

2022 REPORT TO GREVIO

ISTANBUL CONVENTION IN CROATIA

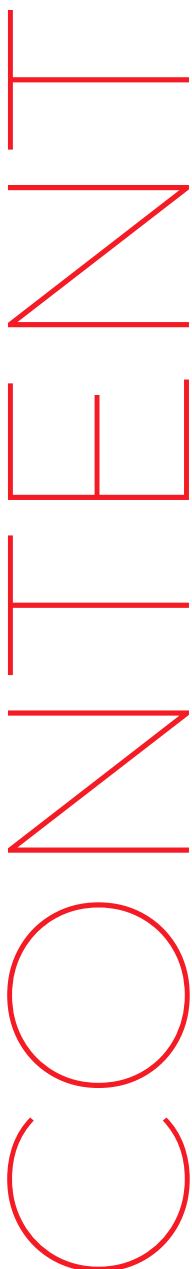


There can be no human rights
without women's rights.

**B.a.B.e. REPORT ON COMPLIANCE WITH THE
COUNCIL OF EUROPE CONVENTION ON
PREVENTING AND COMBATING VIOLENCE
AGAINST WOMEN AND DOMESTIC
VIOLENCE (ISTANBUL CONVENTION)
CROATIA**

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About B.a.B.e.

B.a.B.e. Be active. Be emancipated. was founded in 1994 and operates with the aim of improving the human rights status of all citizens of the Republic of Croatia, with special emphasis on the rights of women and the suppression and prevention of domestic and gender-based violence.

Through many years of work, B.a.B.e has established itself in the public as an association focused on the protection of the rights of women and victims of domestic violence. The activities of the organisation are based on four program pillars - Gender Equality Program; Program for prevention and suppression of all forms of gender-based violence, which provides support to victims of domestic violence in the form of free legal and psychological counselling; Women's shelter program; and Advocacy and monitoring program of legislative procedures, public policies and implementing measures which include strategic activities aimed at ensuring effective protection of human rights.

B.a.B.e. continuously conducts comprehensive activities in the field of prevention, protection and combating violence against women, both through activities carried out at the societal level with the aim of improving the existing legal and policy framework as well as through individual work with victims of domestic violence through legal and psychological counselling and Women's shelter. Since the ratification of the Convention in 2018 until the end of 2021, B.a.B.e. has provided support services to 7390 beneficiaries in total, of which 6874 were women, of whom 3630 needed legal help regarding violence to which they have been exposed, while 88 women and 106 children in total were placed in our shelter during this period.

It is thus noted that the information presented throughout report is based on the data collected through the work of legal and psychological counselling and experiences of woman who turned to us for help. We consider this type of information to be of the utmost value in assessing the real effectiveness and compliance of the domestic legal system with the Convention since some of negative patterns as well systemic problems are best identified through individual experiences.

Croatian context of ratification of Istanbul convention

It is considered important to explain the social context in which the Istanbul Convention was ratified in the Republic of Croatia and the controversies that followed the process of ratification of the Istanbul Convention in the Republic of Croatia.

On 13 April 2018, the Croatian Parliament adopted the Act on the Ratification of the Istanbul Convention, and the Convention entered into force in the Republic of Croatia on 1 October 2018.[1] Ratification of the Istanbul Convention in the Republic of Croatia was accompanied by fierce opposition from certain conservative social groups who actively sought to prevent ratification in Parliament through various civic initiatives that offered the "real truth" about the Istanbul Convention. The imposition of gender ideology was cited as the main reason for opposition, with such organizations almost completely occupying media space with such arguments, with the true meaning of the Istanbul Convention and its purpose remaining under the radar.

It is noted that in an effort to appease right-wing conservative groups in imposing discourse on the introduction of gender ideology, the Government decided to adopt an interpretative statement to the Convention as follows: 'The Republic of Croatia considers that the aim of the Convention is to protect women against any form of violence and to prevent, prosecute and eliminate any form of violence against women and domestic violence. The Republic of Croatia considers that the provisions of the Convention do not contain the obligation to introduce gender ideology in the Croatian legal and educational system, nor the obligation to change the constitutional definition of marriage. The Republic of Croatia considers that the Convention is in line with the provisions of the Constitution of the Republic of Croatia, especially with the provisions on the protection of human rights and fundamental freedoms, and that the Convention shall be applied in accordance with the said provisions, principles and values of the constitutional order of the Republic of Croatia.[2]

After ratification in Parliament, the same initiatives tried to organize a referendum to repeal the Istanbul Convention, and this topic was the subject of heated public debates. In October 2018, the Ministry of Administration notified the public that Initiative did not collect enough citizen signatures and therefore that preconditions for calling a referendum have not been met. After that, the Initiative filed a constitutional complaint to the Constitutional Court of the Republic of Croatia, which was rejected in December 2018. After the decision of the Constitutional Court, the Istanbul Convention and its conservative interpretation hadn't been in the focus of the public anymore.[3]

[1] Act on Confirmation of the Council of Europe Convention on preventing and combating violence against women and domestic violence, Official Gazette no. 3/18

[2] In accordance with Article 78(2) of the Convention, Croatia has also reserved the right to apply Article 30(3) of the Convention solely in relation to victims who are claiming compensation in accordance with the national legislation regulating the issue of compensation for victims of criminal offences

[3] Decision of the Constitutional Court of the Republic of Croatia, no. U-VIIR-3592/2018 Zagreb, December 2018, available at [https://sljeme.usud.hr/Usud/Praksaw.nsf/C12570D30061CE54C1258378003710FE/\\$FILE/U-VIIR-3592-2018.pdf](https://sljeme.usud.hr/Usud/Praksaw.nsf/C12570D30061CE54C1258378003710FE/$FILE/U-VIIR-3592-2018.pdf)

02. COMPLIANCE OF THE CROATIAN LEGISLATIVE FRAMEWORK WITH THE CONVENTION

General observations

It can be said that the legislative framework of the Republic of Croatia is in its essence in line with the provisions of the Istanbul Convention. Certain shortcomings of the relevant laws have been noticed through case law and some have been gradually corrected by subsequent legislative interventions, the impression is that legislative changes are more the result of pressure from NGOs and the public than planned activities by the Government. However, it is commendable that the Government expresses its willingness to co-operate with civil society organizations and acknowledges them as relevant stakeholders.

The principle of gender equality is proclaimed in Art. 3 of the Constitution as one of the highest values of the constitutional order of the Republic of Croatia.[4] Even before the ratification of the Istanbul Convention, the principle of gender equality and the prohibition of discrimination based on sex were contained in provisions of relevant laws, such as the Gender Equality Act which is in force since 2003[5] and the Anti-Discrimination Act which is in force in 2009.[6] The principle of equality is also one of the fundamental principles proclaimed by the Family Act.[7]

The main laws dealing with the issue of violence against women and domestic violence are the Act on Protection from Domestic Violence and the Criminal Act. The Act on Protection from Domestic Violence is a specialized law that specifically deals with the issue of domestic violence. It is a misdemeanour act that regulates and defines types of domestic violence by defining domestic violence, among other, as the use of physical force as a result of which no bodily injury had occurred for the victim, psychological violence that violated the victims dignity, sexual harassment, and economic violence such as prohibiting or disabling the use of joint or personal property, disposing of personal income or property acquired through personal work or inheritance, disabling employment, denying funds to maintain a joint household and to care for children.[8] The law provides for misdemeanour sanctions, financial fine in the minimum amount of 2,000.00 HRK (approximately 300 EUR), and maximum of 17,000.00 HRK (approximately 2,200.00 EUR) and imprisonment of maximum 90 days.[9]

Criminal Act regulates domestic violence as a criminal offense committed by the one who seriously violates the regulations on protection from domestic violence and thus causes fear for the safety of victim or the safety of close persons or family members of the victim or puts them in a degrading position or a state of long-term suffering, without committing a more serious criminal offence.[10] This criminal offense covers more serious forms of domestic violence which do not meet the elements of other criminal offense, and are of intensity or perseverance that goes beyond the limits of misdemeanour liability, such as serious insults, intimidation, physical, sexual abuse, etc. The prescribed punishment is imprisonment for a term of one to three years.

[4] Constitution of the Republic of Croatia, Official Gazette no. 56/90, 135/97, 08/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14

[5] Gender Equality Act, official Gazette no. 116/2003, 14/2008, 82/2008.

[6] Anti-discrimination Act, Official Gazette no.85/08, 112/12

[7] Family Act, Official Gazette no. 103/15, 98/19, 47/20

[8] Act on Protection from Domestic Violence, Official Gazette no. 70/17, 126/19, 84/21, Article 10

[9] Act on Protection from Domestic Violence, Article 22, Official Gazette no. 70/17, 126/19, 84/21, Article 22

[10]Criminal Act, Official Gazette no. 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21

Other criminal offenses that appear relevant and most common in cases of violence against women are criminal offenses against sexual freedom (rape, lewd acts, sexual harassment) and criminal offenses against personal freedom - threat, and intrusive behaviour.

It should be noted that these misdemeanour and criminal offences are gender neutral, ie that the relevant legislative framework does not recognize domestic violence, ie other forms of violence against women as gender-based violence and a form of discrimination against women, which indicates that national legislation in this area is not in fully in line with the provisions of the Istanbul Convention.

The Ombudsperson for Gender Equality continuously points to this issue in her annual reports.[11] However, it should be noted that this does not represent an obstacle for courts to identify in each case whether the gender-based violence occurred and to acknowledge the same in their decisions, especially bearing in mind that the provisions of the Istanbul Convention which is ratified by the Republic of Croatia are binding for the courts and are by its force above national legislation in accordance with the Constitution.[12]

Legislative amendments

In the last few years, since the Istanbul Convention came to force, several relevant amendments to the Criminal Act and the Act on Protection from Domestic Violence have been adopted.

Amendments to the Act on Protection from Domestic Violence that entered into force in 2020 are the result of, among other, consistent doubts about the qualification of certain violent behaviours as a criminal offense of domestic violence or misdemeanours under the Act on Protection from Domestic Violence.[13] Amendments to the Act on Protection from Domestic Violence tried to resolve such doubts to some extent by excluding from the application of the Act on Protection from Domestic Violence all acts of violence that resulted in bodily injury for the victim. This sets a clearer line between the application of the Act on Protection from Domestic Violence and the Criminal Act with regard to physical violence, which must always be prosecuted as a criminal offense if it resulted in bodily injury to the victim which wasn't the case earlier. However, doubts are still present regarding other forms of domestic violence and the over-regulation of domestic violence (as a misdemeanour, criminal offense and as a special form of certain other criminal offenses, such as bodily injury) is generally problematic, causes uncertainty in application and creates unequal protection for victims.

Further mention should be made of the legal amendments to the Criminal Act that entered into force in 2020, which tightened sanctions for domestic violence and criminal offenses against sexual freedom and abolished the criminal offense of sexual intercourse without consent.[14]

[11] Gender Equality Ombudsperson, Annual Report, available at: https://www.prs.hr/application/images/uploads/IZVJESCE_O_RADU_2020_Pravobranit.pdf

[12] Constitution of the Republic of Croatia, Article 134

[13] Act on Protection from Domestic Violence, Official Gazette no. 126/19

[14] Criminal Act, Official Gazette no.126/19

In connection to this it is explained that until these amendments, Criminal Act separately regulated the criminal offense of rape and the criminal offense of sexual intercourse without consent as if they were different criminal offenses, although in essence the criminal offense of sexual intercourse without consent is also rape without an element of direct force or threat of bodily harm and physical integrity of the victim or other person. At the initiative of civil society organizations, the government adopted the aforementioned amendments, and the criminal offense of sexual intercourse without consent was removed from the Criminal Act so that all criminal offenses of sexual intercourse without consent are now prosecuted as rape.

Finally, the amendments to the Criminal Act and the Act on Protection from Domestic Violence, which entered into force in July 2021, are particularly relevant.[15] After civil society organizations and the Gender Equality Ombudsperson have been for years pointing to the issue of violence against women by intimate partners who were not covered by the definitions of a family member under the Act on Protection from Domestic Violence or the definition of a close person under the Criminal Act, due to which these cases of violence remained unprocessed (unless they met elements of other serious criminal offences, for example, bodily injury) amendments were finally adopted by which current and former partners in intimate relationships were included in the definition of a family member and close person.

By excluding intimate partners from the definition of close persons, victims of partner violence were denied adequate protection, and it often happened in practice that violence to which women were exposed could not fall under any legal definition of a criminal offense so that this type of violence was prosecuted only in cases of more serious physical violence when such cases were qualified as some form of criminal offences against life and physical integrity.

Also, by the exclusion of intimate partners from the definition of close persons the initiation of criminal proceedings for victims of intimate partner violence was made difficult since the most common criminal offenses to which such victims were exposed (threat, intrusive behaviour) are not prosecuted ex officio if the victim is not a family member or a close person to the perpetrator. Therefore, the victims were forced to initiate criminal proceedings on their own and they had to do so within a three-month time limit since the commission of the offence, otherwise the prosecution could not be carried out.

That had particularly negative effect on young women who were often exposed to violence on behalf of their intimate partners with whom they didn't live in the same household. Also, there have been cases of partner violence in intimate relationships that lasted for several years, in which situations victim remained unprotected just because she didn't share the same place of residence with the perpetrator, which was not acceptable. In such cases, victims would seek the help of the police, where they would be told that they could file a private lawsuit against their partner since this type of violence was not prosecuted ex officio unless serious bodily injury had occurred. This certainly had a dissuasive effect on victims who often did not have the funds to initiate private lawsuits which ultimately led to the situation in which the perpetrators went unpunished.

[15] Criminal Act, Official Gazette no. 84/21, Act on protection from Domestic Violence, Official Gazette no. 84/21

With such legislative changes, the Croatian national legislation in this important aspect was harmonized with the provisions of the Convention, which includes a wider range of potential perpetrators, defining in Art. 3. b Domestic violence as "all acts of physical, sexual, psychological or economic violence occurring in the family or household or between former or current spouses or partners, regardless of whether the perpetrator shares or has shared the same residence with the victim".

Furthermore, difficulties have emerged regarding the effective prosecution of the criminal offense of sexual harassment since it was prescribed by the law that this criminal offence is prosecuted upon the request of the victim and not ex officio.

This meant that the victim was obliged to report such a criminal offence within three months of learning about the crime and the perpetrator, which was a procedural condition for prosecution. Therefore, the said criminal offence was not prosecuted ex officio and there was a preclusive deadline for initiating proceedings. As it has been shown that many victims report sexual harassment with a significant time lag, such a provision in many cases made it impossible to initiate criminal proceedings against the perpetrators thus victims were left without protection.

After several media-exposed cases of sexual harassment and the case law through which it became clear that the stated preclusion period represents an obstacle to effective prosecution of sexual harassment, by the legal amendments that came into force in July 2021 it was finally regulated that sexual harassment would be prosecuted ex officio so that the victims were no longer bound by the three months' time period to report this criminal offence in order for the prosecution to be undertaken.[16]

This certainly represents a positive step forward in the protection of victims of sexual harassment who are predominantly women, however, there are also further shortcomings in the legal regulations of this criminal offence that diminish such protection. Namely, sexual harassment constitutes a criminal offence only if the victim is in a relationship of dependence or subordination to the perpetrator, while in other cases it constitutes a misdemeanour regulated by the Gender Equality Act and the Anti-Discrimination Act. In this way, victims of sexual harassment who are not necessarily in a relationship of subordination / dependence to the perpetrator are placed in an unequal position because they are not provided with criminal protection, which cannot be considered justified, especially in some cases observed in practice (for example victims in the workplace exposed to sexual harassment by colleagues who are not their superiors) and in cases involving particularly degrading forms of harassment for the victim, when misdemeanour prosecution of such situations under the Gender Equality Act cannot be considered sufficient.

[16] Criminal Act, Official Gazette no. 84/21, Article 156

Also, the actual case law has crystallized the interpretation that sexual harassment in order to constitute a criminal offence must represent a more permanent condition and be repeated, which proved to be unfavourable for victims. The vivid example of this is the court decision that resonated with the public in January 2020, issued in criminal proceedings for sexual harassment of a police officer by a superior, in which the defendant was acquitted because the harassment occurred "only once" and was not repeated. In the specific case, the court stated that the existence of sexual harassment requires repeated harassment and given that the case in question was a one-time harassment, the elements of the criminal offense of sexual harassment were not met. This indicates that further legislative interventions are needed to ensure the full and effective protection of women victims of sexual harassment.

Finally, by the legal amendments to the Criminal Code that came into force in July 2021, largely at the initiative of B.a.B.e. supported by other civil society organizations and the public, a new criminal offense has been introduced into Croatian criminal law – Image based Abuse by sexually explicit footage.[17] This is considered to be of the utmost importance in the context of the widespread use of new technologies, and thus the commission of violence against women through social networks and other digital platforms, most often as the so-called revenge porn. Bearing in mind that the victims of revenge pornography are predominantly women and that it is a form of violence that represents an extension of violent behaviour that they suffered in other forms while they were physically close to the perpetrator it is commendable that this type of violence is recognized by the law and regulated in order to provide complete and effective protection to victims.

Housing

Legislation that is also considered relevant for the women victims of violence is certainly Social Welfare Act which regulates the right to temporary accommodation for victims of domestic violence. [18]

The number of shelters for victims of domestic violence is continuously growing, and in 2020 and 2021 six more shelters were opened, so that in 2021 in total 25 shelters were established in the Republic of Croatia.[19] The increase in the number of shelters is certainly commendable, but it should be borne in mind that this is temporary accommodation that can last up to a year while it is important to provide women victims of violence with adequate support and a long-term housing solution after leaving the shelter, and to ensure their economic independence so that they can permanently remove themselves from a violent environment.

[17] Criminal Act, Official Gazette no. 84/21, Article 144a

[18] Social Welfare Act, Official Gazette no. 18/22, Article 112

[19] Gender Equality Ombudsperson, Annual Report, available at:

https://www.prs.hr/application/images/uploads/IZVJESCE_O_RADU_2020_Pravobranit.pdf

In 2019 the new Housing Care Act in the Areas of Special State Concern entered into force, granting the rights to domestic violence victims to housing care, which is a positive step forward.[20] However the aforementioned law suffers from a whole range of deficiencies that reflect negatively on the realization of the rights of victims. For example, the urgency as a precondition for achieving the right to housing care is compromised by the condition that the victim must have a final court judgment for domestic violence. In addition, the fact that housing care is of a temporary character without the possibility of a permanent provision of housing outside the areas that are legally defined as areas of special state concern is also a limiting element in terms of equal protection.

However, according to our experiences, we can say that in cases where all the above conditions are met, the victims' right to accommodation is realized without difficulties and that women who achieved this right express their satisfaction with this form of assistance.

[20] Housing Care Act in the Areas of Special State Concern, Official Gazette no.106/18, 98/19

03. IMPLEMENTATION ISSUES

General observations

Despite the formally adequate legislative framework, it cannot be said that the Republic of Croatia has reached satisfactory standards in the protection of the rights of women and victims of domestic violence, given that there is still a lack of adequate implementation of the legislative framework in practice by the judiciary.

Thus, implementation at the individual level is currently proving to be the biggest problem in the field of protection of women and victims of domestic violence, which leads to further consequences which are manifested as reluctance of victims to report violence and the lack of trust in the institutions for which reason victims are often resigned, disappointed and feeling left on their own and punished for deciding to report violence.

Mild penal policy

One of the biggest problems in this area is certainly the widespread practice of imposing mild sanctions in cases of violence against women and domestic violence by the courts. For example, despite the fact that the Act on Protection from Domestic Violence prescribes the possibility of imposing prison sentences, probation and fine sentences are imposed in most cases. The same situation is in criminal proceedings in which probation is also most prevalent. Such mild Penal Policy achieves neither the purpose of special nor general prevention and sends the wrong message to victims as well as to society as a whole about the tolerance of violence despite its declaratory prohibition. The Gender Equality Ombudsperson has been pointing for years that the judiciary sentences less than 10% of the total number of perpetrators of violence to a unconditional prison sentence, all others have been sentenced to relatively mild fines, i.e. probation. Such case law is not in line with the provisions of the Istanbul Convention, which imposes an obligation on Member States to ensure that the offenses prescribed by the Convention are punished with effective, proportionate and dissuasive sanctions.

Issues regarding misdemeanour proceedings

A particular problem arises with misdemeanour proceedings conducted in the largest number of cases of reported domestic violence, in accordance with the Act on Protection from Domestic Violence, due to light sentences. Namely, such proceedings are carried out almost mechanically according to the identical pattern of treatment, which does not provide sufficient mechanisms for protection of victims and neither does have any effect on the perpetrator. It is important to stress that even when convicted the perpetrator does not suffer any real consequences for his actions.

In misdemeanour proceedings, the police and courts tend to treat domestic violence as an isolated event outside the context of possible previous violent behaviour of the perpetrator and do not recognize the pattern of violent behaviour of certain perpetrators, which also affects the seriousness of the punishment. This often leads to a reappearance of violence and escalation of violence into much more serious forms that are sometimes fatal to the victim.

There are still cases in which the perpetrators are taken to the on-duty misdemeanour judge after the violence had been reported. If they confess the charge, they are convicted on the same day with a lenient punishment which takes into account as a mitigating circumstance the admission of the offense, so that the perpetrators often return to the household where the victim lives the next day.

Also, victims regularly complain that the final effect of imposing a fine in misdemeanour proceedings is felt by themselves and their children, given that the fine is paid from the household budget, so they have repeatedly expressed scepticism to report violence at all, fearing that if a fine is imposed as a sanction to the perpetrator the household budget will be burdened and they and their children will ultimately suffer financially as a result. It should be noted that we still have information about the negative practice of judges in misdemeanour proceedings who often suggest perpetrators to confess guilt for a misdemeanour since that will be taken into account when sentencing which perpetrators often accept.

Participation of the victim

In addition, misdemeanour proceedings are still sometimes carried out without the participation of victims and making possible for the victims to exercise her procedural rights guaranteed by the Act on Protection from Domestic Violence.

In misdemeanour proceedings in which the victim is enabled to participate, the problem of non-existence of the right to free representation of victims of domestic violence comes to light. In connection to this it is explained that one of the problems in obtaining effective protection of victims of violence is the system of free legal aid which does not recognize free legal representation in misdemeanour and criminal proceedings for victims of violence (except victims of sexual violence, children and victims of trafficking). Victims, even though they have certain procedural rights during the proceedings, often do not exercise these rights because they are not ready to come to court hearings on their own, face the perpetrator and actively participate in court proceedings without legal representation. The possibility of being accompanied by a person of trust is certainly commendable however, it is a mechanism of support to victims and not legal representation which often leads to an unequal position of the victim in comparison to the perpetrator.

In this regard It should be noted that the active participation of the victim in misdemeanour proceedings, at least taking into account the current case law, is indeed necessary because the role of the police in such proceedings is factually reduced to a strictly formal role of the one who files and indictment, however in further proceedings remains passive and does not actively represent the indictment.

Moreover, it is common for police representatives not to appear at court hearings at all, and then the active role of the victim is very important because the victim in these situations takes on the role of prosecutor, although procedurally such a position does not belong to the victim. Therefore, the victims should be given the right to free representation by a lawyer in misdemeanour proceedings or take planned actions in order to educate police officers who will be specially trained to represent the prosecution in misdemeanour proceedings or establish special police departments within the police whose main task will be representation of the indictment in misdemeanour proceedings.

Confrontation of the perpetrator and the victim

The practice of courts in misdemeanour proceedings to conduct direct confrontation of the victim and the perpetrator is particularly inappropriate. The court regularly conduct confrontation as a part of usual evidentiary proceedings and consider this to be adequate mechanism through which the court can determine who is telling the truth and who has more credibility, the victim or suspect. This certainly represents further victimization of the victim who is exposed to the perpetrator, often without legal representation and forced to face the perpetrator, who she often fears, on her own while her reactions and behaviour are observed by the court that has no capacity or knowledge on the basis of such confrontation to assess whose testimony is credible.

No appeals against acquittals by the police

Also, significant problem is the reluctance of the police to file appeals in misdemeanour proceedings. The victims in such proceedings (as well as in criminal proceedings) given its procedural position do not have the right to appeal against the court decision and in this part depend entirely on the police as an authorized prosecutor. This issue is continuously pointed out by civil society organizations as well as by the Gender Equality Ombudsperson, who has repeatedly condemned such practices by instructing the police on the proper course of action in such cases. However, based on the experiences of a number of women who contact us regarding domestic violence issues and misdemeanour proceedings, it can be concluded that undesirable practices in which the role of the police is exhausted in filing an indictment are still present.

Failure to implement the Individual Victim Assessment Mechanism

In criminal proceedings, the victim is in a more favourable position since the indictment is represented by the Municipal State Attorney's Office, which is actively involved in the proceedings. However, the mechanism of individual assessment of the victim provided by the provision of Art. 43 a of the Criminal Procedure Code applicable also in misdemeanour proceedings under the Act on Protection from Domestic Violence, although it may be a well-designed mechanism for additional protection of victims, in some cases is not implemented at all, which then prevents victims from exercising their rights which belong to them under the Criminal Procedure Act and the Domestic Violence Protection Act. There are often cases when victims are not informed about their rights and receive concrete information on their role in the proceedings only from lawyers they hire themselves or from civil society organizations.

The issue of double charging the victim and the perpetrator

Also, although to a lesser extent than before, there are still cases of double charges and double arrests where misdemeanour proceedings are initiated against the perpetrator and the victim since the primary aggressor is not distinguished from the victim. It is especially alarming when with the threat of double arrest, the police tries to influence the victim to give up on charges ensuring the victim that if she insists on her report both of them will be arrested and children taken away by the social welfare centre which certainly has a deterrent effect on victims who give up reporting violence in such situations.

Conduct of police officers leading to non-prosecution of violence

It is also noted that police officers are unfamiliar with the provisions of relevant legislation, so there are situations in which police officers refuse to act in cases of violence against women by ex-spouses due to misinterpretation that they do not fall under the definition of family members under the Act on Protection from Domestic Violence. Victims are also often referred to initiating private lawsuits, especially in cases of economic violence that is not yet fully recognized as a form of domestic violence, although it is increasingly present in practice. Namely, economic violence is often qualified by the police as “unresolved property relations” and victims are referred to initiate civil proceedings, i.e. there is no awareness that economic violence is also a form of violence against women and that it is a duty to prosecute it *ex officio*.

Qualification of domestic violence as a misdemeanour or a criminal offence

The mentioned doubts in practice regarding the qualification of certain forms of violent acts as misdemeanours or criminal offenses mostly stem from the discretionary powers of the police to which most victims report violence, which in each individual case qualifies certain events and decides whether to prosecute certain forms of violence as a misdemeanour or criminal offense, i.e., whether to file an indictment with the competent misdemeanour court or to forward the report to the Municipal State Attorney's Office for further proceedings in order to conduct criminal proceedings. However, the lack of clear criteria on how to qualify certain events of domestic violence, results in unequal treatment of victims who are sometimes exposed to identical type of violent behaviour, since, for example, one police station qualifies it as a misdemeanour and files an indictment, while another police station qualifies the same offense as a criminal offense. This is certainly undesirable and is contrary to the principle of rule of law and legal security and puts some victims at a disadvantage providing them in identical situations different level of protection than to other victims.

In any case, it can be concluded that the victims are not satisfied with the misdemeanour proceedings for domestic violence, given that the final outcome does not instil in the victims a feeling of security and justice.

Non prosecution in cases of victim's withdrawal

Also, noted is that police as well as state attorney's office have a tendency not to prosecute cases of domestic violence in cases when victim withdraw their reports. Therefore, although the prosecution should be initiated and processed *ex officio*, police and state attorney's office make it dependent of the victim. If the victim decides to withdraw her criminal or misdemeanour report or decides to use her right not to testify against the perpetrator, the police will not initiate misdemeanour proceedings while the state attorney's office often decides in such cases to give up on further prosecution with the explanation that there is not enough evidence against the perpetrator without the victim's testimony. Therefore, criminal and misdemeanour prosecution rely entirely on the victim although it is the duty of the prosecution to collect evidences and conduct prosecution in their own, regardless of the victim's dispositions.

Limited rights to compensation for material damage and non-existence of compensation for non-pecuniary damage

It is also noted that in practice victims do not exercise their rights under the Act on Financial Compensation to the Victims of Crime and that victims are often unaware of their rights under the mentioned law. In this regard, it should be said that the financial compensation provided to victims on the basis of this law is quite limited. It applies only to the victims of crimes of violence and essentially covers crimes committed with intent with the use of force or violation of sexual integrity. The said law guarantees compensation for property damage, namely health care costs, compensation for lost earnings, compensation for loss of alimony and compensation for funeral expenses.

An additional limiting circumstance is the deadline for submitting a request for compensation, which must be submitted no later than six months from the day the crime was committed, and which deadline may be extended if the victim was unable to file a request for compensation within the proscribed time, when she must do the same within three months or three years from the day the crime was committed. Therefore, within the said law, victims have limited rights to compensation for material damage, while the right to compensation for non-pecuniary damage by the state is not provided.

It should be noted that according to the Criminal Procedure Code, victims have the right to file a property claim in criminal proceedings, however, that they also do not use this right since criminal courts have limited possibilities to determine the right to compensation and do so only if it does not lead to a delay in criminal proceedings, so often even when the victims make a compensation claim, the victims are instructed to initiate a special civil proceedings in order to obtain full compensation.

Also, as it follows from the name of the law itself, no type of monetary compensation by the state is provided for victims of misdemeanours nor are the victims in misdemeanour proceedings entitled to a compensation claim within the misdemeanour proceedings. Thus, victims most often after the end of the criminal/ misdemeanour proceedings need to initiate further civil proceedings for damages against the perpetrator, which represents additional burden for them.

ISSUES OF PARTICULAR CONCERN - CIVIL CUSTODY PROCEEDINGS

The particularly alarming is discrepancy in the application of the provisions of the Istanbul Convention in civil custody proceedings, which came into the public focus in 2021. Having in mind that initiating criminal or misdemeanour proceedings for domestic violence is in most cases accompanied by initiating proceedings for divorce and parental care, this complexity is often not taken into account by courts and the social welfare centres in custody proceedings. Namely, although the Family Act prescribes the principle of equality and the prohibition of discrimination and violence against a partner as one of the fundamental principles in family relations and while it also explicitly stipulates that domestic violence constitutes particularly serious violation of the principles of solidarity, mutual respect and assistance to family members, domestic violence in case law does not represent a relevant factor in making a decision on custody.[21]

Social welfare centres which, at the request of the court, assess the parental competencies of the parents do not take into account domestic violence as a relevant factor in the assessment of parental capacities. The prevailing understanding is that domestic violence is a problem that is not interlinked with parental relationships, and there is a persistent insistence on the separation of parental and partner relationships. Thus, often the parental abilities of persons against whom domestic violence proceedings are conducted or are already found guilty for domestic violence, by social welfare centres are assessed as flawless and the fact that they committed domestic violence to the detriment of the spouses does not affect the assessment of their parental abilities.

Courts in civil custody proceedings act in an identical manner so that the practice of separating partner and parent relationship is also present here. Victims of violence are often instructed not to burden children with their mutual partner relationships since the violence was not committed against children and has no influence on them and therefore that it concerns only the parents and does not in any way impact the child, openly stating that it also does not affect parental abilities in any negative way.

In custody proceedings often absurd situations occur when centres and courts impose an obligation on the victim to directly contact and cooperate with the perpetrator of violence, even in situations where precautionary measures are in force in criminal or misdemeanour proceedings. Refusal of the victim to do so is considered non-cooperation and assessed as negative with regard to her parental abilities. Victims are forced to allow unhindered contact of children with the perpetrator of violence and are otherwise accused of manipulating children. Judicial proceedings for the adoption of interim measures that should urgently regulate the manner of performing parental care in such crisis situations take a disproportionately long time and the victims depend on themselves in dealing with custody issues in domestic violence situations over a long period of time.

Particularly unfavourable is the situation when custody and domestic violence proceedings are conducted at the same time, in which situation the Social Welfare Centre is guided by the presumption of innocence of the suspect, so that it does not acknowledge the existence of the violence and gives priority to the protection of the suspects right not to be found guilty until the final judgment before protection of the rights of children and the victim. In this cases Social Welfare Centre completely denies that violence had occurred and finds parents to be equally capable to take care of children.

[21] Family Act, Official Gazette no. 103/15, 98/19, 47/20, Article 3 and Article 4

This is in direct conflict with the provisions of the Istanbul Convention, which explicitly stipulates the obligation of the parties to take all necessary measures to ensure that the occurrence of violence within the scope of the Convention is taken into account when determining childcare and the right to see children and to ensure that the exercise of any right to see children or care for children does not jeopardize the rights and safety of the victim or children.

The Gender Equality Ombudsperson in numerous of such cases gave recommendations to Centres that domestic violence represents one form of discrimination of women and that the perpetrator, and the victim cannot be considered equal.

In this regards, positive step forward represents a court decision from January 2021 by which it was determined that the members of the expert team of social welfare centre had discriminated a mother while taking action in custody proceedings and giving their assessment on her parental abilities, since among other, they treated the victim of domestic violence and the perpetrator as equal.[22]

[22] Decision of the Velika Gorica Municipal Court, no. P-122/20, confirmed by the decision of the Bjelovar County Court, no: Gž-423/21.

POLICY FRAMEWORK

Regarding the policy framework, in the Republic of Croatia the National Strategy for Protection against Domestic Violence for the period from 2017 to 2022 is in force.[23] The National Strategy regulates seven areas of action with a total of 33 measures which are provided for in each area. Each measure of the National Strategy is based on one or more provisions of the Istanbul Convention. The national strategy for each area of action contains a description of the situation, objectives and measures. Within each individual measure, the following is determined: holders, cooperating institutions, activities, deadlines, performance indicators and necessary financial resources. The National Strategy obliges the competent bodies (holders and cooperating institutions) to undertake the necessary activities in order to protect victims of domestic violence, and it represents an upgrade of the established system of protection of victims of domestic violence.

In June 2019, a new Protocol of Procedure in Cases of Domestic Violence was adopted as an operational document that specifies the obligations and manner of action of relevant stakeholders in specific cases of domestic violence, including the actions and obligations of state bodies (police, social welfare centre, health and educational institutions).[24]

The Protocol of Procedure in Cases of Sexual Violence, adopted in August 2018, is also in force with the aim of introducing standardized treatment of victims of sexual violence in order to ensure uniform practice of all competent bodies and institutions and provide quality and effective assistance to victims.[25]

Unfortunately, there is currently no strategic framework for implementing gender equality policy. The last national policy on gender equality was in force from 2011 to 2015, and no further strategies have been adopted since. Bearing in mind that the principle of gender equality requires implementation in all segments of life, it is necessary to establish a broader strategic policy framework that would contain a concrete strategic plan and measures to achieve this goal which goes beyond the area of domestic violence.

[23] National Strategy for Protection against Domestic Violence for the period from 2017 to 2022, available at <https://mrosp.gov.hr/UserDocImages/dokumenti/MDOMSP%20dokumenti/Nacionalna%20strategija%20zastite%20od%20nasilja%20u%20obitelji%20za%20razdoblje%20do%202017.%20do%202022.%20godine.pdf>

[24] Protocol of Procedure in Cases of Domestic Violence, available at:

https://zdravlje.gov.hr/UserDocImages/2019%20Vijesti/PROTOKOL%20O%20POSTUPANJU%20U%20SLUC4%8CAJU%20NASILJA%20U%20OBITELJI%20-%20usvojen%20na%20Vladi%2019.lipnja%202019_.pdf

[25] Protocol of Procedure in Cases of Sexual Violence, Official Gazette no. 70/18

04. CONCLUSION

Although the legal framework is generally adequate and the Republic of Croatia has adopted all standards for the protection of the rights of women according to the provisions of the Istanbul Convention, the problems regarding effective protection in practice still exists. The implementation of legal provisions is still lacking, although the situation is slowly improving. It is necessary to change the perception, further sensitize and educate police officers who have first contact with a victim of domestic violence, the Social welfare centres as well as the judges of misdemeanour courts, in order to adequately sanction domestic violence at its very first occurrence, so that it does not repeat again and graduate in brutal forms of violence when every intervention by the state is long overdue. The efforts in this regard are noticeable, police officers, employees of the Social Welfare Centres and judicial officials are involved in numerous trainings and workshops organized by civil society organizations and the Gender Equality Ombudsperson, however it is often found difficult to completely eliminate deeply rooted negative practices.

Special efforts need to be taken with regard the rights of women victims of domestic violence in custody proceedings since provisions of Istanbul Convention in these proceedings are not respected which leads to further victimization and discrimination of victims of violence.

The biggest problem is the extremely mild penal policy taken by the courts in relation to the perpetrators of crimes against women and domestic violence. This primarily refers to sanctions imposed by misdemeanour courts, which have a particularly important role in preventing the escalation of further violence by sanctioning perpetrators in misdemeanour proceedings. Namely, at this stage, a punishment that will achieve the purpose of special and general prevention is much needed. Misdemeanour courts have the opportunity to react at a time when violence has not escalated to the point that it requires criminal repression and when the direct consequences for victims are not so severe. However, this is where the system fails, misdemeanour proceedings are not taken seriously and there are many cases of returnees and perpetrators of more severe forms of violence after they have already been punished in misdemeanour proceedings.

According to the Gender Equality Ombudsperson, the system of combating violence against women and domestic violence in the Republic of Croatia in the long run discourages victims from reporting minor forms of violence until the situation escalates and grows into criminal law. This kind of misdemeanour legal system does not fulfil its preventive nature and does not offer an effective and rapid response to violence but brutalizes it and moves it from the sphere of misdemeanour to criminal law, which is a result of the lack of effective and systematic measures to prevent violence outside the justice system.

Thus, it can be said that there is a huge potential for progress in the field of prevention of violence against women and domestic violence, and one gets the impression that this area is not sufficiently in the focus of the state. Namely, the focus should not be exclusively on repression but on prevention which is subject to regulation of the relevant policy framework whose concrete effects, if any, are not so much recognized in public but perceived more as a declaration of will and good intentions while concrete effects are lacking. This is clearly seen from the fact that we are witnessing an increase in violence against women, which is more and more brutal and often results in femicide while also new forms of violence against women under the influence of new technologies are emerging.

Croatia does not have an adequate system for preventing gender-based violence. Prevention mechanisms should be integrated into all parts of society, especially the education system, which has the greatest potential to become an effective mechanism in combating violence against women by introducing the children from an early age the importance of gender equality and gender-based violence and in that way influence the negative patterns of behaviour that are deeply rooted in Croatian society.

To conclude, since 2018, when the Istanbul Convention entered into force in the Republic of Croatia, certain progress has been made in the field of violence against women and domestic violence and the system of protection of women has been improved, however, further efforts need to be taken in order for legally guaranteed rights become a reality for every single woman victim of violence.

BE ACTIVE.
BE EMANCIPATED.

For a society of equal,
emancipated and
active individuals
in which there is
no place for violence!

BaBe!
Budi aktiva. Budi emansipiran.