

INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)
**INTERNATIONALLY RECOGNISED CORE
LABOUR STANDARDS IN CROATIA**

**REPORT FOR THE WTO GENERAL COUNCIL REVIEW OF THE
TRADE POLICIES OF CROATIA
(Geneva, 24 and 26 March, 2010)**

EXECUTIVE SUMMARY

Croatia has ratified all of the eight core ILO labour Conventions. However further measures are needed to comply with the commitments Croatia accepted at Doha in the WTO Ministerial Declaration in 2001, and in the ILO Declaration on Fundamental Principles and Rights at Work in 1998 and its Social Justice Declaration in 2008.

Croatia has ratified both Convention No. 87 on Freedom of Association and Protection of the Right to Organise and Convention No. 98 on the Right to Organise and Collective Bargaining. Workers have the right to form or join unions of their own choosing and the law provides for the right to strike, however with some limitations. The constitution and law protect collective bargaining and the right to organise, and workers can largely exercise these rights in practice. The new Labour Code, intended to bring Croatian labour legislation in line with the European Union's *acquis communautaire*, allows more labour market flexibility and liberalisation and as a consequence, the use of fixed short-term contracts is still widespread despite strong trade union efforts to partially limit the possibility of using such contracts.

Croatia has ratified Convention No. 100 on Equal Remuneration as well as Convention No. 111 on Discrimination. Discrimination in employment is prohibited but existing social, judicial and economic relations are obstacles in combating discrimination in workplaces. The majority of female workers are employed in lower paying positions and the gender pay gap is approximately 20 percent. There are reports that the Romani population, especially women, is subject to severe discrimination and exploitation and limited access to the labour market.

Croatia has ratified the core ILO Conventions on child labour, No. 138 and No. 182. According to the new Labour Code, a person with 18 years of age or under cannot be employed if he/she is in education, except with prior approval of labour inspectors. The law is generally enforced but some problems exist in the catering and tourism, retail, bakery, construction and services sectors. Recent changes to the criminal code have criminalised trafficking in children for purposes of sexual exploitation and labour.

Croatia has ratified Convention No. 29 and Convention No. 105 on the Abolition of Forced Labour. In practice forced labour occurs through the trafficking of human beings especially women and girls for the purpose of commercial sexual exploitation and the problem is growing.

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN CROATIA

Introduction

This report on the respect of internationally recognised core labour standards in Croatia is one of the series the ITUC is producing in accordance with the Ministerial Declaration adopted at the first Ministerial Conference of the World Trade Organisation (WTO) (Singapore, 9-13 December 1996) in which Ministers stated: "We renew our commitment to the observance of internationally recognised core labour standards." The fourth Ministerial Conference (Doha, 9-14 November 2001) reaffirmed this commitment. These standards were further upheld in the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work adopted by the 174 member countries of the ILO at the International Labour Conference in 1998 and in the Declaration on Social Justice for a Fair Globalisation adopted unanimously by the ILO in 2008.

There are several trade union centres in Croatia including the ITUC-affiliated Independent Trade Unions of Croatia - Nezavisni Hrvatski Sindikati (NHS) and the Union of Autonomous Trade Unions of Croatia (UATUC). NHS has a membership of 113,000 persons and UATUC a membership of 165,000 persons covering all areas of the workforce. The HUS, Hrvatska Udruga Sindicata with a membership of more than 40,000 members, is an ITUC associate member.

Croatia is a candidate country for European Union membership; it is a member of the United Nations, the Council of Europe, the Organization for Security and Co-operation in Europe, NATO, the World Trade Organization and the Central European Free Trade Agreement.

I. Freedom of Association and the Right to Collective Bargaining

Croatia has ratified ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise as well as Convention No. 98 on the Right to Organise and Collective Bargaining, both in 1991.

The law allows workers to form or join unions of their own choosing; a trade union may be established by at least ten adult persons with legal capacity. A higher-level association may be established by at least two associations.

The Labour Code prohibits direct or indirect anti-union discrimination. Union delegates cannot be dismissed from work, transferred or demoted without the consent of the trade union.

The law provides for the right to strike, with some limitations. Strikes can take place in order to promote and protect social interests of trade union members if wages have not paid during 30 days from the date on which they are due. The law does not stipulate when strikes can take place, the law however limits the implementation of strikes if they were not preceded by conciliation procedures. Compulsory arbitration for determination of minimum product maintenance may be imposed in any workplace.

There are limitations of the right to trade union organising for military personnel (army), but not to clerks and official employed in armed forces.

The constitution and law protect collective bargaining and the right to organise, and workers exercise these rights in practice, although among large national and international companies operating big commercial chains and in the private sector, where companies tend to be smaller and more “fragmented”, workers are often indirectly prohibited from organising. In addition, trade unions report that they are increasingly faced with demands for so-called secret membership; namely, due to fear of dismissals, workers do not want their employers to know that they are members of a union.

As an EU candidate member country, Croatia has made a commitment to amend its Labour Act in line with European rules and after 18 months of consultations and negotiations between the social partners, the new Act of labour legislation was finalised on 4 December 2009 when the Parliament adopted the new Labour Code. Several attempts to balance the provisions of the draft Labour Code had been made through intensive bipartite social dialogue meetings during 2009. However, before the last reading in Parliament in 2009, the employers’ organisation withdrew from the negotiations before all issues had been resolved, essentially leaving the social partners without a final bipartite say in relation to the proposed further liberalisation and flexibilisation through the new Labour Law. Nevertheless, in comparison with the earlier text of the proposal of the Act, trade unions managed to obtain certain improvements.

Previously, the government had used European integration and harmonisation requirements as a pretext for making extensive legal reforms and reducing the rights of workers and trade unions, which had been a concern of both Croatian and European trade unions. The adopted new Labour Code that is now harmonised with EU legislation should create prerequisites for the closure of the 19th negotiation chapter “Social Policy and Employment” with the European Union.

The new Labour Code brings substantial changes for workers, especially concerning the regulation of working time and leave - it defines the longest weekly working week as 40 hours with a maximum 8 hours of overtime, when previously it was ten hours. The new Labour Code (art. 46, par. 3) enables flexibilisation in organising working time, solely for workers working in shifts for whom full working hours can be distributed unevenly over weeks, with certain exemptions provided for in the law (maximum 48 hours a week, 12 hours a month). Nevertheless, the fact remains that the organisation of working time is made additionally flexible, which can result in non-payment of overtime hours.

After the adoption of the old Labour Code in 1995 and the amendments of 2003 enabling employment on fixed short-term contracts lasting from three months to three years, the use of fixed-term employment contracts became more the rule than the exception; more than 80 % of newly-employed workers are employed on a short-term basis, according to UATUC. This is in stark contrast to the fundamental principles contained in European Directives which clearly stipulate that fixed-term work should be an exception in forms of employment, and not a rule. The high rate of fixed-term work in Croatia jeopardises the equal treatment of workers employed on a fixed-term basis in relation to those employed full-term, and decreases the quality of work of workers employed on fixed-term basis, through the insecurity it entails. It is reported that workers on short-term contracts dare not form or join a union or ask for a wage increase, payment of overtime work, or annual leave as this might influence the renewal of their employment contracts. The new Labour Code has made some improvements in regulation of fixed-term contracts, as a result of extensive trade union lobbying and hard work, and the possibility of limiting fixed-term work has been achieved. Currently, an employer can hire a worker on a fixed-term basis for a period of up to three years regardless of previous employment during those three years. In the

previous Labour Code the three years were linked to employment performance while the new Code links the three-year period to workers. According to UATUC, the way fixed-term work is regulated is not fully satisfactory but it is a welcome step forward towards reducing the number of workers in fixed-term employment.

According to the public services unions, the new Act on the Basis for Wages in Public Services that entered into force on 1 April 2009 will endanger the freedom of collective bargaining, contrary to ILO Convention No. 98. With this new Act, the government found a way to balance its budget without unilaterally cancelling the collective agreement but still obtaining salary reductions for public services employees. By amending the Law on the basic rate for salaries in public services, the change in salaries would automatically take place since collective agreement is determined in that Law. In fact this Law will reduce the base salary for 180,000 employees in public service by six percent. Previously the salary basis was determined by the collective agreement but for state employees, this will not be possible for the next two years.

Non-payment and late payment of wages is a reoccurring problem in Croatia along with non-payment of overtime or for work on holidays. In August 2009 shop stewards at the Split Ironworks went on hunger strike to protest against non-payment and late payment of wages of 460 workers at the plant during the past four month. Split Ironworks is looking for a new owner after acquiring massive debt but so far the governments' efforts to save the company have not been successful and in October 2009, four shop stewards re-started their hunger strike and were later joined by 20 employees inside the plant. The hunger strikes both in August and in October ended after a few days with the government's decision to pay a minimal amount of wages, to discuss "adequate salary" and urgently to take steps to restart production.

Conclusions:

*Workers have the right to form or join unions of their own choosing and the law provides for the right to strike, however with some limitations. The constitution and law protect collective bargaining and the right to organise, and workers largely exercise these rights in practice. The new Labour Code, that set out to bring Croatian labour legislation in line with the European Union's *acquis communautaire*, allow more labour market flexibility and liberalisation and as a consequence, the use of fixed short-term contracts is still widespread despite trade union efforts to partially limit the possibility of using fixed-term work contracts.*

II. Discrimination and Equal Remuneration

In 1991, Croatia ratified Convention No. 100 on Equal Remuneration and Convention No. 111 on Discrimination (Employment and Occupation).

The new Act on Combating Discrimination entered into force as of 1 January 2009. This means that for the first time, grounds and areas of discrimination have been clearly defined, including the procedures for protecting citizens and combating discrimination. The Act also established an institutional framework for combating discrimination. One of the defined grounds for discrimination is trade union membership and with this new Act trade unions were given stronger arguments for their active work on combating all forms of discrimination in the area of

labour and employment, enabling the protection of trade union members against all forms of discrimination.

The proposed draft Act on the Salaries of Civil Servants and Civil Service Employees of 2009 has been strongly criticised by NHS and UATUC because a new model of salary promotion based on the evaluation of work and efficiency is to be introduced. This could essentially mean that women are deprived of promotion due to maternity leave and absences associated with childcare. If an employee has not worked in the previous six calendar months, the worker is not evaluated and salaries cannot be increased, pursuant to Article 82 in the Act.

Despite the fact that the National Policy for the Promotion of Gender Equality 2006-10 aims at eliminating discrimination against women and establishing real gender equality, including in the labour market, a large range of discriminatory practices exist.

Women are generally employed in lower paying positions in the work force. In 2009, the Zagreb Institute of Economics presented a study that showed that employers paid women on average 20 percent less than men of equal age, work experience, and education. The study also reported that 25 percent of employed women held a university degree as opposed to 16 percent of employed men. The Croatian trade union women's group reports that the average pension of women is 17 percent lower than the average pension of men.

In October 2007, the Office for Gender Equality published a survey on discrimination that indicated that two thirds of women experienced some form of discrimination while looking for employment; for instance such discrimination during job interviews ranged from questions about marital status to plans for pregnancy and comments on their physical appearance. The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has in 2009 expressed concern with the rising number of complaints to the Croatian Gender Equality Ombudsperson. In 2007, 174 complaints were submitted, almost twice as many as in 2004; more than one-third of the complaints related to employment discrimination against women, including sexual harassment, in both the private and public sectors.

The law prohibits sexual harassment in the workplace; however, it remains a problem. Trade unions report that the problem was most pronounced in the textile and leather, trade, and catering industries. According to the ombudsman for gender equality and unions reported, sexual harassment cases are being conducted, however many women were reluctant to take action for fear of reprisal.

Societal violence, harassment, and discrimination against Roma remains a problem in Croatia. While around 9,500 persons declared themselves to be Roma in the 2001 census, officials and NGOs estimated that the Romani population was between 30,000 and 40,000. Roma are faced with many obstacles, including language, lack of education, lack of citizenship and identity documents, high unemployment, and widespread discrimination. According to the Council of Europe, only 6.5 percent had permanent jobs, while the Ministry of Social Welfare estimated that 20,000 to 30,000 Roma were receiving some form of social assistance. A 2006 UNDP report on social exclusion estimated that while Roma constituted less than 1 percent of the population, they accounted for 13.6 percent of the recipients of social assistance.

On a national level, the Croatian government has worked to increase the employment rate of Roma by providing two years' salary payments to employers who hire Romani workers. However, when it comes to Romani women in particular, they have only limited Croatian language skills and their integration on the labour market has proven to be difficult.

Conclusions:

Discrimination in employment is prohibited but social, judicial and economic relations are obstacles to combating discrimination in workplaces. The majority of female workers are employed in lower paying positions and the gender pay gap is approximately 20 percent. There are reports that the Romani population, especially women, is subject to severe discrimination and exploitation and limited access to the labour market.

III. Child Labour

Croatia ratified Convention No. 138 on the Minimum Age in 1991 and Convention No. 182 on the Worst Forms of Child Labour in 2001.

According to the new Labour Code, minors cannot be employed in jobs endangering their security, health, morals or development. Minors under the age of 15 may work if they receive prior approval from the state labour inspectorate and if it is determined that the child will not suffer physically or mentally from the work. The law prohibits workers under the age of 18 from working overtime, at night, or under dangerous conditions. A person of 15 years of age, or a person above 15 and under 18 years of age, cannot be employed if he/she is undertaking education.

The law proscribes the worst forms of child labour, including trafficking in children for purposes of sexual exploitation and labour.

The national ombudsman for children coordinates the country's efforts to prevent the exploitation of children and to assist in removing children from exploitative situations. The State Labour Inspectorate has approximately 100 inspectors whose duties include inspection for illegal employment of minors. The inspectorate forwards all cases of violations involving minors to the Office of the Ombudsman for Children. According to the ILO CEACR, labour inspectors reported more than 150 violations in 2006 and 2007 relating to minors employed in activities such as catering and tourism, retail sales, bakery, construction and services.

The minimum age convention refers to all types of work, not merely employment that involves a labour contract and on that basis the ILO CEACR has requested the Croatian government to take the necessary measures to protect self-employed children or children working in informal activities as “the Convention is also applicable to children who work without an employment relationship”. The Labour Act does not offer protection in this area.

The Croatian government has taken several steps to improve access to education for national minorities and while education is free and mandatory from 7 to 14 years, Romani children are faced with serious obstacles to continuing their education, including discrimination in schools and a lack of family support. The ILO CEACR find it worrisome that in spite of great efforts, only 7 percent of Romani children go to primary school and a mere 3.5 percent graduate from secondary level in comparison to 85 percent at national level. The CEACR has recommended that the Croatian government redouble its efforts to increase the school enrolment rates and to reduce the school drop-out rates of children in the Roma community so as to prevent them from falling victim to the worst forms of child labour, particularly child trafficking.

Conclusions:

According to the new Labour Code, a person with 18 years of age or under cannot be employed if he/she is in education. The law is generally enforced but some problems exist in the catering and tourism, retail, bakery, construction and services sectors. Recent changes to the criminal code have criminalised trafficking in children for purposes of sexual exploitation and labour.

IV. Forced Labour

Croatia ratified Convention No. 29, the Forced Labour Convention, in 1991 and Convention No. 105 on the Abolition of Forced Labour in 1997.

The law prohibits all forced or compulsory labour, including by children, and all forms of trafficking in persons; however, the country is a source, destination, and transit country for trafficked men, women and children for the purpose of sexual exploitation and forced labour. Most women and young girls are from Eastern European countries and the Balkans. The Trafficking in Persons Report of 2009 reports that for the first time, there has been an increase in trafficking of men for the purpose of forced labour with Croatia being the destination country but the nature of which is not specified.

Under the Law on Community Work outside Prison (OGRC No. 128/99), it has been possible to replace a sentence of imprisonment of up to six months with community work outside the prison without remuneration. The CEACR has noted that the forced labour Convention expressly prohibits a situation whereby convicts are hired to or placed at the disposal of private individuals, companies or associations and in 2005, it requested the Croatian government to clarify the matter. In 2009, the CEACR found the information provided by the government to be a satisfactory explanation in line with section 54(1) of the Penal Code that states that community work outside prison premises may be decided by the court only with the consent of the convicted person concerned.

Conclusions:

Forced labour occurs through the trafficking of human beings, especially women and girls for the purpose of commercial sexual exploitation, and the problem is growing.

Recommendations:

1. The government must effectively allow and promote collective bargaining in all sectors and take effective measures to prevent anti-union discrimination.
2. The government should ensure that the law enables all workers to take strike action in order to defend their social, economic and occupational interests.
3. The government must strengthen its efforts to reduce the gender pay gap, including by promoting the principle of equal pay for work of equal value in collective agreements, and increase its efforts and budget to redress women's unfavourable position on the labour market.
4. The government should take more active measures to ensure that sexual harassment and discrimination against women at the workplace are prevented.
5. Further action is needed to prevent harassment, discrimination and social exclusion against the Romani population by taking various measures to ensure more equal access to the labour market, including provision of language courses.
6. The Croatian government needs to increase its efforts to raise school enrolment rates and to reduce the school drop-out rates of children in the Roma community, particularly so as to protect them from the worst forms of child labour.
7. The government must elaborate and implement effective policy measures to tackle the human trafficking (both internal and international) of children and of adults.
8. In line with the commitments accepted by Croatia at the Doha WTO Ministerial Conference and its obligations as a member of the ILO, the government of Croatia should provide reports to the WTO and the ILO on its legislative changes and implementation programmes with regard to the above areas.
9. The WTO should request the ILO to intensify its work with the government of Croatia in these areas and provide a report to the WTO General Council on the occasion of the next trade policy review.

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