



## **JOINT SHADOW REPORT**

on the implementation of Council of Europe's Convention on preventing and combating violence against women and domestic violence in Croatia

February, 2022

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**In dedication to all brave women who share their stories with us.**

## List of acronyms

**CEDAW** The Convention on the Elimination of all Forms of Discrimination Against Women

**CES** Croatian Employment Service

**CoE** Council of Europe

**CSO** Civil Society Organization

**CSW** Center for Social Welfare / Center for Social Work

**DV** Domestic violence

**GBV** Gender based violence

**ISTANBUL CONVENTION** or **CONVENTION** Council of Europe Convention on preventing and combating violence against women and domestic violence

**NGO** Non-governmental organization

**SARC** Sexual Assault Referral Centres

**SGBV** Sexual and Gender based violence

**SV** Sexual violence

**UN** United Nations

**VAW** Violence against women

## Introduction

The Republic of Croatia signed The Council of Europe's Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) on 22nd of January 2013 and it was ratified by the Parliament on 12nd of June 2018.

The ratification itself was preceded by a heated public debate, mostly encouraged by right-wing and conservative organizations and political parties who claimed that Croatia's ratification of the Convention introduced a "gender ideology" and believed that the fight against violence must be regulated at the national level without international bodies to control the process. The debate has divided Croatian society, and that division is still visible. Certain groups of people still deny the importance of the Convention and claim that it is ineffective because even after its ratification, violence is still present.

In the described social surroundings, the implementation of the ratified Convention began and almost 4 years after the ratification, Croatia has many challenges ahead to meet all the requirements of the Convention.

Many activities from the Convention itself are carried out by associations, civil society organizations (CSOs), that is women's and feminist organizations that directly provide support to women victims of violence and/or carry out preventive and advocacy activities. Much of the responsibility for implementing the Convention lies with CSOs, which, despite a serious lack of financial and human capacity and stability, are expected to support victims, conduct advocacy and activism campaigns, implement prevention programs, and endure the increasing burden of securing funding through tenders, both national and foreign. This takes away the time organizations need to implement their "watchdog role" vis-à-vis the state, and this has proven to be true in the organization of writing of this report.

All the organizations and individuals involved in the writing did their work voluntarily, without any financial compensation. Due to the overload in the main organizations, writing this report was an additional activity for everyone, for which it was necessary to find and spend a sufficient amount of time. COVID-19 also proved to be an obstacle because most of the team, at some point, was either positive with more or less severe symptoms or was in self-isolation, often with children and other family members and this greatly affected our ability to write this report.

This report was planned and written in the period from mid-December 2021 to February 28th 2022. Throughout January and February, we contacted the Ministry of Labour, Pension System, Family and Social Policy (as a Co-ordinating body) several times to obtain information on the state report for GREVIO, however, we never received an answer. The state report, without almost any public attention, was accepted at the Government session only on February 18th 2022, and thus the quality reaction of CSOs was close to impossible.

We decided to write our report following the articles of the Convention along with emphasizing Croatia's background, challenges and our recommendations. There are two separate and

underlined paragraphs for two specific topics (Migration and asylum and Gender based violence in maternity and gynaecological care).

In writing the report, we were guided by our own experiences in working with women victims of GBV and available data and materials. The process was initiated and coordinated by SOS Rijeka and all members of the team had the opportunity to participate in writing almost all parts of this report and we are proud that it was written in cooperation and solidarity. We also have full confidence in colleagues from other organizations who write their own reports, that they will also professionally and argumentatively point out the problems and that together we will contribute to improving the quality of life of women victims of GBV in Croatia.

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#### *Severability clause*

*The statements and claims made within this report are upheld by the NGOs and independent individuals that support this report according to their respective areas of responsibility and objectives. The NGOs and individuals involved are united by their intention of making a joint report from a civil society and/or individual professional perspective. Nevertheless, not all of the NGOs/individuals who are involved can support every assessment and recommendation made here.*

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## General Information on Women in Croatia

In this introductory section we are providing some general information, facts, and figures about the situation of women in Croatia. Gender equality is part of the Croatian constitution, but it is still not reached, and gender discrimination against women is still very present. Thus, the 2021 Gender-Equality Index for Croatia is 59,2. It is a slight increase in regard to the 2020 GEI, but still way below the European average of 68 points. At the time of writing this shadow report, Croatia still does not have a National Plan for Gender Equality. Furthermore, violence against women and domestic violence is not recognized as a form of gender-based violence. The Ministry of Labour, Pension System, Family and Social Policy on its web page under domestic violence write the following: "A number of laws and strategic documents in the Republic of Croatia regulate the fight against violence against women and domestic violence. Violence in the Republic of Croatia, as in other European countries, has become a ubiquitous problem that has become part of everyday life, at all levels of society, regardless of family type and regardless of education, age or gender."<sup>1</sup> This shows that there is not understanding that domestic violence is a part of gender-based violence against women.

### Facts and Figures - Statistics about Violence against Women/girls and children

The first Law on Protection from Domestic Violence entered into force on November 21st, 2009. On January 1st, 2018 new Law on Protection from Domestic Violence entered into force. In 2005 the Croatian government adopted the Procedure Protocol In Cases Of Domestic Violence. The Protocol was amended several times and a new one is into force from June 16th, 2019. Furthermore, Croatia passes bylaws regarding the protection of victims of domestic violence, improved legislative framework regarding sexual violence, sexual harassment, and sexual violence against children. However, all this falls short because there are many missteps made by the system regarding the protection of women against violence.

Data on violence against women:

- Sexual violence: 17% of women experienced attempted rape or rape<sup>2</sup>
- Sexual harassment: 41% of women have experienced sexual harassment since the age of 15<sup>3</sup>
- Domestic violence: 31% of women have experienced domestic violence frequently, while 44% occasionally<sup>4</sup>

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<sup>1</sup> Ministarstvo rada, mirovinskog sustava, obitelji i socijalne politike, Nasilje u obitelji, seen on February 21 2022. available at: <https://mrosp.gov.hr/istaknute-teme/obitelji-i-socijalna-politika/obitelj-12037/nasilje-u-obitelji-12046/12046>,

<sup>2</sup> Mamula, Maja, (ur) Stanje seksualnih prava žena, Zagreb 2006.

<sup>3</sup> European Union Agency for Fundamental Rights, Violence against women: an EU-wide survey. 2014, [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2014-vaw-survey-main-results-apr14\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2014-vaw-survey-main-results-apr14_en.pdf)

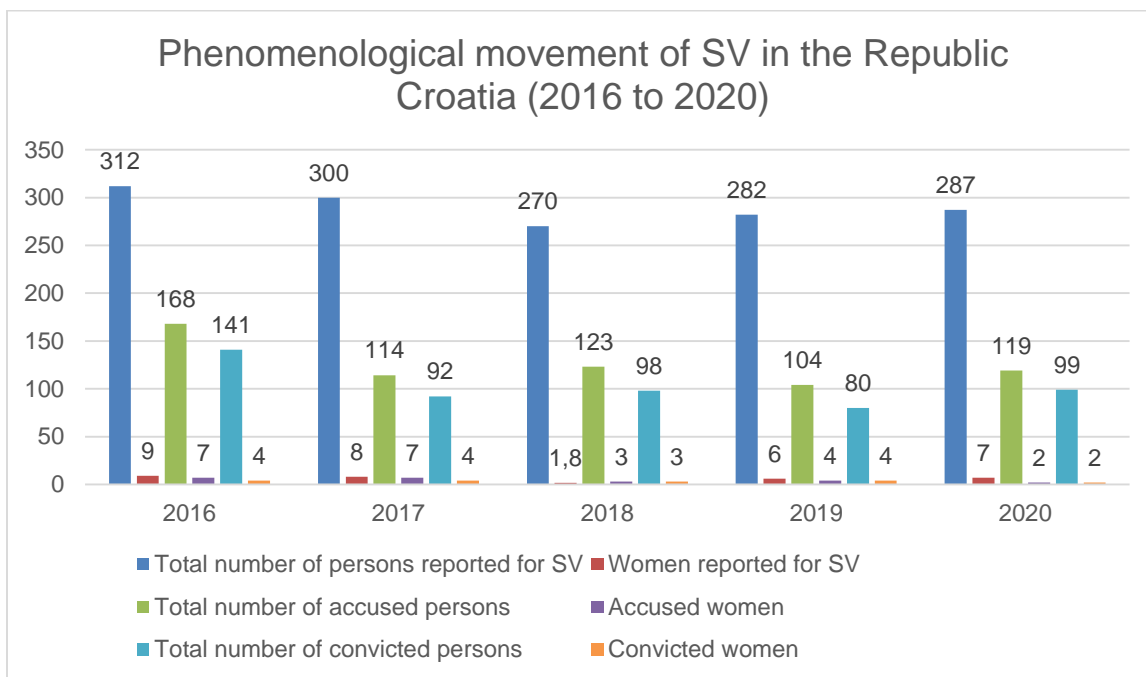
<sup>4</sup> Women Against Violence Europe (WAVE), Country Report 2012: Reality Check on Data Collection and European Services for Women and Children Survivors of Violence, 2013, str. 74.

- Child abuse: 13.7% young people experienced sexual abuse during their childhood. If inappropriate exposure of children to sexual content as a form of sexual abuse is included, then this percentage is even higher and it amounts to 18.1%.<sup>5</sup>

Data on police-reported violence in the period 2018-2020 shows women were overrepresented as victims of DV accounting to almost 8 in 10 victims in a three-year timeframe. The rate of police reported DV decreased by 17% between 2018 and 2020. The share of recidivists who have previously been convicted of violence in the total number per year is persistent and significant.

| Year | Total  | Male (%)    | Female (%) | Recidivists (%) |
|------|--------|-------------|------------|-----------------|
| 2018 | 10.272 | 7.983 (78%) | 2289 (22%) | 2434 (24%)      |
| 2019 | 9.623  | 7.500 (78%) | 2123 (22%) | 2052 (21%)      |
| 2020 | 8.539  | 6.601 (77%) | 1938 (23%) | 1848 (23%)      |

Data on numbers of reported, accused and convicted persons for SV show a low percentage of convictions, but not for women who are represented here mostly because offenses related to prostitution<sup>6</sup>.



<sup>5</sup> Poliklinika za zaštitu djece grada Zagreba, Prevalencija zlostavljanja i zanemarivanja djece u Hrvatskoj, Zagreb 2006.

<sup>6</sup> Rittossa, Dalida et al., unpublished research conducted as part of the project IP-CORONA-04-2086 of the Croatian Science Foundation, 2021

## Femicides

- In 2020, 14 women were murdered in total. Out of this number 9 of them were murdered by their (former) intimate partner. From 2018 the number of murdered women in total and by (former) intimate partner is on rise.

| Year | Total number of women murdered | Women murdered by (ex)intimate partner | %   |
|------|--------------------------------|--|-----|
| 2018 | 8                              | 4                                      | 50% |
| 2019 | 13                             | 7                                      | 54% |
| 2020 | 14                             | 9                                      | 64% |

## Shelters for Victims of domestic violence

There are a total of 25 shelters for victims of domestic violence in Croatia in 2021. The total capacity of the shelters in 2020 was 308 places. In 2020, 886 women and children were accommodated in the shelters for victims of domestic violence.<sup>7</sup>

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<sup>7</sup> Ministry of Labour, Pension System, Family and Social Policy, administrative data

## Statistic of the National Helpline 116 006 for victims of domestic violence

The National Helpline was established on November 25, 2020.

|                             | Total number of calls | Total number of calls GBV | %   |
|-----------------------------|-----------------------|---------------------------|-----|
| 25 Nov. 2020 – 31 Dec. 2020 | 224                   | 116                       | 52% |
| 1 Jan. - 31. Dec. 2021      | 1957                  | 872                       | 45% |

| Total number of calls GBV Nov 2020 – December 2021 | Number | M  | F   |
|--|--------|----|-----|
|  | 988    | 99 | 889 |

### Gender Pay Gap

The Gender Pay Gap between women and men in Croatia in 2019 was 11.5%. The EU average was 14,1 %. According to the Eurostat in 2010 the gender pay gap was 5.7% and then it began to widen. In 2017 it was 12.3%.

### Gender Pension Gap

The Gender Pension Gap in Croatia in 2020 was 30.4%. According to the Eurostat from 2014 the gap is constantly widening – in 2014 it was 22.2%. The average pension in 2020 amounted to 418 € for men, compared to 331 € for women.

### The Lack of Childcare facilities

In 2018 the percentage of children (3 years to school age) covered by early preschool education was 76.3%

## **Paternity Leave**

Although men in Croatia can use parental leave, the percentage of men is still very low. Thus, in 2020, parental leave up to 6 months of age of the child used only 0,27% of men. Parental leave after 6 months of age of the child used 4,30%.

## **At Risk of Poverty rate**

According to the Croatian Bureau of Statistics in 2019 at-risk of poverty rate for women was 19,3%, while for men was 17,2%. The most at risk were women 65 and older. Their at-risk poverty rate was 33,6% (men of the same age group was 24,9%).

## **Low percentage of women in Politics**

Croatian Politics is male-dominated. In the Croatian Parliament currently, there are only 31,7% of women (48 out of 151) delegates. On the county level, only 9.5% of women are County Prefects (2 out of 21). On the city level, 13,4% of mayors are women (17 out of 110).

## **Women in Management and Supervisory Boards**

According to the data from the Croatian Financial Services Supervisory Agency, the percentage of women in the management boards of joint-stock companies was 12.6%. The share of women in the supervisory boards of these companies was 22.33%.

## **Women in National Administration**

In 2020 the percentage of women in top official positions i.e. functionaries and government and public officers was 25,9% (494 out of 1910). While 30,6% of women ambassadors (19 out of 62).

## **Women in the Police**

In 2018 there were only 18,02% of women police officers in Croatian police. Out of which 10,54% are in management positions.

## **Women in Military**

In 2020 there were just 10,13% of women in the Croatian Armed Forces as active military personnel.

## **Women in Universities**

The share of female full professors in Croatia in the academic year 2019/2020 was 39,1% in regards to 60,9% of male professors. In the same academic year, there were 54,4% female assistants and 45,6% male assistants. The data shows that as the rank of the professor is higher

the percentage of women is lower. In the academic year 2020/2021 there were 22,2% of female deans (2 out of 9).

## **Women in Justice**

In 2020 there were 23,1% (3 out of 13) of women judges of the Constitutional court and 34,2% (13 out of 38) women were judges of the Supreme court.

## **Abortion**

in Croatia is regulated by the *Act on Health Care Measures for Exercising the Right to a Free Decision on Giving Birth*. Article 15(2) specifies that a pregnancy can be legally terminated on a woman's request up to the 10th week from conception and after that, a commission may approve access to abortion if the pregnancy is a result of a crime, there is a risk to the health or life of the pregnant woman, or if there is a serious fetal impairment. In 2017, the Croatian Constitutional Court issued a decision in which they held that the existing law was constitutionally valid, but because the law contained outdated provisions, new legislation had to be adopted within two years.<sup>8</sup> Nothing has been done to this day.

Despite the legality of abortion women in Croatia continue to face difficulties and barriers in accessing legal abortion care. These include widespread refusals of abortion care, financial barriers (abortion on request is not covered by public health insurance), the lack of accessible evidence-based information, biased service provision by some medical professionals and social stigma related to abortion.<sup>9</sup>

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<sup>8</sup> Constitutional Court of the Republic of Croatia, No. U-I-60/1991 i dr. (Feb. 21, 2017). In the decision, the Court ruled that by allowing women's access to abortion in the circumstances set forth in the 1978 law, including abortion on a woman's request, the law gives effect to women's constitutional rights to privacy, liberty, and personality and complied with international human rights law and comparative European law.

<sup>9</sup> See, e.g., Vosika, Marina, Barriers to Abortion Access in Croatia, <http://www.znajznanje.org/wp-content/uploads/2018/07/Marina-Vosika-Msc-Report-Barriers-to-Abortion-Acess-in-Croatia-1.pdf>; Bacic, Masenjka, 'We Don't Do It Here' – Abortion Rights Under Threat in Croatia, available at: <http://fellowship.birn.eu.com/en/fellowship-programme/we-don-t-do-it-here-abortion-rights-under-threat-in-croatia>

# Joint shadow report on the implementation of the Convention in the Croatia

## Article 3 - Definitions

### Background

Croatia mainly takes a strong gender – neutral approach to violence: on legislative and on policy level, as well as in response. Not enough special attention has been given to the fact that women are more vulnerable and that they are victims of gender based violence.

In the Criminal Code, the offense of domestic violence<sup>10</sup> is even categorized amongst the criminal acts “against marriage, family and children,” overlooking the human rights based and gendered approach of the Convention. In Law on Protection against Domestic Violence, all definitions are also completely lacking gender perspective.<sup>11</sup> Both the Criminal Code and the Law on Protection against Domestic Violence do not refer in any way to violence against women, but provide a general definition of the term of domestic violence.

Furthermore, despite efforts to delineate domestic violence as a criminal offense from its counterpart in misdemeanor legislation, there are problems of overlapping between the Law on Protection against Domestic Violence provisions and the provisions of the Criminal Code.<sup>12</sup> Due

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<sup>10</sup> Article 179a: “Whoever seriously violates the regulations on protection against domestic violence and thus causes fear for the safety of a family member or close person or puts him in a degrading position or a state of long-term suffering, thus not committing a serious crime, shall be punished by imprisonment for a term of one to three years.”

According to Art 87. Para 1 Points 8-11, Family members are: spouse or extramarital partner, life partner or informal life partner, their joint children and children of each of them, blood relative in the direct lineage, relative in the collateral line up to the third degree, in-law relatives up to the second degree, adoptive parent and adoptee. Close persons are family members, former spouse or extramarital partner, former life partner or informal life partner, current or former partner in an intimate relationship, persons who have a joint child and persons living in a joint household.

<sup>11</sup> According to the Article 10, domestic violence is:

1. application of physical force as a result of which no bodily injury occurred
2. corporal punishment or other forms of degrading treatment of children
3. psychological violence that has caused the victim dignity or distress
4. sexual harassment
5. economic violence such as the prohibition or disabling of the use of joint or personal property, the disposition of personal income or property acquired through personal work or inheritance, the disabling of employment, the denial of funds for the maintenance of a joint household and childcare
6. neglecting the needs of a person with a disability or an elderly person which leads to his / her distress or insults his / her dignity and thus causes him / her physical or mental suffering.

According to the Article, this Act applies to: spouse, extramarital partner, life partner, informal life partner, their joint children and children of each of them, blood relatives in the direct line, relatives in the collateral line up to the third degree, relatives by in-laws to the concluding second degree, adoptive and adoptee.

The provisions of this Act shall also apply to a former spouse, former extramarital partner, former life partner, former informal life partner, current or former partner in an intimate relationship, persons having a joint child and persons living in a joint household.

<sup>12</sup> See: Munivrana, Maja; Bosak, Martina, The Implementation of the Istanbul Convention in Croatia –

to this fact, alongside some other issues addressed in the section regarding Art. 45. of the Convention, “one can question if domestic violence should be prosecuted as a misdemeanor at all and whether *de lege ferenda* it should constitute solely a criminal offense.” (...)”Treating domestic violence as a misdemeanor sends the message that domestic violence is not a serious social problem, and in the end is not in line with the letter and the spirit of the Istanbul Convention.”<sup>13</sup>

Stemming from the gender-neutral approach, concepts of violence against women nor gender based violence (against women) are not defined in legislation or policy.

The Procedure Protocol in Cases of Domestic Violence shows some notion of a gender-sensitive approach, but insufficient. It recognizes that the majority of victims of violence are women and perpetrators are men. Among general principles, it is stated that “all bodies in the process are obliged to protect the interests of women exposed to gender-based violence and domestic violence”, in accordance with the Convention as well as other international instruments. However, in most part it is focused on and uses only the term domestic violence, just as it puts emphasis on “ensuring that professional assistance is provided to families who are in crisis and who have difficulties related to the violent behavior of a family member”. It also defines only domestic violence as “violation of human rights and a form of discrimination”.

The Code of conduct in case of sexual violence, as expected, shows much better recognition of sexual violence as gender-based. It states that “Sexual violence, in addition to domestic violence, enters into the dominant forms of gender-based violence, i.e. those types of violence in which in most cases the perpetrator is a man and most of the victims are women. Gender-based violence is present in all parts of the world regardless of culture and time period. Victims are exposed to psychological, physical, sexual and economic violence, as well as systematic isolation that makes them even more vulnerable and exposed to various forms of violence.” It also recognizes that “Sexual violence is visible in a wide continuum, from sexual harassment and abuse, through rape to trafficking in women for forced prostitution and / or pornography. In addition to these forms, sexual violence includes traditional harmful practices (such as female genital mutilation), penalties for gender transgression and rape in war.”

On the policy level, “before the 2018 ratification of the Istanbul Convention, the Government enacted three national policies and one action plan which took into account the Istanbul Convention’s standards - National Strategy for the Development of Victim and Witness Support Systems from 2016 until 2020, National Strategy for Protection against Domestic Violence for the period from 2017 to 2022, National Plan for Combating Discrimination for the period from 2017 to 2022 and National Action Plan on Implementation of UN Security Council Resolution 1325 (2000) on Women, Peace and Security and related resolutions and others. Only the last two of mentioned strategic acts explicitly mention measures contained in the Istanbul Convention. Although these strategic documents do express Government’s intention to tackle violence against women, the strategic acts fail to connect gender inequality and violence against women making them gender-

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Legal and Institutional Challenges, forthcoming in Osteuropa Recht 1/22

<sup>13</sup> *Ibid.*



neutral. Furthermore, these national plans address only “family” violence and trafficking as a category of the Government’s concern, omitting to take into the account a distinct category of gender-based violence against women. Finally, these national plans do not contain quantitative measurable data or deadlines for implementation of measures, which makes their outputs very hard to evaluate. Following the ratification of the Istanbul Convention, the Government strengthened efforts to tackle some of the shortcomings contained in the before-mentioned strategies and plans. It has enacted two National Plans which explicitly address violence against women as an intersectional problem, and is currently in the process of drafting two National plans that will include different types of violence against women. In that sense, it is evident that the Government moved away from only formally addressing “family” violence as a central problem of violence against women, and broadened the scope to include sexual violence and other forms of violence as an equally important policy aim. Furthermore, all National Plans enacted after the 2017 Strategic Planning Act entered into force, contain qualitative/quantitative data and deadlines for the implementation of measures. Indicators ensure more effective policy evaluation in the future. However, although the Government has implemented some changes in the policy development on violence against women in the documents adopted after 2017, these changes appear to be just formal as no specific funds have been allocated to address the issue in the already enacted Action Plans. “<sup>14</sup>

National Policy for Gender Equality 2011-2015 did entail a chapter titled „Eliminating violence against women” and was significantly more gender-sensitive, but after 2015 it **was not renewed**. Croatia has been without gender equality policy for more than six years now.

## Challenges

By legislation, policies and measures not targeting gender-based violence against women separately, we are facing the risk of violence against women becoming not visible enough as well as inadequately addressed. Gender neutral approach fails to address the specific experiences of women, hindering their effective protection. To tackle violence against women effectively, both policy and legislation must acknowledge that violence against women is a violation of human rights and a form of discrimination against women.

As CEDAW concluded back in 2015, it still seems that “the State Party’s legislative and policy framework is more concerned with keeping the family unit intact than with ensuring the safety of women who are victims of gender-based domestic violence.”<sup>15</sup>

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<sup>14</sup> *Ibid.*

<sup>15</sup> United Nations, Committee on the Elimination of Discrimination against Women, Concluding observations on the combined fourth and fifth periodic reports on Croatia, CEDAW/C/HRV/CO/4-5, 28 July 2015, point 19, available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/HRV/CO/4-5&Lang=En](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/HRV/CO/4-5&Lang=En)

## **Recommendations**

- The application of a gendered perspective in the implementation of the Istanbul Convention, including in relation to law and policy has to be enhanced.
- It is necessary to ensure that all legislation and administrative regulations, including protocols, at national level and all other levels, conform fully to the definitions contained in Article 3 of the Istanbul Convention.
- to introduce a clear gendered approach to preventing and combating all forms of violence against women, including domestic violence, to fully acknowledge their gendered nature

## Article 6 - Gender-sensitive policies

### Background

The Convention requires that a gender perspective is included in all areas of implementation and evaluation of the policies and that policies of equality need to be promoted and effectively implemented, since “the realisation of de jure and de facto equality between women and men is a key element in the prevention of violence against women” (Preamble). The nature of this obligation is two-fold. On the one hand, it calls Parties for the integration of a gender perspective in the development of measures to implement the convention and in the evaluation of their impact. On the other hand, this article calls on parties to promote and implement policies aimed at achieving gender equality and at empowering women.

The Croatian Constitution enshrined gender equality in a Constitutional amendment in 2000 (Article 3). Gender equality is reinforced in Article 14 of the Constitution, which prohibits discrimination based on race, skin colour, sex, language, political or other opinion, national or social origin, property, birth, education, social status or other characteristics.

The Law on Gender Equality was approved in 2003 and consolidated in 2008 and 2017. As the legal framework for gender equality in Croatia, it establishes the protection and promotion of gender equality as a fundamental value and includes the general prohibition of discrimination on the grounds of sex, marital or family status and sexual orientation. The Office for Gender Equality and the Ombudsperson for Gender Equality serve as national machinery for the achieving gender equality.

### Challenges

The Committee on the Elimination of Discrimination Against Women, in its 2015 recommendations to Croatia stated that “the State party increase the human, technical and financial resources, including at the county and city levels, allocated to the Office for Gender Equality and the Ombudsperson for Gender Equality in order to improve their effective functioning as national machinery responsible for the advancement of women and the full implementation of the Convention.”<sup>16</sup>

The Committee expressed concern, “that, in general, the State party’s legislative and policy framework is more concerned with keeping the family unit intact than with ensuring the safety of women who are victims of gender-based domestic violence.”<sup>17</sup>

The fundamental policy instrument for combating gender discrimination is the National Policy for Gender Equality, which is adopted and implemented in continuous five-year periods. However, Croatia is entering the seventh year without the main strategic document for the protection of women's rights that would ensure gender mainstreaming and the full equality of women. In 2011,

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<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

Croatia adopted the latest (the fourth) National Policy for Gender Equality for the period 2011–2015. The fifth in a row – National Policy for the period 2017–2020 was drafted, but it wasn't submitted for public consultation<sup>18</sup>. According to EIGE<sup>19</sup>, in 2019, the Office for Gender Equality was developing a National Policy for Gender Equality for the period 2019-2022. The new document, National plan for gender Equality<sup>20</sup> for the period 2021 – 2027 is still in the process of preparation.

Croatia lacks sufficient and sustained political commitment behind policies promoting gender equality and the empowerment of women. The anti-gender actors, who have heavily opposed the ratification of the Istanbul Convention in Croatia, use misinformation and evocative anti-gender vocabularies to attack gender equality and women's rights. The fact that the government did not have a systematic policy on gender equality affected systematic implementation and financing of measures for the protection of women's rights on national, regional and local level and resulted in deterioration of status of women in society. With 59.2 out of 100 points, Croatia ranks 19th in the EU on the Gender Equality Index 2021. Its score is 8.8 points below the EU's score. Since 2018, the country has kept the same ranking. Consequently, without basic strategic documents the priorities in the protection of women's rights are not appropriately reflected in the priorities of EU funding in Croatia.

Despite the recognition government of the need to integrate a gender perspective in policies, particularly policies combatting violence against women, these policies are based on a limited understanding of the gendered dimensions of such violence (e.g. dual arrests)

According to EIGE<sup>21</sup>, the main challenges for the future of gender mainstreaming policy implementation in Croatia is” lack of gender impact assessment and gender budgeting, particularly in light of Article 3 of the Law on Gender Equality, requiring certain bodies to consider policy effects on the positions of women or men, in order to achieve real equality.”

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<sup>18</sup> Gender Equality Policies in Croatia – Update, Policy Department C: Citizens' Rights and Constitutional Affairs, European Union, 2017, available at: <http://www.europarl.europa.eu/supporting-analyses>

<sup>19</sup> <https://eige.europa.eu/gender-mainstreaming/countries/croatia>

<sup>20</sup> Vlada Republike Hrvatske, Ured za ravnopravnost spolova, Izrada Nacionalnog plana za ravnopravnost spolova za razdoblje od 2021. do 2027. godine, 8 January 2021, available at: <https://ravnopravnost.gov.hr/vijesti/izrada-nacionalnog-plana-za-ravnopravnost-spolova-za-razdoblje-od-2021-do-2027-godine/3429>

<sup>21</sup> European Institute for Gender Equality, Gender mainstreaming - Country specific information - Croatia, available at: <https://eige.europa.eu/gender-mainstreaming/countries/croatia>

## Recommendations

- Croatia needs to adopt and implement the National Policy for Gender Equality, the main strategic document for the promotion of gender equality and protection of women's rights.
- Gender mainstreaming measures as well as gender-specific measures are necessary to prevent violence and achieve gender equality.
- Croatia needs to take a rights-based approach, recognizing that to achieve gender equality we have to address all forms of gender based violence and recognize structural harms and drivers of gender-based violence
- Gender-sensitive approach also implies that all institutions dealing with the problem of violence have an internal standard on gender equality, including training of professionals involved in the implementation of policies and standards to deliver rights-based services to victims.

## **Article 8 - Financial resources**

### **Background**

Croatia hasn't properly established how much financial and human resources are needed for preventing and combating violence against women and domestic violence, nor does it provide adequate resources in accordance with Article 8 of the Convention.

### **Challenges**

In the State budget for 2022 with projections for 2023 and 2024, for the section "Improvement of the protection of victims of domestic violence" (under jurisdiction of Ministry of Labour, Pension system, Family and Social Policy) the amount of only 3,045,000 HRK (approx. 406,000 euros) was allocated. The Deputy Club of the Green and Left Block proposed an amendment to increase the planned funds by another 10 million HRK (approx. 1,333,333 euros), but it was rejected. The budget does not allocate funds that explicitly ensure the implementation of the Istanbul Convention, such as funds for shelters, specialized services for victims, prevention, education, data collection etc. The allocated amount is insufficient to effectively combat gender-based violence. Also, main strategic documents of the Government (National Recovery Plan until 2026; Action Plan for Improving the Social Welfare System; National Social Services Development Plan 2021-2027) do not set out objectives or measures in the context of the implementation of the Convention. The National Plan for Gender Equality is yet to be adopted and it is necessary to include a chapter on "Gender-based violence" with clearly defined objectives, measures, competent authorities and necessary resources to achieve them, all in line with the Istanbul Convention. The same goes for other National plans that prescribe all forms of violence covered by the scope of the Convention (e.g. planned National Plan to Combat Sexual Violence and Sexual Harassment). Otherwise, the area of violence against women and domestic violence will not be appropriately reflected in the priorities of EU funding in Croatia or there will be none.

Also, the Government Office for Gender Equality, which is an expert body for performing professional and administrative tasks related to achieving gender equality in Croatia and responsible for adopting the National Plan for Gender Equality, has an annual budget of 2,050,995 HRK (approx. 247,000 euros), and for the item "Implementation of the law and the National Plan for Gender Equality" only 330,220 HRK (approx. 44,000 euros) is allocated in 2022 and the same amount is planned in the next two years.

Furthermore, in the mentioned State budget the Government had proposed only 625,000 HRK (approx. 84,000 euros) for the measure of housing for victims of domestic violence. However, in this case, the proposed amendment of the Deputy Club of the Green and Left Block to increase the planned amount by 4.4 million (approx. 587,000 euros) was accepted, and the total amount in the 2022 budget for that purpose is now 5 million HRK (667,000 euros). However, there is a risk that these funds will not be allocated to the housing of victims of violence because the criteria for housing victims of violence are very strict, and social housing policy has not been developed.

In general, we can conclude that the State does not have a systematic, planned and sustainable financial strategy for preventing and combating violence against women and domestic violence. Most of the funds used by the State for this purpose come from projects funded by the European Union. In this way, for example, some shelters in counties have been opened in cooperation with civil society organizations, but it is not clear how the funding will be ensured once the projects are completed (see more in section regarding Article 23 of the Convention).

Considering all of the above, the best solution would be to draft a separate Action Plan for Implementation of Istanbul Convention, or similar strategic document, in cooperation with women CSOs which would contain all necessary objectives, measures, competent authorities and necessary resources.

The problems regarding government funding for CSOs providing specialist support services are described in later sections, namely sections regarding Articles 22, 23, 25 and 57.

## **Recommendations**

- Increase considerably financial and human resources for preventing and combating gender-based violence and domestic violence. Adequate resources are needed at the state, regional and local levels. Financing should be strategic, systematic and sustainable.
- Define specific objectives and measures and allocate adequate funds in strategic documents. It is necessary to explicitly calculate and define how much funds are needed for the implementation of the Istanbul Convention and from where those funds will be allocated.
- All non-institutional services provided by women's NGOs, including autonomous shelters, should be continuously funded directly from the state budget (and not through tenders), with guarantee of their autonomy intact

## Article 10 – Co-ordinating body

### Background

Coordinating bodies at various levels formally exist, but do not fulfill their intended role. Collection and dissemination of information is lacking, at best.

The Law on Ratifying the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence tasks the Ministry of labor, pension system, family and social policy, as a coordinating body, with coordinating, implementing, monitoring and evaluating policies and measures to prevent and combat all forms of violence covered by the Convention.

Furthermore, pursuant to the Agreement on Interdepartmental Cooperation in the Field of Prevention and Combating Violence against Women and Domestic Violence, the “National Team for Prevention and Combating Violence against Women and Domestic Violence” was established, as well as county teams. The role of national and county teams is to actively participate in the implementation of the National Strategy for Protection against Domestic Violence for the Period 2017 -2022, as well as to ensure consistent implementation of the provisions of the Convention on Preventing and Combating Violence against Women and Domestic Violence.

Recently, “City teams for prevention and combat against violence and other threats” were established, and their work is coordinated through the police. The efficiency of the National and County teams is limited by the lack of funds to support the work of the teams. During 2021 as part of the project by Women's Room and UZOR, research was conducted and recommendations were made to improve the work of county teams.

In addition, there are “County Commissions for Gender Equality”, which in their work often touch on the area of violence against women and domestic violence.

### Challenges

When it comes to the Ministry as a coordinating body, “the body that implements the Istanbul Convention” is at the same time in charge of evaluating the implemented policies. Such structures are not in line with Article 10 of the Istanbul Convention, which requires member states to establish an independent and scientific assessment based on the robust data. Not only that the Ministry of labor, pension system, family and social policy is a biased body, but also no permanent staff or budget have been allocated to it in order to perform duties of the coordinating body. This raises concern that the coordinating body’s work adds to the existing workload of its members, and that existing financial and human resources do not ensure the effective execution of its mandate.”<sup>22</sup>

The problem of insufficient formal or regular consultative processes between co-ordinating body and the NGO sector is also present. During the process of drafting this report, we tried to get in touch with the Ministry of labor, pension system, family and social policy (as a coordinating body) to let them know about our work and to ask whether the State’s report is ready as well as when/if

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<sup>22</sup> Munivrana, Maja; Bosak, Martina, The Implementation of the Istanbul Convention in Croatia – Legal and Institutional Challenges, forthcoming in Osteuropa Recht 1/22



could the report be made available to us. The real obstacle we encountered was the fact that it was not possible to find any information (online) about the Ministry as the coordinating body. Consequently, we were not able to find any contacts of the Ministry (as the coordinating body). Therefore, we sent two emails to the addresses of the Cabinet, State secretary and an advisor from the Directorate for Family and Social Policy. We did not receive a reply to any of the two emails sent.

Regarding the National team and county teams, challenges are as follows:

- Irregular joint meetings of County teams and absence of participation of more than half of the members in the meetings
- Convening and holding meetings depends on the proactivity and enthusiasm of the leaders of County teams and on the proactivity and enthusiasm of individual members
- Lack of financial resources or insufficient financial resources for the work of the County teams
- Lack of Action plan for implementation of Convention and monitoring framework (annual and throughout the medium or long-term timeframe)
- Lack of capacity and engagement of members for regular work of County teams;
- Some members of county teams do not work directly or have any relevant experience with victims of GBV
- Members are appointed (not elected), which sometimes results in a member's lack of motivation and willingness to really fully actively participate;
- Not all relevant organizations (especially CSOs) are represented and often people appointed from state institutions are self excluded from participation
- lack of structures for national oversight of implementation by local and regional government with clear line of accountability for implementation
- lack of horizontal and vertical coordination and unclear roles and powers of team leaders and members
- unwillingness to discuss specific cases, due to misunderstanding of privacy protocols
- lack of support and control of county teams by the Ministry and National team
- Members of county teams are often under educated, especially concerning GBV

At the moment, we don't have access to enough information regarding the work of city teams to make comments about their work (since not a lot of NGOs are included in their work).

## **Recommendations**

Regarding the Ministry of labor, pension system, family and social policy, as a coordinating body, it is necessary to:

- insure the independence of coordinating body and transparency in its work
- insure permanent staff or budget in order to perform duties of the coordinating body
- insure sufficient formal or regular consultative processes between co-ordinating body and the women's NGO sector

- establish monitoring committee of key stakeholders for the Convention, develop Action plan with clear targets and indicators for the implementation of Convention

Regarding the National team and county teams:

- Counties should take more responsibility (including finances) for the work of county teams
- Ministry should give clear instructions, and require transparent and standardized planning and reporting for national, county and city teams
- Coordination between National, County and City teams should be established, based on clear jurisdictions and roles
- introduce specific conditions/protocol for selecting and electing team members (of the National, county and city teams); the procedure of appointments should be replaced by the election procedure (based on candidacy or at least the consent of a candidate)
- Work in teams should not be mandated, but voluntary, otherwise there is lack of motivation to participate
- Minimal educational standards should be established, and supported by National team
- The state should take into consideration the analysis of the county teams made by NGOs UZOR and Women's Room and follow the recommendations following the study

## Article 11 - Data collection and research

### Background

There have been some coordinated efforts to improve collection of administrative data on violence against women. However, these coordinated efforts aim only the domestic violence. Head 3 of the current Law on Protection against Domestic Violence applies to the data collection. According to this article, the ministry in charge of justice, the ministry in charge of social welfare, the ministry in charge of internal affairs, the ministry in charge of health and the ministry in charge of education are obliged to collect data and compile them in annual reports. Collection of data for each aforementioned body is prescribed by the Ordinance on the manner of collecting, processing and submitting statistical data and reports in the field of application of the Law on Protection against Domestic Violence (Ordinance). The Ordinance prescribed a type of data that have to be collected and it also provides data collection tables for each body. The compiled data is presented in the annual report of the Commission for Monitoring and Improving the Work of Criminal and Misdemeanour Proceedings and Execution of Sanctions Related to Protection against Domestic Violence (Commission), which is also in charge for giving proposals and opinions regarding the application of the Law on Protection against Domestic Violence and the Criminal Code.<sup>23</sup> Commission's annual reports contain only the data about misdemeanour domestic violence offences.

Ministry of Interior publishes "Calendar of violence"<sup>24</sup> - a daily *on-line* report on domestic violence. The report contains the number of cases of domestic violence that occurred in the last 24 hours in Croatia. The domestic violence is categorised by type (misdemeanour or criminal offence from article 179.a of the Criminal Code) and the county where it occurred.

The Ministry of Interior also collects and publish (some) administrative data on other forms of violence against women (other than DV) is it is collected in line with the articles of Criminal Law. The only other institution that published data regarding violence against women is Croatian Bureau of Statistics (CBS). Till 2020 they published a Statistical report "Adult Perpetrators of Criminal Offences, Reports, Accusations and Convictions". Last publication was presenting data

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<sup>23</sup> Giving proposals and opinions regarding the application of the Criminal Code is enabled by the amendment of the Law on Protection against Domestic Violence from 2019. (Official Gazette 126/19), which entered into force on 1st of January 2020, and the Commission seems to be quite confused about it. The 2020 report states:

„It was pointed out at the session that, having in mind the amendments to the Law on Protection from Domestic Violence, which expanded the powers of the commission, the Ordinance (for Commission for Monitoring and Improving the Work of Criminal and Misdemeanour Proceedings and Execution of Sanctions Related to Protection against Domestic Violence) should be amended. However, Article 21, paragraph 3 of the Law on Protection from Domestic Violence does not specify to whom and in what procedure the Commission should give proposals and opinions regarding the application of the same Law, so there is no legal basis for proposing amendments to the Rules of Procedure. „

<sup>24</sup> Available at: <https://mup.gov.hr/kalendar-nasilja/283308>

from 2019. Although not published anymore, data can still be found in the database - however, it is not it is not easily accessible nor user-friendly<sup>25</sup>

Governmental Office for Gender Equality is a government body whose scope of work also includes conducting research on issues related to gender equality.

## **Challenges**

The challenges regarding collecting the data as prescribed by Ordinance on the manner of collecting, processing and submitting statistical data and reports in the field of application of the Law on Protection against Domestic Violence:

- data collected from different bodies show just trends regarding the number of cases of domestic violence within the timeframe
- State Attorney Office collects data that are only disaggregated by sex and type of offense of domestic violence
- The ordinance does not require the collection of data relating to domestic violence criminal offenses, but only misdemeanor offenses according to the Law on Protection against Domestic Violence
- Lack of GBV research

The Commission for Monitoring and Improving the Work of Criminal and Misdemeanour Proceedings and Execution of Sanctions Related to Protection against Domestic Violence is established in 2017, and so far, only three annual reports are publicly available (for 2018, 2019, and 2020). The challenges regarding the reports are:

- Although the report is published on the web page of the ministry in charge of justice, it is not easily accessible
- The data across the different government bodies are not comparable
- The report does not contain data from non-governmental organizations and civil society
- Disaggregation of data varies considerably on the type of data. Some are disaggregated along with many indicators, some just contain sex
- From data on the number of persons reported due to domestic violence (which are disaggregated by sex) as a misdemeanor, it is not possible to determine how many of these cases are dual arrests in which women victims of domestic violence are arrested and sectioned along with the perpetrators for defending themselves and/or for verbal insulting the perpetrator. This is also not possible to determine from the data presented by the Ministry of Justice and Public Administration.

Challenges regarding Calendar of violence:

The data is not disaggregated by any category mentioned in point 76 of Explanatory Report to the COE Convention on preventing and combating violence against women and domestic

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<sup>25</sup> Available at: [https://www.dzs.hr/PXWeb/Menu.aspx?px\\_db=Pravosudje&px\\_language=hr](https://www.dzs.hr/PXWeb/Menu.aspx?px_db=Pravosudje&px_language=hr)

violence. Besides the fact that it registers only cases of domestic violence (and not other forms of GBV against women), it only registers criminal offenses of domestic violence from article 179. an of the Criminal Code (and not any other criminal offenses committed in family and or/between close persons).

#### Challenges regarding the collection of data on other forms of violence covered by the scope of the Convention:

For the majority of other forms of violence, data does not exist (except for sexual violence and sexual harassment). For other forms of violence, data are not collected (with the exception of some hardly available and disaggregated data from the Croatia Bureau of Statistics database).

#### Challenges regarding the collection of Ministry of Interior data

From their annual reports it is possible to determine the annual number of cases of violence against women, but only for those criminal offenses that are recognized in the Criminal Code of the Republic of Croatia. The data is only disaggregated by sex and age. Besides this disaggregation, the collection of the data does not follow recommendations given in point 76 of the Explanatory Report.

#### Challenges regarding research

From the ratification of the Convention in 2018, Croatia did not support any research in the field of any form of violence covered by the scope of the Convention. Furthermore, no population-based survey was conducted to assess the prevalence of and trends in any forms of violence covered by the scope of the Convention.

Researches are mainly conducted by local nongovernmental organizations and is financed from donations.

The current National strategy for protection against domestic violence (2017 – 2022) does not include any measure regarding the data collection and research on domestic violence.

In the draft Report of the Republic of Croatia on Implementation of the Convention that was accepted by the Government on February 18th, 2022<sup>26</sup>, on pages 13 and 14 researches supported by the Government (subsection F) and researches on violence against women (subsection G) are mentioned. Three researches mentioned under subsection F are not publicly available. Under subsection G two researchers are mentioned, both are done by the Police Academy. One is the analysis of the victimology of victims of domestic violence. The other is

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<sup>26</sup> Ministarstvo rada, mirovinskoga sustava, obitelji i socijalne politike, Prijedlog izvješća Republike Hrvatske o provedbi Konvencije Vijeća Europe o sprječavanju i borbi protiv nasilja nad ženama i nasilja u obitelji, Zagreb, veljača 2022., available at: <https://vlada.gov.hr/UserDocImages//2016/Sjednice/2022/Velja%C4%8Da/102%20sjednica%20VRH//102%20-%2019%20Izve%C5%A1%C4%87e.pdf>

research on attitudes of participants in the Adult Education Program for the profession of the police officer on gender and minority issues. The second research is not relevant to the Convention.

Taking into consideration everything mentioned above and what is written in the draft state report the conclusion is that, although data collection exists, Croatia does not put too much effort in order to implement provisions listed in Chapter 11 – Data collection and research. Furthermore, from all this it can be seen that the Government do not understand what is violence against women. Thus significant improvement in this area is needed especially regarding scope and understanding of violence against women and domestic violence.

## **Recommendations**

### Data collection

In order to improve the collection of data and the development of evidence-based policies, it is necessary to:

- define a “gold standard” for data collection and provide adequate resources for research and data collection
- ensure an efficient and methodological system of data collection, documenting the magnitude of violence by producing robust, comparative data in order to guide policy and to monitor the implementation of measures to address the problem. The data should be collected regarding all forms of GBV, be disaggregated by sex, age, type of violence as well as the relationship of the perpetrator to the victim, geographical location, as well as other relevant factors (such as disability). Data collection should be modelled in accordance with the recommendations from The Council of Europe study on “Administrative data collection on domestic violence in Council of Europe member states” (EG-VEW-DC(2008)Study) All data should include the following minimum standards: Gender and age of victims; gender and age of perpetrator; the relationship of victim and perpetrator; type of violence; location of the violent act.
- tackle the lack of co-ordination, harmonization and comparability of the data, which makes tracking cases at all stages of the law-enforcement and judicial proceedings impossible. The Croatian Bureau of Statistics (or some other body) should be appointed as a central body for collection, data processing, unification and publishing of all relevant, comparable data regarding all forms of violence covered by the scope of the Convention. The data should be properly disaggregated, they should target victims and perpetrators. The data should be presented in a way that presents the scope of gender-based violence in Croatia.
- Violence against women and domestic violence should have a high priority in crime statistics, and crime prevention measures, thus the data have to be publicly available and easily accessible
- Non-governmental organisations and civil-society data have to be included in The Commission for Monitoring and Improving the Work of Criminal and Misdemeanour

Proceedings and Execution of Sanctions Related to Protection against Domestic Violence annual reports<sup>27</sup>.

It is also necessary to tackle some more specific issues:

- to harmonize data collection and analysis regarding cases of gender-related killings and to conduct publicly available annual studies on cases of gender-based killings of women, which would serve as input data for analysis aimed at assessing possible systemic gaps in the institutional responses to violence
- to tackle the lack of collection of properly disaggregated data on the number of protection and precautionary measures – in the context of both criminal and misdemeanor proceedings, including the collection of data showing whether the measure was ordered ex officio or was proposed (and by whom), in what stage of the proceeding was the measure ordered, as well as including the number of violations and sanctions imposed as a result of such breaches
- to ensure the collection of data on child victims and witnesses in cases of violence covered by the Istanbul Convention, including the data on whether civil child custody proceedings take into account histories of domestic violence, and how the safety of all family members is ensured
- establish the body/register/mechanism where women can report cases of gender-based violence in health institutions, such as gynecological or obstetric violence.
- to ensure the collection of data on the granting of refugee status on the basis of gender-related persecution

### Research

- to ensure the support to researchers to conduct research on violence against women, including by financially encouraging research into these areas.
- to ensure research evaluating the efficacy of measures taken to prevent and combat violence against women
- To reverse low level of public trust in the system responsible for protection of women victims of violence and their children, ensure full accountability, encourage transparency and regular victim feedback on the experience within the system, timely and truthful reporting on malpractice/mistakes and commitment to ongoing improvements

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<sup>27</sup> Under the Art. 21 of The Law on Protection against Domestic Violence, the Commission has 11 members elected among judges, state attorneys, attorneys, civil servants of the ministry in charge of internal affairs, civil servants of the ministry in charge of justice, civil servants of the ministry in charge of social welfare, civil servants of the ministry in charge of health, civil servants state of the ministry in charge of education and a representative(s) of civil society. To our knowledge, information regarding who the elected members are is not publicly available. On 7th of February 2022, we made (under the Right of Access to Information Act) a request for access to information towards the Ministry of Justice and State Administration, asking for the information about the elected members of the Commission. Despite the legal obligation and 15-day deadline, the Ministry did not respond to our request.

## Article 13 - Awareness-raising

### Background

Despite the prevalence of GBV in Croatian society, this kind of violence is avoided to be defined as gender-based. Strong attempts to prevent the ratification of the Convention through intimidation by so-called "gender ideology" have left serious consequences in understanding the concept of gender and consequentially gender-based violence. Both anti-feminist attitudes and an anti-feminist approach to violence that challenges the gender conditioning of violence are increasingly present. There are no campaigns that would raise awareness about gender conditioning of violence, point out the causes of violence, break down gender stereotypes and focus on gender equality.

### Challenges

The problem of misunderstanding the SGBV and the causes of violence is especially indicated by the way the media report on cases of gender-based and sexual violence and comments on social networks on articles in cases of violence where prejudice and stereotypes are still strongly present in society. Like blaming the victim for the violence she has been through as well as the justification of the perpetrator<sup>28</sup>. The cases of escalated cases of SGBV are treated as a consequence of affect rather than the escalation of continuous violence and control over the victim. Although the Government has issued guidelines for reporting in cases of violence, these guidelines are regularly violated.

The Government regularly implements awareness raising campaigns and programs through which it points out the fundamental misunderstanding of the issue of gender-based violence, mechanisms and all forms of gender-based violence.

For example, on September 22, the National Day for Combating Violence against Women, as part of the "Lily"<sup>29</sup> campaign, the Ministry of the Interior released a video targeting men and raising awareness that violence is not the way a real man acts. The problem with the video is that it portrays a woman and a man in stereotypical gender roles, where a man should protect instead of beat women, while a woman is shown serving breakfast to her family. Women are predominantly represented through traditional gender roles, and it seems that nothing is being done to break down gender stereotypes. Besides, the campaigns are usually oriented towards Domestic Violence ignoring other forms of SGBV.

The problem is that campaigns are much more often focused on secondary, not primary, prevention of violence, based on a variety of media content, and not on education and training.

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<sup>28</sup> Gender Equality Ombudsperson's Report: Pravobraniteljica za ravnopravnost spolova, Izvješće o radu za 2020. godinu, page 136, available at:

[https://www.prs.hr/application/images/uploads/IZVJESCE\\_O\\_RADU\\_2020\\_Pravobranit.pdf](https://www.prs.hr/application/images/uploads/IZVJESCE_O_RADU_2020_Pravobranit.pdf)

<sup>29</sup> Video for "Lily" campaign: <https://mup.gov.hr/vijesti/video-povodom-nacionalnog-dana-borbe-protiv-nasilja-nad-zenama-u-sklopu-projekta-lily-predstavljamo-novi-spot/286556>



Furthermore, the campaigns are often short-termed and lacking sustained and long-term efforts to raise awareness. Thus, there is unanswered need to ensure regular and long term awareness-raising campaigns and activities

It is a serious omission of the state that during the pandemic it did not work on raising awareness about the problem of domestic violence against women and available help. The Ministry of the Interior has launched an important “Behind the Door”<sup>30</sup> campaign to raise awareness of children victims of violence in the lockdown situation and to raise awareness among the general public about the importance of reporting violence if they witness it. The campaign had very good visibility. It was important and necessary, but it is hard not to wonder why such a campaign was not launched for women, and given that family violence that was mostly GBV against women increased by 40%.<sup>31</sup> We believe that the State should have invested much more in raising awareness of the problem of domestic violence during the pandemic, especially violence against women, and working to raise the visibility of available help to all victims of domestic violence.

Particularly problematic is the apparent lack of awareness of professionals working with survivors of domestic violence (police, social workers, judges, physicians, psychologists, health workers, teachers) about the problem of gender-based violence, the dynamics of violence and the obligations arising from the Convention. It is difficult to expect the wide public to have information about the measures available to prevent violence, when even professionals working with or being the first contact to those who have survived violence and who should be implementing these measures have the lack of awareness about the problem and the measures.

The problem of gender-based violence experienced by people from particularly vulnerable groups, such as Roma women, women with a migrant background, women with disabilities, LGBTIQ\* people, remains completely invisible, as there is no communication in public about available assistance and rights for these particularly vulnerable groups.

Also, there is insufficient involvement of women’s non-governmental organizations in the design and implementation of awareness-raising campaigns; It is necessary to give them the financial means to do so (most campaigns were project-based and dependent on EU funding; the authorities should to make available sufficient and sustainable funding for awareness-raising campaigns, including to women’s support services and women’s NGOs).

Also, we do not know the impact of awareness-rising initiatives. Were any of the campaigns evaluated and how to draw conclusions as to their impact?

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<sup>30</sup> “Behind the Door” campaign: <https://www.index.hr/vijesti/clanak/mup-pokrenuo-vaznu-kampanju-prijavi-nasilje-na-192/2173993.aspx>

<sup>31</sup> Ombudsperson for Gender Equality, Public Statement on the increase of violence and not recognizing GBV: Pravobraniteljica za ravnopravnost, Public Statement on the occasion of 25<sup>th</sup> of November- International Day for the Elimination of Violence against Women, 14 November 2020, available at: <https://www.prs.hr/cms/post/223>

## Recommendations

- The government, should design (in cooperation with civil society organizations working on SGBV) and fully fund and implement awareness campaigns that will work to break down harmful attitudes, prejudices, stereotypes and focus on awareness of the causes of violence, gender equality and primary prevention of violence. In addition to videos, websites, social networks and media content for the general public, this must be done through ongoing education and trainings organized for: the media; children and young people; professionals working with survivors of violence (police, social workers, judges, physicians, psychologists, health workers, teachers)
- The government should also raise awareness of specific issues related to violence and particularly vulnerable groups: Roma women, women of migrant origin, women with disabilities, LGBTIQ \* persons
- The government should ensure the constant presence and visibility of information related to available help to those who have survived violence (both the national number for victims of violence, the contacts of specialized services for women who have survived violence and specialized assistance for those from vulnerable groups who have survived violence. It is very important to provide the visibility of available help in rural areas and among vulnerable groups.
- The authorities should ensure a stronger role of the competent ministries in conceptualising, implementing and evaluating public awareness-raising activities and/or to carry out research on the impact that awareness-raising campaigns have had on the population, including changes in perceptions on sexism, gender equality and gender-based violence.

## Article 14 – Education

### Background

The National Strategy for Protection against Domestic Violence 2017 - 2022 in the part on the prevention of violence (Chapter 3, Chapter I) refers to the Curriculum of Health Education (HE) and Civic Education (CE). In addition, the National Strategy detects critical points of prevention and points to the necessity for additional education of all stakeholders in the educational process because the contents/activities in existing prevention programs are fragmentary, incomprehensible and insufficient. Furthermore, the Action Plan for the Prevention of Violence in Schools 2019-2024 states that prevention programs must include the topic of gender-based violence, and that it is necessary to ensure the implementation of programs on prevention of gender-based violence and violence in youth relationships by schools. It states that it's also necessary to include education and sensitization programs on the topic of gender-based violence in the professional development of teachers.

### Challenges

No information is available on whether above mentioned documents and measures are being implemented. From the experiences of women's CSOs, the curricula are conceptually, structurally and substantively very diverse, and the topics of gender equality and gender-based violence are poorly represented and inadequately addressed in the education system. Most prevention programs are designed and implemented by women CSOs. The programs are available free of charge, and some have even been approved by the Education and Teacher Training Agency and made available to schools, but again there is no information on who uses them and how.

Croatia receives (continuously) recommendations from various international bodies to introduce or improve education on these issues. At the end of 2020, Croatia received a recommendation for the introduction of comprehensive sexuality education, as well as civic education in schools by the UN Universal Periodic Report (UPR). It was stated that “measures need to be taken to ensure that comprehensive and age-appropriate education on sexuality and reproductive health and rights is systematically integrated into the school curriculum (137,129), and that age-appropriate curricula on comprehensive sex education are adopted and implemented, including information on problems of violence (137,130).”<sup>32</sup>

Also, in 2015, Croatia received recommendations related to education from the CEDAW Committee to review the school curriculum and materials in order to remove discriminatory gender

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<sup>32</sup>UN Universal Periodic Report, available at:  
<http://www.mvep.hr/hr/dokumenti-i-obrasci/dokumenti/univerzalni-periodicni-pregled-ljudskih-prava/>;  
<https://www.ohchr.org/EN/HRBodies/UPR/Pages/HRIndex.aspx>

stereotypes and include mandatory modules of gender education, and to increase the number of hours and quality of age-appropriate education in sexual and reproductive health in schools.<sup>33</sup>

An analysis of secondary school curricula in Zagreb shows that some schools implement prevention programs - some curricula clearly state the names of prevention programs they implement, while others generally state which areas or topics they cover as part of prevention or teaching. The analysis included 59 high schools that had information on curricula available. Prevention programs and content related to gender-based violence are implemented in 16 high schools. Preventive programs and contents related to sexual and reproductive health are most often implemented through cooperation with school doctors, while 6 schools list specific programs/activities they implement on this topic. Preventive programs and contents related to the topic of gender equality are implemented in 5 schools. Also, it should be noted that the aforementioned topics are partly covered through cross-curricular topics of Civic Education and Health Education, with some schools specifying in the curricula which topics they cover, while others state that teachers decide which of the contents to include in the plan and program of the subjects.<sup>34</sup>

Cross-curricular topics<sup>35</sup>, primarily Health Education (HE) and Civic Education (COO), should include gender-based violence and gender equality. However, the HE curriculum does not mention the topic of gender-based violence or any other gender-related topic at all. The curriculum talks about violence in general, most often referring to peer violence. In the 1st and 2nd grade of primary school, the curriculum envisages the treatment of the topic of sexual violence, but with the instruction that teachers themselves assess whether it is relevant content for their students, which is an extremely problematic instruction.

If the systematic implementation of cross-curricular topics comes to life in schools, they can be one of the possible channels for the prevention of gender-based violence and the promotion of gender equality. On the other hand, as the GOOD initiative points out, the problem with our education system is that it is not prepared to deal with cross-curricular topics in a quality way.<sup>36</sup> This specifically means: a busy schedule; lack of professional training of teachers for the implementation of these topics and the lack of appropriate educational programs during university education; overburdening of teachers motivated to implement these contents with other obligations in school; lack of appropriate educational materials for the implementation of these contents.

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<sup>33</sup> CEDAW, Concluding observations on the combined fourth and fifth periodic reports on Croatia, op. cit. (footnote 15)

<sup>34</sup> Bijelić, Nataša, Provedba preventivnih programa i aktivnosti vezanih uz rodno uvjetovano nasilje, rodnu ravnopravnost i seksualno i reproduktivno zdravlje u srednjim školama na području Grada Zagreba (šk.god.2020/21 i 2021/22), 2021, available at: <http://www.cesi.hr/provedba-preventivnih-programa-i-aktivnosti-vezanih-uz-rodno-uvjetovano-nasilje-rodnu-ravnopravnost-i-seksualno-i-reproduktivno-zdravlje-u-srednjim-skolama-na-podrucju-grada-zagreba-sk-god-2020-21-i/>

<sup>35</sup> Cross-curricular learning should involve establishing patterns of information between different academic subjects.

<sup>36</sup> GOOD inicijativa, Polazišne osnove i zahtjev, available at: [http://goo.hr/wp-content/uploads/2015/11/2015\\_Polazisne-osnove\\_Zahtjevi\\_GOOD-Inicijativa.pdf](http://goo.hr/wp-content/uploads/2015/11/2015_Polazisne-osnove_Zahtjevi_GOOD-Inicijativa.pdf)

When it comes to SV specifically, we have to emphasise that there is still no systematic prevention programme against SV in schools. Also, there is no evaluation of quality or impact assessment for existing prevention activities. Prevention often depends on the capacities of the CSOs that implements it, as well as the good will of the principals, teachers, and associates to open the doors of their schools to the cooperation with CSOs. Often there is considerable doubt as to the quality and efficiency of workshops conducted by CSOs, as there are still prejudices around the expertise and the work of CSOs. When prevention activities are carried out, they are usually of the one-time-only type and consist mostly of lectures, in which children are rarely active participants. All this reduces the likelihood of such activities leading to concrete results on the level of knowledge, attitudes, and behaviour of children. Children do not have enough information and knowledge about SV, especially about some of its specific forms (electronic) nor about the possibilities and mechanisms of protection and support. There is a noticeable amount of prejudice, that is often based on gender stereotypes, which minimizes the effect of violence and blames victims. Teachers also lack the knowledge about the problem, which includes the basic indicators for recognition of SV, and the support mechanisms of protection for children. This lack of knowledge creates a sense of inadequacy for addressing this issue with children or involvement in solving concrete problems. The system has formal protection and support mechanisms (laws, protocols, strategies) which in practice still do not show satisfactory results. Some of the protocols are mutually contradictory, school principals do not want to report SV, the child protection system is very slow, court proceedings are very lengthy, and there is not enough investment in supporting victims of SV.

When it comes to higher and university level education, in universities, especially Faculty of law and School for social work, teaching on GBV in curriculum is insufficient.<sup>37</sup> There is a lack of obligation for universities to expand curriculum, knowledge and practice learning for students in GBV. These is quite problematic since lawyers and social workers represent frontline practitioners that work with family violence and GBV upon graduation.

The need to improve professional work related to gender-based violence against women is also strengthened by the International Federation of Social Workers Europe (IFSW Europe) in its 2019 statement, which called on social work schools to incorporate women's rights and violence into their which is also in line with Article 14 of the Council of Europe Convention. IFSW Europe recognized the need to improve the skills of social workers in relation to the needs of women victims of violence and stressed that despite the Convention's commitments, "every country and community lacks commitment to a comprehensive approach to prevention, protection survivors), prosecution, and coordinated policies ".<sup>38</sup>

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<sup>37</sup> „...although most of health, criminal justice and social work professions require future professionals to be prepared to deal with consequences of gender-based and domestic violence, the study shows there is still a long way to go“ Matešić, Marina, Vrečko, Ines, Prevention of gender-based violence as higher education learning outcome: teaching, learning and assessment of human rights learning outcomes in Croatia, *Metodički obzori : časopis za odgojno-obrazovnu teoriju i praksu* , Vol. 14 No. 2 (27), 2019, available at: <https://hrcak.srce.hr/248974>

<sup>38</sup>International Federation of Social Workers Europe. Press Release, 24 November 2019, available at: <https://www.ifsw.org/ifsw-europe-calls-on-social-work-schools-to-incorporate-womens-rights-and->

Although the Ministry of the Interior is making continuous efforts in conducting education of police officers with secondary education, police high school programs, basic courses for police officers on duty in police stations in cases of violence against women and domestic violence, specialist course etc. there is overall need to define framework for education.

As a result, children, youth and/or future professionals do not have the information nor the knowledge neither about the forms of GBV/SV nor about the protection mechanism. Their teachers and professors do not know how to recognize GBV/SV nor how to provide basic assistance and support. In such an environment, the perpetuation of prejudice is present.

## **Recommendations**

- Content related to gender-based violence, gender equality and sexual and reproductive health should be represented in the curricula of cross-curricular topics, but also through the implementation of prevention programs in all schools, as well as in kindergarten/preschool
- In cooperation with women's CSOs, develop prevention programs and conduct teacher/professor training/education
- To conduct availability and quality assessment for the existing programs, together with the assessment of the frequency and manner in which they are being implemented; to address the needs of the educational system based on the previously conducted assessments

## Article 15 - Training of professionals

### Background

There is a lack of comprehensive professional training on GBV and about duties and obligations under the Istanbul Convention. Also, there is a lack of follow up instructions that are necessary to understand how to implement specific obligations under the Convention.

### Challenges

When available, education for professionals working with victims (i.e. social workers, psychologist, judges, lawyers, police officers working in the police, CSWs, judiciary etc.) are most often incomprehensive, of short duration, fragmented, underfunded, and with an attendance on a voluntary basis, which means that they do not reach all of those responsible in the institutions.

Theoretical assumptions promoted through training such as - “gender neutral approach to violence”, “research on false allegation of abuse by women”, “parental alienation” “family conflict theory” and “Johnson typology of violence” - is reflected in beliefs and practice of social workers, psychologist, judges, lawyers, police officers etc.

Particularly problematic are the numerous trainings for the application of the scientifically unfounded “concept of parental alienation” which minimizes the impact of violence against women and children. Also, the understanding and the use of Johnson's “typology of violence” (“intimate partner terrorism and situational violence”) by some experts who dominate social work policy influence as a proof of “gender neutral approach” to violence is worrying.

Given that these two main theoretical concepts, intensively promoted in previous education, converge (support and overlap), their application will continue to negatively affect the safety and protection of women and children victims of violence. Therefore, the competent ministries needs to question, revise and better manage the knowledge that is the basis for training of the professionals.

When we talk about SV specifically, an evident problem is the lack of specialised training for personnel employed in relevant institutions who work with survivors of SV and child sexual abuse. The lack of adequate training can be seen on the university level and beyond, because there is no specialised education about SV, the effect of trauma, etc. Previous reports from the state authorities point to the need for the continuous training of the health, social welfare, police, prosecution, judiciary, and educational system staff as well as persons who work in organizations that provide support to victims. Even though some public policies in Croatia emphasize the importance of the training for professionals, unfortunately these recommendations are not put into practice. As a consequence, we face inadequate awareness and education about working with survivors of SV contributes to secondary victimisation and existing prejudice towards SV and victims of SV which are wide-spread in society. They are noticeable in the approach of

relevant institutions to victims of SV. Such prejudice encourages victim-blaming and distrust towards victims.

The GBV trainings organized by women's organizations are the only one in line with the theoretical concept of gender-based violence used by the Istanbul Convention. However, these trainings are usually sporadic, of short duration, fragmented, underfunded, and do not reach all of those responsible in the institutions.

## **Recommendations**

- To develop, in cooperation with women organizations, a comprehensive national training framework for GBV/ SV / Istanbul Convention prior to proceeding with licensing and accreditation for all professionals working with victims (i.e. social workers, psychologist, judges, lawyers, police officers working in the police, CWSs, judiciary etc.)
- Training on gender-based violence must be approached comprehensively, with clear goals, target groups, expected learning outcomes to effect competencies and practice within whole systems. Clear training standards for each profession has to be developed (number of hours, topics, etc.). Education must take trauma-informed and the victims-centred approaches that would result in the integration of knowledge about trauma into policies, actions, and practices.
- Professional development in the field of gender-based violence must be mandatory, coherent, scientifically based, it is necessary to determine priorities, total duration of education and different modalities of education and levels of education (basic, secondary, advanced) and ways of monitoring and evaluating training.
- Where there is still a gap (or inconsistency) between the obligations under the Convention and current laws and by-laws, it is necessary to provide more intensive training of experts on direct application of obligations under the Convention to reduce doubts
- Training in other areas (e.g. protection of children in family law) should be as much conceptually aligned as possible with training on gender-based violence and obligations arising from the Convention
- New Academy of Social Work should not develop or implement any training without robust consultation and approval from women CSOs about its role, capacity and clarification on theoretical foundation that will further influence competencies of professionals
- For certain topics for which there is still a lack of quality guidelines, instruments and expertise in Croatia, it is necessary to provide for the possibility of obtaining a license and organizing training by internationally recognized experts in these fields



## **Article 16 - Preventive intervention and treatment programmes**

### **Background**

#### Psychosocial treatment

Psychosocial treatment of perpetrators of domestic violence (outside prison) may be imposed based on as many as four laws: 1. Security measure pursuant to Article 70. Criminal Code; 2. Obligation pursuant to Article 206d, point 6. of Criminal Procedure Act; 3. Protective measure (as a misdemeanor sanction) based on Article 13. Law on Protection from Domestic Violence; 4. Special obligation with a suspended sentence pursuant to Article 45. of Misdemeanor Act and obligation pursuant to 109c of Misdemeanor Act. These provisions are accompanied by ordinances and standards for their implementation. It is based on a cognitive-behavioral approach, with a clear gender perspective. Violence in the family and against women is unacceptable, the perpetrator is solely responsible, it can be stopped by change by the perpetrator, and the safety of the victim / family member is a priority. The treatment consists of an entry procedure over 1-2 months, and 16 weeks of individual / group meetings, and is typically conducted over 6 months.

Implementation began in 2005. in Zagreb and Rijeka, based on a pilot training of 25 experts. Since 2007. the Ministry of Justice issues licenses based on completed education, and in the period 2007-2010. Another 120 experts have completed such training. It was planned to establish a network of 47 centers in which about 2000 treatments per year would be carried out, on the territory of the entire Republic of Croatia.

#### Program for the rehabilitation of sexual offenders

Perpetrators of sexual crimes in Croatia, while serving a prison sentence, may be included in a special program designed specifically for the rehabilitation of persons who have committed such crimes. The program is called PRIKIP - Prevention of Recidivism and Control of Impulsive Behavior. It is a group program lasting several months, the group meets once a week. The program is based primarily on CBT principles. Prisoners can be included in the program in several ways: if they have committed a crime with a sexual component and are currently serving a prison sentence for it, and if the prison sentence or the remaining part of the prison sentence is longer than 6 months, the Diagnostic Center report states that the prisoner must be included in PRIKIP. If he was not in the Diagnostic Center, this decision is made by the officer of the Treatment Department (TD) of the prison or penitentiary where the prisoner is serving his sentence, and also, the expert team of the prison or penitentiary can propose for the perpetrator to be included in the program if he committed a sexual crime sometimes earlier and wasn't included in the program when serving that sentence.

Prisoners cannot be forced to participate in the mentioned PRIKIP program. That is, a prisoner may be assigned to join the program by a prison or penitentiary, but he does not have to attend the program. The consequence for him is the fact that he cannot be assessed with a performance

grade above "satisfactory", and because of that it is likely (from practice, not the rule) that he will not be granted extra-prison benefits and parole.

If a prisoner is given a partial suspended prison sentence, he has no incentive to participate in any program because he cannot expect the sentence to be reduced and these prisoners are the least cooperative.

If a prisoner also joins the program, he does not have to actively participate in it, he can be excluded from it. Program managers provide an assessment of the collaboration and the achieved purpose of involvement in the program.

## **Challenges**

### Psychosocial treatment

From the beginning, the Ministry of Justice (and State Administration) did not provide sufficient funds for implementation, and treatment was established in those cities and counties that provided most of the necessary funding. Since 2012 the Ministry co-finances the implementation of treatment in the amount of HRK 2,000 (265 Euros) per treatment, which amounts to about 30% of the funds needed for sustainable implementation. Therefore, treatment (judicial measure) is carried out exclusively in cities that additionally finance providers, most often from funds intended for social services. Due to that, the implementation of treatment was suspended in most of the Republic of Croatia, and out of 145 licensed persons, less than 30 are still active. In the last 10 years, there have been no new educated experts, and only at the end of 2021. the education of one group began. Due to the lack of centers to which perpetrators could be referred for treatment, in the last 5 years the courts have imposed fewer measures than before, even in cities where the continuity of treatment is ensured with local government funds. Most of the referred persons come based on misdemeanor warrants, and very few are sent by criminal courts. There is an unjustified delay between the imposition of a measure and a referral for treatment, which can last from several months to several years. Finally, although the treatment was initially designed to work with men who are violent towards their partners, the share of women among perpetrators of violence referred to treatment has increased over the years, and now stands at 25-30%.

Back in 2013, The UN Special Rapporteur expressed her concern about the efficacy of psychosocial programmes in preventing domestic violence. As she has noted: "There are no independent studies on the effective implementation and benefits of such treatments." She was also concerned about the emphasis on perpetrator treatment, which diverts limited funding from victim services, thus conveying the message that the State cares more for the welfare of perpetrators than of the victims.<sup>39</sup> Relevant independent studies regarding the psychosocial treatment still haven't been conducted.

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<sup>39</sup>United Nations, Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, Mission to Croatia, A/HRC/23/49/Add.4, June 2013, point 65 available at:

## Rehabilitation of sexual offenders programmes

Considering before mentioned PRIKIP program for sexual violence perpetrators, it is not implemented continuously and in all prisons and penitentiaries. Only educated experts can implement the program, which is why they sometimes travel to another city on the day of the program. If possible, the prisoners are sent to the prison or penitentiary where the program is implemented in order to be included in it, such transfers are in principle always approved. However, if a prisoner has a short sentence or simply not long enough to be included in a new group of programs that starts in, say, 6 months, he will not be able to participate in the program. Such prisoners are released without serving an important part of their sentence, they receive individual treatment only from TD officers in accordance with the officer's abilities and education. This most often happens with partially suspended sentences, when the prison sentence is relatively short and the court does not bother to consider the possibility of executing a special program.

Also, there are some obstacles to inclusion in the program itself, and program managers make an assessment of who will be included in the program. If it is a person with lower intellectual abilities than those required to monitor the program, if the person is a security risk, extremely uncooperative, etc., the program provider may choose not to include him in the program, which must be explained to the expert team that makes the final decision. (i.e. the prison manager's approval).

The same program is conducted in the same group with different types of sex offenders - rapists, domestic abusers with a component of rape, pedophiles, younger men who have entered into a relationship with a minor, etc. These categories are realistically incomparable in terms of personality structure, motivation and in general the etiology of their behavior, therefore there is less group homogeneity and less likely for all of them to benefit equally from the group and the program. The implementation of the program depends on the implementers themselves, quality control is poor or almost non-existent and there is no possibility of continuing the implementation of the program outside of prison, which should be necessary for these groups.

## **Recommendations**

### Psychosocial treatment

- to conduct independent studies on the effectiveness, implementation and benefits of psychological treatment and to develop new implementation standards (based on the result of the studies)
- to ensure 100% funding for the implementation of treatment by the State
- to encourage the establishment of treatment centers throughout the Republic of Croatia, for the offenders of all types of violence against women, including sexual violence
- to educate police officers and judges, so that the measure is proposed and issued only in in cases where there are indications; to avoid double arrest and application of psychosocial treatment towards a victim (wrongly recognized as a perpetrator))

### Program for the rehabilitation of sexual offenders

- To financially support prisons and penitentiaries to educate and/or employ more people for conducting the specialized programs for sexual violence offenders
- To educating judges about the sexual violence offenders programs so that the proposed sentences can be compliable with the program duration

## Article 18 (Paragraph 4) - General obligations

### Background

Art. 18. Par. 4 of the Convention sets the requirement not to make access to services subject to the victim's willingness to press charges or testify against the perpetrator.

### Challenges

Accommodation in the shelter for victims of violence is in Croatia most often conditioned by reporting violence to the competent authorities. In some cases, (shelters which are funded by the Ministry on "per-bed"/"per capita" bases)<sup>40</sup> even an official written decision has to be issued (by the Ministry) for the shelter to get reimbursed/funded for accommodating a victim. This is a long-lasting and well known problem - for example, back in 2013 the Report of the Special Rapporteur on violence against women, its causes and consequences<sup>41</sup> recognized the system of accepting only the victims referred by the CSWs or police as a barrier to safe refuge (point 43). In her recommendations, the Special Rapporteur noted that "national standards to address concerns about shelters and other support provided to women victims of violence" should be developed (and that did not happen).

Many other services (for example, employment incentives and housing for victims of violence) are also conditioned by the existence of some evidence that violence was reported. For employment incentives, victim is required to prove her status with a certificate / decision or other document of the competent institution such as court, or a shelter<sup>42</sup>, and for housing a final (non-appealable) court judgment on domestic violence against the applicant must be submitted.<sup>43</sup>

As analyzed in depth under Article 28 of this report, there is also an issue of requirement for professionals working with victims to report violence (regardless of victim's consent). Such requirements lead us to the conclusion that almost all services are conditioned by reporting the violence.

Since misdemeanors and most of criminal offences in Croatia are to be prosecuted *ex officio*, after reporting the crime, the victim's willingness to proceed is usually not required to press charges. Therefore, in the light of the Croatian legal system, we should consider the obligation to report violence as an equivalent to the obligation to press charges (which is not in line with the Convention).

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<sup>40</sup> About funding model for shelters, see section regarding the Article 23 of the Convention.

<sup>41</sup> United Nations, Report of the Special Rapporteur on violence against women, op. cit. (footnote 39).

<sup>42</sup> Čatipović, Iva; Zec, Lorena, Život nakon nasilja – priručnik za (re)integraciju žrtava nasilja u obitelji, SOS Rijeka – centar za nenasilje i ljudska prava, Rijeka, 2021, page 15, available at: <http://sos-rijeka.org/wp-content/uploads/%C5%BDivot-nakon-nasilja-WEB-verzija.pdf>

<sup>43</sup> Housing Care in Assisted Areas Act, article 45.

This may determine women's decisions to even seek support from these services, affecting their rights to receive protection and support regardless of her willingness to press charges.

### **Recommendations**

- it is necessary to ensure low threshold support services acting in the interest of victims and giving them the choice to decide whether or not to press charges against the perpetrator

## **Article 19 – Information**

### **Background**

In the Republic of Croatia, the provisions of Directive 2012/29/EU have been transposed into the current Criminal Procedure Act (CPA). The rights of victims of all criminal offenses are regulated by Article 43 of the CPA, and the rights of children as victims of criminal offenses by Article 44 of the CPA. Article 43 stipulates, among other rights, that victims of criminal offenses have the right to access services providing support to victims of criminal offenses, the right to effective psychological and other professional assistance and support of the authorities, organization or institution for assistance to victims of criminal offenses in accordance with the law and the right to be accompanied by a person of trust in taking action in which he/she participates. The Croatian legislature recognized victims of crimes against sexual freedom and trafficking in human beings as a particularly vulnerable category of victims, and granted them additional rights in criminal proceedings: 1) talk to the advisor before the questioning, at the expense of the state budget, 2) a legal representative at the expense of the state budget, 3) to be questioned by a person of the same sex in the police and state attorney's office and, if possible, in case of repeated questioning to be questioned by that same person, 4) refuse to answer the questions not related to the criminal offense but related to the victim's strictly personal life, 5) request to be questioned by means of an audio-video device, 6) confidentiality of personal data, 7) demand the exclusion of the public from the hearing. When taking the first action in which the victim is involved, the court, the state attorney, the investigator and the police are obliged to notify the victim in a manner comprehensible to them of their rights and they shall treat the victim with care and ensure that the victim understood the rights read to her/him.

Also, Article 43a of the CPA prescribes the obligation to conduct an individual assessment of the rights of victims of crime. Prior to the questioning of the victim, the authority carrying out the questioning shall, in cooperation with authorities, organizations or institutions providing assistance and support to victims of crime, make an individual assessment of the victim. The individual assessment of the victim shall include determining whether there is a need to apply special protection measures in relation to the victim, and if so, which specific protection measures should be applied (special method of questioning the victim, the use of communication technologies to avoid visual contact with the perpetrator and other measures prescribed by the law). In making the individual assessment of the victim, the personal characteristics of the victim, the type or nature of the crime and the circumstances in which the criminal offense has been committed shall be particularly considered. In doing so, special attention shall be paid to victims who have suffered significant harm due to the severity of the crime, to victims of the criminal offense committed because of a personal characteristic of the victim, and victims whose relationship with the perpetrator make them particularly vulnerable. The individual assessment of the victim shall appropriately include victims of terrorism, organized crime, trafficking in human beings, gender-based violence, violence in close relationships, sexual violence and sexual exploitation or hate crime, and victims with disabilities. Through the mentioned institute of individual assessment, the cooperation of competent bodies and civil society organizations is

stipulated in terms of providing and adhering to recommendations with the aim of adequately determining special protection measures.

The provisions of Directive 2012/29/EU have also been transposed into the Law on Protection against Domestic Violence, where the rights of the victims are regulated by Article 6 (in a manner similar to Article 43 of the CPA).

## **Challenges**

The main challenge within the scope of the Croatian criminal justice system in relation to victims is the implementation of Directive 2012/29/EU in everyday practice and in the treatment of victims of crime. The biggest obstacle in working with victims is certainly non-standardized treatment and their lack of understanding of existing rights and possibilities. The police, the state attorney's office and the court should inform the victim in a comprehensible way about the rights she/he has in accordance with the law during the first action in which she/he participates. Among other things, this relates to the right of access to support services. The police provide written instructions to the victims about their rights; the state attorney's office and the court provide information orally. The problem is that the victim receives pure citation of legal articles that she/he does not understand, does not understand what support services are and what type of help and services are available. Victims do not understand the legal language and therefore, very often, do not exercise their rights. The police provide victims with a list of organizations and institutions where they can turn for help and support. However, since victims often receive no explanation of what these services/organizations provide, they do not even understand why they would contact them, that the services are free of charge or what methods of assistance exist. Institutions very rarely provide leaflets and brochures with information on available assistance from services/organizations, i.e. this is not standardized across all institutions. The instruction on rights has been translated into foreign languages, but this still does not ensure clarity of these rights and possibilities for the victims themselves. The system of referring victims to support services or civil society organizations has been reduced to the formality of submitting legal texts of articles and it is left to victims to understand their rights and possibilities and to understand where they can get which type of services and assistance. The institute of individual assessment of victims of crime has also not been implemented in a purposeful and standardized manner. Very often, the implementation of an individual assessment is not carried out or it is carried out according to a certain pattern, without taking into account the personal characteristics of each victim individually and the circumstances of the commission of each act. The individual approach to each victim is neglected and the very purpose of the institute is reduced to satisfying the form.

There is also no prescribed cooperation with support services or civil society organizations in the form of cooperation and consultations on recommendations and opinions on the necessary special protection measures. In general, the problem is with the exercise of all the rights of victims of crime prescribed by the law. Their exercise depends on the discretion of the bodies that decide on them, victims have no possibility of appeal if they are not enabled to exercise any of the rights and this has no impact on the course of criminal proceedings. E.g. if the victim is not referred to the support service, if she/he is not enabled to testify via audio-video device (e.g. the court does



not have technical equipment, the equipment does not work, that type of testifying is not enabled to the victim) or if the victim is not enabled to be accompanied by a person of trust, this will have no bearing on the further course of the proceedings nor the possibility for the victim to influence it.

## **Recommendations**

- Ensuring comprehensible and standardized referral of victims by the police, the state attorney's office and the courts to support services/organizations in a language that victims understand.
- Ensuring a more direct connection of victims with support services/organizations by the police since the police is most often the first instance victims come into contact with.
- Ensuring the delivery of comprehensible materials by the police, the state attorney's office and the courts with information on rights and support services/organizations.
- Ensuring the availability of understandable materials for victims in foreign languages.
- Ensuring standardized treatment of victims in the exercise of their rights that do not depend on the discretion of individual bodies and technical/spatial capabilities of individual bodies (e.g. the existence of proper devices and audio-video testing in all courts, the existence of waiting rooms for victims in all courts for the purpose of avoiding visual contact with the defendant).
- Ensuring adequate and purposeful implementation of individual victim assessment.

## Article 20 - General support services

### Background

In this section, we will focus specifically (only) on housing, employment and healthcare services issues.

The state, local and regional self-government are, in certain ways and to a certain extent, trying to support the housing and employment of victims of violence.

### Housing

As a kind of “a first-aid” , some measures from the social welfare system can be helpful, such as a one-time financial benefit.<sup>44</sup> Also, victims can seek help from some alternative sources, such as the #spasime fund.<sup>45</sup>

Local and regional self-government units also sometimes offer, within their social programs, some measures that are applicable or even specifically designed to help victims of domestic violence (although they are more often linked to the single-parent status). For example, measures such as co-financing the cost of renting an apartment, co-financing overhead costs, heating costs etc. Comparing different cities / counties, we could conclude that they are quite ununified.

A special housing measure for victims of domestic violence is proscribed under Article 45. of the Act on Housing Care in Assisted Areas, which is to be implemented by the Central State Office for Reconstruction and Housing Care of the Republic of Croatia. This housing opportunity is available in the entire territory of the Republic of Croatia. Funds for the costs of accommodation are provided in the state budget of the Republic of Croatia, if the person cannot bear them himself.

As for preconditions for exercising the right, they are as follows: a final court judgment on domestic violence against the applicant; that the applicant does not own or co-own another habitable family house or apartment in the territory of the Republic of Croatia; that the applicant does not have

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<sup>44</sup>It's the right proscribed under the Social Welfare Act. The total amount of one-time benefits in one calendar year may not exceed HRK 2,500 for a single person or HRK 3,500 for a household. In particularly justified cases, CSW may recognize an increased one-time benefit with the prior consent of the Ministry of Labor, Pension System, Family and Social Policy. Increased one-time fee can be recognized in the maximum amount of up to HRK 10,000.

By the time we finish this report, the new Social Welfare Act is expected to enter into force. We are not expecting any significant improvement when it comes to the position of victims of violence. Other than when it comes to (shelter) accommodation, the Act doesn't really recognize victims (domestic or gender based violence) as an especially vulnerable group. For most of the benefits under this Act, they are expected to meet the same preconditions as any other beneficiary.

<sup>45</sup> <http://spasi.me/en/index.html>: #spasime initiative and SOLIDARNA foundation established fund #spasime in order to provide specific and interventional care for the victims of domestic violence in terms of economical, legal, psychological, medical and residential help. Joint idea for Fund establishment is developed out of the need to raise the public awareness about the increasing problem of domestic, partner or any other form of violence. Fund's role is to do what institutions cannot and that is to act immediately. However, access to the fund is preconditioned by violence being reported.

sufficient funds to provide an adequate housing unit necessary for housing, and she/he cannot achieve it through his work, income from property, from the debtor or otherwise, or when the total income and total income of the applicant and adult members of his household per month do not exceed the amount of one budget base per household member (HRK 3,326.00); a recommendation from the competent social welfare center on the need for housing for victims of domestic violence. According to the data we collected from administrative bodies in the counties and the City of Zagreb, in years (2019 and 2020), a total of 70 such requests were submitted in the Republic of Croatia, while in the same period 40 were resolved positively.

We would especially like to point out that in the observed two-year period, not a single request was submitted in as many as 10 Croatian counties. This leads us to the conclusion that it is very likely that victims of domestic violence are not even aware of the possibility of this type of housing.

Besides (temporary) housing options for victims of domestic violence described above (which can last for up to 2 years), a person with the status of a victim of domestic violence may also exercise the right to permanent housing, but (only) in assisted areas and areas of special state concern.

### Employment

The Croatian Employment Service (CES) offers some active measures for employment. These are different groups of measures such as support for employment, self-employment, training, education and training. They are designed to make it easier for vulnerable / targeted social groups to find employment in a variety of ways - whether it is providing opportunities to acquire a certain (professional) qualification, or allocating certain funds for self-employment (starting your own business) or providing certain funds to the employer who decides to hire a member of the target group or some other way to facilitate entry and survival in the labor market. In addition to active employment policy, employment promotion is also implemented through other activities, such as career guidance and career development activities and employment mediation.

Some of the measures of active employment policy (such as the “public work” measure of) recognize the victims of domestic violence as a special target (sub)group that can use this measure.

The status of a victim of domestic violence has to be proven by a certificate / decision or other document of the competent institutions (court, social welfare center, shelter).

Statistics on the use of measures by victims of violence, collected from the Croatian Employment Service, show as follows:

| Year | TOTAL NUMBER OF UNEMPLOYED VICTIMS OF DV REPORTED TO THE CES | TOTAL NUMBER OF VICTIMS OF DOMESTIC VIOLENCE INCLUDED IN ACTIVE MEASURES FOR EMPLOYMENT | men | women | MOST USED MEASURE                     |
|------|--|---|-----|-------|---------------------------------------|
| 2018 | 195  | 35  | 10  | 25    | employment aid (9)                    |
| 2019 | 165  | 10  | 0   | 10    | public work (8)<br>employment aid (2) |
| 2020 | 135  | 6   | 0   | 6     | public work (3)<br>employment aid (3) |

The table shows the decline in the number of unemployed victims of domestic violence recorded in the CES records, as well as the decline in the percentage of victims of violence who use active employment policy measures.<sup>46</sup>

### Healthcare services

In Croatia we have a huge lack of gynecologist on all levels of health care, on country level 46 teams do not have a full-time gynecologist (team leader), and 58 teams are not contracted at all<sup>47</sup>. This problem is even more important when we think about providing adequate health care to women and girls that are victims of GBV.

*More about healthcare related problems see in special Section – Gender based violence in maternity and gynaecological care.*

### **Challenges**

<sup>46</sup> Regarding the use of some other services within the competence of the CES, in 2020 5 victims of domestic violence were included in active job search workshops, which is 3.7% of the total number reported in their records. In the previous year, 18 victims of domestic violence (10.9%) were included in the workshops.

During 2020, 8 unemployed persons (5.9%) belonging to this vulnerable group were involved in vocational guidance and assessment of remaining working and general abilities, similar to last year (4.8%), while improving competencies and improving the employability of 4 persons - victims of domestic violence (3%) were involved in educational activities outside the measures of active employment policy.

In the period from 1 January to 31 December 2020, 55 persons - victims of domestic violence (40.7%) were employed "through" the CES, while in the same period in 2019, 73 persons (44.2%) were employed, and during 2018 91 persons (46.6% of the total number of evidenced victims of violence).

<sup>47</sup> Mreža javne zdravstvene službe u djelatnosti zdravstvene zaštite žena - <https://hzzo.hr/zdravstvena-zastita/zdravstvena-zastita-pokrivena-obveznim-zdravstvenim-osiguranjem/ugovoreni>

## Housing<sup>48</sup>

Some of the obstacles noticed during assisting women in a housing process (under Article 45. of the Act on Housing Care in Assisted Areas):

- Precondition of the existence of a final court's decision

A final court decision as a condition is quite restrictive, due to the (too) long duration of court proceedings. It creates an "void" for women who are victims of violence, but this "status" has not yet been confirmed by a final court decision.

- CSW seems not to be adequately familiar with the measure

With CWSs, we encountered a problem of the staff not being familiar with this measure - some were not even aware of the existence of the measure and / or did not know what exactly what should be written in the "recommendation of the competent social welfare center on the need for housing the victim domestic violence ", which is part of the mandatory documentation. In both cases, after being properly informed, the staff was cooperative.

- Difficulties in finding a suitable property

The biggest issue we encountered in assisting in the housing process was finding a suitable property. Under the Act, beneficiaries should be allocated with a state-owned state. But if there is no suitable state-owned property available, a suitable property shall be rented out from a private owner. Renting out a private property was quite hard due to extremely high degree of discrimination that is present in the real estate market - most of potential landlords refused to close a deal as soon as they heard that a potential tenant is a female victim of violence with children.

## Employment

- the request of possessing a "certificate" proving the status of a victim

For a number of reasons, some victims are not ready or able to report or prosecute violence to the extent that would allow them to have a certificate that they are victims of violence. Also, some of them simply do not want to be "labeled" and are uncomfortable with the thought of being stigmatized as a victim in the workplace and that the circumstances of their private life are thus presented to the employer.

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<sup>48</sup> Based on: SOS Rijeka, Funkcioniranje mjere stambenog zbrinjavanja žrtava nasilja u obitelji, 2022., available at:<https://www.sos-rijeka.org/wp-content/uploads/FUNKCIONIRANJE-MJERE-STAMBENOG-ZBRINJAVANJA-ZRTAVA-NASILJA-U-OBITELJI.pdf>

- Insufficient information of victims, as well as employers, about available measures

In particular, additional cooperation is needed between counseling centers and shelters for women victims of violence and the CES.<sup>49</sup>

- Negative attitudes of employers about the employment of victims of violence

A share of employers for various reasons, some of which are related to prejudices about victims of violence, do not really want to use active employment policy measures. This shows us how much more we need to work on raising public awareness of the problem of (gender-based) violence and combating prejudice.<sup>50</sup>

### Healthcare services

In addition to lack of gynecologist, the existing ones do not receive almost any education or training on trauma or GBV, with focus on sexual violence. From our work we know about gynecologist that are required to take “rape kits” from women, but report that they “don’t believe the victim because she was too calm during the physical exam”. There are not enough gynecologists that specialize in children and adolescent gynecology and this represents a problem in all the cases when there is SV against children (girls).

## **Recommendations**

### General recommendations

- to ensure better recognition of gender based violence victims within social welfare system and other general services; to provide training for their employees, specifically on the gendered nature of violence against women, including domestic violence
- to tackle the issue of uneven access to general support services and different levels of resources available in municipalities/counties

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<sup>49</sup> Also one of the conclusions of the research conducted by The Women's Room – Center for Sexual Rights. See more: Ženska soba- Centra za seksualna prava: Korak bliže zapošljenju - stavovi poslodavaca o zapošljavanju žrtava nasilja u obitelji, Zagreb, 2019., dostupno na: <http://zenskasoba.hr/hr/podrucja-rada/aktivnosti/izdavastvo/>

<sup>50</sup> Ibidem

### Housing and employment

Without raising the (broader) issue of (general) housing policy and insufficient solutions for a permanent housing solutions, we believe it is necessary:

- to tackle discrimination against women and women with children in the real estate and work market. Preventive programs, awareness raising, dispelling myths and prejudices, combating discriminatory practices against women victims of violence are needed, as well as more effective sanctioning of those who commit such discrimination
- stronger cross-sectoral cooperation and better “flow” of information is needed
- the procedure protocol of finding a suitable real estate should be developed
- to reconsider housing preconditions (finality of the judgment determining the status of the victim) and review the duration of the measure (two years are not sufficient to achieve the purpose), as well as the precondition of a “certificate” proving the status of a victim of violence requested by CES (in the process of using active employment measures)

### Healthcare services

- education of all personnel on trauma related topics and GBV, especially gynecologists, paramedics and emergency services
- providing enough gynecologists that specialize in children and adolescent gynecology through state funded specializations and employment with equal geographical distribution

## Article 22 - Specialist support services

### Background

In Croatia, specialist services for women victims of violence are provided mainly by non-governmental (civil society) organizations. Those organizations support victims with short and long-term psychological counselling, psychotherapy, trauma care, legal counselling, empowerment and support towards achieving economic independence, advocacy and outreach services, telephone helplines, safe accommodation etc.

*Information on women's shelters, helplines and support services for victims of sexual violence centers will be provided in the respective sections (especially section regarding Article 25).*

Relevant organizations are, in accordance with State's policies and available funding opportunities, focused mainly on domestic violence. The Ministry of Labour, Pension System, Family and Social Policy keeps the Address book of institutions, organizations and other institutions that provide assistance, support and protection to victims of domestic violence, with over 80 different addresses. On that list, we can find specialized women's CSOs, but also some institutions (for example, all ombudsperson institutions in Croatia), public healthcare institutions (clinical hospital centers), religious organizations (for example, Caritas), as well as some CSOs which are not specialized (only) for work with women victims of violence, but they do, through counseling and some their activities, contribute to combating domestic violence. Due to lack of official, consistent and methodological mapping and/or standards (which would take into account key principles set out in Article 18 of the Convention), we can only guess how many of these organizations are really to be considered as the providers of "specialist support services".

When adding some specific criteria<sup>51</sup> Women's room 2016 research<sup>52</sup> showed 23 different CSO's<sup>53</sup> from 15<sup>54</sup> (of total 21) counties. Their working hours (for work with victims) were usually on weekdays, a total of 8 to 10 hours per day (16 organizations). Shelters and individual counseling centers had an SOS telephone that worked 24 hours a day (4 organizations) or on-call shifts (8 organizations). In addition to the formally stated working hours, some organizations

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<sup>51</sup> The criteria for organization to be considered as an CSO working directly with women victims were:

1. that the organization is neither religious nor political
2. that the organization has existed for at least 2 years
3. that the organization works directly with women victims of violence with a minimum of 10 counseling per month
4. that the organization defines itself as an organization that works on combating violence against women.

<sup>52</sup> Mamula, Maja et. al., Organizacije civilnog društva kao ključni akteri u suzbijanju nasilja nad ženama u Hrvatskoj, Ženska soba, Zagreb, 2016., available at: <http://zenskasoba.hr/docs/OrganizacijecivilnogdruštvaZENSKASOBA.pdf>

Given the passage of time since the research was conducted, it is possible that the current situation regarding available services is different.

<sup>53</sup> A call for the participation in the research was sent to NGOs listed based on the result of a previous Women's Room research (from 2010), as well as based on various lists and address books kept by relevant bodies and/or organizations that provide assistance and support to women victims of different forms of violence.

<sup>54</sup> But most of those CSO's (73,9%), operate nationally.



had the possibility of working with the victim according to the previous agreement, i.e. according to the needs and possibilities of the victim (3 organizations). Only one organization had a counseling center that works only for several hours a week.<sup>55</sup>

Regarding the forms of direct work with women victims of violence, almost all organizations (95.7%) provided long-term support to victims (longer than three months) and legal support. They were followed by psychological counseling (91.3%), providing crisis support to victims of violence (87.0%) and providing support to victims in court proceedings (82.6%). The least represented forms of direct work were the provision of medical counseling (21.7%) and legal representation in court (30.4%). Shelter accommodation was provided by 39.1% of organizations which participated in this research.<sup>56</sup>

As reasons for contacting CSO's, research identified domestic violence as the main one (95.7%), then sexual violence (21.7%). Other forms of violence are far less represented and mentioned rarely, occasionally or not at all (e.g. trafficking in women, structural violence, mobbing, war violence, etc.)<sup>57</sup>

## Challenges

Women's Room 2016 research<sup>58</sup> also investigated what challenges are CSOs working directly with victims of violence facing. Identified problems were divided in five categories:

### 1. Insufficient funding

The largest number of participants (56.5%) pointed out insufficient funding as the main problem, which "threats the sustainability and the existence of organizations and prevents the creation of long-term work strategies." It is also directly related to the problem of undercapacity of the working teams (52.2% participants), with the problem of insufficient number of people in the team, who are often overloaded with numerous projects, excessive bureaucracy (especially on EU projects), lack of supervision and psychological support. Furthermore, organizations face the problem of frequent staff changes due to the fact that it is hard to keep quality people on a low salary and in conditions of work overload.

### 2. General social climate toward CSOs

which was identified as a problem by more than a third of participants (34.8%). It includes negative effects of the economic and political climate, bad image of CSOs and their work (often fostered by the media), alongside general distrust of citizens in institutions and justice. The influence of

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<sup>55</sup> The total count of organizations is over 23 due to the fact that some organizations have different working hours for the shelter and for counseling centers. Mamula, Maja et. al., Organizacije civilnog društva kao ključni akteri u suzbijanju nasilja nad ženama u Hrvatskoj, Ženska soba, Zagreb, 2016., page 13, available at: <http://zenskasoba.hr/docs/OrganizacijecivilnogdrustvaZENSKASOBA.pdf>

<sup>56</sup> *Ibid.*, page 13.

<sup>57</sup> *Ibid.*, page 15.

<sup>58</sup> *Ibid.*, pages 23-24.

patriarchal society and insensitivity to the issue of violence against women has also been directly affecting the work of CSOs, as well as attitudes towards victims.

### 3. Poor cross-sectoral cooperation

A significant part of the participants (30.4%) mentioned the problem of poor cross-sectoral cooperation and the attitude of institutions towards CSOs, which is still significantly burdened by stereotypes about feminist and women's organizations, as well as prejudice against any work not directly controlled by the public bodies / institutions, i. e. work which retains autonomy. Low level of cooperation with relevant institutions is often reflected in the slow resolution of cases, but also the lack of feedback from institutions to CSOs (when working on the same cases).

### 4. Lack of organizations providing services for women victims of violence,

together with inadequate working conditions (26.1%). These include the lack of SOS hotlines for victims, the lack of specialized lawyers and advocates for victims, inadequate working spaces, as well as lack of spaces adequate for people with disabilities.

We believe that it is really important to emphasize shortcomings in the provision of specialist support services catered to the needs of specific groups of victims beside victims of domestic violence: while the network of specialist support services that assist victims of domestic violence is to (some extent developed), specialist support services for victims of other forms of violence such as sexual violence, FGM, forced marriage, forced abortion and sterilisation or sexual harassment are, if at all, available in a much lower number.

## **Recommendations**

- to develop a comprehensive strategy for service provision by conducting a needs assessment on the number, types and geographical location of services available and required by victims of all the different forms of violence, with a view to filling (on a needs basis) the gaps in service provision
- ensure that the provision of services pays due attention to the specific needs of groups of victims who are or may be exposed to intersectional discrimination, such as women with disabilities, LBTQ+ women, migrant women, women with mental health issues, and by all the victims (including those who belong to vulnerable groups such as underage victims, disabled women, LBTQ+ women, migrant women, women with mental health issues etc.)
- ensure that sexual violence (including rape and sexual harassment) counselling services are more available
- harmonize the provision of specialist services with the standards defined by the convention which call for a human rights-based approach, grounded on a gendered understanding of violence against women and aimed at preventing secondary victimization, ensuring respect for victims' human rights and safety, and empowering victims

- plan for licensing of organizations that provide specialized services, licensing criteria to be decided in cooperation with women CSOs
- improve cross-sectoral cooperation between women CSOs and institutions working with victims
- ensure financial and human resources are available to enable the above.

## **Article 23 – Shelters**

### **Background**

In the Republic of Croatia there are three different models of shelter financing. Many shelters receive funding from the State, but in an unsustainable manner and only for a specific period of time that does not allow shelters to develop, plan or provide the required services.

When it comes to the first model, back in 2008, tripartite financing of shelters was envisaged in a way that 30% of the amount needed for financing should be provided by the Ministry of Labor, Pension System, Family and Social Policy, 30% by the counties, 30% by the cities, and 10% by the civil society organisations through tenders - however, this model did not come to life. Instead, 7 autonomous women shelters (run by NGOs) are financed by the Ministry, County and City but when it comes to the amount/percentage/share of co-financing, there is no rule: some of them are more financed by the Ministry and some by the County or by the City. Ministries' share in financing fluctuates significantly in the total share of annual costs of autonomous shelters, no matter their capacity. Financing is provided by grants allocated for a specific period (based on a tenders/calls).

The second financing model is a so-called “per capita” model and 12 shelters are financed in this way. Most of them are open to adult victims, which implies they are open to adult men victims.

The third model is financing through the European Social Fund. In 2020, 6 new shelters were founded by this model, in counties where there were no shelters. The new shelters were opened hastily, without strategic planning, with some NGOs practically coerced into opening them. Their financial stability and future financing remains unclear, and the prospective future for most of them is not likely.

With the establishment of new shelters, there are now 25 shelters in the Republic of Croatia with a total capacity of 346 places, thus covering the entire territory of the country.

Some of the shelters are established and run by independent civil society organisations, some are run by religious organisations or other organisations/institutions (some of which are founded or co-founded by a County or a City).

### **Challenges**

There is a lack of full incorporation and implementation of the Convention to adopt comprehensive and holistic approaches to integrated services to combat and prevent violence against women.

The insufficient financial support for civil society organisations that provide specialised support services to women who are victims of gender-based violence calls into question the sustainability of those shelters.

Women's need for emergency shelter can occur at any time, especially during night hours, and it is important to secure immediate access to shelters. There are different barriers, such as the requirement of formal recognition of victim status. In many cases, women do not have the opportunity to apply for shelter on their own, but referral must be through a CSW.

Furthermore, not rarely adolescents and boys above a specific age are excluded from shelters, separating them from their mothers or preventing mothers from seeking a refuge.

Many shelters don't have conditions to accommodate women with disabilities, pregnant women, (former) addicts nor women who need any kind of special medical care. There is also a concern that women and girls with disabilities, pregnant women, lesbian, bisexual and transgender women and intersex persons (even if accommodated) continue to face intersecting forms of discrimination and gender-based violence.

There is a concern that there is a subtle discrimination against Roma women that is not so clear and visible and that Roma women and girls are frequently exposed to intersecting forms of discrimination and marginalization and continue to face stigmatization and harmful practices.

There are 25 shelters in Croatia, but not all of them are specialised shelters for women. Therefore, there is a need to distinguish specialised women shelters from shelters for adult victims of domestic violence and/or shelters led by religious organisations. Women sometimes do not even know who runs the shelter nor do they have any option to choose where to be accommodated. Therefore, they often don't know what to expect coming to shelter - what kind of support they will get and what kind of obstacles they will run into. For example, some women reported back to us that in the shelters run by religious organisations the concept of "sanctity of a family" was forced onto them and that they were suggested to "forgive the perpetrator" and "embrace her role as a woman" etc. Some shelters have very strict house rules and their relationship with the victim is not based on (mutual) trust. For example, in some shelters women have to hand over their mobile phones (for the first week or two of their stay).

There are some other important open questions about shelters and the way in which they operate, for example:

a) material conditions

Some of the shelters literally don't have suitable living conditions. Facilities are old, ruined, with broken furniture and tiles and barely functioning bathrooms. Not to mention lack of (any) safety measures in many of the shelters - some of them do not have enough security cameras, any kind of security on windows/entrances and/or they even do not have the fenced yard. Many of them are completely inaccessible for people with disabilities.

b) the availability and quality of services for women and children

Some shelters are completely understaffed (some have only one or two employees, each working one 8-hours shift and then being on call during the night), which considerably affects the

availability and quality of services. Some shelters, due to staff shortages, hardly succeed in providing (an adequate) psychological and psychosocial support. in-house legal support is also less frequently available Most of them succeed in providing, at least to some extent, psychological and psychosocial support, while in-house legal support is less frequently available..

As clear from the above said, one of the biggest problems is certainly a completely non-standardized treatment available to women and children.

The State also completely fails to ensure a safe environment for the women and children, by allowing (by “loose” legislation and the terrible implementation of that legislation) fathers who are perpetrators to keep their parental rights and make live contact with the children. Victims shouldn’t be obliged, forced and/or pressured, (direct or indirect) to ensure the visitation to her children without the Court ruling. And even then, the visitation rights should be executed only in a safe environment and exclusively under supervision of an expert person of trust.

## **Recommendations**

- to provide adequate, secure and autonomous funding to shelters and support services for women who are victims of violence without endangering their autonomy. The State obligation to protect women from violence has to be reflected in the allocation of adequate and stable (not tender based) financial resources
- to standardize services of the shelters; to provide funding for adequate infrastructure of the shelters, as well as enough employees in order to provide quality services so the shelters could be shelters a places of empowerment for women
- to provide safe emergency accommodation 24/7 which includes an obligation to ensure the funding for night work and weekend work for the experts in shelters.
- to provide a sufficient number of specialized shelters for women. State should provide for a sufficient number of safe and confidential shelters, adequately funded and allocated throughout territory, including in rural areas. State should map and plan an adequate number of shelters; to provide shelters to women with their children including adolescents and boys of all ages
- to provide access to shelters regardless of women’s willingness to report violence
- to implement measures to achieve substantive equality for women and girls in all stages of life who face intersecting forms of discrimination, such as Roma women, women and girls with disabilities, lesbian, bisexual and transgender women and intersex persons.
- to provide gender-based education for all the employees in every shelter in order to provide the best service to all women and their children regardless of the “type” of the shelter
- to ensure that violence by one parent against the other is identified and taken into account when deciding upon child custody and visitation measures and that refusal to allow visitation and contact on account of alleged violence is not held against the parent who has made the allegation; only with the decisions of the court, with mandatory supervision and without the so-called “handover of children” in which the victim and the perpetrator meet, shall meetings with the father (perpetrator) be allowed.

## **Article 24 - Telephone helplines**

### **Background**

Croatia did set The National Call Center for Victims of Crime (NCC) back in 2013 (in cooperation with NGO - Victim and Witness Support Service Croatia who runs the NCC, the UNDP wiki database and the Ministry of Justice). Since 2020, National Call Center for Victims of Crime (116 006) is open every day 24 hours a day including holidays and weekends. The helpline is free of charge and anonymous and is available in two languages – Croatian and English.

There are also some other helplines run by women's NGOs and/or shelters, some of which are available outside working hours, some even 0-24.<sup>59</sup> However, they are unduly neglected, especially with regard to (co)financing.

Beneficiaries of the NCC are (adult) victims and witnesses of crimes and misdemeanors and members of their families.

The scope of the NCC includes: informing about the rights of victims and witnesses of crime and misdemeanors, providing emotional support, referral to relevant civil society organizations and institutions, assistance in completing the cash benefit claim form.

Victims' calls on the line of the NCC are answered by specially educated personnel (employees) and volunteers. As concluded from the interview conducted with the NCC representatives, both employees and volunteers receive long-term (up to 3 months) initial education (including education on gender based violence), as well as additional education during the course of their work.

### **Challenges**

From the above noted, it is clear that Croatia has a telephone helpline for victims, which is free of charge, anonymous, available 24/7 in two languages – Croatian and English. However, the NCC is not specifically intended (only) for women victims of violence against women. It is intended for all victims and witnesses of crimes and misdemeanors, as well as members of their families.<sup>60</sup> Consequently, the name of the line doesn't reflect the fact that it is the designated helpline for women victims of gender based violence.

The NCC itself estimates that two languages in which help is available (Croatian and English) are sufficient, although are aware and are trying to address specific needs of some vulnerable groups, for example:

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<sup>59</sup> For example, helplines run by Udruga Uzor and Ženska grupa Karlovac Korak.

<sup>60</sup> However, information gained from the National Call Center shows that in 2021 79,9% of their callers were victims of gender-based violence.

- people with disabilities<sup>61</sup> (in order to be more available, Nacional Call Center is in process of establishing *online* chat forum)
- migrants and asylum-seekers (a basic prerequisite would be finding and hiring translators)

However, any further significant improvements in innovating and expanding the service would require significant (additional) funding and support from the State.

As above mentioned, the NCC is intended for adults – callers who are children are being instructed to call 116 111 - Hrabri telefon (Brave Phone), free and anonymous helpline which is available on working days from 9:00 to 20:00 (not 24/7)<sup>62</sup>. Because the term „women“ from the Convention (Art 3. f) also includes girls under the age of 18, we face the fact that the service for underaged women is not available 24/7.

Although education (initial as well as in-service) regarding gender based violence is provided, it seems that (due to insufficient financial funds) in-service trainings sometimes depend on women' organizations and/or other associates' willingness to conduct them free of charge.

## Recommendations

- additional measures shall be taken by the State to ensure that women victims of gender based violence have real access to dedicated helpline(s); by enhanced financing of already existing specialized women's dedicated telephone helplines and by enhanced promotion and public communication of the NCC as a line for women victims of different forms of gender based violence
- conduct the extensive research regarding available telephone services, their recognition by the target groups, alongside with the research of the needs of vulnerable groups (which include, but are not limited to: children, Roma women, migrant, asylum-seeking and refugee women, women with disabilities, women without a residence permit, LBTQ+ women, women from rural areas, women in prostitution and women with substance abuse). Develop research based strategy and budgeting plan for addressing the research recognized needs.

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<sup>61</sup> There is also Zajednica saveza osoba s invaliditetom Hrvatske – SOIH (Croatian Union of Associations of Persons with Disabilities – SOIH) specialised helpline for women with disabilities who are victims of violence - SOS helpline for women with disabilities victims of violence provides counseling services, information services and psychosocial support services, but only two hours a week - every Wednesday from 16:00 to 18:00

<sup>62</sup> Brave Phone's website (<https://udruga.hrabritelefon.hr/en/>) states that Brave Phone for Children can be phoned:

- When you have a problem you want to talk about.
- When you need any support and help.
- When any person near you puts you at risk, or in any way makes you feel uncomfortable or unsafe.
- If you are afraid for your safety and/or life.



- additional advertisement and other forms of strong and specific awareness-raising and State supported campaigns are needed in order to achieve adequate recognitions of the existing telephone helpline(s)
- to ensure adequate funding for regular, systematic and curriculum-based in-service education on gender based violence for personnel (employees) and volunteers answering the National Call Center's helpline

## Article 25 – Support for victims of sexual violence

### Background

Despite earlier positive developments, such as the adoption of the Code of conduct in case of sexual violence, the response of relevant bodies and institutions is still insufficient and there are **not enough services available** for victims/survivors of SV. The specialized, highly professionalized, free of charge services are missing.

When we apply the Recommendations of the Council of Europe to its member states<sup>63</sup> and Recommendations of the Convention to the situation in Croatia, we can conclude that Croatia lacks 18 specialised services.

In Croatia, the Women's Room has been the only specialized service for victims/survivors of SV with its Centre for Victims of SV (The Centre). The Centre has its multi-disciplinary team of female experts who provide free of charge help and support to survivors and their close ones. It is established for adults and youth of age 16-18. The Centre provides the following services: counselling: legal, psychological and informing on services available in health sector; psychotherapy to assist working through traumatic experience; informing and counselling for non-offending family members and persons close to survivors of SV; support in procedure of reporting SV (accompaniment by the confidential person to police, hospital, state prosecutors' office, court, social welfare centre); preparation for the court procedure; drafting publications and various materials for psychoeducation of survivors of SV. The Centre's team also includes the chocolate Labrador Darko, a therapy dog, whose presence and calm energy reduce the stress and discomfort of persons who come for support, both during intake and in later work. The team provides services to survivors from the whole Croatia, both in person and via modern technologies. Annually, this covers more than 250 survivors who receive over 2000 different services.

There are several other women's organizations in the country that within their mandate of supporting women survivors of domestic violence, support to a certain extent also survivors of SV.

In regard to protection of mental and physical health of survivors of SV, it is noticeable that there are neither specialized departments in institutions (including health sector) nor their services are standardized. To the largest extent, the individual interest among professionals is a key whether they enter specialists' trainings on SV issue. Practice-based mirroring indicates that sexual trauma is not recognized and understood in its specifics. One of examples addresses diagnostics where one can learn that professionals express that SV is not a main issue why survivors turn to them, as they say, „because if that had been the case, survivors would have disclosed SV during first

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<sup>63</sup> Council of Europe Group of Specialists for Combating Violence against Women (1997), Final Report of Activities of the EG-S-VL including a Plan of Action for combating violence against women, Strasbourg, 1997

couple of sessions and not after a significant amount of time“ i.e. such practice raises concern of their being biased as well.

In Croatia, there are no Sexual Assault Referral Centres (SARC). It is important to know our legislative framework which is presently in place. In accordance with the Criminal Code of the Republic of Croatia, in case if victim/survivor enters medical examination after surviving SV, a medical doctor is obliged – upon gained knowledge on SV - to report the case immediately to police and this step initiates ex officio procedure. In the other words, after medical examination and collection of forensic evidence, a victim has no possibility to make a decision about reporting on their own.

At the same time, long-term practice of women's specialized services in daily service provision to survivors indicates that lack of SARC in Croatia should not be necessarily considered a problem. **Lessons learned are strongly convincing and speak in favour of establishing necessary support to specialized services responsible to provide comprehensive and long-term help and assistance** while SARC bring a range of dilemmas and raise concerns. SARC model is primarily focused on victims/survivors of SV who are immediately ready to report which is applicable to exceptionally low percentage of victims. Then, the focus is on medical examination and collection of forensic evidence and far less on protection of mental health. Very differently to this framework, the specialized services provide long-term, free of charge, anonymous help and support which includes crisis counselling (psychological, legal, medical) and psychotherapy to facilitate successful coping with traumatic experience, connecting to relevant intuitions and accompaniment to them, preparation for the court proceeding and accompaniment to the court, and similar. Therefore, speaking **from evidence-based perspective, we strongly pay your attention that a model of specialized services for working with survivors of SV is far more applicable for Croatia.** This perspective lies in the best knowledge of wider social context, authentic needs and detailed and in-depth overview on services that presently exist and do not exist. Based on experience, it is already proved in Croatia that specialized services for survivors of SV can establish strong, reliable and inter-connected support system for survivors together with selected university hospitals where professionals are used to learning/teaching environment. Therefore, by signing up memo on co-operation which includes obligation for medical doctors and nurses to attend regularly specialists' trainings, their operation with updated and current knowledge will be accomplished. Following up the model of inter-connecting different types of specialized services produces very important benefits: a) synergies of public and civic sector (instead of their polarization, rivalry, and similar) b) recognition and acknowledgment of work and results of civil society organizations, and in particular women's organizations as historically main carriers of services for survivors of violence, as stated in the Convention (Article 9).

Initiated by the Women's Room, during last few years there were significant efforts in place toward Croatian Government in the area of developing and passing public policies. The aim is to ensure a larger number of available and easy accessible services for survivors of SV. These initiatives are very concrete work in progress in the form of serial of official meetings and established task-forces such as a present one for drafting the National Plan for Combating Sexual Violence. All meetings were high profile, including contribution of the Prime Minister of Croatia. **Therefore, it**

**is important to be aware of this constructive process in the country and to keep the course of the key messages belonging to same direction when providing recommendations Croatian authorities.**

## **Challenges**

In regard to service provision for victims/survivors of SV, several key issues are identified.

Firstly, the lack of specialized services for women and child survivors of SV is common to majority of countries in EU. In Croatia, the situation is not even near to meet the Recommendation declared by the Convention. This results in the fact that victims/survivors of SV and SV against children have nowhere to turn for help and assistance. Implications are long-term and affect their life and health but also their access to justice.

Secondly, organizations that work with survivors have difficulties to reach geographical spread. Majority of services is situated in bigger towns while there are numerous counties in Croatia where there is no one organization in place to offer specialized help and assistance.

Thirdly, existing services for survivors of SV lack with standardized approach and practices. One can notice significant differences not only related to a number of staff relative to the number of cases but also to the level of their specialists' knowledge. For this reason, significant number of victims/survivors do not exercise successfully their fundamental rights guaranteed by the law (e.g. giving testimony via audio/video device, power of attorney to the state's funds debit).

Fourthly, developing services for working with child survivors of SV is an imperative. In Croatia, since 2002 there is Zagreb Child and Youth Protection Centre (known as The Polyclinic). During last two years the work of this institution was marked with numerous scandals, primarily in connection to their strong affiliation to Parental Alienation doctrine. This resulted in serious mistrust of a part of professional and general public toward services of Zagreb Child and Youth Protection Centre – all followed up by public reaction of the City of Zagreb as its founder. Mistrust is reflected dominantly through the fear that majority of reported cases of SV against children will be rejected as groundless i.e. misinterpreted by as manipulation of a parent (primarily mother) during divorce procedure. The final implication led to mistrusting the only specialized place in Croatia for working with child survivors of SV related to professionals' impartiality and their service quality as a whole.

Fifthly, it is a common need of health services to build specialized knowledge in the area of SV. In order to accomplish this goal, it is necessary for them to overcome hesitance about attending educational programs and networking initiated, organized and delivered by women's specialized services.

## Recommendations

- Establish minimal three additional specialized services for working with victims/survivors of SV, situated in four regional centres of Croatia (Zagreb, Split, Rijeka and Osijek), in order to achieve accessibility for larger number of women survivors of SV. It includes having in mind that there will be still a significant proportion of work delivered by usage of modern technologies (zoom, skype, WhatsApp, and similar). All specialized services should be connected and networking to ensure high service quality related to individual cases, exchange best practices and develop standardization of case management.
- Develop: a) standards as integral part of services' operation which refer to service quality and case management and b) standards about staff and type and level of specialization of staff.
- Ensure comprehensiveness of specialized services in four regional centres. Apart from crisis counselling (psychological, legal, medical) and informing survivors on available support in health system, these services need to offer possibility for long-term individual and group psychotherapy, support to non-offending family members and other persons who are close to survivors, preparation for court proceeding, accompaniment of survivors to relevant institutions carried out by confidential persons, making referrals to other specialized organizations that are in position to meet specific needs e.g. shelter. This full range of services guarantees systemic and continual work on improving the treatment of victims/survivors.
- Develop educational programs for professionals, so that they can learn about the quality work with victims/survivors of SV and to have this learning as a pre-condition for staff position in specialized services. The programs should be verified by competent state agency and include diverse knowledge which is by content and level corresponding to international standards.
- Continual delivery of educational programs which contribute to professional advancement of staff in specialized services for survivors of SV.

## Article 28 - Reporting by professionals

### Background

Article 28 of the Convention aims to ensure that professionals normally bound by rules of professional secrecy have the possibility to report to competent organizations or authorities if they have reasonable grounds to believe that a serious act of violence covered by the scope of this Convention has been committed and that further serious acts of such violence are to be expected.

However, as stated in Explanatory Report<sup>64</sup>, it is important to note that this provision does not impose an obligation for such professionals to report. It only grants these persons the possibility of doing so without any risk of breach of confidence.

### Challenges

Croatia faces two set of challenges regarding Article 28 of the Convention:

- Confidentiality rules

Confidentiality rules are contained in many different (and mutually inconsistent) laws regulating the work and obligations of a specific group of professionals. This fact leaves the space open for interpretation which groups of professionals are (and to what extent) obliged to keep confidentiality.

For example, the Free Legal Aid Act in Art. 7 para. 10 stipulates that the providers of free legal aid are obliged to keep confidential all information they have gained from their users. The Free Legal Aid Act does not contain any exceptions to this rule.

However, a psychologist who provides psychological assistance (maybe in the same association) would not necessarily be in the same position as the Law on Performance of Psychological Activity contains different confidentiality rules. The respective Law does not stipulate the obligation to keep (confidential) all the data gained in the performance of psychological activities, but (in Art. 22 para. 1) stipulates that the psychologist is obliged to keep confidential (only) the data regarding mental and health condition of the user of psychological services, causes, circumstances and consequences of that condition. There aren't any provision providing exceptions (circumstances in which the obligation of confidentiality could be lifted).

The Law on Medical Practice (Art 21.) states that everything that doctor learns about a patient who seeks medical help in connection with his health condition must be kept as a medical secret and may be disclosed, unless otherwise provided by special law, only with the approval of the patient, parent or guardian of minors, and in the event of his mental incapacity or death, with the

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<sup>64</sup> Council of Europe Treaty Series - No. 210 Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, Istanbul, 11.V.2011, point 147, <https://rm.coe.int/16800d383a>

approval of his immediate family, guardian or legal representative. This Law at least contains a provision opening the possibility of providing some other rules by a special law. It also contains special rules about the obligation to report (Art 23), stipulating that a doctor is obliged to file a report to the police or the state attorney's office (only) if during the medical activity he/she suspects that the death or bodily injury of a person was caused by violence. The doctor is also obliged to file such report when he/she suspects that the health or condition of a minor or helpless person is seriously endangered by neglect or abuse.

From the above mentioned examples, we can conclude that Croatia has numerous, unclear and mutually uncoordinated laws setting confidentiality rules for the different professional groups. On the other side, Croatian legislation requires (certain) professionals to report incidents of violence to law enforcement authorities, regardless of the victim's consent.

- Mandatory reporting of professionals in certain cases

### Criminal law

Criminal Procedure Act stipulates (Art. 204) that everyone shall be bound to report criminal offences subject to public prosecution about which they have learned themselves or have learned from other sources. Cases in which a failure to report a criminal offence is a criminal offence shall be prescribed by law. Criminal Code (Art. 302) stipulates a Failure to Report a Criminal Offense as criminal offence for itself<sup>65</sup> Although paragraph 5 (of Art. 302) sets an exception according to which a person (normally) required to keep a secret/confidentiality are not committing a criminal offense by not reporting a criminal offence, given the earlier evidence on the ambiguity and vagueness of rules related to keeping secrets / confidentiality, we are of the opinion that professionals are not adequately protected by this exception.

### Misdemeanor law

Law on Protection against Domestic Violence (Art. 7) stipulates that health workers, employees in social welfare institutions, persons employed in educational institutions, professional workers

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<sup>65</sup> (1) Whoever knows that a criminal offense has been committed for which a prison sentence of ten years or more is prescribed and does not report it, even though he knows that such a report would enable or significantly facilitate the detection of the offense or perpetrator, shall be punished by imprisonment for a term not exceeding three years.

(2) The punishment referred to in paragraph 1 of this Article shall be imposed on an official or responsible person who fails to report the commission of a criminal offense of which he learned while performing his duty, and it is a criminal offense for which the initiation of criminal proceedings is not left to a private lawsuit or prosecution upon a motion.

(3) The perpetrator of the criminal offense referred to in paragraph 2 of this Article shall not be punished by a punishment more severe than that prescribed for a criminal offense which he has not reported.

(4) There is no criminal offense referred to in paragraph 1 of this Article when its legal characteristics are committed by a person who is married or living in an extramarital or living community or informal community with a person who committed an unreported criminal offense or is related to that person by straight blood line, brother or sister, adoptive parent or adoptee, unless the offense was committed against a child.

(5) There shall be no criminal offense referred to in paragraphs 1 and 2 of this Article when its legal characteristics are realized by a religious confessor or a person who is obliged by law to keep a secret.

employed in religious institutions, humanitarian organizations or civil society organizations, and all other professionals who come into contact with victims of domestic violence in their work are obliged to report to the police or the state attorney's office the act of domestic violence that they found out about in the course of their work. If they fail to do so, persons who do not report to the police or the State Attorney's Office the commission of domestic violence of which they learned in the course of their work, shall be fined at least HRK 3,000.00 to 10,000.00 (Art 23) The Act contains no exceptions to those rules.

The only document recognizing the importance of victim's consent is the Procedure Protocol In Cases Of Domestic Violence<sup>66</sup>. When proscribing the role of civil society organizations (but only of civil society organizations, not the professionals in other organizations/institutions), the Protocol states that they should „report to the police or the state attorney's office the commission of domestic violence for which they are learned in the performance of their duties with the consent of the victim, except in the case of violence against children or violence witnessed by children “. However, it doesn't change the fact that:

- a) the Protocol is not aligned with the Law on Protection against Domestic Violence (Art. 7., Art. 23.) nor Criminal Code
- b) In hierarchy of legal acts, the Protocol is inferior to laws.

Therefore, we can conclude that Croatia's numerous, unclear and mutually uncoordinated laws setting confidentiality rules for the different professional groups together with the requirement to report incidents of violence regardless of the victim's consent raise issues around the provision of victim-centered and gender-sensitive support services that respect victims' autonomy. Situations of mandatory reporting of instances of violence against women imposed by the law are affecting victims' help seeking behavior and also jeopardize Art. 18. Para. 4. of the Convention.

#### Failures to file a report made by CSWs

In our everyday work with women, we are often informed about CSWs not reporting the violence (to the police nor State Attorney), although women reported the violence to and expected the violence to be reported to the police/ State Attorney. This happens regardless of the fact that the Procedure Protocol In Cases Of Domestic Violence clearly states that CSWs are, in case of suspicion or knowledge of domestic violence, obliged to urgently and without delay make a report to the police and submit all information about the case.<sup>67</sup>

Competent Ministry (Ministry of Labour, Pension System, Family and Social Policy) is (at least partially) aware of that problem, as evident from its instructional letter (class: 555-03/21-01/14, no. 524-8-03-01/1-21-2, dated 1st of April 2021)<sup>68</sup> sent to all CSWs in which the Ministry states

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<sup>66</sup> Procedure Protocol In Cases Of Domestic Violence, available at: [https://mup.gov.hr/UserDocImages/dokumenti/Protokol\\_o\\_postupanju\\_u\\_slucaju\\_nasilja\\_u\\_obitelji-usvojila\\_Vlada\\_19\\_6\\_2019.pdf](https://mup.gov.hr/UserDocImages/dokumenti/Protokol_o_postupanju_u_slucaju_nasilja_u_obitelji-usvojila_Vlada_19_6_2019.pdf)

<sup>67</sup> *Ibid*, page 11.

<sup>68</sup> The instructional letter (unofficially translated into English) is available in Appendix 1.



that it has been noticed that here are still, in isolated cases, failures to pass on reports of domestic violence to the competent authorities, due to the belief that the authorities already have information about violence. The Ministry notes that it is necessary to report every case of violence to the police urgently and without delay, regardless of the fact that police may already be informed.

The Letter also recognizes the problems in the identification of victims of violence and of the links between intimate partner violence and violence against children.

Although there is a legal basis for punishing such omissions, they almost without exception stay completely unpunished (and even officially unnoticed).

## Recommendations

- It is necessary to set clear and unified confidentiality rules for all groups of professionals whose functions involve contact with women and children who may be victims of any of the forms of violence covered by the scope of this Convention. Those rules should ensure that professionals normally bound by rules of professional secrecy have the possibility to report to competent organizations or authorities if they have reasonable grounds to believe that an act of violence covered by the scope of this Convention has been committed/further serious acts of such violence are to be expected, without the risk of breaching confidence/professional secrecy rules.
- On the other hand, legislation regarding requirement to report violence should be amended in a way that requirement to report incidents of violence **is linked to the victim's consent** (with clear exception of some specific cases, such as where the victim is a minor or is unable to protect her or himself due to physical or mental disabilities).
- Due to CSW professionals often not reporting the violence that they have been informed it is necessary:
  - to improve training of professionals in the identification of victims of violence and of the links between intimate partner violence and violence against children, as well as
  - improve the efficient rules for tracking and processing breaches of professional duties.

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Dnevno.hr, Centri socijalne skrbi primili novu uputu: 'Subjektivne procjene su nedopustive, žrtvu se ne smije savjetovati da joj nije potreban odvjetnik, 7.4.2021., available at: <https://www.dnevno.hr/vijesti/hrvatska/centri-socijalne-skrbi-primili-novu-uputu-subjektivne-procjene-su-nedopustive-zrtvu-se-ne-smije-savjetovati-da-joj-nije-potreban-odvjetnik-1714429/>

## Article 31 – Custody, visitation and safety

### Background

Croatian Family Act strongly encourages a shared parenting approach, which in practice often collides with accusations of parental alienation leading to serious breaches of the protection of women and children victims of violence. Institutions tend to give priority to the presumed best interest of the child, which is deemed to be to maintain contact with both parents at all costs, regardless of the violence children have witnessed. It is clear from that practice that the balance of family protection legislation and of the protection of women and children victims of violence has not been achieved, that there are problems of interpretation and application of child best interest principles in custody decisions in cases of domestic violence and that the application of parental alienation belief system is widespread among key institutions, especially since 2016.

Under the Family Act, in the situation of a divorce or termination of extra-matrimonial partnership, custody and parental responsibility issues may be resolved in the process of mandatory counseling (by drawing up a Shared Parental Care Plan) or (if parents don't agree on a Shared Parental Care Plan) by a court ruling. The Shared Parental Care Plan is a written agreement between the parents setting out ways to provide shared parental care where the child's parents do not live as a family on a permanent basis. The Family Act does not prescribe any special procedure of mandatory counseling for families in which some type of violence is present – instead, it “adjusts” the basic procedure: in which way and to what extent, it largely depends upon the assessment of the 's team of experts (a lawyer and a social worker or a psychologist). Mandatory counseling is usually conducted at joint meetings (where both parents are present). However, if concludes that, considering the circumstances of the particular case, a joint meeting would not be expedient or if one or both parties so request for justified reasons, separate interviews with the parties shall be scheduled and conducted. (Art. 323. Para. 3).

Under the Family Act, if professionals who provide mandatory counseling suspect domestic violence, they shall *ex officio* determine an appropriate measure for child protection within the competence of the CSW, or propose to the court to adopt another measure for child protection within the court's jurisdiction (Art. 328 Family Act). In practice, this provision a) either doesn't get applied at all or b) if/when it gets applied, the measures are usually applied toward both parents (the victim and the perpetrator).

If the parents fail to agree on the Shared Parental Care Plan or if it is rejected by the court, one of the spouses/partners may bring an action in front of the court, in order to resolve parental care issues (with whom the child will reside, the ways of providing parental care, the child's contact with the other parent, or the child's maintenance). If the parents fail to agree on the Shared Parental Care Plan, a CSWs will inform them that they have to retry to reach an agreement in the family mediation process. The family mediation is in principle mandatory and a proof of participation in the first meeting has to be submitted to the court. There are some exceptions (Art. 332), but they are not enough to ensure that a victim of violence won't be forced and/or pressured

to take part in the mediation. More about problems related to family mediation is written in the section regarding Article 48 of the Convention.

In 2021 within the framework of the small grant that promotes investigative journalism, journalist Jelena Jindra wrote a series of articles about misuse of parental alienation in cases of domestic violence, entitled “System for the Protection or Abuse of Children?”<sup>69</sup>. Jindra spoke to more than 40 mothers who are/were victims of domestic abuse who were accused of parental alienation and are losing or are in the process of losing custody rights. Article heavily criticizes CSWs and other institutions which imported the concept and use of parental alienation in the custody of children in so-called high-conflict divorce cases. The stories of women and the case of children who are sexually abused but the allegation was dismissed are troubling.

The first public institution to introduce the term “parental alienation” into the child protection and family law system was the Polyclinic for the Protection of Children and Young People of the City of Zagreb (hereinafter the Polyclinic). Since its founding in 2002, it has been the only public health institution in Croatia specialized in providing assistance to abused and neglected children. Most children come to the Polyclinic on the instructions of the social welfare centers due to exposure to their parents' „high conflict divorce“. Since 2015. and networking with international practitioners of parental alienation, the emotional abuse of alienated children in „high-conflict divorce“ became one of dominant topics of Polyclinic’s interest and area of work. The Polyclinic and the European association of parental alienation practitioners - EAPAP organised an international conference<sup>70</sup> which they concluded with petition for supporting controversial „28 Truths of the Profession in Protecting Children from Emotional abuse in Parental Divorce: Establishing Good Practice in Croatia“- signed by majority of professionals in welfare centers and by Chamber of psychologist, by Chamber of social workers and Associations of psychologist and Association of social workers, (main professional bodies in Croatia)<sup>71</sup>. Furthermore, a professor from the Department of Social Work at the University of Law Zagreb, presented a project on „Early detection of possible parental alienation in Social Welfare Centres“, currently implemented in partnership with UNICEF Croatia and the Croatian Government- Ministry of labor, pension, family and social policies. They developed several assessment lists to assess parental alienation that are already in place in

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<sup>69</sup> Published In the non-profit media H-Alter, run by NGO Association for Independent Media Culture, available only in Croatian language, available at: <https://h-alter.org/hrvatska/sustav-za-zastitu-ili-za-zlostavljanje-djece-10/> On September 21, 2021. the Zagreb Municipal Civil Court, issued an injunction to nonprofit media H-alter, barring it from „further reporting“ on a local childcare Polyclinic and its director. The injunction was issued in response to a complaint filed by director on behalf of the Polyclinic for Child and Youth Protection of the City of Zagreb, alleging that H-alter’s critical reporting on the institution and herself had damaged their reputations. The injunction was in effect for 30 days, during which the Polyclinic or director could claim damages or initiate a criminal proceeding for insult or defamation. What was considered as precedent is that injunction was issued under the Enforcement act, which normally regulates the payments of debts and taxes, and is not typically used in media cases.

<sup>70</sup>See more at: <https://www.poliklinika-djeca.hr/english/featured/news/conclusions-of-the-3rd-eapap-european-conference-about-alienation-participants-assessed-that-this-conference-is-the-beginning-of-a-reform-in-harmonizing-the-best-practices-for-dealing-with-alienation/>

<sup>71</sup> Poliklinika za zaštitu djece i mladih grada Zagreba, 28 Truths of the Profession in Protecting Children from Emotional abuse in Parental Divorce: Establishing Good Practice in Croatia, available at: <https://www.poliklinika-djeca.hr/english/featured/news/28-truths-of-the-profession-in-protecting-children-from-emotional-abuse-in-parental-divorce-establishing-good-practice-in-croatia/>

CSWs. Also, the Head of association of judges and mental health experts in family law was participating in the Conference, and is regularly involved in training by Karen and Nick Woodall to enhance the capacity of judges and lawyers in recognizing manipulation and parental alienation<sup>72</sup>. Parental alienation and related concepts represents, especially when introduced deeply into “the system” by highly influential and respected experts, represent extremely high risk - to be used in a manner allowing for violence against women and their children to remain undetected and/or contested since they ignore the gender-based nature of domestic violence and essential aspects of child welfare.

Witnessing the misuse of the concept of parental alienation, and after the articles of the journalist Jindra, Croatian NGOs wrote and signed a reaction that was sent to the ministries, professional chambers of psychologists and social workers and to ombudperson for children's rights and for gender equality. The reaction is an integral part of this report and it can be found in Appendix 2. In the written reaction we summed up experiences that women face regarding parental care after DV and raised concerns about the concept of parental alienation. Only the Ombudsperson for Gender Equality reacted to our letter by inviting us to a topic related meeting and planning future cooperation and activities.<sup>73</sup>

## Challenges

### Shortcomings in the legal framework and/or implementation

As mentioned above, the Family Act as a whole unreasonably insists on a shared parenting approach. The pre-divorce (or pre-custody arrangement) process is not adequately adjusted for DV/GBV cases. The Family Act does foresee some adjustments to mandatory counseling proceedings when it comes to presence of violence, but: a) violence often isn't recognised adequately, b) those adjustments<sup>74</sup> are not enough and are interpreted in a way that a lot of violence victims end up “negotiating” with the perpetrator about Shared Parental Care. They may

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<sup>72</sup>See more at: <https://childhub.org/en/child-protection-news/training-lawyers-parental-alienation-and-manipulation-family-court-system?language=ro>

<sup>73</sup> More information about the meeting available at: <https://www.prs.hr/cms/post/528>

<sup>74</sup> The content of mandatory counseling is proscribed by Art 325.:

**1. Introducing spouses to the possibility of marital counseling**

2. informing spouses about the legal and psychosocial consequences of divorce in relation to them and their children

3. instructing spouses that they are obliged to take care of the child's well-being when arranging disputed family relations

**4. acquainting spouses with the content of the Shared Parental Care Plan and providing assistance if required**

**5. getting acquainted with the benefits of family mediation and informing spouses about available family mediators**

**6. informing spouses who intend to divorce about the obligation to respond to the first meeting of family mediation if they have not reached an agreement, ie a Shared Parental Care Plan and**

7. acquaintance of spouses with the procedure for divorce initiated by a lawsuit of one of the spouses in accordance with Article 327 of this Act.

**In the cases when the rights and welfare of the child are endangered or when domestic violence is suspected to be present, points 1, 4, 5 and 6 (bolded) should not be applied to the content of compulsory counseling.**

not be directly forced to do so, but are usually “strongly encouraged” by the CSW (by statement about a child's right to have both parents, by bringing up the duty of the parent to encourage the child to have a relation with another parent (Art. 95. Of the Family Act) ect.)

There is also a very serious problem present when it comes to a period between the moment of parents getting separated (stop living together) and the moment of issuing some court decision ruling on custody/visitation rights. What usually happens in that period is that, due to lack of any court decision stating otherwise, both parents have their parental rights completely intact. This means that the perpetrator has the right to maintain contact with his children. As mentioned under sections regarding Articles 52 and 53., the complete judiciary system usually fails to recognise the child as a victim. Consequently, even if/when they decide to issue some kind of a protective measure towards the mother (within the criminal or misdemeanor proceeding), it applies only to her. This means not only that the child is left unprotected, but also that the mother has to encourage her child to see the father, often even to bring the child to the father herself. If we go back to the Family Act, there is a possibility to solve this problem by a temporary measure (Art 526 - 543 of the Family Act): if it is not possible to reach an agreement in matters concerning the personal rights of the child, which relate to the question of which parent or other person the child will live with and the establishment of personal relations with the child, the court may regulate those issues by a temporary measure (which can be issued *ex officio* or at the request of the child or a parent). However, temporary measures get issued *ex officio* extremely rarely (we don't know how rare exactly, because there is no data available), and even when requested by a child or a parent, they are almost never issued within the 30-day period prescribed by the Family Act. Courts often simply ignore the fact that someone proposed a temporary measure and a victim and her children stay unprotected for months or even years.

An example of situations mentioned above, from our practice - a woman fled her abuser with a small baby, only one month old. She was scared of him and wasn't prepared to let him see the baby on his own for first couple of weeks after she ran away. After she settled and felt more secure, she agreed to the father having unsupervised visitations with the baby. But, the father has already told the CSW she didn't allow him to see the baby, they stated that in their reports and even after more than a year of regular father-child visitations, she is labeled as an alienating mother and is viewed as uncooperative by the. The father's lawyer wrote about “parental alienation” in his court appeal.

Civil courts deciding on divorce/custody have a possibility to issue (on request of a parent, child or of CSW) some other measures that could be useful for the protection of victims and their children, but they are quite rarely proposed by the CSW who should take much more pro-active approach: for example, there is a measure of a prohibition of approaching the child (Article 154 of the Family Act) and maintaining personal relations with the child under supervision (Article 124 of the Family Act).

Consequently to the above said, after the divorce violent fathers also often keep full custody rights because custody of both parents (shared custody) is rule and the courts deciding on parental care often “don't want to hear” about the DV/GBV in the family preceding the divorce, saying that it is

of no importance for the current parental care decision. Sometimes, the judges don't have the much needed information from the Criminal and Misdemeanor rulings about DV in the family.

Even in DV cases, the "manipulation of the child in high-conflict divorce" is a dominant discourse in welfare policy, in mainstream media and in the training of professionals working in the family and child protection system. We have many cases of recent DV (sometimes even when victims are still in a women's shelter) where visitation rights are granted to violent fathers, furthermore, we have cases where there are barring orders (against the father) but they apply only to the mother and/or some children, but no to (other) children in the family. Mothers are usually expected to organize, support and encourage father-children visitations. If mothers are not compliant, they are risking being labeled "uncooperative" by CSW which can have negative consequences in the future parental care procedures. Women who raise issues of domestic violence as a reason for not attending meetings in the presence of the perpetrators or not agreeing to custody or visitation, are labeled as an uncooperative parent and thus, paradoxically, "unfit for parenting".

Regarding the civil courts making relevant decision we believe it is also important to pay attention to the following facts:

- a) Judges do not screen cases related to the determination of custody and visitation rights for domestic violence, they do not conduct risk assessments or ask for the disclosure of the risk assessment and safety plans drawn up by law-enforcement agencies and/or other competent stakeholders, with a view to taking them into account and determining the best interest of the child.
- b) The judges too often blindly rely on what CSWs serve them. The court-appointed expert witnesses (when appointed) are often not qualified and are without specialist (or any) knowledge about GBV. Croatia also faces a general problem of insufficient consultation (by courts, when taking decisions on custody and visitation) of all relevant professionals, when considering violence. There is lack of consultation of civil courts with criminal/misdemeanor courts, including on whether criminal proceedings are pending against the father of the victim's children or have been brought in the past. The lack of consulting and co-ordinating with other relevant bodies and/or professionals, including, but not limited to, law-enforcement agencies, health and education authorities, and specialist women's support services is also present.
- c) Croatia doesn't have specialized family courts - in 2021, the Ministry of Justice and Public Administration announced that 21 family courts will be established<sup>75</sup>, as well as they are considering licensing of the family judges. However, we don't have any information regarding the advancement of this process and we are really concerned about it, mainly because of the negative experiences from other countries and our experience with poor reform planning and implementation in our judicial system in Croatia.

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<sup>75</sup>Jutarnji list, Osniva se 21 obiteljski sud: O razvodima, djeci i skrbništvima odlučivat će specijalizirani suci, 6 March 2021, available at: <https://www.jutarnji.hr/vijesti/hrvatska/osniva-se-21-obiteljski-sud-o-razvodima-djeci-i-skrbnistvima-odlucivat-ce-specijalizirani-suci-15055625>

Women's organizations report of rising occurrence of post-separation violence towards women and mothers where perpetrators use coercive control, withholding of financial support, alienating allegations, harassment, legal abuse (misuse of litigation and court proceedings, making false reports, making legal threats, manipulation with visitation rights, ... ) and this often leads to secondary victimization via under-educated institutions.

### Some specific issues

- Measures for the protection of the personal rights and welfare of the child

When detecting a problem within family (including domestic violence) most common response by CSWs is issuing one of the measures from their competence,<sup>76</sup> especially measures of professional assistance and support in the realization of child care or a measure of intensive professional assistance and supervision over the realization of child care.

When it comes to their implementation, problems are as follows:

- a) They are issued (in a same manner) towards both parents - victim and the abuser
- b) They are most often implemented by completely uneducated and incompetent individuals (here, we will call them supervisors).

Under the Ordinance on measures for the protection of personal rights and welfare of the child, a person may be appointed supervisor if he or she is:

- expert worker of the social welfare center (unless he/she participated in the work on the case)
- professional worker of another social welfare institution or
- another person who meets the following conditions: he/she is a social worker, psychologist, social pedagogue, educational rehabilitator or (exceptionally) an expert of another academic title (helping professions) whose competencies correspond to specific family needs and knowledge of working with children and families at risk. It is not prescribed how the precondition of "knowledge of working with children and families at risk" shall be established. In the Ordinance, there is not one word about DV, GBV and special needs of the families facing DV and GBV.

In practice, supervisors are most commonly appointed from the last category (another person) without even the precondition of the academic title of a helping profession being met (women informed us of being appointed with a supervisor who is a geography professor, a theologian, a nurse...). They usually don't have any special education regarding the work with children and families at risk or GBV. The lack of available supervisors is present, which is not a surprise if we take into consideration that they are severely underpaid, unprepared, unprotected and uneducated. As a consequence, they are rarely helpful. Far more often their work is counterproductive and their lack of knowledge and skills often causes severe secondary

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<sup>76</sup> Article 134. of the Family Act:

In order to protect the personal rights and welfare of the child, the Center for Social Welfare may determine:

1. urgent measure of separation and placement of the child outside the family
2. warning of mistakes and omissions in the care of the child
3. measure of professional assistance and support in the realization of child care i
4. a measure of intensive professional assistance and supervision over the realization of child care.

traumatization of victims. Women informed us about supervisors constantly encouraging them “to save the family”, to “forgive the perpetrator because he had a bad childhood”, “not to take the father away from the child”. There were also more extreme examples, such as a case of a supervisor who told a 5-year old child that she will go to prison if she is lying about being afraid of her father or telling a victim of DV “that it is better they don’t involve the police” after she told her about the new occurrence of the abuse.

- Supervised visitation/personal relations with a child

As already mentioned, this measure is not proposed/issued often enough. Even when the measure is issued, there are some problems regarding its implementation. For example, Croatia also lacks the necessary resources/infrastructure to ensure safe supervised visitation. Alongside with the problem of lack of proper education/sensibilisation of the supervising personnel, meeting spaces are often not equipped to deal with cases involving violence, without protection and appropriate measures, thereby presenting high risk to victims and children. Therefore, victims may feel that the only way to protect their children from violence is to refuse to comply with decisions on visitation rights, for which they would most certainly get punished.

- Permanent and temporary residence problems

Under the Family Act, only both parents (consensually) can change the child's place of permanent or temporary. Exceptionally, the consent of the other parent is not required if the relocation does not significantly affect the existing personal relationship with the other parent and or the change of residence is necessary to protect the rights and interests of the child, provided that the parent with whom the child lives got the permission from the CSW (which CSW most often refuse to provide). If the parent cannot obtain the written consent of the other parent (or the CSW), the only remaining option is to initiate (too long) court proceedings. In DV cases, this problem can bring quite severe consequences - children can't be enrolled in school, there is an issue of which CSW and court will be competent (where the proceeding will be conducted) etc.

The lack of legal provisions ensuring the secrecy of the victim's (and children's) address is even a bigger issue: neither Family Act, nor criminal/misdemeanor or any other legislation protects the secrecy of their whereabouts. There is the unwritten (or at least as far as we know it's unwritten) rule that the father won't be informed on women's and children's whereabouts while there are in a safe house/shelter<sup>77</sup>, but the minute they get out, the father (within his parenting rights, which are usually not in any way suspended) has the right to know where his children are.

- Custodian for special cases in Croatian legal system

Custodian for special cases was introduced in the Croatian legal system in 2015, as an answer on demands set by the UN Convention on the Rights of the Child. It is an institute represented

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<sup>77</sup> Although, there have been cases where judges insisted that the victim states the address of the temporary residence, although the perpetrator is present, as well as cases when due to the perpetrator's right to access the court file he found out the address.



by law specialists who should provide the protection of the minor's legal rights in proceedings which emerge with possibility of collision between child's and legal guardians interests (for example, in cases of parental neglect, custody, alimentation issues or probate proceedings).<sup>78</sup> The Croatian Family Act governs precise special qualities for the role: obtained master's degree in law, bar exam and employment at the Centre for Special Custody, as an government body of Ministry of Labour, Pension System, Family and Social Policy. Custodian represents a child/adult in legal proceedings in which she/he was appointed<sup>79</sup>, informs them in an appropriate manner (especially concerning the child's age or persons mental condition) about the beginning, conduction and the result of the proceedings. If needed, she/he contacts with parents/legal guardians of the child/adult with disabilities, in order to enlighten any possible doubts regarding legal matters. As for the territorial organization of the Centre for Special Custody, there is a central unit based in Zagreb, and three other dislocated units in Rijeka, Split and Osijek. There are circa 25 custodians which cover the whole state territory and collaborate in everyday bases with more than 30 municipal courts which conduct above mentioned proceedings, including 120 social welfare centres as institutions of close collaboration.

There are provisions of approximately 1200 cases per one custodian annually, which obviously demonstrates a disproportion of needs for adequate legal representation and available resources. Given the size of territory, long distance between courts and shortcoming of the financial resources and equipment (official vehicles), custodians are often prevented from participating in court hearings which results in postponement or extension of legal proceedings. Consequently, this might disable a child/adult to take active part in proceedings.

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<sup>78</sup> It is also applicable as an institute of protection of adults with mental disabilities in cases of deprivation of legal capacity.

<sup>79</sup> In accordance with Article 240 of The Family Act, based on the principle of territoriality, social welfare centre or municipal court appoint custodian for special cases to a child: in marital and maternity/paternity dispute, in cases of guardianship protection and parental care, in cases of lack of consent for adoption, in cases of collision in interests between child and legal guardian in property and probate proceedings, in cases of a child with citizenship of another state/without citizenship who finds itself on Croatian territory without accompaniment of legal guardian.

## Recommendations

- to take legislative and other measures necessary to:
  - ensure a special procedure in deciding on parental rights in cases of DV, which procedure will ensure:
    - the protection of the victim and her children (including the imminent temporary suspension of parental rights for suspected perpetrator and/or imminent issuance of necessary temporary measures and/or adequately supervised parental rights, as well as the guarantee of secrecy of victim and her children's whereabouts)
    - exclusion of mandatory counseling, shared parental care, mandatory mediation
    - recognising the witnessing to violence as violence of a perpetrator against the children
    - the explicit reference to domestic violence as a legal criterion to be introduced into the Family Act and taken into account when deciding on custody and/or and visitation rights
    - that courts take into account any and every episodes of violence, including by consulting with all relevant professionals and/or or to conduct its own investigations
  - form specialized family courts, with specialized and licensed family judges who applied for the family courts themselves (not appointed by a yearly rotation system)
  - ensure screening of cases and court applications for violence, develop screening protocols
  - ensure that all appointed experts (expert witnesses, supervisors, members of expert teams...) have extensive education and specialization in GBV and DV. It is necessary to ensure that only those professionals, particularly psychologists and child psychiatrists, who are attuned to the issue of violence against women and the requirements of the Istanbul Convention, can be appointed by courts to provide advice on issues of custody and visitation in situations of violence against women
  - ensure the increase of material resources for the Centre for Special Custody, so the institute of the custodian for special cases could have the chance to achieve its purpose
- ban the use by court-appointed experts, social workers and courts of concepts related to "parental alienation", as well as any other approach or principle, such as the "friendly parent provision", "high –conflict/family conflict", "situational violence", which tend to consider mothers who invoke the violence as "uncooperative" and "unfit" as a parent, and to blame them for the poor relationship between a violent parent and his children. Those concepts are also dangerous as they may distract social workers, court and expert witness to assess properly risks for GBV, especially risk to women and children abused by men and minimize danger of violence and need for safety procedures/protective measures.

- All policy instruments developed for CSW/social workers practice under the Memorandum of understanding between UNICEF Croatia and the Ministry of labor need to be re-assessed against obligations under Istanbul Convention to identify collisions and especially likelihood of decision making that cause potential harm to women and children victims of GBV as direct consequence of applying these policy instruments, especially “List for the Assessment of Danger to Psychosocial Welfare of Children in High Conflict Parental Separation and divorce”
- Provide robust gender disaggregated data and analytics on “high-conflict separation/divorce cases” and “manipulative parents cases” to see how many of them are potentially misinterpreted cases of GBV against women and children abused by men.
- Adopt shared understanding and operative definition across legislation of “coercive control” as psychological abuse in which “manipulation and control” is at the heart of majority of DV/GBV cases and raise awareness of coercive control across public institutions to be interpreted consistently with international research

## Article 36 – Sexual violence, including rape

### Background

The legal definition of rape has undergone significant changes in the Act on Amendments to the Criminal Code, which entered into force on January 1, 2020. These amendments removed the criminal offense from the Article 152 related to Sexual Intercourse Without Consent, which included any non-consensual sexual intercourse or equivalent act of sexual nature when no force or threat to the life and body of the victim of rape or other person was used. These changes are also included in the essence of the criminal offense of rape, which now states: Rape, Article 153: (1) Whoever engages in sexual intercourse or an equivalent sexual act with another person without this person's consent, or whoever induces another person to engage without this person's consent in sexual intercourse or an equivalent sexual act with a third party or to perform without their consent a sexual act equated to sexual intercourse upon himself or herself, shall be punished by imprisonment for one to five years. (2) Whoever commits the offence referred to in paragraph 1 of this Article by the use of force or by threat of an imminent attack on the life or limb of the raped or other person, shall be punished by imprisonment for three to ten years. A distinction is still made between whether force or threat has been used, which represents a condition for prescribing a lower or higher prison sentence. These changes raised the prescribed minimum prison sentence to one year in paragraph 1 (previously six months) and to three years in paragraph 2 (previously one year). If a rape results in a more serious consequence or is committed under more serious circumstances (e.g., by a close person, pregnancy of a victim of rape, multiple perpetrators, death of a victim of rape), then it is considered to be a Serious Criminal Offense Against Sexual Freedom prescribed in the Article 154 of the Criminal Code, which carries longer prison sentences. The legislator makes the difference between sexual intercourse and sexual act equated to sexual intercourse, either by the perpetrator committing such an act against the victim or by the perpetrator inducing the victim to commit such acts with a third person or upon herself/himself. Judicial practice indicates that rape is qualified as penetrating parts of the perpetrator's body or objects into the victim's body (anal, vaginal, oral), forcing the victim to commit acts involving self-penetration and/or forcing the victim to penetrate the perpetrator's body openings.<sup>80</sup>

Consent referred to in paragraph 1 of Article 153 (Rape) of Criminal Code shall exist if the person decided of their own free will to engage in sexual intercourse or an equivalent sexual act and was capable of making and expressing such a decision. It shall be deemed that no such consent exists in particular if the sexual intercourse or the equivalent sexual act was performed by the use of threat, by fraud, by abusing one's position towards a person who is in a situation of dependence with respect to the perpetrator, by exploiting a person's condition due to which the person was unable to express his or her refusal or if it was performed against a person unlawfully deprived of liberty. A perpetrator who is avoidably mistaken as to the existence of consent shall be punished

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<sup>80</sup> Vuletić, Igor, Šprem, Petra, Materijalnopravni aspekti kaznenog djela silovanja u hrvatskoj sudskoj praksi Polic. sigur. (Zagreb), godina 28. broj 2, str. 130 – 155.

by imprisonment not exceeding three years - meaning that according to objective circumstances and his personal characteristics he must and could have known that there was no consent.

If the act was committed by a close person, it is considered a Serious Criminal Offense Against Sexual Freedom under Article 154 of the Criminal Code. Close persons include family members, ex-spouse or common-law partner, ex-life partner or informal life partner, current or ex-intimate partner, people who have a child together and persons living in a joint household. Family members include spouse or common-law partner, life partner or informal life partner, their common children and children of one of them, blood relative in the direct lineage, relative in the collateral line up to the third degree, in-law relatives up to the second degree, adoptive parent and an adoptee. The current or former partner in an intimate relationship are included in the Act on Amendments to the Criminal Code since 2021.

## Challenges

Despite a number of positive legislative changes in recent years with regard to the criminal offense of rape, many problems remain with regard to the reporting and prosecution of these cases. There is a widespread lack of knowledge and misunderstanding regarding the dynamics of these criminal offenses, the impact of trauma on victims, the reasons why these offenses are often reported with delay, and the victim's co-responsibility in committing these offenses is still questioned and sought. This is often evident from the determination of mitigating circumstances for the perpetrator, which reduces the perpetrator's guilt and the severity of sentence imposed (e.g. the victim's behavior is stereotypically interpreted as the victim's contribution to the crime, the defendant's marital status and parenthood are often taken as a mitigating circumstance, the fact of participating in the Homeland War is taken as a mitigating circumstance for the perpetrator (e.g. VSRH, I KŽ 626/ 4-5, ... mitigating circumstances in the form of the defendant's parenthood, the need to support five minor children, his participation in the Homeland War, as well as reduced accountability...). Challenges also exist in the length of court proceedings and the severity of sentences imposed on perpetrators. Given all the complexity of criminal proceedings, proceedings sometimes still take a very long time and that length of the proceedings themselves has a negative effect on victims and causes retraumatization and victimization of victims. According to the research of the Ombudsperson for Gender Equality, on average, 41 months pass from the first wrongdoing and the date of the final verdict, but in some cases of rape a time lag of several years has been observed. However, in some cases of rape a time lag of several years was observed, so cases with a lapse of 170 months, 168 months, 167 months are cited.<sup>81</sup> The same analysis of the Ombudsperson indicates that sentences are imposed mostly within the first third of the proscribed sentence, and what is particularly worrying is that perpetrators of such serious crimes are given suspended and partly suspended sentences as well as community service (17.4% of all imposed sanctions covered by the analysis).<sup>82</sup> This is shown by some other

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<sup>81</sup> Rittossa, Dalida, Juranović, Sandra, *Stručna analiza pravomoćnih kaznenih presuda o nasilju prema ženama 2012.-2016.* Zagreb, Ured Pravobraniteljice za ravnopravnost spolova, 2020.

<sup>82</sup> *Ibid.*

analysis, e.g., according to Garačić, courts in 79.45% of cases impose sentences on rape perpetrators that fall within the first third of the prescribed framework.<sup>83</sup>

## **Recommendations**

- Conduct specialized education for representatives of the judiciary on sexual violence and the impact of trauma on victims.
- Equalize prescribed punishment for cases of rape where there is no use of force or threat with cases where there is.
- Expedite court proceedings in cases of criminal offenses against sexual freedom.
- Impose more appropriate punishments for perpetrators of rape and serious criminal offenses against sexual freedom.
- Discontinue imposing a suspended sentence and community service for the criminal offense of rape.

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<sup>83</sup> Garačić, Ana, Zakonska i sudska politika kažnjavanja županijskih sudova u Republici Hrvatskoj za kaznena djela silovanja i zlouporabe droga, Hrvatski ljetopis za kazneno pravo i praksu, 11(2), 2004, str. 475-516.

## Article 40 – Sexual harassment

Parties shall take the necessary legislative or other measures to ensure that any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment, is subject to criminal or other legal sanction.

### Background

Protection against sexual harassment is prescribed in civil, misdemeanor and criminal law, namely through:

- Gender Equality Act and the Anti-Discrimination Act, which define sexual harassment as discrimination, provide for the possibility of private lawsuit and define misdemeanor sanctions;
- Labour Act which regulates the procedure for protection of dignity from sexual harassment in the workplace and the possibility of private lawsuit;
- Law on Protection against Domestic Violence, which defines sexual harassment as one of the forms of domestic violence and sanctions it as a misdemeanor;
- Criminal Code, which defines sexual harassment as a criminal offense
- Code of Conduct in Case of Sexual Violence

In recent years in Croatia, the focus of the general and professional public has been on the issue of sexual harassment thanks to numerous civic initiatives (initiative #spasime, #pravdazadjevojke, # nisamtražila and #nisisama). These initiatives were either launched following the global #metoo movement or arose in response to a number of cases in which adequate protection of victims within the system was absent. Numerous cases of sexual harassment have been made public, with an emphasis on numerous faculties and other work environments (e.g., the Academy of Dramatic Arts). All of the above pointed to dissatisfactory legislative solutions in relation to sexual harassment, inadequate protection of victims, chronic misunderstanding of the issue and insufficient protocols and procedures within the labour law system and other areas.

One of the key results of mentioned initiatives and long-term advocacy for the improvement of legislation on sexual harassment are the amendments to the Criminal Code in relation to the Article 156 Sexual Harassment<sup>84</sup>. The Act on Amendments to the Criminal Code from 2019, as a consequence of the tightening of the legal criminal policy of punishment, raised the prescribed

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<sup>84</sup> The current Criminal Code defines sexual harassment in Article 156:1) Whoever sexually harasses another person who is his/her subordinate or who is in a situation of dependence with respect to him/her or who is especially vulnerable due to her/his age, illness, disability, addiction, pregnancy, a severe physical or mental disability shall be sentenced to imprisonment for a term of up to two years. 2) Sexual harassment shall mean any form of unwanted verbal, non-verbal or physical conduct of a sexual nature which aims at or effectively constitutes a violation of the dignity of a person, which creates an intimidating, hostile, degrading or offensive environment.

maximum sentence from one to two years. Also, significant changes in relation to redefining the procedural presumption of prosecution of the criminal offense of sexual harassment occurred with the adoption of the Act on Amendments to the Criminal Code from 2021. Until then, sexual harassment was prosecuted on request, unless it was committed against a person particularly vulnerable due to age, in which case it was prosecuted *ex officio*. In accordance with the legal provisions, a request for prosecution had to be submitted within three months from the day when the authorized natural or legal person found out about the crime and the perpetrator. There are many examples where the three-month time limit and the necessity to submit a request prevented victims from initiating proceedings against perpetrators of sexual harassment.<sup>85</sup> In 2021, after continuous warnings that the three-month time limit in question is too short for victims to initiate proceedings, the procedural presumption of prosecuting the crime of sexual harassment was redefined and is now being prosecuted *ex officio* (meaning that the three-month time limit is no longer mandatory to initiate proceedings for submitting a motion for prosecution). It should be noted that the key role in these changes was played by civil society organizations that, through many years of advocacy, emphasized this challenge (a member of the Women's Room was a member of the Working Group for Amendments to the Criminal Code at the Ministry of Justice). All these civic initiatives, discussions in public space and changes in legislation have led to an increase in the number of female students who turned for help and support to the Center for Victims of Sexual Violence at the Women's Room. Also, the faculties themselves asked for help in drafting rules of conduct in cases of sexual harassment at faculties, acquainting faculties with the necessary procedures and protocols they must have and with the requirements for training students, faculty staff on sexual violence, sexual harassment, assistance and support mechanisms and reporting possibilities.

## **Challenges**

Even though we welcome and commend some positive legislative changes, the challenges that remain are still an ineffective legal framework, lack of knowledge and understanding on the issue of sexual harassment and the consequences for victims.

Despite the aforementioned amendments to the Criminal Code, a number of problems remain within the legislative framework that call into question the effectiveness of legal protection for victims of sexual harassment. The legislative framework does not use a gender-sensitive approach and sexual harassment is not defined as gender-based violence. Although the intention of the State was to widely sanction sexual harassment, it has been shown in practice that the existing legislation does not offer a sufficient level of protection and creates problems in implementation. Previously mentioned laws contain the same or very similar definition of sexual harassment with different types of punishment and sanctioning, while some laws do not have any

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<sup>85</sup> examples of cases, Annual Report of the Gender Equality Ombudsperson for 2020, p. 55: Pravobraniteljica za ravnopravnost spolova, Izvješće o radu za 2020. godinu, available at: [https://www.prs.hr/application/images/uploads/IZVJESCE\\_O\\_RADU\\_2020\\_Pravobranit.pdf](https://www.prs.hr/application/images/uploads/IZVJESCE_O_RADU_2020_Pravobranit.pdf)



definition (e.g. the Law on Protection against Domestic Violence). It is therefore necessary to harmonize existing definitions, as well as the implementation of the law.

Furthermore, the Gender Equality Act prescribes misdemeanour sanctions, but does not clearly specify the authorized prosecutors to initiate proceedings, thus causing ineffective sanctioning of perpetrators. The slowness and inexperience of the judiciary is an additional problem in cases of private anti-discrimination lawsuits.

The same goes for the Labour Act protection mechanisms for sexual harassment in the workplace. Existing mechanisms are insufficient, employers either do not have developed mechanisms or they are often reduced to a mere formality that is not functional in practice (e.g., commissioners for the protection of the dignity of workers to whom victims should turn are usually close associates of the employer and cover up such cases or put victims at an even greater disadvantage in the workplace), although they are obliged to do it, according to the Labour Law<sup>86</sup>. Also, from the practice of the Ombudswoman for Gender Equality we know that after the anti-discrimination procedure conducted by her office or the procedure of protection of the dignity of workers on employer level, very rarely does the perpetrator bear the consequences in terms of transfer to another job, department or employer's office. It is mostly the victims who either leave their jobs or are relocated so as not to be in contact with the perpetrator. Judicial protection through a private lawsuit of the victim against the employer who did not eliminate the illegal and discriminatory behaviour proves to be too slow and with a very uncertain outcome for the victim. Disciplinary punishment of perpetrators in the field of employment and education and protection of victims by employers/universities are not uniformly prescribed. It is left to each individual employer/university to define procedures, sanctions and protection of victims in its internal acts<sup>87</sup>. For example, there was a case<sup>88</sup> of a professional association terminating an employment contract with a person reported for sexual harassment, which resulted in a severance pay in millions, thus offending the victims and sending a message that sexual harassment is not worth reporting.

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<sup>86</sup> In 2021 Dunja Bonacci Skenderović conducted research on Sexual Harassment at workplace. Results regarding protection mechanisms showed that 53% respondents answer that their companies either do not have a prevention system set through documents/rulebooks or they do not know about it; 54% respondent answer that either they do not know or the company does not have commissioner for protection of dignity of workers; 75% of respondents answered that the companies in which they work do not provide education on sexual harassment at work. Bonacci Skenderović, Dunja, „Na poslu želim da me se doživljava profesionalno!“, Istraživački izvještaj o spolnom uznemiravanju na radnom mjestu u Hrvatskoj, Zagreb, 2021. Available in Croatian at <https://projectfrida.com/istrazivanje/>

<sup>87</sup> See more: Ljubičić, Višnja, Praksa Pravobraniteljice za ravnopravnost spolova u slučajevima zaštite od spolnog uznemiravanja, in: Grgurev, Ivana and Potočnjak, Željko (ed.), Pravna zaštita od spolnog uznemiravanja, Zagreb, 2021. pages 1-28

<sup>88</sup>Pravobraniteljica za ravnopravnost spolova, Izvješće o radu za 2020. godinu, page 56, available at: [https://www.prs.hr/application/images/uploads/IZVJESCE\\_O\\_RADU\\_2020\\_Pravobranit.pdf](https://www.prs.hr/application/images/uploads/IZVJESCE_O_RADU_2020_Pravobranit.pdf)

A special problem is the distinction between sexual harassment as a criminal offense and as a misdemeanour<sup>89</sup>. The description of the criminal offense requires that a person "harasses" another and that they are in a relationship of "superiority or dependence". In the Croatian language, the same verb can have two forms, depending on whether it stands for a permanent or a current action. The form of the verb "to harass" used in the Criminal Code is of a permanent nature and it is implied that in order to constitute as a criminal offense sexual harassment must be repeated, although this is not justified nor it derives from the Istanbul Convention. However, this was the position of the working group for amending the Criminal Code, and some courts apply this interpretation in court proceedings.

The interpretation of some courts that the perpetration of the crime of sexual harassment requires a "repeated action" leads to inconsistencies in case law and failure to protect the victim. As an example, we cite the judgment of the Municipal Court in Vukovar from 2020, which acquitted a police officer who for 6 hours (all night) physically and verbally sexually harassed his female colleague to whom he was a superior. The court acquitted him because the harassment "happened only once", concluding that it "could possibly constitute a misdemeanour". Given that the legal principle of "ne bis in idem" does not allow the same person to be tried for the same thing, this victim was left without any legal protection. In addition, this interpretation of "repeated conduct" may lead to a milder form of sexual harassment being treated as a criminal offense, while a more severe which happened once would be a misdemeanour.

Furthermore, in cases of misdemeanour liability, as well as in the context of labour law, sexual harassment will often also be permanent or repeated and there will be a relationship of superiority and dependence, which only confirms that existing legislation does not provide a basis for clear distinction in practice and consequently, effective protection of victims. In addition, there is also a problem of distinguishing the criminal offense of sexual harassment from other criminal offenses (e.g. domestic violence under Article 179a and lewd acts under Article 155 of the Criminal Code)<sup>90</sup>.

Given that described legal solutions have a negative impact on the legal security and protection of victims, the criterion for distinction between the criminal offense and misdemeanour should be the intensity of the perpetrator's action, i.e. that all more severe forms of sexual harassment be treated as criminal offenses. In addition, the criterion of superiority or dependence calls into question the punishment of more severe forms of sexual harassment in cases where, for example, the perpetrator is a colleague in the workplace - such cases should also be sanctioned by the Criminal Code.

In conclusion, judicial practice is not gender sensitive and judges are not sufficiently educated to conduct these proceedings. The cases end up either with lenient punishments or in favour of the perpetrator. In addition, as stated in the Ombudswoman for Gender Equality's report<sup>91</sup> "according

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<sup>89</sup> See: Munivrana, Maja, Kaznenopravna zaštita od spolnog uznemiravanja, in: Grgurev, Ivana and Potočnjak, Željko (ed.), Pravna zaštita od spolnog uznemiravanja, Zagreb, 2021. pages 119-152

<sup>90</sup> See more: *Ibid.*

<sup>91</sup> Pravobraniteljica za ravnopravnost spolova, Izvješće o radu za 2020. godinu, op. cit. (footnote 28), page 56.

to the Ministry of the Interior, there were 64 criminal charges filed for the offense of sexual harassment in 2020, but according to the Central Bureau of Statistics, the number of cases actually processed in courts are in single digits. Only a few cases are prosecuted annually, while there are even fewer convictions."

All of the above discourages victims from reporting sexual harassment. Additionally, victims are not informed about their rights and possibilities, there is a lack of systematic programs to prevent sexual harassment at all levels (e.g. work places, faculties, sports clubs and sports associations) and there is a lack of systematic acts and protocols of legal entities, and control of violations in cases of sexual harassment. The biggest problem and challenges at the faculties are insensitivity, lack of education for students and teaching staff, lack or poor regulation of legal acts for sexual harassment, not only at individual faculties but also at the university level, resistance of teaching staff to respond to reports in a way to take them seriously or to undertake steps regarding reported cases (usually due to the lack of clear procedures and possibilities).

## **Recommendations**

- Implementing specialized programs for the prevention of sexual harassment at all levels (work environment, universities, sports clubs and sports associations).
- Conducting public campaigns against sexual harassment with the aim of sensitizing the general public.
- Implementing specialized educational programs for representatives of the system (police, state attorney's office, courts) with the aim of raising the level of knowledge and awareness on the issue of sexual harassment, the dynamics of violence, the consequences for victims.
- Regulating the labor law framework with the aim of effective treatment of perpetrators of sexual harassment in the work environment, defining protection mechanisms and informing all relevant stakeholders about them (e.g. employees, students).
- Ensuring the implementation of comprehensive programs against sexual harassment in faculties that include regular education for students and all teaching staff, development and adoption of necessary legal acts at the level of individual faculties and universities, ensuring clarity and transparency of procedures for students (through leaflets, posters and the like).
- Harmonize existing definitions of sexual harassment as well as implementation of different laws
- Change Article 156 Of the Criminal Code in order to define sexual harassment based on the criterion of intensity of the perpetrator's action

## Article 45 - Sanctions and measures

### Background

Except for problems arising from the Croatian dual system of prosecuting domestic violence (misdemeanor and criminal), Croatia has a relatively solid (criminal) legal framework for sanctioning domestic violence.<sup>92</sup> It also has a set of criminal provisions that tackle other forms of gender based violence set out in articles 33 to 41 of the Convention. Yet, the fact that Croatian laws do not at all recognize gender based violence as such and are entirely gender-neutral, makes it hard to talk about (in)efficiency of sanctions provided for the offenses linked to articles 33-41. In our view the mere fact of not even naming gender based violence against women does speak for itself. When, on rare occasions, usually triggered by a particularly heinous event, Croatian legislators took some measures to improve the legal response to violence, in most cases these measures were about tightening penalties, rather than dealing with extremely mild sanctioning practices.<sup>93</sup> Tougher prescribed penalties per se, without making an effort to influence the sanctioning practices, is and will never be enough.

As in many other areas, here we also lack official data and statistics that would allow us to statistically support findings and conclusions gained from our direct work with victims. However, in 2019 the Ombudsperson for Gender Equality published the results of two important project-based research, including the analysis of final misdemeanor and criminal judgments on violence against women from 2012-2016 period.

### Misdemeanors

470 final misdemeanor judgements were analyzed (all based on the Law on Protection against Domestic Violence, all regarding male violence against women); 65.74% of them were conducted

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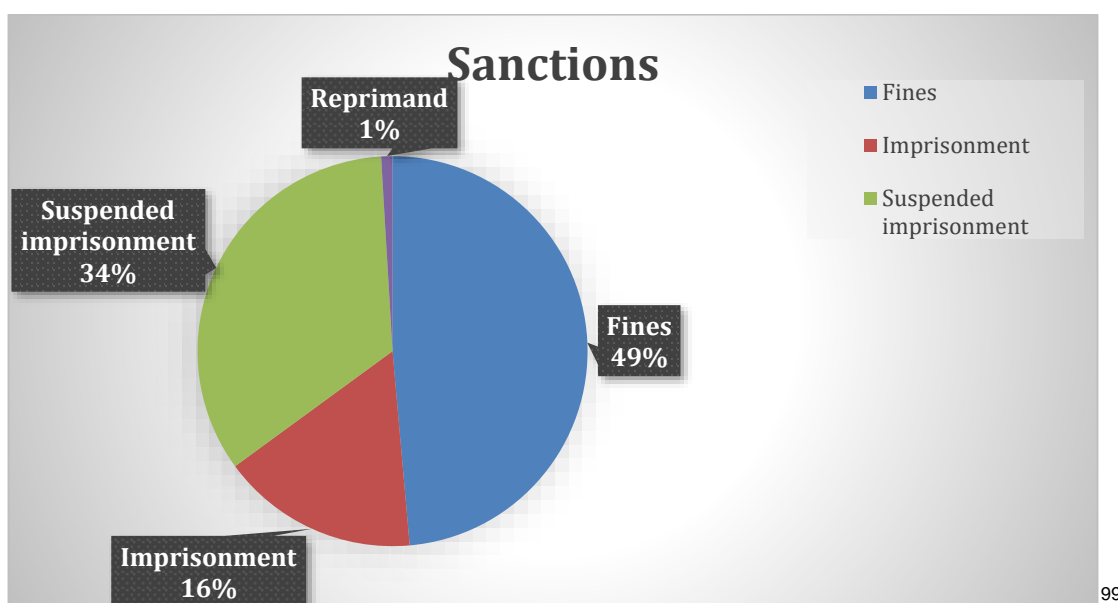
<sup>92</sup> This does not mean that there is no room for improvement - for example, Article 179. a of the Criminal Code states: „Whoever seriously violates the regulations on protection against domestic violence and thus causes fear for the safety of his family member or close person or puts him in a degrading position or a state of long-term suffering, thus not committing a more serious crime, shall be punished by imprisonment from one to three years.” From our point of view, the fact that the sole description of this criminal offense implies that the domestic violence is a less serious crime (which will exist only if more serious one is not committed), alongside with the possible imprisonment of only up to 3 years, does show how (un)seriously is domestic violence treated in Croatia.

<sup>93</sup> The Ombudsperson for Gender Equality said that the analysis of misdemeanor acts showed that since 2003 till the moment of giving the statement (2019) the legislator did some legal tightening "but there were no legislative interventions to significantly influence the judicial policy of punishment.", <http://www.glas-slavonije.hr/411264/1/Ostrije-kazne-za-nasilnike-U-zatvor-i-zbog-prijetnje>

as urgent, 34.26% as regular proceedings.<sup>94</sup> From the day the crime was committed until the day the decision became final, the procedure lasted an average of 120.1 days.<sup>95</sup>

Out of 470 judgements, proceedings were suspended in 1 case, 40 proceedings resulted in acquittals, in 8 cases a misdemeanor warrant was issued and there were additional 421 convictions. Additionally, in 5 proceedings, the court rendered a verdict dismissing the charges. No proceedings ended by agreement of the parties.<sup>96</sup>

**Fines were imposed on 208 defendants (48.60%)** and the average amount of HRK 1,727.79<sup>97</sup>. Community service has never been imposed as a sanction. The courts sentenced 70 defendants (16.36%) to imprisonment for an average of 19.73 days. Probation was imposed on 146 defendants (34.11%). The average duration of a suspended prison sentence is 21.4 days with an average probation period of 301 days, i.e. 10 months. Partial suspended imprisonment was not imposed on any of the defendants. Finally, four (4) defendants (0.93%) were reprimanded.<sup>98</sup>



<sup>94</sup> Rašić, Mario et. al., Kvantitativni rezultati stručne analize pravomoćnih prekršajnih presuda o nasilju prema ženama, 2012.-2016., Pravobraniteljica za ravnopravnost spolova, Zagreb, 2019., page 20, available at: [http://vawa.prs.hr/storage/uploads/publikacije/Kvantitativni\\_rezultati\\_prekršajnih\\_presuda-4861.pdf](http://vawa.prs.hr/storage/uploads/publikacije/Kvantitativni_rezultati_prekršajnih_presuda-4861.pdf)

<sup>95</sup> Taking into account 461 verdicts. because for 9 verdicts the data on finality were not precisely stated. *Ibid*, page 22.

<sup>96</sup> *Ibid*, page 14.

When considering these numbers, it is important to bear in mind that we do not know:

- how many cases of violence remain unreported (some estimates say up to 90%)
- how many reported cases remain unprosecuted.

<sup>97</sup> Approximately 230 EUR

<sup>98</sup> *Ibid*, page 46.

<sup>99</sup> *Ibid*, page 47.

A special obligation was imposed on only 2 defendants, while on 468 defendants it was not (in those two cases it was a special obligation of treatment or continuation of treatment for alcohol, drug or other addiction). Researchers were of the opinion that these numbers should have been higher.<sup>100</sup>

Only eleven decisions (2.20%) were appealed, and only in two of the appealed cases the appeal was lodged by the police, as the authorized prosecutor.<sup>101</sup>

Researchers were of the opinion that in 100 decisions the judgment was fair to the victim, whereas **in 280 was not fair to the victim**. In 90 decisions it was not possible to assess whether the judgement was fair or not<sup>102</sup>

### Criminal Offenses

655 judgement were analyzed, all dealing with male violence against women<sup>103</sup>. There were 213 criminal orders issued, 26 convictions based on the agreement of the parties, 373 convictions, 29 acquittals and 13 suspensions.<sup>104</sup> In addition, with respect to 10 defendants, the court rendered a verdict finding that the defendant had committed an unlawful act in a state of mental incapacity, and ordered compulsory placement in a psychiatric institution.<sup>105, 106</sup>

The authorized prosecutor was, in the vast majority of analyzed cases, the state attorney (608 of 655 decisions or 92.8%). In 45 verdicts (6.9%), the authorized prosecutor was the injured party

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<sup>100</sup> *Ibid*, page 55.

<sup>101</sup> *Ibid*, page 59.

<sup>102</sup> *Ibid*, page 61.

<sup>103</sup> 30 different criminal offenses were included: 16 murders and 9 attempted murders, 17 aggravated murders, 95 bodily injuries, 32 aggravated bodily injuries and one 1 aggravated bodily injuries in an attempt, 3 particularly aggravated bodily injuries and 1 negligent aggravated bodily injury; unlawful deprivation of freedom in 16 decisions, 291 threats and 69 intrusive conducts. In one verdict, the defendant was convicted of violating the inviolability of home and business premises, which is the only case of a crime against privacy; 23 sexual intercourses without consent, 93 rapes and eight 8 criminal offenses of attempted rape, 3 serious criminal offenses against sexual freedom, 6 lewd acts, 40 serious criminal offenses of sexual abuse and exploitation of a child, one 1 aggravated criminal offense of prostitution, 13 sexual abuse of a young child under the age of fifteen and 1 criminal offense of sexual abuse of a child over the age of fifteen; violations of children's rights in 36, and domestic violence in 37 decisions; 1 serious criminal offense against human health and 1 case of the criminal offense of enabling the use of drugs. Finally, there was 1 theft and 2 cases of damage to another's property.

<sup>104</sup> Some verdicts had more defendants and more criminal offenses, so the number of outcomes of the proceedings is higher than the total number of analyzed verdicts.

<sup>105</sup> Rašić, Mario, Kvantitativni rezultati stručne analize pravomoćnih kaznenih presuda o nasilju prema ženama, 2012.-2016., Pravobraniteljica za ravnopravnost spolova, Zagreb, 2019., page 15, available at: [http://vawa.prs.hr/storage/uploads/publikacije/Kvantitativni\\_rezultati\\_kaznenih\\_presuda-3c09.pdf](http://vawa.prs.hr/storage/uploads/publikacije/Kvantitativni_rezultati_kaznenih_presuda-3c09.pdf)

<sup>106</sup> It is important to bear in mind a big gap between the number of reported cases and the number of cases in which the indictment has been preferred. For example, in 2019, 423 persons were reported under Article 179. a of the Criminal Code (domestic violence) and for 166 the indictment had been preferred (39,243%). See: Državni zavod za statistiku, Statistička izvješća, ISSN 1332 – 1668, Punoljetni počinitelji kaznenih djela, prijave, optužbe i osude 2019., available at: [https://www.dzs.hr/Hrv\\_Eng/publication/2020/SI-1671.pdf](https://www.dzs.hr/Hrv_Eng/publication/2020/SI-1671.pdf) DZS 2109 report

(taking over following the state attorney's decision not to prosecute), and in 2 (0.3%) cases the proceedings were initiated by a private lawsuit.<sup>107</sup>

From the day the crime was committed until the day the decision became final, the proceedings lasted an average of 646.55 days. The proceedings conducted by municipality courts lasted significantly less (464.62 days on average) than those conducted in county courts where more serious offenses are dealt with (1.076,17 days on average).<sup>108</sup>

Fines, in the form of day-fines were imposed on 13 defendants in the average amount of HRK 4,957.58<sup>109</sup>. Replacement of sentences with community service was imposed 34 times with an average duration of 372.45 hours. Courts sentenced 188 defendants to imprisonment with an average of three years and 231 days. A suspended sentence was imposed on 349 defendants with the average duration of 8 months and 21 days, with an average suspension period of 1 year and 295 days. Partial suspended imprisonment was imposed on 23 defendants, with an unconditional sentence of imprisonment for an average of 9 months and 13 days. The suspended part of the prison sentence was imposed on the same defendants for an average of 12 months and 9 days. The trial period was on average 3 years and 63 days. With respect to 10 defendants the court found that the accused committed an illegal act in a state of mental incapacity, and therefore the decision ordered a forced placement in a psychiatric institution.<sup>110</sup> The long-term imprisonment was imposed by the courts on three (3) defendants (0.48%) in the average duration of 31 (in all cases for aggravated murder).

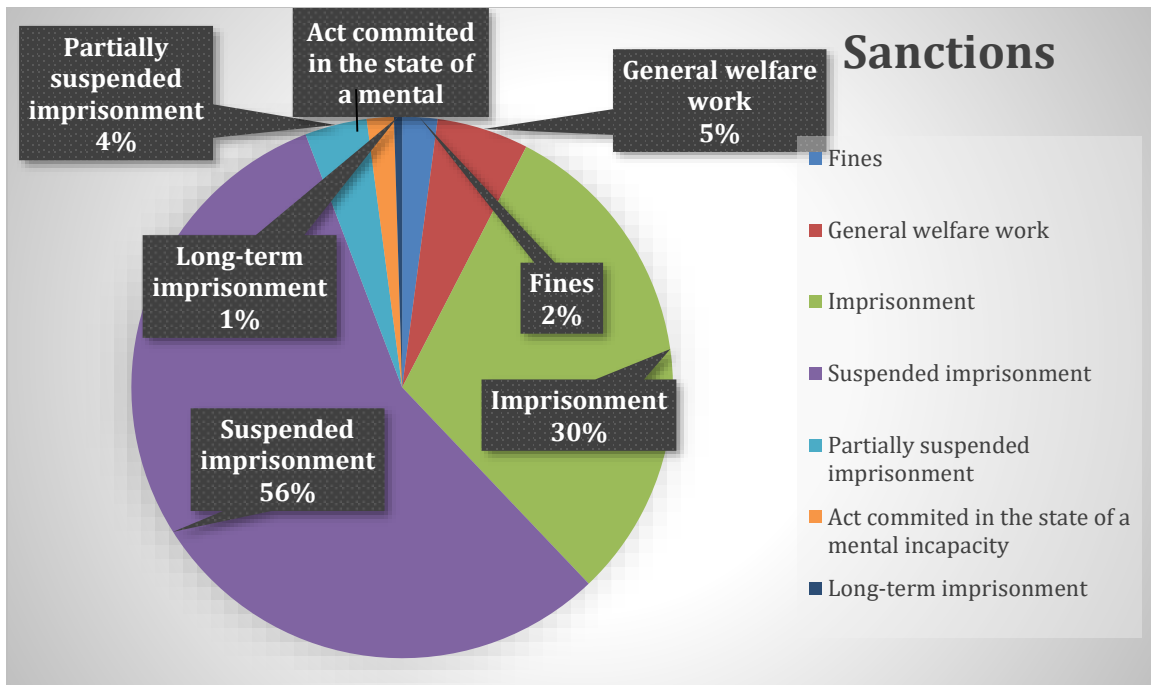
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<sup>107</sup> Rašić, Mario, Kvantitativni rezultati stručne analize pravomoćnih kaznenih presuda o nasilju prema ženama, op. cit. (footnote 105), page 20.

<sup>108</sup> *Ibid*, page 25-26.

<sup>109</sup> Approximately 660 EUR

<sup>110</sup> *Ibid*, pages 45-46.



Regarding imposed imprisonment, its average duration was as follows:

| Criminal Offense   | Average duration (in days) |
|--|----------------------------|
| Rape   | 1.122,5                    |
| Sexual intercourses without consent                          | 1.245,21                   |
| Murder   | 2.679,44                   |
| Aggravated murder  | 5.502                      |
| Threat   | 412,83                     |
| Bodily injury  | 448,48                     |
| Aggravated bodily injury                                     | 397,5                      |
| Serious offenses of sexual abuse and exploitation of a child | 1.575,35                   |
| Sexual abuse of a child under the age of 15                  | 2.201,45                   |
| Violations of children's rights                              | 691,38                     |
| Unlawful deprivation of freedom                              | 1.386,8                    |
| Domestic Violence  | 136,25                     |

<sup>111</sup> *Ibid*, page 50.



**It is particularly important to notice that in five cases of rape (4 committed and one attempted) the county courts decided to replace the punishment with community service, with an average duration of 476 hours. The same occurred in five cases of serious criminal offenses of sexual abuse and exploitation of a child with an average duration of work for the common good of 265 hours.<sup>112</sup>**

***More about sanctioning of sexual offenders see under the section regarding Article 36 of the Convention.***

Security measures in addition to punishment were imposed on only 86 (12.95%) defendants, whereas they were not imposed on 578 (87.05%) defendants.<sup>113</sup>

The institute of mitigation of punishment was applied toward 421 (63.40%) defendants, while for 243 (36.60%) defendants it was not. This means that in approximately two thirds of all the analyzed cases the courts imposed punishments below the minimum prescribed for committed offenses due to the presence of particular (extraordinary) mitigating circumstances.<sup>114</sup> When taken together with the fact that the most common sanction by far was the suspended sentence, it is clear that sanctioning of gender based violence in Croatia is inefficient.

According to the subjective impression of the researcher, in 368 (56.18%) decisions the judgment was fair to the victim, whereas in 195 (29.77%) was not fair for the victim. In 92 (14.05%) decisions, it was not possible to assess whether the judgment was fair or not<sup>115</sup>

## **Challenges**

### Dual system for punishing domestic violence

Already in 2013, the Report of the Special Rapporteur<sup>116</sup> recognized the problems rising from the fact that in Croatia domestic violence cases can be prosecuted under either criminal or misdemeanor laws. This (now as well as back then) sometimes results in severe cases of domestic violence being pursued as misdemeanors (inter alia, “to speed up the process”). This

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<sup>112</sup> *Ibid*, page 53.

<sup>113</sup> *Ibid*, page 59.

<sup>114</sup> According to Article 48 of the Criminal Code (1) If expressly so provided by law, the court may impose a less severe punishment than the one prescribed for a particular criminal offence. (2) The court may impose a less severe punishment than the one prescribed for a particular criminal offense also in cases where special mitigating circumstances exist, in particular if the perpetrator has reconciled with the victim, if he or she has fully or in greater part compensated for the damage caused to the victim by the criminal offense or if he or she has made serious efforts to compensate for the said damage, provided the purpose of punishment can also be achieved by such a less severe punishment. (3) The court may impose a less severe punishment than the one prescribed for a particular criminal offense also when the state attorney and the defendant have agreed on this.

<sup>115</sup> Rašić, Mario, *Kvantitativni rezultati stručne analize pravomoćnih kaznenih presuda o nasilju prema ženama*, op. cit. (footnote 105), page 67.

<sup>116</sup> United Nations, Report of the Special Rapporteur on violence against women, op. cit. (footnote 39), point 59.

almost automatically leads to inadequate sanctioning.<sup>117</sup> Although years has passed since 2013 and some legislative changes were introduced in the meanwhile, as well as changes in statistical trends, there is still a lot of confusion in delineation of criminal offenses from misdemeanors in the sphere of domestic violence and domestic violence which should be prosecuted as a criminal offense is still quite often prosecuted as a misdemeanor<sup>118</sup>:

SOS Rijeka's case, intern number: 17-3-53-IC-2021; Municipal court of Crikvenica - Permanent attendance in Senj, Pp J-1049/2019, 28.5.2021.

M.B. called a police on 26 of October 2019, when her extramarital partner N.C. "committed domestic violence by verbally abusing his extramarital partner in the presence of their joint son (born 2019) out of jealousy by loudly uttering the words" Whore, cow, I'll nail your head to a stake, I'll take your baby, your cunt motherfucker, fuck your father and mother, you ruined my life, and then he took the child in his arms while he was screaming from his cries, which caused mental distress to M.B. "

Although it is very clear that this is a criminal offense<sup>119</sup>, the police initiated misdemeanor proceedings and the court went along with it (as they most often do). The perpetrator was found

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<sup>117</sup> For the last 10 years, Croatia has had a continuous decline in the number of reported domestic violence misdemeanors and at the same time an increase in the number of domestic violence offenses. The number of reported misdemeanors is continuously declining by about 10% per year, while the number of criminal offences within family/among close persons increased by as much as 28.8% in 2020 (compared to 2019). However, these statistical trends can be interpreted differently. The police believe that they speak in favor of the fact that the police are (more) serious about deciding whether it is a misdemeanor or a criminal offense. They state that this is the result of additional sensitization and education of the police in recognizing and correctly qualifying certain behaviors through criminal law, instead of misdemeanor law. The Gender Equality Ombudsperson thinks differently: she believes that the decline in the number of reported misdemeanors does not mean that we have managed to suppress this behavior and states that there are indicators implying that victims have less and less trust in institutions and that some forms of violence are moving from the misdemeanor to the criminal sphere. In other words, she is suggesting that the victims, due to lack of the trust in institutions, don't report the violence until it becomes so brutal that they cannot cope with it anymore and until it has transferred from misdemeanor to criminal sphere.

See Pravobraniteljica za ravnopravnost spolova, Izvješće o radu za 2020. godinu, op. cit. (footnote 28) and Petković, Danijela, Prikaz okruglog stola „Obiteljsko nasilje – izazovi u svakodnevnoj praksi“, Policija i sigurnost, Zagreb, godina 28. (2019), broj 4, str. 584 – 594.

<sup>118</sup> In September 2019. Gender Equality Ombudsperson Višnja Ljubičić also confirmed „that it is not uncommon for serious acts of violence to be prosecuted as a misdemeanours in Croatia, and that it often happens that serious cases of violence are not properly recognized. Glas Slavonije, Oštrije kazne za nasilnike: U zatvor i zbog prijete, 23.9.2019., available at: <http://www.glas-slavonije.hr/411264/1/Ostrije-kazne-za-nasilnike-U-zatvor-i-zbog-prijetnje>

<sup>119</sup> Criminal Code, Article 139, Threat:

(1) Whoever seriously threatens another with some evil so as to frighten or disturb him shall be punished by imprisonment not exceeding one year.

(2) Whoever seriously threatens to kill or to inflict serious bodily injury on another, or to kidnap or deprive a person of his liberty, or inflict harm by setting fire, causing an explosion by using ionizing radiation or by other dangerous means, or to destroy a person's social status or material existence, shall be punished by a fine or by imprisonment not exceeding three years.

(3) If the criminal offense referred to in paragraphs 1 and 2 of this Article is committed against an official or a responsible person in connection with his work or position, or to a journalist in connection with his work, or to a lawyer in the course of his work, or out of hatred, to a **close person** or to a person particularly

guilty under the Law on Protection against Domestic Violence, art. 22. Para 3.<sup>120</sup> The court found mitigating circumstances (the perpetrator has not been previously convicted of a misdemeanor, he admitted that he "reacted inappropriately") and got the mitigated<sup>121</sup> and suspended punishment: 30 day of prison, which wouldn't be executed if he does not commit a similar or more serious misdemeanor within 6 months.

Also, it is very significant that the court felt the need to indicate (in the disposition part of the judgment) that the violence was committed out of jealousy, as well as that the verdict was reached in an urgent procedure, yet 19 months passed since the violence took place.

During the suspension period, N.C. repeated the violence against M.B. - this time, the violence is categorized as a criminal offense (Art. 179.a of the Criminal Code). Precautionary measures are ordered, but only towards M.B, not the children. The indictment proposes a suspended imprisonment (again).

### Mild penal policy

Even when distinguished correctly, both criminal and misdemeanor sanctioning policy in Croatia is too mild: "less than 10% of the total number of perpetrators of violence is being sentenced to unconditional prison sentences, all others have been sentenced to relatively mild fines or suspended prison sentences. The reason for such a mild penal policy is the lack of systematic education of judges and state attorneys and the chronic deficit of early professional and preventive work. Judges also often compensate for this shortcoming with lenient sentences, aware of the fact that punishment alone cannot solve the problem of domestic and gender-based violence."<sup>122</sup>

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vulnerable because of his age, severe physical or mental disability or pregnancy, or to a large number of people, or if caused greater unrest to the population, or if the threatened person is placed in a difficult position for a long time, the perpetrator will be punished by imprisonment from six months to five years.

Article 179 a, Domestic violence:

Whoever seriously violates the regulations on protection against domestic violence and thus causes fear for the safety of his family member or close person or puts him in a degrading position or a state of long-term suffering, thus not committing a more serious crime, shall be punished by imprisonment from one to three years.

<sup>120</sup> "Whoever commits violence referred to in Article 10 of this Act in the presence of a child or a person with a disability or an elderly person, shall be punished by a fine of at least HRK 7000.00 or imprisonment for a term not less than 45 days."

<sup>121</sup> This mitigation is also debatable, because the Misdemeanor Act proscribes (Art. 37. Para 1) that the punishment prescribed for a certain misdemeanor can be mitigated when this Act expressly proscribes so, or when the court holds that, given the existence of especially mitigating circumstances, the purpose of punishment can also be achieved by a more lenient punishment than the one proscribed. However, in this case, although the court found (some) mitigating circumstances, in the reasoning it's explicitly stated that "especially mitigating circumstances were not found".

<sup>122</sup>Pravobraniteljica za ravnopravnost spolova, Izvješće o radu za 2020. godinu, op. cit. (footnote 28). page 71.

“Some judges have been known not to view domestic violence as abuse that threatens women’s safety and well-being, but rather as “disturbed relationships”, “arguments” or minor infractions. Judicial practices sometimes do not reflect an understanding of the dynamics of domestic violence nor sensitivity towards victims of long-term, repeated violence. Some judges have been known to discredit victims’ experiences and ask them why they waited so long to report the violence, or allege that they are lying so as to abuse the system or obtain financial gains or property. This indicates a strong need for comprehensive judicial training on domestic violence. In addition, limited resources and personnel diminish the opportunity for the specialization of judges.”<sup>123</sup>

The State Attorney’s Office is also aware of a mild penal policy of the courts. “The vast majority of sanctions imposed on adults are suspended sentences, share of which in the crime structure of this age group of perpetrators is continuously increasing. At the same time, prison sentences are decreasing, which, with the exception of the most serious crimes (aggravated murder, murder, etc.), **continue to be imposed in the lower third of statutory sentences for individual crimes, and the use of mitigation is common.** The number of recidivisms over the years shows that this penal policy of the courts does not fulfill the purpose of punishment. We are of the opinion that the widespread use of probation, including community service as a substitute for imprisonment, cannot achieve the purpose of punishment as prescribed by the Criminal Code. Frequent application of suspended sentences sends to the perpetrators, and to the public as a whole, a message that the crime ultimately pays off. We believe that these institutes should be applied more restrictively, only when justified by the circumstances of the case, and in other cases the perpetrator should be sentenced to imprisonment for an appropriate duration, as a warning to all not to commit criminal offenses. Finally, we reiterate that the State Attorney’s Office can influence the criminal policy of the courts only by filing appeals against the decision on the sentence when it is not satisfied. However, the percentage of success in these appellate proceedings shows that the higher courts generally support the mild penal policy of the first instance courts, which the State Attorney’s Office does not consider adequate.”<sup>124</sup>

As Ombudsperson for Gender Equality often emphasizes, mild sanctioning policy is one of the reasons that the number of criminal offenses is increasing. In other words, “one of the reasons for this transition of violence from the field of misdemeanor protection to the field of criminal law, and then migration from minor to more serious crimes, lies in the fact that the misdemeanor courts impose mild, mostly suspended sanctions and fines and regularly release defendants to defend themselves, while protective measures are imposed in a decreasing number of cases, and in those cases in which they are determined, their effective implementation is questionable.”<sup>125</sup>

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<sup>123</sup>United Nations, Report of the Special Rapporteur on violence against women, op. cit. (footnote 39), point 63.

<sup>124</sup>Republika Hrvatska, Državno odvjetništvo Republike Hrvatske, A-643/17, Izvješće Državnog odvjetništva Republike Hrvatske za 2017. godinu, 23 April 2018, page 48, available at: <https://dorh.hr/sites/default/files/dokumenti/2018-06/izvjescedorh2017.pdf>

<sup>125</sup> Pravobraniteljica za ravnopravnost spolova, Izgradnja učinkovitije zaštite: promjena sustava za borbu protiv nasilja prema ženama, 2017., page 8, available at: [http://vawa.prs.hr/storage/uploads/publikacije/Brosura\\_izgradnja-ucinkovitije-zastite-7ffc.pdf](http://vawa.prs.hr/storage/uploads/publikacije/Brosura_izgradnja-ucinkovitije-zastite-7ffc.pdf) IZGRADNJA

## Problem of dual arrests and prosecutions

Dual arrests usually lead to dual prosecution and sanctioning (see section regarding Article 50).

### **Recommendations**

- to reconsider the treatment of domestic violence as a misdemeanor. i.e. *de lege ferenda* domestic violence should constitute solely a criminal offence; in the meanwhile, to ensure proper distinction between misdemeanor and criminal cases and to prosecute domestic violence as a criminal offence in all cases legal elements of different crimes can be established
- to strategically tackle too mild sanctioning policy and the problem of dual sanctioning
- to ensure systematic and mandatory education of judges and state attorneys regarding gender based violence
- to ensure efficient and methodological system of data collection and statistical data processing as well as publishing of the data that would allow to track sanctioning policy

## **Article 48 - Prohibition of mandatory alternative dispute resolution processes or sentencing**

### **Background**

#### The use of mandatory counseling and mediation in the context of parental separation and divorce proceedings

When spouses have underaged common or adopted child or children, divorce proceedings are to be initiated by filing a mandatory counseling request to CSW. As the term suggests, this proceeding is mandatory.<sup>126</sup>

Mandatory counseling is designed as a form of assistance to family members when making an (amicable) decision on family relationships, in this case - on parental care. So, the basic goal should be for parents to agree on shared custody. Croatian law (and practice) strongly prefers joint custody - even in cases of domestic violence.

The Family Act does not prescribe any special procedure of mandatory counseling for families in which some type of violence is present – instead, it “adjusts” the basic procedure: in which way and to what extent, it largely depends upon the assessment of the CSW’s team of experts. Mandatory counseling is usually conducted on joint meetings (where both parents are present). However, if CSW concludes that, considering circumstances of the particular case, joint meetings wouldn’t be efficient, or if one or both parties so request for justified reasons, separate interviews with the parties should be scheduled and conducted (Art. 323. Para. 3).

Based on the Article 324. Paragraph 4. of the Family Act, the Mandatory Counseling Rulebook was adopted, thus elaborating the mandatory counseling procedure.

If mandatory counseling doesn’t end successfully/parents don’t succeed in drawing up a plan on joint parental care, the spouses are in principle obliged to attend the first meeting of the family mediation. One of the exceptions (Article 332) to the rule of mandatory family mediation is when, according to the CSW’s expert team assessment, equal participation of spouses in the mediation procedure would not possible due to domestic violence. “Thereby the victim of violence depends on someone's subjective assessment which can be wrong<sup>127</sup>, which can put the victim in a state of danger and unnecessarily prolong the process of bringing the necessary court decisions, and without victim even having any mechanism against such actions of the professional team or family

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<sup>126</sup> Of course, there are certain exceptions: according to Art. 329 para. 4 of the Family Act, obligatory counseling shall not be conducted in relation to the spouse or both spouses who are deprived of legal capacity or are not able to understand the meaning and consequences of the procedure nor with professional assistance; in relation to a spouse incompetent to stand trial or one of unknown residence and/or temporary residence.

<sup>127</sup> Even people who are recognized as lead experts in domestic violence and have a huge impact on education of employees in Croatia, consider that mediation after domestic violence is possible, when conducted by educated mediators with specific protocols. (<https://hrcak.srce.hr/file/26153>)

mediator. Any opposition to the 's misjudgment will be interpreted as non-cooperation, and non-cooperation will lead to serious consequences prescribed by the Family Act."<sup>128</sup>

Considering its purpose and the way it is implemented in practice<sup>129</sup>, we are of the opinion that it is tantamount to mandatory mediation.

### Fines

Regarding paragraph 2 of the Article 48, it is important to notice that Croatia doesn't take any measures to make sure that any fine that a perpetrator is ordered to pay shall not indirectly lead to financial hardship on the part of the victim.

## **Challenges**

### Mandatory counseling

From the previous paragraph, we can conclude that in the Croatian family law system we face an absence of a clear prohibition of mandatory ADR processes in cases of violence (against women).

Furthermore, even this (unclear) prohibition of ADR remained widely unused in practice.

There are some other major risks for women victims of violence present in practice:

- the risk that joint mandatory counseling sessions and/or mandatory family mediation may be proposed or held where a woman has not previously mentioned that she has experienced domestic violence which risk of is enhanced by the lack of systematic detection of DV/GBV by professionals, as well as by lack of clear obligation placed on judges or mediators to actively screen family law cases for domestic violence
- the risk that mandatory counseling and/or mandatory family mediation is (always, even in cases of violence!) quasi-mandatory as any refusal, in practice, can have negative consequences for the party who refuses (the victim), or can at least incite fear of negative consequences.<sup>130</sup>

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<sup>128</sup> Bezbradica Jelavić, Sanja et. al., Analiza usklađenosti zakonodavstva Republike Hrvatske s Konvencijom Vijeća Europe o sprječavanju i borbi protiv nasilja nad ženama i nasilja u obitelji, Centar za žene žrtve rata, Zagreb, 2016 , page 79, available at: <https://www.czzzr.hr/dokumenti/analiza-uskladjenosti.pdf>

<sup>129</sup> More about problems related to mandatory counseling see under the section regarding Article 31 of the Convention.

<sup>130</sup> For example, where parents were not able to reach an agreement of joint custody, custody remains to be decided within the court proceedings, and according to Art. 416. Para 2. of the Family Act, the court will particularly appreciate:

1. the willingness of each parent to cooperate in the mandatory counseling process or the willingness to participate in family mediation

- additionally, when women are “pressured” to participate in mandatory counseling and or/mediation, there is a high risk that they will, due to power imbalance that is typical in cases of GBV and/or DV, likely be of impaired the ability to negotiate and reach acceptable agreement that ensures, inter alia, the children’s and the mother’s safety
- workers reportedly mediate and encourage victims to reconcile with their offender<sup>131</sup>

Some of these challenges were already recognized by CEDAW back in 2015.<sup>132</sup> Committee was concerned that Croatian legislation:

- a) adopts the “friendly parent” approach, under which a parent must encourage his or her child’s contact with the other parent under all circumstances, including in cases of domestic violence, meaning that a mother seeking to limit visitation by a violent father could face heavy fines and incarceration of up to six months
- b) That, while the mandatory mediation before the initiation of divorce proceedings proposed in the legislation excludes cases in which there is domestic violence, CSWs nevertheless pressure women who are victims of domestic violence to agree to joint mediation;

The Committee called upon the State party: (a) To amend legislation concerning child custody in divorce cases to ensure that violence by one parent against the other is identified and taken into

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2. readiness of each parent to encourage the realization of personal relations of the child with the other parent.

Although (according to Para. 3) willingness to cooperate referred to in paragraph 2 of the Article shall not be important in cases of domestic violence, due to lack of recognition of GBV and underestimation of domestic violence (by the CSW and/or the court), women are often pressured to “cooperate” or they are facing the risk to become so called “uncooperative mothers” who are alienating children from their (abusive) father. See more about this problem under Article 31.

<sup>131</sup> It was noticed back in 2013 by Special Rapporteur (point 17), and is still the case.

Special Rapporteur also noticed that “Furthermore, the focus of this institution is primarily to retain the unity of the family and provide reconciliation through mandated mediation processes. Often this is done with the perpetrator and the victim being present together in the same location. Testimony during interviews has confirmed that CSWs have shown inadequate and inappropriate responses to the protection needs of women victims of family violence. In addition, it was stated that CSWs’ employees presented a lack of understanding of the complex nature of abusive relationships and showed a failure to respond adequately, including to the point of dismissing victims’ safety. This situation, combined with the restriction of access to shelters and other forms of assistance for women victims of family violence, leads to a reluctance to use this institution” (point 53).

Some of The Special Rapporteur’s recommendations were (point 76): Restructure the mission and functions of the Centres for Social Welfare (s). Specific and specialized institutional structures should provide support and assistance to women victims of violence, ensure family and children welfare and provide financial support to persons in need of State support programmes. Ensure, through education, a change of mentalities among the various employees of these Centres from a social/welfare approach to a human-rights based approach recognizing and focusing on violence against women and taking into consideration the nature of relationships based on power and dependency; ensure CSW staff are provided with effective gender-sensitive training in partnership with women’s NGOs and that they treat all cases of domestic violence as urgent. Compulsory mediation should be prohibited and sanctions imposed on authorities who continue the practice of forced mediation.

United Nations, Report of the Special Rapporteur on violence against women, op. cit. (footnote 39).

Although some legislative amendments have been undertaken since 2013, the majority of those findings still stand.

<sup>132</sup> United Nations, Committee on the Elimination of Discrimination against Women, op. cit. (footnote 15).



account when deciding upon child custody and that refusal to allow visitation and contact on account of alleged violence is not held against the parent who has made the allegation; (b) To exclude mandatory mediation in cases of domestic violence and train all community and social workers to refrain from pressuring women to agree to mediation in such cases.<sup>133</sup>

### Fines

In misdemeanor proceedings for domestic violence, fines are imposed in almost 50% of proceedings where the defendant is found guilty.<sup>134</sup>

Ordering the perpetrator to pay a fine consequently has a bearing on the family and often results in financial hardship for the victim. Such a measure may thus present an indirect punishment of the victim and negatively affect the victim's decision on reporting the violence. It also may negatively affect the victim's trust in the judiciary system and its ability to protect her.

We believe that this tendency to fines it is a direct consequence of lack of judges' education and understanding of GBV.

### **Recommendations**

- to take legislative and other measures to clearly and completely prohibit the mandatory participation in ADR processes where there is violence against women
- to ensure the training for professionals such as CSW workers, family judges, lawyers and mediators alongside with development of professional guidelines or screening methods on the systematic detection of risk for GBV and DV. Judges should be educated about possible negative implications of sanctioning DV by fines. Relevant NGOs should be involved in the training of professionals.
- to ensure that professionals such as CSW workers, family judges, lawyers and mediators recognize coercive control and the power imbalances in relationships marred by violence and to ensure that parents with a history of abuse are granted separate meetings in order to reach a decision on child custody/residence/visitation which does not jeopardise the rights and safety of the mother and her children.

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<sup>133</sup> *Ibid*, point 42, 43.

<sup>134</sup> Rašić, Mario et. al., Kvantitativni rezultati stručne analize pravomoćnih prekršajnih presuda o nasilju prema ženama, op. cit. (footnote 94), page 46.

## **Article 50 - Immediate response, prevention and protection**

### **Background**

Article 50 of the convention requires law enforcement agencies to react promptly and appropriately in cases of violence against women by offering victims immediate protection and engaging in the prevention of violence.

Most of the issues regarding this Article have already been written about in other sections (dedicated to other articles of the Convention), so here we will use referrals to those sections of the Report. However, we will also bring up and/or additionally emphasize a few most important issues.

### **Challenges**

#### Insufficient training and/or specialisation of law enforcement officers on violence against women and need for specialised protocols

Although we cannot say that there isn't any training for law-enforcement officers, we have to say that the existing training is (to our knowledge) directed mainly to domestic violence, not curriculum based, systematic or mandatory. This can have serious ramifications for the responses to such violence and the ensuing criminal investigations, including possible delays in opening investigations or failure to do so altogether. In Croatia, it is still possible that police simply disregard existing protocols and refuse to intervene in cases of domestic violence and/or refuse to initiate the official procedure. Among many such cases, women who turned to us reported that their attempts to report the violence to the police ended by the police telling them: "solve it yourself", "it's nothing terrible, don't call us about it", "what do you call us when there is no blood and loose teeth on the floor? You could have solved it on your own, and now you're both going into custody! ", " And watch how you dress until the end of the proceedings? " etc.

Mandatory education should address the concept of power and control; instructions on how and where to receive reports and interview victims in a manner that prevents secondary victimization as well as it should sensitise and prepare police officers to deal with reports from women who are in a particularly vulnerable situation such as women with disabilities.

We are also of the opinion that disciplinary and other proceedings must be instituted against police officers who violate the rights of victims. Even when they are found to have made a mistake in their actions, usually nothing happens or they just get a warning.

*More about the problem of treating the criminal offenses as misdemeanors see under section dedicated to Article 45.*

## Lack of a gendered understanding of violence against women in the context of investigations and the problem of dual arrests

The lack of proper education is tightly linked to the lack of a gendered understating of violence against women. The Procedure Protocol in Cases of Domestic Violence fails to properly acknowledge the unequal power relations between women and men, often leading to the classification of cases of domestic violence as family disputes. A tendency to view domestic violence as “mutual violence”, considering both parties as perpetrators and not taking into account the context and history of violence and a primary aggressor analysis is present in all Croatian institutions (police, CSWs, courts).

“The results of the research ‘Implementation of Croatian legislation related to partner violence. The Human Rights Report’, which were published in 2012, pointed out that double arrests were widespread in Croatia. The reasons for this are the normative regulation of the Law, which in very general terms classifies psychological and economic violence as domestic violence, and this provision applies to the detriment of the victim regardless of the danger that the perpetrator poses to the victim's safety. In practice, this means that a victim who verbally insulted his perpetrator can be prosecuted and held accountable, in addition to the abuser who physically beat her.” Another reason is that the police do not systematically identify the primary aggressor. Instead of the police identifying the primary aggressor and determining the defensive injuries, the police usually leave it to the judges and doctors. As a result, many victims face not only the very possible arrest if they seek help, but also the charges and punishment for defending themselves from attack. <sup>135</sup> The Ombudsperson for Gender Equality is also in her reports persistently warning of this problem. <sup>136</sup>

CEDAW Committee also recognized this and in its report stated the concern by the practice of dual arrests, whereby women who are victims of domestic violence are being arrested and occasionally sanctioned, along with alleged aggressors, for being verbally insulting or defending themselves. <sup>137</sup> The National Strategy for Protection against Domestic Violence for the period from

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<sup>135</sup> Bonačić, Marin, Dvostruka uhićenja i procesuiranje kod nasilja u obitelji, unpublished paper, written as a part of a project “Izgradnja učinkovitije zaštite: promjena sustava za borbu protiv nasilja prema ženama” (Lead Partner: Ombudsperson for Gender Equality, co-funded by the the Rights, Equality and Citizenship (REC) Programme of the European Union project - No. JUST/2016/RGEN/AG/VAWA /9940.)

Similar conclusions can be found in the UN's report: “The inability of some elements of the justice system to understand the complex nature of violent relationships has led to the phenomenon of dual arrests and sentencing. Perpetrators may try to convince the judges that the violence was mutual and that they are also victims. If both parties are arrested and charged, the possibility that the offender will be convicted is diminished. In many dual arrest cases, the perpetrator is charged with physical violence and the victim with psychological violence. In other cases, involving allegations of physical violence from both parties, the victim may have acted in self-defense in response to the perpetrator's physical violence. In such cases, the police simply arrest both parties, leaving it to the judge to determine the primary aggressor. “

United Nations, Report of the Special Rapporteur on violence against women, its causes and consequences, op. cit. (footnote 39)

<sup>136</sup> Bonačić, Marin, Dvostruka uhićenja i procesuiranje kod nasilja u obitelji, op. cit. (footnote 135).

<sup>137</sup> United Nations, Committee on the Elimination of Discrimination against Women, op.cit. (footnote 15), point 18.

2017 to 2022 mentions the remark of the Committee for the Elimination of Discrimination against Women, but does not contain any measures to address the problem of double arrests.<sup>138</sup>

SOS Rijeka's case, intern number: 10-20-54-LZ

In 2015., N.V. was for the first time reported and sanctioned for domestic violence, committed towards his extra-marital partner J.T. For physically attacking her, he was sanctioned with a fine of 6.000,00 HRK. (Misdemeanor Court in Rijeka, Pp J-819/15, 7.7.2015.)

In July 2020, N.V. attacked J.T. again, in front of their daughter (born in 2014). J.T. called the police, who found her and her child hidden in the bedroom. In fear, J.T. wet herself. She says that a police officer told her: "Don't worry, we'll take him away now.", only to return shortly thereafter and say he was sorry, but that N.V. told them that she had insulted him and that they had to arrest her as well. They were both arrested and taken to the police station along with a child who had no one to stay with. A 's social worker came and she wanted the child to be taken care of in a Nazorova Children's Home, but even that was not possible because it was not possible to organize COVID testing at that time (and the child couldn't be admitted without being tested). The child was with the parents at the police station from 5pm to 11pm, when J.T. managed to reach a friend who took care of the child.

This dual arrest was followed up by dual sanctioning: N.V. and J.T. "were found guilty of committing domestic violence as extramarital spouses in a verbal conflict, in a way that the first defendant N.V. pushed the door roughly to J.T., then while she was on the floor he held her by the hair, then wanting to record her reaction with a cell phone, all in the presence of their daughter." (...) They were both found guilty for committing domestic violence "the first defendant by psychological violence and the use of physical force" and the second defendant by psychological violence", both committed in the presence of a child. (Misdemeanor Municipal Court in Zagreb, Pp J-2170/2020, 24.7.2020.) The court didn't even bother to explain what kind of "psychological violence" J.T. allegedly committed, as well as it didn't look out for a primary aggressor or consider self-defense.

The consequences of double arrests are numerous: from coming to court, stigma, embarrassment, and potential loss of confidence in criminal justice. In addition to emotional trauma, such an arrest can lead to a risk of future violence, including fatal injuries, as women who have been arrested have been shown to refrain from calling police in the future. Potential loss of rights and privileges related to victim status should also be mentioned, such as transport to a safe location, temporary accommodation in a shelter, issuance of a restraining order and participation in victim assistance and empowerment programs, job loss and financial difficulties. In addition, the victim will sometimes, although not at fault, enter into a settlement to expedite the proceedings and reduce the potential danger to themselves and their children. Also, although often the idea behind the double arrest is that the court will solve the problem and determine who is the victim and who is the perpetrator, in practice this does not happen and that the victim ends up with

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<sup>138</sup> Bonačić, Marin, Dvostruka uhićenja i procesuiranje kod nasilja u obitelji, op. cit. (footnote 135).

criminal (misdemeanor) records. In addition, such a judgment may have further consequences and be used against the victim in child custody proceedings.<sup>139</sup>

With regard to statistics on arrests in cases of domestic violence, it should be noted that the Central Bureau of Statistics does not publish publications with data on the application of measures of deprivation of liberty in criminal or misdemeanor proceedings. Data on arrests are to be collected by the Commission for Monitoring and Improving the Work of Criminal and Misdemeanor Proceedings and the Execution of Sanctions Related to Protection from Domestic Violence. Namely, the Rulebook on the manner of collecting, processing and submitting statistical data and reports in the field of application of the Law on Protection from Domestic Violence stipulates that records kept by the police must contain, among other things, data on the number of detained persons, but (only) for two “types” of detained person: a) data on the number of person placed in a special room until the intoxicating drug has ceased with its effect, and b) the number of perpetrators brought to the misdemeanor court.<sup>140</sup> Therefore, unfortunately, the reports of the Commission do not provide the data on the number of arrests. Both the Ordinance on the manner of collecting, processing and submitting statistical data and reports in the field of application of the Law on Protection against Domestic Violence and the Committee’s internal rules of procedure have to be amended to ensure proper collection of all relevant data (for both criminal and misdemeanor proceedings). The other solution is to completely change the system of data collection and to entrust it to some other (centralized) institution. However, the problem of data collection has to be addressed.

Given all the above, one of the problems in researching the practice of double arrests in the Republic of Croatia is the lack of publicly available data on double arrests.

When we asked the Ministry of Interior for (publicly unavailable and unpublished) data regarding dual arrests, we were provided some data about dual arrests in cases of **misdemeanors** of domestic violence:

- during 2018, out of 12,272 both “perpetrators” were arrested in 189 cases, which is 1.54% of the total number of arrested perpetrators
- during 2019, out of 11,475 misdemeanors, both “perpetrators” were arrested in 184 cases, which is 1.60% of the total number
- during 2020, out of 10,414 misdemeanors, both “perpetrators” were arrested in 110 cases, which is 1.05% of the total number and
- during 2021, out of 10,205 misdemeanors, both “perpetrators” were arrested in 123 cases, which is 1.20% of the total number of arrested perpetrators for misdemeanors of domestic violence.

On the other hand, according to other sources, it seems that the rate of dual prosecutions could be around **5,4 %**<sup>141</sup>

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<sup>139</sup> *Ibid.*

<sup>140</sup> *Ibid.*

<sup>141</sup> *Ibid.*

However, these figures (of dual arrests and dual prosecutions) are not mutually comparable because:

- there are not referring to the same period of time
- figures referring to dual arrest refer only to arrests in misdemeanors (and not criminal) cases
- we do not know anything about the methodology used to get those figures (in both of these cases)
- the fact that there was no double arrest does not necessarily mean that there was not dual prosecution.

Therefore, to draw statistically supported conclusions on dual arrests and prosecutions, it is necessary to systematically and methodologically collect, process and publish relevant data, as well as to conduct comprehensive research on the subject in question.

### Low reporting

All the above said leads to victims' lack of trust and confidence in law enforcement agencies, which prevents victims from even turning to them for help.

In order to help instill trust in law enforcement authorities, Article 50 of the convention requires, inter alia, providing for an adequate number of female law enforcement officers, including at high levels of responsibility. Croatia doesn't have an adequate number of female officers: more than a few times we faced a situation that, although we announced in advance to the police (in written or by phone) that a woman who wants to report the violence would come to the station, and explicitly asked them to ensure the presence of a female officer, the presence of a female officer was not ensured or a victim was told that she should wait for hours (or even come in to the station again the following day) in order to talk to a female officer. We also have to address the issue of (in)adequacy of police stations' premises, due to the fact that in some cases police premises are not conducive to victim reporting, as they either did not allow for anonymous or confidential interviews or because the buildings are not accessible to women with disabilities.

### Low rate of prosecution and convictions

Bearing in mind that insufficient data presents a challenge to assessing whether cases indeed proceed along the criminal justice chain, it seems that the rate of convictions (compared to the rate of prosecutions) is not low.

However, the rate of persecutions (compared to the rate of reporting) seems to be very low (although they seem to be rising from year to year): available data seems to show that in last for year (on average) about 35% of reported Domestic Violence offenses (Art. 179.a of the Criminal Code) got prosecuted.<sup>142</sup>

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<sup>142</sup> For example, in 2017, 188 persons were reported under Article 179.a of the Criminal Code (domestic violence) and for 38 the indictment had been preferred (20,879%); in 2018, 266 persons

See more under section dedicated to Article 45.

## Recommendations

- to introduce and/or step up the provisions for mandatory initial and in-service trainings for law enforcement officers, on all forms of violence covered under the Convention, in coordination with women's CSOs
- to provide for an adequate number of female law enforcement officers, including at high levels of responsibility
- to strategically tackle the problem of dual arrests and dual prosecutions (with education, protocols, guidelines, checklists, as well as adequate sanctions for those not abiding by them)
- to ensure an efficient and methodological system of data collection, documenting the magnitude of violence by producing robust, comparative data in order to guide policy and to monitor the implementation of measures to address the problem. The data should be disaggregated by sex, age, type of violence as well as the relationship of the perpetrator to the victim, geographical location, as well as other relevant factors (such as disability). Data collection should be modeled in accordance with the recommendations from The Council of Europe study on "Administrative data collection on domestic violence in Council of Europe member states" (EG-VEW-DC(2008)Study)

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**were reported under the Article 179. a of the Criminal Code (domestic violence) and for 69 the indictment had been preferred (25,94%); in 2019, 423 persons were reported under the Article 179. a of the Criminal Code (domestic violence) and for 166 the indictment had been preferred (39,243%); in 2020, 604 persons were reported under the Article 179. a of the Criminal Code (domestic violence) and for 358 the indictment had been preferred (59,27%)**

See: Državni zavod za statistiku, Statistička izvješća, ISSN 1332 – 1668, Punoljetni počinitelji kaznenih djela, prijave, optužbe i osude 2017., available at: [https://www.dzs.hr/Hrv\\_Eng/publication/2018/SI-1627.pdf](https://www.dzs.hr/Hrv_Eng/publication/2018/SI-1627.pdf); Državni zavod za statistiku, Statistička izvješća, ISSN 1332 – 1668, Punoljetni počinitelji kaznenih djela, prijave, optužbe i osude 2018., available at: [https://www.dzs.hr/Hrv\\_Eng/publication/2019/SI-1650.pdf](https://www.dzs.hr/Hrv_Eng/publication/2019/SI-1650.pdf);

Državni zavod za statistiku, Statistička izvješća, ISSN 1332 – 1668, Punoljetni počinitelji kaznenih djela, prijave, optužbe i osude 2019., available at: [https://www.dzs.hr/Hrv\\_Eng/publication/2020/SI-1671.pdf](https://www.dzs.hr/Hrv_Eng/publication/2020/SI-1671.pdf);  
Državni zavod za statistiku, PC Axis Databse, Pravosuđe - Počinitelji kaznenih djela - Punoljetni - T.01.01. PRIJAVLJENI PUNOLJETNI POČINITELJI PREMA KAZNENIM DJELIMA, SPOLU I VRSTI ODLUKE U 2020.[https://www.dzs.hr/PXWeb/Selection.aspx?px\\_tableid=T0101\\_2020.px&px\\_path=Pravosudje\\_\\_kaz\\_nena\\_\\_punoljetni&px\\_language=hr&px\\_db=Pravosudje&rxid=f3f0c4b6-c28d-4a32-8083-a9434cae83c](https://www.dzs.hr/PXWeb/Selection.aspx?px_tableid=T0101_2020.px&px_path=Pravosudje__kaz_nena__punoljetni&px_language=hr&px_db=Pravosudje&rxid=f3f0c4b6-c28d-4a32-8083-a9434cae83c)

We have to bear in mind that the methodology that DZS uses is not the same one the police use in their reports. Due to this and some other limiting factors, these conclusions should be taken with caution.

## Article 51 – Risk assessment and risk management

### Background

In accordance with Directive 2012/EU /29, the Criminal Procedure Act introduced the obligation to conduct an individual assessment of victims. Article 43.a - Prior to the examination of the victim, the authority carrying out the examination shall, in cooperation with authorities, organizations or institutions providing assistance and support to victims of crime, make an individual assessment of the victim. *De lege lata*, individual assessment of victims is mandatory only in criminal cases. However, although the obligation to conduct individual assessment is not explicitly prescribed in either the Misdemeanor Law or the Law on Protection against Domestic Violence (as it should be), the obligation to conduct an individual assessment in misdemeanor cases as well certainly derives from the Directive 2012/EU/29, the Procedure Protocol in Cases of Domestic Violence and from the subsidiary application of the Criminal Procedure Act.

The individual assessment of the victim shall include determining whether there is a need to apply special protection measures in relation to the victim, and if so, which specific protection measures should be applied (special method of questioning the victim, the use of communication technologies to avoid visual contact with the perpetrator and other measures prescribed by the law). When the victim of a crime is a child, it will be assumed that there is a need to apply special protection measures and determine which specific protection measures should be applied. In making the individual assessment of the victim, the personal characteristics of the victim, the type or nature of the crime and the circumstances in which the criminal offense has been committed shall be particularly taken into account. In doing so, special attention shall be paid to victims who have suffered significant harm due to the severity of the crime, to victims of the criminal offense committed because of a personal characteristic of the victim, and victims whose relationship with the perpetrator make them particularly vulnerable. The individual assessment of the victim shall appropriately include in particular victims of terrorism, organized crime, trafficking in human beings, gender-based violence, violence in close relationships, sexual violence and sexual exploitation or hate crime, and victims with disabilities. The individual assessment of the victim shall be carried out with the participation of the victim and considering her/his wishes, including her/his wish for the special protection measures prescribed by the law not to be used. The authority carrying out the proceedings shall minimize the number of questionings of the victim for whom the specific need for protection has been determined. The state's attorney may propose that such a witness be questioned at an evidence-collecting hearing. For the purpose of conducting the individual assessment, the Rules of Conduct of Individual Assessment of the Victim was adopted. The rules do not recognize sex (female) and separation/divorce as risk factors.

The risk assessment of the Center for Social Welfare (CSW) is not explicitly mandated nor is mentioned in the Social Care Act or the Procedure Protocol in Cases of Domestic Violence. Immediately upon learning or receiving a report of domestic violence, CSW's duty is to report it, without delay, to the police and to submit all received information about the case, write "an official note" which includes information about the victim, the perpetrator and the violence committed.



The responsibility of CSW is to work with the victim to draw up a Safety plan in accordance with the „danger assessment“ in each individual case, regardless of whether the victim remains in the family or moves to shelter. The primary purpose of the Safety plan includes measures to protect a victim against recurrence of violence. It may include preparation of necessary documents and telephone numbers, places where the victim can be accommodated and contact of persons to turn to, plan to change some life habits, change of e-mail address, telephone and access passwords, etc. The Safety plan for children includes procedures and measures for acquainting them with appropriate procedures in case of need - who and which telephone numbers they can contact, informing school teachers about the family situation, in case the abuser comes or tries to contact the child. The obligation of CSW is to enable the victim to present all the facts important for establishing the case of committed violence.

According to some CSWs, the assessment of the “urgency of protection measures” depends on circumstances such as duration of violence, manner of committing violence, possible earlier violence and earlier exposure of the victim and children to violence and possibly earlier action of administrative bodies in case of domestic violence. If a victim of violence fears for their safety and life, the center is obliged to offer accommodation in a shelter for victims of violence and, in case of their consent, to provide that accommodation. The CSW is also obliged to assist the victim of violence in exercising the right to free legal aid and representation before the Croatian Bar Association. Very low number of protection measures for victims proposed (under the Law on Protection against Domestic Violence) by CSWs may be indicative of missing signs of risks and danger of violence for victims (CSWs proposed only 68 protective measures in 2019 and 52 in 2020)<sup>143</sup>. It also shows a lack of proactive approach when it comes to victim protection.

There are no detailed practice instructions that clearly and sufficiently describe the role of CSW in GBV risk assessment, safety planning, procedure for making decisions of issuing protective measures and its role in multiagency risk management.

Contrary to this, a comprehensive body of duties under Family Act and policy instruments exist for CSW role in “child protection”. The assessment of the threat to the rights and welfare of the child is carried out according to the Ordinance on measures for the protection of personal rights and welfare of the child based on collected socio-anamnestic data and assessments obtained with social work instruments. So far this included the Child Developmental Risk Assessment List and the Child Safety Assessment List, which form an integral part of the Ordinance. The procedure for assessing the endangerment of the rights and welfare of the child ends with the conclusion of the expert team on the need to determine measures to protect the rights and welfare of the child from the CSW or the need to propose to the court measures to protect the rights and welfare of the child.

According to the Ministry of Interior, the implementation of the individual assessment of the victim and the obligation that the implementation of the individual assessment of the victim is applied

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<sup>143</sup> Administrative data, gained from approximately 80% of a.

*mutatis mutandis* in cases of violations of the Law on Protection from Domestic Violence.<sup>144</sup> Since 2018 police officers are obliged to assess the risk of severe violence, the severity of the situation, the risk of recurrence of violence and, according to the assessment, manage the risk by taking measures aimed at preventing further violence by arresting perpetrators, imposing or proposing and executing precautionary measures, proposing and implementing protective measures, etc. In this regard, a “Form for Assessing the Risk of Recurrence of Violent Behavior” has been developed, which serves as a main tool for police officers in assessing and making decisions regarding further treatment of perpetrators of violent behavior and taking measures to protect the victim. There is no data on evaluation of implementing this tool, as well as no data on quality of risk assessment by police officers in GBV cases.

The number of women killed since 2018 is on the rise, with an over 50% increase of in both key parameters - in the number of women killed in total and in the number of women killed by former or current intimate partners (current / ex-husband, extramarital partner current / former, current / former partner). From 2016, it can be noticed that for the fifth year in a row, a high percentage of over 50% of women were killed by men with whom they were in intimate relationships. According to Ombudsperson for Gender Equality reports, in almost all cases analyzed so far, there were some elements that indicated the danger of femicide, but effective and adequate risk assessment and management along with measures to protect victims were regularly lacking.

## **Challenges**

The challenge is certainly the purposeful and individually focused implementation of individual assessment. In many cases, the implementation of this institute has been reduced to a pure form, it is not implemented by all bodies, the personal characteristics of the victim and the circumstances of the crime are not taken into account, and neither are previous assessments (of other bodies in the process), which would certainly be necessary because the needs of victims and the risk dynamics change over time. The cooperation of the competent authorities with civil society organizations is insufficient in the area of seeking recommendations/opinions for the purpose of conducting a purposeful risk assessment.

Overall, there is lack of comprehensive, co-ordinated multi-sectoral approach (by the system as a whole), lack of consolidated, consistent and comprehensive statutory guidance and policy practice for GBV risk assessment and risk management and the lack of shared understanding of need for comprehensive multiagency practice guidance for risk assessment, safety planning and risk management for all agencies (CSW, police and the justice system).

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<sup>144</sup> As already mentioned, individual assessment is *de lege lata* explicitly prescribed only for criminal cases/offences. However, there are legal bases for its application in misdemeanor cases as well.

The lack of coordinated response in risk management is common and the whole system approach pathway is not in place to ensure effective information sharing and multi-sectoral response to prevent risk of violence against women or lethality.

Two recent cases illustrate challenges with recognition of risks, implementation of risk assessment and multiagency risk management:

Case example 1: January 2022. Hostage crisis in Zagreb<sup>145</sup> – the ex-husband took his ex-wife hostage and locked their two minor children in the apartment with the threat of activating the gas bottle and killing everyone. The anti-terrorist police solved the crisis 4 hours after when the man finally surrendered and the case ended without a fatal outcome.

It turned out that the man had already been reported for domestic violence (more than once) and had repeatedly violated precautionary measures. Before that, he spent some time in a pre-trial detention, and when he got released no one had informed police or the victim (although he had committed a similar act of attempted suicide threat before). According to the woman (victim of violence), the problem with her ex-husband and the institutions not providing adequate protection has been going on for about a year and a half, since she returned from the safe house with the children. In that period, her ex-husband threatened her with a gun. He then attempted self-harm in front of the building with the same gun. She then reported him for installing a GPS device in the car, for which he was arrested again. After two months he was released again and has, constantly since, violated restraining orders (precautionary measure). CSW “knew nothing about this”, since the case is for CSW relevant only in terms of the custody. The mother's latest statement regarding CSW is that they suggested (to the criminal court) for the precautionary measure to be removed, so that the father could make contact with the children. This kind of professional behavior and assessment is disturbing and points out the flaws in CSW's work and their tendency to minimize the risk of violence to children and women, even in extreme cases such as this one. The mother seeks to deprive the father of parental care in court, and the CSW seeks another expert evaluation of the whole family (again), prolonging the procedure.

Case example 2: November 30. 2021 - Femicide in Lidl store<sup>146</sup> A woman was killed in the Lidl store in Split in front of customers and employees in the middle of the day less than three months after she started a separation/ divorce from her ex-husband with whom she had a 17-year-old son. She died after 15 stab wounds due to multiple injuries. CSW stated that it had no knowledge of domestic violence even though the family was on mandatory counseling and three times on mediation with the aim of agreeing on a shared parenting plan for a 17 years old son. CSW does

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<sup>145</sup>Dnevnik.hr, Policija o otmičaru iz Dugava: Osumnjičen za još dva kaznena djela, 17 January 2022, available at: <https://dnevnik.hr/vijesti/hrvatska/policija-o-postupanjima-uoci-talacke-krize-u-dugavama---692479.html>

<sup>146</sup>Jutarnji list, Ubojstvo u Lidlu nije izoliran slučaj: broj žena koje su ubili njihovi partneri zabrinjavajuće raste, 30 November 2021, available at: <https://www.jutarnji.hr/vijesti/crna-kronika/ubojstvo-u-lidlu-nije-izoliran-slucaj-broj-zena-koje-su-ubili-njihovi-partneri-zabrinjavajuce-raste-15127024>

not screen for violence nor implement any risk assessment before mandatory counseling or before mediation.

## Recommendations

- Implementing education for representatives of the judiciary on the conduct of individual assessment of victims and risk assessment.
- Ensuring that an individual assessment of victims is carried out in each case, taking into account all individual characteristics of the victim and her/his needs. The mandatory individual assessment should also be prescribed for misdemeanor cases/proceedings.
- Ensuring individual risk assessment/management for victims in view of the changing nature and risk dynamics throughout the duration of any court proceedings.
- Strengthening the cooperation of competent authorities with civil society organizations for the purpose of conducting individual assessments and risk management.
- Create a new, consistent and comprehensive statutory framework for multi-agency risk management - practical guidelines for GBV risk assessment, safety planning and multi-agency risk management which are to be mandatory for all agencies and in all GBV cases (not only in child protection cases) taking into account all individual characteristics of the victim and her/his needs.
- It is necessary to identify a comprehensive list of risks and high risks indicators and tools, including the lethality risk based on internationally recognized and validated instruments with highest predictability of assessing risk for GBV, along with accompanying guidelines, toolkits for learning.
- Add sex (female) and recent separation/divorce as personal characteristics of victim /vulnerability risk factors in Rules of Conduct of Individual Assessment of the Victim in Article 6.
- Introduce pilot project with electronic monitoring of offenders of GBV with early warning alarm system for victim.
- “List for the Assessment of Danger to Psychosocial Welfare of Children in High Conflict Parental Separation and divorce” and the use of any policy instruments with indicators such as “manipulation”, “parental alienation”, “high–conflict/family conflict”, “situational/common couple violence” or similar - needs to be removed completely and immediately from the social work practice instructions.
- Establish independent expert panel to promptly evaluate the persistence of underlying assumptions of gender neutral approach to violence and magnitude of gender bias against women victim of violence across whole government and public sector.
- Ensure robust impact assessment of all laws, statutory guidance and policy instruments in the areas of family law, child protection/social welfare and domestic violence to identify likelihood of policy application to increase risk to danger to women and children. Impact assessment should include include analysis of soft policy instruments, professional articles that inform practice and review of content of training for professionals that guide social workers practice in intersected areas of family law, child welfare protection and GBV

## Article 52 - Emergency barring orders

### Background

It is crucial for these measures to be adequate to eliminate the immediate danger; to allow the authorities to order the perpetrator to leave the victim's place of residence and prohibit contact with the victim immediately.

In Croatia, this is ensured in misdemeanor proceedings, but not in criminal proceedings.<sup>147</sup>

Namely, the Misdemeanor Act (Art. 130, para. 6) stipulates that “In case of probability of misdemeanor prescribed by law having been committed, the police and inspection entities of state administration can temporarily determine through a command one or more precautionary measures from Paragraph 2 of this Article<sup>148</sup>, and for eight days longest, towards a person for which there is reasonable doubt he/she is the perpetrator of the misdemeanor.”<sup>149</sup>

In addition, some protective measures (prohibition on approaching, harassing or stalking a victim of domestic violence; removal from the joint household may (according to Art. 14 of the Law on Protection against Domestic Violence) be applied (based on the court’s decision) even before the initiation of misdemeanor proceedings, at the proposal of the person exposed to violence (the victim) or an authorized prosecutor, if there is a direct threat to the safety of the victim or her family members or a joint household member. The decision shall be rendered by the court without delay, and no later than within twenty-four hours from the submission of the motion. The court will make a decision after hearing the victim and the person against whom protection is sought. The appeal does not delay the execution of the decision.<sup>150</sup>

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<sup>147</sup> See *S. Bezbradica Jelavić et al*, Analiza usklađenosti zakonodavstva Republike Hrvatske s Konvencijom Vijeća Europe o sprječavanju i borbi protiv nasilja nad ženama i nasilja u obitelji, op. cit. (footnote 128).

<sup>148</sup> (2) Precaution measures are the following:

1. Banning leaving one’s residence without court approval,
2. Banning visits to a certain location or area,
3. Banning coming near to a certain person and banning establishing or maintaining connections with a certain person,
4. Banning undertaking a certain business activity,
5. Temporary dispossession of travel and other documents for crossing the state borders, along with a ban,
6. Temporary dispossession of one’s driving licence for driving a vehicle or licence for steering a vessel, flying an airplane or other means of transport.

<sup>149</sup> According to Art. 130. of the Misdemeanor Act, Para 7., if the police or inspection entities of state administration, in the case from Paragraph 6 of this Article, do not submit the indictment proposal within 8 days since the determination of the precaution measure, along with a proposal to the court to extend the application of the precaution measure, or if, following the submission of such a request, the court do not determine regarding the precaution measure within the deadline of further 3 days, the precaution measure being applied ceases.

<sup>150</sup> According to Art. 14. Para. 4. of the Law on Protection against Domestic Violence, The court shall revoke the decision if the victim or other authorized prosecutor does not file an indictment proposal within eight days from the day the decision was made, of which he is obliged to warn the victim.

Such urgent action/response is not possible in criminal proceedings. In it, precautionary measures can only be imposed by the state attorney as a substitute for investigative custody, and the only power that the police have on the spot is to arrest the perpetrator. And for police to be allowed to arrest the perpetrator, some special preconditions have to be met.<sup>151</sup>

## Challenges

In criminal proceedings, adequate measures able to eliminate the immediate danger are not ensured. “The only power that the police have on the spot is to arrest the perpetrator”<sup>152</sup>, and “if there are no preconditions for arrest, and there is a likelihood that an act of violence was committed against woman, it is not possible to determine measures to remove the perpetrator. So when it comes to perpetrators of crimes, the law does not provide for the issuance of urgent removal orders.”<sup>153</sup>

Though situation is better when it comes to misdemeanor proceedings, there are also some obstacles for available options to be as efficient as possible:

- a) the frequency of the use of available options

In 2020, 8.539 people were reported to the police as possible (misdemeanor) perpetrators<sup>154</sup> and police issued 2.647 commands<sup>155</sup> for one or more precaution measures (based on Art. 130, para. 6 the Misdemeanor Act, in connection with para 2.), i. e. 30,999 %. This percentage raises the question of placing the burden of hurriedly seeking safety in a shelter or elsewhere on the victim, rather than ensuring the removal of the perpetrator.

- b) lack of data and information, alongside with complicated preconditions for protective measures

When it comes to the use of protective measures before the initiation of misdemeanor proceedings, at the proposal of the person exposed to violence (the victim) or an authorized

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<sup>151</sup> Article 107. of the Criminal Procedure Act:

Police authorities are entitled to arrest:

- 1) a person against whom they execute a ruling for compulsory appearance or a ruling on detention or investigative custody
- 2) a person against whom there are grounds for suspicion of having committed an offence subject to public prosecution, if any grounds exist **for ordering investigative custody** referred to in Article 123 of this Act
- 3) a person who is in the act of committing an offence subject to public prosecution

<sup>152</sup> Munivrana, Maja; Bosak, Martina, The Implementation of the Istanbul Convention in Croatia – Legal and Institutional Challenges, forthcoming in *Osteuropa Recht* 1/22

<sup>153</sup> S. *Bezbradica Jelavić et al*, Analiza usklađenosti zakonodavstva Republike Hrvatske s Konvencijom Vijeća Europe o sprječavanju i borbi protiv nasilja nad ženama i nasilja u obitelji, op. cit. (footnote 128), str. 96

<sup>154</sup> Izvješće o radu Povjerenstva za praćenje i unaprjeđenje rada tijela kaznenog i prekršajnog postupka i izvršavanja sankcija vezanih za zaštitu od nasilja u obitelji za 2020, <https://mpu.gov.hr/UserDocImages/dokumenti/Izvje%C5%A1%C4%87e%20Povjerenstva%20za%202020.pdf>

<sup>155</sup> Ministry of the Interior, administrative data.

prosecutor and based on the decision of the court (Art. 14 of the Law on Protection against Domestic Violence)

- statistical data that could show how often the protective measure are being proposed/issued in this stage (before the initiation of misdemeanor proceedings) are not available (at least not publicly)
  - to our knowledge, the police rarely use this option (we assume that they, when assessing that emergency protection is needed, rather use commands from Art. 130, para. 6 the Misdemeanor Act)
  - to our knowledge, the cases of victims rarely propose protective measures themselves, due to the fact that they lack:
    - information that they have the possibility to do so
    - (legal) knowledge to make such proposal<sup>156</sup>
- the issuance of the protective measures is preconditioned by the prior hearing of the victim and the person against whom protection is sought.

The fact that GREVIO has already clarified that as a measure of protection, emergency barring orders should not depend on the will of the victim and must be ordered *ex officio* as part of the state obligation to prevent any act of violence covered by the Istanbul Convention, makes this provision (as well as precondition of prior hearing of the victim, which can also lead to unnecessary additional secondary trauma) even more debatable.

#### c) duration of the protective measures

The duration period should be sufficient to provide effective protection to the victim. Existing examples of such orders in Council of Europe member states range between 10 days and four weeks, with or without the possibility of renewal. In Croatia, there is a possibility of renewal; however, initial duration is max. 8 days, which we believe not to be enough.

#### d) applicability of emergency barring orders to children

If the child was not the (direct) victim her/himself, protective measures usually don't apply to them (regardless of the fact that the child may have witnessed the violence). Consequently, perpetrators stay allowed to maintain contact with their children (and CSWs sometimes explicitly demand of women to encourage the child to see the perpetrator, as well as they sometimes demand the she takes the children to the designated address herself)

It is absolutely contrary to GREVIO's explanation that one of the purposes of emergency barring orders is to create distance between the abusive partner and the victim: in the physical sense as

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<sup>156</sup> See section regarding 57 – secondary free legal aid (representation in front of the court) is not available for misdemeanor proceedings. Therefore, the only available option would be asking for primary legal help (legal information and/or advice, due to the fact that the providers of primary legal aid are not allowed to represent in court proceedings nor to drafting submissions in court proceedings).

much as in the emotional sense. It gets undermined if the victim must facilitate contact or visitation between the abuser and the children.<sup>157</sup>

Having in mind all of the above said, we conclude that the aim to protect the right of women victims of domestic violence and their children to safety and to remain in their own homes is not satisfactory met (by current legislation nor practice).

## Recommendations

- ensuring availability of adequate urgent measures for protection within criminal proceedings
- ensuring more efficient *ex officio* and *ex parte* application of emergency measures for protection
- ensuring that the alleged perpetrator is removed from the residence, rather than the victim
- setting up a centralized and efficient system of data collection
- stepping up efforts to promote, monitor and enforce emergency measures for protection, including through protocols/regulation and technical means
- ensuring that sanctions for breaching emergency measures for protection are effectively applied in practice
- ensuring that emergency measures for protection are (always) applicable to children

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<sup>157</sup> GREVIO, Mid-term horizontal review provides a panoramic view of the implementation of the Istanbul Convention, 10 May 2021, point 469, available at: <https://rm.coe.int/horizontal-review-study-2021/1680a26325>



## Article 53 - Restraining or protection orders

### Background

The Misdemeanor Act proscribes seven **protective measures**<sup>158</sup> and Law on Protection against Domestic Violence (additional) four protective measures.<sup>159, 160</sup> However, it is debatable which of those measures could/should be interpreted as measures for protection of the victim.

Pursuant to the Misdemeanor Act, the court may impose one of **precautionary measures** from Article 130, paragraph 2<sup>161</sup>, among them prohibiting access to a certain person and prohibiting establishing or maintaining contact with a certain person<sup>162</sup>. Such precautionary measure can be imposed also in criminal proceedings<sup>163</sup> and the court may also impose a measure prohibiting stalking or harassment of a victim or other person.

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<sup>158</sup> Article 50, Paragraph 1: Protective measures are: 1. compulsory treatment for addiction, 2. prohibition to perform certain duties or activities, 3. prohibition of performing certain activities or jobs to a legal entity, 4. prohibition of obtaining permits, authorizations, concessions or subsidies, 5. ban on doing business with users of state and local budgets, 6. ban on driving a motor vehicle, 7. ban on visiting a certain place or area.

Those protective measures may be prescribed for a period of one month to two years, unless otherwise prescribed by the Act.

<sup>159</sup> Article 13: The court may impose the following protective measures on the perpetrator of domestic violence, in addition to the protective measures prescribed by the Misdemeanor Law: 1. mandatory psychosocial treatment, 2. prohibition of approaching, harassing or stalking a victim of domestic violence, 3. removal from the joint household, 4. Compulsory treatment for addiction.

<sup>160</sup> According to the Law on Protection against Domestic Violence, "protective measures may be imposed independently and without the imposition of a sentence or other misdemeanor sanction, they "may be imposed ex officio, at the proposal of the authorized prosecutor, victim or social welfare center." (Art. 12., Para 2. and 3.) As explained in the section regarding Article 32, some of protective measures from the Law on Protection against Domestic Violence ) may be applied even before the initiation of misdemeanor proceedings.

<sup>161</sup> See footnote 137.

<sup>162</sup> According to the Misdemeanor Act, the court can according to its official duty (*ex officio*) or upon a proposal from the plaintiff, order one or several precautionary measures be applied against the defendant, following the submittal of the indictment proposal, if this is necessary for ensuring the presence of the defendant in proceedings, preventing the defendant from committing new misdemeanors or preventing or aggravating establishing evidence in proceedings; precautionary measures can be imposed throughout the misdemeanor proceedings.

<sup>163</sup> Criminal Code, Article 98, Paragraph 2) Precautionary measures are: 1) ban on leaving the place of residence, 2) ban on visiting a certain place or area, 3) the obligation to report regularly to a certain person or state body, 4) ban on approaching a certain person, 5) prohibition to establish or maintain contact with a certain person, 6) ban on performing certain business activities, 7) temporary confiscation of travel and other documents for crossing the state border, 8) temporary revocation of the license to drive a motor vehicle, 9) prohibition of stalking or harassing the victim or other person, 10) removal from home, 11) ban on internet access.

According to the Criminal Procedure Act, precautionary measure can be imposed in the event that there are circumstances for determining investigative custody or that it has already been determined, but the court or the State Attorney (depending on the stage of the proceeding) determined that the same purpose can be achieved by precautionary measure/s; precautionary measures may be ordered before and during criminal proceedings.

## Challenges

lack of *ex parte* basis for ordering protection and availability addition other legal proceedings (regardless of setting in motion criminal or misdemeanor proceeding)

Only the Law on Protection from Domestic Violence allows the victim to request the imposition of protective measures (Article 12, paragraph 3 and 4, Article 14, paragraph 1), while all other measures intended to protect the victim are to be determined by the court *ex officio* or based on the proposal of the prosecutor, i. e. the police or the state attorney.<sup>164, 165</sup>

The Law on Protection from Domestic Violence also allows CSWs to propose protective measures, but they use this opportunity extremely rarely - probably due to the lack of education and understanding of GBV, as well as lack of proactive approach. They often take and express the position that they “must be neutral and treat both parents equally.”

Also, as already mentioned in connection with the previous article of the Convention, only in misdemeanor proceedings under the Law on Protection from Domestic Violence and the Misdemeanor Law could the measures for protection be imposed in urgent proceedings. The misdemeanor law allows the police to temporarily, by a maximum of eight days, order precautionary measures against a person for whom there are grounds for suspicion that he is the perpetrator of the misdemeanor (Article 130, paragraph 6). Furthermore, according to the Law on Protection from Domestic Violence, the court is obliged to decide on a proposal for a measure immediately without delay, and no later than twenty-four hours from the submission of the proposal (Article 14, paragraph 2). Such a proposal may be submitted by persons exposed to violence or by an authorized prosecutor to eliminate the immediate danger for the safety of the victim or members of her/his family or a member of the joint household. Such urgent procedures for imposing a measure do not exist in criminal proceedings.<sup>166</sup>

As already stated, in misdemeanor proceedings the victim may request the imposition of measures for protection, but only within the misdemeanor proceedings (not in *ex parte* proceedings outside the misdemeanor proceedings) and not completely regardless of setting in motion a misdemeanor proceeding.

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<sup>164</sup> According to the Misdemeanour Act (Art. 109. Para 1.), authorized plaintiffs are: 1. State attorney, 2. State administration entity, 3. Legal entity with public authority, 4. Damaged party.

**Therefore, when (and only when) the victim (damaged party) takes the role of authorized plaintiff, she/he could also propose precautionary measures from the Misdemeanor Act.**

<sup>165</sup> See S. Bezbradica Jelavić et al, Analiza usklađenosti zakonodavstva Republike Hrvatske s Konvencijom Vijeća Europe o sprječavanju i borbi protiv nasilja nad ženama i nasilja u obitelji, op. cit. (footnote 128), page 98.

<sup>166</sup> *Ibid.*

### availability for all forms of violence against women

Based on the above said, we can also conclude that measures offering protection are not equally available to victims of all forms of violence against women, due to the fact that those which are granted Law on Protection from Domestic Violence are only available for victims of domestic violence.

### applicability to children

As already stated in the section regarding previous article (Article 52), the authorities often omit protecting children: if the child was not the (direct) victim her/himself, measures usually don't apply to them (regardless of the fact that the child was present and witnessed the violence). Consequently, perpetrators stay allowed to maintain contact with their children. Sometimes the measure applies to one of the children in the family but not to another which clearly demonstrates omissions in protecting children as victims and/or witnesses.

### not ensuring that the measures cannot be issued against the victim and perpetrator mutually

"In Croatian practice, there is a notion of provocative behavior and that research shows that there is a widespread practice of imposing measures on the perpetrator and the victim, which is detrimental to combating domestic violence and protection of victims. Thus, the results of the research published in the publication Implementation of Croatian Legislation related to partner violence in 2012 showed that the practice of double arrest, in which the victim is arrested together with the perpetrator, widespread in Croatia."<sup>167</sup>

### lack of data

We know about inefficiency of protection from our practice, but it is really hard to find the causes and propose solutions since we don't have the access to relevant data.

Based on the Article 21 of the Law on the on Protection against Domestic Violence, operates the Commission for Monitoring and Improving the Work of the Bodies of Criminal and Misdemeanor Procedure and Execution of Sanctions Related to Protection from Domestic Violence., and the Commission "shall collect the reports of the competent bodies, in accordance with Article 20, paragraph 1 of this Law, review the submitted reports and monitor the situation on the basis thereof. Based on the collected reports and other necessary data, the Commission prepares an annual report and gives proposals and opinions regarding the application of this Law and the Criminal Code" However, they are not sorted by age or sex (of victim or perpetrator) and the relation between is not visible. We don't know who proposed the measure or is issued ex officio. We completely lack data on proposed and issued precautionary measures in cases of family violence.

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<sup>167</sup> *Ibid.*

Regarding the information about data of protective measures proposed and issued base on the Law on the on Protection against Domestic Violence, the Report states the following:

| <b>PROTECTIVE MEASURES</b>   | <b>Proposed in 2020</b> | <b>Implemented in 2020</b>                                |
|--|-------------------------|---|
| <b>mandatory psychosocial treatment</b>  | 927                     | 434 (265 fully implemented, 169 partially) <sup>168</sup> |
| <b>prohibition of approaching, harassing or stalking a victim of domestic violence</b> | 1.144                   | 994   |
| <b>removal from the joint household</b>  | 207                     | 215   |
| <b>compulsory treatment for addiction</b>  | 507                     | no data available   |

The Report doesn't provide us with the data regarding protective measures issued (ordered) during 2020. That data was gathered directly from the Ministry of Justice and State Administrator, based on a previous request:

| <b>PROTECTIVE MEASURE</b>  | <b>Issued in 2020</b> |
|--|-----------------------|
| <b>mandatory psychosocial treatment</b>  | 292                   |
| <b>prohibition of approaching, harassing or stalking a victim of domestic violence</b> | 1.162                 |
| <b>removal from the joint household</b>  | 96                    |
| <b>compulsory treatment for addiction</b>  | 459                   |

Comparing the data is quite confusing, since the methodology isn't explained at all: for example, the fact that the number of implemented removals from joint household is higher than a number of issued measures ordering the removal from the joint household is quite confusing. The results could probably easily be explained by the criteria set to take the measure (s into account as implemented/executed, but the criteria were not explained. Therefore, we do not know for sure whether all measures whose implementation began during the calendar year are taken into account, or only the measures whose implementation ended during the calendar year (which

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<sup>168</sup> Perpetrators who were referred for treatment (by courts) but for certain reasons the measure was not implemented, are also taken into (total) account. The records therefore include perpetrators who went through only the initial interview or entry procedure, but were not included in the treatment because they did not meet the basic prerequisites for inclusion, such as resistance to accepting minimal responsibility for their behavior. Records are also kept for perpetrators who were involved in treatment but gave up or discontinued treatment (e.g. self-initiated exclusion or exclusion by the provider due to unjustified absences).

could mean that the measures whose implementation started in previous year(s) and ended in 2020 are also to be taken into account).

From the fact that in 2020 a total of 2.785 protective measures were proposed (under the Law on Protection against Domestic Violence), while 8.539 persons were reported as potential perpetrators under the same law, we can conclude that protective measures were proposed in 32,615% of cases.

Some research showed that in misdemeanor proceedings (under the Law on Protection against Domestic Violence) precautionary measures were ordered in only 4,68% of the cases, while protective measures were ordered in 22,34% of the cases.<sup>169</sup> In criminal proceedings (dealing with men violence against women), precautionary measures were ordered in only 6% of cases. Investigative custody was ordered in 33,89% of cases.<sup>170</sup>

Another "Research has proven that the causes of large the number of non-accepted protective measures is found in the courts' conclusion that such measures wouldn't be effective<sup>171</sup> and in the victims' wish for such measures not to be imposed. **In one fifth of the analyzed measures, the court does not pay attention to the proposed protective measure whatsoever, so that neither in the operative part nor in the reasoning of the judgment does the court even mention the fact that measures were proposed.** However, the greatest concern is the fact that in any of the 225 judgments which were analyzed, the authorized prosecutor did not file a single

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<sup>169</sup> Rašić, Mario et. al., Kvantitativni rezultati stručne analize pravomoćnih prekršajnih presuda o nasilju prema ženama, 2012.-2016., op. cit. (footnote 94).

<sup>170</sup> Rašić, Mario, Kvantitativni rezultati stručne analize pravomoćnih kaznenih presuda o nasilju prema ženama, 2012.-2016., op. cit. (footnote 105). pages 36,38.

<sup>171</sup> According to: Šapina, Valentina, Zaštitne mjere propisane Zakonom o zaštiti od nasilja u obitelji čija provedba je u nadležnosti policije – razlozi neprihvatanja od strane prekršajnih sudova, Policijska i sigurnost, Zagreb, godina 25. (2016), broj 4, page 363, available at: <https://hrcak.srce.hr/file/258836363>, most common reasons justifying the conclusion of ineffectiveness were:

- the court has imposed some other protective measure that has not been proposed and considers that it will

to achieve the purpose of punishment,

- the imposition of the proposed measure in the opinion of the court is not necessary because the purpose of punishment could be achieved without the application of that measures,

- the defendant apologized to the victim during the proceedings and the court considers that there are no circumstances which indicate that the defendant will continue to engage in violent behavior,

- the defendant regrets the commission of the misdemeanor, so far he has not been punished for the misdemeanor and the court considers that the purpose of sentencing will be achieved even without the imposition of the proposed protective measure,

- the court finds that the imposition of the measure is not absolutely necessary in order to prevent the in committing and ensuring necessary protection of the health and safety of the and the defendant promised not to commit domestic violence again, and the judge assessed that promise as convincing and sincere,

- in the opinion of the court, the application of a protective measure is neither necessary nor appropriate because there is no danger that the defendant could repeat the domestic violence,

- the defendant has not been punished so far, and a precautionary measure was in force against him until the finality of the judgment and the court considers that the danger of re-offending is removed by that (precautionary)measure,

- the violence committed by the defendant was an isolated incident,

- the same measure is in force after the previous misdemeanor of the defendant.

appeal, and in more than half of the cases in which he proposed imposing a protective measure that was not accepted, the authorized prosecutor waived the right to appeal. It seems that the only thing important to the authorized prosecutor is the fact that the defendant was found guilty, by which the authorized prosecutors, as well as judges, put the victim and her protection out of focus.”<sup>172</sup>

## **Recommendations**

- to provide victims with the possibility to request an urgent ex parte protection/precautionary measure, inside and/or outside of misdemeanor and criminal proceedings
- to ensure the possibility for victims to obtain a protection/precautionary measure/order whether or not they choose to set in motion any other legal proceedings (respecting the fact that some victims may not be prepared to press charges)
- ensuring that the measures cannot be issued against the victim and perpetrator mutually, alongside with banning from national legislation and practice any notions of “provocative behavior” in relation to the right to apply for restraining or protection orders
- to develop policies/strategies/measures requiring the competent authorities, in particular the police, to identify the primary aggressor, in order to avoid the continuous arrests of victims when acting in self-defense.
- to ensure protection/precautionary measure are (always) applicable to victim's children
- to ensure efficient and methodological system of data collection statistical data processing as well as publishing of the data regarding protection/precautionary measure
- to ensure proper education and training of relevant professionals on the use and importance of protection/precautionary measures orders, in order to battle low levels of use (proposal, issue and implementation) of such measures

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<sup>172</sup> *Ibid.*, page 365.

## **Article 56 - Measures of protection during investigations and judicial proceedings**

### **Background**

The rights of victims were written about under the section regarding Article 19 of the Convention, where some of the challenges regarding their implementation were described.

### **Challenges**

However, we think that it is extremely important to additionally emphasize how non-standardized the treatment of the victims is, as well as how often their rights get violated. It proves the lack of understanding and respect for existing rights of the victims.

Some police officers/state attorneys/social workers/judges are quite diligent when it comes to respecting the rights of the victim, and others deny victims their right quite so easily, without bearing any consequences for doing so.

Example from our practice:

A female victim of sexual violence (rape) contacted one of the women's organizations for support: she said she would like to report sexual violence, the employee of the NGO contacted the police station and stressed that the victim's first language was not Croatian and that she needed an interpreter and asked for a female inspector. The police instructed them to come to report the next morning, but nevertheless they did not provide any of the requested (a female inspector, an interpreter). A person of trust (an employee of an NGO) was with the victim during the questioning at the police and state attorney's office, as a person of trust.

When the case reached the court (almost a year and a half later), the judge insisted that the victim testify in court, in front of the accused, in order to "confront" them (the victim and the perpetrator), and the victim was denied her right to testify via video link<sup>173</sup>. The same person of trust came to the hearing, but the judge did not allow her to be present and decided that she would call that person as a witness.<sup>174</sup> In addition to that, the judge also said that the lawyer is a person of trust for the victim (?) and that she does not need anyone else. When the person of trust, an employee of the women's association (NGO) testified, the judge commented that she had no business going to the police or the state attorney's office with the victim.

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<sup>173</sup> Under the Art 44 Para 4 Point 5 the victim of crimes against sexual freedom has the right to request to be questioned by means of an audio-video device, in accordance with Art. 292. Para 4. of the same Act which proscribes that that victims of crimes against sexual freedom shall be interrogated via audio-video devices (and how).

<sup>174</sup> Art 202 Para 2 Pont 38 stipulates that a person of trust is a person chosen by the victim. It can be a victim's legal representative or (any) other person having legal capacity, unless he or she is proposed or called as a witness. However, the status of a person of trust in cases where she/he exercised a role of a person of trust before being proposed or called as a witness stays unclear (i.e. whether such person could be called to testify as a witness).

Victim and witness support departments exist in courts in various Croatian cities or victims and witness support operates through associations (NGOs). Different Departments/NGOs report different experiences in ensuring victims' rights and emphasize that sometimes the exercise of rights depends on the good will and education of the official.

The Covid-19 pandemic also served as a popular excuse for violating victims' rights - there were several cases in which the victim was denied the right to be accompanied by a person of trust "because there are already too many people in the room, and the epidemiological conditions for a person of trust to be present are not met."

Such behavior/practice conveys the message that the State cares more for the welfare of perpetrators than of the victims.

Apart from the lack of education and awareness, the reasons probably also lie in the fact that the violation of the rights of the victim (as opposed to the rights of the defendant) does not constitute a ground for appeal. Therefore, if a victim gets deprived of her/his right nothing will happen (in a procedural sense).

## **Recommendations**

It is necessary to take legislative and other measures to ensure

- standardized treatment of victims in the exercise of their rights that do not depend on the discretion of individuals and technical/spatial capabilities of individual bodies
- additional education and awareness raising for all institutions (i.e. their officials and other staff members) working with victims, together with comprehensive and clear guidelines and rules of conduct
- that the rights of the victims have a "guarantee" – their violation has to bear a consequence, i.e. it has to be recognized as a ground of appeal. The injured person (the victim) should be granted the right to file an appeal herself/himself, but a second instance court should also be obliged to review, by virtue of the office (*ex officio*), whether there is a violation of the criminal procedure provisions referred to the rights of the victims



## Article 57- Legal aid

### Background

The Istanbul Convention recognizes that in order for victims of violence against women and domestic violence to effectively access justice, they must be afforded the right to legal assistance and to free legal aid.

Croatia doesn't provide the right to free legal aid/legal assistance specifically for victims of gender based violence. They can get it if they can classify as a member of some (other) group which qualifies for free legal aid/assistance.

Within criminal law (Criminal Procedure Act), free legal assistance is granted to following groups of victims:

- A child as a victim of a criminal offense has the rights to legal representative (attorney) at the expense of the state budget (Art. 44 Para. 1)
- A victim of a criminal offense against sexual freedom and a victim of human trafficking has the rights to legal representative (attorney) at the expense of the state budget (Art. 44. Para 4 Pont 1.)

Some victims have the right to talk to an "advisor" (at the expense of the state budget):

- The victim of a criminal offense punishable by imprisonment for a term exceeding five years, if he/she suffers more serious consequences of the criminal offense, (but only) when submitting a claim for indemnification (Art. 43, Para. 2)
- A victim of a criminal offense against sexual freedom and a victim of human trafficking has the rights to legal representative (attorney) at the expense of the state budget, before the questioning (Art. 44. Para 4 Pont 2.)
- A victim in respect of whom special protection needs have been identified (in accordance with Article 43a. of the Criminal Procedure Act), before the questioning (Art. 44 Para. 5 Point 1)

## Civil law

Free Legal Aid Act differs two types of free legal aid: primary<sup>175</sup> and secondary<sup>176</sup> free legal aid. Primary legal aid is provided by administrative bodies<sup>177</sup>, authorized associations and legal clinics. Secondary legal aid can be provided only by a lawyer.<sup>178</sup> The primary legal aid can be obtained by directly addressing the primary legal aid provider. The procedure for granting secondary legal aid is initiated by submitting an application to the administrative body (the same body mentioned in the footnote 173). The condition for granting free legal aid is the financial situation of the applicant and members of his/her household. However, secondary legal aid can, in some cases, be granted without determining the financial situation – for example, if the applicant is a victim of a criminal offense of violence in the proceedings for the purpose of exercising the right to compensation for the damage that is caused by the commission of a criminal offense.

In cases when the financial situation is to be determined, the total income and assets of the perpetrator of domestic violence, if any, are not taken into account if the applicant is a victim of that violence (Art. 15, Para 2).<sup>179</sup>

Regarding the type of procedure, secondary legal aid may be granted in the following procedures:

- a) in connection with real property rights, except for land registry procedures
- b) labor relations
- c) family relationships, except in divorce proceedings in which the spouses do not have common underaged (biological or adopted) children or children over whom they exercise parental care after coming of age
- d) enforcement proceedings and insurance proceedings in the case of enforcement or securing a claim arising from proceedings for which legal aid may be granted in accordance with the provisions of this Act
- e) peaceful settlement of the dispute

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<sup>175</sup> Art 9: Primary legal aid includes: a) general legal information b) legal advice c) drawing up submissions before public bodies, the European Court of Human Rights and international organizations in accordance with international treaties and the rules of procedure of those bodies d) representation in proceedings before public bodies e) legal assistance in out-of-court peaceful settlement of the dispute  
Primary legal aid doesn't include representation in court proceedings nor drafting submissions in court proceedings.

<sup>176</sup> Art. 12: Secondary legal aid includes: a) legal advice, b) drafting submissions in the procedure of protection of workers' rights before the employer, c) drafting submissions in court proceedings, d) representation in court proceedings, e) legal assistance in the peaceful settlement of the dispute.

Secondary legal aid also includes: a) exemption from payment of court costs b) exemption from court fees.

<sup>177</sup> A county body to which the performance of tasks of state administration related to the provision of legal aid is entrusted.

<sup>178</sup> This refers to lawyers (people who graduated from a law school) and who have chosen the profession of an attorney at law and as such are registered with the Croatian Bar Association.

<sup>179</sup> However, there is also a provision stipulating that the total income and assets of member of a household won't be taken into account if a) the members of the household is participating in the proceedings as an opponent to the applicant or b) when their interest is contrary to the interest of the applicant. Therefore, the provision ensuring the total income and assets of the perpetrator of domestic violence won't be taken into account if the applicant is a victim of that violence is in fact overlapping with those provisions.

f) exceptionally, in all other administrative and civil court proceedings when such a need arises from the specific life circumstances of the applicant and members of the household, and in accordance with the basic purpose of this Act.

#### Additional option

There is another possibility for obtaining free legal aid in the Republic of Croatia: pursuant to Art 21 of the Law on Advocacy and Title III. Code of Ethics for Lawyers, Croatian Bar Association provides free legal aid to socially vulnerable persons and victims of the Homeland War in legal matters in which those persons exercise rights relating to their position. In principle, this type of free legal aid is available for all types of court proceedings (but depending on social or war victim status).

### **Challenges**

Regarding legal aid within the criminal law system, and the concept of „an advisor“, Art. 202 Para. 2 Point 19 d Criminal Procedure Act stipulates that „An advisor is a person designated by law“, without any further explanation. Therefore, the role and/or profession of an advisor is not clear, as well as who will decide on what sort of professional to provide. It could be a lawyer, but also a psychologist, pedagogue, social worker etc.

It also stays unclear when (from which moment) the victim can claim the right to free legal representative (attorney) and/or advisor: is only after the official commencement of criminal procedure<sup>180</sup> or (any) moment before that. Some of our clients informed us that they were told that they can get free legal representative only once the indictment is confirmed. The Criminal Procedure Act also omits to prescribe how and to whom the victim shall express her/his will to exercise those rights, which is confusing and discouraging for victims.

From the above mentioned, we can conclude that free legal representation within criminal proceedings is not granted to all victims of gender based violence. It is also not granted to (any) victims of gender based misdemeanors.

The lack of gender based violence educated, sensitized and specialized attorneys is another big problem.

Regarding free legal aid available under the Free Legal Aid Act, there are numerous challenges:

#### Primary legal aid

Under the Free Legal Aid Act, primary legal aid is to be provided by administrative bodies, authorized associations and legal clinics. In 2020, associations provided 73,67% of legal aid, legal

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<sup>180</sup> Criminal Procedure Act, Art. 17. Para. 1. :

Criminal proceedings shall be commenced by: 1) the finality of the decision to conduct an investigation, 2) confirmation of the indictment if the investigation has not been conducted, 3) determining the hearing on the basis of a private lawsuit, 4) by passing a judgment on the issuance of a criminal warrant (Article 541, paragraph 1).

clinics 6,60% and administrative bodies 5.365%.<sup>181</sup> According to information available on the Ministry of Justice and Public Administration website, there are 53 authorized associations and legal clinics in Croatia.<sup>182</sup> The Free Legal Aid Act prescribes that the provision of legal aid to authorized associations and legal clinics shall be approved on the basis of an approved project (Art 36), and the tender for the acceptance of the project shall be announced by the Ministry by the end of January of the current year. There is only one tender for all the providers of free legal aid in Croatia.

In practice, we are dealing with following difficulties:

- funds provided by the Ministry of Justice and Public Administration are very limited: in 2021, the Ministry funded 24 free legal aid projects (and only few of them are run by associations specialized in working with victims of gender based violence). The projects were funded with the amounts between 50.000,00 HRK and 95.000,00 HRK, which is not nearly enough for the costs of the needed personnel, nevertheless other direct and indirect costs of conducting the project (as rent, utilities and other running costs). Although in 2021 the tender was announced within time frames set by law (which was not always the case), contracts with the Ministry were not signed by late May, which means that free legal aid providers are expected to operate almost half of the year without knowing whether they will get the funding or not. An additional problem in the work of free legal aid providers is Art. 34 Para 7 of Free Legal Aid Act, according to which the Ministry will delete from the Register of Primary Legal Aid Providers all the providers whose project has not been approved for three years in a row. However, the Ministry doesn't implement this provision as well as they don't update the list of active free legal aid providers. Therefore, from the list of free legal aid providers on the Ministry's website, it is not possible to conclude which associations are really providing free legal aid, as well which ones are specialized for some vulnerable groups (as victims of gender based violence).

Due to insufficient funding, delays in the implementation of the tender and complete lack of taking into account any advocacy attempts to improve the free legal aid system, some associations are providing free legal aid without being registered by the Ministry.

There is one other (parallel) option for funding of the free legal aid programs – Ministry of Labor, Pension System, Family and Social Policy. In 2021, there were some tenders (calls) allowing (among other activities) and free legal aid for associations providing counseling and safe housing for victims.

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<sup>181</sup> Vlada Republike Hrvatske, Izvješće o ostvarivanju prava na besplatnu pravnu pomoć i utrošku sredstava u 2020., Zagreb, srpanj 2021., page 6, available at: <https://www.sabor.hr/izvjesce-o-ostvarivanju-prava-na-besplatnu-pravnu-pomoc-i-utrosku-sredstava-u-2020-podnositeljica?t=129048&tid=210055>

<sup>182</sup> See the Ministry's website: <https://mpu.gov.hr/gradjani-21417/besplatna-pravna-pomoc/ovlastene-udruge-i-pravne-klinike-za-pruzanje-primarne-pravne-pomoci/6190>

However, one of them (the one for counseling centers)<sup>183</sup> had 2 priorities: 1. counseling service for victims of domestic violence 2. counseling service for victims of sexual violence. Applicants were allowed to apply to both priority areas of the Call at the same time, but financial support can be granted only for one application or project and the one with the highest number of points. That means that:

- a) the Ministry doesn't fund the project covering all forms of gender based violence (but only domestic and sexual violence)
- b) the associations working with women of gender based violence cannot be funded only for counseling victims of domestic **OR** victims of sexual violence (but not both at the same time!) As a result of such policy, in 2022 in Croatia there will be **only 2 projects** focused on victims of sexual violence (in other word, the Ministry is funding only two associations to work specifically with victims of sexual violence).

Regarding second call, the one for intended (primarily) for shelters<sup>184</sup> - it is focused only on victims of domestic violence. The other problem is that associations funded by the Ministry on „per capita“ basis are not allowed to apply (regardless of the fact that „per capita“ basis are not sufficient for psychological and legal counseling and other forms of support apart from accommodation).

### Secondary legal aid

According to the Free Legal Aid act (Art 17. Para 2), the administrative body is obliged to decide on the request for secondary legal aid within 15 days from the day of submitting the proper request. However, in reality applicants wait for a decision for a month or two, sometimes even longer.

Income thresholds do not take into consideration the specific financial status of women/women victims of violence, especially women with children.

The lack of gender based violence educated, sensitized and specialized attorneys is another big problem when it comes to secondary legal aid.

Foreigners (on temporary stay) in Croatia face additional difficulties, since they can get free legal aid only under the condition of reciprocity, and the process of establishing whether that condition is met is in some cases taking over a year to be completed.

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<sup>183</sup> Call for applications of projects of associations that provide counseling services for victims of domestic violence and victims of sexual violence in the Republic of Croatia for 2021, [https://mrosp.gov.hr/?id=12441&pregled=1&datum=Tue%20Oct%2019%202021%2016:42:50%20GMT+0200%20\(srednjoeuropsko%20ljetno%20vrijeme\)](https://mrosp.gov.hr/?id=12441&pregled=1&datum=Tue%20Oct%2019%202021%2016:42:50%20GMT+0200%20(srednjoeuropsko%20ljetno%20vrijeme))

<sup>184</sup> Call for applications for three-year programs of associations that provide counseling and shelter services for women and children victims of domestic violence in the Republic of Croatia (2022-2024), [https://mrosp.gov.hr/?id=12479&pregled=1&datum=Wed%20Dec%2001%202021%2014:09:07%20GMT+0100%20\(srednjoeuropsko%20standardno%20vrijeme\)](https://mrosp.gov.hr/?id=12479&pregled=1&datum=Wed%20Dec%2001%202021%2014:09:07%20GMT+0100%20(srednjoeuropsko%20standardno%20vrijeme))

There is no official data about these problems (at least not any that would be publicly available), so these findings come from information that our clients share with us.

- a) citizens are not sufficiently acquainted with the free legal aid system

due to insufficient promotion and institutions often failing to inform the victims of their right to free legal aid.

For example, according to the Procedure Protocol in Case of Domestic Violence, should “refer the victim and assist her in exercising her right to free legal aid”. However, CSWs often fail to provide victims with relevant information, which is also evident from the Ministry of Labour, Pension System, Family and Social Policy’s instructional letter (class: 555-03/21-01/14, no. 524-8-03-01/1-21-2, dated 1st of April 2021)<sup>185</sup> where it is stated: “The Centre’s expert employees should immediately conduct the initial assessment of a victim’s needs and, depending on them, provide psychological, legal and/or financial assistance to the victim, inform the victim and help them exercise their right to **free legal assistance**. We draw attention to the obligation of familiarizing each victim of domestic violence with the right to free legal assistance and the importance to be heard and recorded in the minutes given the circumstance of being acquainted with the said right, as well as assistance in exercising this right. Subjective assessments of expert employees that this is not necessary are **inadmissible**. Also, a victim of domestic violence should not be advised that there is no need for an attorney regardless of the needs they plan to authorize them.”

## Recommendations

- ensure that free legal assistance is (more) available to victims of all forms of violence covered by the Istanbul Convention, both in criminal/misdemeanor and civil cases. It demands legislative, funding and other changes in criminal law as well as in the system of free (primary and secondary) legal aid
- address the lack of expertise in the area of violence against women of legal aid lawyers and ensure that they are trained in this respect (we strongly encourage the involvement of women NGOs in the training of legal aid lawyers).

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<sup>185</sup> See Appendix 1.

## Special sections

### Gender based violence in maternity and gynaecological care (in the context of Articles 3, 12, 29 and 38 of the Convention)

“Roditelji u akciji - RODA” (Parents in action) is a civil society association that was an integral part of writing this report. Experts from RODA specialize in reproductive and health care rights, women’s rights and GBV in hospitals, mainly in maternity and gynaecological care. We decided to emphasize their point of view and problems they see are happening in Croatian hospitals on a regular basis because it also constitutes GBV as described in the Convention.

#### Article 5 – State obligations and due diligence

##### Background

Civil society organisations have led awareness-raising campaigns, specifically two waves of #PrekinimoŠutnju (#BreakTheSilence) where women used social media to share their experiences of violence in maternity and gynaecological care.<sup>186</sup> The state has been warned about this by several human rights bodies.<sup>187</sup>

##### Challenges

The state has refused to conduct due diligence: it has not introduced accountability mechanisms, monitoring or quality improvement programs to address the violence women are experiencing in maternity and gynaecological care.<sup>188</sup>

##### Recommendations

- The state should introduce mechanisms through which women can report human rights violations in maternity and gynaecological care, professional accountability measures for healthcare providers who perpetuate violence against women, as well as introducing and financing monitoring and quality improvement programs that include various stakeholders, including civil society.
- Educational programmes for healthcare professionals (pre-service and in-service) should include mandatory and regular trainings on eliminating violence against women, non-coercive communication and respectful care, especially for those that work in the state health system.

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<sup>186</sup> Roda - #PrekinimoŠutnju. available at: <https://www.roda.hr/udruga/projekti/prekinimo-sutnju/>

<sup>187</sup> UN, OHCHR, Croatia must act now to end violence and abuse against women in reproductive health procedures, say UN experts, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24198&LangID=E&fbclid=IwAR2-9Qmo8nu1E-OU4GvVQS1jLH4Yt9IZ0bfiWic24wLOCPqMu9pHZoMpGZI>

<sup>188</sup> Roda - Parents in Action. One year after #BreakTheSilence the state is still silent on obstetric violence. Available: <https://www.roda.hr/udruga/projekti/prekinimo-sutnju/godinu-dana-nakon-prekinimosutnju-avlada-i-dalje-suti.html>

- An Action Plan for Women's Reproductive Health, prepared through a multi-disciplinary, participative process, can form the basis for the implementation of these recommendations.

## Article 12 – General obligations

### Background

Since the 1960s women's reproductive health has been provided almost exclusively by male-dominated obstetrician-gynaecologists in centralised health centres and hospitals. Prior to that care was community based and organised by midwives who were and continue to be mostly women.

The paradigm shift meant that midwives went from being central care providers for women with normal pregnancies and those requiring well-woman reproductive healthcare to being demoted to doctor's assistants with no scope of practice or professional autonomy of their own.<sup>189</sup> Midwives are a profession that faces intersecting forms of discrimination: it is a female-dominated profession providing care to other females, for lived experiences and health care required only by females. This cultural tradition has put midwives and midwifery in an inferior position: midwives are still encouraged to complete a 4-year secondary school education, which is often a prerequisite for a midwifery university degree.<sup>190</sup> Masters programmes were only recently introduced, and only for two cohorts with no guarantee of continuity. Doctoral programmes do not exist. University-level programmes exist only in two cities (Rijeka and Split, with none in the capital, Zagreb).<sup>191</sup> Finally, the lecturers at university-level programmes are almost exclusively obstetrician-gynaecologists, as are the programme directors.

In practical terms midwives with a secondary school education and those with a university degree have the same scope of work and autonomy in the hospital system. Midwives cannot open their own practices because of conflicting legislation and lack of insurance coverage by the state health system.

### Challenges

Patriarchal structures and right-wing rhetoric have meant that male obstetrician-gynaecologists are very reluctant to give any control of reproductive healthcare to midwives. They have the monopoly over sexual health, contraception, abortion and childbirth, while this is not the norm in

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<sup>189</sup> Mivšek, Polona et al., Midwifery education in Central-Eastern Europe, *Midwifery*. 2016 Feb;33:43-5. doi: 10.1016/j.midw.2015.10.016. Epub 2015 Nov 17. PMID: 26632483, available at: <https://pubmed.ncbi.nlm.nih.gov/26632483/>

<sup>190</sup> *Ibid.*

<sup>191</sup> University of Rijeka, Midwifery, available at: <http://www.fzsri.uniri.hr/hr/studenti/studijjski-programi/192-veucilisni-diplomski-studiji/primaljstvo.html>



other European countries where midwives have professional autonomy to provide care in these areas.

## **Recommendations**

- The implementation of autonomous midwifery, that would include midwifery led-education and higher levels of education for midwives, policy processes and quality improvement programs would ensure that midwives have an equal and substantive seat at all decision-making levels, and would deconstruct the patriarchal model that is currently led by obstetrician-gynaecologists.
- A robust legislative framework for the midwifery model of care (including autonomous midwifery practice) and harmonisation of legislation that deals with midwifery care should be implemented in maternity facilities and community-based care, that would ensure that midwives have the possibility of having midwifery care covered by state health insurance. In these practices midwives should be able to provide well-woman gynaecological care, sexual health counselling as well as full-scope maternity services.

## **Article 29 - Civil lawsuits and remedies**

### **Background**

In relation to violence and rights violations women experience in gynaecologic and obstetric care, there is no formal complaint process and legal recourse is expensive and long. The average duration of the lawsuit to the final verdict is 4044 days (11,2 years).<sup>192</sup> Power dynamics in these lawsuits favour the health providers (especially physicians) involved.

### **Challenges**

Power dynamics in court cases involving ill-treatment, violence or malpractice in gynaecology and obstetrics strongly favour the health care providers being sued, as courts put more weight on their testimony as opposed to the woman's experience of care.

There is a conflict of interest with regard to the expert witnesses that are called by the court, many of whom are colleagues or friends of the health care providers involved in the court case. There are no expert witnesses in midwifery in Croatia.

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<sup>192</sup> Review of case law in gynecology and obstetrics in Croatia, available at: <https://www.roda.hr/udrugaj/projekti/radar/pregled-sudske-prakse-u-ginekologiji-i-porodnistvu.html>

Expert witnesses in gynecology and obstetrics will more often than not testify that any ill treatment or violent interventions were medically indicated, which is not the case.

## Recommendations

- Introduce training programmes (pre-service and in-service) for judges and legal experts on GBV in gynaecology and obstetrics, including what the difference between unavoidable poor outcome and ill-treatment, violence and malpractice look like.
- Create a transparent system of court-appointed expert witnesses, whereby the expert witnesses called to testify in a case are required to have no conflict or relationship with the colleagues involved in the case.
- Implement a programme for midwifery court experts.
- Create a no-blame recourse process and compensation for women and families who have had unavoidably poor outcomes after pregnancy and childbirth, with a separate, transparent recourse for cases of ill-treatment, violence or malpractice.

## Article 38 – Female genital mutilation

### Background

Routine procedures that are not medically necessary, that include routine use of episiotomy (cutting of the perineum during childbirth) and “tight stitching”, of tears or cuts after vaginal childbirth (also known as the husband stitch, with the goal to presumably increase male pleasure during vaginal intercourse) are common in Croatia, and fulfill the World Health Organization’s Classification of FGM (Type IV: Unclassified: All other harmful procedures to the female genitalia for non-medical purposes).<sup>193</sup> In a recent study published in the Lancet Regional Health Europe, the percentage of episiotomies in Croatia in 2020 was 48.1%, while in twelve other European countries studied in the same study was 20.1%.<sup>194</sup> The amount in Croatia is far above any medically-justifiable amount, which according to the World Health Organization should be less than 10% of vaginal births.<sup>195</sup>

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<sup>193</sup> WHO classification of Female Genital Mutilation, available at: [https://www.who.int/teams/sexual-and-reproductive-health-and-research-\(srh\)/areas-of-work/female-genital-mutilation/types-of-female-genital-mutilation](https://www.who.int/teams/sexual-and-reproductive-health-and-research-(srh)/areas-of-work/female-genital-mutilation/types-of-female-genital-mutilation)

<sup>194</sup> Lazzerini, Marzia et al. Quality of facility-based maternal and newborn care around the time of childbirth during the COVID-19 pandemic: online survey investigating maternal perspectives in 12 countries of the WHO European Region, The Lancet Regional Health Europe, 2021, available at: [https://www.thelancet.com/journals/lanepa/article/PIIS2666-7762\(21\)00254-4/fulltext](https://www.thelancet.com/journals/lanepa/article/PIIS2666-7762(21)00254-4/fulltext)

<sup>195</sup> Melo, Inês et al, Selective episiotomy vs. implementation of a non episiotomy protocol: a randomized clinical trial, Reprod Health. 2014; 11: 66. Published online 2014 Aug 14, available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4142063/#:~:text=Background,when%20the%20procedure%20is%20necessary>

In the article *Episiotomy: a form of genital mutilation* published in 1999. in the medical journal *Lancet* it is stated that “Compared with a natural tear, episiotomy results in more bleeding, more pain, more permanent vaginal deformity, more temporary, and longlasting difficulty with sexual intercourse”.<sup>196</sup>

Council of Europe Resolution 2306 (2019)<sup>1</sup> regarding Obstetrical and gynecological violence published in 2019 states that “Obstetrical and gynecological violence is a form of violence that has long been hidden and is still too often ignored. In the privacy of a medical consultation or childbirth, women are victims of practices that are violent or that can be perceived as such. These include inappropriate or non-consensual acts, such as episiotomies and vaginal palpation carried out without consent, fundal pressure or painful interventions without anesthetic.”<sup>197</sup> Sexist behavior in the course of medical consultations has also been reported.

The Special Rapporteur for the Violence Against Women has also discussed the problem of episiotomy, stating “While the procedure may be of benefit to the infant and the mother, if medically necessary, if unnecessary and/or done without informed consent, it may have adverse physical and psychological effects on the mother, can lead to death and may amount to gender-based violence and torture and inhuman and degrading treatment.”<sup>198</sup>

The “husband stitch” is a problem which the #PrekinimoŠutnju (#BreakTheSilence, a campaign similar to #MeToo where women in Croatia went to social media to discuss their experiences with harmful and painful gynecological care in 2014 and 2018).

Suturing tears or cuts after vaginal childbirth in Croatia is still often done without anaesthetic, which the SR-VAW also referred to in her report on obstetric violence, “Episiotomies, including stitching after birth when practiced without informed consent and without anaesthesia, may have significant repercussions on a woman’s reproductive and sexual life and mental health and the long-lasting scars from this practice accompany a woman for the rest of her life. When not justified by medical necessity, it should be considered to be a violation of women’s rights and a form of gender-based violence against women.”<sup>199</sup>

WHO recommendations regarding Intrapartum care for a positive childbirth experience includes “Episiotomy policy 39. Routine or liberal use of episiotomy is not recommended for women undergoing spontaneous vaginal birth. Not recommended.”<sup>200</sup>

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<sup>196</sup> Wagner, Marsden, Episiotomy: a form of genital mutilation. *The Lancet*, Volume 353, Issue 9168, P1977-1978, 1999, available at:

[https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(05\)77197-X/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(05)77197-X/fulltext)

<sup>197</sup> CoE, Parliamentary Assembly Resolution 2306, Obstetrical and gynaecological violence, 2019, available at: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=28236&lang=en>

<sup>198</sup> UN, Report of the Special Rapporteur on violence against women, its causes and consequences on a human rights-based approach to mistreatment and violence against women in reproductive health services with a focus on childbirth and obstetric violence, 2019, available at: <http://undocs.org/A/74/137>

<sup>199</sup> *Ibid.*

<sup>200</sup> WHO recommendations, Intrapartum care for a positive childbirth experience, available at: <https://apps.who.int/iris/bitstream/handle/10665/272447/WHO-RHR-18.12-eng.pdf>

## Challenges

The patriarchal power structures in healthcare institutions where obstetrician-gynecologists make the majority of decisions, that midwives must then implement and women must then passively undergo are impossible to change because obstetrician-gynecologists control medical and midwifery education, maternity care policy making processes, quality improvement programmes and generally must approve any changes that happen in maternity care in Croatia overall.

The midwifery model of care is a proven way to lower severe tears,<sup>201</sup> episiotomy rates while ensuring the health and safety of women and newborns.<sup>202</sup> However, despite the requirements of the European Education Area (where midwifery is one of five EU-regulated professions),<sup>203</sup> Croatian legislation has not all been harmonised and midwives are not able to practice independently nor do they have an independent scope of practice. As a result, they can only work as doctor's assistants in hospitals.

There have been efforts by civil society to increase awareness about the harmful effects of these practices,<sup>204</sup> but the State has not taken any steps to rectify the situation.<sup>205</sup> Additionally, episiotomy, husband stitch and stitching without anesthetic are only rarely mentioned in medical records, an ethical issue which is a way to protect obstetricians and health institutions, with only the victim's experience and word to testify to the fact that these practices were used.

## Recommendations

- The implementation of autonomous midwifery, that would include midwifery led-education, policy processes and quality improvement programs would ensure that midwives have an equal and substantive seat at all decision-making levels, and would deconstruct the patriarchal model that is currently led by obstetrician-gynaecologists.
- A legislative framework for the midwifery model of care (including autonomous midwifery practice) should be implemented in maternity facilities and community-based care, that would ensure that midwives have the possibility of having midwifery care covered by state health insurance.

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<sup>201</sup> Martin-Arribas, Anna et al., A comparison between midwifery and obstetric care at birth in Spain: Across-sectional study of perinatal outcomes, *International Journal of Nursing Studies*, Volume 126, 2022, available at: <https://www.sciencedirect.com/science/article/pii/S0020748921002741>

<sup>202</sup> The Lancet Midwifery Series, available at: <https://www.thelancet.com/series/midwifery>

<sup>203</sup> World Health Organization, European Union Standards for Nursing and Midwifery: Information for Accession Countries, 2009. available at: [https://www.euro.who.int/\\_data/assets/pdf\\_file/0005/102200/E92852.pdf](https://www.euro.who.int/_data/assets/pdf_file/0005/102200/E92852.pdf)

<sup>204</sup> Roda - Parents in Action, Women's Experiences in Pregnancy, Birth and Postpartum in Croatia, 2018-2019, available at: [https://www.roda.hr/media/attachments/udrugu/dokumenti/analize\\_izvjestaji/Iskustva\\_trudnica\\_rodilja\\_ba\\_binja%C4%8Da\\_20182019\\_digitalno\\_izdanje.pdf](https://www.roda.hr/media/attachments/udrugu/dokumenti/analize_izvjestaji/Iskustva_trudnica_rodilja_ba_binja%C4%8Da_20182019_digitalno_izdanje.pdf)

<sup>205</sup> Roda - Parents in Action. One year after #BreakTheSilence the state is still silent on obstetric violence, available at: <https://www.roda.hr/udrugu/projekti/prekinimo-sutnju/godinu-dana-nakon-prekinimosutnju-a-vlada-i-dalje-suti.html>

- Accountability measures that would ensure that maternity facilities that are not meeting the best-practice standards (e.g. they have very high episiotomy rates) are involved in quality improvement programs with clear targets and monitoring processes. Also, in situations where women's experiences are not in alignment with medical notes and statistics, accountability processes should investigate the reasons for this.
- An Action Plan for Women's Reproductive Health, prepared through a multi-disciplinary, participative process, can form the basis for the implementation of these recommendations.

## **Migration and Asylum (in the context of Chapter VII of the Convention)**

The main problem regarding Article 59 of the Convention is that for obtaining temporary residence for humanitarian reasons in case of DV the victim should submit evidence. It is unclear what constitutes evidence and what happens if a person cannot obtain or show the evidence that she is a victim of (gender based) violence. We recommend that Croatia writes about the practice of this kind of situation so that is clear how the laws are being implemented.

Data collection and statistics in Croatia are often systems that could be improved in many aspects of state policy and practice within many state sectors. The institutions could provide more concrete data on migration and asylum, but it is clear that it has not been a priority and it often lacks more information. Migration and asylum system is very complex and in the last several years there have been serious violations of human rights from the state authorities on the European external borders in Croatia, confirmed by the European Court for Human Rights and Council of Europe. These particularly are violent and illegal pushbacks from the Croatian territory. The State's Report explains the principle of non-refoulement but, unfortunately, the testimonies collected on the ground prove differently. People in need of international protection are being pushed back and among them there are women and victims of GBV. Croatian media have been reporting on such cases and the most known one is the case in which journalist Danka Derifaj reported - where a woman fled her home country with her two underage children, because of GBV, and the Croatian police pushed them back to Bosnia 22 (!!) times.

The whole data collection system should be improved, in general, but also to further investigate the position of women and women and girls victims of GBV. This would also influence the much needed screening of every woman and girl for cases of GBV, regardless of the time of the violent event(s) happening, prior to coming to Croatia or during their stay.

The Reception Centre for Asylum Seekers in Kutina is currently being renovated and all asylum seekers are being accommodated in the Reception Centre in Zagreb. The Reception Centre in Zagreb is a building that used to be a hotel and as such it has certain parts of the building intended for vulnerable groups, but it does not have the conditions for persons to be completely separated from each other therefore, complete privacy or separation is not ensured for asylum seekers who are victims of GBV.

The report explains details on the Standard Operational Procedure for Prevention and Response to Sexual and Gender-Based Violence in the Reception Centre for Asylum Seekers, but it would be necessary to read more about the implementation of this Procedure, to see the analysis of its effectiveness and how and if it helped the victims of GBV, etc.

This report should have provided insight into how the system implements the Convention and what is being done to protect victims of violence who are migrants and/or asylum seekers. This report does not provide statistics, qualitative data or actual insight into the situation on the ground. In order to monitor and analyse the implementation of this convention, it is necessary to establish mechanisms to monitor the situation on the ground and provide a quantitative and qualitative

insight into how the Republic of Croatia really prevents GBV and protects the victims of GBV in situations where victims are refugees and other migrants. In addition, practice shows that women victims of violence who are migrants and who are trying to enter the Republic of Croatia also often become victims of violence by the Croatian police, which illegally and forcibly pushbacks them from the Republic of Croatia.

## Summary of the most important recommendations and priorities

In the light of the considerations indicated in our report, our main recommendations are focused (but not limited) on requesting from the State immediate actions to:

- ensure that measures taken in accordance with the Istanbul Convention address **all forms of violence against women** in a holistic and comprehensive manner with **due regard for their gendered nature**. The **application of a gendered perspective** in the implementation of the Istanbul Convention, including in relation to law and policy has to be enhanced.

It is necessary to ensure that all legislation and administrative regulations, including protocols, at national level and all other levels, conform fully to the definitions contained in Article 3 of the Istanbul Convention. An action plan for implementation of the Convention, giving due importance to **all** forms of violence covered by the Convention, has to be developed and based on specified, consistent and on-going funding to allow for sustainable and comprehensive actions. It is important to ensure that all measures taken to this end are independently evaluated and their impact assessed.

- especially strengthen measures to prevent and combat violence that affects **women who are or might be exposed to intersectional discrimination** (these include, but are not limited to, Roma women, migrant, asylum-seeking and refugee women, women with disabilities, LGBTQ+ women, women from rural areas, women in prostitution, women with substance abuse), in particular by integrating their perspective into the design, implementation, monitoring and evaluation of policies for preventing and combating violence against women
- take measures to improve and expand the collection and public availability, by all relevant statutory agencies, of robust, comparable, harmonised and **disaggregated data** on all forms of violence against women, including that data on sanctions and protection/precautionary measures
- enhance the role of the **Co-ordinating body**, to equip it with the clear mandate, power and competences that are widely communicated; allocate the necessary human and financial resources; to separate roles of the co-ordination and implementation of policies and measures on the one side from the role of their monitoring and evaluation on the other - in order to ensure objectivity in the evaluation of policies; to restructure and reinforce other co-ordinating structures (National, County and City teams) as well as co-ordination between them



- ensure mandatory and fully functional **co-operation, co-ordinated multiagency response and “flow” of information between all the relevant institutions**, including law-enforcement agencies, the judiciary, prosecution services, probation officers and support services for victims of GBV, in relation to all forms of violence covered by the Convention.
- ensure legally mandated **training for all professional groups that come in contact with victims**, in particular law enforcement officials, prosecutors, judges, social workers, teachers and health professionals, which includes:

- a. systematic and compulsory initial trauma-informed and victim-centered training on the different manifestations of GBV against women, their detection and their (gendered) root causes
- b. regular in-service training that is mandatory and based on protocols and guidelines for intervention in cases of all forms of violence against women

All forms of violence against women covered by the Istanbul Convention should be addressed, in particular sexual violence, as well as the psychological dynamics of intimate partner violence, post-separation violence, the effects of violence on victims and witnesses (including children), and the prevention of secondary victimisation, in cooperation with independent women’s NGOs providing specialist support to women victims of violence.

- establish at different levels of government **consultative dialogues with women’s organisations from all parts of the Republic of Croatia**, in order to incorporate their opinions and experiences into the design of relevant policies to foster state actors’ co-operation with and mutual support for women’s organisations, while ensuring sustainable funding levels
- develop a comprehensive strategy for **service provision** by conducting a needs, availability and quality assessment on the number, types and geographical location of services required by victims of all the different forms of violence.  
To take measures to (a) expand the coverage and capacity of quality specialist services throughout the country in relation to all forms of violence against women, (b) ensure the financial sustainability and the continuity of service provision, (c) guaranty victim’s equal access to services throughout the national territory (d) harmonise the provision of specialist services with **the standards** defined by the Convention (e) support further strengthening and/or establish minimally three additional specialized services for working with victims/survivors of sexual violence, situated in four regional centres of Croatia (Zagreb, Split, Rijeka and Osijek), in order to achieve accessibility for larger number of women survivors of sexual violence (f) provide access for child victims/witnesses to

appropriate, age-specific support services (g) to ensure that access to all services is granted regardless of women's willingness to report violence

- expand the number and/or capacity of **specialist shelter facilities dedicated (solely) to women and their children** while **monitoring the quality and financial sustainability of service provision; develop clear and uniform standards for the provision of specialized shelter services for women victims of violence, especially in relation to their safety and empowerment and as well as staff capacity and training.**  
Develop a strategy of insuring the provision of shelter to women who are or might be exposed to intersectional discrimination (including, but not limited to, Roma women, migrant, asylum-seeking and refugee women, women with disabilities, LBTQ+ women, women from rural areas, women in prostitution, women with substance abuse).
- ban the use by court-appointed experts, social workers and courts of **concepts related to “parental alienation”, as well as any other approach or principle, such as the “friendly parent provision”, “manipulation”, “high conflict approach”, “situational violence”**, which tend to consider mothers who invoke the violence as “uncooperative” and “unfit” as a parent, and to blame them for the poor relationship between a violent parent and his children
- ensure that **courts are under the obligation to consider all issues related to violence against women when determining or restricting custody and visitation rights**, while recognising that witnessing gender based violence also represents violence towards children. The practice of victim blaming for “not protecting” the children from witnessing the violence must be extinguished, while recognising that **the perpetrator is solely responsible for exposing children to violence**. The victims' right to choose whether/when to report the violence should in fully be respected and the **practice of removing children from non-abusive parents completely extinguished**.
- take the necessary measures, whether of a legal nature or otherwise, **to ensure the safety of women and children, including by limiting or suspending custody and visitation rights of perpetrators of domestic violence** until the court decides otherwise. In cases where visitation shall be allowed, to improve the co-ordination and co-operation between courts and services that assist women victims of violence and their children and stepping up the funding and staffing for supervised visitation (within secure premises), to ensure that children and women are not put at risk by visitation regimes, as well as to insure potential risks to be identified and the relevant courts informed

- take measures, including legislative amendments, to enable an effective response of law enforcement bodies and the judiciary to violence against women, by:
  - ensuring that the competent courts are under a duty to consider violence against women when determining custody and visitation rights and to assess whether such violence would warrant restricting these rights
  - improving and developing risk-assessment and management procedures in all cases of violence against women covered by the Convention and ensuring their wide dissemination within all statutory agencies involved in dealing with such cases, while considering introducing a system to analyse retrospectively all cases of gender-based killings of women
  - ensuring that violations of the rights of the victims are recognized as a ground of appeal. The injured person (the victim) should be granted the right to file an appeal herself/himself, but a second instance court should also be obliged to review, by virtue of the office (*ex officio*), whether there is a violation of the criminal procedure provisions referred to the rights of the victims
  - initiate a process of reviewing the protection and precautionary measures currently in place, as well as their implementation in practice with a view to ensuring that they are available for immediate protection without undue delay.  
Precautionary measures, protective measures and/or other forms of emergency barring orders must be quickly accessible to victims of all acts of domestic violence and all forms of violence against women, in criminal and misdemeanor proceedings. They should be always available *ex parte* (in addition to issuing them *ex officio* and or/at the proposal of the authorized prosecutor), inside and/or outside of misdemeanor and criminal proceedings; it is necessary to ensure the possibility for victims to obtain such measures whether or not they choose to set in motion any other legal proceedings (respecting the fact that some victims may not be prepared to press charges)
  - ensuring, through all available means (including legislative changes, new protocols and training of professionals) more operational clarity when distinguishing domestic violence as a misdemeanor from domestic violence as a criminal offense. *De lege ferenda*, all forms of GBV against women should be treated as criminal offenses (not misdemeanors)
  - ensuring, through all available means (including legislative changes, new protocols and training of professionals) more dissuasive sanctions for GBV offenders
  - ensuring the ending of the practice of dual arrests and dual accusations.
  
- adopt an Action Plan for Women's Reproductive Health, prepared through a multi-disciplinary, participative process that includes CSOs and has a gendered perspective. The Action plan should include GBV in reproductive health and plan prevention, education, implementation of autonomous midwifery, data collection, monitoring and quality improvement measures, victim support and needed policy and legislation changes.

# Appendices

## Appendix 1

REPUBLIC OF CROATIA  
MINISTRY OF LABOUR, PENSION SYSTEM, FAMILY AND SOCIAL POLICY  
DEPARTMENT OF FAMILY AND SOCIAL POLICY

Class: 555-03/21-01/4  
Reg. no.: 524-8-03-01/1-21-2  
Zagreb, 1 April 2021

DEPARTMENT OF SOCIAL SERVICES

- all –

SUBJECT: Domestic violence victim protection

- instruction on the protocol, to be delivered

Dear Sir/Madam Head,

Following the protocols of the Social Services Centres (hereinafter: Centre) in cases of domestic violence in reports and complaints of citizens and other interested parties, as well as through insight into the protocols in the SocSkrb application, an insufficient implementation of the Procedure Protocol in Case of Domestic Violence in particular cases has been noticed.

The aim of the Centre's procedures is to take measures and actions, as well as provide support in line with the jurisdiction for a comprehensive protection of victims of domestic violence and family members.

A victim of domestic violence who is referred to the Centre should be treated with particular sensibility and communication should be tailor-made to suit the victim's needs. In conversation with domestic violence victims, one should bear in mind that victims are exceptionally vulnerable. In the Centre's protocols, domestic violence situations should by no means be treated as isolated incidents. Through an insight into the Centre's protocols, insufficient support to victims as well as equalising the victim and the perpetrator, often putting them in an equal position, has been noticed. The Centre's premises should to victims of domestic abuse be a space of protection and safety.

Furthermore, it has been noticed that reports on domestic violence still, in isolated cases, are not forwarded to competent authorities because they already have information on violence. We stress that it is necessary to report such cases to the police immediately and without delay, as well as submit all information on the case **regardless of whether the police have already been informed or not.**

The Centre's expert employees should immediately conduct the initial assessment of a victim's needs and, depending on them, provide psychological, legal and/or financial assistance to the

victim, inform the victim and help them exercise their right to **free legal assistance**. We draw attention to the obligation of familiarising each victim of domestic violence with the right to free legal assistance and the importance to be heard and recorded in the minutes given the circumstance of being acquainted with the said right, as well as assistance in exercising this right. Subjective assessments of expert employees that this is not necessary are **inadmissible**. Also, a victim of domestic violence should not be advised that there is not need for an attorney regardless of the needs they plan to authorise them.

A large number of reports refers to the issues of **parental custody in domestic violence cases**. A termination of a parental community reported for violence does not assume highly conflicting interparental relationships in all situations. It has been noticed that in terms of parental custody the victim and the perpetrator are put in an equal position and child exposure to violence is not perceived as a risk.

In drafting opinions and proposals to the court, in certain cases the interest of the violent parent is prioritised before the child's interest and before victim protection, and despite the presence of domestic violence the parental competences of the victim parent and the perpetrator parent are assessed as equal. This is particularly present in situations of maintaining a personal relationship with the domestic violence perpetrator parent. We hereby draw attention to the fact that a child's exposure to domestic violence, even though the violence is not directed to the child, presents a form of **psychological child abuse with specific consequences on their psycho-social development**.

The said poses a special risk when a victim and children resort to an emergency temporary accommodation in critical situations. We once again stress that in the legal hierarchy, the right of the child and the victim to safety and a life without violence is above the rights of the perpetrator. The Centre head organises and runs the Centre's business and professional activities and is **responsible** for their legality. Protocols in cases of domestic violence cannot be postponed. Protection of domestic violence victims, as particularly vulnerable groups, is imperative in the protocol.

Kind regards,

## Appendix 2

7<sup>th</sup> of September 2021

### **In reaction to claims appearing in a series of articles by journalist Jelena Jindra on the H-Alter website under the title *A System for Child Protection or for Child Abuse?***

As a civil society organisation working directly with women victims of gender-based violence, we hereby express our concern regarding the experiences of women and other claims appearing in the series of articles written by journalist Jelena Jindra on the H-Alter website under the title *A System for Child Protection or for Child Abuse?*

Regarding this matter, we feel it is our duty to point out that we ourselves in our everyday work witness victims who are often scared to report violence, and the growing reason for fear of reporting is the fear that institutions might accuse them of 'alienation' and take away their child if they try to protect themselves (and the child) from abusers. If we allow for victims to be intimidated and punished this way for deciding to report violence (against herself and/or the child) or seek surveillance or banning the violent parent from seeing the child, if she expressed her fear for the child's safety while the child is with the other parent and/or in any other way tried to point to the jeopardy of her own and/or the child's mental, emotional and/or physical safety, we are breaching the most fundamental principle of work with victims and the responsibility for violence and its consequences are immediately transferred from the abuser to the victim.

In that context we find that the parental alienation syndrome and/or parental alienation is a very dangerous concept, especially if used in cases of domestic violence, where its use is fully contrary to professional guidelines<sup>206</sup> and empirical evidence of the alienation concept being abused as a mechanism to silence women and children abuse victims. Relevant and recent scientific research warn of the fact that mother's claims of father's violence, especially in case of violence against the child, increases the risk of mother losing custody over the child. Father's claim of the mother alienating the child doubles this risk (Meier, 2020).<sup>207</sup>

Regardless of what we (don't) call the alienation concept/syndrome, we deem it evident that we are in a situation in which testimonies from a large number of women raise the question whether their implementation jeopardises the rights and safety of women and children victims of gender-based abuse, as well as the (non-)implementation, i.e. the breach of binding international documents and resulting legal standards. We remind that the Council of Europe Convention on preventing and combating violence against women and domestic violence binds us, in case of domestic violence, to first and foremost respect the obligation to take into account the occurrence of violence and to ensure that the right to see the children or custody doesn't jeopardise the rights

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<sup>206</sup> The European Psychotherapy Association considers the concepts of parental alienation syndrome and parental alienation inappropriate for use in psychotherapy: <https://www.savez-spuh.hr/izjava-europske-asocijacije-za-psihoterapiju-o-konceptima-sindroma-otudenja-od-roditelja-i-roditeljskog-otudenja/>.

<sup>207</sup> Meier, J. (2020). U.S. child custody outcomes in cases involving parental alienation and abuse allegations: what do the data show?. *Journal of Social Welfare and Family Law*. 42. 1-14. 10.1080/09649069.2020.1701941.

and safety of the victim or children.<sup>208</sup> In other words, the safety of children and the non-violent parent has to be a priority.

We also remind of the reports of the monitoring mechanism of the GREVIO<sup>209</sup> Convention, especially for Italy<sup>210</sup> and Spain<sup>211</sup>, where the alienation concept is approached extremely critically, warning of the lack of its scientific ground and making an attempt at regulating it or fully banning it.

We also draw attention to the Resolution Proposal of the European Parliament on the consequences of partner violence in intimate relationships and the women and children's right to custody (2019/2166(INI)), which says that, although in principle joint custody and unmonitored contacts are desired to guarantee that both parents have equal rights and equal responsibility and to protect the child's best interests, partner violence in intimate relationships is apparently not reconcilable with joint custody and care because of its difficult consequences to women and children, including the danger of radical acts such as murdering women and children, underlining that in determining custody arrangements and rights to visit the child the most important are the protection of women and children against violence and the child's best interest, which has priority over other criteria. Also, it is highlighted that the best alternative is the sole custody of the non-violent partner, most often the mother, which prevents further violence and secondary victimisation.<sup>212</sup> This proposal is important because it also underlines many other important facts which in practice are sometimes neglected, such as the right of every child to be in contact with both parents, stemming from Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 9 of the European Convention on the Exercise of Children's Rights, can be limited to guarantee the best interest of the child and the child's safety.

We also remind of the very important letter from the Ministry of Labour, Pension System, Family and Social Politics, stating that a victim of domestic violence addressing a professional for help should be approached with particular care and communication should be adapted to the victim's needs, and in contact with social welfare institutions victims should feel safe and secure. Furthermore, the practice of equalling the victim and the abuser should be terminated. We find particularly important the part of the letter clearly stating that a child's exposure to violence, even

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<sup>208</sup> Article 31 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (hereinafter: Convention). As the Explanatory Report says, "particularly in domestic violence cases, the issues related to children are often the only connection between the victim and the abuser. To many victims and their children, respecting the contact order can present a significant safety risk since this often means a direct encounter with the abuser. Therefore, this paragraph states the obligation of ensuring that victims and their children are secured from any subsequent damage. (Office for Gender Equality, Council of Europe Convention on preventing and combating violence against women and domestic violence, Explanatory Report (unofficial translation), p. 64.

<sup>209</sup> Mid-term Horizontal Review of GREVIO baseline evaluation reports, available at: <https://rm.coe.int/horizontal-review-study-2021/1680a26325>.

<sup>210</sup> GREVIO Baseline Evaluation Report Italy. Available at: <https://rm.coe.int/grevio-report-italy-first-baseline-evaluation/168099724e>.

<sup>211</sup> GREVIO Baseline Evaluation Report Spain. Available at: <https://rm.coe.int/grevio-s-report-on-spain/1680a08a9f>.

<sup>212</sup> The Resolution Proposal is available at: : [https://www.europarl.europa.eu/doceo/document/CJ02-PR-663336\\_HR.docx](https://www.europarl.europa.eu/doceo/document/CJ02-PR-663336_HR.docx).

if the violence is not directed to the child, is a form of emotional abuse of the child with specific consequences on the child's psycho-social development.<sup>213</sup>

It is also mentioned that in the hierarchy of rights, the right of the child and the victim to safety and life without violence are above the rights of abuser.<sup>214</sup> These instructions in fact represent the basic rules and standards of work with victims and the testimonies of 'Croatian Lauras', as well as the very fact of this letter's existence, point that daily practice is not in line with them.

The procedure protocol in case of domestic violence binds all professionals contacting the victims to apply the basic principles of work with violence victims, one of which is that only the perpetrator of violence is responsible for violent behaviour.

In order for the aforementioned obligations of professionals and the Republic of Croatia as a signing party in the Convention to be complied with, it is extremely important to believe the victim and proceed from that point on in our investigation of the case.

In conclusion, since the aforementioned articles by journalist Jelena Jindra described the testimonies of several women warning of the possible significant irregularities in the work of institutions which an important role in a large number of cases of domestic violence, we deem it is necessary to investigate their grounds.

Consequently, we demand:

- that relevant state institutions and professional associations seriously investigate the claims mentioned in the article, whether there was a breach of the rights of children and/or victims of violence in a partner relationship
- that the Ministry of Labour and Pension System, Family and Social Politics and the Ministry of Justice and Public Administration urgently organise education and training for persons included in systems of support and protection of the rights of victims, with an accent on understanding gender-based violence
- an urgent reform of the social welfare system which would, among other things, include the improvement of employee work conditions, ensure lifelong learning, education and supervision for the employees, restructure the system with new job openings for experts
- a strategic approach and intense work on increasing the sentiment of trust that citizens, including violence victims, have in the justice system, including changes of existing practices and external independent controls

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<sup>213</sup> The same conclusions are mentioned in the previous note to the already mentioned Resolution Proposal, stating that violence of intimate relationship partners is connected with violence against children and children abuse; that children exposed to domestic violence probably suffer negative consequences on their mental and physical health which could be acute or chronic; that children victimisation in violence against women can continue and escalate during the custody process; that growing up in a violent domestic surrounding can have major consequences on the child's development and behaviour as an adult; that exposure to violence in childhood through abuse and/or witnessing abuse between partners in intimate relationships brings the child into danger of becoming a victim or an abuser as an adult (items M and N, p.6).

<sup>214</sup> This paragraph mentions the conclusions and guidelines that the Ministry of Labour, Pension System, Family and Social Politics, class 555-03/21-01/4, reg.no.- 524-8-03-01/1-21-2, addressed on 1 April to all the social welfare centres. Although the letter, as we know, was addressed (only) to the professionals from the social system, we believe the guidelines and conclusions stated in it are by all means applicable to all the experts encountering violence victims in their work.



- expanding the network and strengthening institutions implementing complete diagnostics and treatment of children and young people, especially violence victims, and ensuring their levelled territorial distribution

The undersigned organisations and experts support this reaction and put themselves on disposition for further dialogue and mutual education and exchange of knowledge and experiences regarding the aforementioned issues.

SOS Rijeka – centre for non-violence and human rights

B.a.B.e. association

OCD DELFIN Pakrac

Gordana Sarson

CESI – Centre for Education, Counselling and Research

Karlovac Women's Group Korak

Lesbian organisation Rijeka LORI

Sandra Turkanović

#SPASIME initiative

PaRiter Association for Human Rights and Civil Participation

Sanja Kovačević

Poreč Centre for Civil Initiatives

HERA association Križevci

Autonomous Women's House Zagreb

Platform for Reproductive Justice

Family Protection Association – Rijeka U.Z.O.R.

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