



FUNDAMENTAL RIGHTS AND THE RULE OF LAW

Report on the visit to Croatia

30-31 March 2023



European Economic
and Social Committee



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Six members took part in the visit to Croatia. The delegation met with several representatives of civil society, specifically civil society organisations (CSOs), the social partners, the media and the legal professions, as well as the Croatian authorities. The aim of this report is to faithfully reflect and reproduce the views of civil society.

1. Fundamental rights of the social partners

Participants considered that workers were not legally impeded from enjoying **freedom of association and freedom of assembly**, in particular the right to join a trade union. However, the extent to which these rights were enjoyed in practice varied along with the size of the company and was particularly complicated in the case of small and medium-sized enterprises, where pressure on unionised workers had been on the rise in recent years. Participants regretted that the Labour Act had limited the right to strike to specific situations and they advocated for the adoption of a general right to strike.

Participants believed that the **involvement of the social partners in decision-making** was all too often merely symbolic. The social partners were included in working groups set up by the authorities for the discussion of draft laws, but this came too late in the process, when comments on a near-final draft law could not have any meaningful impact. They also regretted the fact that the recommendations stemming from the Economic and Social Council (ESC) did not lead to tangible action by the government. They advocated for the resources and expertise of the ESC to be boosted and for the ESC to be given a more prominent role in the decision-making process. The Croatian authorities indicated that, since its establishment as a tripartite body in 2020, the ESC had been involved in every important decision made in the country concerning labour and social affairs, such as the updated Labour Act and the Action Plan on the minimum wage. They added that the social partners had been involved from the planning phase of the ESC's work, as well as in relevant parliamentary committees.

Participants explained that the coverage of **collective bargaining agreements** varied considerably between the public and the private sectors. Some participants regretted the lack of motivation on the part of the social partners when it came to negotiating collective agreements, although it was remarked that the EU Directive on adequate minimum wages had boosted discussions in several sectors. The Croatian authorities indicated their intention to extend the coverage of collective bargaining agreements. They appreciated that the social partners had shown flexibility during the COVID-19 crisis by accepting the temporary suspension of two extended collective bargaining agreements in the areas of construction and health.

The social partners considered that **over-regulation came at the expense of collective bargaining**. The example was given of the law on the status of physicians, which created a special status for physicians in the public service. Participants felt that such a law overstepped the limits of the role played by representative unions in collective bargaining. Some participants also considered that the state was not setting the right example by refraining from entering into collective bargaining in state-owned enterprises such as banks. Multinational enterprises also tended to be less open to collective bargaining in Croatia than they were in their home country.

Participants criticised the lack of proactivity on the part of state authorities in ensuring the proper **implementation of labour laws**. For example, the law limiting short-term contracts to a maximum of six months was considered as being not properly applied, and the detection of violations was not helped by an understaffed and underpaid labour inspectorate. One participant also explained that the restitution of trade unions' properties previously appropriated by the state had been lagging behind since 1997, despite an agreement on principles being reached in 2020. Overall, participants considered that the Labour Act was too procedural, which meant that labour case-law mostly concerned procedures rather than content, for example concerning the right to strike.

The social partners participating in the session expressed a general **low level of trust in the judiciary**, which they saw as susceptible to outside influence, slow and insufficiently efficient. Examples were given of a decision handed down in 2021 concerning the illegality of a collective agreement dating from 2006 – in the meantime that agreement had been replaced twice, and such a delay made the fulfilment of rights and compensation impossible. Participants also regretted the lack of consistency in labour case-law, resulting from diverging approaches to lawsuits depending on location. Unpredictability resulting from inconsistent case-law and poor implementation of law was presented as a real problem for business.

The social partners expressed their concerns with regard to **demographic decline** in Croatia, which had lost around 400 000 people (a tenth of its population) in a decade. Emigration concerned both the most educated and lower skilled workers and their families, looking for better prospects in other EU Member States. This had not been compensated for by the arrival of foreign workers, despite the abolition of quotas.

2. Freedom of association and freedom of assembly

Participants considered that the **legal framework regulating the freedom of association and the freedom of assembly** was liberal. Only three people were needed to set up a CSO, which resulted in the creation of a wide number of small associations. Generally speaking, there was no major issue concerning the right to protest. However, some participants criticised the restrictions on protests on St Mark's Square – the seat of state institutions in Zagreb – which had not been lifted since a shooting in 2020. CSOs had appealed to the government to seek the reopening of the square to demonstrators, but the authorities had reportedly refused, referring to a security level assessment which they had, however, kept secret.

The **legal framework for CSOs**, dating from 2014, was considered to be adequate, notably because it introduced important principles for the sector and facilitated the running of economic activities with a non-profit aim. However, the availability of information on the operation of CSOs was found to be insufficient, while the financial and administrative burden imposed by the state on their running (for example concerning book-keeping and reporting) was felt to be constantly increasing. Calls for

proposals imposed criteria (for example in the area of taxation) that generated many issues for small CSOs, often resulting in their staff being overwhelmed by administrative tasks at the expense of the vocation of the CSO. On the other hand, the contractualisation and reception of payments for projects financed by the state were often late, creating delays and complicating the day-to-day work of CSOs.

A central concern raised by participants was the **absence of trust and partnership spirit** between the state authorities and CSOs, a situation which had not changed considerably since the country had gained independence. Participants strongly criticised the inability of the authorities to renew the National Strategy for the Creation of an Enabling Environment for the Development of Civil Society, which had expired in 2016. Participants also referred to the lack of influence of the Council for Civil Society Development – the government advisory body entailing CSO participation – to illustrate what was, in their view, a lack of political will on the part of the authorities to develop a genuinely free civic space in Croatia. The Croatian authorities indicated that the 2023-2030 National Strategy for CSOs was currently being prepared.

Participants considered that the **involvement of CSOs in decision-making** through the mentioned council, as well as the government's Council on Human Rights and the legislative drafting groups, was mostly superficial. Some participants also considered that the authorities were favouring the inclusion of CSOs close to their views in such bodies, even when they were not representative of a given sector, at the expense of independent organisations. CSOs made use of the e-consultation portal to comment on draft legislation, but doubted whether it had an impact. One participant explained that the Government Office for Cooperation with NGOs organised elections for the EESC but that, in 2020, candidates could not present their programmes or take part in debates before the vote had taken place.

Access to funding was also considered a serious issue by the participants. According to them, national lottery funding channelled through the National Foundation for Civil Society Development had diminished over recent years. It was particularly complicated for CSOs doing watchdog activities or providing legal aid to finance themselves, and the EU was seen as a better source of funding than the national level. CSOs regretted that they had not been properly included in the discussions on the Croatian National Recovery and Resilience Plan (NRRP) or as recipients of its funding. One participant pointed out that EU funds earmarked for corruption monitoring and civic education had been reallocated by the national authorities to CSOs providing services in other domains. The Croatian authorities indicated that public funding for CSOs had increased by half between 2015 and 2019. They also pointed to efforts to propose tenders on core CSO funding during the COVID-19 crisis. Acknowledging the difficulties highlighted by participants concerning yearly tenders, the Croatian authorities indicated their intention to favour multiannual funding contracts in the future.

Participants explained that CSOs were confronted with a rise in **negative narratives** – particularly those working on issues such as the rights of LGBTIQI persons, migrants and ethnic minorities, gender equality, the protection of the environment, and a historic approach to the war of independence. One participant explained that Croatia was one of the countries with the highest numbers of strategic lawsuits against public participation (SLAPPs), targeting journalists but also CSOs and human rights defenders.

3. Freedom of expression and media freedom

Noting that Croatia was among the lowest ranked EU Member States on the Reporters without Borders index, participants considered that the pro-EU stance by the authorities was not sufficiently matched by measures to protect **media freedom**. One participant warned about the introduction by the

authorities of amendments to the Penal Code that would criminalise the use of information leaks from investigations.

Participants regretted the rise of an **anti-media narrative**, which fuelled verbal and physical attacks on media professionals. One participant believed that around a thousand SLAPP cases, entailing damages amounting to over EUR 10 million, were allegedly ongoing in Croatia. Such cases of strategic litigation to silence journalists were being launched by figures as diverse as public officials, political parties from both the majority and the opposition, local politicians, businesspersons, and judges themselves. One participant regretted the fact that the courts did not use the possibility offered by the Civil Procedure Act to dismiss abusive litigation at an early stage. The Croatian authorities considered that the figure of 1000 SLAPP cases was very much overestimated compared to their own estimation of slightly over 30 cases. According to them, the figure of 1000 cases actually referred to all lawsuits involving journalists, including, for example, labour disputes. The Croatian authorities also referred to the work of the expert group set up in 2021 on policies to combat SLAPPs, which included media representatives.

Participants regretted the **lack of social dialogue and collective bargaining** in the media sector. While unions were well established in the traditional media and the public broadcasting service, representation was low in new media and particularly digital media. Discussions were called for concerning benefits, media workers' rights, and a fair share in the post-COVID-19 recovery. Media workers hoped that the European Media Freedom Act could prompt employers to join comprehensive discussions.

Participants considered the **transparency of media ownership** to be very low. While large-scale private media were mostly in the hands of foreign owners, local media outlets were often controlled by local councils, which strongly affected the independence of reporting. The lack of transparency of ownership raised suspicions in cases such as the reallocation of a radio frequency from an independent station to a radio channel that was part of a large conglomerate. The Croatian authorities indicated that electronic media now had the obligation to inform the relevant agency about the composition of their ownership, and that a system on the disclosure of financial data for all media was planned.

Participants regretted that **pressure and socioeconomic hardship** had led to a tendency for media workers to leave the world of journalism. Those remaining in the sector often had to cope with self-censorship or pressure if they wrote on topics such as history, minorities, or business activities. At university, journalism curricula were now in competition with public relations curricula, illustrating a blurring of the lines between communications and reporting. Young journalists often ended up in news portals mostly processing existing information in order to produce low-cost content instead of investigating or producing original content. There was hope that the European Media Freedom Act, which defined journalism as a public good, could help bring about a change of approach.

Foremost among the **funding difficulties** faced by the media sector, participants stressed that the Media Act adopted two decades ago was no longer fit to address the current challenges. Participants regretted the fact that the authorities did not publish yearly tenders, as intended in that Media Act. They also criticised the alleged refusal by the authorities to disclose the allocation of millions of euros in advertising funds on the grounds that it was a matter of business secrecy. One participant also pointed to the lack of transparency concerning the use of EU funds to promote fact-checking, which would mostly have benefitted a state agency, and concerning the visibility components of EU projects, which would usually benefit media closer to the government.

Participants criticised the procedure for selecting the board of the **public broadcasting service**, which was in the hands of the political forces controlling the majority in Parliament. One participant referred to data showing a clear overrepresentation of government views over those of the opposition in prime-time public debates on public television. The Croatian authorities stated that a law reforming the appointment procedure for public broadcasting service managers was planned.

One participant expressed concerns with regard to the protection of the **copyright of authors** in the context of the transposition into Croatian law of the EU Copyright Directive. It was explained that the Croatian legislator had changed the logic of the Directive by granting copyright to the owner rather than the producer of the content. In the absence of any deadline on the right of exploitation of a work, the owner could change its content without the consent of the author, which raised serious questions concerning the risk of censorship and the right to access information.

4. The right to non-discrimination

According to participants, Croatia had a good **legal framework** and oversight mechanisms on discrimination, but there were issues with implementation in practice. They had the feeling that the political will in the area of non-discrimination had slowed down after Croatia's accession to the EU, in parallel with the re-emergence of nationalist discourses. Participants felt that consultations on the recently adopted National Plan to promote and protect human rights and combat discrimination did not allow them to influence its content in a meaningful way. On their side, the Croatian authorities considered that CSOs had indeed been fully involved in the working group meetings and the public consultation, and that the authorities had provided explanations when suggestions could not be integrated into the document.

Participants in this session and the session on the rule of law expressed their trust in the work of the general and sectoral **ombudsbodies**, which they considered as more efficient than the various Government offices in the area of human rights and discrimination. However, they regretted the fact that ombudsbodies depended on the Parliament for their election and that the ombudsbodies for children, gender equality, and persons with disabilities could be dismissed by the Parliament if their report was not accepted. On that point, the Croatian authorities indicated that the situation could be addressed through the transposition of the EU Directive on Equality Bodies.

Participants regretted the absence of a Strategy on **Gender Equality** in Croatia since 2015, while noting that a new one was currently being prepared. They noted that the right to abortion dated back to when Croatia formed part of Yugoslavia, but that such a right was limited by the fact that many doctors used conscious objections. Participants called for more awareness-raising efforts to inform women about their rights and to complement the repressive approach to gender-based violence with prevention campaigns. Sexual harassment, notably in the education sector, was not sufficiently addressed and sexual education was missing in school curricula. Participants pointed to the high cost and length of judicial proceedings as detrimental to women's access to redress, and called for more training for the police and the judiciary. Participants regretted that women bore the brunt of the fact that Croatia was largely a precarious work economy that relied on short-term contracts. They acknowledged that the gender pay gap had decreased but felt that it was still too big.

Participants appreciated that the National **Roma** Inclusion Strategy was ambitious and that, overall, the situation had improved over the last twenty years. However, they considered that implementation was still slow in leading to long-term results. Lack of skills and education were believed to lead to a

vicious circle limiting the real integration of Roma people in the labour market, despite the existence of positive discrimination policies that were welcomed.

Participants believed that the 2014 Law of Same-Sex Life Partnership was not being systematically implemented. They regretted the lack of a national strategy for **LGBTIQ persons**, and the fact that their rights were generally absent from other strategies on gender and human rights. They indicated that a change of legal identity was possible for transgender people, but also that there was a total lack of public policy concerning the relevant medical aspects. Participants believed that there was a growing social acceptance of same-sex relations in Croatia, but that the weight of religion and conservative culture was the source of an anti-civil society narrative which particularly targeted LGTBIQ persons.

The rights of **migrants, including asylum seekers**, were raised in both this session and the one on the rule of law. It was remarked that the alleged thousands of illegal pushbacks at the border had to be considered as a rule of law issue given what was qualified as a near total absence of investigations. According to one participant, only around ten judicial proceedings had been initiated, most of which had been dismissed by the attorney. According to that participant, the Croatian authorities denied there was any systematic aspect to the alleged pushbacks and presented proven acts of violence as isolated cases, despite the fact that the country had been condemned by the European Court of Human Rights (ECHR). It was felt that the independent monitoring mechanism put in place by the authorities was not fully independent, as it could apparently not make unannounced visits to the border or access the databases of the Ministry of Interior. It was also regretted that neither the ombudsbodies nor CSOs could apparently access police stations and places where asylum seekers were detained – the ban on CSOs providing legal aid to access reception centres resulted from COVID-19-related restrictions, which had not been lifted. Concerning the alleged pushbacks, the Croatian authorities pointed to the fact that the country was the first EU Member State that had set up a monitoring mechanism – which they insisted was independent – as requested by the EU Pact on Migration and Asylum. They added that every incident at the border had been investigated through disciplinary or judicial channels.

5. The rule of law

Participants considered that Croatia had progressed in the area of the rule of law in the **decade preceding its accession** to the EU, but that efforts had been less substantial since its accession. Participants acknowledged the existence of national strategies in the area of human rights and gender equality, but regretted the lengthy processes of adoption and piecemeal action points. The Croatian authorities contested the idea that reforms in the area of the judiciary had slowed down after the country's accession to the EU, referring to several strategies in the area, such as the Strategy on the Development of the Judiciary.

Participants explained that **trust in the judicial system** among the general public was very low, and that the quality of justice was affected by the fact that the system was overburdened. The absence of publication of the decisions of courts of first and second instance was considered an major issue. It was regretted that the implementation of some decisions of the ECHR was still lagging behind and that references to the EU Charter of Fundamental Rights were apparently decreasing in national judgments. Participants remarked that this called for more training for judges and prosecutors on victim support and on international human rights law and EU law more generally. Participants also regretted that free legal aid provided by CSOs was underfunded. Justice for war crimes was seen as stagnating, with most trials held in absentia and investigations not progressing because of the limited capacity of the police and the attorney. The Croatian authorities considered that the low level of public trust in the judiciary

did not match the comprehensive legal framework put in place to guarantee the independence of judges and the courts. They remarked that Croatia had a litigation-based, rather than conciliation-based, approach to dispute resolution, which contributed to the courts being overwhelmed. They indicated that work was underway to ensure that all court decisions would be made public as of 2024.

Concerning **corruption**, participants remarked that nepotism was common, for example, obtaining a job at local level through connections with local politicians. It was believed that Croatian citizens placed greater trust in EU-level monitoring through the European Anti-Fraud Office (OLAF) than the national monitoring through the Office for Combating Corruption and Organised Crime (USKOK), whose mandate had been weakened. One participant remarked that some files reopened by OLAF had remained in the drawers of the national prosecutor for years, which was a sign of a lack of will to investigate. According to participants in this session and the session on media freedom, SLAPPs against journalists were often linked to their work on corruption and Croatia distinguished itself by the fact that judges were also at the source of such legal proceedings. Participants considered that legislation on whistle-blowers was a major step in the right direction, and they called for increased support from public authorities to ensure the effective protection of whistle-blowers. The Croatian authorities indicated their political will to tackle corruption, notably through that the Anti-Corruption Strategy 2021-2030, which was the basis for triennial action plans entailing more than two hundred measures in the areas of prevention and repression. They added that USKOK had opened cases against top-level officials and that they were collaborating with all relevant international institutions in the relevant area.



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