



### **Activity 3.2.2**

## **Guidelines for detecting cases of discrimination**

**Author: Wolfgang Zimmer**

Twinning Project

Establishing a comprehensive system  
for anti-discrimination protection

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Author: Wolfgang Zimmer

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The „Guidelines for detecting cases of discrimination“ were drafted in the framework of the IPA 2009 Twinning project „Establishing a comprehensive system for anti-discrimination protection“. The overall objective of this Twinning project was to establish an efficient and effective system for combating discrimination, thus raising the level of protection against discrimination in the Republic of Croatia. The project strengthened the capacity of the two beneficiary institutions – the Office of the Ombudsman as the central body responsible for combating discrimination and the Office for Human Rights and Rights of National Minorities as the state body directly involved in combating discrimination. An efficient system for monitoring reported cases of discrimination and for collecting and monitoring equality data has been developed. Finally, suggestions for a comprehensive system for supporting victims of discrimination have been elaborated.

The Instrument for Pre-accession Assistance (IPA) provides assistance within the framework of the European Partnership of the potential candidate countries and the Accession Partnership of the candidate countries.

IPA is created as a flexible instrument made up of 5 components, with its main objective to support institution-building and the rule of law, human rights, including the fundamental freedoms, minority rights, gender equality and non-discrimination, both administrative and economic reforms, economic and social development, reconciliation and reconstruction, and regional and cross-border cooperation.

The European Union is made up of 27 Member States who have decided to gradually link together their know-how, resources and destinies. Together, during a period of enlargement of 50 years, they have built a zone of stability, democracy and sustainable development whilst maintaining cultural diversity, tolerance and individual freedoms. The European Union is committed to sharing its achievements and its values with countries and peoples beyond its borders.



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## Foreword Ombudswoman/Deputy

This publication was developed as a part of the project "Establishing a comprehensive system for anti-discrimination protection" financed from the IPA (Instrument for Pre-accession Assistance). During the project implementation period (November 2011 - June 2013) series of activities have been implemented in order to develop the existing anti-discrimination system and strengthening main actors who are directly or indirectly involved in combating discrimination. An indispensable part of this work was aimed to spreading information on the legal and institutional framework for protection against discrimination, as well as raising awareness on discrimination and strengthening sensibility to recognize discriminatory situations and discrimination cases.

The Guidelines for detecting cases of discrimination, publication that is before you, is written with the same intention. It is primarily targeted to employees of public administration bodies, in order to be able to find all relevant information about the system of combating discrimination at one place.

In accordance to the provisions of Croatian Anti-Discrimination Act (NN 85/08, 112/12) the Ombudsperson is defined as central equality body for combating discrimination. According to this provision, Office of the Ombudsperson is working on the individual cases but as well on creation of environment in which it is unacceptable to treat any person, in any area of life, less favourably just because he/she belongs to a certain social group.

A crucial step in combating discrimination is the recognition of certain behaviour as discriminatory, since most discriminatory practices have their ground in the stereotypical attitudes and prejudices that are sometimes so widespread and persistent that behaviour based on them can be considered as normal and usual. The guidelines contain information about the grounds on which discrimination is prohibited, areas where it is prohibited as well as forms and options for protection against discrimination. In short, Guidelines try to cover all aspects of protection against discrimination, as regulated by the Anti-discrimination Act. The publication is filled with many different examples since this is the best way to understand meaning and the appearance of discrimination.

In this way, the Guidelines should enable you to recognize discrimination and encourage you to complain to the relevant institutions, including the Ombudswoman, if you recognize it in your professional or private life. Since the first step in combating discrimination is to file a complaint and report about discrimination, and from similar individual cases it is possible to recognize general occurrences, all of us have the important role in this fight against discrimination. I believe that is our common goal.

Lora Vidović, Ombudswoman

## Purpose of guidelines

These guidelines should enable public administration bodies to identify cases of discrimination and to support victims of discrimination by referring them to the Office of the Ombudswoman and the specialized ombuds. According to the provisions in the Croatian Anti-Discrimination Act (ADA) the guidelines will explain the concept of discrimination, the various grounds and forms of discrimination as well as the scope of the law. They will also inform about the mandate of the ombud institutions and the obligation of public bodies to report cases of discrimination to them.

In early 2012 the latest survey on perceptions of discrimination showed that only about 50 per cent of the respondents were aware of the fact that Croatia has implemented a law combating discrimination. The majority of respondents could not specify which public body is the central body for combating discrimination; only 8 per cent could identify the Office of the Ombudswoman. The majority of respondents did not know how to contact the Office of the Ombudswoman. While about a quarter of respondents had experienced discrimination at least once in the last 5 years, only 40 per cent of them had taken steps to protect their rights. It is alarming that hardly any of them had turned to the Office of the Ombudswoman. The results of the survey show that the general public is in need of information about the ADA and the support the Office of the Ombudswoman and specialized ombuds offer. Public administration bodies, which are in contact with potential victims of discrimination, play an important role in disseminating this kind of information and in supporting victims of discrimination to get in contact with the competent ombud institution.

## What is discrimination?

Discrimination is defined as any unequal treatment of a person linked to a specific or associated characteristic which is not justified and that leads to a disadvantage.

Example:

*Two citizens file an application for issuing a driving license at their local public administration. One applicant is of Roma origin. His application is severely delayed because the competent civil servant dislikes him because of his ethnic origin.*

However, not every case of unequal treatment results in discrimination. If differences between individuals are the basis of unequal treatment, it can be justified in certain cases.

Example:

*The Ministry of Foreign Affairs and European Integration is looking for office staff to work in France. The Ministry asks job applicants to speak French fluently. This job requirement discriminates applicants who do not speak French well enough. In regard to the job tasks it is justified to ask applicants to meet this job requirement.*

Very often wrongful expectations or prejudices result in discrimination. People link certain personal features to personal attributes or expected behaviour, *e.g. persons of a certain ethnic origin are lazy (and therefore will not be hired); female employees have to take care of their children and will not work as hard as their male colleagues (and therefore they will not be promoted, although meeting all formal requirements).*

As prejudices are hard to fight (as they are mainly irrational and almost impossible to argue against) it is very important to combat discrimination, which could range from unfriendly behaviour to exclusion and segregation or even to open violence.

## Grounds of discrimination

A person can be discriminated on various grounds. However not every treatment that a person receives and that is experienced as less favourable or as discriminatory can be classified as discrimination according to the Croatian Anti-Discrimination Act. The unequal treatment has to be linked to at least one or more protected grounds of discrimination specified in the ADA. The grounds will be explained in the following section. The focus will be on the grounds listed in the relevant EU Equal Treatment Directives (2000/43/EC, 2000/78/EC, 2002/73/EC, 2004/113/EC and 2006/54/EC) and those most commonly reported to the ombud institutions.

### Gender

If a person is treated unequally because of him or her being a woman or a man, he or she is discriminated because of his or her gender. This ground also covers persons of uncertain sex and trans-gender persons.

Examples of discrimination based on gender:

*An employer hires a male applicant for a job, although a woman, who also applied for the job, did meet the job requirements in a much better way. When she asks the employer for an explanation why her application has been rejected, the employer tells her that he cannot afford to have a female employee, because in the end she will get pregnant and he will have to hire another person.*

*A male employee tells sexist jokes during breaks and asks a female co-worker if she is willing to wear a bikini during office hours.*

*A male employee tells his boss that he will go on parental leave after his first child is born. Two days later the employee's work contract is cancelled. He asks his boss for an explanation and is told that the company does not have enough resources to deal with „guys going on parental leave“.*

### Race/ethnic origin/ skin colour/national origin

This ground covers all features which allow that a person is seen as “Non-Croatian”, “alien” or “foreign” such as his or her national or ethnic origin, colour of skin, name, native tongue or accent, culture and tradition, or nationality/citizenship. Nationality/citizenship however is not a ground of discrimination on its own accord in the ADA. Under certain circumstances discrimination on the ground of nationality is allowed (see below under “exception”).

Examples of discrimination based on race/ethnic origin/skin colour/national origin:

*A company publishes a job advertisement stating: “Croats only!”*

*A Croatian civil servant refuses to give information on how to apply for a driving license to a citizen because of his Serbian origin.*

*A man of Nigerian origin wants to visit a club with some friends. The bouncer lets his friends enter the club. The Nigerian is refused entry because the manager does not want “blacks” in his club.*

*A police officer stops a young Rom and searches his backpack although there is no evidence that he has committed any crime. The officer tells the boy that he thinks all Roma are thieves.*

**Exception:**

In Article 9 (9) of the ADA states that discrimination on the ground of nationality is allowed if there are separate legal acts, e.g. in which rights are exclusively granted to Croatian citizens or which regulate residence or work permits for foreigners. This exception does not allow state bodies, public institutions, private companies or individuals to discriminate against individuals on ground of their nationality if not related to any of the laws specified above.

Examples of exceptions:

*A company does not hire a Ukrainian citizen because he lacks a valid work permit. This does not constitute discrimination as the company has to obey the relevant Croatian act regulating access to the Croatian labour market.*

*A museum has different entry fees for visitors according to their nationality. A Croatian citizen has to pay a lower fee than a visitor with Albanian citizenship. This is forbidden.*

## Religion

This ground applies to members of any religion or religious community as well as persons who are not affiliated with a religious community, e.g. atheists. The ground also includes practising religion and the compliance with religious rules, e.g. regarding clothes and food.

Examples of discrimination based on religion:

*An airport authority does not employ Muslims for working in high security areas.*

*A Muslim woman works as a cashier at a supermarket. She decides to wear her headscarf during working hours. Her boss explains to her that from now on she will be restricted to working at the warehouse since the policy of the company forbids wearing religious symbols in front of the customers.*

**Exception:**

Article 9 (5) of the ADA states that discrimination on the ground of religion is allowed for a church or religious community or organisation if such an unequal treatment is required by their religious doctrine, beliefs or objectives, e.g. in regard to occupational activities or membership.



Examples of exceptions:

*A Catholic school is looking for a principal. An atheist applies for the job but is rejected because he is not Catholic. As the principal is responsible for representing the ethos of the institution and the conveyance of the Catholic doctrine to the students, it is not discriminatory to ask an applicant to be a member of the Catholic Church. The same applies to religion teachers.*

*A Catholic school is looking for a new janitor. An atheist applies for the job, but his application is rejected because he is not Catholic. This is forbidden because the duties of a janitor are not connected to the conveyance of the Catholic doctrine to students.*

## **Political or other belief, trade union membership**

This ground covers any political or philosophical/ideological belief, e.g. liberalism, conservatism, humanism, or pacifism. It is also unlawful to discriminate against a person because he or she is or is not affiliated with a political party or trade union.

Examples of discrimination based on political or other belief:

*A Croatian public authority is hiring officers. One of the applicants is a woman who is a party official of a political party. She mentions this party affiliation in her CV and although she is qualified her application is rejected.*

*A man is working in the administration department of a security company. During breaks he sometimes mentions to his colleagues that he is against the use of weapons and calls himself a "pacifist". When his boss hears about this, he calls him to his office and informs him that he will be dismissed because he does not want to have "such a pacifist weakling" working in his company.*

## **Age**

This ground covers members of all age groups. Individuals must not be discriminated because they are too young or because they are too old. Fixed age limits strongly indicate discrimination.

Examples of discrimination based on age:

*A radio station is looking for employees and publishes a job advertisement on its website stating that the applicants have to be "older than 18 and younger than 29 years" of age.*

*An employee of an insurance company is dismissed at the age of 57 after having worked for the company for more than 30 years. His boss explains to him that he has become too expensive for the company and that they will now hire a younger person who will work for lower wage.*

*At a rollercoaster in an amusement park a sign states that customers have to be under the age of 60 for security and health reasons. This constitutes discrimination because persons beyond that age can be perfectly capable of enjoying the ride without any health issues.*

**Exception:**

There are many different exceptions to this ground, e.g. in regard to youth protection or granting privileges to older persons.

Examples of exceptions:

*A public transport company may offer lower fares to retired persons beyond the legal retirement age.*

*A shop refuses to sell alcohol to a 10 year old boy. This does not constitute discrimination as it is covered by youth protection laws.*

## **Sexual orientation**

This ground applies to persons being homosexual, bisexual or heterosexual.

Examples of discrimination based on sexual orientation:

*A homosexual truck driver is confronted with homophobic hate speech by an employee of a storage facility where he is unloading his truck.*

*A youth organisation rejects the application of a youth worker who openly states that he is homosexual because they fear that he might molest young clients.*

## **Gender identity and expression**

Gender identity refers to a person's subjective experience of his/her own gender independent of individual sexual characteristics or the sex assigned to the person at his/her birth. This applies to transgender persons for instance. Gender expression is the way how a person communicates his or her gender, e.g. by showing "typically" masculine to feminine behaviour.

Example of discrimination based on gender identity and expression:

*A transgender person who has applied for a job as a car dealer has an appointment at the owner's office for a job interview. When the owner sees the applicant for the first time, he immediately cancels the interview and tells the applicant that customers do not want to be advised by "such a freak".*

## **Disability/ Invaliditet**

Osnova invaliditeta obuhvaća dugotrajna tjelesna, mentalna, intelektualna ili osjetilna oštećenja. Ovo uključuje osobe koje imaju kronična ili progresivna stanja kao i osobe čiji poremećaji su stabilniji. Na primjer osobe s oštećenjima sluha, vida, paraplegičare, osobe s Downovim sindromom, autizmom, shizofrenija i tako dalje.

Primjeri diskriminacije na osnovi invaliditeta:

*Javna tvrtka za prijevoz kupuje 10 novih autobusa. Ovi autobusi imaju rampu koja ih čini dostupnim osobama u invalidskim kolicima. Ovim rampama rukuje se ručno zbog čega vozač mora ustajati sa svog sjedala da bi mogao postaviti rampu. Putnik u kolicima želi ući u autobus no vozač autobusa mu kaže da zbog kašnjenja nema vremena postaviti rampu zbog čega putnik ostaje na stanici. Osoba u invalidskim kolicima prijavljuje se za posao u uredu. Njena prijava je odbijena zbog toga što vlasnik tvrtke smatra da će biti na bolovanju mnogo češće nego osoba koja nema invaliditet.*

## Health condition

This ground covers different forms of illnesses which can affect a person.

Examples of discrimination based on health condition:

*A woman suffered from cancer a few years ago. She is applying for a job at a company. During the job interview the company's owner asks her about her health condition. When she mentions that she has overcome cancer, the owner tells her that he is not willing to hire her since she is more likely to get sick again compared to other applicants.*

*A hairdresser refuses to serve a customer who is HIV positive although there is no risk of infection during service.*

## Property

This ground covers a person's income, financial situation and what he or she owns.

Examples of discrimination based on property:

*A job advertisement is published on a web portal for the position of an employee in a regional branch of a company. Among other requirements it is stated that the person should own a car.*

*A man is denied entry into a club because the bouncer thinks that the visitor's "cheap looking" attire does not fit into the "noble clientele" of the club.*

Exceptions:

Article 9 (3) of the ADA states that it does not constitute discrimination when implementing measures of social policy favouring persons or households of difficult financial or social status, providing that these measures do not lead to direct or indirect discrimination on the grounds of gender, sexual orientation, race, skin colour, ethnic origin, religion and disability.

Example of exception:

The Ministry of Education takes a decision that children coming from homes which have lower income than Croatian average get school books for free as well as subsidised meals in schools.

## **Social status**

This ground refers to the way individuals are seen by others in regard to their social status including the educational or financial and social environment a person was born into, their former or present jobs.

Examples of discrimination based on social status:

*A homeless person finds an advertisement offering a flat at a cheap price and goes to have a look at it. The flat owner refuses to let the flat to him because he does not want to have a tenant who has been homeless and he supports his argument by saying that the other tenants in the house would also be against him moving in.*

*A convict is released from prison. He is applying for a job at a restaurant. The owner denies his application since he does not want "criminals" to serve his customers and knows that his customers would start molesting him if they learned about his past.*

*A former civil servant is applying for a job at a private company. His application is rejected because the owner of the company thinks that civil servants are always lazy and do not fit into the working environment of the private sector.*

## **Discrimination based on the misconception of grounds**

As demonstrated above, discrimination can occur on basis of many different grounds. But what if an assumed feature connected to one of the protected grounds does not actually apply to the person who is treated unequally? The ADA straightens out that unequal treatment based on a misconception of a ground can be discriminatory and unlawful.

Examples of discrimination based on the misconception of grounds:

*A man is denied entry into a club because the bouncer is not allowed have Roma enter it, although the man actually is not of Roma origin.*

*An employee is verbally harassed by colleagues because they think he is homosexual which he is not.*

*An employment agency denies applications by persons who have a “foreign sounding” name. This results in the denial of applications by women who are of Croatian origin but who have taken over her foreign husband’s name.*

## **Discrimination by association**

A person can be affected by a discriminatory act, which in fact is targeted at another person who has a characteristic which is a protected ground of discrimination.

Examples of discrimination by association:

*A Croatian woman is married to a Rom. They want to enter a club. Her husband is denied entry whereas she was able to enter the club. She is not interested in visiting the club without him as she wants to enjoy the evening with her husband. She is discriminated because of her husband’s ethnic origin.*

*A female employee has to take care of her child with a disability. Her employer allows employees to take care of their children when they are ill providing them with time off whenever they need it. The female employee however is not allowed to take time off in order to care for her child. She is discriminated because of her child’s disability.*

## **Exceptions in general**

In addition to the exceptions mentioned above (in regard to the grounds of nationality, religion and age) the ADA also lays down other exceptions in which a less favourable treatment of a person does not constitute discrimination for certain reasons. It may be very difficult to decide if a specific situation constitutes an exception therefore it should be up to an expert in an ombud institution to identify such exceptions. A case should be reported to the Office of the Ombudswoman or a specialized ombud anyway even if the civil servant reporting it is not totally sure that it is discrimination or is an exception of discrimination.

## Forms of discrimination

Discrimination is always about an actual (or hypothetical) comparison. One person is treated differently from another in a comparable situation without any reasonable justification. The unequal treatment happens in regard to an actual or perceived ground that is connected to the person, e.g. his or her age, ethnic origin, sexual orientation or religion. Discrimination arises out of different forms of behaviour or provisions (e.g. legal or by contract). The ADA defines different forms of discrimination, which will be explained in the following section.

### Direct discrimination

Direct discrimination occurs when unequal treatment is related to an actual or perceived attribute that is connected to a protected ground. The comparison between a person affected by discrimination and another person, real or imagined, not affected by discrimination in a similar situation is an important part of the definition of direct discrimination. The unequal treatment does not have to be intentional to constitute an unlawful act of discrimination. The ADA also defines a set of exceptions, which can justify unequal treatment (see exceptions in regard to certain grounds above and in general in chapter “Access to justice for victims of discrimination”).

Examples of direct discrimination:

*A real estate agent advertises a flat in a newspaper. In the ad it is pointed out that tenants have to be of Croatian origin.*

*In a large company only male employees are promoted to become heads of department.*

*A male employee is dismissed after his boss learns that the employee is homosexual.*

*A young Rom wants to visit a club with his friends who are of Croatian origin. The Rom is refused entry whereas all of his friends can enter the club.*

### Indirect discrimination

An apparently neutral provision, criterion or practice which places or could place a person in a less favourable position on at least one of the protected grounds is defined as indirect discrimination. Again a comparison between a person who is discriminated by an apparently neutral act and another person in similar situation is important to identify an unlawful act of discrimination. However indirect discrimination can be justified objectively, i.e. if an act is justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

Examples of indirect discrimination:

*The management of a factory forbids workers to wear headgear when handling machinery. This neutral provision discriminates workers who wear religious clothes, e.g. Muslim women who wear headscarves. In comparison workers who do not wear religious headgear are not affected by this provision. The aim of the provision is to protect workers from injuries when handling machinery with moving parts. The aim however could also be achieved by a provision that bans only loose headgear enabling Muslim women to wear scarves which are firmly attached to their heads.*

*A factory canteen offers meals at a reduced price to its workers. The meals regularly contain pork. Jewish and Muslim workers cannot benefit from the offer on these days since their religion does not allow the consumption of pork. The factory's owner refuses to offer alternative meals due to slightly higher costs.*

## **Harassment**

This special form of discrimination refers to discriminatory verbal or non-verbal acts against a person belonging to a certain group based on a protected ground. In order to be classified as harassment these acts have to be unwanted by the affected person and have to have the purpose or effect of violating the dignity of the person creating an intimidating, hostile, degrading or offensive environment.

Examples of harassment:

*A young Rom wants to enter a club. He is denied entry. In addition the bouncer tells him in front of other customers waiting in line that Roma are "dirty thieves".*

*A male employee who is homosexual is constantly called "faggot" by two colleagues who also tell homophobic jokes during breaks.*

*An employee forwards emails to all of his colleagues containing derogatory jokes about people of Bosnian origin. Two colleagues who are members of Bosnian national minority also receive these emails. One of them tells his colleague that although he is a member of Bosnian national minority he enjoys most of the jokes. The other colleague however strongly objects to receiving these jokes. The employee however continues sending his discriminatory emails to everyone.*

## **Sexual harassment**

In addition to the definition of harassment sexual harassment refers to acts which are of sexual character, e.g. sexual proposals or jokes, touching of intimate parts or posters with sexual content.

Examples of sexual harassment:

*The manager tells one of his employees that she will be promoted to become head of department if she agrees on having sex with him.*

*A young woman is entering a shop. The sales clerk whistles and tells her that she is wearing a “sexy outfit”. She tells the clerk that his behaviour is inappropriate. The clerk responds that she should not act “like that” and approaches her to touch her bottom.*

## **Failure to provide reasonable accommodation**

Persons with disabilities have the right to have access to publicly available resources, participate in public and social life, to have access workplaces and to have appropriate working conditions. In order to include persons with disabilities in all these spheres of life, reasonable accommodation has to be provided. Public bodies as well as private companies and individuals who do not provide for such accommodation discriminate against persons with disabilities. They have to take measures, like adapting their infrastructure and premises or using appropriate equipment in order to make services or jobs they offer accessible to persons with disabilities, unless taking these measures would result in an unreasonable burden, e.g. if a small company or an individual cannot afford to adapt their premises and there is no adequate public financial support to assist them.

Examples of failure to provide reasonable accommodation:

*A large insurance company is hiring clerks. A person with a visual impairment applies for the job but is rejected because the company does not want to pay for adapting his future workplace to his specific needs. However the company being one of the largest employers in its sector could easily afford the costs for this reasonable accommodation.*

*A company rebuilds their premises, which makes the premises less accessible for persons in wheelchairs. The intention was to modernize the office building and not to exclude employees or customers from accessing it. However they fail to provide reasonable accommodation to their customers with disabilities thus discriminating against them.*

*The owner of a flat on the 3<sup>rd</sup> floor of a large apartment building would have to invest a lot of money to install an elevator to make his flat accessible to a tenant in a wheelchair. This investment would be an unreasonable burden to the individual owner and therefore the refusal of providing reasonable accommodation does not constitute discrimination.*

*A hotel chain is building a new hotel at the Croatian coast. The rooms in the upper floors can be reached by elevator. The elevator however is too small to be accessed by a customer in a wheel chair. Since it would not cost a lot more to install a bigger elevator, the hotel chain fails to provide reasonable accommodation to customers in wheel chairs.*

*At the entrance of a shopping mall a sign forbids customers to take their dogs inside. Customers with visual impairments who have to rely on their dogs for assistance cannot enter the mall . Customers with visual impairments have to be accommodated by an exemption to this rule allowing them to enter the mall with their guide dogs.*



## Encouragement to discrimination

A person instructing or encouraging other persons to discriminate against others on basis of a protected ground is responsible for discrimination although he or she might not establish a direct contact to the discriminated person.

Examples of encouragement to discrimination:

*The owner of a club orders his bouncers to prevent customers of Roma origin from entering his club.*

*The manager of a company is informed by one of his male employees that he is being harassed constantly by one of his colleagues on the ground of his homosexuality. The manager replies that his employee should not take these discriminatory acts too seriously. Later the manager talks to the employees who have harassed their colleague telling them that he secretly supports what they are doing since he wants the disliked colleague to quit anyway.*

## Segregation

Segregation as a form of discrimination is a forced and systematic separation of persons on a protected ground.

Example of segregation:

*A local school authority assigns Roma children to a special school because of their alleged lack of knowledge of the Croatian language thus systematically separating them from Croatian students.*

## Severe forms of discrimination

The ADA lays down three severe forms of discrimination, which have to be taken into account by the court when deciding on the appropriate amount of damages for the victim of discrimination.

- Multiple discrimination occurs when a person is discriminated on more than one of the protected grounds, e.g. a Rom in a wheelchair cannot enter a restaurant which lacks a ramp, a waiter tells him that he is not welcome anyways as they do not serve Roma customers. He is discriminated because of his disability and his ethnic origin.
- Repeated discrimination: A man of Bosnian origin is denied service in a restaurant on three separate days.
- Continued discrimination: A boss sexually harasses a female employee over a long period of time.

## Victimisation

A person who reports discrimination, witnesses discrimination or refuses to obey an instruction to discriminate has to be protected from adverse effects of his or her actions. Therefore the ADA states that such a person shall not be placed in a less favourable position. Victims and persons who support victims in any way are protected.

Examples of victimisation:

*An employee reports sexual harassment towards one of his colleagues to the management. Instead of investigating the discrimination case, the management transfers the witness to another department.*

*A witness of a case of discrimination in regard to the entry of a club testifies against the club's owner in a court case. Subsequently he is denied entry to the club himself.*

*A female employee complains to the management about wage discrimination – she earns much less than her younger and less qualified male colleague. She is dismissed shortly after the complaint.*

*An employee in a real estate agency refuses to discriminate tenants based on their ethnic origin. He is dismissed because of not following orders.*

## Scope of discrimination

### Personal scope

The ADA covers the conduct of all state bodies, bodies of local and regional self-government units, legal persons vested with public authority and the conduct of all legal and natural persons. In other words every civil servant or private person as well as every public or private entity in Croatia has to act in accordance with the ADA.

### Material scope

The wide scope of the ADA covers every area of work and social life.

- Work and working conditions;

Examples:

*Unequal pay on ground of gender.  
Sexual harassment at the work place.*

access to self-employment and occupation, including selection criteria, recruiting and promotion conditions;  
access to vocational guidance, vocational training, professional improvement and retraining

Example:

*In a company employees of Serbian origin are excluded from in-house trainings to the effect that they will not be promoted.*

- Education, science and sports:

Example:

*During a football game a player is addressed by fans of the opponent team as “dirty fag” who should be hanged; a teacher tells a student that she is stupid and lazy because she is of Roma origin.*

- Social security, including social welfare, pension and health insurance and unemployment insurance:

Example:

*A home for older people does not accept residents who have suffered from tuberculosis even if the illness had already been cured a long time ago.*

- Health protection:

Example:

*A doctor refuses to draw blood from a homosexual patient because he fears that his patient might be HIV positive; a dental clinic's receptionist refuses to arrange a treatment for a Roma patient because he thinks that the Rom will not be able to pay the bill.*

- Judiciary and administration

Example:

*Statistical data shows that at a local court defendants of non-Croatian origin receive higher sentences in regard to comparable criminal acts than Croatian defendants; an Albanian citizen is applying for a work permit at the Ministry of the Interior when the officer tells him that he refuses to handle his application because of his ethnic origin.*

- Housing:

Example:

*A real estate agent tells a potential tenant of Turkish origin that he will not be able to rent the flat because the owner does not want "foreigners" as tenants; a homosexual owner of a flat who shares it with his boyfriend receives a letter by another resident in which it says "piss off faggot".*

- Public informing and the media:

Example:

*In a newspaper article the author writes about Roma and their habitual delinquency.*

- Access to goods and services and their provision: :

Example:

*A Romani woman enters a clothing shop and is denied service by a sales clerk because the expensive clothes which are sold there "do not suit Roma persons".*

- Membership and activities in trade unions, civil society organisations, political parties or any other organisations:

Example:

*A worker becomes involved in a trade union. His boss dismisses him because he is afraid that he will try to improve working conditions at the company's cost.*

- Access to participation in the cultural and artistic creation:

Example:

*In a traditional dance contest only contestants of Croatian origin are allowed to participate.*

## Access to justice for victims of discrimination

The Anti-Discrimination Act specifies institutions to support victims of discrimination. The Office of the Ombudswoman is the central institution dealing with discrimination under the ADA. In addition to the Office of the Ombudswoman there are three specialized bodies dealing with certain grounds of discrimination and with children as victims of discrimination.

### **The Office of the Ombudswoman**

Within his/her non-discrimination mandate the Ombudswoman he/she receives reports on cases of discrimination from public authorities and private persons. Regarding these complaints he/she supports victims of discrimination by providing necessary information to them about their rights and obligations and about possibilities of taking a case to court and other means of protection. When court proceedings have not yet been initiated the Ombudswoman can examine individual reports and take actions within his/her competence required for eliminating discrimination and protecting rights of discriminated persons.

If a complainant has already initiated court proceedings the Ombudswoman is not able to take action, but can, in certain cases, join the court proceedings as an intervener on the side of the victim. The Ombudswoman can also start legal proceedings (in the public interest) when a larger number of persons have been discriminated against.

With the parties' consent the Ombudswoman can also conduct mediation with the possibility of reaching an out-of-court settlement and he/she can also file criminal charges if criminal law has been violated or start misdemeanour proceedings.

The Office of the Ombudswoman also collects data on discrimination, e.g. court cases, conducts surveys, raises public awareness about discrimination and delivers reports to the Croatian Parliament about the occurrence of discrimination.

### **Specialized ombuds**

The Ombudswoman for Gender Equality is responsible for dealing with complaints on the grounds of gender, gender identity and expression, sexual orientation, marriage and family status.

The Ombudswoman for People with Disabilities is responsible for dealing with complaints on the ground of disability and health status in some cases.

The Ombudswoman for Children is responsible when the victim of discrimination is a child regardless of the protected ground on which the discrimination is based on.

## Remedies and redress in cases of discrimination

In addition to the possibility of turning to the Office of the Ombudswoman or the specialized ombuds, the ADA provides victims of discrimination with different legal means to deal with discrimination.

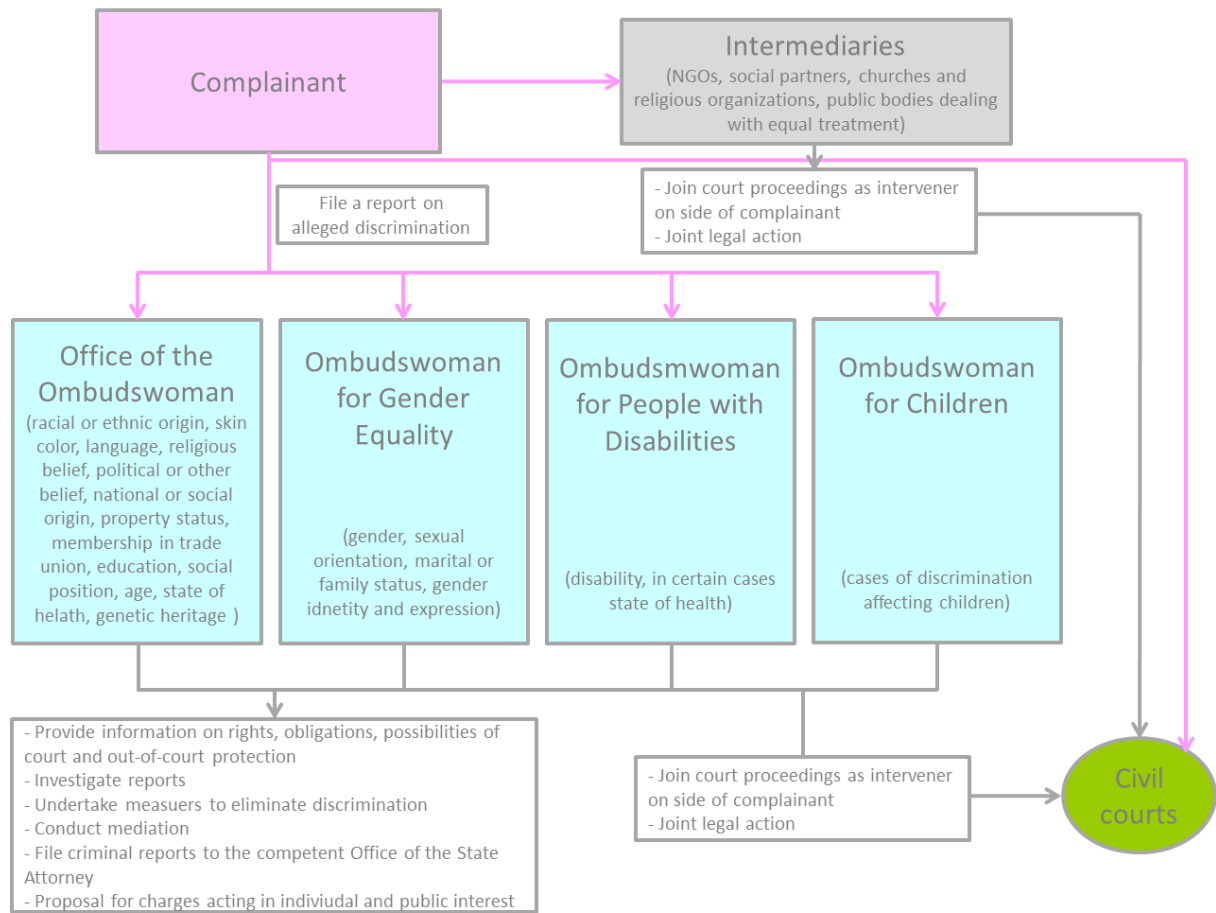
Victims can initiate **civil legal actions** in order to

- get a court decision establishing if they have been discriminated
- have on-going/further discriminatory activities prohibited
- have discrimination and its negative effects eliminated
- get monetary compensation for being discriminated
- have the court decision published at costs of the defendant.

Discrimination can also result in **misdemeanour or criminal procedures**. The ADA classifies certain discriminatory behaviour as a misdemeanour and specifies monetary fines. The level of the fine depends on the form of discrimination (victimization, harassment, sexual harassment) and on whether the defendant is a natural or legal person.

The most severe acts of discrimination (hate speech, crimes motivated by hatred toward a specific group) are sanctioned by Penal code.

## Overview of institutional setting





## Role of public authorities

As a civil servant you have the duty to refrain from discriminating according to the Article 6 of the Civil Servants Act which states that civil servants should refrain from discriminating or favouring citizens on any ground of discrimination, e.g. age, gender, nationality, ethnic origin or religious belief. But you also have a duty not to discriminate under the ADA which applies to the conduct of all state bodies but also to a much broader scope of actors including the conduct of all bodies of local and regional self-government units, all legal persons vested with public authority, all legal persons, all natural persons.

### Obligation to report discrimination

The ADA obliges you as a civil servant to alert the Ombudswoman or the specialized ombuds to discrimination you have either witnessed yourself or which has been reported to you. Article 10 (1) of the ADA states that all state bodies, bodies of local and regional self-government units, legal persons vested with public authority and all legal and natural persons have to report a reasonable suspicion of discrimination to the Ombudswoman or the specialized ombuds. According to the ADA the alleged victim of discrimination has to be asked for his or her consent before forwarding his/her case to any of the ombud institutions.

However if a case of discrimination is reported to you, it is advisable to first of all encourage an alleged victim of discrimination to contact one of the ombud institutions him-/herself. If the victim is reluctant to do so or needs any kind of support in reporting his/her case, then it is your task as a civil servant to ask him/her if they agree on reporting the case through you. If they agree, please make a written note of this circumstance and forward it together with the information about the alleged discrimination.

The need for consent of the victim does not mean that the case cannot be forwarded anonymously. If the victim does not want to have his/her identity revealed, the case can be reported without any information regarding the victim's personal or contact data. As a civil servant you should make the victim aware of the fact that in such a case the Office of the Ombudswoman or a specialized ombud will have limited means of examining the case and finding ways to combat discrimination.

Note: If you are not sure which of the ombud institutions is competent for a specific kind of discrimination, please forward it to the Office of the Ombudswoman who will refer the case to the competent ombud institution.

### Obligation to provide information

The ombud institutions are vested with the power of investigation in cases of discrimination. In order to be able to execute this power, they have to gain access to relevant information which is available to you as a civil servant. Article 10 (2) obliges all state bodies, bodies of local and regional self-

government units, legal persons vested with public authority and all legal and natural persons to provide all the information and documents related to discrimination at the request of the Ombudswoman or the specialized ombuds within 15 days.

If public bodies fail to fulfil this obligation within 30 days, the responsible person in a state body or local and regional self-government unit can be fined to pay HRK 1,000 to HRK 5,000.

## **How to report discrimination**

As some victims are already convinced that they have experienced discrimination on a specific ground others may only be able to communicate that they have been treated less favourably than other individuals, but cannot specify the reason for this treatment. To find out if a relevant case of discrimination has occurred, the Office of the Ombudswoman provides you with the following catalogue of questions to be asked to alleged victims of discrimination. Following these questions will guarantee that all the relevant information about a case of discrimination is at once submitted to the Office of the Ombudswoman.

In order to provide the Office of the Ombudswoman with all the relevant information you should encourage the victim of discrimination to find answers to all the following questions.

1. What happened to you?
2. When did it happen to you?
3. Where did it happen to you?
4. Who did this to you? (Please provide personal data on the alleged perpetrator)
5. Why do you think that he/she/they did this to you?
6. Have you already taken any action in response to what happened to you? If you have, what did you do? When did you do this?
7. Do you have any pieces of evidence (e.g. documents) or information about witnesses (please provide personal data on potential witnesses)?

If the alleged victim does not want to stay anonymous, you should take down the victim's

- a. name,
- b. address,
- c. telephone number,
- d. email contact.

When forwarding the case to the Office of the Ombudswoman or a specialized ombud please make sure that you explicitly indicate that you have asked the victim to give his/her consent to reporting the case to an ombud institution and that the victim has agreed to forwarding his/her case.

Please also provide your own contact details (name, office address, phone number and/or email contact) to make sure that the Ombudswoman can acquire additional information or have insight into relevant files.

You should report the case to the Office of the Ombudswoman or a specialized ombud in **written form** via letter or email including possible pieces of evidence (e.g. documents).

If you come across information, of which you are not sure if it constitutes discrimination, you should still report this information to the Office of the Ombudswoman or specialized ombuds who are experts in detecting and identifying cases of discrimination.

## **Data protection**

Discrimination is a particularly sensitive area and therefore it is of great importance that you follow the obligation “to maintain as secrets all data to which they gain access during procedures concerning clients and their rights and obligations and legal interests pursuant to law” as specified in Article 21 of the Civil Servants Act.

Information about cases of discrimination has to be handled with utmost care for they generally contain sensitive data of victims, perpetrators and witnesses. Article 8 of the Personal Data Protection Act specifies „special categories of personal data“ as „personal data pertaining to racial or ethnic origin, political opinions, religious or other beliefs, trade-union membership, health or sex life as well as personal data regarding criminal and misdemeanor proceedings“. So you should protect this sensitive data from unauthorized access and dissemination as well as other forms of abuse. If personal data was gathered for the purpose of forwarding a case to an ombud institution you have to make sure that the personal data is solely used for this specific purpose.

## Contact details

### **Office of the Ombudswoman**

Phone: +385 (0)1 48 51 855

Fax: +385 (0)1 63 03 014

E-mail: [ombudsman@ombudsman.hr](mailto:ombudsman@ombudsman.hr)

WWW: <http://www.ombudsman.hr/>

### **Ombud for Children Rights**

Phone: +385 (0)1 4929 669

Fax: +385 (0)1 4921 277

E-mail: [info@dijete.hr](mailto:info@dijete.hr)

WWW: <http://www.dijete.hr>

### **Ombud for Gender Equality**

Phone: +385 (0)1 48 48 100

Fax: +385 (0)1 48 44 600

E-mail: [ravnopravnost@prs.hr](mailto:ravnopravnost@prs.hr)

WWW: <http://www.prs.hr>

### **Ombud for Persons with Disabilities**

Phone: +385 (0) 6102 170

Fax: +385 (0)1 6177 901

E-mail: [ured@posi.hr](mailto:ured@posi.hr)

WWW: [www.posi.hr](http://www.posi.hr)