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## DISCRIMINATION IN A CROSS-NATIONAL PERSPECTIVE: LABOUR AND SOCIAL DISCRIMINATION OF MIGRANT WORKERS IN THE REPUBLIC OF CROATIA

### *Abstract:*

*The Republic of Croatia was traditionally a country of labour emigration and only in the last decade has it become a country of labour destination, mainly for migrants from the region. The overall migration rate remains low if compared to traditional migration countries. Still, laws, regulations and administrative provisions have to ensure equality in access to labour and social rights and must prevent, as far as possible, discrimination of migrants. Despite EU membership, national laws are not fully aligned with the legal obligations arising from international human rights treaties, the EU migration acquis and the Stabilisation and Association Agreements with the EU candidate countries. This paper focuses on legal research to determine whether discriminatory provisions in national labour and social law, particularly relating to third-country nationals and seasonal workers, are preventing higher labour market participation and limiting migrants' labour mobility within the national market. In addition, the research attempts to answer the question whether the current legal provisions impede migrant workers' access to social rights and full local integration in the Republic of Croatia. The main research method is qualitative research of existing laws, regulations and administrative provisions. The findings can be summarised in three categories: 1. Croatian legislation has several areas of unequal treatment of migrants and their family members that can result in discrimination; 2. national social legislation precludes certain categories of migrants from full access to social rights, thus obstructing their local integration; 3. currently, several categories of migrant workers do not enjoy internal labour mobility.*

**Keywords:** *migrant workers, discrimination of migrants, access to labour and social rights.*

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## I. INTRODUCTION

The recent publication of the first report on the Migrant Integration Policy Index (MIPEX) for the Republic of Croatia has revealed unfavourable integration policies in the areas of migrants' access to health services, political participation, education and access to nationality.<sup>1</sup> The report also exposes numerous discriminatory provisions of applicable laws, regulations and policies in the areas of anti-discrimination, labour market mobility, the right to family unity and access to permanent residence for migrants.<sup>2</sup> The Republic of Croatia ranked 30<sup>th</sup> out of 38 countries included in the MIPEX research, clearly pointing out that the labour and social discrimination of migrants is the main obstacle to the successful integration of foreigners.

Croatian migration legislation is generally harmonised with the EU *acquis*, which had been one of the conditions for Croatia's accession to the EU in July 2013, but certain labour rights of migrant workers are still under-regulated or unregulated. The paper will try to analyse national laws, regulations and policies in labour and social law that are of crucial importance for the equal treatment of migrant workers. We will examine if any of the provisions of national legislation might prevent higher labour market participation and might limit migrants' mobility within the national labour market. In addition, the research will try to answer the question of whether the current legal provisions impede migrant workers' access to social rights and full local integration in the Republic of Croatia.

## II. ACCESS TO THE NATIONAL LABOUR MARKET FOR EU NATIONALS

The principal law governing the entry, stay, residence and certain other rights of foreigners (including specific labour and social rights) in the Republic of Croatia is the Aliens Act adopted on 1 January 2012 and amended in 2013.

Formally, EU nationals have free access to the Croatian labour market, with the exception of nationals of 13 EU Member States that introduced transitional measures for Croatian nationals following the accession of the Republic of Croatia to the EU. These re-

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<sup>1</sup> Research for the paper was conducted within the framework of Jean Monnet Chair in EU Labour, Equality and Human Rights Law. The paper was presented at the IMISCOE Conference: Rights, Democracy and Migration – Challenges and Opportunities at the University of Geneva in June 2015.

The author of this paper has been involved in MIPEX research in the capacity of expert for the labour mobility and as a peer-review expert in the area of access to health.

<sup>2</sup> T. Huddleston et al., Migrant Integration Policy Index 2014, Brussels, 2015., available at: <http://www.mipex.eu/what-is-mipex>, (accessed on 01 May 2015).

strictions are in line with Art. 153 of the Aliens Act and the Regulation on the temporary application of restrictions for EU nationals conditioning employment on the obligation to obtain a work permit.

EU nationals wishing to work in Croatia have to undertake a rather complicated procedure of registering either a short-term stay (within a very short deadline of 48 hours upon arrival in the Republic of Croatia) or a temporary stay within another tight deadline of three days from entry into the Republic of Croatia. Following the registration procedure and in accordance with the provisions of the Treaty on the Functioning of the European Union, EU nationals should be able to enjoy the same access to employment as Croatian nationals, with the exception of employment in the public service. In practice, access to national employment is restricted for several reasons.

Jobs in the Croatian labour market are generally divided into three sectors: the private sector, public service (state administration including ministries under which are hospitals, universities, schools, social services, etc.) and public companies (electricity, gas and water providers, public financial companies, state agencies, the national airline company, public insurance companies, state television, public transportation companies, etc.). The major obstacle to employment in public companies in the Republic of Croatia is the common formal requirement of the submission of a certificate of citizenship. This is applicable to all job seekers, regardless of whether the applicant is a graduate of a Croatian university. Subsequently, due to the requirement of a certificate of citizenship for the public sector, EU nationals enjoy free access only to private employment or self-employment in the Republic of Croatia. Discrimination based on the nationality of workers of the Member States as regards employment can be legally justified only on grounds of public policy, public security or public health, but employment in public companies commonly does not entail any of the above-mentioned grounds, so we find very little justification for the formal requirement of citizenship for employment in public companies.

Furthermore, the Republic of Croatia has a very elaborate list of 250 regulated professions for which a particular expert qualification is required and which are regulated by specific laws. Professional chambers or state bodies authorised to approve employment in a specific profession have the main role in recognising foreign qualifications for regulated professions. Even two years after the accession of the Republic of Croatia to the EU, chambers have still not introduced automatic recognition of EU-acquired qualifications, nor have they afforded preferential access to the national labour market to EU nationals. The annual report of the Ombudsman for 2014 emphasised citizens' complaints against the work of the Croatian Chamber of Dental Medicine, the Croatian Nurses Chamber and the Croatian Medical Chamber in dealing with requests for the recognition of foreign qualifications.<sup>3</sup> Existing procedures of recognition of qualifications are conducted under the au-

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<sup>3</sup> Izvješće pučke pravobraniteljice za 2014. godinu, Zagreb, <http://www.ombudsman.hr/attachments/article/517/Izvje%C5%A1%C4%87e%20pu%C4%8Dke%20pravobraniteljice%20za%202014.%20godinu.pdf>,

thority of professional chambers and they are slow, expensive and inefficient. In practice, certain EU study programmes are incompatible with Croatian programmes, which has led to additional requirements, such as extensive study periods and supplementary exams.<sup>4</sup> As this paper was being drafted, the Croatian Parliament accepted the Draft Act on the Recognition of Qualifications in order to facilitate the full alignment of the Croatian legal framework with Directive 2005/36/EEZ on the recognition of professional qualifications. According to the Draft Act, all professional qualifications of medical doctors, specialised doctors, general care nurses, dental practitioners, specialised dental practitioners, veterinary surgeons, midwives, pharmacists and architects acquired in the EEA Member States should be automatically recognised in the Republic of Croatia.

The final point related to access to the national labour market is related to sports athletes. Two years into full EU membership of the Republic of Croatia, EEA sports athletes are not afforded the same treatment as Croatian nationals in regards to access to professional clubs and have the same access as all other foreigners, i.e. third-country nationals. According to the Aliens Act, professional athletes are eligible for a single permit outside the annual quota (Art. 76). The Sports Act stipulates that national sports associations regulate the right of foreign athletes to play for Croatian clubs, as well as the conditions of participation in sports games (Art 47, para 6). The Act explicitly excludes EU nationals from the notion of “foreigners”, i.e. EEA nationals have the same rights as Croatian nationals (Art. 62.2 of the Sports Act). At the same time, the regulations of sports associations, such as the basketball and volleyball associations, do not reflect the EU membership of the Republic of Croatia. Thus, they still do not differentiate between EU and EEA nationals, the nationals of countries that have entered into the SAA with the EU, and third-country nationals. Thus, EU nationals can play in Croatian sports clubs in limited numbers and do not enjoy equal access to professional sports in the Republic of Croatia based on their nationality. This is not in accordance with the jurisprudence of the Court of Justice of the EU.<sup>5</sup>

Furthermore, the regulations of sports associations do not grant preferential treatment to the nationals of EU candidate countries (Albania, Serbia, Montenegro, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia and Turkey) based on their association agreements with the EU. These agreements stipulate “treatment of legally employed workers free of any discrimination based on nationality”. Consequently, the num-

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2014., (accessed on 25 April 2015).

<sup>4</sup> Deliberations of the Croatian Parliamentary Councils, <http://www.sabor.hr/prijedlog-zakona-o-reguliranim-profesijama-i-prizn> (accessed on 25 April 2015).

<sup>5</sup> Particularly related to decisions of the Court of the EU in cases C-13/76, *Gaetano Dona v. Maria Mantero*, 14 July 1976; C-415/93, *Union royale belge des sociétés de football association ASBL v Jean-Marc Bosman, Royal club liégeois SA v Jean-Marc Bosman and others and Union des associations européennes de football (UEFA) v Jean-Marc Bosman*, 15 December 1995. and Z. Pivač, Economic Freedoms of the EU Analysed from the Point of Sports Organizations in Republic of Croatia, *Pravni vjesnik* 14/2, pp. 233-251.

ber of athletes from SEE countries who can play in certain sports events in the Republic of Croatia is limited and such athletes are equal to any third-country national. This is not in accordance with the decision of the Court of Justice of the European Union related to the rights of nationals of non-Member States that have concluded partnership or association agreements with the EU (IOM, 2014).

### III. ACCESS TO THE NATIONAL LABOUR MARKET FOR THIRD-COUNTRY NATIONALS

Access to employment for third-country nationals (TCNs) is related to the work status of a foreigner and Croatian residence status. TCNs can be admitted on the basis of a quota system, work outside the quota, a work permit or one of the EU common migration policy statuses such as that of a Blue Card holder.

According to the Regulation on the status and work of foreigners in the Republic of Croatia, the employer is required to enclose an explanatory justification of the employment of the foreigner, including information on his or her professional competences, qualification and working experience and justification on why the position cannot be filled from the Croatian national labour market. The police may then check with the Croatian Public Employment Service if the position indeed cannot be filled from the Croatian national labour market.

The possibility to change residence status after entry is available only to Blue Card holders and temporary residents who qualify for long-term residence status.

### IV. ACCESS TO THE LABOUR MARKET FOR NATIONALS OF EU CANDIDATE COUNTRIES

Albania, Iceland, Montenegro, Serbia, the Former Yugoslav Republic of Macedonia and Turkey currently have the status of EU candidate countries, while Bosnia and Herzegovina and Kosovo are EU potential candidate countries. All the above-mentioned countries have concluded Stabilisation and Association Agreements with the EU except Iceland and Kosovo. All agreements regulate the movement of workers between candidate countries and the EU Member States. In this regard, all six agreements clearly stipulate reciprocal treatment of legally resident workers and their family members who should be free of any discrimination based on nationality, regarding working conditions, remuneration or dismissal, compared to the nationals of Member States. Stabilisation and Association Agreements provide for free access to the labour market of Member States for family members of a worker and open the possibility for granting additional access to professional training

after three years of the conclusion of the agreement, taking into account the situation in the labour market in the Member States and in the Community.

Despite the legal nature of the Stabilisation and Association Agreements which are international agreements, i.e. legally binding instruments for all parties, in this case we have a very specific situation. In reality, nationals and family members of candidate countries legally residing in the Republic of Croatia are granted the same treatment with regard to working conditions and access to the labour market as other third-country nationals. There is no specific provision in any of the applicable national migration laws and regulations to afford preferential treatment to candidate countries' nationals or their family members based on the Stabilisation and Association Agreements. The only exception is related to the coordination of social security benefits due to the fact that the Republic of Croatia has concluded bilateral agreements on the recognition of social security benefits with five of the six candidate countries (Bosnia and Herzegovina, FYRoM, Montenegro, Serbia and Turkey). These bilateral agreements were concluded prior to the entry into force of the Stabilisation and Association Agreements and are currently the legal basis for the recognition and export of social security benefits.

Another important question is the enforceability of the provisions related to the movement of workers and the equality of treatment of nationals of candidate countries and of EU Member States. It is not clear whether the nationals of Albania, Bosnia and Herzegovina, FYRoM, Montenegro, Serbia and Turkey could complain to the Stabilisation and Association Council or whether the EU has another complaint mechanism for the violations of provisions of the Stabilisation and Association Agreement. Having in mind that the Stabilisation and Association Agreements are linked to the fulfilment of the Copenhagen criteria for accession to the EU, it is unlikely to expect that the Stabilisation and Association Agreements have the same legal effects as other international agreements.

## V. INTERNAL LABOUR MARKET MOBILITY OF MIGRANT WORKERS

Given the already mentioned limitations imposed on the nationals of 13 Member States that need to obtain a work permit as a condition for legal employment in the Republic of Croatia for two years following accession (until the end of June 2015), leading to their inability to change their employer because of a link between their residence permit and work permit, we can conclude that at this moment EEA nationals have limited internal labour market mobility.

In addition, the previously mentioned requirement for a certificate of citizenship and the difficulties in recognising foreign qualifications also seriously impede the internal labour market mobility of EEA nationals.

Certain categories of third-country nationals do enjoy unrestricted labour mobility in the Republic of Croatia. Among them are permanent residents, persons under international protection (including subsidiary and temporary protection), family members of a Croatian national, foreigners having permanent residence, refugees, persons on humanitarian stay, persons on autonomous stay, full-time pupils or students when they perform work through authorised agents, without contracting employment, and researchers who enjoy the unrestricted right to employment and self-employment without a residence or work permit and, therefore, enjoy full labour market mobility (as per Art. 73 of the Aliens Act).

Long-term residents and residents on family reunion permits enjoy the right to change employment (jobs and sectors) in the same way as nationals. Residents on temporary work permits are tied to the specific job and employer for which the work permit was issued (as per Art. 73, paras 5 and 6), and have no possibility of changing jobs, unless new employers submit new requests for work permits.

## VI. SPECIFIC LABOUR RIGHTS

The labour rights of legally residing migrant workers are regulated by the Aliens Act and Labour Act and by a number of specific bylaws in various sectors and professions.

Only permanent residents and EU nationals enjoy labour rights comparable to Croatian nationals, except unlimited access to regulated professions. Temporary residents, posted workers, Blue Card holders and long-term residents enjoy the right to regulated maximum working hours, a minimum period of rest, paid annual leave, minimum remuneration including payment for overtime, protection of health and safety at work, protective measures for pregnant workers and workers who have recently delivered, who are breastfeeding or minor workers, protection against discrimination, the right to vocational training, education and study grants, social care, rights to pension insurance and healthcare, the right to child allowance (subject to the requirement of three years' residence), pregnancy and parenthood support allowance, tax benefits, access to goods and services markets, the freedom of association and unionisation, membership in organisations which represent workers or employers, or organisations whose members perform a particular profession, including the right to a fee for such work. All categories also enjoy the right to recognition of diplomas and professional qualifications and job search counselling services (as per Arts. 85a, 86(5), (6), 98(1) subparas 2-7, (2) of the Aliens Act. All third-country nationals should conclude a labour contract with the employer, but work without a labour contract has the same legal effects, as prescribed in the provisions of the national Labour Act (Arts. 12 and 13).



Due to the incomplete transposition of the EU Employer Sanctions Directive into Croatian legislation, undocumented migrant workers do not enjoy basic labour rights. Instead of the complete transposition of Art. 6 of the Directive which guarantees the right to outstanding remuneration, including costs arising from sending back payments to the country to which the third-country national has returned or has been returned, the Aliens Act has transposed only one out of three substantive provisions.<sup>6</sup> The transposed provision relates to the employer's obligation to pay public contributions, i.e. taxes and social contributions, the penalty rate and fees (Art. 212 of the Aliens Act). Since the Aliens Act has not legalised the right to remuneration subsequently, a violation of that right has not been included in the part of the Act which stipulates criminal liability, i.e. penalties and fines. Therefore, employers could claim that undocumented migrant workers in Croatia are not entitled to paid employment merely on account of their undocumented residence status, and the courts would have difficulties in establishing applicable statutory penalties even if they derive the undocumented migrant workers' right to paid employment from the applicable regional or international human rights instruments.<sup>7</sup>

The Aliens Act also transposed the provision of Art. 6, para 2b of the Directive stipulating that "before the execution of an expulsion order, the alien who resided and worked illegally will be informed about the available options for remuneration compensation, with any statutory contributions in accordance with a *lex specialis*, and will be informed about the possibility to lodge a complaint or to take legal action against the employer" (Art. 107, para 5). In the Directive, this provision is part of the overall statutory right to remuneration for past work, while in the Croatian Act the incorporation of this provision is confusing since the Act does not specify any entitlement to remuneration, or applicable legislation from which an alien could derive his or her right to remuneration. Stipulating mere information of entitlement to a right which cannot be derived either from the Labour Act or from the Aliens Act seems redundant.

Furthermore, reference to a *lex specialis* in this case could be a reference to the Labour Act (which in fact is a *lex generalis*) or to another law applicable to special categories of employees (it is difficult to imagine the applicability of a *lex specialis* in labour law as it mainly regulates employment in public services, which is *de facto* and *de iure* irrelevant to undocumented migrants). Notwithstanding the legislator's intention, none of the Croatian laws could be considered a *lex specialis* applicable to derive the right to remuneration due to the fact that an employment contract, or a verbal agreement on employment concluded between the employer and an undocumented migrant, violates directly the *ius cogens* on the authorisation of entry, residence and employment, entails criminal liability,

<sup>6</sup> H. Špadina, 'Undocumented Migrant Workers' Right to Remuneration: Consequences of Incomplete Transposition of the Employer Sanctions Directive into the Croatian Law', *Contemporary Legal and Economic Issues IV*, (eds. I. Barković, M. Lulić), 2013, pp. 189 – 206.

<sup>7</sup> Ibid.

and any formal agreement of that kind would be null and void.<sup>8</sup> Employers could easily abuse legally unrecognised employment to avoid the payment of outstanding remuneration to the worker, particularly bearing in mind that undocumented migrants usually face swift deportation from the country of employment, which deprives them of the possibility of submitting a substantiated claim before a competent authority or court. This was precisely one of the reasons why the provisions on sending back payments to the country of origin or residence were incorporated in the Employer Sanctions Directive. Apart from this, the Aliens Act, in Art. 219, para 2, uses the term “*compensation*” instead of remuneration, stipulating that “the amount of compensation to the illegally residing alien and the amount of paid public contribution based on that compensation shall not be considered tax expenditure of the employer”. This provision clearly intended to penalise employers, but, as a side effect, the employers could be encouraged to engage in labour exploitation since the cost of work (due to the worker’s residence status) is legally unrecognised.

Besides, the Aliens Act omits to stipulate the internationally recognised right to a minimum wage or to a wage that would be in accordance with the mandatory national provisions on wages, collective agreements or in accordance with the established practice in the relevant occupational branches (as stipulated in Art. 6, para. 1a of the Directive) which creates an opportunity for possible abuse since the Croatian Minimum Wage Act is derogated by the force of *ius cogens* of the migration legislation. Undocumented migrant workers are consequently legally unprotected from the employers’ discretionary power to determine their salaries below the threshold of the statutory minimum wage.

Croatian legislation will have to be further harmonised in order to fully comply with the provisions of the Employer Sanctions Directive and international and regional human rights instruments. All of these instruments stipulate the right to remuneration of all workers, and even explicitly stipulate the right of undocumented migrants to paid employment and protection against labour exploitation (CoE Resolution No. 1509).

## VII. SOCIAL RIGHTS OF MIGRANT WORKERS

Human rights and the social rights of migrants, including the prohibition of discrimination and the right to equal treatment, are protected in the Croatian Constitution and in the Anti-Discrimination Act. Labour and social rights of legally residing migrant workers are regulated in the Labour Act, the Health Care Act, the Child Allowance Act, the Social Welfare Act, the Pension Insurance Act and other *leges speciales*.

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<sup>8</sup> H. Momčinović, ‘Nevaljanost ugovora – ništetni i pobojni ugovori prema Zakonu o obveznim odnosima’, *Pravo u gospodarstvu*, Vol. 45, No. 6, 2006, pp. 129-132. and I.Vukorepa, *Zapošljavanje stranaca*, Radni odnosi u Republici Hrvatskoj, (ed. Ž. Potočnjak), *Organizator*, 2007, pp. 893-922.

The scope of the social rights of migrants in Croatia depends on their residence status and employment. EEA nationals and permanent residents enjoy certain social rights comparable to Croatian nationals, but other categories of migrant workers are mainly excluded from the statutory entitlement to social rights, apart from compulsory health and pension insurance applicable to all categories of legally employed migrant workers, regardless of their nationality.

The equality of treatment of EEA nationals is also restricted in some areas of social rights, such as the right to unemployment benefits and child allowance. According to the provisions of the Aliens Act, EEA nationals can retain the status of employee or self-employed person if they become temporarily unable to work due to illness or accident, if they lose the job held for at least one year when this is not their fault, if they are registered with the competent Public Employment Office as a job-seeker or if they join an occupational training programme. All EEA nationals whose employment contract for a definite period of time shorter than one year has been terminated and who are registered as unemployed with the Public Employment Office, or, if in the first 12 months of work further to an employment contract for an indefinite period of time in the Republic of Croatia they have lost their job through no fault of their own and are registered as a job-seeker, retain the status of employee or self-employed person for a period of six months after the termination of employment. It is not clear from the provisions of the Aliens Act if EEA nationals are entitled to unemployment benefits and what the intention of the legislation was when the prolongation of employment status was regulated. Presumably, this provision is linked to the legal entitlement to residence status which could not be regulated for unemployed persons, but the Aliens Act still omits to regulate whether EEA nationals would qualify for unemployment benefits following the termination of employment status, or whether they could not claim such benefits. On the other hand, the Act on Employment Mediation and Unemployment Rights previously regulated the equality of treatment for EEA nationals including nationals of the Swiss Confederation. Subsequently, Croatian nationals and EEA nationals are entitled to unemployment allowance if they have at least 9 months of working experience in the last 24 months. The Act also stipulates the right to pension insurance (including for permanent seasonal employment), compensation of education, specialisation, traineeship and relocation costs and various lump sum allowances. Other categories of migrant workers have limited access to unemployment benefits. Asylum seekers, foreigners under subsidiary and temporary protection enjoy unemployment benefits for the duration of their protected status (Art. 14). Temporary residents enjoy unemployment allowances only if they have lost their job through no fault of their own or with consent. Upon the termination of their unemployment allowance or the expiration of residence, temporary residents lose their unemployment status and their entitlement to all other benefits (as per Art. 15 of the Act).

Regarding social entitlements to parental and child support, the Maternity and Parental Benefits Act and the Child Allowance Act provide social entitlements only for certain

categories of migrants such as permanent residents, refugees and persons under subsidiary protection (along with family members). The Maternity and Parental Benefits Act limited the use of such benefits to aliens who have the recognised status of insured person within compulsory health insurance. This act did not make a condition for the use of benefits a certain duration of residence in Croatia (Art. 8), while the Child Allowance Act excluded from entitlement all migrants who were without permanent residence for at least three years prior to the submission of the application for the allowance (Art. 7.2.). Putting as a condition for child allowance uninterrupted permanent residence in Croatia excludes seasonal migrant workers from claiming child allowance for the periods of contributions to the Croatian social security system. This is not in line with the ECJ decision in C-611/10 *Hudzinski* in which the Court considered that EU applicable law must be interpreted in a manner favourable to migrant workers in the sense that EU law must not have the effect of depriving a Member State, even if it is not the competent State, of the right to grant workers social benefits provided for under its national legislation. Therefore, it is considered that this ECJ case will have a significant impact on the future jurisprudence of Croatia. In addition, the Child Allowance Act does not yet include treatment of EEA nationals equal to that of Croatian nationals.<sup>9</sup>

Access to health services for migrants is an area of particular concern as several categories of migrants have restricted access to healthcare services or are denied such access. For the past several years, the Council of Europe's European Committee on Social Rights has been warning Croatia that the situation with regard to access to healthcare for migrants has not conformed with Article 13§4 of the European Social Charter. The Committee has noted that it has not been established that all legally and unlawfully present foreigners in need are entitled to emergency medical and social assistance. The CoE-ES-CR added that foreign nationals in Croatia are subject to an excessive length of residence requirement to be eligible for social assistance.<sup>10</sup>

In general, all compulsorily insured migrant workers have access to healthcare, except temporary residents whose health insurance contributions have not been paid for 30 days or longer. In that case, they are eligible to use only emergency healthcare (Art. 8. paras 1 and 2 of the Compulsory Health Insurance Act). In 1998, the Constitutional Court decided that limitations to emergency healthcare for insured nationals who have not paid healthcare contributions are unconstitutional and in violation of fundamental rights.<sup>11</sup>

<sup>9</sup> Joined Cases C-611/10 and C-612/10 *Hudzinski and Wawrzyniak* [2012] Available at: <http://curia.europa.eu/juris/liste.jsf?num=C-611/10> (accessed on 25 April 2015).

<sup>10</sup> Human Rights Council, Working Group on the Universal Periodic Review. Geneva, 1–12 November 2010, Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the Annex to Human Rights Council Resolution 5/1, Summary of 11 stakeholders' submissions<sup>1</sup> to the Universal Periodic Review. A/HRC/WG.6/9/HRV/3, page 8, point 52.

<sup>11</sup> Ustavni sud Republike Hrvatske, *eng. Constitutional Court of Republic of Croatia*, U-I-222/1995, O.G. 150/98.

This decision is in line with international human rights standards and should be equally applicable to all categories of insured persons, regardless of nationality.

The Compulsory Health Insurance Act and the Act on the Health Protection of Foreigners in the Republic of Croatia stipulate that all migrants on short and temporary stay, as well as undocumented migrants who are not accommodated in a pre-deportation centre, should cover all healthcare costs, including emergency healthcare services. The European Committee of Social Rights has emphasised that all categories of non-residents in Croatia should be entitled to emergency healthcare and that this should not be linked to the pre-deportation or residence status of a foreigner.<sup>12</sup>

Further, pregnant migrant women cannot derive their healthcare rights from any applicable laws, unless they are obligatorily insured in Croatia. The Act on Compulsory Health Care Insurance does not regulate the healthcare of female migrants, including ante- and postnatal care, nor does it regulate healthcare rights of newborn migrant children. Ante- and postnatal care is not clearly classified, so it is difficult to assess whether delivery would be considered an emergency health service and whether it should be paid for. According to the Regulation on the conditions, organisation and working arrangements of out-of-hospital emergency healthcare, emergency delivery outside the hospital conducted by the competent emergency staff is considered an emergency health service.

Another issue is that the scope of health rights for migrant children is not specifically regulated, so it is not clear whether or not they enjoy the same scope of health protection as Croatian nationals. Without proper legislation, it is difficult to assess whether access to health services for migrant children is in accordance with international human rights instruments. Thus, children of undocumented migrants outside a pre-deportation centre might be denied access to healthcare.

In addition, the Elementary and Secondary Education Act excludes children of undocumented migrants outside a pre-deportation centre from the basic human right to elementary education:

“Aliens who are illegally residing in Croatia will be allowed to attend elementary education only:

1. if they are accommodated in the Reception Centre for Aliens;
2. if their forced removal has been temporary suspended;
3. during the period for which removal has been postponed.”

Thus, we can conclude that the basic internationally recognised human right to education is severely conditioned and absolutely restricted to a small group of undocumented

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<sup>12</sup> European Committee of Social Rights, Conclusions XIX-2 (2009), (CROATIA), January 2010, Articles 11, 13 and 14 of the Charter. European Committee of Social Rights, Conclusions XX-2 (2013), (CROATIA), Articles 11, 13 and 14 of the 1961 Charter.

migrants who have been apprehended by the state authorities and who are waiting to be forcibly deported. This is not in accordance with the universal right to primary compulsory education enshrined in Art. 28 of the Convention on the Rights of the Child and all other universal human rights instruments.<sup>13</sup> The Act also stipulates that EU nationals enjoy the rights to elementary and secondary education equal to Croatians, and certain additional rights, such as the right to education in their mother tongue and concerning the culture of the country of origin (Art. 44 of the Act) and the right to extra-curricular catch-up lessons in the Croatian language (Art. 43). The Act provides the right to elementary and secondary education and the right to catch-up lessons in Croatian to children of asylum seekers, refugees, and persons under subsidiary protection and temporary protection (Art. 46, para 1). The Act omits to regulate the scope of education rights of third-country nationals, so we need to assume that children of third-country nationals who have legal residence in Croatia would also be entitled to elementary and secondary education and catch-up lessons in Croatian. However, in the absence of a clear legal provision, this would be subject to the interpretation of courts or administrative bodies.

## VIII. CONCLUSION

Through qualitative research of the legal framework applicable to migrant workers in the Republic of Croatia, we have attempted to provide a comprehensive and substantiated analysis of the current scope of labour and social rights for various categories of migrant workers. In conclusion, we can confirm that existing laws and regulations could lead to discriminatory treatment of certain categories of migrant workers and their family members.

In this regard, it is particularly concerning to note that two years after the official accession of the Republic of Croatia to the EU, EEA nationals still do not enjoy the same treatment as Croatian nationals in all spheres of access to employment and social rights. They are restricted in access to employment by the formal requirement to submit a certificate of citizenship as part of all job applications to public companies. They are also restricted by the continuing legal gap in the recognition of EU acquired qualifications for regulated professions. Finally, EEA athletes still do not enjoy the same treatment as Croatian nationals. In addition to restricted access to the labour market, EEA nationals also face restricted internal labour market mobility. In summary, we can conclude that basic, organic laws such as the Aliens Act and the Labour Act do not contain legal obstacles, but implementing legislation, regulations and specific sectorial laws contain provisions that

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<sup>13</sup> UDHR, Article 26(1), ICERD, Article 5(e-v), ICESCR, Article 13(1, 2), 14, CRC, Article 28(1), 29(1), ICRMW, Article 30, UNESCO Convention against discrimination in education, Article 3, ECHR, Protocol I, Article 2.

are discriminatory and hinder the full equality of treatment regarding access to employment for EEA nationals.

Access to social rights for EEA nationals in the Republic of Croatia is also not fully comparable with that of Croatian nationals. The right to child allowance and unemployment benefits still has to be additionally amended and clarified.

Other categories of migrant workers have rather limited access to the national labour market, which is heavily protected by a quota system. In addition, numerous categories of third-country nationals are entitled to work outside the quota system, and a further complication is the very complex migration legislation. Internal labour market mobility is reserved for permanent residents and persons under various forms of international protection. Specific labour rights are an issue for undocumented migrant workers who do not enjoy the universal right to paid work.

Several categories of migrants are excluded from the provision of free emergency healthcare, while healthcare for temporary residents might be restricted for migrants whose employers fail to pay contributions. Specifically vulnerable categories of migrants, such as pregnant migrant females or children of migrant workers, do not enjoy explicit legal protection as stipulated in international human rights instruments and their needs are not addressed in any of the migration strategic documents.

The current legal gaps in labour and social legislation of the Republic of Croatia lead to the discriminatory treatment of migrant workers, including internal EU migrants, i.e. nationals of the EEA. Despite a very low number of migrant workers residing in the Republic of Croatia, the legal framework should be free of any discrimination and should be conducive to migrations that would contribute to the economic development of the country. Having in mind the very high rate of labour emigration from the Republic of Croatia over the last year that has resulted in shortages of medical and health staff, and the demographic projections of a low birth rate and the rapid aging of the population, it is of utmost importance to promulgate migration legislation that would ensure full respect of all internationally recognised standards of the labour and social rights of migrant workers and their family members.