



REPUBLIC OF CROATIA
OMBUDSMAN

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Zagreb, 7th September 2016

UN Independent Expert
on foreign debt and human rights
Thematic Engagement, Special Procedures and
Right to Development Division
UNOG-OHCHR
CH-1211 Geneva 10, Switzerland

SUBJECT: Questionnaire on labour rights in the context of structural adjustment and fiscal consolidation policies

Dear Ms Bohoslavsky,

regarding your questionnaire that needed to be fulfilled for the purposes of compiling the next thematic report to the 34th session United Nations Human Rights Council on the effects of foreign debt on human rights, we submit our answers below.

In accordance to your request, our answers are in English. Unfortunately, not all of the links that we can provide are in English and since we don't have the capacities for translation, we identified the links in the questionnaire in Croatian.

Since the Ombudswoman, within her competences laid down by the Constitution of the Republic of Croatia and special laws, considers the impact of structural reforms and economic policy of the state on labour rights primarily through complaints submitted to her by citizens, in which they indicate the problems they face in their employment, as well as during unemployment, including job searching and finding employment, the information that she can provide are based primarily on complaints and due to these complaints initiated investigation proceedings:

1. According to our information, over the last two decades, Croatian Government has implemented or tried to implement fiscal consolidation measures and structural reform programmes that included labour market measures such as:

- labour market reforms (flexibilisations);
- changes to the Croatian labour law;
- changes to the system of collective bargaining;
- freezing of salary increases for public service workers and civil servants;
- reduction of the number of persons employed in the public service;
- freezing of minimum wage;
- privatization or corporate restructuring of state-owned or controlled businesses and services;
- changes to the system of unemployment.

These measures were mainly implemented through changes in existing laws (for example, the Labour act, <http://www.mrms.hr/wp-content/uploads/2012/11/labour-act.pdf>), but also through adoption of new laws (for example, Act on representativeness of employer organisations and trade union organisations, <http://www.mrms.hr/wp-content/uploads/2015/11/Act-on-representativeness.pdf>), as well as through other forms of Government regulations. The main goals of these measures in the private sector (especially during the last reforms of Croatian labour law in 2014) were preservation of existing jobs, creation of new jobs and stimulating employment, enabling rapid adjustment of companies and workers to the market, more flexible company management and reduction of labour costs, more efficient and faster restructuring of businesses and combating undeclared work. In regard to public sector (public service workers and civil servants), the main goals were cutting costs of the state budget and increasing the efficiency of public administration through reducing the number of people employed in the public sector and freezing or reducing employees benefits. All of these goals were especially emphasized during the reforms and measures implemented after the beginning of the global economic crisis and one of the mottos that was most often repeated during the reforms was: “easier termination of employment will lead to an increase in employment”.

With regard to the scope of work of the Ombudswoman, it is impossible to list all the reforms and changes in Croatian legislation, however, as some of the most important we will point out the following:

- the possibility of uneven distribution of working time over days, weeks or months,
- extending working hours through extending the possibility of overtime work,
- the possibility of so-called „by-work“ for workers who already work full time for another employer,
- liberalization of the conditions and restrictions on the duration of fixed termed (temporary) employment contract,
- easier termination of employment contracts in the case of collective redundancies,
- faster and simpler procedure that precedes the termination of employment,
- restricting the right to collective bargaining only to representative trade unions,
- freezing the basis for calculating wages of public sector employees, reduction of the coefficient for calculating wages and other wage cuts done through suspension of certain

- bonuses and additions, as well as the reduction of other material rights of employees (eg. long-service award, annual leave pay, Christmas bonus, etc.),
- prohibition of employment in the public sector,
 - enabling employment up to one-half of the working hours to most pensioners while retaining the right to a pension,
 - implementation of professional training without entering into an employment relationship as one of the active labour market policy measures aimed at unemployed persons who completed schooling for certain occupation, but have no work experience on jobs that require that occupation.

2. The reforms were implemented by the Government of the Republic of Croatia at its own initiative, although some of them were encouraged by recommendations or other relevant instruments of international financial institutions, but also the European Union.

3. To our knowledge, during the design and implementation of the reforms, the Government of the Republic of Croatia has consulted with social partners through the Economic and Social Council at the national level. It is a body that is based on the idea of trilateral cooperation of the Croatian Government, trade unions and employers' organizations with the aim of solving economic and social issues and problems. However, due to mutual misunderstanding and disregard for its members, over the last few years the Economic and Social Council often did not work (more on <http://socijalno-partnerstvo.hr/english/>). Cooperation between the Government and trade unions, employers' organizations and civil society organizations in making some of the regulations that were of interest to their members, was also realized through working groups formed specifically for the design of each of these regulations.

Also, it is a legal obligation of the Government of the Republic of Croatia, when making laws, regulations and acts, to consult the public that has an interest in these laws, regulations and acts through a special web portal named e-consultations (more on <https://savjetovanja.gov.hr/>). Although it is a legal obligation of the Government, we noticed that some acts, often of particular interest to the public, do not undergo the procedure of consultation for various reasons (eg. in case of need for urgent implementation of reforms and similar).

4. The Ombudswoman does not have the exact data that you are looking for, nevertheless it is possible to get more information on this issue in a document of the Government of the Republic of Croatia called National Reform Programme 2016, that can be found on the following link http://ec.europa.eu/europe2020/pdf/csr2016/nrp2016_croatia_en.pdf. More information is also available on the web page of Ministry of finance where you can find a document called Economic and fiscal policy guidelines for the 2014 - 2016 period (<http://www.mfin.hr/adminmax/docs/Economic%20and%20Fiscal%20Policy%20Guidelines%202014-2016.pdf>).

5. a) Freedom of association – this right is guaranteed by the Constitution of the Republic of Croatia and the Labour Act and it was not affected by the reforms, although it has been noticed that the exercise of this right wasn't, and still isn't easy for the workers who work for private employers.

Due to the fact that the Government of the Republic of Croatia had derogated certain articles of collective agreements of the public sector through laws and bylaws, thus reducing material rights of public employees, it was brought to our attention that trade unions considered these measures to be a violation of the right to freedom of association.

b) Right to collective bargaining – although the collective bargaining and entering into collective agreements must be specified, in accordance to the Labour Act, in the articles of association as one of the purposes of an association of every trade union and every employers' association, this right was in 2012. limited by a special law (<http://www.mrms.hr/wp-content/uploads/2015/11/Act-on-representativeness.pdf>) to representative trade unions and employers' associations, which means that only those trade unions and employers' associations that meet certain criteria that are determined in a separate procedure, can engage in negotiations over the conclusion of a collective agreement. Trade unions experienced the adopting of this law as a limitation of their right to collective bargaining, especially in cases where there is more than one trade union that acts in the area of the application of the collective agreement and these trade unions cannot themselves agree on the composition of their bargaining committee.

c) Right to strike in conformity with domestic laws – this right is guaranteed by the Constitution of the Republic of Croatia and regulated by the Labour Act. It wasn't noticed that the reforms affected the exercise of this right in any way.

d) Right to just and favourable conditions of work – it was noticed that the reforms had a negative effect on the said rights of employees in the private sector in which, over the last seven years, there has been a drastic decline in employment, freezing or reducing wages which were too often not even paid, although the work has been done. It has also been noticed that, on one side, the working hours for some workers (as well as wages and employee benefits) were getting shorter due to mismanagement of companies and, on the other hand, the working hours for other workers were extended over the statutory maximum (usually without a corresponding increase in wages).

Although a Minimum Wage Law (http://narodne-novine.nn.hr/clanci/sluzbeni/2013_04_39_720.html) was adopted in 2008 that provides a statutory method of determining the minimum wage and the obligation of employers to pay at least this minimum wage, the amount of minimum wage cannot be considered sufficient for a decent life, which is particularly concerning because this wage, according to some data, receives every tenth worker in the Republic of Croatia. To our knowledge, the minimum wage and its legal regulation are a subject to a number of analysis and controversy among domestic and foreign economic experts, and many of them consider that the height of minimum wage is still

too high and that it has a negative impact on employment and economic recovery of the Republic of Croatia and that it also encourages the so-called "Grey economy".

e) Right to social security, including social insurance – although the social security system in the Republic of Croatia has passed a number of reforms over the years, in which certain rights of the social security system were reduced, abolished or substantially changed, and new reforms have already been announced, all this time the minimum of social security has been guaranteed by law and exercised in accordance with the criteria prescribed in these laws. The system has many flaws, due to which certain categories of people still remain without the support of the system or have difficulty in exercising their rights under this system.

In regard to job-related social protection, we would like to point out that, in accordance to a special law, legal residents, as well as persons with granted permanent stay in the Republic of Croatia, who are not insured on some other basis (eg. unemployed persons), are entitled to health insurance at the Croatian Institute for Health Insurance if they apply for this sort of health insurance in legally prescribed deadline.

Also, all workers with concluded employment contracts as well as persons engaged in an independent activity are insured on a mandatory basis for the case of unemployment and on that basis they are insured according to the pension insurance provisions. This insurance is provided on the principle of solidarity. Due to this insurance, unemployed persons are entitled to certain unemployment benefits if they have at least 9 months of employment in the last 24 months and are registered with the Croatian Employment Service and submitted a claim for unemployment benefits within the legally prescribed deadline.

Unemployment insurance includes:

- unemployment benefit,
- pension insurance,
- financial assistance and reimbursement of expenses during education and training,
- financial assistance during workplace training without a work contract,
- financial assistance for persons insured under an extended insurance scheme on the basis of a temporary work contract for regular seasonal jobs,
- one-off financial assistance and reimbursement for travel and relocation expenses.

f) Prohibition of all forms of forced labour and of harmful child labour – The Ombudswoman, while acting in accordance with her competences, did not notice that the reforms had a negative impact on the prohibition of all forms of forced labour and harmful child labour.

g) Non-discrimination in employment – Anti-discrimination act (<http://www.mvep.hr/zakoni/pdf/478.pdf>) entered into force on 1 January 2009. and it prohibits discrimination in different areas including work and working conditions, access to self-employment and occupation, selection criteria and conditions for employment and promotion, access to all types of vocational training, professional development and training on many grounds of discrimination, e.g. race, gender, trade union membership, education, health

condition, political or other belief and more, and worked out a system of protection through court proceedings or proceedings on suspicion of discrimination carried out by ombudsman institutions. In recent years, the largest number of complaints of discrimination received in the Office of the Ombudsman was in field of labour and employment. The problems are still related to finding work, whilst those who are employed complain about being transferred to lower paid positions, harassment and violation of rights connected with suspicion of discrimination on grounds of age, health status, political opinion, trade union membership, and other grounds.

6. a) Levels of unemployment – according to the information provided by the Croatian Employment Service there were 305.333 officially unemployed persons in 2011., 324.323 in 2012., 345.112 in 2013., 328.187 in 2014., 285.906 in 2015. and 254.653 in the first six month of 2016. These data show that the number of unemployed persons increased up to the year 2013. and then started to decrease in the year 2014. and this trend still continues.

By level of education, most of the unemployed persons have completed secondary or grammar school, then there are those with completed elementary school, a university or academy programme, persons with no education and the ones who completed an undergraduate university and post-secondary non-university programm. From 2014. the average number of unemployed persons also decreased among all groups distinguished by the level of education.

b) Poverty - according to the statistics, the at-risk-of-poverty rate in the Republic of Croatia, after social benefit transfers, is 19.4%. A total of 29.3% are at risk of poverty and social exclusion, whilst 13.9% live in conditions of severe material deprivation, because they are unable to meet their basic needs. For the unemployed this rate is a high 43.2%, for pensioners 18.9% and for other inactive persons 31%. In order to reduce poverty and social exclusion, the Strategy to Combat Poverty and Social Exclusion of the Republic of Croatia (2014-2020) (https://vlada.gov.hr/UserDocsImages/ZPPI/Strategije/STRATEGY_COMBATING_POVERTY_SOCIAL_EXCLUSION_2014_2020.pdf) was adopted, under which the state is working to reduce the number of people at risk of poverty by 150,000 by 2020.

From the beginning of 2014. the guaranteed minimum benefit (GMB) was meant to improve the status of socially at-risk people, but it has not shown positive results for those incapable of work, nor for the unemployed or single parents and one-parent families, or their children. The Social Welfare Act of 2013 prescribed that those unemployed who are capable of work may receive the GMB for a maximum of two years, and after that they can file a new request with the competent social welfare centre only after three months. The intention of this rule was to encourage passive beneficiaries of the GMB to become active in seeking employment, but since this did not produce results, at the end of December 2015., it was deleted by an urgent procedure, so that this right would not be abolished for 40,000 beneficiaries who did not find work.

c) Involuntary temporary employment - although only 24,53% of all employment contracts in 2015. were concluded for a fixed term, which means that 75,47% of employment contracts

were those of indefinite duration, according to the data made available to us by the Croatian Employment Service, of 206.590 unemployed persons who entered into an employment relationship in 2015., only 15.394 of them concluded employment contracts of indefinite duration, whilst 191.196 concluded temporary employment contracts.

d) Non-standard work contracts – the reforms of the labour law that enabled or facilitated the conclusion of non-standard work contracts (eg. so called by-work, permanent seasonal jobs, employment at alternative workplace and part-time work) resulted in a significant increase of the number of workers who concluded these kind of contracts, specially those for by-work and performing of permanent seasonal jobs. Non-standard work contracts are used to reduce labour costs and increase competitiveness in the labour market.

e) Irregular and/or informal work arrangements – according to the Report of Labour Inspectorate for 2014., the reform of labour legislation, in addition to other preventive and curative measures, as well as intensified repressive actions, resulted in a substantial reduction of undeclared work in relation to the period 2011-2013.

g) The percentage of people contributing to or receiving benefits from unemployment social security or public health insurance - according to the information provided by the Croatian Employment Service, 24,4% of all unemployed persons received unemployment benefit in 2011., 22,9% in 2012., 20,4 % in 2013., 17,8% in 2014., 16,9% in 2015. and 16,4% in the first six month of 2016.

7. There is an increasing demand for younger healthy workers, prepared to work overtime, in shifts, frequently to do jobs which do not fit their job description. Regardless of the fact that a large number of workers, due to the lack of any other choice, are prepared to accept these demanding terms, they are very often victims of various forms of discrimination in the workplace. At the same time, inappropriate skills for the work available and the non-alignment of education and training with the needs of the labour market are some of the reasons for the unemployment of young people. In 2015., of the 285,906 unemployed, 29.6% were young people, but in comparison with the previous year, a fall is visible in the average number of young unemployed people.

We receive complaints about discrimination on the grounds of political or other beliefs, concerning employment procedures in state bodies, but also in publicly owned companies. Citizens point out politically motivated assignments to lower-paid jobs, regardless of the results of work and assessments, and that these decision are overturned by the Civil Service Commission several times, but the first-instance body stubbornly ignores its instructions.

Because of fear of even more serious and worse consequences and victimization, as well as uncertainty and costs, citizens avoid court proceedings and discrimination are often not reported.

In the Republic of Croatia there is a special Ombudsman for persons with disabilities, so you can find more information on the effect on the inclusion/exclusion of persons with disabilities in the labour market on the following web site (http://www.posi.hr/index.php?option=com_content&view=category&layout=blog&id=128&Itemid=191).

8. In the Republic of Croatia there is a special Gender Equality Ombudsperson as an independent body in charge of combating discrimination in the field of gender equality whose responsibility is to monitor the enforcement of the Gender Equality Law (<http://www.mvep.hr/zakoni/pdf/476.pdf>) and other regulations on gender equality. Gender Equality Ombudsperson investigates cases of discrimination that is based on gender, marital or family status and sexual orientation, wherein less favourable treatment of women for reasons of pregnancy and maternity is also deemed to be discrimination.

You can find more on this subject on the following links:

- <http://www.prs.hr/index.php/english/annual-reports>,
- <http://www.prs.hr/index.php/analize-i-istrazivanja/analize-rada-i-zaposljavanja>,
- <http://www.mvep.hr/en/other/efp/>,
- <http://www.equal-futures.org/>.

9. According to the information that was made available to the Ombudswoman by trade unions, reforms did have a direct or indirect effect on the activity of organized labour, including strikes, public demonstrations and other forms of industrial action, although these activities did not increase in the expected extent because of a negative atmosphere that prevails among the citizens disappointed with the bad government policy and ineffectiveness of trade union activities undertaken earlier. According to the claims of trade unions, the possibility of undertaking strikes is strictly limited with the reasons defined by Labour Act and these reasons are further limited by case law, so these circumstances also have a negative impact on the will of the people to undertake any activities organized by trade unions.

It was brought to our attention on general level that during and after every strike there were cases of negative treatment of the labour representatives and the workers themselves, as well as cases of recording the workers involved in strike, usually through records of working time.

10. As one of the successful measures by the Government of Croatia that had a positive impact on the enjoyment of labour rights and economic and social rights we would like to single out implementation of professional training without entering into an employment relationship as one of the active labour market policy measures conducted by the Croatian Employment Service from 2012. It is aimed at unemployed persons who completed schooling for certain occupation, but have no work experience on jobs that require that occupation. It is a measure

aimed mostly at young people as a group of unemployed persons who are disadvantaged in the labour market and to whom this measure ensures the entry into the labour market, regardless of whether the law or other regulations stipulate the expert examination or work experience as a condition for performing the tasks of a certain job. Although the public opinion on this subject is divided, as well as those of experts and politicians, we believe this measure to be a successful one. It was implemented primarily to mitigate the negative effects of the economic crisis which adversely affected the employment of young people, particularly those with no experience in the occupation for which they completed schooling.

According to available data, at the end of 2015. the total number of beneficiaries of the aforementioned measure reached 32,494 people, and of the total number of the beneficiaries, 62% of them were employed within one year after using the measure.

Yours sincerely,

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3
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