



OPEN SOCIETY INSTITUTE  
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international gender policy network

# On the Road to the EU

Monitoring  
Equal Opportunities  
for Women and Men  
in South Eastern Europe

2006

ALBANIA  
BOSNIA AND  
HERZEGOVINA  
CROATIA  
KOSOVO  
MACEDONIA  
MONTENEGRO  
SERBIA

# On the Road to the EU

## Monitoring Equal Opportunities for Women and Men in

### Croatia

by *Jagoda Milidrag Šmid*

2006

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## Preface

This monitoring report – “On the Road to the EU” – was prepared as part of the Open Society Institute’s Network Women’s Program (NWP) “Bringing the EU Home” Project. It is a three-year project (2004–2006) that aims to promote awareness, advocacy, and enforcement of equal opportunity legislation at the national level and to build the capacity of national actors in civil society to use EU-level gender equality mechanisms effectively. The project further aims to help increase the importance of equal opportunities on the European agenda.

The “Bringing the EU Home” Project stemmed from OSI’s EU Monitoring and Advocacy Program’s efforts to monitor the progress of candidate countries as they prepared themselves for integration into the European Union and to ensure that they met the Copenhagen political criteria, particularly in relation to the independence of the judiciary, minorities’ rights, and anticorruption. This independent project was developed to evaluate the status of accession countries from the perspective of the *acquis communautaire* in the field of equal opportunities for women and men, which accession countries are required to adopt and comply with.

In 2005, a new phase of the project – “On the Road to the EU” – was started. After concentrating on new member states of and acceding countries to the EU,<sup>1</sup> we started to focus on the candidate and potential candidate countries from South Eastern Europe. Albania, Bosnia and Herzegovina, Serbia and Montenegro, including Kosovo, are potential candidate countries to the EU, while Croatia and Macedonia are already candidates. To use their preparation period for EU membership effectively, NWP invited seven South Eastern European nongovernmental organizations to join the “Bringing the EU Home” Project. With this phase, the project aims to help raise the significance of equal opportunities within the process of new and future accession negotiations, creating a unique platform for candidate and potential candidate countries.

An assessment of the status of equal opportunities between women and men, *de jure* and *de facto*, was carried out in the above seven entities. The EU directives on equal opportunities provided the framework for monitoring and analyzing corresponding legislation, institutions, and practices. The project focused on the directives related to the principle of equal pay for work of equal value; equal treatment as regards employment;

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<sup>1</sup> See the publications of the previous monitoring phases: *Monitoring the EU Accession Process: Equal Opportunities for Women and Men*, Budapest: OSI, 2002; and *Equal Opportunities for Women and Men: Monitoring law and practice in new member states and accession countries of the European Union*, Budapest: OSI, 2005.

protection of pregnant women, breastfeeding women, and women who have recently given birth; and the situation of self-employed workers.

As a result of the assessment, seven monitoring reports were prepared. In this publication you can find the summary of the results, while the full reports themselves are available online.<sup>2</sup> To provide effective tools for advocacy at national and EU levels, the reports outline specific areas of concern and issue clear recommendations to governments on legislation, institutional mechanisms, policies, programs, and research initiatives. The recommendations focus on how laws and their implementation in participating countries should be in line with EU standards, to ensure that gender equality becomes a reality in the countries monitored.

The Network Women's Program worked in cooperation with the relevant members of the International Gender Policy Network (IGPN) in this new phase of the project.

We would like to thank all individuals and partner organizations who were involved in this monitoring project and whose invaluable contributions and support made the publication of these reports possible.

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<sup>2</sup> See [www.soros.org/women](http://www.soros.org/women).

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These national experts prepared full monitoring reports on equal opportunities for women and men on the basis of a detailed methodology prepared under the project “Bringing the EU Home.”

The Network Women’s Program of the Open Society Institute would like to acknowledge the unique role of the international experts: Roxana Tesiu (Romania), Monika Ladmanova (Czech Republic) and Enikő Pap (Hungary), in writing all Executive Summaries and being consultant to the national experts.

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## INTRODUCTION

The effects on Croatian women of Croatia's economic, legal, and institutional transformation in the early 1990s could be metaphorically described as follows: *The Berlin wall had fallen on the heads of Croatian women.*

The results of the first multiparty parliamentary elections were devastating for women: only 4.8 percent of women were elected into Croatia's House of Representatives, the country's parliamentary legislative body. It was not until the year 2000 elections, which brought a new political party in power, that women's representation in the Croatian Parliament significantly increased – their ratio rising to 21 percent. The shift was evident in the presence of women in positions of executive power: at present, a third of all ministers are women, a woman serves as deputy prime minister in the Croatian government (there were no women in Cabinet positions in the early-1990s). Although women remain a political minority in Croatia, they are now more visible in the public and political sphere, which is encouraging.

This accomplishment is the result of long years of struggle and organized pressure exercised by women. In response to challenges of the transition period, which was in part characterized by a strong tendency towards returning women to their traditional roles in family and social life, Croatian women organized themselves, founded NGOs and women's sections within trade unions, and sought and developed strategies in their struggle for equality, as well as a new definition of traditional women's roles. Owing to the struggle and persistence of these women, the political culture and social climate are slowly changing, the public has been sensitized to discrimination against women, social awareness of the necessity of change and the need to develop an adequate legal and institutional network has increased, the media are more open to women's issues, and the harmonization of Croatia's legal order with European Union legislation is currently underway.

The Croatian Constitution prohibits gender discrimination, a Gender Equality Act has been passed, a Gender Equality Ombudsman has been appointed, the Office of the Croatian Government for Gender Equality has been established, the Labor Act has been amended by incorporating a definition of direct and indirect discrimination and sexual harassment, as well as an explicit ban on gender discrimination. Croatia has thus taken significant strides in developing its legal and institutional framework. The aforesaid being relatively new concepts, the implementation of changes and new norms supported by court practice is lagging behind. Accordingly, there are – and will be – numerous obstacles and challenges to overcome at the enforcement level. It will probably be quite some time before the effects of these changes are confirmed in social practice.

Despite such rapid and almost daily change, the patriarchal *status quo*, the cultural pattern and attitudes towards the role of women and social practice that reflects it remains stubbornly persistent, albeit going in cycles. The dominant attitude that woman's *natural* place is primarily in the home and with their family is often mirrored in the media and school textbooks. Women's biological function of procreation is desirable and therefore highly valued. However, in the moral sense only, since when it comes to rewarding motherhood financially, society looks the other way, regarding such support as *expensive*. This duality – the expectation that women should bear more children and the unwillingness to give motherhood stronger social support – is detrimental precisely to women. Young women are faced with societal demands to simultaneously fulfill the socially desirable role of the mother and of a competent, efficient and productive worker. The result is an unfavorable position for women in the labor market, where employers often regard them as undesirable workers because of their expected family duties. According to research done by D. Nesti, Croatian women earn on average 15 percent less than their male colleagues in identical positions with identical job descriptions. They are underrepresented in better paid professions (the difference is 20 percent in men's favor) and segregated in lower paid jobs.

Croatia lacks public policies that would alleviate the situation of families with employed members, help balance out family and professional obligations, enable a reintegration of women into the professional world after their absence from the labor market, and so on. In short, despite clear progress over the past few years, especially in the establishment of the legal and institutional framework, there is a great deal of hard work to be done in order to revive the proclaimed values of gender equality.

## EQUAL PAY

**Council Directive 75/117/EEC of February 10, 1975** on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women.

### SECTION 1 – National Legal Framework Concerning the Principle of Equal Pay for Work of Equal Value

#### 1.1 General provisions

Croatia has antidiscrimination laws that prohibit discrimination on the ground of sex in compliance with international conventions it has signed: Convention on the Elimination of all Forms of Discrimination against Women (CEDAW); the International Labor Organization Convention No.100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (1951); the International Covenant on Economic, Social and Cultural Rights; and the European Social Charter.<sup>1</sup>

#### 1.2 The Constitution<sup>2</sup>

The Croatian Constitution grants all citizens equality and equal rights and in principle bans discrimination on any grounds. With the amendments of the Constitution in the year 2001 gender equality became one of the highest constitutional values. The Constitution does not foresee the equal pay principle per se, but it does speak of the right of every employee to “a fair remuneration.”<sup>3</sup>

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<sup>1</sup> For *CEDAW* and the *International Covenant on Economic, Social and Cultural Rights* there were notifications of successions through which Croatia ratified the treaties. *CEDAW* was ratified on September 9, 1992 and the *Covenant* on October 12, 1992. The ratification of the ILO Convention 100 was published in the *Official Gazette*, “International Treaties,” Nos.6/95 and 3/00; the European Social Charter, the *Official Gazette*, “International Treaties,” No.15/02.

<sup>2</sup> Article 3, the *Constitution of the Republic of Croatia* (revised text), the *Official Gazette*, No.41/2001.

<sup>3</sup> *Ibid.*, Article 55.

### 1.3 The Labor Code<sup>4</sup>

The Labor Code<sup>5</sup> of 1995 establishes equal pay for men and women for work of equal value.<sup>6</sup>

Additionally, in 2003, the Labor Code was amended to include the definition of discrimination (direct and indirect) and explicitly prohibit discrimination on the grounds of sex *vis-à-vis* “work conditions and all employment rights, including equal pay.”<sup>7</sup> Thus, violation of the principle of equal pay was defined as a discriminatory act.

Until the 2003 amendments were passed, the Labor Code contained a general provision about equal pay for men and women for work of equal value in accordance with ILO Convention No.100.<sup>8</sup> The 2003 Amendments to the Labor Code broadened this provision (pursuant to Council Directive 75/117/EC of February 10, 1975), so that Article 89 sets forth a definition of *two people of different sex performing work of equal value*:

- if they perform equal work in equal or similar conditions or could replace one another at their jobs;
- if their work is of equal nature, and the differences that arise do not affect the overall nature of the job;
- if their work is equal on the basis of the criteria of level of expertise or skills, whether the work is manual or not, the level of responsibility, and working conditions.

Equal pay implies not only basic salary, but all bonuses and taxes that the employer pays directly or indirectly, on any legal basis, in money or in kind to the female or male worker for the work performed.

The Code also declares invalid any provisions of the work contract, collective bargaining agreement, work statute, or any other legal act in violation of the principle of equal pay.

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<sup>4</sup> Article 2, paragraph 4, point 4, the *Labor Code* (revised text), the *Official Gazette*, No.137/2004.

<sup>5</sup> Part IX, Article 89, the *Labor Act*, No.758/95.

<sup>6</sup> The Act stipulates that “an employer shall provide equal pay to women and men for equal work and for work of equal value.” Article 89, paragraph 1.

<sup>7</sup> Article 2, paragraph 4.

<sup>8</sup> See footnote 6.

## 1.4 The Gender Equality Act<sup>9</sup>

Article 6 of the Gender Equality Act defines discrimination based on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), but applying to both sexes, whereas Article 7 provides a definition of direct and indirect discrimination. Article 13 of the Gender Equality Act bans discrimination at work and in employment in the public and private sector and state administration bodies in relation to, among other things: “employment and work conditions, all rights deriving from work and on the basis of work, including equal pay...”<sup>10</sup>

### SECTION 2 – Implementation of the Principle of Equal Pay for Work of Equal Value: Legal Foundations and Institutional Structures

#### 2.1 General presentation

Legislative norms incorporating the principle of equal pay for men and women are mandatory for all legal and natural persons employing male/female workers in Croatia, regardless of the sector they belong to (public or private) or type of ownership. In other words, the same legislative norms (the Labor Code) apply to both public and private companies.

Wages determined by collective bargaining agreements (whether on the level of a branch of industry or company) are applied to all employed persons in that industry or company, regardless of sex. On the national level there is only the Collective Bargaining Agreement on the Minimum Wage, applied to all employed persons in Croatia.

However, to date there are no effective (legal) instruments to monitor and to oversee implementation of the legally binding norm of equal pay for men and women. The penal provisions of the Labor Code do not set forth any legal retribution against the employer who violates the principle of equal pay for men and women, but merely declare such work contracts, collective bargaining agreements, and other statutory measures invalid. In practice, this means that the labor inspectorate, authorized to monitor compliance with Labor code provisions, does not specifically monitor compliance with the equal pay principle. For example, in the event that an employee feels that his or her pay is discriminatory, he/she must go to court or to the Ombudsman for Gender Equality, since the Labor Inspectorate has no mandate to intervene in such type of cases.

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<sup>9</sup> The *Gender Equality Act*, the *Official Gazette*, No.116/2003.

<sup>10</sup> Article 13, paragraph 4, the *Gender Equality Act*, the *Official Gazette*, No.116/2003.

As a rule, in medium-size and large companies and institutions that have internal regulations (e.g. statute or job descriptions) governing systematization of jobs, equal pay is determined for the position of the same title, regardless of whether the work is performed by a man or woman. The problem is that in practice there is considerable segregation of *typically female* jobs and professions, which are generally of lower prestige (and underpaid), regardless of how demanding or difficult they are.<sup>11</sup>

Accordingly, in the legal sense, there is no discrimination in these cases. Theoretically speaking, these jobs can be performed by a man as well. In reality, however, the situation is discriminatory—both the criterion of expertise required for a *typically female* job (for example, secretary or social worker) and other knowledge and skills necessary for successful performance (social and communication skills, autonomy in decision-making, creativity, responsibility, etc.) are not taken into account, and therefore not adequately paid. The problem lies in the traditional and deep rooted stereotype of *typically female/service* professions that are already undervalued, their difficulty most often remains unrecognized, and it is difficult both to prove discrimination and acknowledge *women's skills* as a significant contribution to productivity and effective work performance.

## 2.2 Job classification system

A National Classification of Professions exists on paper (contains nearly 500 professions), but is outdated. It was not, however, linked to the setting of pay, is not harmonized with OECD standards, and is not implemented in practice. A new job classification system is being prepared, but this process is contingent upon educational reform and will take some time to complete. For the time being, in reality there is no reliable national classification of professions.

## 2.3 Available legal procedures in cases involving the violation of the principle of equal pay for work of equal value

Labor Code Provisions that render invalid any legal act in violation of the principle of equal pay for men and women for work of equal value<sup>12</sup> and prohibit discrimination on the ground of sex in relation to equal pay,<sup>13</sup> provide the option for wronged parties

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<sup>11</sup> For example, it is possible that the wage of a secretary (*typically female* job) is lower than the wage of a driver (*typically male* job) regardless of the fact that the responsibilities, tasks, skills or amount of job of a secretarial position are more demanding than those of a driver.

<sup>12</sup> Article 89, paragraph 4, the *Labor Code* (revised text), the *Official Gazette*, No.137/2004.

<sup>13</sup> *Ibid.*, Article 2, paragraph 4, point 4.

to file for court protection in the event of violations thereof. There are no special labor courts and labor disputes are assigned to ordinary courts. The court procedure can last from two to ten years. Members of trade unions receive pro bono representation. Workers who do not belong to trade unions do not have to pay court costs, either, but they do have to pay for their own lawyer.

The Labor Code provides that a worker has the right to compensation for damages as set forth in the general provisions of the Civil Obligations Act. This includes damages caused by the employer to the worker by violation of the worker's rights arising from employment.<sup>14</sup>

To date, there has been no court ruling addressing this issue, that is, even though cases of discrimination may have been brought to court, no court rulings have so far emerged. Accordingly, in the absence of a court ruling, the nature and magnitude of compensation for violation of the equal pay principle is impossible to predict.

## **2.4 Out-of-court alternatives**

The Gender Equality Act stipulates that in the event that the principle of equal pay for men and women is violated, the wronged person has the right to ask the Gender Equality Ombudsman to intervene. Acting as mediator or facilitator for the two parties, the Ombudsman can initiate a conciliation procedure. Under the Gender Equality Act, the Ombudsman has the authority to warn, suggest, and issue recommendations. He or she also has the right to ask for reports, and, in the event that they are not provided, to request review of the case by the appropriate supervisory bodies.

## **2.5 Means of informing employees of their right to equal pay for work of equal value**

It is extremely important to inform working men and women about their rights to equal pay for work of equal value. However, the law does not specifically stipulate that workers must be informed about their rights on equal pay, so this task is usually performed by the trade unions. The problem is that inequality of pay for women and men for work of equal value is not acknowledged as discrimination on the grounds of sex and it is also taken for granted by the workers themselves.

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<sup>14</sup> Article 109, paragraphs 1-2.

## 2.6 Role of trade unions

Trade union members have the right to pro bono legal aid and representation in court by the trade union legal representative in all labor disputes, including those dealing with the violation of the principle of gender equality.<sup>15</sup> The trade unions are authorized to represent their members in labor disputes with the employer and before the court, arbitration tribunals and state bodies.<sup>16</sup>

The role of trade unions in shedding light on this issue is irreplaceable. Accordingly, it is crucial to increase the level of knowledge about and understanding of the terms of *discrimination, equal pay, work of equal value* and *job evaluation scheme* among union workers, to enable them to recognize (often hidden) discrimination in pay for women and men and address it. This is extremely important for members of union negotiating committees *vis-à-vis* collective bargaining agreements and pay.

Pro bono legal counseling is available from NGOs, but not from the state. Basically, collective bargaining agreements set forth the principle of equal pay, but from only one point of view (equal pay for equal work). However, when it comes to equal pay for work of equal value, it is not clear whether and how the agreements incorporate this principle.

### SECTION 3 – Factual Background with Regard to the Principle of Equal Pay for Work of Equal Value: Related Research and Statistics

Almost half of all employed women (47.8 percent) work in only four sectors: retail trade, education, health care and social welfare.<sup>17</sup>

Data on the ratio of women in managerial positions shows that there is a glass ceiling hindering equal career advancement of women, even in those sectors in which they constitute a majority on lower levels of hierarchy. For example, although the majority of employed doctors in hospitals are women (56 percent), only 28 percent of them are in executive positions. The same holds true for elementary schools: most of the employed teachers are women (78.5 percent), yet only 39 percent are principals.<sup>18</sup>

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<sup>15</sup> Article 434(a), Amendments to the *Legal Proceedings Act*, the *Official Gazette*, No.117/2003.

<sup>16</sup> Article 171, the *Labor Code*.

<sup>17</sup> Kerovec, Nada. "(In)equality of Women in the Labor Market." *Bread and Roses*, Br/No.26/2005.

<sup>18</sup> Institution for Public Health and Ministry of Education.

To date, Croatia has not harmonized its labor market statistics with EUROSTAT. It is only recently that statistical data on (average) pay for women and men employed in individual industries is being collected and published annually.<sup>19</sup>

According to the most recent statistical data for average monthly net pay in 2003, average net pay for 2003 was HRK 3,949 (EUR 540). Average monthly pay for men was HRK 4,134 (EUR 566), versus HRK 3,710 (EUR 434) for women, that is, women's average pay in 2003 was 11.5 percent lower than men's. If we look at data for individual industries, the difference is even greater:

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<sup>19</sup> In 2005, the data for 2003 was published.

**Average Monthly Net Pay for Men and Women in 2003**

INDUSTRY	AVERAGE PAY FOR MEN		AVERAGE PAY FOR WOMEN		DIFFERENCE	
	HRK (Croatian Kuna)	EUR (Euro)	HRK (Croatian Kuna)	EUR (Euro)	HRK (Croatian Kuna)	EUR (Euro)
<i>Agriculture</i>	3,477	476	3,066	420	-441	-56
<i>Fishing</i>	2,933	401	2,629	360	-304	-41
<i>Mining</i>	4,442	608	4,359	597	-83	-11
<i>Manufacturing industry</i>	3,841	526	3,019	413	-822	-113
<i>Distribution of electricity, gas and water</i>	4,410	604	4,073	557	-337	-47
<i>Civil engineering</i>	3,361	460	3,290	450	-71	-10
<i>Wholesale and retail: repair of motor vehicles</i>	3,660	501	3,056	418	-368	-83
<i>Hotels and restaurants</i>	3,690	505	3,163	433	-527	-72
<i>Transport, storage and communication</i>	4,455	610	4,412	604	-43	-6
<i>Financial management</i>	6,833	936	5,466	748	-1,367	-188
<i>Real estate, business services</i>	4,246	581	3,741	512	-505	-69
<i>Public administration and defense; obligatory social insurance</i>	4,895	670	4,073	557	-822	-113
<i>Education</i>	4,636	635	3,995	547	-641	-88
<i>Health care and social welfare</i>	5,435	744	4,301	589	-1,143	-155
<i>Other social and personal services</i>	4,227	579	3,781	517	-446	-62

The pay gap is biggest in the manufacturing industry, where women's average pay is 22 percent lower than men's; healthcare and social welfare, where women's pay is 21 percent lower than men's; financial management, where women's average pay is 20 percent lower than men's; public administration (16 percent), etc.

Data on average retirement pensions also shows that women are paid less than men during their working years. The average retirement pension for women is 26 percent lower than for men.<sup>20</sup>

Some surveys conducted in 2003 also confirm a gender gap between women's and men's pay in Croatia.<sup>21</sup>

## SECTION 4 – Conclusions. Areas of Concern. Recommendations

### 4.1 Areas of concern and conclusions

A major area of concern is that the principle of equal pay for work of equal value is not widely understood either by employees or by employers, but not even by the trade unions. In consequence, decision making and policy design grapple with numerous difficulties as they strive to promote this principle.

Overall, Croatian women are paid less than their male co-workers, the pattern of discrimination here is similar to that found in other European countries. Further, there are no up to date gender sensitive statistics that could provide a better and more reliable picture of the labor market. Thirdly, workers (both men and women) are not aware of their rights and do not acknowledge and understand the pay gap arising from sex-based discrimination. The same holds true for government officials and policy makers. Also, outdated job descriptions, classification, and evaluation make it even more difficult to set rates of pay, since there is no reliable reference system. People simply do not understand that two different professions can be comparable based on the level of responsibility they entail which can (among other criteria) determine rate of pay.

### 4.2 Recommendations

Croatia needs:

- up-to-date gender sensitive statistics on pay and labor statistics in general;

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<sup>20</sup> Institute for Pension Insurance.

<sup>21</sup> Nestić, Daniel, *The Determinants of Wages in Croatia: Evidence from Earnings Regressions*. 2003. Zagreb: The Institute of Economics.

- a new, reliable system of job descriptions, classification, and evaluation that would form the basis of setting rates of pay; trade unions, NGOs, and the government should jointly participate in this effort. A government-funded collaborative project could be launched to this end;
- a public information campaign to raise awareness about the gender gap in equal pay; inform employers and workers about the provisions of national legislation and the Council Directive; also inform them about measures they can take against discrimination, e.g. Ombudsman, legal counseling, and so forth;
- to broaden the mandate of the Labor Inspectorate to include cases of equal pay and empower it legally to mediate in cases of discrimination.

## EQUAL TREATMENT AT THE WORKPLACE: EMPLOYMENT, TRAINING AND WORKING CONDITIONS

**Council Directive 76/207/EEC** of February 1976 on the implementation of the principle of equal treatment for women and men as regards access to employment, vocational training and promotion and working conditions. Amended on September 23, 2002 through **Directive 2002/73/EEC** of the European Parliament and of the Council.

### SECTION 1 – National Legal Framework Concerning the Principle of Equal Treatment for Women and Men

#### 1.1 General provisions

As mentioned in the section on Equal Pay, gender equality is one of the foremost values of the constitutional order of the Republic of Croatia and a ground for interpretation of the Constitution.<sup>22</sup> In exceptional and precisely defined cases, the Constitution allows for restriction of certain constitutional freedoms and rights, but this may not result in the inequality of citizens on grounds of race, color, sex, language, religion, and national or social origin.<sup>23</sup> The Constitution also guarantees everyone the right to work and to freedom of work, freedom to choose their vocation and occupation, and declares that all forms of employment and work duties are accessible to everyone under the same conditions.<sup>24</sup>

International agreements (including ILO conventions) signed and ratified in accordance with the Constitution are part and parcel of the legal order of the Republic of Croatia, and the legal force of these international treaties overrides domestic legislation. Croatia has ratified ILO Convention No.111 concerning Discrimination in Respect of Employment and Occupation.<sup>25</sup>

Article 5 of the Gender Equality Act defines the meaning of gender equality as: "...that women and men are equally present in all areas of public and private life, have equal

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<sup>22</sup> Article 3, the *Constitution of the Republic of Croatia* (amended text), the *Official Gazette*, No.41/201.

<sup>23</sup> *Ibid.*, Article 17.

<sup>24</sup> *Ibid.*, Article 54.

<sup>25</sup> *ILO Convention No.111 concerning Discrimination in Respect of Employment and Occupation*, the *Official Gazette – Međunarodni ugovori/International Agreements*, No.05/2000.

status, equal opportunities to exercise their rights, and equal benefit from the achieved results.”

The Act defines discrimination on the ground of sex and explicitly forbids this form of discrimination in the field of work and employment.<sup>26</sup>

The Labor Code<sup>27</sup> provides the general legal framework for labor issues. As a body of legislation of general interest, it is regularly applied as a subsidiary legal source for all work-related issues not regulated by special decrees.

Amendments to the Labor Code in 2003<sup>28</sup> paved the way to the harmonization of Croatian labor legislation with EU regulations *vis-à-vis* application of the principle of equal treatment for women and men regarding access to employment, vocational training, promotion, and working conditions. Through this amendment, the goal of the Council Directive 2000/78/EC of November 27, 2000 establishing a general framework for equal opportunities in employment and vocation was integrated into Croatia’s legal order. The Labor Code makes invalid all provisions of collective or individual work contracts or rules and regulations at the workplace that would result in discriminatory behavior on grounds of sex, marital status, and family obligations.<sup>29</sup>

## 1.2 The concept of discrimination on the ground of sex: definitions and legal sanctions

The Gender Equality act and the Labor Code set forth definitions of discrimination on grounds of sex and legal retribution for violating the prohibition of discrimination, and are in compliance with the provisions of the Council Directive.

Article 6, paragraph 2, of the Gender Equality Act defines discrimination on the ground of sex as follows: “[it] ...represents any normative or real, direct or indirect differentiation, exclusion or limitation based on sex, which hinders or denies equal recognition, enjoyment or exercise of human rights of women and men in the political, educational, economic, social, cultural, civic or any other sphere of life.”

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<sup>26</sup> The *Gender Equality Act*, the *Official Gazette*, No.116/2003.

<sup>27</sup> The *Labor Code*, the *Official Gazette*, No.137/2004.

<sup>28</sup> The *Amendments to the Labor Code Act*, the *Official Gazette*, No.114/2003.

<sup>29</sup> Including sex, marital status, and family obligations, the Code enumerates 17 possible areas of discrimination on the grounds of race, color, sexual orientation, age, language, political or other beliefs, national or social origin, financial status, birth, social position, political party membership, trade union membership, and physical or mental disabilities.

Article 6, paragraph 2, also sets forth prohibition of discrimination on grounds of marital or family status, and sexual orientation. Article 7 defines direct and indirect discrimination on the ground of sex, as well as procedures and legal norms that are not considered discriminatory, pursuant to the goal of Council Directive 2002/73/EC:

1. Direct discrimination exists if a person is treated or could be treated less favorably in same or similar circumstances than a person of opposite sex.
2. Indirect discrimination exists when a neutral legal norm, criterion or practice in same or similar circumstances puts a person in a less favorable position than the person of the opposite sex.
3. Legal norms, criteria, or practices that are necessary and can be justified by objective facts that are not related to sex are not considered as discrimination.”

The Act explicitly prohibits discrimination on the ground of sex in work and employment,<sup>30</sup> including conditions of employment and selection criteria for jobs, career advancement, access to all forms and levels of education, vocational training and retraining, as well as advertising for jobs.

The Labor Code defines the category of direct and indirect discrimination in the sphere of work. Direct discrimination means putting, or the possibility of putting a person in a less favorable position than another in a comparable situation, on one of the grounds of discrimination set forth by the Code (which include sex, marital status or family obligations). Indirect discrimination occurs when a seemingly value-neutral provision, criterion, or practice in concrete cases yields discriminatory effects and puts, or could put a person in a less favorable position because of some characteristic trait, status, belief or system of values that he or she possesses, on one of the grounds of discrimination set forth by the Code.

The Labor Code (as well as the Gender Equality Act) prohibits discrimination in the selection process for hiring for and during employment, and it is in compliance with the equivalent provision of the Council Directive.<sup>31</sup>

The Code also stipulates<sup>32</sup> that special conditions, decisive and truly necessary for job performance, are not to be considered discriminatory, and the same applies to practices connected to special protection of certain categories of workers (disabled persons, older people, pregnant women, and women exercising their legal rights related to the protection of motherhood, or workers exercising the rights stemming from provisions

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<sup>30</sup> Article 13 of the *Gender Equality Act*, the *Official Gazette*, No.116/2003

<sup>31</sup> Cf., point 2.1 to see where the *Labor Code* and the *Gender Equality Act* apply.

<sup>32</sup> Article 3, the *Labor Code*, the *Official Gazette*, No.137/2004.

on special parents,' adoptive parents', and guardians' rights). Provisions in Article 3 of the Labor Code enable a more systematic approach to affirmative action.

These Labor Code provisions indicate that the concept and definition of direct and indirect discrimination as set forth in Council Directive 2002/73/EC has been incorporated into Croatia's legal order. The real issue now is how these statutory measures will be implemented in practice.

In the event of discrimination, the Labor Code and the Gender Equality Act provide for compensation of damages pursuant to general provisions of the Obligations Act,<sup>33</sup> and if a wronged job seeker or employed person take their case to court, presenting evidence that substantiates probable cause regarding the occurrence of discrimination, the burden of proof that there was no discrimination shifts to the employer.

### 1.3 Legal status of harassment and sexual harassment

The Gender Equality Act and the Labor Code define harassment and sexual harassment in accordance with Council Directive 2002/73/EC. They are regulated as discriminatory practices and are therefore prohibited.

According to Article 8 of the Gender Equality Act, harassment is any unwanted behavior connected to a person's sex, whose aim is violation of his or her dignity and which creates a hostile, degrading or insulting environment. Article 4 of the Labor Code states that harassment is any unwanted behavior connected to any of the 17 legally defined grounds for discrimination, whose aim is violation of the dignity of the person in search of a job or an employee and which causes fear or a hostile, degrading or insulting environment. Sexual harassment is defined in both laws as any verbal, nonverbal, or physical behavior of sexual nature that represents a violation of dignity of a job seeker or employee and results in fear or hostile, degrading or insulting environment.

The Labor Code obliges the employer to ensure working conditions in which the employee will not be exposed to harassment or sexual harassment.

The employee needs to be protected not only from the employer, but from other supervising colleagues and employees he or she comes into contact with in the workplace. Harassment by those persons represents a violation of the work contract. The Code determines the procedures and measures to protect the employee's dignity and a timeframe (not longer than 8 days) within which the employer should investigate

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<sup>33</sup> The *Obligations Act* No.53/9, 73/91, 111/93, 3/94, 107/95, 7/96, 91/96, 112/99 and 88/01.

the employee's complaint and take adequate measures.<sup>34</sup> The employer who employs more than 20 persons is obliged to name a person who will on his or her behalf receive and resolve employees' complaints. If the employer does not take measures within the set timeframe, the employee has the right to stop working until protection is provided to him or her. In that case, as well as in case when it is not very likely that the employer will take protective measures (because the complaint implicates him or the person delegated to handle complaints), the employee has the right to request court protection within 8 days. The burden of proof that the employee's dignity was not violated, that is, that harassment or sexual harassment did not occur, lies with the employer. During the period the employee does not work, which can last until the employer takes necessary measures or until the end of the lawsuit, the employee receives pay as if he or she were on the job.

## SECTION 2 – Implementation of the Principle of Equal Treatment for Women and Men: Legal Foundations and Institutional Structures

### 2.1 General presentation

The Gender Equality Act and the Labor Code prohibit discrimination on the ground of sex in the sphere of employment and work.

Discrimination is prohibited both in the public and private sector, every sphere of activity, and all levels of professional hierarchy. The principle of equal treatment regardless of the person's sex applies to:

1. conditions of employment, self-employment and practicing a profession, including criteria and requirements for the selection of candidates for jobs;
2. career advancement;
3. access to all forms and levels of education, vocational orientation, training and retraining;
4. conditions of employment and work, all rights derived from work, and on the basis of work, including equal pay.<sup>35</sup>

As regards advertising for employees, the Gender Equality Act obliges the employer to clearly indicate that persons of both sexes can apply for the advertised job.

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<sup>34</sup> These measures are defined through the collective bargaining agreement, the agreement between the workers' council and employer, or rules and regulations in the workplace.

<sup>35</sup> Article 13, the *Gender Equality Act*, and Article 2, the *Labor Code*.

Beside the judicial system, the Gender Equality Ombudsman, the Parliamentary Committee for Gender Equality, and the Croatian Government's Office for Gender Equality provide the principal institutional framework for implementing the legal principles of protection from discrimination on the ground of sex and creating equal opportunities for women and men. At local government level, county committees for gender equality have been established therefor.

The Gender Equality Ombudsman reviews cases of violation of the principle of gender equality, cases of discrimination against individuals or groups of individuals committed by any legal or natural persons, including state administration bodies, local and regional government entities, and other public authority bodies.<sup>36</sup> The Gender Equality Ombudsman works independently and monitors implementation of the Gender Equality Act and other regulations related to gender equality.

In case of violation of the principle of gender equality, anyone can contact the Gender Equality Ombudsman, regardless of whether they have been directly wronged, unless the wronged party explicitly opposes such action.<sup>37</sup> The number of individual interventions by the Ombudsman in 2004 was 88, rising sharply in 2005 (the report will be completed in March 2006). The total number of interventions to date is 2,000, including media monitoring, advertising in the media, working plans of local governments, and so forth.

The Croatian Government's Office for Gender Equality coordinates all activities whose aim is achieving gender equality and provides professional help in the implementation of the Gender Equality Act and other regulations related to gender equality. The Office also cooperates with nongovernmental organizations addressing issues of gender equality and provides a part of the funds for their projects or activities.

There is also a Labor Inspectorate, but it does not have a mandate to handle equal treatment cases. The Labor Inspectorate can intervene in *some* cases of violation of the provisions of the Labor Code (such as health and safety, unfair dismissals, etc.) but not in all types of violation, including that of the equal pay principle.

## **2.2 Available legal procedures in cases involving the violation of the principle of equal treatment for women and men**

Although in 2003 the amendments to the Labor Code and the newly enacted Gender Equality Act presented significant conceptual novelties, which introduced European standards of gender equality into the Croatian legal system, particularly by

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<sup>36</sup> Article 21, the *Gender Equality Act*, the *Official Gazette*, No.116/2003.

<sup>37</sup> *Ibid.*

strengthening antidiscrimination measures in the sphere of employment and work, there is still no systematic court practice related to these issues.

It has already been mentioned that, in cases of discrimination, all persons enjoy court protection, and the burden of proof lies with the employer. The person who was discriminated against in employment or at the workplace can request compensation for damages according to general regulations of the Obligations Act. The Labor Code and the Gender Equality Act stipulate that in case of discrimination a person is entitled to compensation, according to the provisions of the Obligations Act.<sup>38</sup> In all labor disputes, workers are exempted from paying court costs.

However, labor disputes in Croatia last up to several years, so that to date there is no relevant court practice on issues of protection against discrimination and amount (that is, fairness) of compensation. In addition to the right to court protection against discrimination, every person, even if he or she is not directly wronged, can turn to the Gender Equality Ombudsman for help.

As mentioned above, trade union members have the right to pro bono legal aid and representation in court by the trade union legal representative in all labor disputes.

Because of the employer's legal obligation to protect the dignity of the employee in performing work, take preventive measures, and secure working conditions that will prevent their exposure to harassment and sexual harassment, as well as to address issues concerning the prohibition of discrimination in general documents of the company/institution, in case of violation thereof, the employee can request protection from the employer/person in charge of receiving and handling employee's complaints, the Workers' Council or trade union. If even after a timely complaint the employee still does not receive protection, he or she has the right to stop working under the condition that he or she has requested court protection for within 8 days therefrom and has notified the employer about it within 8 days.

Besides the trade unions, a person can present a case before the Ombudsman for Gender Equality, who can play a facilitative/mediative role between the parties. Also, a person can turn to nongovernmental organizations for advice and counseling on how to proceed, but the latter cannot represent him or her in court. Legitimated interest is not a necessary condition for the intervener (NGO or other organization who supports the complainant). The NGO can be part of the process as an intervener, but cannot legally represent the complainant.

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<sup>38</sup> Articles 5, 6, 109, the *Labor Code*; Article 27, the *Gender Equality Act* and the *Obligations Act* Nos 53/9, 73/91, 111/93, 3/94, 107/95, 7/96, 91/96, 112/99 and 88/01.

### 2.3 Protective measures with regard to women's participation in the labor market

The employer cannot refuse to employ a woman because of her pregnancy, to fire or transfer her to another job, unless she herself requests it, under the conditions set forth in Article 64 of the Labor Code. During pregnancy and maternity leave, that is, if the employee is exercising any of the rights on the basis of protection of motherhood, she cannot be fired on any grounds. This absolute ban on giving notice is extended for 15 days after the expiration of any of the rights on the basis of protection of motherhood (both in cases of termination of pregnancy and of maternity leave).<sup>39</sup> The prohibition on firing does not apply to nonpermanent work contracts. This contract expires after the period for which it was concluded (which includes pregnant women and women on maternity leave, if they have nonpermanent work contracts). After maternity leave or working shorter hours, the employee is entitled to return to her previous job, and in case the need for this position no longer exists, the employer is obliged to offer her/him other equivalent positions.<sup>40</sup>

No specific legal provision stipulates that a woman returning to her job from maternity leave must benefit from any improvement in working conditions, but any improvement in working conditions automatically benefits all the employees, including women on maternity leave.

### 2.4 Prohibition of dismissal

According to Article 115 of the Labor Code, filing a complaint against the employer, that is, taking part in proceedings against the employer because of his or her violation of law, collective agreement, or other rules and regulations, as well as contacting the appropriate executive governmental bodies, does not represent a justified reason for the termination of the work contract. Workers' representatives in the Board of Supervisors and members of the Workers' Council are protected from dismissal as well. The employer can dismiss them only with the approval of the Workers' Council.<sup>41</sup> Also, during his or her mandate and six months thereafter, the trade union representative cannot terminate the work contract without the trade union approval.<sup>42</sup>

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<sup>39</sup> Article 77, the *Labor Code*.

<sup>40</sup> *Ibid.*, Article 79.

<sup>41</sup> *Ibid.*, Article 153.

<sup>42</sup> *Ibid.*, Article 190.

## 2.5 Women's and men's jobs

There are no legal regulations about jobs that would prohibit women's access to certain types of employment. Further, in accordance with the above mentioned provision of the Gender Equality Act, in advertising for employees, employers are obliged to show that advertised jobs are accessible to both men and women.

## SECTION 3 – Gender Equality Bodies

### 3.1 Name of the body and date of establishment

The Gender Equality Ombudsman was appointed by the Croatian Parliament in October 2003.<sup>43</sup> The Office for Gender Equality was established by the Croatian government by its decree on February 3, 2004.<sup>44</sup> The head of the Office was appointed by a Government Decision in March 2004.<sup>45</sup>

### 3.2 Legal basis of functioning

The Gender Equality Act, enacted in July 2003, is the legal document serving as the basis of functioning of both the Gender Equality Ombudsman and the Office for Gender Equality.

### 3.3 Mandate and activity objectives

The Office for Gender Equality was founded as an expert body of the Croatian Government for performing expert and administrative work related to the goal of achieving gender equality in the Republic of Croatia.

The purpose and functions of the Office for Gender Equality are defined in Article 18 of the Gender Equality Act. The Office performs expert work and coordinates all activities aimed at achieving gender equality and provides professional help in the implementation of the Gender Equality Act. The Office approves the implementation of action plans for promoting and achieving gender equality, which state bodies, legal

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<sup>43</sup> The *Decision on the Appointment of the Gender Equality Ombudsman*, the *Official Gazette*, No.157/2003.

<sup>44</sup> The *Decree on the Office for Gender Equality*, the *Official Gazette*, No.18/2004.

<sup>45</sup> The *Decision on the Appointment of the Head of the Office for Gender Equality*, the *Official Gazette*, No.27/2004.

persons with public authority, as well as predominantly state owned legal persons and local and regional government are legally required to develop. It can also recommend to the Croatian Government and other state bodies new laws and amendments, and other regulations or measures. The Office develops a national policy for the promotion of gender equality and monitors its implementation, conducts research and analysis, monitors the implementation of laws and other regulations concerning gender equality and their concordance with international documents, and prepares national reports on fulfilling international requirements in this area. The Office is also supposed to cooperate with NGOs addressing issues of gender equality and ensure (a part of) the funds for their projects/activities, as well as promote knowledge and awareness of gender equality.

The Gender Equality Ombudsman reviews cases of violation of the principle of gender equality, cases of discrimination against individuals or groups of individuals committed by state administration bodies, local and regional government, and other public authority bodies, their employees and other legal and natural persons. The Ombudsman is authorized to admonish, suggest and give recommendations, and if he or she discovers that the provisions of the Gender Equality Act have been violated and there are elements of a criminal act, files a complaint to the State Attorney's Office. The Ombudsman has the right to submit proposals to institute proceedings for establishing the constitutionality of acts of law, that is, constitutionality and legality of other regulations, if he or she believes that the principle of gender equality has been violated, and to initiate changes of regulations that are not in compliance with the Gender Equality Act.

In performing his or her duty, the Ombudsman is entitled to request and receive all relevant information and access to documentation regardless of the degree of their confidentiality.<sup>46</sup>

### 3.4 Level of independence

The Croatian Government has established the Office for Gender Equality and appointed its head.

The Gender Equality Ombudsman is appointed and dismissed by the Croatian Parliament upon the initiative of the Croatian government, and his or her deputy is appointed and dismissed by the Ombudsman. The Ombudsman and his or her deputy are state officials, are appointed for the mandate of eight years and can be reappointed.

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<sup>46</sup> Articles 21, 22, 23, 24, the *Gender Equality Act*.

They must be of the opposite sex. According to the Act,<sup>47</sup> the Ombudsman is independent and autonomous in his or her work and submits a report to the Croatian Parliament at least once a year.

Accordingly, the institution of the Gender Equality Ombudsman is more autonomous and independent of the government's influence. However, if Parliament rejects its Annual Report, the Ombudsman can be relieved of duty before the expiration of his/her mandate (for which a majority of parliamentary votes is required).

### 3.5 Financial resources

Both bodies for gender equality are financed from the state budget, so that their effectiveness depends on the funds they have at their disposal (especially with regards to necessary research and analysis of different aspects of gender equality that are missing). The budget of the Ombudsman has not yet been determined, but it will probably stay at the 2004 level (between HRK 2 and HRK 3 million or EUR 270,000 and EUR 400,000).<sup>48</sup>

### 3.6 Role and functions

The Office for Gender Equality and the Gender Equality Ombudsman are primarily engaged in the promotion of gender equality and protection from discrimination on the ground of sex. However, their scope of work does not embrace only work and employment, but is much broader and encompasses equal participation of women and men in all arenas of public life. This implies a gradual increase in the number of employees of the underrepresented sex in bodies of legislative, executive, and judicial power, and in civil service; in appointing officials in state bodies and local and regional government; in appointing members of committees, commissions, and delegations representing Croatia at the international level.

The goal is to achieve equal and balanced representation of women and men both in political party bodies and on lists of candidates for the national elections (running for Parliament) and local elections (election into bodies of local and regional government). The issues of gender equality in the educational system (from elementary to higher education), in all forms of life-long learning, elimination of gender inequality and stereotypes from education on all levels, and ensuring equal representation of the sexes

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<sup>47</sup> Article 21, the *Gender Equality Act*.

<sup>48</sup> There is no available data for the Office for Gender Equality.

in the student population and in the teaching profession, are also important concerns in their work.

### 3.7 Concerns. Overview

Since these institutions and legislative mechanisms are relatively new, reliable results are still not visible. So far it would seem that the Croatian Government's Office for Gender Equality has a somewhat "narrow" administrative orientation in its work. For example, state bodies, legal persons with public authority, predominantly state owned legal persons and local and regional government are obliged to apply special measures and develop action plans in order to promote and achieve gender equality. It is often the case they do not understand what exactly is expected of them, what these plans should include, and what special measures are envisioned. The Office needs to provide them with far more effective professional help than has so far been the case.

The Gender Equality Ombudsman has on several occasions made important interventions and public appearances and this is what yields results. For example, today almost all job advertisements avoid mentioning one of the sexes (as a rule, men) as being the desirable candidate for a job. Only a year ago, this was a common practice. NGOs dealing with gender equality and protection of women's human rights have established a more successful cooperation with the Ombudsman than with the Office for Gender Equality. For example, this year the Ombudsman, in cooperation with the Women's Section of the Association of Independent Trade Unions of Croatia and other Croatian women's sections in trade unions, organized a survey on the protection of women's dignity at the workplace by researching attitudes and experiences of women related to harassment and sexual harassment. The analysis of the survey results is in progress.

The public is also familiar with some of the interventions made by the Gender Equality Ombudsman about advertising slogans in the media that violate the principle of gender equality.

In conclusion, the role of the Gender Equality Ombudsman and the Office for Gender Equality is to raise public awareness of issues of equality and discrimination on the ground of sex and influence the change of the patriarchal *status quo* as well as the cultural patterns and social practices that reproduce it.<sup>49</sup>

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<sup>49</sup> The Ombudsman works with a staff of ten (eight with university education and two with high school education). The Office of Gender Equality employs are staff of four (all with university educations). Over the next year two more positions will be opened and an understudy will be appointed.

## SECTION 4 – Factual Background with Regard to the Principle of Equal Treatment for Women and Men: Related Research and Statistics

### 4.1 Research and statistics on women's access to and presence in the labor market

Official statistical data on employment and unemployment merely supports the fact that gender (women) and age (over 40) are the main limiting factors in getting employment or, in other words, are the most common elements of the negative selection of job candidates. The majority of unemployed persons are in general women, and in this respect Croatia is no exception. However, a much greater concern is the constant increase in the number of unemployed women in recent years. In 2000, women represented 52.6 percent of the unemployed, their ratio rising to 59 percent in 2005.<sup>50</sup>

In the past five years, the ratio of women among the employed population has been more or less steady, varying between 44.5 percent and 45.5 percent.

Most recent data (September 2005) collected by the Central Bureau of Statistics shows that women account for 45.1 percent of the employed, and 59 percent of the unemployed. The rate of registered unemployment for men is 13.4, versus 21.3 for women.

However, data from the Labor Force Survey somewhat deviates from the data on registered employment and unemployment because of different methodology,<sup>51</sup> but also reveals women's unfavorable labor market position.

According to the Croatian Employment Bureau, the rate of employment and unemployment disaggregated by sex is as follows:

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<sup>50</sup> Croatian Unemployment Bureau.

<sup>51</sup> The Survey uses ILO methodology, i.e. defining an employed person as one who has worked at least one hour in the week before the conduct of the survey, whereas the Croatian Unemployment Bureau simply registers the unemployed.

**Employment and unemployment rate, total and disaggregated by sex**

	Total			Men			Women		
	06-12 2003.	06-12 2004.	01-06 2005.	06-12 2003.	06-12 2004.	01-06 2005.	06-12 2003.	06-12 2004.	01-06 2005.
Activity rate	50.2	49.9	49.9	51.8	57.2	57.3	43.3	43.4	43.3
Employment rate	43.0	43.0	43.3	50.3	50.4	50.2	36.5	36.4	37.3
Unemployment rate	14.4	13.8	13.1	13.3	11.9	12.4	15.7	16.0	13.9

Source: *Analytical Newsletter*. Croatian Employment Bureau, No.2/2005

Data on employment of older persons also reveals a much lower employment rate for older women (55 to 64 years of age) than for older men in the labor market. In 2004, only 21 percent of these women, versus 40.6 percent of men were employed.<sup>52</sup>

Generally speaking, the position of Croatian women and men, when it comes to prospects of finding employment, is similar, in the sense that they both face difficulties despite their qualifications (although the situation for women is ever more difficult).

For example, the ratio of young people (15 to 24 years of age) among the unemployed is disturbing, especially the ratio of young women. In 2004, men accounted for 29.7 percent, women for 38.3 percent of the overall ratio of unemployed young people (33.4 percent).<sup>53</sup>

In the given circumstances of high overall unemployment, the position of women as a more vulnerable group in the labor market, is even worse, and they have less of a chance of finding a job.

Women's employment largely depends on the share of the "women's" sector in the national economy (light industry and service sector), that is, the economic position of predominantly "female" branches. For example, when the textile industry (predominantly a "female" industry) faces difficulties then women's employment situation deteriorates.

Trends and data about the ratio of women among the employed in the early-1990s, show that the period of so-called intensive transition (meaning massive closing down of companies or even whole branches of industry) had worked in favor of women due to the fact that they had mostly been employed in the service industry, which was at that

<sup>52</sup> Source: *Analytical Newsletter*, Croatian Employment Bureau, No.2/2005.

<sup>53</sup> Ibid.

time less affected by the recession. Thus, segregation by sex in the professions (a predominantly female workforce in civil service and service sector) and slower deterioration of the social infrastructure (education, health care, etc.) protected women from losing their jobs.

It is seemingly paradoxical, however, that a relative economic recovery over the past five years had a negative impact on women's labor market position. This is not surprising, since in times of relatively positive economic trends, male workers find jobs more easily and more quickly. Secondly, deconstruction of the welfare state further aggravates the position of women, in two ways: the public and social service sector (that mostly employs women) is slimmed down (reform of the service sector leads to parts of it being cut off, whereas future privatization of publicly owned companies would further deteriorate women's labor market position), and consequently limits the women's opportunities to find jobs. On the other hand, those women who hold on to their jobs lose vital social services that help them in balance their professional and family obligations. Thirdly, the overall impoverishment of a population dependent on the labor market prevents use of private services of this kind (because they are expensive) and hinders greater expansion of private initiative in this area.

The network of kindergartens and childcare facilities is an important indicator of the integration of women into the labor market. In Croatia, a mere third of all children can be accommodated in kindergartens.

Research and estimates about the informal economy dating from 2000<sup>54</sup> show that illegal employment of workers is most present in predominantly „female” sectors: commerce and health care (in private social and health care institutions).

This raises many questions: do women mostly choose jobs that offer less possibility of advancement? Are women less interested than men in higher positions, better pay, better possibilities of acquiring additional knowledge? Do they have other priorities? Are those priorities self-chosen or externally imposed?

The survey conducted by the Women's Section of the Association of Independent Trade Unions of Croatia in cooperation with the Section for Unemployed Persons in May 2005 clearly shows the position of younger unemployed women and their experiences in looking for employment.

Most frequent questions that employers as a priority ask in job interviews are: Are you married? Do you have a husband/boyfriend? How old are you? Do you have any obligations that would prevent you from working long hours if needed? How many

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<sup>54</sup> *Financijska teorija i praksa*, br. 1/2002, Neslužbeno gospodarstvo u RH (Financial Theory and Practice, No.1/2002, Informal Economy in the Republic of Croatia, collection of works).

children do you have and how old are they? Do you have anyone to take care of your children while you work? Do you have a car? Do you live far from the office?

Typical women's responses about their experiences in searching for a job:

1. There are very few „normal” employers who believe qualifications, motivation, working experience and willingness to learn are important for job performance.
2. Respectable companies do not ask questions about private matters in job interviews, but these are rare.
3. Employers mostly offer fixed-term employment contracts (poor working conditions, often unpaid overtime work and so on).
4. It is common practice not to cover social insurance or register the employee without his or her knowledge as a part-time worker (4 hours a day).
5. One typical answer (received by e-mail): “You are too old and have more experience for the job than we need.”

Although the number of persons employed as part-time workers in 2004 is, in total, negligible, it is suggestive that the majority are women (67.8 percent). A possible risk is that, if greater flexibility<sup>55</sup> is practiced in the near future, women will be much more vulnerable in this respect than their male colleagues.

Lastly, gender sensitive statistics of the labor market are incomplete, so there is no data on nonpermanent or indefinite work contracts by gender. There are no special measures to actively encourage women's labor market participation. The National Action Plan for Employment for 2006 is in the process of being adopted, but the budget for active changes in the employment sector is being cut.

## 4.2 Women in the labor market after maternity leave

After maternity leave, the employer is obliged to return the female employee to the job she performed before prior thereto or offer her another one equivalent to her former position. To date, most employers have complied therewith.

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<sup>55</sup> As shown, more women than men work in part-time jobs. However, many employers do not ascribe to part-time work the same value as to full-time jobs, and that hurts women in the labor market.

Mandatory maternity leave lasts for 6 months, and can be extended until the child is one year old (for twins, the third and every next child until the child reaches the age of three).<sup>56</sup>

For women who have a nonpermanent work contract, employment is terminated after the period for which the contract was concluded. The employer decides whether or not he or she will extend the contract for the woman returning from maternity leave. Research conducted by the NGO TOD in Zagreb in 2003 showed that a growing number of professional women employed in highly-paid positions with private companies are giving up their right to maternity leave of 6 months or a year and returning to their jobs at their own request after 42 days (the minimum prescribed by the law, in accordance with the ILO Convention).<sup>57</sup> By contrast, in lower paid positions, in private companies, women do take up their 6 to 12 month maternity leave.

### 4.3 Discriminatory job advertisements

In Croatia, there is no research on discriminatory job advertisements.

Owing to the provision of the Gender Equality Act stating that in advertising for employees, advertisements must clearly show that both sexes can apply and due to persistent interventions by the Gender Equality Ombudsman employers pay attention not to publicly give preference to either of the sexes in the advertisements. However, this does little to prevent employers from discriminating against women with family obligations in practice, in job interviews (see 4.1.).

### 4.4 Sexual harassment

Although the law protects women from sexual harassment at the workplace, they rarely report such behavior. Trade union experiences<sup>58</sup> show that, even in those cases when a woman decides to report sexual harassment, she requests “discrete” intervention from the trade union and refuses to use all the mechanisms that the Labor Code and Gender Equality Act offer her. The reason is fear of losing a job, a feeling of unease and shame, and many times lack of knowledge and information about her rights.

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<sup>56</sup> In the case of twins maternity leave can last until the children are three years old. Each time, maternity leave can last until the most recently born child reaches the age of three.

<sup>57</sup> Research by Smiljana.

<sup>58</sup> This experience comes from the cases that the author of the report as well as her colleagues have encountered.

That is why the Gender Equality Ombudsman has in cooperation with the Women's Section of the Association of the Independent Trade Unions decided to organize an extensive survey on harassment and sexual harassment at the workplace. The accompanying leaflet contains basic information about rights, legal mechanisms, and protection. The research is about a poll in which only women participate. There are two groups of questions: the first group refers to personal opinions and the second to personal experiences.<sup>59</sup>

## SECTION 5 – Conclusions. Areas of Concern. Recommendations

### 5.1 Conclusions

Discrimination against working women and in employment is often hidden, not clearly and immediately visible, but it exists and can be direct and indirect.

Women are mostly employed in lower-paid sectors (service industry, labor-intensive industries, e.g. textile industry), constitute a disproportionate majority among part-time employees, can expect slower career advancement than men (only 6 percent of top managers are women) young women are less desirable employees because of (implied) family obligations and motherhood. Women's experiences in searching for a job (confirmed by data) show that they are treated less favorably and this plays a role in limiting employment opportunities and career advancement.

Research on problems related to gender equality and different aspects of (existing) discriminatory practices is lacking. The statistical data does not adequately measure new elements and demands and are not gender-sensitive enough. Additionally, the statistics accessible to the public are not up-to-date (for example, most recent statistical data on average pay disaggregated by gender is from 2003).

Flexible and nonstandard forms of work that could stimulate a greater participation of women in the labor market go unrecognized by the employers (although the law allows them). Although these nonstandard forms of work could help women balance business and family life, they also carry the risk of confining women in nonstandard forms of employment, which may mean greater job insecurity, lower pay, lower chances of career advancement, greater exploitation, and possibly (and only seemingly paradoxically) increased workload and professional strain (working for more employers because of insufficient income).

With regards to the implementation of the provisions of the Council Directive, via the Labor Code and the Gender Equality Act, it will take some time before the effects of

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<sup>59</sup> The poll analysis is in progress and no results are yet known.

these legal norms become visible, and it is likely that their actual enforcement via the court system will be difficult, especially in lawsuits related to indirect discrimination. To date, court decisions have not provided a common consensus on the understanding of indirect discrimination, particularly in cases of vulnerable groups, such as women in the labor market, so it is difficult to use this experience and see how it works in practice or what lessons it proffers.

## 5.2 Recommendations

- It is necessary to insist on the introduction of gender-sensitive statistics in all areas, including the labor market, and to stimulate research on these issues.
- As regards employers' associations and trade unions, it is important to raise their level of knowledge and awareness and improve information about direct and indirect discrimination.
- It is also essential to strengthen institutional mechanisms, for example the role of the Labor Inspectorate, so that it will have the authority to act legally in cases of discrimination, secure sufficient funds, and reform the judicial system by, for example, educating judges to become more gender sensitive.
- Croatia needs public policies and financially affordable social services that will relieve the double burden from working women (professional and family obligations) and facilitate their return to professional work after maternity leave.
- To discuss and promote forms of flexible education (life-long learning), to empower women in the labor market.
- To discuss and develop a program for integrating women within nontraditional professions and introducing special measures for employing single mothers.
- To encourage women's entrepreneurship, among other spheres, in services for family (despite being a traditionally female occupation, it is a sector where woman entrepreneurship is strong).

## **PREGNANCY AND MOTHERHOOD PROTECTION**

1. **Council Directive 92/85/EEC** of October 19, 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding.

Measures and Improvements at Work of Pregnant Workers, Workers Who have Recently Given Birth, or are Breastfeeding

### SECTION 1 – Legal and Conceptual Framework

Croatian legislation sets forth no official definition of “pregnant woman,” but if a woman is pregnant and she wants to make use of her motherhood rights, she needs to inform her employer and submit a physician’s certificate verifying the fact of pregnancy, breastfeeding, etc.

The Labor Code has devoted an entire chapter of 17 articles to the protection of women and motherhood. The law does not allow the employer to ask women information about their pregnancy, either at the time of entering into the work contract or during employment. Further, pregnancy cannot be a reason to turn away a job applicant and refuse to employ her. An employer cannot for any reason dismiss a pregnant woman with an indefinite term work contract (protection in this case is absolute).

However, in certain cases it will be in the interest of the pregnant woman to inform the employer of her pregnancy and submit a physician’s certificate, so that she can exercise the legal rights protecting pregnant and breastfeeding women (prohibition on termination of employment; request to be transferred to other jobs if the current job endangers her or her baby’s life or health; the right for a breastfeeding break, etc.).

Accordingly, in order to be granted these legal rights, the woman has to inform the employer of her pregnancy and submit proof (physician’s certificate).

## SECTION 2 – Assessing the Risk to the Safety or Health of a Pregnant Worker and the Employer’s Obligations

### 2.1 Assessing the risk to the safety or health of a pregnant worker

In accordance with the ILO Convention No.45<sup>60</sup> Croatia’s Labor Code stipulates that a woman may not perform heavy physical work, underground or underwater work, and other jobs that, taking into account her psychological and physical condition, significantly endanger her life and health.<sup>61</sup> This general legal provision is elaborated in greater detail in the Jobs Not to be Performed by Women Act.<sup>62</sup> The Act also sets forth special protections for pregnant and breastfeeding women from health risks.

In its section on jobs not to be performed by a woman the Act lists 19 groups of jobs not to be performed by a pregnant woman.<sup>63</sup> Professions, jobs (fireman, jobs performed at great altitudes) and work conditions in which a pregnant woman should not work are strictly defined: unfavorable microclimate/high temperature/high relative humidity/coldness; noise above 90 dB; height; exposure to vibrations and quakes; exposure to ionizing radiation; microwave radiation and specific chemical and biological agents. Names of chemical and biological agents are also listed. These jobs are not to be performed by a woman from the day she submits to the employer the document confirming her pregnancy issued by an authorized physician. The Act also lists jobs not to be performed by a breastfeeding woman (jobs exposing her to pesticides based on chloride hydrocarbons; halogen derivatives of carbohydrates; lead and its inorganic and organic compounds).<sup>64</sup>

Legal protection of pregnant and breastfeeding women from health risks that could endanger their or their babies’ health has been harmonized with Council Directive 92/85/EEC.

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<sup>60</sup> Article 63, *ILO Convention No.45 on Employment of Women at Underground Works in Mines of All Categories*, the *Official Gazette* – International Agreement, Nos.6/1995 and 1/2002.

<sup>61</sup> Prohibition of work underground does not apply to women performing supervising jobs and health and social care functions, to students and interns who in the course of their education or vocational training have to spend a period of time in underground parts of the mines, and women who have to do the same in order to perform non-manual jobs (Source: the *Labor Code*).

<sup>62</sup> The *Jobs Not to be Performed by Women Act*, the *Official Gazette*, No.44/1996.

<sup>63</sup> Article 4, the *Jobs Not to be Performed by Women Act*.

<sup>64</sup> *Ibid.*, Article 5.

## 2.2 Employer's obligations

A pregnant or breastfeeding woman must not perform jobs or work in conditions that endanger her or her baby's life and health, as set forth in the Labor Code and the Jobs Not to be Performed by Women Act. She can be temporarily transferred to other jobs at her own request or the employer's decision, if her health demands it, as established by a relevant physician.<sup>65</sup>

The employer is legally obliged to assess the nature of the exposure and transfer the pregnant and breastfeeding woman to another job if she performs jobs hazardous to her or her baby's life or health. In case of dispute, the only relevant opinion is the physician's statement about whether this workplace is appropriate for a pregnant woman or not. Temporary transfer to another position must not result in loss of pay.

If a pregnant/breastfeeding woman works for an employer employing 5 or less persons, and it is not possible to transfer her to other appropriate jobs that do not endanger her or her baby's health, she has the right to paid leave. This right is regulated by the Conditions and Procedures for Exercising the Pregnant or Breastfeeding Woman's Right to Leave from Work Act.<sup>66</sup>

The amount of pay she receives in such situations is determined by health insurance regulations. For a breastfeeding woman, this protection lasts until she stops breastfeeding (there is no fixed amount of time).

If the employer does not comply with these legal provisions and provisions of the Jobs Not to be Performed by Women Act and leaves a pregnant or breastfeeding woman in a job she is not allowed under the law to perform, he or she will be guilty of a misdemeanor and will be punishable with a heavy fine: EUR 8300 to EUR 13.500. (Under Croatian law this is one of the gravest offences an employer can commit).<sup>67</sup>

The employer must not request over-time or rescheduled full time work from a pregnant woman, mother with a child less than 3 years of age, or a single parent with a child of less than 6 years of age, without his or her written consent.<sup>68</sup>

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<sup>65</sup> Article 65, the *Labor Code*, the *Official Gazette*, No.137/2004.

<sup>66</sup> The *Conditions and Procedures for Exercising the Pregnant or Breastfeeding Woman's Right to Leave from Work Act*, the *Official Gazette*, No.103/1996.

<sup>67</sup> Article 248, the *Labor Code*.

<sup>68</sup> *Ibid.*, Articles 41 and 43.

### SECTION 3 – Cases in which Exposure is Prohibited for Pregnant Workers and Workers who have Recently Given Birth

The Jobs Not to be Performed by Women Act (Section 2; 2.1.) forbids pregnant and breastfeeding women from performing work that would expose them to physical, chemical or biological agents listed in Annex II.

### SECTION 4 – Night Work

Croatia has not ratified the ILO Conventions No.89 (concerning Night Work of Women Employed in Industry) and No.171 (concerning Night Work). The Labor Code includes a partial prohibition of night work of women employed in industry (Article 60), and special cases and exceptions<sup>69</sup> (Article 61). Pregnant women, mothers with children under 2 years old, and single mothers with a child less than 3 years of age, can be exempted from the prohibition of night work at their own request. The employer cannot order them to work at night, unless they request so themselves. Accordingly, the employer is obliged to transfer pregnant women and mothers with small children to day shifts.

There is absolute prohibition of night work for parents of children with developmental problems who avail themselves of their right to shorter work hours.<sup>70</sup>

The Ministry of Labor and county offices for labor issues are obliged to check the implementation of security and protection measures at workplaces. If the employer, contrary to Labor Code provisions, orders night work for a pregnant woman or mother of a child under 2 years old (for single mothers, with a child under 3 years old), the labor inspector will file misdemeanor charges, and the employer will be punishable with a heavy fine (this is one of the gravest offences an employer can commit).<sup>71</sup>

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<sup>69</sup> Articles 60, 61, the *Labor Code*, the *Official Gazette*, No.137/2004.

<sup>70</sup> Article 73, paragraph 7, the *Labor Code*.

<sup>71</sup> Article 248, the *Labor Code*.

## SECTION 5 – Maternity Leave and Time Off for Ante-Natal Examination

Besides the Labor Code, the right to maternity leave is regulated by the Act on the Changes and Amendments to the Maternity Leave for Self-Employed and Unemployed Mothers Act<sup>72</sup> and the Act on the Changes to the Health Insurance Act.<sup>73</sup>

A woman can go on a maternity leave 45 days before the expected date of delivery, but she must begin to use it at least 28 days before her expected delivery date. The expected delivery date is anticipated by the physician. Under Croatian law, mandatory maternity leave can last for up to 6 months from childbirth, although the mother can, at her own request, return to work sooner, but not earlier than 42 days after delivery. Subsequently to mandatory maternity leave, a woman can use additional leave during the baby's first year of life (if the child is born prematurely, maternity leave is extended for the number of days that the child was prematurely born). After mandatory maternity leave, the right to additional leave can also be used by the child's father. In case the father uses the additional leave for at least three months, the leave is extended for another two months. The right to a longer maternity leave (from the baby's first year until 3 years of age) is reserved for mothers of twins and mothers for their third or every next child.<sup>74</sup>

Taking into consideration the high level of legal (that is, mandatory) protection of motherhood, provisions on mandatory maternity leave do not form part of collective bargaining agreements. As the right to maternity leave is guaranteed by act of law, it is not part of work contracts.

The benefit received during mandatory maternity leave (for six months after childbirth) is 100 percent of the mother's average pay for the previous six months, but it cannot be lower than HRK 1,600 or higher than HRK 4,250 (for full-time jobs),<sup>75</sup> The benefit received for maternity leave from 6 months to the child's first birthday varies from HRK 1,600 to HRK 2,500 (depending on the amount of compensation paid during the first six months of the child's life). The benefit received for maternity leave from the child's first to its third birthday (for twins, third and every next child) is HRK 1,600.<sup>76</sup>

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<sup>72</sup> The *Act on Changes and Amendments to the Maternity Leave for Self-Employed and Unemployed Mothers Act*, the *Official Gazette*, No.30/2004.

<sup>73</sup> The *Act on Changes to the Health Insurance Act*, the *Official Gazette*, No.30/2004.

<sup>74</sup> Article 65, the *Labor Code*.

<sup>75</sup> The *Act on Changes in the Health Insurance*, the *Official Gazette*, No.30/2004.

<sup>76</sup> The *Execution of the State Budget of the Republic of Croatia Act*, the *Official Gazette*, No.31/2004.

According to health insurance regulations, women with health problems during pregnancy, who are required to take a leave of absence from work on the ground thereof, receive a benefit equivalent to their full pay (based on average pay for the prior 6 months).

In practice, if a woman needs a prenatal check up, she can simply provide a physician's certificate and take the necessary time off.

## SECTION 6 – Prohibition of Dismissal and Defense Rights

Pregnant women and mothers on maternity leave with indefinite term work contracts cannot be dismissed on any grounds. This is an absolute prohibition of dismissal, as long as the employee exercises any of the rights protecting motherhood. This principle is adhered to in court of law.<sup>77</sup>

Additional protection of a pregnant woman and parent using the rights that protect motherhood is set forth by the legal provision that, to include these categories in programs of providing for excess labor (in cases of company restructuring), permission from the worker's council is required.<sup>78</sup> Termination of employment will be invalid if, on the day the employment was terminated, the employer was aware of the circumstances that prevent termination of work contract, or if the employee, within 15 days from the termination of work contract, informs the employer about these circumstances (for example, pregnancy) and submits a certificate from an authorized physician.<sup>79</sup> If the employee became pregnant during the notice period or one of the child's parents started exercising some of the rights set forth by the law, the period of notice is postponed for after pregnancy and the expiration of the right in question.<sup>80</sup>

If the employee has a definite-term employment contract, employment is terminated when the time defined in the contract expires, regardless of pregnancy or maternity leave.

In case of bankruptcy, these categories of employees are not protected from termination of employment.

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<sup>77</sup> Supreme Court of the Republic of Croatia, Rev. 1805/01.

<sup>78</sup> Article 153, the *Labor Code*.

<sup>79</sup> *Ibid.*, Article 77.

<sup>80</sup> Article 118, the *Labor Code*.

## SECTION 7 – Conclusions. Areas of Concern. Recommendations

### 7.1 Conclusions

Legal protection of pregnant women and motherhood in Croatian legislation is well-structured and is in compliance with Council Directives. Employers for the most part comply with legal protections for pregnant and breastfeeding workers and working mothers of small children and there are very few lawsuits related to this issue. However, as regards complaints filed by labor inspectors to the Misdemeanor Court, in most cases the statute of limitations expires before a verdict is handed down because of the inefficiency of the judiciary. The principal issue at hand is that the majority (84 percent) of newly employed persons enter into nonpermanent work contracts, even though the Labor Code stipulates that nonpermanent work contracts may only be entered into in special circumstances.

### 7.2 Areas of concern

Employers abuse the institution of the definite term work contract, so that the younger generation entering the labor market is mostly hired under nonpermanent work contracts. This is especially damaging for young women, because, when employed on the basis of such work contracts, they are not protected from dismissal in case of pregnancy. Although the employer must not require a pregnant woman to work overtime or according to a different schedule without her written consent, women will most often provide a written consent because of strong competition in the labor market. In reality they will work overtime even without written consent, and will not seek to protect their rights (being afraid of dismissal upon return from maternity leave).

It is a special problem that only one third of preschoolers can be accommodated in kindergartens, and there is an even more acute shortage of childcare facilities for infants 6 months to 12 months old.<sup>81</sup>

### 7.3 Recommendations

- To bolster measures to enforce compliance with health and safety protections pregnant and breastfeeding workers: by giving greater powers to the labor inspectorate and improving the competence of administrative bodies; by systematically educating and training health protection officers (workers'

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<sup>81</sup> Ministry of Science, Education and Sports.

representatives), and by establishing more systematic and improved cooperation with labor medicine professionals.

- To change Labor Code provisions on nonpermanent employment and social rights of nonpermanent employees, especially pregnant women and mothers with small children.
- To initiate a campaign to introduce special measures for reintegration of women into the labor market after maternity leave, and include women in the annual National Action Plan for Employment, formulated and adopted on the state level.
- To put these issues on the negotiating table for collective bargaining agreements, especially mechanisms of control and mediation in case of disputes.

## PROTECTION OF SELF-EMPLOYED WOMEN DURING THEIR PREGNANCY AND MOTHERHOOD

**Council Directive 86/613/EEC** of December 11, 1986 on the application of the principle of equal treatment between women and men engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood.

### SECTION 1 – National Legal Framework on Self-Employment: General Provisions

In Croatia's legal order the principles of equal treatment and nondiscrimination also apply to self-employed persons.

The definition of a self-employed person, as formulated in the Directive, does not exist—instead, various forms of self-employment are defined in different acts of law, depending on the activity: the Small Business, Trades and Crafts Act, the Lawyer Profession Act, etc. Self-employed persons are primarily small entrepreneurs, agricultural workers, and members of the free professions. The free professions comprise self-employed health workers, veterinarians, attorneys, notaries, auditors, engineers, architects, tax advisors, interpreters, translators, scientists, writers, artists, journalists, etc.<sup>82</sup>

Spouses of self-employed persons who have compulsory social, health, and retirement pension insurance coverage have the same social rights as spouses of employees (health insurance, right to a family retirement pension). In short, the spouse of a self-employed person enjoys the same social rights through him or her, as the spouse of an employed person.

### SECTION 2 – Social Rights of Spouses of Self-Employed Workers

#### 2.1 Formation of companies by spouses

Under Croatian law, the requirements for starting a private business/company are the same for married and unmarried persons; marital status is irrelevant. Procedures for starting a private business are regulated by various acts of law: the Trading Companies Act, the Small Business Act, the Trades and Crafts Act, the Lawyer Profession Act, the

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<sup>82</sup> The *Income Tax Act*, the *Official Gazette*, No.177/2004.

Health Protection Act, etc. (depending on the activity the self-employed person wishes to engage in).

However, there is a problem that prevents women, regardless of their marital status, from starting their own businesses, even with the help of government incentives for small and medium-size entrepreneurship. Obtaining loans and government incentives paid through the banking system is mostly conditional on mortgage guarantees for real estate over which the mortgage holder has ownership rights. Women are often not the formal owners of real estate, and even when they are, they are reluctant to mortgage their apartment. This is the kind of risk they are simply not willing to take.

## **2.2 Recognition of the work of spouses**

Unfortunately, there are no legal initiatives that would challenge the conditions and work of spouses who are not employees or partners, but offer help as family members. For the moment, there are no visibly governmental steps or measures in this field.

## **2.3 The rights of self-employed workers whose work activity is interrupted due to pregnancy and motherhood**

Self-employed workers contribute to the compulsory social security system.

Self-employed persons have the same rights during pregnancy and motherhood as workers and employees. Mothers with their own businesses, entrepreneurs and agricultural workers with compulsory retirement pension and health insurance coverage are entitled to maternity leave just like any other working mother.<sup>83</sup> However, the wives of self-employed persons who are not officially employed are not entitled to maternity leave or motherhood rights. They are only covered by the health insurance of their spouses. Within the social security system, self-employed persons, in case of insolvency or bankruptcy, are not entitled to monetary benefits during unemployment (as is the case with employees who have lost their jobs). However, they are granted all other unemployment rights, if they register with the Employment Service.

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<sup>83</sup> The *Maternity Leave for Self-Employed and Unemployed Mothers Act*, the *Official Gazette*, No.24/1996; 109/1997; 82/2001; 30/2004.

## SECTION 3 – Legal Means of Redress

The legal framework concerning the principle of equal treatment and nondiscrimination applies equally to all workers, including self-employed persons, so that in theory, they can request court protection if this principle is violated.

Self-employed persons are organized in various associations: the Croatian Chamber of Trades and Crafts, the Croatian Bar Association, the Croatian Architects' Association, the Croatian Association of Artists of Applied Arts etc., which promote the interests of their members and their social rights.<sup>84</sup>

## SECTION 4 – Related Research and Statistics

### 4.1 Social perception of self-employed women and men

In general, official statistics offer relatively limited data on employed persons. In 2004, women accounted for 29.3 percent of small entrepreneurs (83,770 persons in total), and for 53.5 percent persons in the free professions (12,552 persons in total).

Compared to men, women in the free professions mostly work in health care and social welfare (3,945 women as against 1,988 men).<sup>85</sup>

There is no data or research on the tendency of spouses to jointly start and run their own companies.

### 4.2 Research on women in agriculture

Unfortunately, there is no reliable statistical data on self-employed rural women. Further, there is almost no fresh data or research on women in agriculture, their problems, and position (ownership, work and social status). These issues are occasionally addressed by nongovernmental women's organizations, and the research of Sanja Crnković Pozaić is over 11 years old.<sup>86</sup>

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<sup>84</sup> The Chamber of Trades and Crafts is, for example, actively involved in a program of vocational training for trades and crafts (a representative of the Chamber is a member of the Agency for Vocational Training's Board).

<sup>85</sup> The State Statistical Bureau, *Statistical Reports, Employment and Wages in 2004*.

<sup>86</sup> "Transformation of Croatian Agriculture from the Perspective of Employment." *Rural Sociology*, No.1/2, 1994.

Generally speaking, in rural areas, older households are dominant, because young people look for other possibilities. Farms are mostly owned by men (patriarchal cultural pattern).

### **4.3 Research on the status and rights of self-employed women**

As in the previous section (4.2) on female agricultural workers, there is no relevant statistical or research data on the status, rights, and problems of self-employed women. In shedding light on the problems of self-employed women and women entrepreneurs and the difficulties and obstacles they face when starting a business, women's NGOs have contributed more than the official authorities.

Under Croatian law, self-employed women with compulsory social insurance coverage who have kept up with their health and retirement pension insurance premiums have all the social rights enjoyed by other workers during pregnancy and motherhood. The only difference, as noted in 2.3, is that they do not have the right to financial benefits during unemployment.

## **SECTION 5 – Conclusions. Areas of Concern. Recommendations**

### **5.1 Conclusions**

Women's entrepreneurship, the position and problems of self-employed women do not receive enough attention in the public domain and from public authorities. Their problems are certainly not a social priority. This is, in part, a reflection of the dominant political culture and powerful patriarchal biases. Another reason is a lack of publicly accessible and gender sensitive statistical data. For example, the Croatian Bar Association has its own webpage with basic information about the number of members and interns, but not from a gender perspective. Agricultural issues are addressed by peasants' associations, dominated exclusively by men, although the lion's share of work on the farms is done by women. There is not enough relevant research and data.

### **5.2 Recommendations**

- To insist on establishing adequate, gender sensitive and systematic statistical monitoring.
- To stimulate research on women and agriculture, obstacles to women's entrepreneurship and self-employment.

- To involve more women in existing technology parks and business incubators, if necessary, by introducing incentives for women (small pilot-projects in cooperation with the local government).
- To analyze administrative and other obstacles preventing women to engage more actively in entrepreneurship.
- To advocate for women's quotas in programs for stimulating small and medium-size entrepreneurship implemented by public authorities.

### 5.3 General recommendations

- Introduction of gender sensitive statistics in all spheres of work and life.
- Incentives to research on the problems, position, and discrimination of women.
- Modernization of the judiciary, professional training for judges and adjustment of the judicial system to new demands.
- Strengthening of institutional mechanisms (in staff, funds and technical expertise).
- Monitoring and public education campaigns to raise awareness of existing problems and possible solutions.

## ANNEX

### List of Legislation Screened

*Amendments to the Legal Proceedings Act*, the *Official Gazette*, No.117/2003.

*Analytical Newsletter*, Croatian Employment Bureau, No.2/2005.

*The Conditions and Procedures for Exercising Pregnant or Breastfeeding Woman's Right to Leave from Work Act*, the *Official Gazette*, No.103/1996.

Decision on the Appointment of the Gender Equality Ombudsman, the *Official Gazette*, No.157/2003.

Decision on the Appointment of the Head of the Office for Gender Equality, the *Official Gazette*, No.27/2004.

Decree on the Office for Gender Equality, the *Official Gazette*, No.18/2004.

*Financijska teorija i praksa*, br. 1/2002, Neslužbeno gospodarstvo u RH (Financial Theory and Practice, No.1/2002, Informal Economy in the Republic of Croatia, collection of works).

*The Gender Equality Act*, the *Official Gazette*, No.116/2003.

ILO Convention No.45 on the Employment of Women at Underground Works in Mines of All Categories, *Official Gazette*, International Agreement Nos.6/1995 and 1/2002.

ILO Convention 100 was published in the *Official Gazette*, International Treaties, No.6/95 and 3/00; European Social Charter, the *Official Gazette*, International Treaties, No.15/02.

ILO Convention 100 was published in the *Official Gazette* International Treaties, No.6/95 and 3/00; European Social Charter, the *Official Gazette* International Treaties, No.15/02.

ILO Convention No.111 concerning Discrimination in Respect of Employment and Occupation, the *Official Gazette* Međunarodni ugovori/International Agreements, No.05/2000.

*The Labor Act*, No.758/95.

*The Labor Code* (revised text), the *Official Gazette*, No.137/2004.

*Act on Amendments to the Labor Code*, the *Official Gazette*, No.114/2003.

Kerovec, Nada. "(In)equality of Women in the Labor Market." *Bread and roses*, Br/No.26/2005.

Nestić Daniel, *The Determinants of Wages in Croatia: Evidence from Earnings Regressions*.

*The Obligations Act* No.53/9., 73/91, 111/93, 3/94, 107/95, 7/96, 91/96, 112/99 and 88/01.

The State Statistical Bureau. *Statistical Reports, Employment and Wages in 2004*.

Supreme Court of the Republic of Croatia, Rev. 1805/01.

*The Jobs Not to be Performed by Women Act*, the *Official Gazette*, No.44/1996.

*The Constitution of the Republic of Croatia* (revised text), the *Official Gazette*, No.41/2001.

*The Act on Changes and Amendments of the Maternity Leave for Self-Employed and Unemployed Mothers*, the *Official Gazette*, No.30/2004.

*The Act on Changes of the Health Insurance*, the *Official Gazette*, No.30/2004.

*The Execution of the State Budget of the Republic of Croatia Act*, the *Official Gazette*, No.31/2004.

*The Income Tax Act*, the *Official Gazette*, No.177/2004.

*The Maternity Leave for Self-Employed and Unemployed Mothers Act*, the *Official Gazette*, No.24/1996; 109/1997; 82/2001; 30/2004.

“Transformation of Croatian Agriculture from the Perspective of Employment.” *Rural Sociology*, No.1/2, 1994.

## List of Documentation Screened

ILO, *ABC of Women Workers' Rights and Gender Equality*. 2000. Geneva: ILO.

*Analytical Newsletter*, No.2/2005. Croatian Employment Bureau.

*Yearbook*, 2004. Croatian Statistical Bureau.

*Croatian Unemployment Bureau Report*.

“Informal Economy in the Republic of Croatia.” *Financial Theory and Practice*, No.1/2002, (collection of works).

Centre for Women's Studies, *Gender Equality From Concept to Practice* (collection of works). 2004. Centre for Women's Studies.

Institute for Pension Insurance documents.

Institution for Public Health and Ministry of Education documents.

Nada Kerovec, “(In)equality of Women in the Labor Market,” *Bread and Roses*, Br/No.26/2005.

Nestić Daniel, *The determinants of wages in Croatia: Evidence from Earnings Regressions*, Report on the results of the project “Gender Nondiscrimination and Equal Pay.” 2003. Transition to Democracy (NGO), Zagreb.

“Employment and Wages in 2004,” *Statistical Reports*, The State Statistical Bureau, 2004.

“Transformation of Croatian Agriculture from the Perspective of Employment,” *Rural Sociology*, No.1/2, 1994.