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REPORT ON ACTIVITIES OF THE GENDER EQUALITY OMBUDSPERSON IN 2003 (for the period from October 1st to December 31st 2003)

Introduction

According to Article 3 of the Constitution of the Republic of Croatia, gender equality is, in addition to freedom, equality, national equality, peace-keeping, social justice, the respect for human rights, inviolability of property, preservation of nature and environment, the rule of rights and democratic multiparty system, the highest value of the constitutional order and the ground for interpretation of the Constitution.

That means that all the provisions of the Constitution of the Republic of Croatia that refer to the basic rights and freedoms should be interpreted in the context of gender equality as a ground for the interpretation of the Constitution.¹

In that sense there has been enough political will of the legislative body of the state administration to include the Republic of Croatia among those democratic countries that build their polity by fully recognizing and promoting the equality of women and men as an indispensable precondition of sustainable development.

This set the foundations for enacting laws that will create an environment for the realization of equal opportunities for both sexes and a consistent implementation of these legal regulations in practice.

On 29th October 2001, the Republic of Croatia and the European Communities and their member states signed the Stabilization and Association Agreement. By signing this Agreement, the Republic of Croatia formally took on the responsibility to harmonize its laws with the regulations of the

¹ The opinion of the Constitutional Court of the Republic of Croatia was articulated in the decision no. U-III-1945/2000 from March 14, 2001: "It is important to note that the provision of Article 3 of the Constitution does not determine the liberties and rights of men and citizens. In this Article the Constitution states the highest values of the constitutional order that are elaborated and explained in other provisions of the Constitution, especially in those that guarantee the liberties and rights of man and citizen. The provision of Article 3 of the Constitution serves as a ground for the interpretation of the Constitution and a guideline of the legislator in elaborating the constitutional rights of citizens and is directed to state bodies, and not directly to citizens."

European Union, which created the need to legally regulate the gender equality issues in a comprehensive way and according to the standards prescribed by the legislation of the European Union.

Equal opportunities for women and men are an integral part of the provisions of Article 69 and Article 91 para. 3 of the above mentioned Agreement, which, among other things, stipulate that cooperation between the parties who signed the Agreement will include adjustment of the Croatian legislation in the field of equal opportunities for women and men.

National program for the Integration of the Republic of Croatia into the European Union (published in the Official Gazette no. 30. from 27th February 2003) in item 1.3.1.4. affirms *Gender Equality*. In this document the Government stated the following as its political principles: «By promoting the principles of gender equality, the Government of the Republic of Croatia seeks to reinforce the equality of women and men in all areas of human activity and raise awareness of the need to accomplish the full equality of women and men».

The Republic of Croatia has for the first time engaged in drafting special antidiscrimination laws: the Gender Equality Law, the Law on Protection from Violence in the Family and the Law on Same-sex Partnerships (published in the Official Gazette no. 116/03 from July 22nd 2003).

The Program of the Government of the Republic of Croatia for the 2003-2007 mandate period (dated December 23rd 2003) asserts the following: «One of the most important tasks of the Government is to stimulate improvements in the social status of women through gender equality policies, employment, equal wages, entrepreneurship and participation in political and public life."

The Gender Equality Law

The Gender Equality Law was passed by the Croatian Parliament on its session on July 14th 2003, and it was published in the Official Gazette no. 116 on July 22nd 2003. It came into effect on July 30th 2003.

The Gender Equality Law determines the general basis for the protection and promotion of gender equality as a fundamental value of the constitutional order of the Republic of Croatia, and defines and regulates the protection from discrimination on the ground of gender and realization of

equal opportunities for women and men in political, economic, social, educational and other spheres of life. It provides a definition of discrimination on the ground of gender – as direct or indirect discrimination, and as harassment and sexual harassment. It envisions the state mechanism for the achievement of gender equality and mechanisms of protection of gender equality principles.

In section IX. of the Gender Equality Law, titled Securing the Implementation of the Law, a special body was instituted, the Gender Equality Ombudsperson.

The Gender Equality Ombudsperson

The Ombudsperson is independent in her or his work, monitors the implementation of the Gender Equality Law and other regulations concerning gender equality and at least once a year submits a report to the Croatian Parliament.

The Gender Equality Ombudsperson is an official of the Republic of Croatia that is appointed and dismissed by the Croatian Parliament upon the proposal of the Government of the Republic of Croatia.

The Gender Equality Ombudsperson considers cases of violation of gender equality principles, cases of discrimination against individual or groups committed by the state administration bodies, units of local or regional governmental bodies, and other public authority bodies, employees in these bodies and other legal or physical subjects (Article 21., para. 2. of the Gender Equality Law).

In performing the duties delegated to her or him, the Ombudsperson is allowed to caution, suggest and recommend.

The Gender Equality Ombudsperson is empowered to ask reports from the bodies from Article 21. para. 2. of the Gender Equality, and in case the bodies do not comply with the request, the Ombudsperson can ask the supervisory body to make an inspection.

If, in the course of her or his work, the Ombudsperson finds out about cases of violation of the provisions of this Law with elements of criminal act, she will file a complaint to the authorized state attorney's office.

The Gender Equality Ombudsperson is entitled to put forward a proposal for initiating a legal procedure of evaluating the constitutionality of laws, that is, constitutionality and legality of other regulations, if she or he believes that the principle of gender equality has been violated.

If the Gender Equality Ombudsperson ascertains that the principle of gender equality was violated because of the incompatibility of regulations with the Gender Equality Law, she will propose initiation of the process of changes in the regulations.

The Ombudsperson writes the rules of work procedure, which determine the organization of work, internal structure of the expert service, and other issues of significance to her or his work, that is verified by the Croatian Parliament.

Activities of the Gender Equality Ombudsperson

By the decision of the Croatian Parliament at its session on October 1st 2003 (The Official Gazette no. 157/03), Gordana Lukač-Koritnik was appointed the Gender Equality Ombudsperson.

The Ombudsperson started her work without financial means for the functioning of the Office and without an office location.

The State Budget for 2003 provided no funds for the work of the Office of the Gender Equality Ombudsperson.

For that reason, a financial plan for year 2003 has been drawn up, on the basis of which the Government of the Republic of Croatia was asked to permit the allocation of funds from the current budgetary reserve in the State Budget for year 2003, which the Government approved at its session on October 23rd 2003. The funds were transferred to the direct transfer account (giro account) of the Gender Equality Ombudsperson on November 19th 2003.

Thus, the Office functioned without funds until the second half of November 2003.

In spite of this, all the necessary procedures for obtaining a permission for making of the seal and categorizing the Gender Equality Ombudsperson as the new business subject according to the National classification of positions and offices were made.

Moreover, the financial plan for the 2004-2006 period for section 121, heading 05 was drawn.

After securing the funds, the process of public procurement for equipping and furnishing the Office of the Gender Equality Ombudsperson was started.

The Gender Equality Ombudsperson immediately started looking for the business premises for the office and submitted a request for the allocation of premises for use of the Office of the Gender Equality Ombudsperson.

Finally, in the decision of the Commission of the Government of the Republic of Croatia for property management on December 9th 2003, the Gender Equality Ombudsperson were given for use the business premises at Preobraženska 4/I for the Office, but not until March 1st 2004 when the current user moves out of the premises. The area of premises is 156,26 m².

In order for the Office to be able to work until that time, the Gender Equality Ombudsperson started looking for business premises to lease in the meantime.

The Gender Equality Law envisions that the Gender Equality Ombudsperson has one deputy. Although it was not a legal requirement, the deputy was proposed on the basis of applications for a public call.

On November 8th 2003, the public call for application of candidates for the Deputy of the Gender Equality Ombudsperson was announced in three daily newspapers, with the following requirements:

- Person of male sex (based on provision in Article 19, para. 4 of the Gender Equality Law, The Official Gazette 116/03) that is publicly known by his work in the field of human rights protection
- level of education – institution of higher education

These were the only legal requirements and 15 candidates applied for the position, most of whom did not have the necessary qualifications.

Because there were no business premises, problems arose regarding receiving mail and conducting interviews with the candidates.

That is why 4 candidates were chosen, with whom interviews were conducted. During the interview, special attention was paid to the interest of the candidate for the issue of gender equality.

After that the Gender Equality Ombudsperson suggested to the Croatian Parliament to appoint Dragan Vukadin for the Deputy of the Gender Equality Ombudsperson, and the Croatian Parliament appointed him on January 30th 2004.

Apart from the mentioned activities, the Gender Equality Ombudsperson was working on the Rules of work procedures.

During the period from October 1st to December 31st 2003, apart from the Gender Equality Ombudsperson, there were no full time employees.

Apart from the above mentioned duties, the the Gender Equality Ombudsperson:

- participated in the round-table discussion on the role of the Omdusman organized by the OSCE Mission to the Republic of Croatia – 7th October 2003
- participated in the drawing of the National program for protection and promotion of human rights in the Republic of Croatia that is composed by the Human Rights Commission of the Republic of Croatia - 20th October 2003
- participated in the panel “How will the anti-discriminatory provisions of the recently enacted Gender Equality Law be implemented in practice?”, KIC – November 27th 2003
- took part in the panel-discussion “Gender Equality and Croatian Society in legislation and political programs of parties: critiques and perspectives” – November 13th 2003

- participated in the round-table discussion "Legal position, rehabilitation and social inclusion of disabled persons in the Republic of Croatia" organized by the State Institute for the Protection of Family, Motherhood and Youth – November 14th 2003
- participated in the round-table "European university system and women's studies" organized by the Center for Women's Studies with the support of European Commission within the CARDS program – November 14th 2003
- participated in the counselling session "Family Law – novelties, doubts and perspectives" organized by Narodne novine d.d. within the framework of the program of legal education and information in cooperation with the Ministry of work and social welfare – November 20th and 21st 2003
- Participated in the seminar "From legislation to action: equality between men and women" at the Faculty of Law in Zagreb – December 4th 2003
- Participated in the round table "Judicial protection of collective, diffuse and group interests", Croatian Law Center – December 15th 2003.
- Participated at the conference about the development of the system of asylum law in the Republic of Croatia organized by the Croatian Law Center – December 16th 2003

The Ombudsperson also attended various lectures, panels and promotions of the documents of the Council of Europe.

All the above mentioned events were important occasion for the promotion of the Gender Equality Law and the role of the Gender Equality Ombudsperson, especially because of the experts who participated as representatives of the state bodies of the republic of Croatia, particularly educational institutions, media, judiciary and the police, and because of the international community representatives (particularly the European Commission, OSCE, ODIHR, UNIFEM and foreign embassies in the Republic of Croatia, as well as university professors for abroad) and non-governmental organizations dealing with gender equality issues.

Thus the Gender Equality Ombudsperson tried to be in touch with the legislative changes, judicial practice in dealing with discrimination and work on school textbooks and many other issues important for the implementation of the Gender Equality Law. .

During the period that this report covers, the Gender Equality Ombudsperson was informally contacted by several individuals and non-governmental organizations for violence in the family and sexual harassment in the workplace and for expert advice on the possible application of the Gender Equality Law in their cases.

During these counselling meetings, the Gender Equality Ombudsperson drew special attention to Article 2 of the Law, according to which no one is to suffer negative consequences because he or she, as a victim or witness of gender discrimination, gave a statement before the authorized body or warned the public of an instance of discrimination, as well as to the possibility of court protection when, in cases of discrimination, the person perceived as the damaged party can demand compensation of damage according to the regulations of law of obligations concerning accountability for inflicted damage.

In spite of this, there were no requests for initiating the procedures on the basis of the provisions in the Law.

Special attention is drawn to the provisions of the Gender Equality Law according to which the Gender Equality Ombudsperson and employees in his or her office are obliged to keep the information they came upon in their work secret, and the provision according to which anyone can contact the Gender Equality Ombudsperson because of the violations of the provisions of the Law, regardless of whether they are the directly damaged party, except if the damaged party explicitly disapproves.

Because of these provisions, the Gender Equality Ombudsperson could not act in these cases without the request for initiating legal proceedings, that is, contract to the will of party involved.

NGOs also do not wish to initiate the proceeding unless they have the consent of the damaged parties.

Fear of losing a job and being exposed to additional harassment are obvious reasons why the parties prefer to go on sick leaves or solve the problems in other ways, especially because of lack of understanding of their surroundings or direct warnings of the witnesses that they don't want to testify.

However, the Gender Equality law offers possibilities for, at the level of consciousness-raising on issues of gender equality, changing the status quo and

the Ombudsperson thinks that this should be one of the priorities in her work.

This is the only way we can gradually build trust in the existence of an effective legal system of the state and its institutions.

Finally, for the purpose of promotion the Gender Equality Law and the role of the Gender Equality Ombudsperson, the Ombudsperson established cooperation with the media by giving interviews and statements to daily newspapers and appearing on television programs “Forum” and “Res publica”.

Conclusion

During the period from October 1st to December 31st 2003, the Gender Equality Ombudsperson undertook measures and performed activities aimed at the establishment of the Office of the Gender Equality Ombudsperson and the promotion of the Gender Equality Law and the role of the Gender Equality Ombudsperson as a new body extremely important for the implementation of the Gender Equality Law for the purpose of achieving gender equality as one of the highest values of the constitutional order of the Republic of Croatia.

The Gender Equality Ombudsperson

proposes

that the Croatian Parliament acknowledges the Report on the activities of the Gender Equality Ombudsperson for year 2003.