

Equality between men and women: challenges to Croatian legislation

Vasiljević, Snježana

Veröffentlichungsversion / Published Version

Sammelwerksbeitrag / collection article

Empfohlene Zitierung / Suggested Citation:

Vasiljević, S. (2003). Equality between men and women: challenges to Croatian legislation. In K. Ott (Ed.), *Croatian accession to the European Union. Vol. 1, Economic and legal challenges* (pp. 273-290). Zagreb: Institute of Public Finance, Zagreb. <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-61740>

Nutzungsbedingungen:

Dieser Text wird unter einer CC BY-NC-ND Lizenz (Namensnennung-Nicht-kommerziell-Keine Bearbeitung) zur Verfügung gestellt. Nähere Auskünfte zu den CC-Lizenzen finden Sie hier:

<https://creativecommons.org/licenses/by-nc-nd/4.0/deed.de>

Terms of use:

This document is made available under a CC BY-NC-ND Licence (Attribution-Non Commercial-NoDerivatives). For more information see:

<https://creativecommons.org/licenses/by-nc-nd/4.0>

Chapter 12

EQUALITY BETWEEN MEN AND WOMEN: CHALLENGES TO CROATIAN LEGISLATION

Snježana Vasiljević
Faculty of Law
Zagreb

ABSTRACT

Reform of the Croatian legal system and the adjustment of its legislation to EU law is one of the main conditions for the Republic of Croatia to be able to join the Union. This paper analyses the existing requirements for gender equality inside the EU, the current situation in the applicant countries and the existing problems and challenges for states that are only on the way towards European integration. In the Republic of Croatia gender equality is not guaranteed to a sufficient extent, which has resulted in negative public reactions from NGOs and organisations for the protection of human rights and the rights of women. In addition, individuals are exposed everyday to various forms of sexual harassment in the workplace, in schools, universities and public places. So far, except at the constitutional level, no kind of legal approach has been adopted to guarantee gender equality or freedom of sexual orientation, which is an obligation of Croatia according to international treaties and the SAA.

Key words:

gender equality, sexual orientation, equal opportunities principle, equal procedure principle, sexual harassment, European Union, Copenhagen criteria, Council of Europe, Stabilisation and Association Agreement, European Community Treaty, *acquis communautaire*.

INTRODUCTION

The protection of fundamental human rights is both a challenge and the most important objective in the construction of a modern and democratic society. Many European states, in the endeavour to acquire the description of being democratic have put provisions about gender equality into existing laws or have passed special laws protecting sexuality and fundamental human rights such as the right to life, liberty, privacy and dignity. In spite of this, in most of them sexual harassment is still not regulated by special legal provisions, i.e., laws.

The conditions for joining the EU are clear and precise. States that are applicants for membership and future associated members have a laborious task ahead of them in fulfilling these really high criteria, which also means adjusting the national legislation with the rules of the EU. What conditions for membership are and what kind of framework the EU has set up for future members is explained in Chapter 2.

Through comparative analysis (in Chapter 3) of the existing situation in some of the member states, states that are applicants for membership of the Union and the less developed current members, an endeavour is made to highlight the existing level of protection of gender equality and victims of sexual harassment at a European level. Chapter 4 deals with the current level of legal protection in the Republic of Croatia and says how much the Republic of Croatia is behind in the process of coming closer to the EU.

At the end, with concrete conclusions and recommendations of measures to bring Croatia closer to the standards for membership in the EU (Chapter 5), the necessity for reform in Croatian legislation and its adjustment with EU law is highlighted.

THE EU AND GENDER EQUALITY

The criterion for the protection of gender equality

Equal treatment of the sexes, one of the fundamental human rights, is protected at the level of the Union. One of the criteria for

the protection of fundamental human rights in the EU legal system is the European Convention.ⁱ The European Court of Justice is bound to protect these rights. Although the EU is not a party to the EC, the European court has started to apply its rules (Rodin, 1997). This means that parties to the EC (member states of the Council of Europe) are obliged to ensure that its rules are really applied.

States parties of the EC can ensure the application of the Convention-guaranteed rights by ratification of the ECⁱⁱ and its direct application as a *self-executing* treaty, through the passing of a separate legal instrument to incorporate the rights guaranteed by the EC into the domestic legal system, or else the state can decide that the degree, and the content, of the protection of human rights is, at a national level, already in accord with the standards stipulated by the EC. The Constitution of the Republic of Croatia says that international treatiesⁱⁱⁱ that have been ratified and published are applied directly and have a force superior to statute. Since the standards of the EC, depending on national law, will be self-executing, i.e., directly applicable, and since the Croatian Constitution allows for this, the courts and other bodies in the Republic of Croatia can apply them directly (Rodin, 1997).

As a result of the change that occurred when the Treaty of Amsterdam (1999) came into force, the principle of the equality of men and women was supplemented in the broader context by the application of the so-called positive measures. The application of positive measures was envisaged in Article 2 of the Treaty according to the Directive on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training, promotion and working conditions (207/76/EEC) and the Recommendation of the Council (84/635/EEC) on the promotion of positive measures with respect to women. The European Court of Justice defined positive measures as obligatory and justified. The Amsterdam Treaty confirmed the importance of the principle of equal opportunities, and of the respect for human rights in the integration process. Certain legislative additions were passed to open up new opportunities for advancement as were Union objectives, including the most important one – the promotion of equality. They guarantee a high level of social protection and employment, equality of men and women, improvement of conditions and quality of life and mutual economic and social assistance among the member states. All the same, this article says nothing about actual equality, that is, the

putting into practice of the principle of equality. According to Article 13, the Council is obliged to undertake all measures against discrimination. Discrimination according to gender is just one of the segments governed by this article. Its provisions will not come into force until directives about what its substance is are adopted. Article 137 of the EC Treaty obliges the Community to support member states in the area of the promotion of equality between men and women in equal job opportunities and conditions of work. Article 141, the most important provision of the EC Treaty, gives a legal basis to the positive action measures, raising them to the level of the constitution of the Community. The implementation of these measures is made possible by Directive of the EU Council no. 75/117/EEC concerning the approximation of the laws of member states that relate to the implementation of the principle of equality of pay for men and women.

In the Council's Recommendation no. 84/635/EEC, which is based on the idea of equal opportunities, it is concluded that the promotion of this principle is only possible with the work of the member states and with their cooperation in the bodies that carry out social policy (the social partners). In its preamble it confirms the fact that the traditional anti-discriminatory measures are inadequate for the obviation of the existing inequalities. The recommendation pays special attention to the fact that the public sector could do a lot in this direction and in this way serve as a model in the solving of the same problems in the other areas. The Council recommends member states and social partners to adopt and apply positive measures. In this manner, although the Recommendation has no legally binding force, important steps can be made in the promotion of the principle of equality, for which, of course, two-way cooperation between state and individual is required (Rubenstein and De Vries, 1998).

In the rectification of existing inequalities, the legally binding and the not legally binding documents at the level of the Union are equally essential. For example, the EU Charter of Human Rights, though it has no legally binding status in the legal system of the Union, does nevertheless have marked importance in connection with the respect for and promotion of the principle of equality. Thus in Article 21 of the European Charter, all discrimination on the grounds of gender, race, skin colour, ethnic and social origin, genetic features, language, religion and convictions, political and other opinions, affiliation to some ethnic minority, wealth, birth, disability, age or sexual orientation is forbidden. In spite of the Charter's having created no new

legal resources capable of being used in the protection of human rights in the member states of the Union, it has a powerful interpretative force. The courts of the member states and the European Court must pay attention to it in their interpretations and interpret legal norms in the light of the rights guaranteed by the Charter. Such practice, which is otherwise accepted in the judicial interpretation of international law, starts off from the assumption that the national and European legislation did not in its activity have any intention of breaching any of the provisions of the Charter, rather to follow them. Although it is not part of the positive legal system of the EU, the Charter has already had certain legal impacts mediated via the interpretations of the courts (Rodin and Selanec, 2001). Similarly, Croatia is not obliged to incorporate the guarantees contained in the Charter into its legal system. Nevertheless, considering the conditionality of the Agreement on European standards of protection of human rights being respected, the Charter will have to be a criterion for normative regulation and protection.

The EU requirements and the harmonisation of the national legislation with EU law

The process of integrating new states into the EU takes for granted the existence of mutually different legal and political systems, which in a given period and according to certain agreed on institutional solutions will tend to converge on each other so that in the end their integration will become a merely formal question (Rodin, 1997). It is a question in this how much total integration of the new states is a matter of international and internal policy of the member states and how much a legally regulated process. The course of integration and final joining of the Union are conditioned both procedurally and substantially. Experience to date shows that the states that have become members have previously gone through various phases of contractual regulation of their relations with each other. The transition from one phase to another is today a matter of the political evaluation and will not only of the member states, but of the European institutions as well.

When there is discussion of the integration of the countries of Central and Eastern Europe into the legal system of European law, one of the basic problems is the question of the harmonisation of their

constitutional law systems and their ability to integrate. The principle of the equality between men and women, or equal treatment in line with the provisions of the Treaty on the foundation of the European Community (Article 141), with the Draft Charter of the EU on fundamental rights, and Directive EU 75/117/EEC about harmonisation of the laws of member states that relate to implementation of the principle of equality of pay for men and women, the Council's Directive EU 97/80/EEC about the burden of proof in cases of discrimination on grounds of gender, EU Directive 76/207 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training, promotion and working conditions. The article of the Foundation Treaty mentioned is binding upon all member states of the EU and constitutes a law with which Croatian law will have to become harmonised. It is also the legal basis for the passing of the secondary legislation the reception of which is also part of the *acquis*, and hence a condition for approaching the EU.

In accordance with everything stated, it is the duty of the Republic of Croatia to ensure the creation of regulations guaranteeing equality between men and women, freedom of sexual orientation, and protection from various forms of sexual discrimination, especially of sexual harassment. This would also be to create the grounds for the harmonisation of Croatian law with EU law, the passing of by-laws and regulations, collective agreements and so on.

THE EQUALITY OF MEN AND WOMEN

Equality between men and women at the level of the EU

The Equal Treatment Directive forbids every form of discrimination, direct and indirect, on the grounds of gender. At the same time, its aim is to give legal form to the principle of equal treatment for men and women. The equal treatment directive contains three exceptions to the principle of equal treatment (De Burca and Craig, 1998). These are of limited opportunities for derogation, the application of positive measures, and the removal of existing inequalities that most of all hit women because of their abilities to get employed and promoted, to receive further training, their working conditions and social security.

The states have also bound themselves to introduce more effective sanctions and damages in cases of sexual harassment and the introduction of a special counsellor or commissioner for the prevention of sexual harassment at the workplace. Still, in its form to date the directive has not sufficiently thoroughly regulated the problem of direct and indirect discrimination, sexual harassment^{iv}, the questions of sanctions and damages, the foundation of special bodies in the member states to promote the principle of equal opportunities and the questions of parental rights while seeking maternity leave, and in line with this the Council and the Parliament have decided on joint action to draw up a proposal for a draft amendment to the said instruction.^v The final wording of the amendment has still not been adopted because of the long-lasting procedure through which it has to go in the EU institutions. If these amendments are accepted in their existing form, it will be an important advance in the development of the existing legislation at the level of the EU that protects equality between men and women. The Commission has proposed that a more precise and all-embracing definition of sexual harassment be put into the final wording of the amendment. In favour of this is the fact that a small number of men, but no less significant, complain of sexual harassment at work from women and other men, that is, it is not only women that are the victims of sexual harassment, and men are not the only perpetrators. Young women, women starting out at work, women with irregular and insecure labour contracts, women who carry out traditional jobs, divorced women, lesbians and women who are members of minority racial and ethnic groups are particularly exposed to sexual discrimination (Rubenstein and De Vries, 1998).

In the Council's Resolution on the protection of men and women at work and in the European Commission Code of Practice on Measures to Combat Sexual Harassment various forms of conduct that are considered sexual harassment are stated (Rubenstein and De Vries, 1998). Sexual harassment is absolutely unacceptable if it implies conduct that offends the other person, if it is undesirable and unjustified; if the rejection of or submission to such conduct – whether it is a matter of working women or employers (including superiors and equals) is directly or indirectly used while making a decision about taking someone on for practice or a job, about the offer of a permanent job, about promotion, a pay rise, or if it affects any kind of decision about employment and if such behaviour makes the work environment inimical, awkward and degrading for the person it applies to.^{vi}

Equality of men and women in some EU member states

In an analysis of the EU average to date about the normative level of protection of gender equality we will have to make use of an individual approach to the study of the existing legislative solutions in each one of the member countries. This is a lengthy business because of the variety of solutions, with respect to their contents, the scope of the protection and the way it is applied. Provisions about the equality of men and women and about sexual harassment are built into various already existing laws, such as labour laws, criminal codes and other regulations – collective bargains and labour contracts. The battle against sexual harassment at the EU level has in recent years resulted in provisions about sexual harassment being put into existing laws in countries like Belgium, France, Germany, Italy, Ireland, Holland and Spain and into collective agreements in some sectors, as in Spain, the UK, Holland and Denmark. This is also the duty of states according to the European Commission's Recommendation on the Protection of the Dignity of Women and Men at Work (92/131/EEC).^{vii} In some states provisions about gender equality have been put into special laws such as equal treatment laws or equal opportunity laws. What is common to them all is that all states are protecting sexuality at the level of constitutional law. Through a review of existing legislative approaches in some of the member states we can define the current average protection of the rights of individuals from sexual discrimination.

In the establishment of actual equality, *Sweden* is, of course, among the leading countries. The *Sweden or Nordic model* stands out as one of the most progressive models in the promotion and protection of sexual equality.^{viii} The Nordic countries have the institution of Ombudsman for matters of encroachment on the equality between men and women. The equality of the sexes is governed by a special equal opportunities law which guarantees an equal position to men and women, that is, it protects them from every form of discrimination related to conditions of work, equal pay for equal work, retirement conditions, parental relations, sexual harassment, and equal representation of men and women wherever it can be achieved. The Equal Opportunities Act expressly forbids sexual harassment at the workplace, sexual harassment by an employer or some other employee, and every form of harassment that is the consequence of a report by an employee who has

been the victim of sexual harassment to the competent body. An employer who infringes the provisions of this law is bound to pay damages. The objective of the law is to achieve the non-condemnation of any person who has at work complained or agreed to testify in the case of some complaint (Elman, 1996). It is important to mention that in Sweden there is also a Ministry for Matters of Gender Equality (Kindenberg, 2001).

In France and Germany the application of the criminal code is one of the main resources in the battle against sexual harassment at work. In *France* sexual harassment was recognised as a problem as far back as 1985, an important role being played by the European Community (Elman, 1996). The Recommendation and the Regulations of the Commission had the biggest part to play in this. In French law sexual harassment is incorporated into criminal, labour and civil law. In spite of this, existing approaches are still subject to criticisms because it is considered that the provisions in force do not sufficiently protect the victims of sexual harassment. This is a particular problem in the workplace, where sexual harassment mostly actually happens.

EU member countries mostly follow the American model when passing provisions about sexual harassment. The *Austrian* Equal Treatment Act contains provision about sexual harassment along the lines of the American rules (*Equal Employment Opportunities Commission Guidelines*). The Act also covers all forms of sexual harassment (Cahill, 2001). The Equal Treatment Commission is charged with handling complaints about sexual harassment.

The situation in the *UK* is similar; an increasing number of various forms of sexual harassment of heterosexual and homosexual men and women forced the government there to set up a special Equal Treatment Commission in England, Scotland and Wales, to provide for individuals efficient legal protection against various forms of sexual harassment. The legal basis for the handling of complaints is the Sex Discrimination Act passed in 1975 (Millins and Bridgeman, 1998). In addition, the implementation of the rules concerning sexual discrimination put in this law was influenced by the European Commission's Recommendation and Code of Practice on Measures to Combat Sexual Harassment.

France and Belgium^x have the most complete regulations about protection against sexual harassment, with *Holland and Great Britain* not far behind, while *Greece and Portugal* do not have any special regulations at all to regulate the ban on sexual harassment.^x This, of course, calls into question the protection derived from and respect for the princi-

ple of gender equality guaranteed in the constitutions of the states mentioned. Although victims of sexual harassment and other forms of the infringement of the principle of equal opportunities and equal treatment can seek protection of their rights at the constitutional and international level, there is still the problem of the absence of any regulations to regulate questions of damages and determine sanctions in such cases.

Equality between men and women in countries that are applicants for EU membership

Research into the current legal protection against sexual discrimination in states that are applicants for membership in the EU shows that most of them are still not ready for EU accession. The criteria of respect for high standards of protection of fundamental human rights and liberties are truly high, and are also important for the establishment of and respect for the democratic principles that each state should aim at. Apart from that, it is also their duty if they wish to be full members of the international community and of supranational institutions such as the EU.

Slovenia has passed its Workplace Relations Law, which came into force in 1998. The Law explicitly forbids the discrimination in the workplace of persons who are inclined towards the same sex. An employer is expressly forbidden to put any employee into an unequal position because of his or her ethnicity, race, skin colour, sex, age, state of health, religious, political or other conviction, membership in a party, ethnic or social origin, family and health status, sexual orientation and other reasons of a personal nature. Since 2001 there has been an ombudsman for human rights. This progress by *Slovenia* in the protection of the principle of equality and the suppression of discriminatory behaviour of homosexual or bisexual orientation was positively evaluated by the European Commission (Pecnik, 2002). In spite of this, the European Parliament, the Council and the parliaments of the member countries set *Slovenia* two more conditions in the area of protection of sexual equality which it is bound to meet before it can join the EU. These concern the need to adopt a national programme for protection against discrimination, and the application of such a programme in practice.

The EU has also given a positive evaluation of the advances made in the protection of equality between men and women in *Estonia*,

where the constitution bans various forms of discrimination, including discrimination on the grounds of gender. Such forms of discrimination are forbidden in the Salaries Law and the Labour Law. Apart from this, the national programme for the adoption of the *acquis* guarantees the passing of a gender equality law by the end of 2002. This programme will also settle the problem of sexual harassment at a legislative level.

The *Czech Republic* has to thank the existence of a constitutional provision about the equality of men and women for its advances in the protection of gender equality and a positive evaluation of the current situation. From the examples of the *Czech Republic*, *Estonia* and *Slovenia* it is obvious that some of the applicant states have fulfilled a large number of the conditions to join the EU, thus approaching high standards for the protection of human rights. As against this, most of them are still faced with extensive work in the creation of a new legislative background for the protection of equality between men and women.

In *Bulgaria*, discrimination on grounds of gender is explicitly forbidden by the Constitution and the Labour Law. In spite of this, women are still exposed to gender discrimination at the workplace, which means that the rules prescribed by the labour law are not put into practice and are not respected. Employers often break the rules about equal opportunities, the rights of women to maternity leave, and do not adequately protect women from sexual harassment at the workplace. Apart from that, the current Bulgarian labour law does not contain the principle of equal pay for equal work, which existed in the Bulgarian Labour Law up to 1992. Since then women have no longer been guaranteed this equality and in reality they are considerably worse paid for their work than men. Apart from that, the legislator has failed to regulate the matter of legal remedy and damages in all cases of sexual discrimination and sexual harassment. Nor does the Bulgarian criminal code anywhere specifically mention the problem of sexual harassment, although there are several provisions that refer indirectly to cases of sexual discrimination. Still, these provisions do not protect the victims of sexual discrimination at the workplace. In *Bulgaria* there is no special commission to which complaints could be sent in cases of violation of the principle of equal opportunities, equal treatment and sexual harassment. Sexual harassment is not specifically regulated by a single law or regulation. For this reason *Bulgaria* has been exposed to EU criticism (and international criticism too) because of its failure to respect its own constitutional principles and laws, by which it is in breach of the obligations it has undertaken to join the EU.

Malta, Romania, Cyprus, Slovakia and Turkey do not meet in their entirety the criteria of the protection of equality between men and women. Since these are all states that ought to be acceding to the Union in the next round of enlargement, they have a really difficult task to harmonise domestic legislation with EU law, and to meet the now rather high criteria that have been set by the current member states in the matter of the regulation of gender equality.

EQUALITY BETWEEN MEN AND WOMEN IN CROATIA

Croatia does not currently satisfy all the criteria for membership of the EU. Apart from the 1993 Copenhagen criteria, the Republic of Croatia still needs to meet the additional political conditions relating to the return of refugees, media freedom, cooperation with the ICTY and regional cooperation. As part of its reporting on whether Croatia has lived up to the provisions of the SAA, the EU is also monitoring whether it meets the criteria for EU membership. In this area, for us the most important criterion is that of stability of institutions of the member countries sufficient to ensure democracy, the rule of law, the respect for human rights and minority rights. Croatia is still quite a long way behind in fulfilling these criteria, especially because of the lack of proper laws to protect the right of individuals at the normative level, because of the ineffectiveness of the courts, and because of the inadequate number of properly educated experts (especially lawyers, most of whom who do not know the material of European law). For this reason we have no reason to hope for any rapid approach to the standards for membership in the EU.

Still, the Republic of Croatia has made a certain advance in the regulation of the equality between men and women at a legislative level. The amendments to the Labour Law of 2001 put in a provision concerning positive discrimination. There was also an intention to adopt a provision about sexual harassment, but for reasons of absence of political will, it was left out. No provision about sexual harassment exists in the Criminal Code either. The provisions of the Criminal Code define abuse and do not make any distinction between abuse and harassment. What is positive is that in some firms there is a trend towards putting rules about sexual harassment into the collective

agreements, because of the increasing number of complaints from individuals (mainly women) that they had been exposed to some form or other of sexual harassment at the workplace. This is in line with the Rules of the Commission about practical measures for suppressing sexual harassment of 1991, and with the Commission's Recommendation of 1991 concerning the protection of the dignity of men and women at work. Although these are not obligatory, states that are applicants for potential membership of the EU are bound to follow them in the process of harmonising the national legislation with EU law. Croatia too took on this obligation when it signed the SAA. The Republic of Croatia also bound itself to respect the norms of international law, and this obligation derives from the constitutional provision according to which international laws that have been ratified and published are ipso facto a part of the internal legal system. The existing constitutional framework of the Republic of Croatia does not have any major drawbacks that would prevent the country joining the EU. The final arbiter in the area of the protection of fundamental constitutional rights and liberties in the Republic of Croatia is the Constitutional Court. Just like the practice of this body, Croatian legislation too accepts the solution according to which it is held that the degree and contents of the protection of rights in a material sense at a national level is in line with the standards stipulated by international treaties. Nevertheless, in practice it turns out that any victims are deprived of their rights, because the national courts apply in their proceedings only the statutes and usually ignore the standards laid down in international documents, which is one of the limitations in the process of approaching the EU. It is obvious that certain adjustments of the standardising system will be needed; they can be done either through legislative regulation (the most likely approach), or through interpretations of the Supreme and the Constitutional courts. The choice between these two approaches will certainly depend on the mood of the political body (Rodin, 1997).

Judging from the speed at which applicant states have progressed towards membership to date, it is realistic to expect that the Republic of Croatia at its current tempo could in a year or two approach the criteria set up for EU accession. In this process, the Republic of Croatia should take account of any external risks that could constitute a limitation on its rapprochement with the EU. They could result in changes in the EU attitude to Croatia, and also on an insistence on the achievement of legal protection standards that Croatia is not capable of meeting because of the current limitations within the

domestic legal system. At the moment Croatian institutions are not prepared for this process, and it is unreal to expect that the problem will soon be able to be solved. It is practically impossible to estimate when the Republic of Croatia will really and fully, in the sense of the respect for the respect for human rights, be ready to become a fully member of the EU. This will depend quite a lot on the development of the awareness of the individual of the need to protect people against discrimination on grounds of gender and sexual orientation, and on political will to have an impact on the acceleration of the adoption of legislative solutions protecting the sphere of sexuality.

CONCLUSIONS AND RECOMMENDATIONS

In the regulation of equality between men and women and protection from sexual harassment, as already mentioned, Croatia is not essentially behind the current applicant states, because some of them have still not put sexual harassment provisions into their existing laws (e.g., Romania, Slovakia and Turkey).

Nevertheless, we do lag behind the member countries, and for this reason further efforts in the adjustment of the national law to solutions that already exist in the member states (for example, in the UK, France, Sweden and Austria) are necessary. By taking over existing solutions, a point of departure is created for further regulation of the question of gender equality and protection against sexual harassment. Before this it is necessary to work out an effective strategy of and directives for the harmonisation of the national law. Bearing in mind the criteria of protection of human rights, it is certainly necessary to forbid in Croatia both direct and indirect discrimination on the grounds of gender and sexual orientation; to guarantee equality of men and women in all areas, particular with respect to employment, work, pay, promotion and further training; to guarantee equal pay for equal work, or work of equal value; to guarantee the equality of men and women in the area of social security; to bring in measures of affirmative action; to guarantee freedom of sexual orientation and to ensure court protection and damages in all cases of violation of the right to equality between the sexes. The legislator must decide in which way it will apply these solutions, perhaps through the passing of a single law which will set rules about various forms of discrimination on grounds of gender or sexual preference, or perhaps such provisions can be inserted into laws

that exist already (e.g., the Labour Law, the Civil Law, the Criminal Code, the Family Law). One of the recommendations must certainly be the insertion of provisions forbidding sexual harassment into the Criminal Code *de lege frenda* with a contemporary provision modelled on American law, from which the term *sexual harassment* is actually taken.

The objective of putting provisions about equality between men and women into the Croatian legal framework is to introduce standards for the identification of various forms of discrimination with respect to gender and sexual preference, and mechanisms for its obviation, including the protection of the courts. Respect for the criterion of equality between men and women and legal protection against sexual discrimination is one of the areas of the most dynamic development of European law. Hence for the Republic of Croatia it is exceptionally important to keep up with the changes and to make up for the existing gap. Founding a special independent body to which complaints about sexual discrimination and infringements of the principle of equality between men and women and the drawing up of a national programme for the battle against sexual discrimination would certainly speed this process up.

At the end, it is important to draw attention to what is perhaps the most important step – sensitising the domestic public to the existence of a problem. This would be greatly helped by a high quality media campaign. Women's associations should present their work and its effectiveness better, and not monopolise the area, in the sense of claiming that they alone are competent to solve questions of violations of equality between men and women. All of this is a long-lasting and extensive process, in which all the experts and legal institutions of the Republic of Croatia have to be involved.

ⁱ According to Article 14 of the Convention (a general clause) the exercise of the rights and liberties acknowledged in the Convention has to be secured without discrimination on any grounds at all, with respect to gender, race, colour, language, religion, political or other opinions, ethnic or social origin, affiliation to an ethnic minority, wealth, family or any other grounds. This article is not applicable without the invocation of the breach of some other right. For the more effective implementation of the principle of equality and the protection of human rights, the Committee of Ministers, on 26 June 2000, adopted Protocol 12 (the Republic of Croatia ratified this, but it is not yet in force), which guarantees a general prohibition of discrimination, in line with Article 14 of the Convention.

ⁱⁱ The Republic of Croatia signed the European Convention on 6 November 1996, and ratified it on 17 October 1997. It deposited ratification documents on 5 November, and it was subsequently published in Official Gazette 18/97, annex: Treaties (Rodin, 1998).

iii *Fundamental human rights are protected by international documents like the General Declaration of the UN concerning the rights of man, the International Pact on Civic and Political Rights, Convention relating to discrimination to do with employment and occupations, the Charter of the Community concerning the basic social rights of employees, the Convention on the elimination of all forms of discrimination against women, the European Convention and the European Social Charter. The principle of equal treatment was originally contained in the character of the ILO, whence it was put into the Philadelphia Declaration (1944).*

iv *The concept of sexual harassment started to be mentioned in the mid-70s in America, when the feminist movement started up, and hence many ascribe its appearance to the feminist schools that came into being at that time (MacKinnon, 1987).*

v *The Commission for the first time announced a proposal to amend the existing Directive on 7 June 2000, aiming at its improvement and creating standards concerning sexual harassment. The EP in the second reading of the draft of the bill for the modified Instructions proposed several amendments to the wording that the Council sent it in July 2001.*

vi *The Regulations of the European Commission about practical measures for the suppression of sexual harassment distinguish two kinds of sexual harassment: sexual extortion (quid pro quo) and sexual harassment brought about by a hostile environment. Both expressions are taken from American literature (MacKinnon, 1987).*

vii *The basic definition of sexual harassment derives from the American Equal Opportunities Commission (Cahill, 2001). Sexual harassment is regulated in most detail in US law, more precisely, but Article 14 of the Constitution, the Civil Law of 1964 (Ch. VII, section 703) and practice of the Supreme Court (the best-known case of sexual harassment to have appeared before the Supreme Court is Meritor Savings Bank v. Vinson iz 1986).*

viii *One of the basic reasons for Sweden to have made such progress in the promotion of gender equality is the change in the basic approach to the understanding of equality. What was changed in the Swedish way of understanding gender equality is the evolutionary approach. The fundamental unit of society is not the family but the individual, hence a woman, as individual, is acknowledged to have the same rights as a man.*

ix *In Belgium the Labour Law was augmented by an amendment about regulations at work, and employers are obliged to undertake measures to protect employed people from sexual harassment at work.*

x *It is appalling that about 50% of European women claim to have been the victim of sexual harassment (Rubenstein and De Vries, 1998).*

LITERATURE

- Cahill, M. L., 2001.** *The Social Construction of Sexual Harassment Law, and the Role of the National, Organizational and Individual Context.* Aldershot: Ashgate.
- Craig, P. and De Burca, G., 1998.** *EU Law, Text, Cases and Materials.* Oxford: Oxford University Press.
- Dijk, P. and Hoof, G. J. H., 1990.** *Theory and Practice of the European Convention on Human Rights.* Deventer-Boston: Kluwer Law and Taxation Publishers.
- Dojčinović, G. [et al.], 2001.** *Što Hrvatskoj donosi Sporazum o stabilizaciji i pridruživanju?* Zagreb: Ministarstvo za europske integracije.
- Ellis, E., 1998.** *EC Sex Equality Law.* Oxford: Clarendon Press.
- Elman, A., 1996.** *Sexual Politics and the European Union: The New Feminist Challenge.* Oxford: Berghahn Books.
- European Union, 2002a.** “Council Directive on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions”. *Official Journal L 39, 14.2.1976.* [online]. Available from: [<http://europa.eu.int/infonet/library/i/95c29605/en.htm>].
- European Union, 2002b.** “Resolution of the Council and the representatives of the Governments of the Member States on the fight against racism and xenophobia in the fields of employment and social affairs”. *Official Journal, C 296, 10.11.1995.* [online]. Available from: [<http://europa.eu.int/infonet/library/i/95c29605/en.htm>].
- Gomien, D., 1996.** *Kratak vodič kroz Europsku konvenciju o ljudskim pravima.* Zagreb: Organizator.
- Gomien, D., Harris, D. and Zwaak, L., 1996.** *Law and practice of the European Convention on Human Rights and the European Social Charter.* Strasbourg: Council of Europe Publications.
- Hartley, T. C., 1991.** *Temelji prava Europske zajednice.* Rijeka: Pravni fakultet Sveučilišta u Rijeci.
- Hrženjak, J., 1992.** *Međunarodni i evropski dokumenti o ljudskim pravima: čovjek u njegove slobode u pravnoj državi.* Zagreb: Informator.
- Kindenberg, U., 2001.** *Taking active Steps. Side by Side: A Magazine from the Equal Opportunities Ombudsman,* special edition.
- Mackinnon, C. A., 1987.** *Feminism Unmodified: Discourses on Life and Law.* Cambridge: Harvard University Press.

- Matulović, M., 1996.** *Ljudska prava*. Zagreb: Hrvatsko filozofsko društvo.
- Millins, S. and Bridgeman, J., 1998.** *Feminist Perspectives on Law: Law's Engagement with the Female body*. London: Sweet & Maxwell.
- Minnesota Advocates for Human Rights, 1999.** *Sex Discrimination and Sexual Harassment in the Workplace in Bulgaria* [online]. Minneapolis: Minnesota Advocates for Human Rights. Available from: [<http://www.mnadvocates.org/Publications/Women%20Publications/sexharas.htm>].
- Pecnik, A., 2002.** *Istospolna usmerjenost in zaposlovanje*. Ljubljana: SKUC LL.
- Riigikogu, 2001.** *Harassment/Bullying at the workplace in Estonia* [online]. Estonia: Riigikogu. Available from: [http://www.riigikogu.ee/osakonnad/msi/tood/tell01_38.html].
- Rodin, S. i Selanec, G., 2001.** "Povelja ljudskih prava Europske unije." *Euroscope*, 10 (54), dodatak.
- Rodin, S., 1997.** *Europska integracija i ustavno pravo*. Zagreb: Institut za međunarodne odnose.
- Rodin, S., 1998.** "Ustavnopravni aspekti primjene Europske konvencije za zaštitu ljudskih prava i temeljnih sloboda." *Zbornik Pravnog fakulteta u Zagrebu*, 48 (1-2), 85-116.
- Rubenstein, M i Vries, I. M. de, 1998.** *Kako suzbiti seksualno uznemiravanje na poslu: vodič za primjenu pravila Evropske komisije*. Zagreb: TOD.
- Sajko, K., 2001.** *Izbor međunarodnih ugovora Vijeća Europe*. Zagreb: RRiF-plus.
- United Nations, 1998.** *Resolution of the Government of the Czech Republic (No. 236) on the Priorities and Procedure of the Government in Promoting the Equality of Men and Women* [online]. New York: The United Nations. Available from: [<http://www.un.org/womenwatch/confer/beijing/national/czech.htm>].