supreme Court Revr-1352009, Zagreb County Court Gžr-1216/2006 and Zagreb County Court Gžr-1003/2007.

suggested that there exists a narrow pay gap between men and women that has significantly expanded when wages are analysed according to specific groups of jobs or tasks. It was also observed that women are not that present in positions involving technical and manual work, which are socially perceived as male jobs, and under-representation at company level also results in under-representation in the management structures of companies.

Croatian trade unions also deal with this subject matter, but at the level of promoting the right to equal pay for equal work and work of equal value, or in the context of the promotion of EU strategies. It may be possible to explain the lack of social attention by the fact that in communist Yugoslavia, i.e., Croatia, the concept of two breadwinners in the family was promoted, which has long dominated the opinion that there are no problems with the gap in the wages of women and men. However, thorough research has demonstrated that the differences existed at that time as well, because women mostly used to receive lower pensions for equal work and work of equal value. In the field of scientific research, it is possible to find a number of papers, which either address the subject matter from legal, economic and sociological aspects (Grgurev; Nestić), or are dedicated to the subject matter partially, i.e., through a more general analysis of gender equality in the Croatian labour market. Future discussions are expected to boost debates in the EU and raise awareness of the problem, which is mainly addressed by civil society organisations, particularly those focused on the protection of women's rights (that have so far been active in the public articulation of the problem of unequal pay for women and men who perform equal work or work of equal value).

3. Transferability aspects

Belgium's Gender Pay Gap Law delivers quality solutions that primarily bring order to job classification and collective bargaining, which, inter alia, focuses on the gender pay gap in the real and public sectors. Removing the perceived problems related to inadequate filling in of the data that employers are obliged to submit to the competent authorities, as well as the lack of control of data submitted in that way, suggest that at a practical level, a shift from declaratory intent to practical commitment will be necessary to reduce the pay gap. This will probably be possible with minor legislative intervention and the introduction of additional obligations and control of the submitted data. In the Croatian context, the said act would probably have shared a similar fate, and we cannot expect it to yield great results in a short period of time. Taking into account a long-term problem with under-representation of women in parliament and political life and circumvention of existing regulations in this segment, gender pay gap problems regulated by legislation are expected to be treated primarily at a declaratory level (as before). Another problem is frequent criticism that at all levels Croatia is characterised by excessive normativeness or inflation of a set of acts in all areas, so that other possible nomotechnical interventions should also be considered (amendments of existing acts, the introduction of obligations in regulations governing collective bargaining and the like).

4. Recommendations

At European and national level, it is necessary to further intensify the debate on the problems of gender segregation in the labour market, gender equality, equal distribution of work and family responsibilities between women and men and narrowing the gender pay gap as causally related topics. The fact that women make up the majority of the general population and that, when it comes to higher levels of education, women outnumber men, will not substantially change the existing statistical indicators in this area. In addition, what is necessary is greater representation of women in decision-making and further policy-making. Also, progress can be expected only if money is invested in measures and policies that will result in more equal distribution of work and family responsibilities between women and men and changes in the sphere of decision-making.

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