

**Key Words:** sexual violence, legal reform regarding rights of victims and survivors of sexual violence, relevant documents and strategies, Protocol of Conduct in cases of sexual violence, lack of support services for victims and survivors.

## **Introduction**

1. This report is submitted jointly by Women's Room – Center for Sexual Rights from Zagreb, Croatia,<sup>i</sup> which operates the Center for Victims of Sexual Violence (hereafter referred to as 'Center') – the only referral Center for victims of sexual violence in Croatia – and the Sexual Rights Initiative.<sup>ii</sup>

## **Executive Summary**

2. This report focuses on sexual violence as a form of gender-based violence and on the status of the rights of victims and survivors of sexual violence. The report describes the current situation in Croatia regarding the prevalence and risk factors of sexual violence, the legal framework, including changes in the Criminal Code, and the distribution and accessibility of support services for victims and survivors of sexual violence. The report also addresses the Protocol of Conduct in Cases of Sexual Violence (hereafter referred to as 'Protocol') as this is currently the most important document regarding sexual violence in Croatia. The report also presents recommendations for the Croatian government and policymakers on how to improve the implementation of relevant laws and regulations concerning the protection of victims and survivors.

## **Background and Context**

3. Although sexual violence is punishable within the Criminal Code, lack of effective implementation and enforcement of the law is a significant challenge. The Criminal Code is not favourable for victims or survivors of sexual violence; the minimum prison sentence for cases of rape was reduced from three years to one year in January 2013.

4. From the experience of Women's Room having worked directly with victims and survivors of sexual violence, related court processes have mostly lasted around 3 years. The time between occurrences of felony, in this case rape, and the conclusion of the judicial process can take as long as 6 years. For example, in one such case coming to the Center, the victim was attacked in August 2008 while the perpetrator was imprisoned in April 2014.

5. Croatia seriously lacks a system of support for victims and survivors of sexual violence. The Council of Europe recommends operating 1 center for victims of sexual violence for every 200,000 women in the population.<sup>iii</sup> There are 2,218, 554<sup>iv</sup> women in Croatia. Accordingly, at least 12 centers should be operating; however, only one center currently exists.

6. Additionally, Croatian society is still dominated by patriarchal values, which directly contribute to numerous prejudices and stereotypes that blame the victim for the experienced violence. Often the victim is faced with suspicion, not only by family and friends, but also by police officials when reporting the offence. Unfortunately, secondary victimization is, according to the work of the Center, a common occurrence.

## **Legal Framework**

7. Numerous efforts have been made but positive changes in the Criminal Code have been rare and extremely slow, e.g. sexual harassment was not considered a felony until January 2013; the

same for intrusive behaviour/ stalking and female genital mutilation. Furthermore, there have been other relevant changes regarding sexual violence, which indirectly reflect the public and governmental opinion on sexual violence. The minimum sentence of imprisonment for rape was reduced from three years to one year. The current sentence for rape extends from a minimum of 1 year to a maximum of 10 years. The new Criminal Code also introduced the offense of “sexual intercourse without consent” (hereafter referred to as Article 152). This new felony remains a subject of controversy and debate among representatives of relevant institutions, bodies and civil society organizations (hereafter referred to as ‘CSO’). The problem lies in the definition of the offence and in reduced sentencing for the perpetrator in comparison to rape. As it was stated, the intention of the legislation was to prove the absence of consent; as in cases of rape, it is needed to prove the existence of threat and/or physical force. Unfortunately, it seems that either a mistake was made in the Criminal Code and Article 152 or the above-mentioned intention of the new legislation was not true after all. In Article 152, we do find a definition of consent, but what is confusing is the fact that we also find the term “threat” as in Article 153 “Rape.” This has led to numerous discussions and to the current situation where most sexual violence offences are now qualified as Article 152. According to the data of the Ministry of Interior, rape was reported 65 times in the 2011<sup>v</sup> and 79 times in the 2012.<sup>vi</sup> In 2013<sup>vii</sup>, rape was reported in 82 cases and sexual intercourse without consent in 71 cases. The penalty for sexual intercourse without consent ranges from a minimum of 6 months to a maximum of 5 years of imprisonment. When the perpetrator is sentenced, during the process of appeal, the higher court can reduce the first sentence, and they most often do.

8. The Protocol of Conduct in Cases of Sexual Violence was adopted by the Croatian Government at its 64th session held on November 29th, 2012, following the proposal of the Office for Gender Equality. The Protocol is based on several laws and regulations<sup>viii</sup> and on the obligations prescribed by the National Policy for the Promotion of Gender Equality from 2011 to 2015.<sup>ix</sup> The objectives of the Protocol are to introduce standardized conduct with victims, standardized methods of data collection, and documentation and storage of physical evidence; to inform persons from all relevant state institutions, bodies and CSOs about their obligations and responsibilities regarding the victim; to ensure timely care, which provides emotional support to victims and reduces the risk of further development of traumatic disorders; to provide quality medical care to victims, including examination, treatment, and monitoring of health; to enable the use of an interdisciplinary approach in providing assistance to victims; and to ensure the confidentiality of the collected data. The Protocol objectives have not been met in practice and there is still lack of awareness among relevant institutions about its existence. Representatives of institutions are not provided with any education on its implementation and no human or financial resources are being invested in order to meet the needed obligations of the Protocol. As a result, reporting and prosecution procedures are highly traumatizing for victims of sexual violence, which directly results in a smaller number of reports. Victims often state that they were asked to give their statement more than 3 times during police questioning and exposed to psychiatric and medical evaluations among other things. It is also often the case that the police officials violate requirements set by the Protocol to provide adequate protection and support to the victim. In a number of cases, police officials clearly demonstrate their prejudices and stereotypes of victims, such as blaming the victim.

9. On January 22, 2013, Croatia signed the Convention on Preventing and Combating Violence against Women and Domestic Violence,<sup>x</sup> better known as the Istanbul Convention, becoming the 26<sup>th</sup> member of the Council of Europe to do so. The Convention is the first legally binding European instrument in this area that identifies measures to prevent all forms of violence against women. Although Croatia has signed the Convention, it has not yet ratified it. The Croatian Government has been ignoring calls from CSOs to ratify the Convention. The Convention is extremely important in the process of combating sexual violence because it clearly states what

minimum standards must exist and describes the system of support for victims. For example, based on the Council of Europe Taskforce Recommendations,<sup>xi</sup> at least 12 rape crisis centers are needed in the country. With at least 11 rape crisis centers missing (91%), Croatia fails to meet the Taskforce Recommendations and fails to meet the standards of the Convention, including the standard of “easily accessible rape crisis or sexual violence referral centers for victims in sufficient numbers.”

10. Croatia does not have a policy or strategy on combatting violence against women. It is thus not surprising that sexual violence is not recognized in any national policy or strategy as a social issue needing attention. There are national and local policies and strategies on domestic violence but violence against women as such is dominantly unrecognized as a relevant problem. Sexual violence is not recognized by donors nor is it their funding priority. As such, the sustainability of CSOs working on this issue is being made somewhat difficult.

11. Abortion in Croatia is legal according to the Law on Health Measures in Implementation of the Right to Freely Decide on Childbirth, which states that abortion is permissible until the 10<sup>th</sup> week of pregnancy. After that period of time, only the 1<sup>st</sup> instance commission, which has most commonly consisted of a team of medical experts, can approve the abortion with the written consent and written demand of the woman herself. This can be approved only when the pregnancy is a result of rape or other felonies, such as sexual intercourse with a child, sexual intercourse with a person with a disability, incest or sexual intercourse under the abuse of position. Although abortion is legal, it is not accessible for every woman. The cost of the procedure is too high for women and adolescent girls of lesser means; medical doctors can refuse to carry out the procedure based on the right given by the Article 20 “Conscientious Objection“of the Law on Medical Profession; and women are often subjected to judgement and humiliation from close friends and relatives as well as from medical staff.

### **Support services for victims of sexual violence**

12. There is one center for survivors of sexual violence in the whole country, which was set up in 2002 by the Women’s Room. With approximately 11 rape crisis centers missing (91%),<sup>xii</sup> Croatia fails to meet the Council of Europe Taskforce Recommendations. It is clear that the system of support for victims is insufficient and that it lacks basic help and support. Therapy e.g. psychotherapy in state hospitals does exist but because of waiting lists, it can take more than 2 months before a person sees a therapist for the first time. The time period between the procedure and counselling session is too long and as the victims themselves state, the doctor often does not have the time for them and only checks their medicines. Furthermore, the geographical accessibility of these services is also insufficient. It is often the case that counselling services are available only in the county centers.

13. In May 2008, the Department for Organizing Support for Victims and Witnesses started working with the County Court in Zagreb, as a joint project of the Ministry of Justice and the United Nations Development Programme (UNDP) in Croatia. The Department provides emotional support to witnesses before, during and after the court process. It also provides them with comprehensive information on their rights and how to claim them. From the Center’s experience with victims, the impact of the Department is significant as victims who have gone through extremely traumatic experiences need all of the support they can get. The Court process is often very stressful for the victim and to have a person of trust by their side helps. However, the Department only exists in 7 of 21 county courts across Croatia and lacks sufficient employees. Furthermore, employees lack supervision, which should be a necessity in this line of work in order to provide quality support.

## **Victims of sexual violence**

14. Victims of sexual violence are disproportionately targeted on the basis of age and gender. This is confirmed by the official statistical data of the Ministry of Interior. Looking at the 10 year time period, 2000-2010, there were a total of 6,685 victims. Of that number, 86% were girls and women. Regarding age, the most frequent victims were children aged 0-14 years (32%), minors aged 14-18 years (30%), younger adults aged 19-22 (15%) and persons between the ages of 23-30 (11%).<sup>xiii</sup> The situation in 2013 was similar, when girls and women made up 92% of the total 709 victims.<sup>xiv</sup> The implementation of programs for the prevention of sexual violence in elementary and high schools as a part of the “Health education” curriculum is vital. While the curriculum developed by the Committee for the development of curriculum of “Health Education” formed by Ministry of Science, Education and Sports is mandatory for schools to implement, the monitoring of its implementation is severely lacking. The Curriculum consists of 4 modules and specifically the 4<sup>th</sup> module “Gender equality” is considered an important issue in our society. The prevention of sexual violence is one of the topics including in this module. The provision of comprehensive sexual education to children and youth is a duty of the state and, hence, the consistent implementation of the Curriculum should be considered a priority, along with its monitoring.

15. Victims of sexual violence have certain rights under the Criminal Procedural Law. Thus, in accordance with the Criminal Procedural Law, victims of a “crime against sexual freedom” have the right to speak with a counsellor before giving a statement, for which the expenses will be covered by the State. With this right, we immediately face the problem of implementation. In the Criminal Procedural Law, the term “counsellor” is not defined and in that way, the Court is not clear on who should be appointed to counsel the victim. Practice shows different interpretations; some judges’ interpret it as lawyers, some as the Department for Organizing Support for Victims. Under the Criminal Procedural Law, the victim has a right to talk with police officials and State Attorney personnel of the same gender, to refuse to answer questions strictly related to his/her personal life, to give a video testimony and to have the public excluded from the trial. The problem is that these rights are not obligations and the victim may or may not be able to claim them. Judges have the authority to grant or deny requests filed by victims. Requests may be denied on various grounds, including the unavailability of audio-visual equipment or if the judge decides that the victim is not under stress or fear of the perpetrator such that a video testimony is necessary. In the end, although victims do have rights, there is no guarantee these will be fulfilled by relevant authorities.

## **Recommendations**

The Government of Croatia should:

16. Clearly define the offence of “Sexual intercourse without consent” in the Criminal Code, distinct from the offence of “rape”; clearly define the rights of the victims in the Criminal Procedural Law and guarantee their enforcement;

17. Raise the current minimum sentence of imprisonment for the offense of rape to a minimum of three years and more efficiently enforce the imposed sentences;

18. Establish support services for victims by opening at least 3 new regional centers for victims of sexual violence, supporting the one existing center, and establishing the Department for Organizing Support for Victims and Witnesses at each County Court.

19. Make the procedure of abortion accessible to women in all socio-economic situations, including through providing access to free abortion services.

20. Monitor the implementation of the Curriculum of Health Education in all preliminary and secondary schools in order to provide comprehensive sexuality education;

21. Ratify the Istanbul Convention and harmonize the legislation and other needed mechanisms, such as establishing the national SOS line for violence against women.

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<sup>i</sup> **The Women's Room** is a non-governmental, feminist, non-profit organization established with the aim of empowerment of women and raising awareness of institutions and general public about women's sexuality and sexual rights through education, research, advocacy and public work. The **Women's Room provides direct and indirect assistance and support to victims of sexual violence.**

<sup>ii</sup> The Sexual Rights Initiative (SRI) is a coalition including: Action Canada for Population and Development (Canada); Egyptian Initiative for Personal Rights (Egypt); Federation for Women and Family Planning (Poland); Creating Resources for Empowerment and Action (India); Coalition of African Lesbians (Africa); Akahata Equipo de Trabajo en Sexualidades y Generos (Latin America) and others.

<sup>iii</sup> [http://www.coe.int/t/dghl/standardsetting/equality/03themes/violence-against-women/EG-VAW-CONF%282007%29Studyrev\\_en.pdf](http://www.coe.int/t/dghl/standardsetting/equality/03themes/violence-against-women/EG-VAW-CONF%282007%29Studyrev_en.pdf)

<sup>iv</sup> Croatian Bureau of Statistics „Statistical report: Census of Population, Households and Dwellings 2011“. 2011

<sup>v</sup> Ministry of Interior, Secretariat of Ministry, Department for Strategic Planning, Analysis and Development (2012.): Survey of basic safety indicators in 2011 in Republic of Croatia.

<http://www.mup.hr/UserDocImages/statistika/2012/pregled%202011.pdf>

<sup>vi</sup> Ministry of Interior, Secretariat of Ministry, Department for Strategic Planning, Analysis and Development (2013.): Survey of basic safety indicators in 2012 in Republic of Croatia.

<http://www.mup.hr/UserDocImages/statistika/2013/statistika2012.pdf>

<sup>vii</sup> Ministry of Interior, Secretariat of Ministry, Department for Strategic Planning, Analysis and Development (2014.): Survey of basic safety indicators in 2013 in Republic of Croatia.

<http://www.mup.hr/UserDocImages/statistika/2014/Statisticki%20pregled2013.pdf>

<sup>viii</sup> Recommendation Rec (2002) 5 of the Committee of Ministers of the Council of Europe to member states on the protection of women from violence and Explanatory Memorandum.

<sup>ix</sup> Official Gazette RC 88/11

<sup>x</sup> Council of Europe (2011) Convention on preventing and combating violence against women and domestic violence <https://wcd.coe.int/ViewDoc.jsp?id=1772191>

<sup>xi</sup> [http://www.coe.int/t/dghl/standardsetting/equality/03themes/violence-against-women/EG-VAW-CONF%282007%29Studyrev\\_en.pdf](http://www.coe.int/t/dghl/standardsetting/equality/03themes/violence-against-women/EG-VAW-CONF%282007%29Studyrev_en.pdf)

<sup>xii</sup> [http://www.coe.int/t/dghl/standardsetting/equality/03themes/violence-against-women/EG-VAW-CONF%282007%29Studyrev\\_en.pdf](http://www.coe.int/t/dghl/standardsetting/equality/03themes/violence-against-women/EG-VAW-CONF%282007%29Studyrev_en.pdf)

<sup>xiii</sup> Mamula, M., Vukmanić, M., Zore, P., and Hojt, A. (2014). "Sexual violence in Croatia 2000 – 2010". Zagreb: Women's Room.

<sup>xiv</sup> Ministry of Interior, Secretariat of Ministry, Department for Strategic Planning, Analysis and Development (2014.): Survey of basic safety indicators in 2013 in Republic of Croatia.

[http://www.mup.hr/UserDocImages/statistika/2014/Statisticki%20preg2013\\_konacni%20prom\\_WEB.pdf](http://www.mup.hr/UserDocImages/statistika/2014/Statisticki%20preg2013_konacni%20prom_WEB.pdf)