



Implementation of Croatia's Domestic Violence Legislation



Implementation of Croatia's Domestic Violence Legislation A Human Rights Report

**The Advocates for Human Rights
Autonomous Women's House Zagreb
Bulgarian Gender Research Foundation**

The Advocates for Human Rights
Minneapolis





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This report is dedicated to the women of Croatia.

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EXECUTIVE SUMMARY

Domestic violence is a serious and prevalent problem around the world. Violence directed against women by their intimate partners, including current or former spouses or boyfriends, is a global epidemic with devastating physical, emotional, financial, and social effects on women, children, families and communities around the world. It violates the fundamental human rights of women and often results in serious injury or death. According to the United Nations, as many as 70% of women are victims of violence at some point in their lives.¹ While statistics vary slightly, studies show that men commit up to 95% of domestic assaults on women, in stark contrast to women who are offenders in only 5% of such assaults.²

In Croatia, domestic violence reflects this worldwide pattern and is a widespread problem throughout the country. In 2010, the Ministry of the Interior showed 15,189 reported domestic violence offenses.³ Data on police interventions similarly reflect this prevalence. In 2008, the police received 16,885 requests for intervention in domestic violence cases in Croatia,⁴ followed by 9,833 requests for protective measures by the police.⁵ According to police in one town, it is physically impossible for them to detain every perpetrator, because they register six to seven cases of domestic violence per day.⁶ In addition, the high rates of femicide show that the killings of women and girls in gender-related violence are an alarming problem throughout Croatia.⁷

The Autonomous Women's House Zagreb, The Advocates for Human Rights, and the Bulgarian Gender Research Foundation carried out fact-finding in Croatia to monitor the government's implementation of domestic violence legislation. The authors conducted two monitoring missions in October 2010 and February 2011 and traveled to eleven cities. They conducted 67 interviews with ministry officials, non-governmental organizations (NGOs), shelter and state home workers, victims, Centers for Social Welfare employees, police, judges, prosecutors, lawyers, health care workers, and prison personnel.⁸ The findings and recommendations presented in this report reflect the results of these interviews, the authors' observations, and secondary research.

In 2003, the Croatian government adopted the Law on Protection against Domestic Violence (LPDV). By passing one of the first domestic violence laws in the region, the Croatian government has not only demonstrated its commitment to combating domestic violence but also presented itself as a leader in this effort. The Croatian

¹ UN Secretary General, "Violence against Women Fact Sheet," November 2011, 2, http://endviolence.un.org/pdf/pressmaterials/unite_the_situation_en.pdf.

² "Report to the Nation on Crime and Justice - The Data," *Bureau of Justice Statistics, U.S. Dep't of Justice* (1983), <https://www.ncjrs.gov/pdffiles1/Digitization/87068NCJRS.pdf>. More recent studies reflect this pattern, as well. For example, the Bureau of Justice found that 86% of domestic violence victims were females while 86% of defendants were generally male (86%). In the majority of these domestic violence cases (84%), the defendant was male and the victim was female. "Profile of Intimate Partner Violence Cases in Large Urban Counties," *Bureau of Justice Statistics, U.S. Dep't of Justice*, October 2009, page 1, <http://bjs.ojp.usdoj.gov/content/pub/pdf/pipvcluc.pdf>. Another finding showed that "more than 90 percent of 'systematic, persistent, and injurious' violence is perpetrated by men." (citing Kimmel, Michael S. "'Gender Symmetry' in Domestic Violence: A Substantive and Methodological Research Review," *Violence Against Women* 8(11) November 2002: 1332-1363).

³ This statistic reflects both criminal and misdemeanor offenses. Government of the Republic of Croatia, *National Policy for Gender Equality 2011-2015*, (Zagreb, 2011), 31.

⁴ "Report on the Implementation of the Family Violence Procedure Protocol during 2007 and 2008," *Ministry of Family, Veterans' Affairs and Intergenerational Solidarity*, 2009, 5-6.

⁵ *Id.*

⁶ Interview with Police, City J, February 8, 2011.

⁷ From January to June of 2009, there were a total of 25 reported murders and 70 attempted murders in Croatia. Seventeen of these murders and seven of the attempted murders were committed between family members. Of these victims, seven women were killed by their husbands, and in four cases, the husbands tried to murder their wives. Autonomous Women's House Zagreb, "PROTECT Daphne III: Croatia Overview," Presentation, March, 2010. Slide 9.

⁸ The number of interviews conducted (67) reflects the number of actual sittings for an interview and not the actual number of interviewees. The number of interviewees is substantially higher than the number of interviews.

government should be commended and further encouraged to serve as a model for the region by ensuring effective implementation of the LPDV. The adoption of the LPDV represented a significant step toward protecting domestic violence victims and holding offenders accountable. Notably, it provides both urgent (emergency) and long-term protective measures focused on victim safety, including eviction, stalking and harassment measures, restraining orders, and confiscation of weapons. It also provides two measures directed at offenders' behavior, including psychosocial treatment and addiction treatment. While a victim may, on her own, apply for protective measures under the law, most often, police file for these measures on behalf of victims. The law's jurisdiction lies in the misdemeanor system, whose judges decide whether to issue the protective measures and for what term, as well as impose a jail sentence or fine on the offender. A violation of the protective measure is punishable by a fine or imprisonment of at least ten days.

The Croatian government has made evident strides in its efforts to prevent, respond to and punish domestic violence since its initial adoption of the LPDV. The government has amended the LDPV (2009) and promulgated regulations to further implementation of this law, including the Rules of Procedure in Cases of Family Violence and the National Strategy of Protection against Family Violence. The government has also issued protocols for specific sectors, such as the Ministry of Internal Affairs' Regulations on Implementation of Protective Measures for the LPDV. At the urging of women's NGOs, the Croatian government amended the Misdemeanor Law to provide temporary precautionary measures for the duration of LPDV proceedings, the violation of which is punishable by fine. While the adoption of these laws and policy documents are a positive step, there are serious problems with their implementation that negatively impact victim safety and offender accountability in Croatia.

Dual arrests, where the victim is arrested alongside the offender, are widespread throughout Croatia. These dual arrests stem partly from the language of the LPDV. The LPDV classifies psychological and economic violence as domestic violence in very broad terms, and this provision is implemented against the victim regardless of the danger or threat the perpetrator poses to the victim's safety. This means that a victim who has verbally insulted her offender can be prosecuted and held accountable alongside her abuser who has physically beaten her. A second contributing factor to the high rates of dual arrests is that police are not systematically identifying the primary aggressor in domestic violence cases. Instead of making determinations of the primary aggressor and defensive injuries, police generally defer that identification to judges and doctors, respectively. As a result, many victims not only face the very real potential for arrest when they call for help, but also ensuing charges and punishments for defending themselves against the assault. The impact of arresting and charging a victim of domestic violence for attempting to defend herself can be devastating—after she has been punished once for seeking help, a victim will not likely access the justice system again.

Victims of domestic violence are further re-traumatized in the courtroom—whether as offenders or as victims—where misdemeanor judicial practices reflect a misunderstanding of both the law in Croatia and the unique issues posed in domestic violence cases. Several misdemeanor judges were either unaware of the LPDV's urgent protective measures or failed to issue them within the 24-hour timeframe. In addition, many misdemeanor judges engage in a dangerous practice called "facing" whereby each party tells their side of the story while facing the other in close proximity ostensibly to determine credibility. This practice can intimidate a victim whose abuser has used violence to control her behavior and is not likely to result in candid or truthful testimony.

In many cases, police, judicial, Center for Social Welfare, and other actors' practices also reflect a fundamental misunderstanding of the dynamics of domestic violence and how best to address it. Interviews indicate that many

of the state responses focus on children's well-being to the marginalization—and sometimes the exclusion—of victim safety. For example, domestic violence cases in Croatia are handled by a law enforcement unit that is primarily responsible for juvenile delinquency and crimes against children. While this expertise is important, it is also critical that those who respond to domestic violence cases have knowledge and training on the dynamics of violence against women. In addition, some misdemeanor judges see domestic violence as limited to violence against the children.

This focus on children, at the expense of the victim, is also reflected in the state's laws and practices. Courts commonly hold a victim responsible for her children witnessing domestic violence against her. The Family Law provides that parents are accountable for abusing their parental responsibilities if they expose a child to violence among the adult family members. In practice, CSW employees and family and criminal law judges also reported that their primary focus in domestic violence cases is on ensuring the well-being of the children. One criminal judge explained that he decides to issue a warning instead of punishment “[w]hen I find it's sufficient. The goal is not to punish, but to restore, improve....But always, it is the goal of the benefit of the child.”⁹ Fears of losing their children if they report the violence can deter a victim from coming forward to seek help. One Center for Social Welfare worker explained, “There is such a great danger that we should remove the child from such a parent, then [the victims] find another solution. The woman goes away with her child...they are afraid that someone will take the child away, and sometimes women won't report that violence. It is a very big fear...”¹⁰

The Family Law requires couples undergoing divorce proceedings to complete mediation as part of the divorce process. Monitoring revealed that Center for Social Welfare employees conducting mediation do not screen for domestic violence in these cases, nor do they proactively offer separate mediation to mitigate the potential harm to a victim of domestic violence being forced to meet with her abuser. Mediation in domestic violence cases can be counterproductive and even dangerous. It assumes that both parties are equal, yet an offender often holds tremendous power over a victim, who may be afraid to voice her concerns. Even in stages when mediation is not mandated, Center for Social Welfare workers have reportedly still encouraged victims to reconcile with their offender.

Another challenge has arisen from the 2009 European Court of Human Rights decision in *Maresti v. Croatia*, which has dramatically limited the courts in Croatia from effectively protecting victims and holding offenders accountable for their crimes. The *Maresti* case renders misdemeanor and criminal prosecutions mutually exclusive, requiring a victim to choose between long-term protective measures and the appropriate criminal charges against her abuser. Even if an offender perpetrates serious injuries, compelling the victim to seek protection through an eviction or restraining order, the maximum sentence that offender could face is 90 days' imprisonment or a fine. Conversely, if the state attorney chooses to prosecute the case and seek criminal-level punishment, the victim is then precluded from obtaining long-term protective measures for herself under the LPDV. In other words, the victim must wait for another act of violence to occur before she can seek protective measures under the LPDV. The new Criminal Code, which enters into force in January 2013, provides long-term security measures of eviction and a restraining order that can protect the victim after the trial's conclusion. The Criminal Procedure Code, however, lacks corollary security measures to guarantee her the full and comprehensive protection she needs during the trial, and existing measures focus instead on ensuring the defendant's presence in court proceedings.

⁹ Interview with Judge, City J, February 9, 2011.

¹⁰ Interview with CSW, City I, February 7, 2011.

In addition, police and prosecutors demonstrate confusion in the classification of offenses because they are forced to choose between charging the offense as a misdemeanor or a crime after the *Maresti* case.¹¹ In the absence of new guidelines, police default to charging most cases under the misdemeanor system because of its speed relative to the criminal courts, the victim's ability to obtain protective measures, and an unofficial rule that only thrice-repeated or very severe physical violence merits a criminal charge.

Police and judges also limit offender accountability for violence under the LPDV by favoring treatment over other sanctions. Specifically, police and judges tend to propose and issue psychosocial and addiction treatment, weapons confiscation, and to a lesser extent, restraining orders, under the LPDV. This inclination toward batterers' programs is problematic both because of questions regarding their efficacy and the lack of a monitoring mechanism to ensure the offender's compliance. Moreover, the tendency to favor and even order batterers' treatment in lieu of other protective measures or jail can compromise victim safety. Many interviewees questioned the effectiveness of psychosocial treatment programs, in part because there is no evaluation to gauge its success aside from personal observations about recidivism, and there is no systematic monitoring and reporting system if the offender fails to attend. There were also concerns about the quality of such programs, particularly where women victims are required to undergo family therapy with the offender or are blamed for provoking the violence. Furthermore, a serious lack of funding and treatment administrators means that psychosocial programs are simply unavailable in many parts of the country. Moreover, batterers' treatment programs run the risk of diverting much needed and scarce resources away from services for the victim, such as shelters.

In contrast, requests and orders for evictions and stalking and harassment protective measures are comparatively low despite their proven capacity to protect victims. Of the 9,833 protective measures requested in 2008, only 72 stalking and harassment prohibitions were issued (out of 233 requested), and only 109 evictions (out of 377 requested) were granted.¹² Even if the offender is sentenced to jail, he may receive a suspended sentence conditioned on good behavior, community service in lieu of part of the prison sentence, or early release on probation. Although these sentences make eviction and stalking/harassment measures even more crucial for victim safety, police and judges still do not propose or issue them. For example, concern for offenders' welfare if they are expelled from the home biases some decision makers against eviction measures. In addition, a victim's residence in a shelter is another reason for denying an eviction order when legal actors infer she is safe. That reasoning fails, however, to take into account those offenders who find their victims at shelters that lack a secret address, shelters' time limits on residency, and their susceptibility to closures from funding cuts. The low numbers of stalking and harassment orders may stem from a failure to adequately recognize and appreciate the dangers of these acts. Police explained they can only request this measure when the offense itself is stalking or harassment, but yet they fail to recognize these acts and respond when offenders skirt the perimeters of a restraining order by stalking the victim.

A domestic violence victim is also put at risk of further harm during the pendency of an appeal of a protective measure by her abuser. When an offender files an appeal against a decision, the protective measures are stayed until the appeal decision is rendered.¹³ The victim is left without the legal mechanism to protect herself against an

¹¹ Stakeholders also expressed concern that, even with the new Criminal Code that will enter into force in 2013, confusion over and reluctance to charge domestic violence acts as criminal offenses will continue unless further guidance and training is implemented.

¹² "Report on the Implementation of the Family Violence Procedure Protocol during 2007 and 2008," Ministry of Family, Veterans' Affairs and Intergenerational Solidarity, 2009, 5-6.

¹³ Misdemeanor Law, Article 211(1).

offender who may be angry and vengeful. In addition, victims whose protective measures are denied often find themselves without standing to file an appeal themselves. Because police often act as prosecutors in these cases, they have the legal authority to appeal the decision. Police resources and capacity to make appeals, however, is very limited.

Several challenges exist in the prosecutions of criminal domestic violence offenders. Prosecutors demonstrate great reluctance in initiating criminal prosecutions for domestic violence, a practice further aggravated by their tendency to drop cases when the victim recants or invokes her right not to testify against her spouse. As in divorce cases, mediation also occurs in the criminal justice arena in Croatia. The State Attorney's Law authorizes the prosecutor to call for conciliation in cases of domestic violence before issuing an indictment.¹⁴ As mentioned above, mediation is highly problematic in domestic violence cases. At the time of the monitoring mission, this provision was still relatively new, but it poses the very real and dangerous risk of repeated assault of the victim and impunity for the perpetrator.

Even when offenders serve time in jail, victims are still at risk of violence through the prison "benefit leave" program. Prisoners who fulfill a certain length of their sentence may be released for a short-term "benefit leave," ranging from a few hours to a few days. During this time, offenders are under minimal to no oversight, and usually are only required to check in at the police station or attend a local alcohol treatment program (if applicable). Authorities can warn a prisoner not to approach the victim where there are indicators that would compel such safeguards, but the prison administration may have less notice of the risk to victims for those offenders serving time for non-domestic violence offenses. There were several reports of prisoners battering their victims while on benefit leave. The entry into force of the new Criminal Code with long-term protective measures in January 2013 may help address this problem, but its effective implementation remains to be seen.

Finally, the challenges shelters face in receiving the sufficient and regular funding they need compound the risk of further harm to domestic violence victims. The current two funding schemes under the Ministry for Social Policy and Youth (formerly the Ministry of Health and Social Care and the Ministry of Family, Veterans' Affairs, and Intergenerational Solidarity) are complicated and pose massive challenges for organizations providing these accommodations.¹⁵ The government's funding conditions generally fail to reflect the actual needs and operations of a shelter. Such conditions, in turn, reduce shelters' autonomy, forcing them to follow strict and at times, irrelevant criteria in order to garner financing. For example, the Ministry of Health and Social Care finances homes for adult and child victims of family violence on a per-bed basis, but this funding is contingent upon the homes receiving client referrals from police and Centers for Social Welfare. Moreover, the per-bed basis does not reflect the reality that shelters' baseline operating costs are the same no matter how many residents are residing there. Autonomous women's shelter funding from the Ministry of Social Policy and Youth (which formerly came from the Ministry of Family, Veterans' Affairs, and Intergenerational Solidarity) is allocated on a tri-partitioned basis from the Ministry-county-city governments, so payment delays by one government source often leads to disbursement delays by the other two levels. Even when the financing comes through, the amount is often insufficient. As a result, shelters in Croatia are often forced to suspend payment to their employees for months at a time, or, in the worst case, close. One shelter serving a major population has been forced to close multiple times, due to the unreliable and inadequate funding from the government. With approximately 18 accommodation institutions,

¹⁴ Article 62.

¹⁵ As of 2012, both the MoF and the MoHSC have been reorganized to form three new ministries, the Ministry for Social Policy and Youth, the Ministry for Veterans, and the Ministry for Health.

including both autonomous shelters and homes for adult victims of family violence, to serve a population of 4.5 million, the need to ensure these organizations and institutions can remain open and function effectively is critical.

In conclusion, while the government of Croatia has taken important steps to combat domestic violence, monitoring revealed that the state must undertake additional measures to more fully realize victim safety and offender accountability. These measures are addressed in the Recommendations section on page 111, and the government should give urgent attention to those recommendations in the priority section. The authors commend the state, the many legal actors, and NGOs working together to protect victims and hold offenders accountable, and they urge the government of Croatia to execute the recommendations presented by this report in order to continue this vital work.

INTRODUCTION

They would say that I should be patient, that they would try to speak with him so they could bring some sense to him, and that I should be a better mother...I told them I don't have anywhere to go. After that, they wouldn't say anything, but let me go home. That was my life.

- Quote from a victim of long-term domestic violence recalling her treatment by the Center for Social Welfare

As a member of the United Nations, Croatia is obligated to protect the human rights of the people living within its borders. The provisions of the Universal Declaration of Human Rights and numerous other human rights instruments, including the Declaration on the Elimination of Violence against Women, define Croatia's human rights obligations as a member of the international community. Importantly, Croatia has ratified the Convention on the Elimination of All Forms of Discrimination against Women, the International Covenant on Civil and Political Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and is bound by the terms of these conventions. Croatia is also a member of the Council of Europe, which has just adopted the Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention).¹⁶ The international standards set forth in these instruments condemn domestic violence and place an affirmative obligation on member states to prevent and protect women from violence, punish perpetrators, and compensate victims of violence. To this end, states must develop penal, civil, labor, and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence. The effective implementation of these standards is critical to ensuring that states are meeting their due diligence obligations to protect women from violence.

In 2003, the Croatian government took an important step to address violence against women by adopting the Law on Protection against Domestic Violence (LPDV). The law states that its purpose is to prevent, punish and suppress all forms of domestic violence, provide appropriate measures against offenders, as well as provide protection and assistance to victims.¹⁷ Its focus on protecting victims and holding offenders accountable are consistent with international human rights standards.¹⁸

Welcome amendments were made to the law in 2009, including longer durations for protective measures. In its most recent form, the LPDV broadly defines domestic violence as any form of physical, mental, sexual, or economic violence.¹⁹ The law provides for six protective measures a victim can seek against the offender: 1) psychosocial batterers' treatment,²⁰ 2) addiction treatment; 3) eviction from the home; 4) confiscation of firearms; 5) a restraining order; and 6) prohibitions against stalking and harassing the victim of domestic violence.²¹

¹⁶ Croatia has not yet ratified the Council of Europe's Convention on Preventing and Combating Violence against Women and Domestic Violence.

¹⁷ Croatian Parliament, Law on Protection from Domestic Violence Articles 1(2), Zagreb (November 6, 2009) [hereinafter, "LDPV"].

¹⁸ Article 1(2) of the LPDV states: "The purpose of this Act is prevention, punishment and suppression of all types of family violence, the use of appropriate measures against the perpetrators, as well as mitigation for the perpetration of violence by providing protection and assistance to victims of violence."

¹⁹ LPDV, Article 4. For purposes of the law, a family includes spouses; former and common-law spouses; persons with children in common; ascendants and descendants; blood relatives to the third degree; relatives by marriage to the second degree; guardians and wards; and foster parents, foster children, and their families.

²⁰ The Croatian perpetrator psychosocial treatment is a counseling program that aims to modify perpetrators' violent behavior by teaching self-control and conflict resolution skills. The treatment is administered through a six-month program consisting of weekly, two-hour group meetings. The treatment also calls for victim involvement, on a voluntary basis, designed to inform the victim about the program, gather background information the perpetrator, and monitor changes in the perpetrator's behavior. Interview with State Home, City K, February 11, 2011; Interview with NGO, City F, February 7, 2011; Interview with NGO, City K, February 11, 2011.

²¹ LPDV, Article 11(2).

Importantly, three of these measures—the restraining order, stalking/harassment measure, and eviction—can be requested on an *ex parte* or “urgent” basis, in which case the misdemeanor court must render a decision within 24 hours.²² Within eight days of the decision granting urgent measures, the applicant must file a proposal for a hearing on issuance of long-term protective measures.²³ At the hearing, the court may impose fines or incarceration along with any of the six protective measures.²⁴

In 2005, and again in 2008, under the auspices of the Ministry of the Family, Veterans’ Affairs and Intergenerational Solidarity, the Croatian government published the Rules of Procedure in Cases of Family Violence (Rules of Procedure).²⁵ The Rules of Procedure outline specific procedures to be followed by government institutions and officials when handling cases of domestic violence, with the goal of “improving the protection of victims in the family and helping the perpetrators to change their behavior and system of values.”²⁶

While the Rules of Procedure provide important guidance for implementing an effective response to domestic violence, interviewees noted certain shortcomings. Notably, there is no specific directive for training for the sectors charged in the Rules. Also, one NGO noted there is no monitoring body specifically focused on the implementation of the Rules of Procedure.²⁷

The government has also promulgated national plans related to violence against women. The government adopted a National Strategy of Protection against Family Violence (National Strategy) in 2005 and subsequently adopted updated national strategies in 2008 and 2011.²⁸ The 2008 National Strategy sought to provide an overarching framework for the government’s response to domestic violence for the years 2008 through 2010.²⁹ The National Strategy prioritized the education of professionals working on domestic violence, the establishment of a psychosocial treatment program for perpetrators, and the improvement of domestic violence legislation.³⁰ The National Strategy also emphasized the importance of ensuring adequate services and support for victims, increasing victims’ housing and employment opportunities, and raising public awareness.³¹ The government issued a National Policy for the Promotion of Gender Equality 2006-2010 (National Policy), which addresses

²² LPDV, Article 19(1), (3). This report uses the term “urgent protective measures” to refer to the three protective measures that may be issued within 24 hours on an *ex parte* basis under Article 19. This report uses the term “protective measures” to refer to all six protective measures generally.

²³ The restraining order, eviction, and stalking and harassment measures can be ordered for a period between one month to two years. LPDV, Articles 13(3), 14(2), 15(3). Addiction treatment may last for up to one year (LPDV, Article 16(2)), and the psychosocial treatment is a six-month long program. Interview with NGO, City K, February 11, 2011; Interview with NGO, City F, February 7, 2011; Interview with State Home, City K, February 11, 2011.

²⁴ LPDV, Article 20.

²⁵ Government of the Republic of Croatia, Ministry of Family, Rules of Procedure in Cases of Family Violence, (Veterans’ Affairs and Intergenerational Solidarity: Zagreb, 2008) [hereinafter, “Rules of Procedure”].

²⁶ Rules of Procedure, Introduction. The Rules of Procedure are broad in scope, covering conduct by the police, Centers for Social Welfare, health institutions, educational institutions, and the judiciary. Specific provisions of the Rules of Procedure are referred to in more detail throughout this report.

²⁷ Interview with NGO, City K, October 13, 2010. This is despite a specific directive to each Ministry to report on the Rules’ implementation biannually to the Ministry of Family, Veteran’s Affairs and Intergenerational Solidarity, which in turns submits a comprehensive report to the Croatian government. Rules of Procedure, Section 2.1. Further, given the LPDV’s amendments, a police representative noted that the Rules of Procedure may be overdue for revision to better dovetail with the LPDV. Interview with Police, City K, October 12, 2010.

²⁸ Interview with Ministry of Family, Veterans’ Affairs and Intergenerational Solidarity, Veterans’ Affairs and Intergenerational Solidarity, Zagreb, February 18, 2011. Although a new national strategy covering the years 2011 through 2015 was adopted in 2011, the 2008 – 2010 national strategy was in effect during the time period to which the Interviews referenced in this report primarily relate. Government of the Republic of Croatia, *National Strategy for Prevention of Family Violence for the Period 2008 – 2010*. (Ministry of Family, Veterans’ Affairs and Intergenerational Solidarity. Zagreb, 2008). Consequently, this report focuses on the National Strategy of Protection against Family Violence for the Period 2008 – 2010, and references in this report to the “National Strategy” refer to the 2008 – 2010 national strategy.

²⁹ Government of the Republic of Croatia, *National Strategy for Prevention of Family Violence for the Period 2008 – 2010*. (Ministry of Family, Veterans’ Affairs and Intergenerational Solidarity. Zagreb, 2008).

³⁰ *Id.*

³¹ *Id.* at 99-110.

domestic violence and violence against women.³² The National Policy proposes to open new shelters and establish a shelter network.³³ It also calls for monitoring of the LPDV and Criminal Code, with a view to proposing amendments as necessary.³⁴ The government recently adopted a new National Policy for Gender Equality 2011-2015.

Finally, in 2011, Croatia adopted a new Criminal Code.³⁵ The new Criminal Code classifies a domestic violence murder as aggravated murder, and it punishes an offender who kills a family member who he has previously abused by a minimum sentence of ten years.³⁶ The new law eliminates Article 215A on Violent Conduct in the Family, which caused confusion among police, judges, and prosecutors given its vague and overly broad language. Domestic violence is now subsumed into other provisions that address bodily assault. Victims' advocates note that this new classification does not alleviate existing concerns about criminal prosecution of domestic violence. Upon implementation, it is likely that many domestic violence acts will continue to lack the requisite aggravating factors to qualify for criminal prosecution. The new Criminal Code does include safety measures that allow restraining orders or eviction as part of the final judgment, which will last beyond the duration of trial. But to effectively protect victims' safety throughout the proceedings, the Criminal Procedure Code should parallel the amendments to provide for new precautionary measures, including a restraining order, stalking and harassment order, and eviction to protect the victim during the criminal proceedings.

Beyond the adoption of laws and policies, the government is involved in the response to domestic violence in many important ways. Under the LPDV, particular government ministries are charged with creating and implementing regulations to address domestic violence, gathering statistical information, and administering various protective measures.³⁷

While state ministries and local governments have adopted a variety of additional measures intended to prevent and protect against domestic violence, overall there is insufficient government funding and support to successfully implement the LPDV and provide victims with the services and assistance they need. Of particular concern is the government's failure to adequately fund shelters for domestic violence victims and the perpetrator treatment programs provided for in the LPDV.³⁸ Further, interviews revealed that domestic violence victims are often in desperate need of financial assistance and appropriate housing, as they struggle to find employment and are generally unable to secure state-subsidized housing.³⁹ In addition to shortfalls in government funding, attitudes held by first responders, such as Centers for Social Welfare staff, reflect misperceptions about domestic violence and a failure to prioritize victim protection.

Monitoring of the implementation of the LPDV also revealed problems with the law itself, indicating an urgent need for amendments. The LPDV's definition of domestic violence that includes a very broad definition of psychological violence has proven harmful for victims and even led to their arrests and convictions. Article 8 of the

³² The National Strategy proposes a number of measures to combat violence against women, including media and public awareness campaigns, improving judicial proceedings for victims of sexual violence, harmonization of Croatia's domestic legislation with international laws, monitoring and data tracking of violence against women cases, as well as protocols on handling cases of sexual violence. *Id.* at 37-38.

³³ Croatian Parliament, *National Policy for the Promotion of Gender Equality 2006-2010*. (Zagreb, October 13, 2006), 17-18.

³⁴ *Id.* at 18.

³⁵ The new Criminal Code becomes effective in January 2013.

³⁶ Article 111, 2011 amendments to the Criminal Code.

³⁷ LPDV, Articles 23, 24, 25, 26. Individual state officials, especially the Ombudsperson for Gender Equality, also play key roles in the government's response to domestic violence. Interview with Ombudsperson for Gender Equality, Zagreb, October 11, 2010.

³⁸ Interview with Judges, City B, February 16, 2011; Interview with Shelter, City J, February 8, 2011.

³⁹ Interview with Shelter, City F, February 7, 2011; Interview with State Home, City K, February 11, 2011.

LPDV also imposes mandatory reporting of domestic violence, a potentially harmful requirement that can place women in danger of retaliation and cause them to forego seeking assistance if they are not ready to report the violence.⁴⁰ Other provisions in family and criminal legislation that hold a victim responsible when her child witnesses domestic violence improperly punish the victim for the criminal actions of the perpetrator.

In addition, whether and how intimate partners gain protection from the legal system varies. Non-marital partnerships are common, and a police officer estimated that 20-25% of women and men live in these arrangements.⁴¹ Yet, the LPDV does not expressly include intimate partners within its scope of protection, except for partners in common-law marriage,⁴² and responses to cases involving intimate partners without children reveal inconsistencies in how the state responds to these cases.⁴³

To monitor the implementation of these laws and policies, and document challenges such as those described above, the Autonomous Women's House Zagreb, The Advocates for Human Rights, and the Bulgarian Gender Research Foundation carried out fact-finding in Croatia in 2010 and 2011. The authors conducted 67 interviews with various government actors and NGOs in various cities throughout Croatia.⁴⁴ This report presents these findings made on the implementation of the LPDV and relevant legislation. The report also makes recommendations, based on international legal human rights standards, with a view to increasing victim safety and promoting offender accountability.

⁴⁰ Article 8 of the LPDV requires health care workers, social welfare and family professionals, educational professionals, religious institutions, humanitarian organizations, and civil society groups working on children and families to register cases of domestic violence they have learned about through their duties with the police or prosecutor's office; failure to comply with this reporting requirement can subject the reporter to a fine of 3,000 kunas. LPDV, Articles 8, 21.

⁴¹ Interview with Police, City K, October 12, 2010.

⁴² LPDV, Article 3(1). Some actors turn to the Family Law, which defines the scope of cohabitation as applying to an unmarried man and woman in a relationship of at least three years, or less than three years if they have children. Family Law, Article 3.

⁴³ Where officials do not view intimate partners as within the scope of the LPDV or criminal law, victims are left without protection or justice unless they can initiate or afford a private attorney to pursue a lawsuit. Interview with Judges, City K, October 13, 2010; Interview with Police, City J, February 8, 2011; see also Interview with Judge, City J, February 9, 2011 (explaining that the victim can initiate a private prosecution *ex officio* for criminal offenses). Criminal Code, Articles 98-101, 129. Provisional translation for "EU-project: Support to the Judicial Academy: Developing a training system for future judges and prosecutors." Republic of Croatia Ministry of Justice, December 29, 2008 [hereinafter, "Criminal Code"].

⁴⁴ The names of cities in interview citations have been omitted to protect confidentiality except for public figure interviewees. Where interviews refer to individuals, those names have been changed to protect confidentiality.

POLICE

While many interviewees gave positive reports about police response to domestic violence, there were also serious problems reported. For example, there is a growing number of dual arrests, where the victim is arrested alongside the offender. There were also reports of police jeopardizing victim safety by not responding with urgency to domestic violence calls or diligently investigating cases.

Police are often the first responders to domestic violence.⁴⁵ Therefore, the manner in which they respond, their attitude toward the victim, and the protection they provide are vital in promoting victim safety and offender accountability.⁴⁶ A dismissive police response can not only result in a failure to protect the victim, but also deter her from seeking help again. As one lawyer noted, a victim who reports the violence only to receive a dismissive police response, “returns to the home and does not have the strength to report again.”⁴⁷

In addition, police serve as an important link from victims to the legal system and other services. Police play a role in referring or transporting victims to service providers, such as shelters, NGOs, and hospitals.⁴⁸ Police are also a connection between the victim and the courts, because they act as the prosecutor in the misdemeanor cases.⁴⁹ The police prosecutorial role in the misdemeanor system also helps the victim overcome evidentiary challenges she might face. While a victim could initiate her own misdemeanor proceedings and obtain protective measures, she would still face the onerous challenge of collecting evidence on her own.⁵⁰

When police receive a call about domestic violence in Croatia, the senior shift officer collects information about the scene⁵¹ and checks the Ministry of Interior’s database for the perpetrator’s history and use of firearms.⁵² According to the Rules of Procedure, the police officer must “immediately and with no delay” dispatch two police officers “preferably of both sexes” to the domestic violence scene.⁵³ While the authors met several uniformed female police officers, interviews revealed a need for more female police officers.⁵⁴

In addition, the LPDV states that any proceedings or authority to take action are to be conducted on an “urgent” basis.⁵⁵ Generally, interviewees described the initial police response as expeditious.⁵⁶ Lack of training and a

⁴⁵ Interview with NGO, City K, February 15, 2011; Interview with Judges, City J, February 9, 2011; Interview with Lawyer, City K, October 13, 2010; Interview with State Home, City I, February 7, 2011; Interview with Victim, City K, February 17, 2011; Interview with State Home, City E, February 14, 2011; Interview with Shelter, City F, February 7, 2011; Interview with NGO, City K, February 11, 2011; Interview with NGO, City K, October 10, 2010; Interview with NGO, City D, February 11, 2011; Interview with Police, City I, February 7, 2011; Interview with Police, City K, October 12, 2010.

⁴⁶ There are several documents that direct police protocol on responding to cases of domestic violence, including the Rules of Procedure for Cases of Family Violence, Ministry of Internal Affairs’ Regulations on Implementation of Protective Measures for the LPDV (Mol Regulations), Standard Operating Procedures, and a standard police intervention form. In addition, interviews with police further elaborated how they respond to cases in practice.

⁴⁷ Interview with Lawyer, City K, October 13, 2010. See also Interview with NGO, City K, October 11, 2010 (noting that clients fear calling the police in the event they are unhelpful because it will result in new beatings).

⁴⁸ Interview with CSW, City D, February 11, 2011 (explaining that they rely on police documentation of the scene to assess if there is child endangerment). In some cases, the shelter is a secret from the police, so police transport to the shelter directly is precluded.

⁴⁹ Interview with Gender Equality Ombudsperson, Zagreb, October 11, 2010; Interview with Judge, City A, February 14, 2011; Interview with Judges, City B, February 16, 2011; Interview with Judges, City K, October 13, 2010; Interview with Lawyer, City K, October 13, 2010.

⁵⁰ Interview with Gender Equality Ombudsperson, Zagreb, October 11, 2010.

⁵¹ Interview with Police, City K, October 12, 2010; Interview with Police, City H, February 10, 2011; Interview with Police, City B, February 15, 2011; Interview with Police, City I, February 7, 2011; Interview with Police, City D, February 11, 2011.

⁵² Interview with Police, City H, February 10, 2011.

⁵³ Rules of Procedure, Section 1.A.1. Shelter workers reported that a female officer is not always dispatched to the scene, because of a shortage of women in the police force or their assignment to non-domestic violence roles. Interview with NGO, City K, October 13, 2010; Interview with NGO, City J, February 8, 2011; Interview with NGO, City D, February 11, 2011.

⁵⁴ Interview with NGO, City J, February 8, 2011; Interview with Police, City K, October 12, 2010.

⁵⁵ LPDV, Article 5.

failure to prioritize domestic violence, however, can stall further action. In one case, a woman called the police on behalf of her son, whose father attacked him with an axe. When the police arrived, she told them she wanted to report domestic violence by her husband against her and her children. For years, the husband had threatened her, including threats that he would cut her in half. He forced his children to watch him holding a knife to their mother's throat. Her first contact with police was on a Friday; the officer responded, "Now is not the right time. Can you call on Monday when the other colleagues who work on domestic violence are there?"

In spite of the problems, many interviewees reported that, of all the sectors, the police have made the greatest progress in their response to domestic violence.⁵⁷ Interviewees from various sectors reported that victim complaints have decreased, police cooperation has increased, and more female police investigative officers are undergoing training.⁵⁸ Also, misdemeanor judges commended the police response, stating that they work conscientiously and do the best they can given their resources.⁵⁹ One NGO recounted a particularly difficult case that ended in murder, but of all the state actors, "only the police did the great job. All the others had enormous gaps and flaws and that is why she is dead today."⁶⁰

One woman suffered long-term physical abuse and rape from her husband. He beat, slapped, kicked and sexually abused her. No one in the community would come to her aid, and when she fled to her neighbor for help, the neighbor told her to go home.⁶¹ Finally, she sought help from the police, who responded promptly to protect her and arrest the offender:

It's been going on for the last 20 years...Now for the last several years, it would happen on a daily basis, he would humiliate me, insult me, psychologically hurt me, physically and sexually in plain sight of the children....One Christmas, when he threw me, I fell on the side of the bed with my face and then when he kicked me on the top of my head, I broke my nose. He would throw me around the entire room, and it would always be like that, and if anything was not the way he likes, even if I did everything right, he was still not happy. This last day, I could not take it anymore. I called the police, and the police put me here [shelter].⁶²

The police in her city of refuge took her statement and sent it to her hometown police immediately so she would not be registered as missing. That same day, the hometown police arrested her husband, who was criminally charged. The police also helped the woman file for urgent protective measures.⁶³

⁵⁶ Interview with Judges, City B, February 16, 2011; Interview with Judges, City F, February 7, 2011; Interview with Judge, City B, February 16, 2011; Interview with Police, City F, February 8, 2011. But see Interview with NGO, City K, February 15, 2011 (estimating that the response could take 20-30 minutes).

⁵⁷ Interview with State Home, City A, February 14, 2011; Interview with NGO, City K, February 15, 2011; Interview with Doctor, City K, February 15, 2011; Interview with NGO, City K, February 11, 2011 (stating that the police have made the biggest improvement in the last five years); Interview with NGO, City K, October 13, 2010 (stating that police response is better than previously and they have an increased understanding of domestic violence); Interview with NGO, City B, February 15, 2011; Interview with NGO, City J, February 8, 2011; Interview with State Home, City K, February 11, 2011; Interview with NGO, City K, October 11, 2010; Interview with Doctor, City K, February 15, 2011.

⁵⁸ Interview with NGO, City D, February 11, 2011; Interview with State Home, City K, February 11, 2011 (attributing the improved police response to educational efforts); Interview with CSW, City E, February 14, 2011 (stating that there are no complaints about the police from the victims).

⁵⁹ Interview with Judges, City K, October 13, 2010; Interview with Judge, City A, February 14, 2011.

⁶⁰ Interview with NGO, City K, October 12, 2010.

⁶¹ Interview with NGO, City K, February 11, 2011.

⁶² *Id.*

⁶³ *Id.*; Interview with NGO-2, City K, February 11, 2011.

Another victim living in a small town recounted how helpful and polite the police were during the many times they were called. Each time, the police detained her husband for the 12-24 hours period, sent documentation to the Center for Social Welfare (CSW), and requested a restraining order and alcohol treatment for the perpetrator. Their conduct left a lasting impression on her, which was especially important because she received no help from the CSW.⁶⁴

Despite these commendations, interviewees reported gaps and weaknesses in the police response. A prime example is the growing number of dual arrests as discussed on page 22—where the victim is arrested alongside the offender—which has undermined views of police implementation in recent years.⁶⁵

There is also a need for a specialized focus on domestic violence with the law enforcement sector. Domestic violence cases are handled by the same unit in the police department that handles juvenile delinquency and crimes against children.⁶⁶ There are no police officers dedicated solely to policing domestic violence, and officers on juvenile delinquency and crimes against children and minors are assigned to handle domestic violence cases.⁶⁷ An Mol officer described the designation of shared responsibilities: “With three responsibilities [juvenile delinquency, crimes against children and domestic violence], we are not specialized here.”⁶⁸

ATTITUDES OF POLICE

Misconceptions that domestic violence is a private matter or a result of alcohol abuse are frequently the cause of an ineffective police response, such as failing to take domestic violence seriously, inform victims of their rights, refer them to services, or charge the perpetrator.⁶⁹ Shelter workers described how women from smaller towns repeatedly call the police, who tell them it is their own private matter to deal with,⁷⁰ or they should be patient and wait until the situation improves.⁷¹ In these cases, police try to reconcile the parties, a response they viewed as preventive.⁷²

⁶⁴ Interview with Victim, City K, February 17, 2011.

⁶⁵ Interview with NGO, City K, October 10, 2010.

⁶⁶ The Ministry of the Interior established the General Police Directorate to administer police matters. The General Police Directorate encompasses several bodies, including the Criminal Police Directorate. Within the Criminal Police Directorate, there are subsectors, including General Crime, which contains the Section for Juvenile Delinquency and Crimes against Juveniles and Family. European Police and Judicial Systems, “Republic of Croatia,” *Interpol*, accessed August 25, 2011. Section 2.2, <http://www.interpol.int/Public/Region/Europe/pjsystems/Croatia.asp>; European Police and Judicial Systems, “Republic of Croatia”, Interpol, Chart: Organizational Scheme of General Police Directorate: General Police Directorate <http://www.interpol.int/Public/Region/Europe/pjsystems/Charts/croatia1.pdf>; Interview with Police, City K, October 12, 2010. Addressing domestic violence through juvenile delinquency and crimes against children does not promote a specialized police response that focuses on victim safety and offender accountability.

⁶⁷ *Rules of Procedure*, Section 1.A.6; Interview with Police, City K, October 12, 2010; Interview with Police, City K, October 12, 2010; Interview with Police, City F, February 6, 2011; Interview with Police, City E, February 14, 2011; Interview with Police, City D, February 11, 2011; Interview with Police, City F, February 8, 2011; Interview with Police, City I, February 7, 2011; Interview with Police, City B, February 15, 2011; Interview with Police, City J, February 8, 2011; Interview with Police, City H, February 10, 2011. Most often, police interviewees specified juvenile delinquency as their focus, although some police officers described their work as family violence. See e.g., Interview with Police, City H, February 10, 2011. Juvenile delinquency is one of 21 police departments in Croatia. Interview with Police, City I, February 7, 2011. There are approximately 210 police officers certified as juvenile delinquency officers, approximately 60 percent of whom are women. Once certified, these officers are authorized to approve criminal and misdemeanor charges in domestic violence cases. Interview with Police, City K, October 12, 2010; Interview with Police, City D, February 11, 2011. See also Interview with Police, City E, February 14, 2011.

⁶⁸ Interview with Police, City K, October 12, 2010. As one officer explained, most of her work is on crimes against children and delinquency of minors, with domestic violence being just one part of her job. Interview with Police, City F, February 8, 2011.

⁶⁹ See e.g., Interview with NGO, City F, February 7, 2011.

⁷⁰ Interview with State Home, City K, February 11, 2011.

⁷¹ Interview with NGO, City J, February 8, 2011.

⁷² See e.g., Interview with Police, City J, February 8, 2011.

Interviews with police officers also revealed a general misperception that domestic violence is caused by alcoholism or drug addiction.⁷³ For example, one police officer asserted that three-quarters of domestic violence is caused by alcohol abuse.⁷⁴ This misperception also impacts how police assess the risk of danger in a domestic violence case, as they place heavy emphasis on the influence of substance abuse and may not pay attention to other important risk factors.⁷⁵

Interviews also revealed that police are at times insensitive toward the victim and even dismissive of their claims.⁷⁶ A victim, whose offender had thrown an iron pipe at her and threatened her with an ax, described her experience when she reported the violence:

The police asked for the ax and put me in the vehicle with locked doors and closed windows. I asked for the window to be open and he laughed at me, and I started to panic and call for help and then he opened the window. The police said, "Why would you come here to upset him?" I said, "This is my house," and he said "Yeah, like it is my father's." I took the alcohol test, and I showed them the paper that said it was my house, and they verified and [my sons] verified that he threatened me with an ax, but the police did not make a written report, only a note that they went out into the field.⁷⁷

One social worker described how a woman fled her abuser in the middle of the night. When she called the police and asked them for help, the police refused to assist her. They told the woman the police car could only be used for official work. Because she could not remain safely in the city, she was forced to walk for more than three hours in the woods.⁷⁸

Interviews revealed concerns over police distrust of victims.⁷⁹ A high-ranking police official stated that their policy is to consider the victim's statement as the truth when they arrive.⁸⁰ Yet, interviews suggest that this policy is not always implemented in practice.⁸¹ Interviewees explained that when a victim is finally ready to report domestic violence after years, the police sometimes question why she waited so long and consequently do not believe her allegations.⁸² Divorce proceedings can also magnify distrust of a victim. A police officer stated that women often falsely accuse the husband of violence, neglect, and child abuse in a divorce.⁸³

Whether police believe victims can impact perpetrator accountability. In one case, a victim in a small city was raped from behind and therefore could not see her rapist. The police did not believe her, and they sent three different police teams to interview her daily, took her back to the site of the rape, and made her take a lie detector

⁷³ See e.g., Interview with Police, City F, February 8, 2011.

⁷⁴ Interview with Police, City J, February 8, 2011.

⁷⁵ A prevailing myth about domestic violence is that alcohol and drugs are the major causes of domestic abuse. In reality, some abusers rely on substance use (and abuse) as an excuse for becoming violent. Alcohol allows the abuser to justify his abusive behavior as a result of the alcohol. While an abuser's use of alcohol may have an effect on the severity of the abuse or the ease with which the abuser can justify his actions, an abuser does not become violent "because" drinking causes him to lose control of his temper. As described more fully in the section on theories of violence, domestic violence is used to exert power and control over another; it does not represent a loss of control. "Myths about Alcohol and Domestic Violence," *The Advocates for Human Rights*, March 5, 2012, http://www.stopvaw.org/Myths_About_Alcohol_and_Domestic_Violence.html.

⁷⁶ See the Section on Dual Arrests and Charges for further discussion on re-victimization by police on page 22.

⁷⁷ Interview with NGO, City F, February 7, 2011.

⁷⁸ Interview with NGO, City K, February 11, 2011.

⁷⁹ See e.g., Interview with Prosecutors, City K, October 14, 2011.

⁸⁰ Interview with Police, City K, October 12, 2010.

⁸¹ Interview with NGO, City K, October 13, 2010; Interview with NGO, City D, February 11, 2011. See also Interview with NGO, City F, February 7, 2011 (victim stating that she wanted the police to take victims more seriously).

⁸² Interview with Prosecutors, City K, October 14, 2011.

⁸³ Interview with Police, City K, October 12, 2010; Interview with NGO, City K, October 13, 2010; Interview with NGO, City F, February 7, 2011.

test. Ultimately, victim did not want anything more to do with the police officers after this experience, so the NGO intervened to stop the police investigation.⁸⁴

Interviews suggest that multiple calls concerning the same household sometimes result in police trivializing the case.⁸⁵ When police receive repeat calls from the same woman or neighbor, NGO workers reported that police do not take it seriously and assume the women are overreacting or exaggerating.⁸⁶ According to some police, if the person making the report is known to police, the supervisor can assess the claim's validity "on-the-spot."⁸⁷

TRAINING FOR POLICE

The Ministry of Interior (Moi) is responsible for educating law enforcement officials about domestic violence.⁸⁸ Some police officers reported having received extensive training from the Moi and the police academy, as well as supplementary trainings from other experts and legal actors.⁸⁹ Some police officers reported they have completed specific courses on domestic violence or undergone further trainings on domestic violence.⁹⁰ Those trainings appear to focus on changes in laws and procedures,⁹¹ as well as good and bad practices in domestic violence cases.⁹²

Interviews revealed that police are not receiving effective training on identifying the primary aggressor or evaluating defensive injuries in domestic violence cases.⁹³ Only one police officer expressed that training on assessing the primary aggressor is obligatory to identify the victim and the perpetrator.⁹⁴ In fact, one NGO worker opined that the police trainings relay messages about domestic violence that result in more arrests of victims who are in fact acting in self-defense.⁹⁵ The section on Dual Arrests and Charges discusses this in more detail on page 22.

LEGAL FRAMEWORK AND CHARGING ISSUES

The European Court of Human Rights 2009 decision, *Maresti v. Croatia (Maresti)*, drastically altered the legal landscape—and protections—for domestic violence victims. *Maresti* is a decision concerning, among other things, a violation of the applicant's right not to be tried or punished twice for the same offense under Article 4 of the European Convention on Human Rights.⁹⁶ The effect of *Maresti* is that the misdemeanor and criminal laws are

⁸⁴ Interview with NGO, City K, February 15, 2011.

⁸⁵ Interview with NGO, City K, October 13, 2010; Interview with Shelter, City F, February 7, 2011; Interview with Police, City H, February 10, 2011; Interview with Police, City D, February 11, 2011.

⁸⁶ Interview with NGO, City K, October 13, 2010; Interview with NGO, City F, February 7, 2011.

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⁸⁸ Interview with Gender Equality Ombudsperson, Zagreb, October 11, 2010; Interview with Police, City J, February 8, 2011; Interview with Police, City B, February 15, 2011.

⁸⁹ Interview with Police, City B, February 15, 2011; Interview with Police, City I, February 7, 2011; Interview with Police, City K, October 12, 2010.

⁹⁰ Interview with Police, City E, February 14, 2011; Interview with Police, City B, February 15, 2011 (explaining that they undergo training each year in groups of 20-30 officers on the legal framework of how to respond to domestic violence cases); Interview with Police, City D, February 11, 2011; Interview with Police, City H, February 10, 2011.

⁹¹ See, e.g. Interview with Police, City B, February 15, 2011; Interview with Police, City E, February 14, 2011; Interview with Police, City H, February 10, 2011; Interview with Police, City F, February 6, 2011.

⁹² Interview with Police, City H, February 10, 2011.

⁹³ Interview with Police, City D, February 11, 2011; Interview with NGO, City K, October 10, 2010. See also Interview with Police, City E, February 14, 2011.

⁹⁴ Interview with Police, City B, February 15, 2011.

⁹⁵ Interview with NGO, City K, October 10, 2010.

⁹⁶ The applicant had been prosecuted and tried before Pazin Municipal Court for an offence for which he had already been convicted before Pazin Minor Offences Court and for which he had served a prison term (violation of Article 4 of Protocol No. 7). The European Court of Human Rights (ECHR) noted that both sets of proceedings were instituted on the basis of the same police report. The ECHR further found that the appellate court upheld the applicant's conviction in respect of the same offence for which he had already been punished by Pazin Minor

now mutually exclusive for purposes of prosecution. The Croatian government cannot prosecute an offense under both the misdemeanor and the criminal codes—it must choose to use one or the other in domestic violence cases. If a prosecutor chooses to charge an offender under the Criminal Code, the victim is then precluded from obtaining protective remedies under the Misdemeanor Law. Conversely, if the victim seeks a protective measure, then the maximum penalty the offender could face for his violence is a misdemeanor sentence or fine.

Before this decision, standard police practice in cases of severe violence was to bring both charges together in tandem under the Criminal Code and the Misdemeanor Law.⁹⁷ They explained:

I think it was better and easier to protect the family earlier...because we could indict on the misdemeanor and criminal charges also, e.g., if we had a second, third misdemeanor, that would show the continuum of violence, and bring them together and put them in the criminal indictment. We cannot do that anymore, because if the perpetrator has been punished under the misdemeanor law, you cannot punish under the criminal law.⁹⁸

Following the *Maresti* decision, police, as well as prosecutors and judges, face uncertainties about the elements of offenses. Apart from the definitions in the LPDV and Criminal Law, which are vague, there are no official guidelines as to what level of domestic violence constitutes a criminal or a misdemeanor charge. Several interviewees reported that the police have developed unofficial rules in deciding whether to file a case as criminal or misdemeanor.⁹⁹ Police commonly rely on a three strikes rule: after two misdemeanors, the third offense becomes criminal.¹⁰⁰ Also, first-time offenses lacking heavy violence will be considered misdemeanors by police.¹⁰¹ More serious injuries, threats, prior records, and weapons in a first-time offense can merit a criminal charge.¹⁰² The practice for violence in front of children is similarly inconsistent and sometimes leads to criminal charges,¹⁰³ but in other cases, misdemeanor charges.¹⁰⁴

In addition, the language of Article 215A of the current Criminal Code has exacerbated the confusion over what acts constitute a criminal offense.¹⁰⁵ Article 215A states: “A family member who by his or her violent, abusive or particularly insolent conduct puts another member of the family into a humiliating position shall be punished by imprisonment for six months to five years.”¹⁰⁶ Police officers recounted cases where they reported the perpetrator

Offences Court even though the applicant had clearly complained of a violation of the non bis in idem principle regarding him. The European Court therefore considered that the domestic authorities had permitted the duplication of criminal proceedings in the full knowledge of the applicant's previous conviction for the same offence.

⁹⁷ Interview with Police, City K, October 12, 2010.

⁹⁸ Interview with Police, City B, February 15, 2011.

⁹⁹ Interview with NGO, City K, February 16, 2011. Interviewees explained that this practice is not found in law. Interview with CSW, City D, February 11, 2011. See also Interview with NGO, City K, February 16, 2011 (stating that there is no legal foundation for the police practice of bringing criminal charges if there are children involved or if the violence tends to be of a heavy nature).

¹⁰⁰ Interview with Judges, City J, February 9, 2011; Interview with NGO, City K, February 17, 2011; Interview with CSW, City D, February 11, 2011; Interview with Professor, City K, February 17, 2011; Interview with Police, City F, February 8, 2011 (stating that after three misdemeanors, one automatically applies for a criminal indictment).

¹⁰¹ Interview with Lawyer, City K, October 13, 2010; Interview with Police, City J, February 8, 2011 (stating they will initiate criminal proceedings if it is a case of continuous or severe violence, they will start criminal proceedings); Interview with Police, City I, February 7, 2011 (stating they will file criminal charges if the physical violence and injuries are serious, such as bruises or broken bones).

¹⁰² Interview with Police, City E, February 14, 2011; Interview with NGO, City K, February 16, 2011; Interview with Police, City D, February 11, 2011; see also Interview with Police, City J, February 8, 2011 (stating that they initiate criminal proceedings in aggravated assault with harder injuries); Interview with Police, City K, October 12, 2010; Interview with NGO, City K, February 16, 2011.

¹⁰³ Interview with Judge, City A, February 14, 2011; Interview with NGO, City K, February 16, 2011.

¹⁰⁴ Interview with Police, City F, February 6, 2011.

¹⁰⁵ See e.g., Interview with Police, City E, February 14, 2011.

¹⁰⁶ The decision to pursue the criminal case against a perpetrator lies in the authority of the prosecutor; police expressed frustration because while they can arrest the perpetrator, the prosecutor will decide whether to indict him or else drop the charges and release him. Interview with Police, City I, February 7, 2011; Interview with CSW, City D, February 11, 2011.

under Article 215A based on one incident, but the prosecutor perceived there was insufficient intensity and no requisite humiliation.¹⁰⁷ For further discussion on this confusion over Article 215A, see the Prosecutors section on page 37.

This confusion over *Maresti's* application also extends to the judiciary, where the practice is still developing.¹⁰⁸ For example, a municipal court judge gave wide-ranging examples of acts that together could constitute criminal “insolent conduct” and putting another family member in a humiliating position: swearing, harsh insults, throwing and breaking furniture, throwing objects, pushing, punching, spitting, cursing, and hitting.¹⁰⁹ Yet one judge recalled a case where the perpetrator used a knife, which she viewed as a criminal act. To her surprise, prosecuting officials classified it as a misdemeanor.¹¹⁰ At a seminar on these cases, the judges were surprised by which offenses they were instructed fell under the misdemeanor law and which fell under the criminal law.¹¹¹

To some extent, the differences in interpretation of Article 215A will be alleviated by the entry into force of the new Criminal Code in January 2013, which eliminates the article and subsumes domestic violence under other provisions on bodily injury.¹¹² There are concerns that the new legislation will still foster problems with implementation and most domestic violence cases will continue to be charged under the Misdemeanor Law. In addition, the Criminal Procedure Code needs precautionary measures, including a restraining order, stalking and harassment order, and eviction, that are intended to protect victims' safety during the criminal proceedings.

Overall, defaulting to the misdemeanor system has become a safeguard for many police officers to protect the victim should the prosecutor disagree with police assessment of the offense. They outlined several advantages to filing as a misdemeanor that outweigh the drawback of a less severe punishment.¹¹³

The opportunity for greater and longer victim protections under the misdemeanor system is a primary reason police file under that system.¹¹⁴ Police interviewees summarized the Criminal Code's protection of victims of domestic violence as very poor.¹¹⁵ There are no long-term protective measures nor a corollary eviction measure in the criminal system as there are under the LPDV.¹¹⁶

Even though the criminal system can result in a longer prison term than the misdemeanor system, imprisonment alone is not sufficient to protect the victim. The absence of protective measures outside of trial in the criminal system means that once the perpetrator is released to return to his family, there is a risk for re-offense.¹¹⁷ A lawyer described how a husband attempted to kill his wife and stabbed her eight times in the kitchen in front of the

¹⁰⁷ Interview with Police, City E, February 14, 2011.

¹⁰⁸ See e.g., Interview with Judges and Office for Victim and Witness Support, City F, February 9, 2011.

¹⁰⁹ Interview with Judge, City B, February 16, 2011.

¹¹⁰ Interview with Judges and Office for Victim and Witness Support, City F, February 9, 2011.

¹¹¹ *Id.*

¹¹² Criminal Code, Article 117-119. Note: The authors conducted fact-finding in Croatia prior to the adoption of the new Criminal Code.

Interviews as such reflect implementation of Article 215A, now defunct.

¹¹³ Interview with NGO, City C, February 10, 2011; Interview with Police, City K, October 12, 2010.

¹¹⁴ Interview with Police, City K, October 12, 2010.

¹¹⁵ Interview with Police, City E, February 14, 2011; Interview with Police, City I, February 7, 2011.

¹¹⁶ Interview with Police, City K, October 12, 2010. Criminal Procedure Code, Articles 98-101. Provisional translation for “EU-project: Support to the Judicial Academy: Developing a training system for future judges and prosecutors.” Republic of Croatia Ministry of Justice, July 3, 2009 [hereinafter, “Criminal Procedure Code”]. The judge can issue a restraining order during the proceedings, but this authority does not extend to ordering the perpetrator out of the residence. Thus, even these short-term measures do not protect a victim who lives with the perpetrator.

Interview with Police, City K, October 12, 2010.

¹¹⁷ Interview with Police, City K, October 12, 2010.

children. Only the intervention of a neighbor prevented her murder. A criminal court sentenced the husband to eight years' imprisonment, but he was released after five years.¹¹⁸ The lawyer recalled:

The first thing that he did when he was out of jail, he came to her and told her he will kill her, her new partner, everyone, and he would go to jail again. We called the police and now he is in jail for threats for two years, but that man, the judge who found him guilty, did not have any legal possibility for any measures, for example, after he left the jail to forbid him to come close to her again.¹¹⁹

In addition, numerous interviewees opined that the misdemeanor system works more quickly and effectively to meet the immediate needs of victims.¹²⁰ To some police, the speed of the misdemeanor procedure allows less time for the victim to change her mind, be influenced by the offender, and therefore withdraw her testimony.¹²¹ In contrast, the criminal system is regarded as slower and more complicated because of its higher evidentiary standard requiring prosecutors to speak with witnesses and institutions to obtain supporting documentation.¹²² One officer opined that the problem was not in the sentence but the length of time from offense to conviction. To him, the only real justice is "fast justice."¹²³ He questioned:

What is the purpose of the offender being in jail after one year, one year after the offense?....That is the real problem, the offenders see that the whole Criminal Code procedure is very slow, so it gives him the confidence to do the offense.¹²⁴

INVESTIGATION

The investigation is an important process that sets the stage for an effective legal response. Under the Rules of Procedure, police are charged with gathering "evidence and necessary information" for misdemeanor or criminal proceedings.¹²⁵ Interviewees reported that, frequently, an absence of ongoing violence or evidence of violence

¹¹⁸ Interview with Lawyer, City K, October 13, 2010.

¹¹⁹ Id.

¹²⁰ Interview with State Home, City K, February 11, 2011; Interview with Police, City H, February 10, 2011; Interview with Police, City F, February 8, 2011; Interview with Police, City F, February 6, 2011; Interview with Police, City K, October 12, 2010; Interview with Police, City K, October 12, 2010. But even though typically faster, the misdemeanor system is also subject to delays because of *Maresti*. For instance, the misdemeanor process can be delayed should the prosecutor later decide to investigate a criminal charge. Police explained that if there is a criminal case of threat, they will inform the victim she has 90 days to report the crime. Should she choose not to report it as such, the police file it as a misdemeanor and inform the prosecutor of their action. In these cases, the prosecutor may request that the misdemeanor judge stop the proceedings while the prosecutor decides whether to pursue criminal charges.

The *Maresti* decision can also result in further delays by forcing police to appeal dismissed misdemeanors. Because police are precluded from bringing a subsequent criminal charge for the same offense charged in misdemeanor court, they must pursue appeals of those misdemeanors. A police officer explained that *Maresti* compelled them to appeal in a case involving a threat: "We had to write an appeal, because we couldn't go to the criminal law because we already done a misdemeanor case." Interview with Police, City E, February 14, 2011. Another police officer illustrated how *Maresti* force police to maneuver within the appeals channel if the criminal case is neither pursued by the prosecutor or victim. "There was a threat and the elements were in the criminal law, Article 129, so the threat was a misdemeanor and a criminal violation. We reported this threat as a misdemeanor under the LPDV. The judge refused this as not in his jurisdiction because it was a criminal act. We appealed to the highest misdemeanor court because in our opinion that sort of behavior has elements of misdemeanor acts as well and because the victim didn't file the criminal complaint against him and the State Attorney did not take it up." Id.

¹²¹ Interview with Police, City F, February 8, 2011. See also the discussion in Delays Encourage Dropping Cases of Domestic Violence in the Prosecutors section on page 40.

¹²² Interview with Police, City F, February 6, 2011. The lengthiness of the criminal trial can also impact the offender's accountability, as a sense of impunity may lead him to commit another offense. Interview with Police, City K, October 12, 2010.

¹²³ Interview with Police, City K, October 12, 2010.

¹²⁴ Id.

¹²⁵ Rules of Procedure, Section 1.A.2. Police are to gather information about the violence, including the duration, continuity, form of violence, prior behavior, records of prior violence and police intervention, the scope of intervention, and exposure of children to the violence. Rules of Procedure, Section 1.A.2.1.

when the police arrive can diminish police willingness to investigate further.¹²⁶ A social worker stated “for their understanding, there should be blood in the scene or bruises on the woman to prove there is domestic violence. Otherwise, they do not react.”¹²⁷ If the woman claims she was beaten but has no marks on her face, and the man denies it, the “police don’t want to respond.”¹²⁸ In these cases, interviewees explained, police rarely arrest the offender or investigate.¹²⁹

Police have a standard police intervention form, which provides specific instructions on how to interview parties, a checklist on steps taken, a section on protective measures, and general directives on information to collect. It does not, however, contain any guidance on self-defense or predominant aggressor considerations, nor does it require information about existing protective measures, probation, warrants, and prior convictions.¹³⁰ Police also reported that they do not carry a specific set of questions to ask at the scene of a reported assault,¹³¹ but pose general questions about the violence, witnesses, injuries, perpetrator’s actions, victim’s response, threats, and weapons and make observations.¹³² “It’s all in here,” explained one police officer, pointing to his head.¹³³

Police Reports

Police reports are a critical component of an effective justice system response to domestic violence. They set the stage for the investigation and prosecution and may be the only official record of an assault. According to the Rules of Procedure, police are required to compile information gathered into an official note that contains detailed information from the victim.¹³⁴ The Law on Police directs police officers to register reports on committed criminal acts that are pursued ex officio.¹³⁵ Overall, interviews show that police usually file reports after they visit a domestic violence scene.¹³⁶

There were, however, mixed opinions on the adequacy of police report contents. For example, misdemeanor judges in one large city opined that the police do not provide adequate reports. They explained that the police should write everything they see at the crime scene in greater detail, take photos, document where the violence happened, and describe the condition of the victim and perpetrator.¹³⁷ A CSW in the same city confirmed that judges wanted police to describe more facts, use more detail, and go to court and testify.¹³⁸

¹²⁶ Interview with County Court Judges, City K, February 18, 2011.

¹²⁷ Interview with NGO, City K, February 11, 2011.

¹²⁸ Interview with County Court Judges, City K, February 18, 2011.

¹²⁹ Interview with NGO, City K, February 11, 2011.

¹³⁰ The police domestic violence intervention form includes a footnote that requires police to be familiar with any possible protective or precautionary measures against the perpetrator. There is no place indicated on the form, however, for the police to record the existence of these measures. Ministry of Interior, Domestic Violence Intervention Form, Footnote 2.

¹³¹ Interview with Police, City H, February 10, 2011; Interview with Police, City I, February 7, 2011.

¹³² Interview with Police, City H, February 10, 2011; Interview with Police, City K, October 12, 2010. In addition, one NGO noted that officers need to ask domestic violence victims questions about sexual violence. Interview with NGO, City K, February 15, 2011.

¹³³ Interview with Police, City I, February 7, 2011. The form, however, does describe different kinds of situations and potential questions.

Interview with Police, City H, February 10, 2011.

¹³⁴ Rules of Procedure, Section 1.A.2.1.

¹³⁵ Law on Police, Article 51.

¹³⁶ Interview with Police, City E, February 14, 2011; Interview with Police, City D, February 11, 2011.

¹³⁷ Interview with Judges, City F, February 7, 2011.

¹³⁸ Interview with CSW, City E, February 14, 2011 (explaining these judges’ statements were voiced during inter-agency meetings).

Additionally, the judges suggested that police make a list of witnesses since they cannot always remember the scene when they testify. Interview with Judges, City F, February 7, 2011.

On the other hand, interviews in other cities indicated that the police reports are thorough.¹³⁹ Misdemeanor judges reported that the police “maybe even overdo it because they report all cases of violence.”¹⁴⁰ Other judges stated that police will report what they view as minor details, such as a single curse or brief outbursts.¹⁴¹

The police domestic violence intervention form expressly states it is the police responsibility to document injuries to the victim. It stresses the importance of asking the victim about injuries, especially given injuries that may be covered by clothing or hair. It further explains that injuries are to be documented by a police officer based on the officer’s description of the injuries, an examination of the victim, and the medical records.¹⁴² Interviews revealed, however, that police are not evaluating the cause or type of injuries on the parties nor are they consistently taking photos.¹⁴³

Police stated they do not conduct any assessment of injuries aside from asking the woman if she is injured¹⁴⁴ and evaluating the classification level of injuries (light or severe) for charging purposes.¹⁴⁵ More commonly, police defer the main evaluation and documentation of injuries to health institutions, where the doctor’s documentation is “sacred.”¹⁴⁶ Deferring evaluation to doctors also applies to defensive injuries. A police officer explained that while they note the injuries they see, they do not evaluate what caused these injuries or how they happened.¹⁴⁷ Yet, deferring all evaluation of injuries to the doctor can cause problems. If the victim does not want to go to the emergency room, which is common, there is a risk that her injuries will go undocumented.¹⁴⁸

Although police can photograph injuries for evidence, when and whether police take photos is inconsistent. A high-ranking police official explained that police officers are required to take photos of injuries.¹⁴⁹ In some instances, they have taken pictures of the victim’s injuries and damaged items.¹⁵⁰ Yet, interviews suggested the more common practice is for police to take photos only where the violence is severe, of a criminal nature, or there are visible injuries.¹⁵¹

¹³⁹ See e.g., Interview with Lawyers, City K, February 17, 2011.

¹⁴⁰ Interview with Judges, City F, February 7, 2011; Interview with Judges, City B, February 16, 2011 (similarly stating that the police report everything, even things like pepper).

¹⁴¹ Interview with Judges, City F, February 7, 2011.

¹⁴² Domestic Violence Intervention Form, Ministry of Interior, Footnote 5.

¹⁴³ Interview with Police, City B, February 15, 2011; Interview with Police, City H, February 10, 2011; Interview with Police, City D, February 11, 2011; Interview with Police, City I, February 7, 2011; Interview with Police, City F, February 8, 2011; Interview with Police, City K, October 12, 2010; Interview with Police, City E, February 14, 2011.

¹⁴⁴ Interview with Police, City I, February 7, 2011.

¹⁴⁵ Interview with Police, City F, February 8, 2011. An example of a light injury would be bruises and of a severe injury would be broken bones. Id. See the section on Legal Framework and Charging Issues for more information on page 15.

¹⁴⁶ Interview with Police, City B, February 15, 2011; Interview with Police, City H, February 10, 2011; Interview with Police, City D, February 11, 2011; Interview with Police, City I, February 7, 2011; Interview with Police, City F, February 8, 2011; Interview with Police, City K, October 12, 2010.

¹⁴⁷ Interview with Police, City I, February 7, 2011.

¹⁴⁸ Interview with Police, City F, February 8, 2011; Interview with Police, City I, February 7, 2011. See discussion in the Health Care section, page 90.

¹⁴⁹ Interview with Police, City K, October 12, 2010; Interview with Police, City H, February 10, 2011.

¹⁵⁰ Interview with Police, City E, February 14, 2011.

¹⁵¹ Interview with Police, City F, February 8, 2011; Interview with Police, City E, February 14, 2011. In addition, other factors, such as insufficient photographic equipment, failure to bring a camera, or ample other evidence preclude police from taking photos. Interview with Ombudsperson for Gender Equality, Zagreb, October 11, 2010; Interview with Police, City K, October 12, 2010; Interview with Police, City H, February 10, 2011 (explaining they take photos only 25 percent of the time, because they already have enough evidence to make a report).

GENERAL ARREST POLICY

Interviews indicated that police seldom arrested perpetrators in Croatia. Police only make arrests in about one-third of all domestic violence cases throughout the country.¹⁵² For example, in 2008, police made 6,610 arrests of 20,566 reported offenders.¹⁵³ Police arrest of domestic violence offenders is authorized under the Rules of Procedure, the Misdemeanor Law, and Criminal Procedure Code. Both the Criminal Procedure Code and Misdemeanor Law authorize police to arrest a perpetrator who has committed a misdemeanor or crime under certain conditions, such as risk of flight, influencing or tampering with witnesses/evidence, or potential recidivism.¹⁵⁴ The language of the Rules suggests that detention is non-discretionary in domestic violence misdemeanors. The police “must bring the perpetrator of family violence to the police station and keep him/her in detention.”¹⁵⁵ At the scene, the uniformed officer consults with the officer-on-duty to consider various factors that could compel an arrest and detention for 12 hours to start misdemeanor proceedings.¹⁵⁶ Following an arrest, the police have 12 hours to bring the detainee before the judge with an indictment proposal.¹⁵⁷

In some cities, police promptly detain the perpetrator in most or all cases of domestic violence, even without witnessing the assault.¹⁵⁸ Some officers even recognize dangerous behavior not involving a physical attack, such as stalking and harassment, as cause for an arrest. Such arrests, however, are not common practice in Croatia.

One reason for the low arrest rate is that police often require additional factors beyond the Rules of Procedure’s requirement before they will arrest a perpetrator.¹⁵⁹ For example, police cited factors that would compel an arrest: heavier or repeated violence; special family circumstances; the involvement of children or people with disabilities; damage to the house; and threats.¹⁶⁰ In addition, some police base their decision to arrest on whether it merits a stalking or restraining order.¹⁶¹ Some police explained they will arrest for physical violence regardless of injuries,¹⁶² others require visible bodily injuries or medically documented injuries.¹⁶³

Interviews revealed that police sometimes rely on signs of the effects of alcohol to make an arrest decision. Police give great weight to alcohol and may first establish whether there is alcohol involved by conducting an alcohol test

¹⁵² “Report on the Implementation of the Family Violence Procedure Protocol during 2007 and 2008,” *Ministry of Family, Veterans’ Affairs and Intergenerational Solidarity*, 2009, 5-6 (citing that of 16,885 recorded interventions, there were 6,610 arrests). See also Interview with NGO, City K, February 10, 2010.

¹⁵³ “Report on the Implementation of the Family Violence Procedure Protocol during 2007 and 2008,” *Ministry of Family, Veterans’ Affairs and Intergenerational Solidarity*, 2009, 6.

¹⁵⁴ Misdemeanor Law, Article 134(1). Provisional translation for “EU-project: Support to the Judicial Academy: Developing a training system for future judges and prosecutors.” Republic of Croatia Ministry of Justice, April 4, 2009 [hereinafter, “Misdemeanor Law”]; Criminal Procedure Code, Articles 107, 123. Article 135 of the Misdemeanor Law states that police may arrest when they have submitted an indictment to the misdemeanor court for an offense connected to family violence, breach of public order, or an offense entailing a prison or fine punishment greater than 10,000 kuna, and the court has determined detention because there is a flight risk, danger of loss of evidence or influence of witnesses, or the accused may repeat the same misdemeanor. The Criminal Procedure Code also provides police with authority to arrest a person suspected of committing a crime punishable by more than three years’ imprisonment and grounds for investigative detention, including among others, a flight risk, he will impede the proceedings by influencing or affecting evidence, a risk he will repeat the offense or a felony. Articles 107, 123.

¹⁵⁵ Rules of Procedure, Section 1.3.

¹⁵⁶ Interview with Police, City J, February 8, 2011.

¹⁵⁷ Misdemeanor Law, Article 134(3).

¹⁵⁸ Interview with Police, City K, October 12, 2010; Interview with Police, City E, February 14, 2011; Interview with Police, City B, February 15, 2011; Interview with Judges, City F, February 7, 2011.

¹⁵⁹ Rules of Procedure, Section 1.3.

¹⁶⁰ Interview with Police, City H, February 10, 2011; see also Interview with Police, City I, February 7, 2011 (explaining their bases for arrest as set forth in the criminal and misdemeanor laws, e.g. perpetrator is caught in the commission of the offense, circumstances he will repeat the violence, run away, hide, hide the evidence); Interview with Police, City J, February 8, 2011.

¹⁶¹ Interview with Police, City I, February 7, 2011 (explaining they will arrest a perpetrator 100 percent of the time in these cases).

¹⁶² Interview with Police, City J, February 8, 2011.

¹⁶³ Interview with Police, City H, February 10, 2011.

on both parties when they arrive at the scene.¹⁶⁴ Police have authority to remove the offender temporarily if he is “very drunk” or abusive as a way to sober him up.¹⁶⁵

The timing of violence also affects an arrest decision, and there is a greater tendency to detain the perpetrator when police intervene outside of court hours since the judge will be unlikely to hear the case until morning. For example, when violence occurs at night, the police will detain the perpetrator in custody until the court convenes in the morning.¹⁶⁶ This is not always the case, since some victims have complained of police allowing the perpetrator to stay in the home, but placing themselves in the shelter at 2:00 or 3:00 a.m.¹⁶⁷

Dual Arrests and Charges

B. was living in a smaller town in Croatia, and the violence was very regular, and it was very hard and brutal. Also, which is not very common, [her husband] very much abused the children....The first time that she resisted, not in a physical way, I think she was cursing back at him...The police came because they heard the violence because it's a small village. They came and took both of them, because of breach of peace, and they prosecuted both of them. She came to our shelter, so she has a lawyer, and now that the case is finished, she is not guilty after one year...Her husband was convicted of disturbing the peace...The injuries – she had sexual violence, raping in front of the children, pulling hair, kicking [her] head on the floor, kicking her in the stomach on the floor, everything you could imagine, daily, kicking her out of the house in the middle of the night. That went on for their marriage – ten years...This [charge] was brought by the police under official duties against both of them.¹⁶⁸

Across Croatia, there are widespread reports that police are arresting both the victim and the perpetrator, a practice referred to as “dual arrests.”¹⁶⁹ A report by the Croatian Bureau of Statistics found that 22.6% of misdemeanor domestic violence offenses were women in 2010.¹⁷⁰ Reports from interviewees in Croatia corroborated this finding. For example, one NGO in a large city estimated that approximately 30 percent of their clients reported being arrested along with the offender.¹⁷¹ A safehouse worker in a smaller city stated, “I know from my previous experience that lots of women are getting accused or even arrested.”¹⁷² When asked if they often have cases with multiple perpetrators, police in a large city acknowledged that they do.¹⁷³ Police explained, “In many cases, we find out that the other party who called the police also committed domestic violence.”¹⁷⁴

One of the root causes for dual arrests lies in Croatia’s legislation, which provides grounds for arrest in cases of non-physical violence. The LPDV classifies psychological and economic violence on par with physical violence as

¹⁶⁴ Interview with Shelter, City J, February 8, 2011; Interview with Police, City F, February 8, 2011.

¹⁶⁵ Interview with Shelter, City J, February 8, 2011. It is unclear whether arrests in alcohol cases is driven by the arrest requirement under Section 1.A.3 of the Rules of Procedure or the police powers under Article 137 of the Misdemeanor Law, but alcohol is a motivating factor to remove and detain the perpetrator. Interview with Police, City I, February 7, 2011.

¹⁶⁶ See e.g., Interview with Judge, City A, February 14, 2011.

¹⁶⁷ Interview with NGO, City D, February 11, 2011.

¹⁶⁸ Interview with NGO, City K, October 13, 2010 (describing how one of their clients from a small town was charged and prosecuted for verbally cursing at her husband).

¹⁶⁹ See e.g., Interview with Lawyers, City K, February 17, 2011.

¹⁷⁰ Dubravka Rogić-Hadžalić, & Jadranka Kos, Domestic Violence: Legal Framework and Forms of Appearance, 2007-2010. (Croatian Bureau of Statistics, City K, 2012), 27 [hereinafter, “Rogić-Hadžalić and Kos”]. This pattern has been relatively consistent since 2007, and statistics show that women were reported as misdemeanor domestic violence offenders in 16.8% (2007), 17.4% (2008), and 16.8% (2009) of cases. *Id.* Yet, as mentioned earlier, research shows that men are most often the primary aggressors in domestic violence, and women constitute offenders in only 5% of cases. See *supra*, Footnote 2.

¹⁷¹ Interview with NGO, City K, October 11, 2010.

¹⁷² Interview with State Home, City I, February 7, 2011.

¹⁷³ Interview with Police, City B, February 15, 2011.

¹⁷⁴ *Id.*

domestic violence.¹⁷⁵ Thus, any person who commits this kind of violence can be prosecuted and punished under the misdemeanor law the same as those who commit physical violence. Additionally, any person can obtain protective measures against someone who commits psychological or economic violence. While the authors did not hear of any arrests based on economic violence,¹⁷⁶ police officers are widely applying the provision on psychological violence to arrest and charge the victim. Commonly, where the husband is arrested as an offender, the violence is physical, and where the wife is the offender, the basis is psychological violence.¹⁷⁷

A high-ranking police officer explained that psychological violence that merits arrest includes threats, signs the offender will harm the victim, and intimidation.¹⁷⁸ Calling names, on the other hand, are insufficient for an arrest, although they could merit a charge.¹⁷⁹ In practice, however, interviews reveal this is not the perception held by police across Croatia. Many police officers adopt a more expansive interpretation and view name-calling, cursing, shouting, and insults as domestic violence.¹⁸⁰ Even a verbal argument between spouses can constitute domestic violence and lead to the arrest of both parties. In the worst cases, the victim is not only arrested and charged, but also receives a greater punishment than the violent offender:¹⁸¹

We had a client where her husband is repeatedly threatening to kill her, six times. For six times, she has gone to the police and reported him—that he has threatened her, that she is very afraid and that he will kill her. The police waved their hands and told her, “he won’t touch you, he’s just a drunken fool who is just saying these things.” The seventh time, what happened after his oral threat to kill her, “I will kill you, I will slaughter you with a knife.” He took a knife and started running after her and said, “I will kill you, slaughter you so no one recognizes you.” She called the police, and the police came to the domestic violence scene. So, she tells the police that he is threatening again to kill me, and he says to the police, that she said to him, “You are an old senile fool.” The reaction of the police to her was “Ma’am, you really insulted him.”...the police have written an indictment, like a proposal for a misdemeanor procedure, where they proposed for him to be the first accused and pay 1,000 kuna and for her to be the second accused and to pay 6,000 kuna.¹⁸²

Another cause for dual arrests is the breach of public peace article “Violent Behavior” in the Criminal Code.¹⁸³ Article 331 states: “(1)Whoever, to give vent to his base instincts through violence, maltreatment or particularly impertinent conduct in a public place, humiliates another shall be punished by imprisonment for three months to

¹⁷⁵ LDPV, Article 4.

¹⁷⁶ One interviewee explained that it is difficult for the police to establish if someone has committed economic violence. Interview with CSW, City E, February 14, 2011. But see Identifying the Predominant Aggressor in the Misdemeanor and Criminal Judiciary section on page 51, where judges discuss charges brought against the woman for economic violence.

¹⁷⁷ Some police stated that they would arrest only the physically violent party, but charge them both for violence. Interview with Police, City B, February 15, 2011. Other police stated that both parties should be arrested and charged but acknowledged the husband should be more heavily charged because he used physical violence. Interview with Police, City E, February 14, 2011; Interview with Police, City F, February 8, 2011. Yet other police officers stated that they would arrest both parties, but only start proceedings against the husband. In this case, they would release the woman first, because what she did was less severe. Interview with Police, City J, February 8, 2011. Finally, in another city, police officers stated that they arrest both and charge both. Interview with Police, City B, February 15, 2011.

¹⁷⁸ Interview with Police, City K, October 12, 2010.

¹⁷⁹ Interview with Police, City K, October 12, 2010.

¹⁸⁰ Interview with Police, City J, February 8, 2011; Interview with Police, City F, February 8, 2011; Interview with Police, City H, February 10, 2011. See also Interview with Police, City B, February 15, 2011 (stating that name calling and insults is enough to warrant an arrest; Interview with Police, City K, October 12, 2010 (a high-ranking police officer stating that a person could be charged in court with name-calling under the misdemeanor law).

¹⁸¹ Interview with NGO, City K, October 11, 2010; see also Interview with NGO, City K, October 10, 2010.

¹⁸² *Id.*

¹⁸³ Criminal Code, Article 331.

three years.”¹⁸⁴ Even before adoption of the LPDV, police brought dual charges against the victim and perpetrator for violating public peace and order when they could not identify who started the violence.¹⁸⁵

Like dual arrests, dual charges are disturbingly prevalent, and shelter workers estimated that both parties are prosecuted “very often” in “almost every one” of their cases.¹⁸⁶ These practices vary as some police in other cities reported that dual charges were rare.¹⁸⁷

The impact on a victim of being arrested or charged by police can be devastating. In addition to inhibiting police response, it also deters victims from seeking help. One shelter worker reported that women are afraid to call the police because of this practice of arresting both the victim and perpetrator.¹⁸⁸ She explained:

Sometimes, after interrogation, the police decide she is not guilty, but the damage is done because she lived a trauma of being arrested together with the perpetrator. Women do not feel protected when they are arrested together with the batterer.¹⁸⁹

Similarly, a shelter worker recounted how a victim declared she would never report her husband again after they were both charged and fined:

A woman came here and she was bitter, with bruises, a black eye, and other injuries. She said she will not report because she said the last time after he beat her up, she was so frustrated, she threw an onion at his back, and the police concluded they are both guilty and charged them each with an 800 kuna fine....But it was physical violence. She said he battered her physically. Yesterday, she told us he was biting her, and she had to get a tetanus shot.¹⁹⁰

Even when police recognize the victim and her need for protection, interviews show they will still apply the law without discretion and arrest or charge both parties. Specifically, police might request a protective order on behalf of the victim, but still charge both victim and offender.¹⁹¹ Police practice also indicates a tacit acknowledgement of the offender as primary aggressor when they differentiate between levels of culpability in the charging statement. Police may list the offender as the first accused and the victim as the second accused in the indictment.¹⁹²

Predominant Aggressor and Self-defense

In general, police in Croatia do not identify the predominant aggressor at the scene of domestic violence.¹⁹³ Thus, victims who try to defend themselves are at great risk of arrest. This practice aggravates the problems already posed by Croatia’s legislation. The high rate of dual arrests along with interview findings revealed there is no

¹⁸⁴ *Id.*

¹⁸⁵ Interview with NGO, City D, February 11, 2011; Interview with NGO, City K, February 11, 2011.

¹⁸⁶ Interview with NGO, City K, October 13, 2010.

¹⁸⁷ Interview with Police, City J, February 8, 2011; Interview with Police, City I, February 7, 2011. Misdemeanor judges also reported seeing varying rates of dual charges: for one judge, both parties were charged in every case in one week but for another judge, there were only two cases with dual charges in that time period. Interview with Judges, City F, February 7, 2011.

¹⁸⁸ Interview with NGO, City K, February 11, 2011.

¹⁸⁹ *Id.*

¹⁹⁰ Interview with NGO, City C, February 10, 2011.

¹⁹¹ Interview with NGO, City K, October 10, 2010; Interview with NGO, City K, February 15, 2011.

¹⁹² Interview with NGO, City K, February 15, 2011. See also Interview with NGO, City B, February 15, 2011 (stating that if one of the partners is physically abusive, then it is probably considered more seriously); Interview with CSW, City E, February 14, 2011 (stating that the court then decides who is responsible).

¹⁹³ See e.g., Interview with State Home, City I, February 7, 2011; Interview with State Home, City K, February 11, 2011; Interview with NGO, City K, October 10, 2010; Interview with Police, City B, February 15, 2011.

systematic evaluation in place to determine the primary aggressor. One police officer stated, “We don’t even go into deciding who is the primary aggressor; we don’t find it that relevant.”¹⁹⁴

One of the primary reasons for dual arrests is the perception by both police and judges that it is the judge’s role to determine the primary aggressor.¹⁹⁵ When a lawyer demanded to know why police arrest both parties when the perpetrator and victim’s identities are apparent, the police responded that their role is to “stabilize the violent situation.” They explained, “We are police. We are not judges.”¹⁹⁶ Misdemeanor judges corroborated this approach, stating that the police do not determine the primary aggressor but leave that evaluation to the court.¹⁹⁷ In fact, judges expressed their expectation that police will bring in both parties so they can speak to them.¹⁹⁸

A judge opined that police are not adequately trained on how to assess a domestic violence scene and identify the victim and perpetrator.¹⁹⁹ As a result, even when police attempt to identify the primary aggressor (or first accused), they use varying, non-standardized methods, which aggravates the risk of arresting and charging the wrong party. Police explained they arrest the party who is the most dangerous and likely to continue the acts of domestic violence.²⁰⁰ Yet, interviews showed that a wide range of acts fall into this category. The police noted that if they do not arrest the woman and instead leave her in the home alone, she might start breaking things, set the husband’s car on fire, or do something to the children.²⁰¹

Interviews revealed police have often arrested both parties where the victim was acting in self-defense.²⁰² When asked what police do when both parties have injuries, police explained that they will start proceedings against both parties, because it is difficult to establish what happened.²⁰³ A misdemeanor judge stated that police do not typically determine the use of self-defense in domestic violence cases.²⁰⁴ She added that she could not recall ever having seen the word “self-defense” in a police indictment.²⁰⁵

As with identifying the predominant aggressor, a major reason for police non-assessment of defensive injuries is that police do not view themselves as authorized to make that qualification.²⁰⁶ Where the police do any injury assessment, they focus on classifying their severity for purposes of deciding between a misdemeanor or criminal charge.²⁰⁷ Police defer determination of the primary aggressor to doctors.²⁰⁸ Although police understand they may be able to observe defensive injuries on arms or hands, sending parties to the doctors for an injury certificate is

¹⁹⁴ Interview with Police, City J, February 8, 2011.

¹⁹⁵ Interview with Lawyers, City K, February 17, 2011 (describing the police reasoning that they are not judges, so they will arrest them both and leave it up to the judge to decide); Interview with CSW, City E, February 14, 2011 (stating that the police mark the suspect as the first accused, the victim as second accused, and the court decides who is responsible); Interview with State Home, City A, February 14, 2011.

¹⁹⁶ Interview with Lawyer, City K, October 13, 2010.

¹⁹⁷ Interview with Judges, City K, October 13, 2011.

¹⁹⁸ Interview with Judges, City F, February 7, 2011.

¹⁹⁹ *Id.*

²⁰⁰ Interview with Police, City H, February 10, 2011.

²⁰¹ *Id.*

²⁰² See e.g., Interview with NGO, City K, February 15, 2011.

²⁰³ Interview with Police, City J, February 8, 2011 (police admitted that cases where both parties sustain injuries are very rare).

²⁰⁴ Interview with Judge, City A, February 14, 2011.

²⁰⁵ *Id.*

²⁰⁶ Interview with Police, City J, February 8, 2011, p. 5; Interview with Police, City I, February 7, 2011. Nevertheless, police ceded it might be relevant to establish that certain acts of violence could have been done in self-defense. Interview with Police, City H, February 10, 2011.

²⁰⁷ Interview with Police, City D, February 11, 2011. The police domestic violence intervention form directs police to document injuries. Ministry of Interior, Domestic Violence Intervention Form, Footnote 5.

²⁰⁸ Interview with Police, City H, February 10, 2011; Interview with Police, City D, February 11, 2011; Interview with Police, City B, February 15, 2011.

seen as the best practice.²⁰⁹ A cross-comparison of the doctor's evaluation with testimony can establish self-defense and absolve a victim.²¹⁰ But as discussed earlier, if the victim chooses not to go to the doctor, her injuries may go undocumented and unevaluated.

The additional risk of relegating all evaluation to doctors is that victims' use of self-defense may go unacknowledged in cases where the abuser sustains minor injuries, such as scratches that fade before a medical evaluation, or no physical injuries. One victim defended herself with a knife after her husband began to approach her menacingly. She did not even realize she was under arrest when the police took them both to the station:

He smashed everything in the house. I was making a salad, and I had a knife in my hand. When he approached me, I threatened to kill him for the first time in years. I ran from the house and called the police and then the bad things started to happen. When the police came, I told them my husband had two guns, a rifle, and a revolver. We all knew he had guns, the children also knew. They took me and the kids in a small police vehicle and him in a van to the station...I was arrested, and he was arrested, and I did that in self-defense. Then I took the alcohol test, and I did not know I was arrested until the police took us both to misdemeanor court. After I gave my statement, the judge told me I could go free and that was the first time I realized I had been arrested.²¹¹

Violence in Front of Children

Victims in Croatia are at risk of arrest and re-victimization when their children witness domestic violence.²¹² Victims may be deprived of their children through Croatia's civil system (as discussed in the CSW and Family Law Judiciary section),²¹³ as well as to punishment through the penal system. Article 213(1) of the Criminal Code punishes the neglect and maltreatment of a child or juvenile.²¹⁴ The Rules of Procedure correlate with this culpability and create the risk that a victim could be found guilty because her child was a witness to domestic violence.²¹⁵ Police officers in the juvenile delinquency department are charged with assuming control of the case if "a child or minor is victimized, or has witnessed family violence (which provides grounds for reasonable suspicion of the criminal offense of neglect and abuse of a child or a minor)."²¹⁶

In practice, police sometimes arrest both parties simply because the violence occurred in front of the children. According to police who do so, children "are already victims by witnessing domestic violence."²¹⁷ This risk is further compounded for victims, because children tend to rush to their mother's side to defend her.²¹⁸ Interviewees corroborated that police will report victims for child abuse and neglect if the child witnesses the

²⁰⁹ Interview with Police, City B, February 15, 2011. The Rules of Procedure state that in the event of physical injury in a domestic violence case, the doctor is obligated to complete the Report of Injury/Illness Form No. 030911 or 030055. Section 1(c)(4).

²¹⁰ Interview with Police, City B, February 15, 2011.

²¹¹ Interview with NGO, City F, February 9, 2011.

²¹² Like arrest, the fear of losing their child can deter victims from reporting violence to the police. One NGO worker reported that her clients fear that if they call the police too many times, they will take her child away or file a criminal indictment against her. Interview with NGO, City K, October 11, 2010. An interview also revealed police misdirecting victims about their safety and the status of their children. Police told one victim that she could not leave with the children, because the children belonged to her husband, as well. She remembered, "I stayed there in that awful situation with my children for a month." Interview with Victim, City K, February 17, 2011.

²¹³ Family Law, Articles 111, 114, 115.

²¹⁴ Article 213(1) stated that a parent who maltreats a child shall be punished by imprisonment for three months to three years. Article 213(3) states that if such maltreatment results in serious bodily injury or severe impairment of health, the parent shall be punished by a prison sentence of one to five years.

²¹⁵ If the child is a victim by virtue of having witnessed domestic violence, special juvenile delinquency officers and the CSW become involved in the case. Interview with Police, City K, October 12, 2010.

²¹⁶ Rules of Procedure, Section 1.A.3.3.

²¹⁷ Interview with Police, City B, February 15, 2011.

²¹⁸ Interview with NGO, City J, February 8, 2011.

violence, and she “calls them enough.”²¹⁹ Some officers require some negligence or child abuse by both parties before they will report a victim, however, and recognized that it is often not possible for the victim to protect the child.²²⁰

The law assumes an unreasonable expectation that the victim should take measures to remove children from the scene or risk being guilty of neglect and abuse. In one case, a husband began to push his wife around in front of their two young daughters. The mother called the police, who arrested both parties partly because they could not identify the primary aggressor and partly because the violence took place in front of the girls. The police told the woman, “You should have taken the children and put them in another room.”²²¹

HEEDING RISK FACTORS

[T]here was a young couple with 2 children. She went to a women’s shelter locally and got divorced....He had supervised visitation....the man threatened to kill her, and his mother reported that to the police. He shot her and then himself. He survived. They didn’t search him [but] he had a weapon, and given the long domestic violence history of the couple, the police should have taken the mother’s report of the threat seriously....he told his mother that he was going to kill the child’s mother, and she told the police. Then he said he didn’t mean it, but he killed her at the visitation place of CSW.²²²

There were inconsistent reports as to whether police are systematically conducting risk assessments when responding to domestic violence throughout the country. When police and other domestic violence responders conduct a risk assessment in a way that is appropriate to their roles, they can gather vital information about each case that informs their response. Police in particular play an important role in assessing the risks by evaluating the offender’s threats or likelihood to commit further serious or fatal violence. In Croatia, this risk assessment is especially crucial, because no one else is actively conducting them.²²³ A misdemeanor judge confirmed it is the job of police to conduct a risk assessment, which helps them determine whether to apply for urgent measures or use a regular procedure.²²⁴

Croatia’s legislation contains some language relevant to risk, but there is no established risk assessment tool for police.²²⁵ The Rules of Procedure state that, upon examining the situation, the police must undertake measures to immediately protect the victim and prevent the perpetrator from further aggressive behavior.²²⁶ The Rules of Procedure also direct the police to gather specific information during the interview, including the “duration [of violence], continuity, form of violence, possible earlier aggressive behavior, and a possible official record of earlier violence and police intervention, and the scope of the intervention.”²²⁷ Police have the authority to apply for urgent

²¹⁹ See e.g., Interview with CSW, City E, February 14, 2011.

²²⁰ Interview with Police, City B, February 15, 2011; Interview with Police, City K, October 12, 2010.

²²¹ Interview with Shelter, City H, February 10, 2011.

²²² Interview with NGO, City K, October 10, 2010.

²²³ Interview with Lawyer, City K, October 13, 2010.

²²⁴ Interview with Judges, City J, February 9, 2011.

²²⁵ Interview with Police, City K, October 12, 2010. At the time of writing, there was no established risk assessment tool, although police do have a list of risk questions they can ask. While such a resource does not exist yet, efforts are underway to develop a risk assessment tool with the help of the Austrian police. Id. Another aggravating factor that compounds the variations of risk assessments are general police misperceptions of what a risk assessment is or its goals. Instead of performing a risk assessment that focuses on the victim safety, the police tend to conduct risk assessments in a way that focuses on their own safety. Interview with NGO, City K, February 15, 2011; Interview with Police, City F, February 8, 2011; Interview with Police, City I, February 7, 2011. One police officer described how he assesses for direct and immediate threat to life: “You see it by the man. If he is going at you in an aggressive way, you immediately return aggression to him, and sometimes that makes him calm down, and if he does, no force has to be used.” Interview with Police, City F, February 8, 2011.

²²⁶ Rules of Procedure, Section 1.A.1.

²²⁷ Id., Section 1.A.2.1.

protective measures to eliminate a “direct threat to that person’s life or other family members.”²²⁸ But police have explained they also lack a standard protocol to assess this “direct and immediate threat to life” for purposes of applying for urgent protective measures.²²⁹

In addition, the Mol Regulations direct police to assess the danger to the victim by evaluating information about: the perpetrator’s history and behavior during the protective measures’ term; information about the victim’s behavior during the protective measures’ term; and a conclusion about both parties’ behavior during the protective measures’ term.²³⁰ This risk assessment, however, does not take place until after the issuance of protective measures; thus, police are not mandated under these regulations to assess the risk for victims who have not yet been granted eviction, restraining orders, or stalking/harassment measures.

One NGO stated that the use of a risk assessment varies across departments; in their city, the police do conduct an assessment, but in the neighboring county, police do not.²³¹ Police officers have insisted that they do risk assessments, yet interviewees reported cases where police did not conduct an assessment despite high-risk indicia.²³² For example, interviews showed police failing to appreciate the risk and minimizing the danger in some cases. One shelter reported how a perpetrator made online threats, including death threats, to the victim. The police concluded he was not a danger.²³³

An adequate risk assessment is an important tool that can inform arrest decisions. In one case, a woman reported her abuser to the police. The police filed a report, but despite a documented history of physical injuries indicating significant risk, they did not detain the perpetrator and stated they would question him “later.”²³⁴ Yet, the social worker and victim agreed she needed to seek safety in the safehouse and asked for police accompaniment. Since the perpetrator was free, he tracked them and was waiting for them at the safehouse. The social worker stated it “would have been very dangerous if the police did not accompany them.”²³⁵

The authors also heard positive examples of police interventions in high-risk situations. One police officer described a perpetrator who he perceived to be highly dangerous, because he had a knife and threatened to slaughter the victim. He tried to kill himself to avoid arrest. The police charged the perpetrator, and he was sentenced to psychosocial treatment and 90 days’ imprisonment for the domestic violence.²³⁶

DUTY TO INFORM VICTIMS

The Rules of Procedure require police to communicate specific information to the victim.²³⁷ According to police interviewees, police generally inform the victim of procedures and services, and make referrals to shelters, CSWs,

²²⁸ LPDV, Article 19(2).

²²⁹ Interview with Police, City H, February 10, 2011.

²³⁰ Article 6. See the Section on Monitoring of Protective Measures on page 33.

²³¹ Interview with NGO, City F, February 7, 2011.

²³² Interview with Police, City E, February 14, 2011; Interview with Police, City H, February 10, 2011. See e.g., Interview with Lawyer, City K, October 13, 2010.

²³³ Interview with NGO, City F, February 7, 2011.

²³⁴ Interview with CSW, City D, February 11, 2010.

²³⁵ Id.

²³⁶ Interview with Police, City D, February 11, 2011. Police stated that the intent to murder could not be proven so there was no charge. Id.

²³⁷ “In the course of proceedings the police officers are obliged to inform the victim of violence in an appropriate and clear way of his/her legal rights, particularly with regard to protective measures and circumstances of their ruling and their implementation, and on measures and activities which the police will undertake in further proceedings against the perpetrator of violence, which are of particular importance for the safety of the victim (e.g. about escorting of the perpetrator to the police station, ruling the measure of detention and the length of detention, escorting of the perpetrator to the police-court judge or the investigating magistrate with the proposal of the perpetrator’s detention, possible releasing of the perpetrator following the investigation of the police-court judge or the investigating magistrate, the importance of self-defensive

and health and other institutions.²³⁸ Aside from informing the CSW when children are involved, police generally respect victims' autonomy and allow them to make decisions about what services to seek.²³⁹ When a victim does choose to leave the offender, police readily accompany the victim to collect her possessions.²⁴⁰

In addition, interviews revealed that police often develop a safety plan with victims pending and after the issuance of protective measures.²⁴¹ For example, police will tell the victim what to do if the violence occurs again, how to protect herself, and offer referrals while they await the decision on protective measures.²⁴² Following the issuance of protective measures, police are required to develop a plan for the victim in the event the offender threatens her with immediate danger.²⁴³

Finally, and of great importance, is the role that police play in protective measures.²⁴⁴ The Rules of Procedure mandate the police to inform the victim of her legal rights, including protective measures, decisions on those measures and implementation, and measures that the police undertake against the perpetrator to protect victim's safety.²⁴⁵ There were few reports of police failing to inform the victim of her option to file for protective measures.²⁴⁶

Importantly, following the arrest of an offender, the Rules of Procedure require the police to inform the victim immediately if the perpetrator is released from custody.²⁴⁷ In practice, police do not always inform the victim when the perpetrator is released.²⁴⁸ One victim reported:

The police said they would call me when he would be let out, and they did not inform me. I was waiting at home, and he came. I called the police, and they said, 'Oh come on, lady, he probably won't do anything—minimizing what I was going through.'²⁴⁹

Experiences such as these reflect a broader concern regarding police follow-up. For example, one NGO reported a lack of police communication as to the outcome of a victim's case, if the report had been sent to the state attorney, and whether the perpetrator had been charged.²⁵⁰ Also of concern are findings that police do not always

behaviour and cooperative behaviour of the victim being to benefit of her own safety, the address book of institutions and organizations that offer help, support

and protection to victims of family violence, possibilities of finding shelter in a safe house for victims of family violence, or placement in a Home for Children and Adult Victims of Family Violence)." Rules of Procedure, Section 1.A.3.4.

²³⁸ Interview with Police, City F, February 8, 2011; Interview with Police, City D, February 11, 2011; Interview with Police, City I, February 7, 2011; Interview with Police, City E, February 14, 2011; Interview with Police, City F, February 7, 2011; Interview with Police, City B, February 15, 2011; Interview with Police, City K, October 12, 2010.

²³⁹ Interview with Police, City F, February 6, 2011; Interview with Police, City K, October 12, 2010.

²⁴⁰ Interview with Shelter, City F, February 7, 2011; Interview with NGO, City H, February 10, 2011.

²⁴¹ Interview with CSW, City D, February 11, 2011.

²⁴² Interview with Police, City F, February 6, 2011.

²⁴³ Interview with Police, City H, February 8, 2011. In addition, police check on the victim's safety regularly, monitor perpetrator's compliance with the protective measures, and give the victim guidance on means of self-protection. Article 5, Mol Regulations.

²⁴⁴ See the following section on Protective Measures Procedures.

²⁴⁵ Rules of Procedure, Section 1.A.3.4. Such measures include taking the perpetrator to the police station, decisions on detention and its length, taking the perpetrator before the court as regards his detention, potential release of the perpetrator post-investigation of that court, the important of self-defensive behavior and cooperative behavior by the victim, contact information for other organizations to assist the victim, options for shelter or placement in a home for children and adult victims of family violence. Id., Section 1.A.3.4.

²⁴⁶ Interview with NGO, City K, October 11, 2010. Interview with NGO-2, City K, February 11, 2011.

²⁴⁷ Rules of Procedure, Section 1.A.3.2; Interview with Police, City K, October 12, 2010.

²⁴⁸ Interview with NGO, City D, February 11, 2011; Interview with NGO, City F, February 7, 2011. But see Interview with Police, City K, October 12, 2010 (describing that police inform the victim if the magistrate decided to free him, so she can decide whether to stay or seek shelter).

²⁴⁹ Interview with NGO, City F, February 7, 2011.

²⁵⁰ Interview with NGO, City B, February 15, 2011.

follow up with victims to inform them if they receive protective measures.²⁵¹ Instead, it is incumbent on the victim to call and request information.²⁵² A lawyer corroborated this observation; when she asked her clients if the police called them about the protection order, offered them contact information or provided advice, all 50 of her clients responded that no one from the police had called them. When the lawyer confronted the police about their lack of communication with the victim, the police acknowledged this gap, citing inadequate police resources and too much crime.²⁵³

PROTECTIVE MEASURE PROCEDURES

The LPDV providing for protective measures is housed in the misdemeanor system, rather than the civil system. In Croatia, police have the authority to act as prosecutors in misdemeanor cases.²⁵⁴ In this role, police bring the perpetrator before the judge, produce evidence, and propose sanctions.²⁵⁵ In addition, police may question the parties and witnesses and exercise their right to appeal.²⁵⁶ Importantly, they also may propose and seek any of the six protective measures under the LPDV.²⁵⁷

In addition, police have two options to secure immediate protection for victims. First, police have authority to file for three urgent protective measures under the LPDV.²⁵⁸ These include the restraining order, eviction, and stalking and harassment order.²⁵⁹ Second, police have the option of imposing and applying for precautionary measures for eight days under the Misdemeanor Law.²⁶⁰ Article 130 of the Misdemeanor Law allows police to impose several precautionary measures where a misdemeanor has likely been committed, including banning the suspect from visiting certain locations or areas and prohibiting the suspect from coming near or maintaining connections with “a certain person.”²⁶¹ If police are unable to bring the perpetrator before the judge immediately, they can issue precautionary measures while the misdemeanor complaint is before the judge.²⁶²

Generally, interviews showed that police prosecute these cases and seek protective measures on behalf of victims under the misdemeanor system.²⁶³ Police stated that, in almost every case, they propose protective measures to the court.²⁶⁴ Victims’ experiences also reflect police assistance on these applications so they need

²⁵¹ Interview with NGO, City K, October 13, 2010; Interview with NGO, City K, October 11, 2010; Interview with NGO, City K, October 11, 2010.

²⁵² Interview with NGO, City K, October 13, 2010.

²⁵³ Interview with Lawyer, City K, October 13, 2010.

²⁵⁴ Misdemeanor Law, Article 109(1); Interview with Police, City H, February 10, 2011.

²⁵⁵ Interview with Police, City H, February 10, 2011.

²⁵⁶ *Id.*

²⁵⁷ Rules of Procedure, Section 1.A.3.1.

²⁵⁸ Interviews discussing urgent measures showed that police use of urgent measures varies. For example, in one city, 80% of domestic violence cases are urgent; in another city, only 20% of cases are urgent. The disparity may be the result of a variety of factors, including the following: what the police tell the victim; what police view as qualifying violence, e.g. repeat offenders and severe violence; and the court itself.

²⁵⁹ Interview with Police, City H, February 10, 2011. Interview with Judges, City J, February 9, 2011.

²⁶⁰ LPDV, Article 19(1).

²⁶¹ Following eight days, police submit an indictment and a request for an extension to the misdemeanor court to approve for the duration of the trial. Misdemeanor Law, Article 130(7).

²⁶² *Id.*, Article 130(2), (6).

²⁶³ Interview with Police, City E, February 14, 2011; Interview with Police, City B, February 15, 2011. The defendant can be subject to investigative detention for violating precautionary measures. Criminal Procedure Code, Article 98(1). Certain protective measures also exist under Article 50 of the Misdemeanor Law, including psychiatric treatment and addiction therapy for the offender. However, neither of these on their own will adequately meet a victim’s need for safety.

²⁶⁴ Interview with NGO, City K, February 15, 2011; Interview with NGO, City F, February 7, 2011; Interview with NGO, City H, February 10, 2011; Interview with State Home, City A, February 14, 2011; Interview with Ombudsperson for Gender Equality, Zagreb, October 11 (2010) (stating that the Prime Minister expressed concerns over the police’s efforts to obtain a great deal of protective measures, but that the courts are not ordering them); Interview with Judges, City F, February 7, 2011; Interview with State Home, City K, February 11, 2011 (stating that as far as the interviewee knows, the police are asking for protective measures); Interview with CSW, City D, February 14, 2011.

²⁶⁵ Interview with Police, City B, February 15, 2011.

not do it themselves.²⁶⁵ On the other hand, if victims do not want any measures, police must respect their wishes and are precluded from applying for a protective measure on their behalf.²⁶⁶ In some areas, police estimated that 90 percent of victims do not want any measures.²⁶⁷

Nevertheless, as with other police responses, the police assistance in filing and applying for protective measures can vary, indicating a need for systematic training and supervision.²⁶⁸ An NGO lamented that the police who start the proceedings “almost never” come to the hearing, so there is no proper charge.²⁶⁹ Because there is usually no prosecutor present, the judge must make a determination based on the written report.²⁷⁰ Regarding the police use and perceptions of immediate measures, some police request both precautionary and protective measures, because the precautionary measures will still protect the victim in the event of an appeal.²⁷¹ Other police perceive that the LPDV’s protective measures offer police more options than Article 130’s precautionary measures, however, because it allows them to monitor perpetrators’ compliance and arrest for a violation.²⁷²

Protective Measures That Police Prioritize

Police nearly always propose protective measures when responding to domestic violence, but the protective measures they request vary. In general, there is a greater tendency to prioritize treatment for batterers, i.e. psychosocial and addiction.²⁷³ Of the protective measures that focus on victims’ safety, police often implement and request a restraining order. To a lesser extent, police propose eviction and most rarely, stalking and harassment orders. According to the report on implementation of the Rules of Procedure, of 9,833 orders, 47 percent (4,607) were psychosocial treatment, 36 percent (3,517) were substance abuse treatment, and only 8 percent (788) were restraining orders.²⁷⁴

Police widely request and apply for psychosocial treatment in domestic violence cases.²⁷⁵ A misdemeanor judge explained that when police write the indictment, they “intend to send him to psychosocial treatment.”²⁷⁶ Interviews do suggest that police reserve psychosocial treatment applications to first-time or lower level, non-criminal violence.²⁷⁷ Police elaborated that psychosocial treatment is useful in these cases because its purpose is to change his behavior.²⁷⁸ Nevertheless, some police expressed skepticism about the efficacy of psychosocial treatment.²⁷⁹

²⁶⁵ Interview with NGO, City K, February 15, 2011; Interview with NGO, City K, February 11, 2011.

²⁶⁶ LPDV, Article 19(2). Interview with Police, City I, February 7, 2011.

²⁶⁷ Interview with Police, City I, February 7, 2011.

²⁶⁸ See e.g., Interview with NGO, City J, February 8, 2011.

²⁶⁹ Interview with NGO, City K, February 16, 2011.

²⁷⁰ Id.

²⁷¹ Interview with Police, City E, February 14, 2011. As described later in the section, an appeal will stay a judgment on protective measures.

²⁷² Interview with Police, City E, February 14, 2011.

²⁷³ Interview with Police, City B, February 15, 2011; Interview with Police, City I, February 7, 2011. When police find the perpetrator in an intoxicated state, they often propose alcohol addiction treatment as a protective measure. Interview with Police, City I, February 7, 2011. For some police, this decision can preclude an application for psychosocial treatment, since when the perpetrator uses alcohol or drugs, because he must undergo substance abuse treatment first. Interview with Police, City K, October 12, 2010.

²⁷⁴ Report on the Implementation of the Family Violence Procedure Protocol during 2007 and 2008,” *Ministry of Family, Veterans’ Affairs and Intergenerational Solidarity*, 2009, 6.

²⁷⁵ Interview with Police, City K, October 12, 2010; Interview with NGO, City K, October 10, 2010.

²⁷⁶ Interview with Judge, City A, February 14, 2011.

²⁷⁷ See e.g., Interview with Police, City F, February 8, 2011.

²⁷⁸ Interview with Police, City F, February 6, 2011.

²⁷⁹ Interview with Police, City F, February 8, 2011.

Articles 11 and 17 of the LPDV authorize the police to confiscate objects that were or could be used to inflict violence.²⁸⁰ The Rules of Procedure further direct police to temporarily confiscate licensed weapons from the perpetrator, and initiate procedures for weapon seizure and withdrawal of a firearms license.²⁸¹ The Rules of Procedure also state that if police receive information regarding an unlicensed weapon, they must take all measures to locate and confiscate it and file criminal charges.²⁸² While police can rely on the victim's report of weapons, they can also perform their own checks for registered weapons.²⁸³

Weapons are a significant problem in domestic violence, particularly after the war (1991-1995).²⁸⁴ Many of the domestic homicides described to the authors were committed with guns.²⁸⁵ In general, police are diligent in their search for and confiscation of weapons in domestic violence cases.²⁸⁶ Interviews with police and others indicated that police often apply for the protective measure of weapon confiscation.²⁸⁷

Also, as discussed later in this section, police-perpetrator connections can hinder an effective police search for weapons. One victim shared her experience when the police responded to her call:

I reported to the police that he has weapons and they went there and did not find them. But the boys told me, and imagine this, that he hid the weapons in the dish cupboard. So how is it possible that they didn't find the weapons? So I know the police did not look for the weapons but sat and talked to him because they knew each other. The weapons are not registered; he is a war invalid and cannot have registered weapons.²⁸⁸

The protective measures of restraining orders, eviction orders, and stalking/harassment prohibitions are underused.²⁸⁹ Of the 9,833 protective measures requested in 2008, only 788 restraining orders, 233 stalking/harassment prohibitions, and 377 expulsions.²⁹⁰ One NGO stated that when the law was initially adopted, the police would actually use and enforce the expulsion order.²⁹¹ Now, however, police use of this measure has diminished.²⁹² Although an officer opined that eviction should be more common, he estimated only about 10 percent of their cases have restraining and expulsion orders.²⁹³ Judges explained that one reason why eviction is not requested more often is because of traditional stereotypes, such as a man's right to property (the home) supersedes the victim's right to safety.²⁹⁴ Sometimes police or prosecutors ask how they can evict the perpetrator when he has nowhere to go.²⁹⁵

²⁸⁰ LPDV, Articles 11(2), 17.

²⁸¹ Rules of Procedure, Section 1.A.2.2.1.

²⁸² *Id.*, Section 1.A.2.2.2.

²⁸³ Interview with Shelter, City J, February 8, 2011; Interview with Police, City K, October 12, 2010.

²⁸⁴ Interview with Police, City K, October 12, 2010.

²⁸⁵ While police know of the legally registered weapons, the problems lie with the illegal ones. Interview with Police, City K, October 12, 2010. In Croatia, this is not an insignificant number, as the illegally owned firearms is estimated at approximately 597,458. Croatia — Gun Facts, Figures and the Law, Gun Policy, available at <http://www.gunpolicy.org/firearms/region/croatia>, last visited Jan. 20, 2012 (citations omitted).

²⁸⁶ Interview with NGO, City K, October 10, 2010; Interview with Police, City F, February 8, 2011; Interview with Police, City E, February 14, 2011.

²⁸⁷ Interview with Police, City E, February 14, 2011; Interview with State Home, City A, February 14, 2011; Interview with Police, City I, February 7, 2011.

²⁸⁸ Interview with NGO, City F, February 9, 2011.

²⁸⁹ Interview with State Home, City A, February 14, 2011.

²⁹⁰ "Report on the Implementation of the Family Violence Procedure Protocol during 2007 and 2008," *Ministry of Family, Veterans' Affairs and Intergenerational Solidarity*, 2009, 5-6.

²⁹¹ Interview with NGO, City K, February 11, 2011.

²⁹² *Id.*

²⁹³ Interview with Police, City J, February 8, 2011.

²⁹⁴ Interview with Judges, City K, February 15, 2011.

²⁹⁵ *Id.*

APPEALS

The LPDV provides that police and prosecutors can appeal judicial denials of protective measures.²⁹⁶ A police officer suggested that limited resources and a lack of legal knowledge result in fewer appeals than are actually needed.²⁹⁷ An estimate showed at most 100 appeals per year of the 16,000-17,000 cases throughout the country.²⁹⁸ The number of cases that could be appealed is far greater, and one officer estimated that 10 percent (1,600-1,700) of these cases need appeals.²⁹⁹ An officer explained:

You must understand it is [a] huge [problem] with uniformed police officers with only basic legal knowledge, so from time to time, we do receive the calls from the police stations that say it is not good, but they don't know how to appeal. They usually scan the judge's ruling and email me the ruling.³⁰⁰

The officer has sought to fill this gap by making appeals on behalf of uniformed police who lack the technical capacity, but it takes him approximately four to five hours to analyze one ruling. He voiced a need for legal training for more police to be able to make these appeals.³⁰¹

Because the police become the official party when they initiate proceedings, victims and their lawyers are often precluded from making the appeals themselves.³⁰² Furthermore, victims and their lawyer are not necessarily aware when an appeal is made, because the police do not always inform them if they appeal.³⁰³

An appeal of the first misdemeanor court's decision stops the court's order from entering into force. Thus, an appeal by the defendant can slow down the process and ultimately victim protection.³⁰⁴ If the offender tells the judge he will not appeal, the ruling becomes final.³⁰⁵ If the defendant chooses to appeal, then the protective measures issued by the first court will not be valid pending that appeal.³⁰⁶ This has proven both illogical and frustrating for police, because it is one more reason for perpetrators to appeal and invalidate the protective measures for that time period.³⁰⁷ Moreover, it leaves the victim potentially unprotected from her abuser.

ENFORCEMENT OF PROTECTIVE MEASURES

Monitoring of Protective Measures

The Mol Regulations provide very specific instructions for police to monitor offenders' compliance with the protective measures of eviction, restraining, and stalking/harassment. Article 9 states that the police officer assigned to the implementation of the protective measures must communicate with the victim at least once per day to check if the perpetrator is respecting the decision. Also, Article 7 charges the chief police officer with assessing monthly the protective measure's effectiveness in protecting the victim and determining the need for amendments.

²⁹⁶ Interview with Lawyer, City K, October 13, 2010; Interview with Police, City K, October 12, 2010; see also Interview with Police, City H, February 10, 2011. But see Interview with NGO, City K, February 16, 2011 (stating that police do not often initiate appeals).

²⁹⁷ Interview with Police, City K, October 12, 2010.

²⁹⁸ Id.

²⁹⁹ Id.

³⁰⁰ Id.

³⁰¹ Id.

³⁰² Interview with Lawyer, City K, October 13, 2010; Interview with NGO, City K, February 16, 2011.

³⁰³ Interview with Lawyer, City K, October 13, 2010.

³⁰⁴ Interview with Police, City K, October 12, 2010.

³⁰⁵ Id.

³⁰⁶ Misdemeanor Law, Articles 191(1), (3); Interview with Police, City B, February 15, 2011.

³⁰⁷ Interview with Police, City B, February 15, 2011.

In practice, police use regular communication with the victim or her shelter to monitor perpetrators' compliance with the protective measures.³⁰⁸ One interviewee commended the police, explaining "We had a meeting with them and were surprised at how clean they were doing it. They come twice per week to check on that measure."³⁰⁹ Generally, the findings indicate that this monitoring process facilitates victim safety. In addition, some police assume responsibility for monitoring compliance with addiction and psychosocial treatment.³¹⁰

Violations of Protective Measures

The Mol Regulations mandate that the police are to arrest any offender who violates the protective measure or for whom there is a reasonable suspicion he will violate the protective measure.³¹¹ Where a perpetrator deliberately violates the restraining order or refuses to leave the area at the officer's request, the officer can make an arrest.³¹² Interviews demonstrated that police generally respond to violations by arresting the perpetrator and filing an indictment for a new misdemeanor before the court.³¹³ Overall, police make the arrest even if the violation involves no further violence.³¹⁴

A violation of a protective measure is punishable by a fine or imprisonment of at least ten days.³¹⁵ Some police seek disparate punishments based on whether the violation is first-time or not. For a first-time violation, police might propose a conditional sentence; in serious cases with repeat or severe violence, police suggest a jail sentence.³¹⁶ More often, perpetrators receive imprisonment but it depends on the court.³¹⁷ One officer opined that punishments for violations under the LPDV were adequate:

When the restraining order is broken, we need to arrest the offender. So, we do not have to make our own decision but bring him to the court of law at that very moment. So, the judges are taking the cases more seriously, they see that their first restraining order was not making any sense to the offender, and in most cases, he will be in jail throughout the whole proceedings, and likely, he will not get suspended but will go to jail this time.³¹⁸

³⁰⁸ Interview with Judges, City B, February 16, 2011. Once the protective measures are issued, police are assigned a certain number of victims to supervise the enforcement. At a minimum, police check in with the victim through direct contact or telephone once per week. But in high-risk cases, police will increase their surveillance to a more frequent basis. The police called one shelter every day for six months to ask if the perpetrator had breached his restraining order. Police then document their contact with victims. In a particularly notable example, police developed a plan with information about the parties, where they live and go; both parties are informed about what they may or may not do while the plan is in effect. Interview with Police, City F, February 8, 2011; Interview with Police, City H, February 10, 2011; Interview with Police, City B, February 15, 2011; Interview with Police, City D, February 11, 2011. See Ministry of Internal Affairs, Regulations of the Implementation of Protective Measures That Are Proposed by the Domestic Violence Law and Are Placed in the Police Jurisdiction, Article 9 (unofficial translation) (stating that the police authority should be in contact with the victim at least once per week to ensure the offender's compliance); Interview with State Home, City K, February 11, 2011; Interview with Judges, City B, February 16, 2011; Interview with Police, City I, February 7, 2011.

³⁰⁹ Interview with Judges, City B, February 16, 2011.

³¹⁰ Once the court deadline for treatment passes, the police send a letter to the institution inquiring whether offenders have checked into treatment or if they need to start misdemeanor proceedings for a violation. Interview with Police, City E, February 14, 2011.

³¹¹ Article 11.

³¹² Mol Regulations, Article 13.

³¹³ Interview with CSW, City K, October 14, 2010; Interview with Police, City E, February 14, 2011; Interview with Police, City F, February 8, 2011; Interview with Police, City B, February 15, 2011; Interview with Police, City H, February 10, 2011; Interview with Judges, City K, October 13, 2010.

³¹⁴ Interview with Police, City E, February 14, 2011; Interview with Police, City H, February 10, 2011.

³¹⁵ LPDV, Article 22(2).

³¹⁶ Interview with Police, City J, February 8, 2011.

³¹⁷ Interview with Police, City H, February 10, 2011.

³¹⁸ Interview with Police, City K, October 12, 2010.

The Mol Regulations permit police to warn an offender who unintentionally violates a restraining order.³¹⁹ Thus, the police responses are far less consistent when the perpetrator's transgression into the prohibited area or his intentions is unclear. Police have often disregarded offender's behavior when the offender is "passing by" or merely in the vicinity's outskirts by happenstance. One victim who left the shelter and returned to her apartment saw her perpetrator driving through her street despite a restraining order. When she called the police, they responded, "Well, he has a right to drive through the street."³²⁰ In another case, a perpetrator found the victim at a shelter by following the child from school. When the child reported him to the police, the perpetrator defended himself by saying he was walking and accidentally found the shelter. Although he had a restraining order, the police would not do anything because they said there was no law against walking in the street.³²¹ For these cases where the perpetrator skirts the measure's boundaries but does not violate the measure, there were no reports of police that police treated these cases as stalking or harassment and pursued that as a new protective measure.

When the perpetrator violates the order by returning or approaching the victim with her apparent consent, police response varies. Some police treat it as a violation and file an indictment against the perpetrator.³²² Other police do not report the violation, but instead inform the parties that their actions are dangerous.³²³ Of greater concern are reports by the police that they will inform the court that the "measure has lost its purpose" and seek its annulment because "there is no point."³²⁴

OTHER AGGRAVATING FACTORS

Perpetrator – Police Connections

Several interviewees recounted experiences where the victim feared reporting the violence because of a connection between her abuser and the police.³²⁵ Interviews identified two scenarios—where the perpetrator is a police officer or where he knows someone in the force—that deter the victim from coming forward.³²⁶ Individuals who are the victims at the hands of police officer-offenders are often in a unique and particularly vulnerable situation. Unlike most victims of domestic violence, those abused by law enforcement officers may be unable to secure the assistance they seek.³²⁷ In one case, it was common knowledge even among the force that an officer had been abusing his wife and three daughters, one of whom was intellectually disabled, for years. When the victim sought help, the NGO placed her in a shelter far away due to the increased danger. The police officer had visited the domestic violence center and the NGO's office already. Ultimately, he was discharged from the police and married another woman who he abused until they divorced as well.³²⁸

In other cases, the perpetrator may have connections with the police. One victim called the police and told them the offender owns a gun. The police did not confiscate the weapon, but merely wrote in the report that he was driving recklessly. The victim asserted this false allegation was used by the police because they were friends with

³¹⁹ Article 13.

³²⁰ Interview with NGO, City J, February 8, 2011.

³²¹ Interview with NGO, City B, February 15, 2011.

³²² Interview with Police, City B, February 15, 2011; see also Interview with Police, City J, February 8, 2011 (stating that they still consider it a breach of the order even if they have still reconciled with each other); Interview with Police, City H, February 10, 2011; Interview with Police, City E, February 14, 2011.

³²³ Interview with Judges, City J, February 9, 2011.

³²⁴ Interview with Police, City F, February 8, 2011.

³²⁵ Interview with NGO, City C, February 10, 2011; Interview with NGO, City J, February 8, 2011; Interview with NGO, City K, October 11, 2010.

³²⁶ Interview with NGO, City K, October 13, 2010.

³²⁷ "Officer-Involved Domestic Violence", *The Advocates for Human Rights*, May 11, 2009, http://stopvaw.org/Officer-Involved_Domestic_Violence.html

³²⁸ Interview with NGO, City D, February 11, 2011.

him at the local bar. Now, the victim “has no more confidence to go to the police, because if those two police officers are friends with her husband, then maybe the whole department is.”³²⁹

Moreover, a perpetrator’s police connections can also affect whether the victim accesses support services and the legal system. Victims married to police officers may contact NGOs, but are afraid to access their services. When one victim called their hotline, a shelter in a small town told her to call the police or they could call for her. The woman responded by stating, “No, please don’t, because my husband works for the police.” When asked what happens to these women, the shelter worker stated simply, “They don’t call again.” The shelter does not follow up with these victims because of the risk for the women, so the shelter remains uncertain of their fate.³³⁰ Another victim explained that her husband beat her and pulled her hair. The husband had a godfather and a friend in the police force, so she did not seek help from law enforcement. She also chose not to seek medical treatment because she feared her husband would discover she sought help there as well.³³¹

³²⁹ Interview with NGO, City K, February 15, 2011.

³³⁰ Interview with NGO, City H, February 10, 2011.

³³¹ Interview with NGO, City F, February 9, 2011.

PROSECUTORS³³²

Interviews revealed that the prosecution of domestic violence crimes and misdemeanors is hampered in Croatia by inaction, insensitive attitudes, the language of the law, and a failure to prioritize victim safety. For example, prosecutors view the main purpose of custodial detention as preventing the perpetrator from influencing the victim's testimony rather than safety concerns.³³³ A prosecutor noted that when a judge releases the perpetrator from jail after the victim has given her testimony, "We are okay with this."³³⁴

Domestic violence cases can be prosecuted under several criminal and misdemeanor laws in Croatia.³³⁵ The police, CSW, victim, or victim's guardian can report an act to the prosecutor. The prosecutor, in turn, investigates and determines whether the act is a crime, a misdemeanor, or neither.³³⁶ The state attorney has actual authority over prosecution before the misdemeanor court and can submit an indictment proposal for all misdemeanors.³³⁷ Therefore, in theory, a prosecutor could prosecute a case under the LPDV and request protective measures under that law. While police, victims, and other specified entities also have standing to prosecute misdemeanors, a public prosecutor is more likely to prosecute a case where the perpetrator's behavior is a "high intensity, quality, and quantity violent form of behavior."³³⁸ In practice, however, prosecutors do not prosecute cases under the LPDV.

RELUCTANCE TO PROSECUTE UNDER THE CRIMINAL CODE

Article 215A of the Criminal Code punishes any violent, abusive or particularly insolent conduct that puts another family member into a "humiliating position." The punishment is between six months to five years' imprisonment.³³⁹

Despite its relevance, Article 215A is less commonly used by prosecutors because of its imprecise definition of violent conduct.³⁴⁰ As mentioned in the Police section, the confusing language of the article leads to far fewer criminal cases because what police might perceive is a crime, prosecutors may not.³⁴¹ Of the 1,285 cases reported under Article 215A in 2008, there were only 933 indictments.³⁴² Under the LPDV, 20,566 perpetrators

³³² The authors were granted one interview with three prosecutors during the October 2010 mission. The State Prosecutor, however, denied the authors permission to interview any additional prosecutors. The findings on prosecutors are based on the October 2010 interview, an interview with a former prosecutor, and the observations of other interviewees.

³³³ Interview with Prosecutors, City K, October 14, 2010.

³³⁴ Id.

³³⁵ Under the Criminal Procedure law, prosecutors have the right and duty to conduct investigations of criminal offenses and to conduct and supervise evidence collecting actions. Criminal Procedure Code, Article 38. A police officer explained, "We gather the evidence and deliver it to the prosecutor who then decides what he will use and what he won't use: statements from damaged persons and victims that can then be used later in court proceedings...material evidence in the form of documentation from CSWs and health institutions, and all the written assessments of the scene of the alleged crime: what was broken, what was the state of the accommodation where they were found." Interview with Police, City H, 10 February 2011. When the police take a case to the prosecutor, the prosecutor can choose to dismiss it, file a criminal case, or file for an investigative process to be conducted when there is not enough evidence. Usually the role of the police ends with the prosecutor unless the prosecutor requests further evidence. Id. When the prosecutor deems that there is enough evidence for a case to be brought forward, then a public discussion is called where all the evidence is brought in front of the judge.

³³⁶ Interview with Prosecutors, City K, October 14, 2010.

³³⁷ Misdemeanor Law, Article 110.

³³⁸ Interview with Prosecutors, City K, October 14, 2010; Misdemeanor Law, Article 109(1).

³³⁹ Criminal Code, Article 215A.

³⁴⁰ There are a number of other criminal provisions applicable to domestic violence, such as Bodily Injury (Article 98), and Aggravated and Impulsive Bodily Injury (Articles 99, 100), and Threat (Article 129). Interviews indicated that prosecutors may be more likely to use these other provisions of the Criminal Code to prosecute an act of domestic violence, but if the violence has been repeated, they will prosecute all physical acts as a continuum under Article 215A. Interview with Prosecutors, City K, October 14, 2010. In addition, under the language of Article 215A, offenders could accuse women victims of insolent conduct as a rationale for the physical violence.

³⁴¹ Interview with Police, City E, February 14, 2011.

³⁴² "Report on the Work of State Prosecutors 2010," State Prosecutor's Office of Croatia, 2010, 32. In 2010, 925 cases were reported under Article 215A, and there were 613 indictments. Id.

were reported for committing misdemeanor-level violence, and 6,610 perpetrators were arrested and brought before a judge that same year.³⁴³

The vague language of Article 215A has fostered discrepancies in interpretation over what acts constitute being placed in “a humiliating position.”³⁴⁴ In practice, interviews revealed that prosecutors do not view domestic violence as a criminal act unless the first reported violence is very severe or there is a history of repeated violence.³⁴⁵ A former prosecutor described the kinds of cases and sentences that could be prosecuted under this article. The first example primarily involved daily psychological violence by a husband against his wife in front of their children that led to 20 months’ imprisonment. The second case involved an offender who beat his wife for 20 years, causing heavy physical injuries, such as multiple broken ribs, as well as life-threatening injuries. The offender received a conditional sentence that the prosecutor appealed and won a 24-month sentence.³⁴⁶

Several interviewees reported there is a “silent agreement” between the state attorney and the police that a case should not be initiated until the third police intervention.³⁴⁷ A lawyer explained:

I have a client and she was a victim of domestic violence...and her husband was sentenced four times in misdemeanor court, and every time, the police gave notice to the public prosecutor, and they did not prosecute him. The fourth time, they prosecuted him in the criminal court, and the judge sentenced him with a suspended sentence, and they did not have the opportunity to do any measures, and of course, a few months after this last criminal judgment, he found her somewhere in the street of [---] and attacked her again.³⁴⁸

A police officer summarized that Article 215A is working “very badly” to protect women victims of domestic violence because “...prosecutors and judges think that with just one act the person has not been put into a humiliating position.”³⁴⁹ He reported similar experiences with prosecutors failing to initiate cases:

One case made me really angry. A man physically and verbally assaulted his disabled mother and sister. He hit her and kicked her. He knocked her from the wheelchair and kept beating her when she fell and left her to lie on the floor. The sister called the police after 30 minutes and the State Attorney considered this not to have the elements of a criminal act so they did not start the case.”³⁵⁰

Indeed, figures from the Croatian Bureau of Statistics confirm that prosecutors reject the crime report and drop charges under Article 215A in approximately one-third of cases.³⁵¹

³⁴³ “Report on the Implementation of the Family Violence Procedure Protocol during 2007 and 2008,” *Ministry of Family, Veterans’ Affairs and Intergenerational Solidarity*, 2009, 5-6. Figures from the Croatian Bureau of Statistics slightly differ: of 1,127 perpetrators reported under Article 215A, 800 were indicted in 2008. In comparison, 14,069 perpetrators were reported under the misdemeanor law for domestic violence. Figures on misdemeanor indictments are not provided. Rogić-Hadžalić and Kos, 65, 16.

³⁴⁴ Interview with Prosecutors, City K, October 14, 2010.

³⁴⁵ Interview with Lawyer, City K, October 13, 2010, Interview with Lawyers, City K, February 17, 2011, Interview with Professor, City K, February 17, 2011; Interview with Police, City E, February 14, 2011.

³⁴⁶ Interview with Ministry of Justice, Zagreb, February 16, 2011.

³⁴⁷ See e.g., Interview with NGO, City K, October 11, 2010.

³⁴⁸ Interview with Lawyer, City K, October 13, 2010.

³⁴⁹ Interview with Police, City E, February 14, 2011.

³⁵⁰ Id.

³⁵¹ Rogić-Hadžalić and Kos, 65. From 2007 to 2010, prosecutors rejected the crime report and dropped charges in 1,412 cases out of a total of 4,318. Id.

Article 215A has been repealed as of January 2013 and will no longer exist under the new Criminal Code. Under the new Criminal Code, prosecutors will draw on a number of bodily injury provisions to prosecute domestic violence. It remains to be seen how prosecutorial practices toward domestic violence will carry over under the new Criminal Code.

AUTHORITY TO DROP OR MEDIATE DOMESTIC VIOLENCE CRIMINAL CASES

The prosecutor has discretion under Article 62 of the State Attorney's Law (2009) to drop a criminal case of domestic violence if he or she believes that instituting proceedings would not be efficient due to the nature of the offense, the circumstances under which it was committed, the personal characteristics of the perpetrator and injured party, and the nature of their relationship.³⁵² Article 62 reflects the reluctance of the Republic of Croatia to effectively prosecute domestic violence cases. Personal characteristics of the partners and the nature of their relationship should not be a factor in the decision to prosecute cases of criminal domestic violence, except where it is an aggravating factor.

Article 62 also requires a victim of domestic violence crimes to undergo mediation if the prosecutor so decides. If the mediation is successful, the case is dismissed.³⁵³ The Director of Administration of Criminal Law of the MoJ explained this new development, "We are going to place more emphasis on alternative solutions such as mediation."³⁵⁴ He added that, according to Article 62, a prosecutor can seek expert advice and "in more complex cases he can refer the whole process to CSW. This is one of the aspects of trying to put greater focus on preventative and not repressive measures..."³⁵⁵

At the time of this research, this provision was too recent for any established practice to be reported. Practices prior to the adoption of Article 62 suggest, however, that prosecutors have been inclined to drop charges when the victim agrees and suspect consent to complete psychosocial therapy to stop his violence.³⁵⁶ Regardless, the use of mediation in domestic violence cases fails to promote accountability and wrongfully assumes that both parties have equal bargaining power. A safehouse employee articulated the damaging effects of this law when victims feel they are wronged by this practice: "Women perceive [mediation] as re-abusing them. It gives no other result than humiliation to women."³⁵⁷

DELAYS IN CRIMINAL PROSECUTIONS

Delays Encourage Misdemeanor Filings

As discussed in the Police section, interviews revealed that many cases of criminal domestic violence are pursued as misdemeanors to speed up the process. This is particularly relevant post-*Maresti*, which ended the simultaneous pursuit of domestic violence cases as both crimes and misdemeanors. Numerous interviewees

³⁵² State Attorney's Law, Article 62. Article 62(1) states: "When deciding on criminal charges regarding a criminal offence with elements of domestic violence among relatives and other related persons which carries a fine or a maximum sentence of five years in prison, the State Attorney can drop charges if s/he believes that instituting proceedings would not be efficient due to the nature of a criminal offence, circumstances under which it has been committed, personal characteristics of the perpetrator and injured person, and nature of their relation."

³⁵³ Interview with Lawyer, City K, October 13, 2010.

³⁵⁴ Interview with Ministry of Justice, Zagreb, February 16, 2011.

³⁵⁵ *Id.*

³⁵⁶ Rogić-Hadžalić and Kos, 65. As mentioned above, prosecutors dropped charges in approximately one-third of cases under Article 215A. This finding is based on data spanning the period from 2007 to 2010, so presumably reflects prosecutorial practice before the adoption of Article 62.

³⁵⁷ Interview with State Home, City I, February 7, 2011.

acknowledged the lengthiness of the criminal process.³⁵⁸ Prosecutor delays are a contributing factor in dropping cases, particularly “when the victim cools off.”³⁵⁹ A police officer noted that even the prosecutors encourage domestic violence cases to be pursued at the misdemeanor level to expedite the matter.³⁶⁰

Because criminal convictions carry higher penalties, failure to charge an incident as a crime can deny justice for victims of domestic violence. Further, an inadequate response deters a victim from reporting again and further empowers violent offenders.

Delays Encourage Dropping Cases of Domestic Violence

Interviews show that prosecutors too readily dismiss cases when a victim takes the option of not testifying against her spouse, does not cooperate, or recants due to threats, fear, shame or other reasons, even in cases of heavy injury.³⁶¹ Article 285 of the Criminal Procedure Code, exempting a spouse from testifying, can frustrate justice. When the victim invokes this right at trial, her prior deposition cannot be used.³⁶² The criminal case will then be closed.³⁶³ However, a victim cannot use that right if the children are directly or indirectly affected by the alleged crime³⁶⁴ and must testify to the damage caused to the children.³⁶⁵ According to a criminal judge, if the woman is the only victim and she takes her right not to testify, the case will stop “regardless of all the other evidence.”³⁶⁶

Prosecutors expressed frustration when victims decide not to testify. In one of the most serious cases the prosecutor had encountered, “the husband pushed her into a bathroom, smashed her head on the toilet, and put her head into the toilet and flushed repeatedly.” The victim invoked her right not to testify in the case brought under Article 215A. When the prosecutors discovered two minors had been present, they initiated a new case for neglect and abuse of minors under Article 213. The victim claimed the children were not present and exercised her right not to testify, so the prosecutors again had to dismiss the case. Finally, the victim’s own lawyer brought a third indictment for severe domestic violence with children present. This time, she chose to testify to the violent behavior of her husband.³⁶⁷

Even in cases where the victim is willing to testify, the attorney noted that when the husband is present, “not all the truth comes out in front of the judge” for fear of reprisal. Victims do have the right to testify without the violator being present in certain circumstances, and also via video testimony.³⁶⁸ This option is almost never used, however, even when children testify.

HEEDING RISK FACTORS

He was charged for violence—for attempted murder—because he had a knife to her neck, and he got out after 12 days of jail. They let him out for New Year’s, so he could have a bit of merriment. He got a 300-

³⁵⁸ See e.g., Interview with Police, City F, February 6, 2011; Interview with Police, City K, October 12, 2010; Interview with Police, City F, February 8, 2011.

³⁵⁹ Interview with Police, City B, February 15, 2011.

³⁶⁰ Interview with Police, City I, February 7, 2011.

³⁶¹ Interview with Police, City F, February 8, 2011; Interview with Lawyer, City K, October 13, 2010. If a prosecutor decides to drop the case, the victim is informed and has the option to privately prosecute the case. Interview with Ministry of Justice, Zagreb, February 16, 2011.

³⁶² Interview with Professor, City K, February 17, 2011.

³⁶³ Interview with Lawyer, City K, October 13, 2010.

³⁶⁴ Interview with Prosecutors, City K, October 14, 2010; Interview with Judge and Office for Victim and Witness Support, City F, February 9, 2011.

³⁶⁵ Interview with Police, City H, February 10, 2011.

³⁶⁶ Interview with Judge, City J, February 9, 2011.

³⁶⁷ Interview with Prosecutors, City K, October 14, 2010.

³⁶⁸ Criminal Procedure Code, Article 292 (4).

meter restraining order [under the Criminal Code]. He was allowed to bring seven character witnesses, who testified that he is a nice guy and just joking around with that knife. According to the statement, he took the knife only because he was eating paté on bread....She had her throat cut, she has a medical statement, she had visible marks of the knife. The [four-year-old twin] children were present when this occurred, so now they are under stress, and they keep repeating, "Dad's not going to kill mom." This happened on December 12, 2010....The trial was on December 24, and that was the first one. The second was on December 31, and they let him go. So, on December 31, they still don't know what the verdict is....He will wait for the final verdict in freedom....The state attorney did nothing.³⁶⁹

The Criminal Procedure Code allows the prosecutor to file a motion requesting investigative detention if there is a reasonable suspicion that the suspect committed an offense and, among other things, he will impede criminal proceedings by influencing witnesses, there is a danger he will repeat the offense, or if the detention is deemed necessary for the conduct of proceedings due to the especially grave circumstances of an offense that carries a long-term prison sentence.³⁷⁰ Prosecutors consider the severity of the offense and use criminal records to determine whether to file a motion to detain aggressors in custody before or during trial proceedings.³⁷¹ Yet, interviews revealed that prosecutors will still allow the release of dangerous aggressors before sentencing even where there are high-risk indicators.

In one case, violence had been occurring for 20 years and the aggressor was jailed for attempted strangulation. An advocate described the case: "...she was beaten all over her body, the most recent escalation was to the point of strangulation...upon investigation they found a weapon in the premises."³⁷² During a prolonged investigative process, the aggressor was released until the verdict.

In cases where the offender is released, prosecutors allow precautionary measures to substitute for detention in cases of potentially lethal violence. One officer described a violent case:

Last year, we had one case where the woman reported that the husband was violent and had been for a long time. He drove her into the forest, he was jealous, he made her strip, and he beat her with a belt. He locked the children in their room at home and left them a bucket for a toilet...the prosecutor did a good job and assessed that this was a criminal act. We had to persuade him that it was a criminal act, but it worked. She had bruises that were photographed, he examined the crime scene...³⁷³

Despite the high risk, the aggressor was released after 48 hours from jail with precautionary measures.³⁷⁴

USE OF PSYCHOSOCIAL TREATMENT MEASURES

Under Croatian law, a sentence may be suspended with special obligations, including the obligation to undergo alcohol and drug rehabilitation in a medical institution or in a therapy community.³⁷⁵ Although the prosecutors

³⁶⁹ Interview with NGO, City H, February 10, 2011.

³⁷⁰ Criminal Procedure Code, Article 123(1)(2), (3), (4).

³⁷¹ Interview with Prosecutors, City K, October 14, 2010.

³⁷² Interview with NGO, City K, February 11, 2011. See "Facts About Intimate Partner Strangulation," *Minnesota Coalition for Battered Women*, 2009, http://www.mcbw.org/files/u1/microsoft_Word_-_Information_on_Strangulation_0.pdf; "Two Minnesota Prosecutors Explain the Need for Increased Criminal Penalties for Strangulation in Domestic Violence Cases," *The Advocates for Human Rights*, http://www.stopvaw.org/expert_s_corner.html#Two+Minnesota+Prosecutors+Explain+the+Need+for+Increased+Criminal+Penalties+for+Strangulation+in+Domestic+Violence+Cases.

³⁷³ Interview with Police, City E, February 14, 2011.

³⁷⁴ Id.

interviewed by the authors were optimistic about the success of psychosocial treatment, there are indications that their goals are focused on the preservation of the family, rather than safety of the victim. One judge opined, “It’s not the [state] attorney’s goal to get punishment by any means, but to protect the child and the family...”³⁷⁶ When asked how they would protect a victim during the perpetrator’s psychosocial treatment, a prosecutor responded:

It says that he should move out, but I don’t think this is implemented. She is protected in a way as she is included in the treatment—she is giving support on a voluntary basis. She can stop it if it is not useful. The District Attorney’s office and the CSW monitor it very closely.³⁷⁷

Interviews revealed that prosecutors sometimes place the responsibility to decide whether to prosecute or send the aggressor to psychosocial treatment on the victim. One prosecutor said:

We ask the victim to speak and to choose. We call her into the office after examining the case. If it is really bad violence for a long time, or the perpetrator is an alcoholic or mentally ill, we don’t offer to solve [the case] this way. If we think it is quicker and better for the family, we will call the victim and ask, hear her side...³⁷⁸

A shelter worker’s characterization of her clients’ experiences corroborated this practice:

...what happens when prosecutors prosecute on the criminal Articles 215A and 213... they say to a woman, ‘Madam, say “yes” for him to go on psychological treatment and that way he will change his violent behavior to non-violent behavior, because if you say “yes,” we will not press charges against him, and he will be a better husband and father.’³⁷⁹

³⁷⁵ Criminal Code, Article 71(e).

³⁷⁶ Interview with Judge, City J, February 9, 2011.

³⁷⁷ Interview with Prosecutors, City K, October 14, 2010.

³⁷⁸ Id.

³⁷⁹ Interview with NGO, City K, October 11, 2010.

MISDEMEANOR AND CRIMINAL JUDICIARY³⁸⁰

Given its principal role in administering the LPDV, the misdemeanor court system's approach to domestic violence cases was a source of concern for many interviewees.³⁸¹ Interviewees reported a lack of regular training, overly lenient sentencing, and that judges frequently do not prioritize victim safety. The authors did hear positive examples of judges enforcing domestic violence laws against offenders,³⁸² and interviewees acknowledged that some misdemeanor courts have attempted to make improvements.³⁸³

Other than in the areas of detention practices, interviewees overall reported fewer concerns with criminal judges' handling of domestic violence cases than their misdemeanor counterparts.³⁸⁴ As discussed previously in the Police section, most concerns about the criminal justice system focused on the slow and complex process, which prolongs justice and even results in the dropping of cases when victims recant, as well as criminal judges' reluctance to detain suspects. Other interviews revealed concerns about certain criminal judicial practices that should be addressed to improve the government's response to domestic violence.

Because of the central role that misdemeanor judges have in implementing the LPDV, the following section primarily focuses on their practices. Where findings are relevant to criminal judges, specific references are made throughout this section.

ATTITUDES OF JUDGES

It is common for judges to not view domestic violence as abuse that threatens women's safety and well-being, but rather as "disturbed relationships," "arguments,"³⁸⁵ or minor infractions.³⁸⁶ Judicial practices frequently do not reflect an understanding of the dynamics of domestic violence nor sensitivity to victims of long-term, repeated violence. Judges may belittle victims' experiences and ask them why they waited so long to report.³⁸⁷ Another interviewee reported that the judge displayed visible bias favoring the perpetrator—her attitude upon seeing the victim was, "Oh, you again."³⁸⁸ The client's lawyer eventually filed for the judge's recusal because her bias influenced her decisions on all their requests.³⁸⁹

Judicial misperceptions can result in an omission to act. One victim recounted how she finalized her divorce from her husband, who physically beat her and caused low-level injuries. She frequently called the police, who filed procedures before the judge multiple times. The judge told the victim her children would be taken away and placed in a home if she called the police one more time.³⁹⁰

³⁸⁰ For purposes of this report, there are two relevant court systems that govern domestic violence cases. The misdemeanor system governs the domestic violence law and misdemeanor-level offenses, and it includes the misdemeanor court for first instance cases and the high misdemeanor court for appeals. The second court system governs criminal and family law, and it includes the municipal court for first instance cases and the county for appeals. Both court systems' final appeals are made to the Supreme Court. Courts Act, 2009, Articles 17-19, 21, 24. See also Theodora A. Christou et al, *European Cross Border Justice: A Case Study of the EAW*, 2010, page 39, available at <http://www.airecentre.org/data/files/resources/11/ECJP-Final-Publication.pdf>.

³⁸¹ See e.g., Interview with State Home, City A, February 14, 2011.

³⁸² See e.g., Interview with NGO, City K, October 13, 2010.

³⁸³ See e.g., Interview with NGO, City K, October 11, 2010.

³⁸⁴ See e.g., Interview with Lawyer, City K, October 13, 2010 (stating her experiences with most criminal judges had been good).

³⁸⁵ Interview with CSW, City I, February 7, 2011.

³⁸⁶ See e.g., Interview with Police, City K, October 12, 2010.

³⁸⁷ Interview with NGO, City K, February 16, 2011; Interview with NGO, City F, February 7, 2011.

³⁸⁸ Interview with NGO, City K, February 15, 2011.

³⁸⁹ *Id.*

³⁹⁰ Since the parties were divorced and the husband was paying child support, the judge told the victim that everything was fine. Interview with Victim, City K, February 17, 2011; Interview with Lawyer, City K, October 13, 2010; Interview with NGO, City K, October 10, 2010.

Another judicial misperception is that victims are lying so as to abuse the system or obtain property.³⁹¹ One advocate who serves many victims stated that victims also harbor fears that judges will not believe them.³⁹² This well-founded fear can deter victims from accessing the justice system, especially because the LPDV requires courts to warn protective measure applicants of the consequences of a denial of an application.³⁹³

Finally, some judges displayed a disturbing lack of knowledge about the law itself. Misdemeanor judges informed the authors that an eviction could be ordered for a maximum of two months when in reality, the LPDV provides for a maximum term of two years.³⁹⁴ Of grave concern, two misdemeanor judges had never heard of urgent protective measures under the LPDV. The judges insisted that only the precautionary measures under the Misdemeanor Law could be ordered *ex parte*. When shown Article 19 of the LPDV, the vice-president of a court stated, “We never had such a thing in practice. I never used Article 19(2) in practice. I think nobody did.”³⁹⁵

TRAINING FOR JUDGES

The findings indicate a strong need for comprehensive judicial training on domestic violence as demonstrated by the many problems described in this section. As the president of a misdemeanor court explained, “whoever has training has to voluntarily pass the knowledge on to all judges here.”³⁹⁶

In addition, scant resources and personnel diminish the opportunity for specialization of judges. Judges in one city explained that their court only has half the number of staff they should, so that the judges hear all types of misdemeanors.³⁹⁷ In another city, a high misdemeanor court judge explained the large number of urgent domestic violence cases has forced them to assign judges from the traffic division to hear these cases.³⁹⁸

IMPORTANCE OF LEGAL REPRESENTATION

While a victim can request protective measures herself, usually police or lawyers assist them in domestic violence proceedings.³⁹⁹ Having a representative pursue the case is an important service for victims, who may lack the knowledge of their rights and legal proceedings, be struggling with other issues, and be unable to navigate the legal system successfully by themselves.

Under the Croatian Legal Aid Act, victims have the right to legal representation, which is administered by the MoJ and county governments.⁴⁰⁰ This right does not extend to misdemeanor and criminal proceedings, however, where the state presumably represents them. Between February 2009 to January 2010, 173 victims of domestic

³⁹¹ Interview with NGO, City K, October 10, 2010; Interview with Police, City D, February 11, 2011; Interview with Judges, City K, October 13, 2010.

³⁹² Interview with NGO, City K, October 11, 2010.

³⁹³ LPDV, Article 19(5). See also Interview with Judges, City K, October 13, 2010 (stating that false accusations of violence are violence, as well, and must be punished).

³⁹⁴ Interview with Judges, City B, February 16, 2011.

³⁹⁵ *Id.*

³⁹⁶ Interview with Judges, City K, October 13, 2010.

³⁹⁷ Interview with Judges, City J, February 9, 2011.

³⁹⁸ Interview with Judge, City K, February 15, 2011. It was not clear whether these traffic judges underwent training on the domestic violence prior to this assignment.

³⁹⁹ Interview with Judge, City A, February 14, 2011.

⁴⁰⁰ Croatian Legal Aid Act, Article 5. Interview with NGO, City F, February 7, 2011; Interview with NGO, City C, February 10, 2011. See also Susanne Rissler and Filip R.V. Tanay, “Overview of the Domestic Violence Legal and Policy Framework in Croatia,” *United Nations Development Programme, Resident Representative Office in Croatia: Zagreb*, 2010, 25 [hereinafter, “Rissler & Tanay”]; Interview with NGO, City J, February 8, 2011; Interview with CSW, City J, February 8, 2011.

violence obtained legal aid in those cases where they were able to do so.⁴⁰¹ Interviewees reported that free legal aid is often difficult to access, as the application forms are extremely complicated.⁴⁰² In addition, other barriers are the low-income level requirement that excludes many women from qualification, the dearth of attorneys willing to do *pro bono* representation, and the lack of awareness about its availability.⁴⁰³ Further, NGO personnel noted that free legal aid is not available to all domestic violence victims, such as those who are not citizens of Croatia or those who fail to demonstrate financial need.⁴⁰⁴ Other NGO workers explained that access to free legal aid requires proof of domestic violence, such as a police report, which further limits eligibility.⁴⁰⁵

Referrals to these resources are critical, because victims may be unaware they are entitled to receive legal aid. But in some courts outside of Zagreb, there are reports of judges misinforming victims they do not have a right to a lawyer, even though it is provided in the procedural legislation.⁴⁰⁶

JUDICIAL ROLE IN ARREST AND DETENTION

Judges, particularly misdemeanor judges, have a central role to play in the detention of a domestic violence offender. An individual under arrest for a misdemeanor must be charged and brought before the judge with an indictment within 12 hours or released.⁴⁰⁷ The judge is responsible for questioning the suspect and making a decision on the suspect's release or continued detention.⁴⁰⁸ For misdemeanors of breach of public peace or family violence, the judge may continue detention for up to 15 days if there is a risk of flight, obstruction of justice, or a risk of repetition of the same offense.⁴⁰⁹ If he is later sentenced to jail, then his detention counts as time served toward his sentence.⁴¹⁰

Generally, misdemeanor judges demonstrated good practices by detaining the perpetrator as allowed under law. A misdemeanor judge explained that in 99 percent of her cases of physical violence, she would detain them for up to 15 days while the proceedings took place.⁴¹¹ One judge stated that even if the victim pleads for the perpetrator's release, they still look at the evidence to see whether the offense merits custody.⁴¹²

Unlike misdemeanor judges, criminal judges tend to be less willing to continue detention despite the seriousness of the alleged offense. Prosecutors reported that criminal judges often release the suspect from detention after a victim gives her statement.⁴¹³ Criminal judges narrowly view the purpose of detention as preventing influence over the victim, so they will release the suspect once she has given the testimony.⁴¹⁴ Lawyers described the consequences after one offender was released following investigative detention. The husband committed repeated physical violence against the wife and daughter, causing a serious eye injury and stress reactions to the

⁴⁰¹ Jon T. Johnsen, Georg Stawa and Alan Uzelac, Evaluation of the Croatian Legal Aid Act and Its Implementation (2010), Appendix V, http://www.human-rights.hr/attachments/550_Evaluation%20-%20Final_allinsert.pdf [hereinafter, "Johnsen, et al"].

⁴⁰² Interview with NGO, City F, February 7, 2011.

⁴⁰³ Risser & Tanay, 25.

⁴⁰⁴ Interview with NGO, City K, October 13, 2010; Interview with NGO, City B, February 15, 2011. The 2010 Evaluation of the Croatian Legal Aid Act and Its Implementation report infers that "a significant part of the people who live at the edge of poverty would not qualify under the criteria of Article 8 of the Legal Aid Act, which specifies indigency for purposes of qualifying for legal aid. Johnsen, et al, 28.

⁴⁰⁵ Interview with NGO, City J, February 8, 2011.

⁴⁰⁶ Interview with Lawyer, City K, October 13, 2010.

⁴⁰⁷ Misdemeanor Law, Article 134(3).

⁴⁰⁸ Id., Article 134(4).

⁴⁰⁹ Id., Article 135(1), (2).

⁴¹⁰ Interview with Judge, City A, February 14, 2011.

⁴¹¹ Id. See also Interview with Judges, City B, February 16, 2011.

⁴¹² Interview with Judge, City A, February 14, 2011.

⁴¹³ Interview with Prosecutors, City K, October 14, 2010.

⁴¹⁴ Id.

daughter. He raped his wife, and at one point, undressed her in front of the children, and kicked her out onto the street. He was detained for four to five months and eventually released from detention. The criminal court sentenced him to one year imprisonment. Although he had several months more imprisonment to serve, he escaped his prison sentence.⁴¹⁵

HEEDING RISK FACTORS

In both misdemeanor and criminal systems, the availability and use of a bench risk assessment is key to making appropriate decisions on detention. Overall, interviews indicate that misdemeanor judges do not use risk assessment in domestic violence cases.⁴¹⁶ When asked if they use a risk assessment tool, judges responded, “No, we don’t even know they exist. We have to decide on [our] own to set him free.”⁴¹⁷ Other judges explained that a risk assessment is the police officer’s job, not theirs.⁴¹⁸

In the absence of an established risk assessment tool, the factors that judges weigh in their assessment of the case vary. Pertinent indicators, such as severe violence, repeat violence, threats, and a past record are considered by some judges.⁴¹⁹ In other cases, however, judges rely on irrelevant factors to decide the risk is low or on-existent. In one case, an ex-husband threatened his ex-wife and told her, “I’ll get you” in the street in front of witnesses. The judge decided that since the victim waited 30 minutes to call the police, she was not genuinely distressed by his words. On appeal, the high misdemeanor court reversed the judge’s verdict of not guilty and sentenced the man to a suspended jail term of 15 days.⁴²⁰

JUDICIAL TIMELINES

An expedient judicial process is critical to victim safety. An efficient and speedy process is also important because it reduces the time during which victims may recant and withdraw their complaint as often happens in the criminal system.⁴²¹ Although the misdemeanor system is recognized to be faster than the criminal and family systems,⁴²² interviews still revealed concerns over the time misdemeanor procedures can take.⁴²³ Judges are not always accessible 24 hours per day or on weekends and holidays. In addition, the law is silent on a timeframe for issuing long-term protective measures, and parties who fail to appear for a hearing can prolong the proceedings. In one case, a woman filed in August 2010 for protective measures, went to court four times, and each time, the perpetrator did not appear. It was not until February 2011 that she finally received a decision denying her protective measures.⁴²⁴ Finally, because appeals preclude protective measures from entering into force, delays of several days occur, and victims are put at risk for more violence.

⁴¹⁵ Interview with Lawyers, City K, February 17, 2011.

⁴¹⁶ Interview with Doctor, City K, February 15, 2011; Interview with Judges, City F, February 7, 2011. For more information about risk assessment, see “Lethality Assessments,” *The Advocates for Human Rights*, February 1, 2006, http://www.stopvaw.org/Lethality_Assessments.html.

⁴¹⁷ Interview with Judges, City F, February 7, 2011.

⁴¹⁸ Interview with Judges, City J, February 9, 2011.

⁴¹⁹ Interview with Judges, City F, February 7, 2011; Interview with Judges, City B, February 16, 2011.

⁴²⁰ Interview with Police, City K, October 10, 2010.

⁴²¹ Interview with Judges, City F, February 7, 2011.

⁴²² Interview with State Home, City K, February 11, 2011; Interview with Judges, City F, February 9, 2011 (stating that a misdemeanor judge can complete processes very quickly, even within a day); Interview with Judges, City B, February 16, 2011.

⁴²³ See e.g. Interview with NGO, City F, February 7, 2011.

⁴²⁴ Interview with NGO, City H, February 10, 2011. The court’s procedures did not precede implementation of the *Maresti* decision. Thus, under the corollary criminal proceedings for Article 215A, the perpetrator received the choice of a six-month jail sentence or a two-year suspended sentence.

Some interviewees reported that misdemeanor judges were issuing the protective measures immediately or within the 24 hours required under the LPDV.⁴²⁵ This rapid response can occur when the judiciary is accessible 24 hours per day, but not all courts have the resources to remain open continuously.⁴²⁶ In areas where courts do not operate at night, detention serves an important purpose by allowing police to arrest and hold the perpetrator until morning when he can be brought before the judge.⁴²⁷ The detention can also positively impact judicial timelines and compel a misdemeanor court to work more swiftly.⁴²⁸ Interviewees described that when police detain an offender overnight, judges tend to issue a decision on the protective measures within a few hours or the following day.⁴²⁹ If they do not issue a decision immediately, judges can detain the perpetrator an additional 15 days, during which they issue a decision.⁴³⁰

The law does not impose a requirement, however, for judges to be available 24 hours per day to issue urgent protective measures. Although the law requires issuance of urgent measures within 24 hours, its failure to mandate 24-hour judicial availability diminishes the effective implementation of this provision. Furthermore, when police choose not to arrest the offender, the victim is left unprotected if she cannot obtain a protective measure. In one case, the judge did not issue an order for the violence committed at 11:00 p.m., so the victim and her two children were forced to leave the house to remain safe.⁴³¹

In addition, there were numerous reports of judges waiting two to three days to issue urgent protective measures instead of within the 24-hour deadline.⁴³² One NGO described how they requested urgent protective measures for a victim who had endured twenty years of violence. Even though she suffered beatings over her entire body and strangulation in the last incident, they expected the urgent protective measures to be delayed as is the normal practice.⁴³³

Judicial bodies are required to organize the misdemeanor court operations so that they can function on weekends and holidays.⁴³⁴ Some courts do comply with this requirement.⁴³⁵ But others do not, thus forcing the victim to wait without protection until the court reopens. One shelter client feared for her life because her husband was released from jail. She applied for a protective order during the hearing releasing him from detention, but the judge did not issue it at that time. Because it was a Friday, the client hoped to have it by Monday. In the meantime, two shelter workers made a safety plan to meet her after work and accompany her back to the shelter.⁴³⁶

⁴²⁵ LPDV, Article 19(3); Interview with State Home, City A, February 14, 2011; Interview with Police, City D, February 11, 2011; Interview with Police, City J, February 8, 2011; Interview with Lawyers, City K, February 17, 2011; Interview with Police, Split (also stating that it can take a couple of days); Interview with Judges, City J, February 9, 2011.

⁴²⁶ Interview with Judges, City F, February 7, 2011; Interview with Judges, City K, October 13, 2010. See e.g., Interview with Judges, City J, February 9, 2011.

⁴²⁷ Interview with Judges, City J, February 9, 2011; Interview with Police, City F, February 8, 2011.

⁴²⁸ Interview with CSW, City E, February 14, 2011; Interview with Police, City I, February 7, 2011.

⁴²⁹ Interview with CSW, City E, February 14, 2011; Interview with Police, City I, February 7, 2011; Interview with Judges, City B, February 16, 2011; Interview with Police, City F, February 8, 2011.

⁴³⁰ Interview with Judges, City B, February 16, 2011.

⁴³¹ Interview with NGO, City B, February 15, 2011.

⁴³² Interview with NGO, City B, February 15, 2011; Interview with Police, City B, February 15, 2011; Interview with Police, City E, February 14, 2011.

⁴³³ Interview with NGO, City K, February 11, 2011.

⁴³⁴ Rules of Procedure, Section E.7.

⁴³⁵ Interview with Judges, City J, February 9, 2011; Interview with Judge, City A, February 14, 2011; Interview with Judges, City B, February 16, 2011.

⁴³⁶ Interview with NGO, City K, February 11, 2011.

For long-term protective measures, the law does not specify a deadline for issuing the order. The LPDV specifies that “any authority to take action related to domestic violence shall act urgently,”⁴³⁷ and any procedures under the LPDV are to be considered “urgent.”⁴³⁸ The Misdemeanor Law provides little guidance, as well, as it simply charges judges to act quickly and without delay; defendants are allowed a minimum of three days in between the service of summons and the hearing.⁴³⁹ Apart from this language, there is no further guidance on a timeline.

For non-emergency procedures that do not fall within Article 19, interviews revealed that it can typically take anywhere from two weeks to four months to obtain a decision on the protective measures.⁴⁴⁰ One judge explained that of 897 requests for urgent measures, 700 were completed within two weeks, but the remaining requests (196) took more than three months.⁴⁴¹ Protective measures that are delayed by months undermine the goals of victim safety and offender accountability. One shelter worker recalled a client who still had not received a decision from the misdemeanor courts more than two years after her application.⁴⁴²

A victim’s refuge at a shelter can reportedly delay a decision on her application by as much as two weeks to a month because a judge perceives a lack of urgency.⁴⁴³ In one exception where a judge ordered a protective measure more quickly, a shelter worker conjectured (as it was so extraordinary) that it was because the perpetrator was throwing knives at the children.⁴⁴⁴

These delays are compounded by the fact that judges do not automatically notify the victim of their decision. The Rules of Procedure state that, “upon personal request,” the courts are to inform the victim or her lawyer of the outcome of the proceedings and deliver a copy of the court ruling.⁴⁴⁵ Only a few judges reported that they automatically send a copy of their decision to the victim within 30 days of the hearing.⁴⁴⁶ In practice, judges typically wait for this request from victims or their lawyers before they will send their decisions.⁴⁴⁷ As one interviewee described, nobody knows about the court decisions, “neither the centers nor the police, nor anyone.”⁴⁴⁸ The burden on the victim to contact the court to find out the judgment can become especially onerous when the court’s decision is delayed as described above. Furthermore, this provision potentially places victims at risk of further violence if police execute protective measures before a victim learns that she has obtained them and can respond accordingly.

⁴³⁷ LPDV, Article 5(1).

⁴³⁸ *Id.*, Article 5(2). See also Rules of Procedure, Section E(1) stating that judicial bodies are to “act urgently in all matters related to family violence.”

⁴³⁹ Misdemeanor Law, Articles 89(1), 164(2).

⁴⁴⁰ Interview with NGO, City K, February 11, 2011; Interview with Police, City I, February 7, 2011 (explaining that non-arrest cases can take one month for a judicial decision); Interview with NGO, City K, February 16, 2011. See also Interview with NGO, City K, February 15, 2011 (stating it can take months, especially if the victim is seeking protective orders by herself); Interview with Police, City D, February 11, 2011; Interview with NGO, City K, February 16, 2011. See also Interview with Police, City D, February 11, 2011; Interview with Judge, City A, February 14, 2011 (stating it generally takes two weeks to resolve a case, except for more complicated cases that could take longer); Interview with Judges, City B, February 16, 2011 (stating that it can last up to three months, particularly where there are many witnesses).

⁴⁴¹ Interview with Judges, City F, February 7, 2011.

⁴⁴² Interview with NGO, City K, February 15, 2011. See also Interview with Lawyers, City K, February 17, 2011 (explaining that it can take one to years in extreme cases).

⁴⁴³ Interview with NGO, City J, February 8, 2011.

⁴⁴⁴ Interview with NGO, City J, February 8, 2011.

⁴⁴⁵ Rules of Procedure, Section E.5.

⁴⁴⁶ Interview with Judges, City J, February 9, 2011; Interview with Judges, City B, February 16, 2011 (explaining they will send the decision once it is final pending any appeals).

⁴⁴⁷ See e.g., Interview with Judge, City A, February 14, 2011.

⁴⁴⁸ Interview with State Home, City A, February 14, 2011.

Even after the first decision is issued, the appeals process can further delay its entry into force. If the perpetrator appeals the decision of the misdemeanor court, the protective order is stayed pending the appeal. A high misdemeanor judge estimated that 95 percent of her appeals come from the accused and 5 percent from the prosecutor.⁴⁴⁹ An appeal stays the order from entering into effect, so parties can generally expect to wait ten to fifteen days until the decision goes into effect.⁴⁵⁰ Where the courts are already lagging behind, it could take six months to get a protective order: three months to get the order in the first place, and another three months for the perpetrator's appeal process.⁴⁵¹

Given the potential for delays in issuing long-term protective measures and the lengthiness of criminal trials, the importance of other legal means to keep the victim safe cannot be overstated. As mentioned, officials have the authority to detain the perpetrator until the first hearing, but the Misdemeanor Law imposes limits on the length of detentions.⁴⁵² These laws authorize a judge to impose precautionary measures on the defendant for the duration of the trial and may prohibit the defendant from visiting certain places and approaching, establishing or maintaining connections with a certain person.⁴⁵³ Both the misdemeanor and criminal laws also allow a judge to order psychiatric treatment and addiction treatment as security measures.⁴⁵⁴ Precautionary measures serve an important purpose since they are effective until the decision is issued and long-term protective measures come into effect.⁴⁵⁵ But judges are not consistently granting precautionary measures when they are requested.⁴⁵⁶ Interviews suggest that criminal judges tend to prioritize children's welfare over than the victim's safety in applying these measures. For example, a criminal judge explained he would issue precautionary measures if he thinks it will serve the purpose of a jail sentence and benefit the child. To him, "[d]etention is the final frontier."⁴⁵⁷

COURTROOM SECURITY

The physical structure of most courthouses in Croatia may also jeopardize the safety of domestic violence victims. The monitoring teams visited several misdemeanor courtrooms in Croatia that most often are the judges' offices. These rooms are not large and place the victim within a few meters of the perpetrator.⁴⁵⁸ According to one judge, there are only two misdemeanor courthouses in Croatia with actual courtrooms.⁴⁵⁹ Criminal courtrooms are fraught with similar challenges.⁴⁶⁰

Courtroom security is important to not only ensure victim safety, but also to encourage victims to feel secure enough to access the justice system. The possibility is very real that the victim may encounter the perpetrator

⁴⁴⁹ Interview with Judge, City K, February 15, 2011.

⁴⁵⁰ Interview with Police, City E, February 14, 2011.

⁴⁵¹ Interview with NGO, City K, October 11, 2010.

⁴⁵² Interview with State Home, City A, February 14, 2011; Interview with Police, City H, February 10, 2011.

⁴⁵³ Misdemeanor Law, Article 130(2)(2), (3); see also Criminal Procedure Code, Articles 98(2)(2), (4), (5). Notably, precautionary measures may not limit the defendant's right to the home or his relations with household members unless the corollary penal proceedings relate to domestic violence or an offense against those persons. Misdemeanor Law, Article 130(3); Criminal Procedure Code, Article 98(3).

⁴⁵⁴ See e.g., Criminal Code, Articles 75(1), (2) and 76(1), (2).

⁴⁵⁵ Interview with Police, City E, February 14, 2011.

⁴⁵⁶ Interview with NGO, City K, February 11, 2011; Interview with Police, City E, February 14, 2011. Interview with Judges, City J, February 9, 2011; Interview with Judge, City A, February 14, 2011; Interview with Judges, City F, February 7, 2011; Interview with Lawyers, City K, February 17, 2011.

⁴⁵⁷ Interview with Judge, City J, February 9, 2011.

⁴⁵⁸ The courtrooms are generally very small rooms with desks and chairs. Interview with NGO, City K, February 15, 2011. See e.g., Interview with Judges, City F, February 7, 2011 (showing that the courtroom is approximately 10' x 15' or slightly larger). Interview with Judges, City J, February 9, 2011; Interview with Judges, City B, February 16, 2011.

⁴⁵⁹ Interview with Judge, City A, February 14, 2011. The authors observed one of these courtrooms, which has more space, a place for a witness to testify, and more seating areas. Id.

⁴⁶⁰ One interviewee showed the authors their largest municipal courtroom--approximately five or six meters--which was larger than typical and leaves only a couple of meters between the parties. Interview with Office for Victim and Witness Support, City K, February 17, 2011.

upon her arrival, departure, or while waiting in the hallway “where it is not possible to avoid the other.”⁴⁶¹ Depending on the court, there may be no one in the vicinity to intervene to protect the victim while she waits.⁴⁶²

The Office for Witness and Victim Support, established in 2008 by the UN Development Programme (UNDP) and the MoJ, plays a role in helping individuals navigate the court system.⁴⁶³ These advocates are required to describe court procedures to victims, attend hearings with victims where possible, and provide emotional support.⁴⁶⁴ Importantly, where there are witness support offices, there are also private waiting rooms in the courts, providing victims with safe areas to wait separately from their perpetrators.⁴⁶⁵ This office has a presence in seven major cities, including Zagreb, Osijek, Vukovar, Zadar, Rijeka, Sisak, and Split,⁴⁶⁶ but not in many other courts.⁴⁶⁷ They are primarily concentrated in municipal courts, and at the time of this research, only the two misdemeanor courts in Vukovar and Zadar had such support offices.⁴⁶⁸

Courts are charged under the Rules of Procedure with protecting the safety of victims upon arrival and within the court.⁴⁶⁹ There were positive reports of misdemeanor judges exerting their authority to maintain security over the courtroom. In one case, when a perpetrator attempted to speak to the victim in the courtroom, the misdemeanor judge stopped him and ordered him to refrain from speaking to the victim directly. Instead, she directed him to state anything he had to say to herself, and she would repeat it to the victim.⁴⁷⁰ Judges explained that they usually use two or three police officers, so one can remain by the door and the other stays in the hallway.⁴⁷¹ In some cases, the judge can call judiciary police officers at the front entrance to respond if there is a breach of security, or provide an escort for the victim.⁴⁷²

Other cases indicate a need for misdemeanor judges to be more proactive in promoting victim safety. For example, the judge may not intercede and stop the perpetrator from verbally abusing the victim in court.⁴⁷³ In another case, shelter staff were unable to accompany a client to court, so they called the judge to check if there would be any protection for her at the courthouse. Despite the violence and the client’s mental disabilities, the judge did not believe protection was needed. The shelter resorted to calling the police to arrange protection.⁴⁷⁴

⁴⁶¹ Interview with NGO, City F, February 7, 2011; Interview with Judges, City F, February 7, 2011; Interview with NGO, City K, October 11, 2010 (stating that victims fear facing their perpetrator when they go to court).

⁴⁶² Interview with NGO, City D, February 11, 2011. But see Interview with Judges, City F, February 7, 2011 (explaining that the police intervened and escorted them out of the building).

⁴⁶³ Witness Support Offices Help to Deliver Justice, UNDP Croatia, Sept. 30, 2011, <http://www.undp.hr/show.jsp?page=137205>; Interview with NGO, City K, February 15, 2011; Interview with Office for Victim and Witness Support, City K, February 17, 2011; Interview with Judges, City F, February 9 2011.

⁴⁶⁴ Interview with Judges, City F, February 9, 2011; Witness Support Offices Help to Deliver Justice, UNDP Croatia, Sept. 30, 2011, <http://www.undp.hr/show.jsp?page=137205>.

⁴⁶⁵ Witness Support Offices Help to Deliver Justice, UNDP Croatia, Sept. 30, 2011, <http://www.undp.hr/show.jsp?page=137205>; see also Interview with Judges, City F, February 9, 2011; Interview with Office for Victim and Witness Support, City K, February 17, 2011.

⁴⁶⁶ Witness Support Offices Help to Deliver Justice, UNDP Croatia, Sept. 30, 2011, <http://www.undp.hr/show.jsp?page=137205>; Interview with NGO, City K, February 15, 2011. The offices in Rijeka, Sisak, and Split were recently created in 2011. Witness Support Offices Help to Deliver Justice, UNDP Croatia, Sept. 30, 2011, <http://www.undp.hr/show.jsp?page=137205>.

⁴⁶⁷ Interview with NGO, City J, February 8, 2011.

⁴⁶⁸ Interview with Judges and Office for Victim and Witness Support, City K, February 17, 2011.

⁴⁶⁹ Rules of Procedure, Section E.9. Although the Rules of Procedure charge the misdemeanor courts with ensuring victim safety, this still leaves domestic violence victims in civil proceedings at risk of danger in the family law courtroom where domestic violence is generally not taken into account or even discerned. See the discussion in Consideration of Domestic Violence in Divorce and Custody Cases in the Family Law Judiciary section on page 86.

⁴⁷⁰ Interview with NGO, City K, February 15, 2011.

⁴⁷¹ Interview with Judges, City J, February 9, 2011.

⁴⁷² Interview with Judges, City F, February 7, 2011; Interview with Judge, City A, February 14, 2011.

⁴⁷³ Interview with NGO, City K, October 13, 2010.

⁴⁷⁴ Interview with State Home, City E, February 14, 2011.

Furthermore, some misdemeanor judges' interviews show they measure courtroom security in terms of their own personal safety rather than that of victims.⁴⁷⁵

IDENTIFYING THE PREDOMINANT AGGRESSOR

As discussed in the Police section, the LPDV classifies psychological and economic violence as domestic violence, and dual arrests and charges of both the victim and perpetrator are widespread throughout Croatia. One judge reported that all their cases in the week prior to our interview involved dual charges.⁴⁷⁶ Another judge presented statistics that showed the female was identified as the perpetrator in 15-20 percent of cases over a 2-year period.⁴⁷⁷ Indeed, as a report by the Croatian Bureau of Statistics found, approximately 17% of misdemeanor domestic violence offenders over a four-year period were women.⁴⁷⁸

Thus, judges' ability to correctly identify the primary aggressor is crucial in a landscape where victims are often arrested alongside the offender. Domestic violence offenders may try to convince the judges that the violence was mutual and that they are also a victim. Also, victims may use violence to avert an attack from the primary aggressor or in self-defense, as described below. If both parties are arrested and charged, the possibility that the offender will be convicted is diminished.

Where victims have been found guilty of criminal domestic violence, those convictions were often the result of judges not recognizing victim's use of self-defense. In one case, a husband was beating his wife and punching her in the face while she was carrying their small child in her arms. She sustained bruises on her face. She fell down with the child, at which point he reached to take the child away from her. She bit the offender on the finger, which resulted in a light injury. The police came, gave her protective measures, and brought him before the misdemeanor court where he received a suspended sentence. Then, the offender brought private criminal charges against her for biting him on the finger. The criminal judge found her guilty, explaining that her right to defend herself ended when he stopped punching her.⁴⁷⁹

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 arrested both parties, leaving the decision to determine the primary aggressor to the judge.

Overall, interviews revealed a lack of judicial tools and understanding in identifying the predominant aggressor.⁴⁸⁰ Misdemeanor judges explained they rely on their "life experience" to listen to both parties, and read their expressions and gestures to determine who is more convincing.⁴⁸¹ One judge told a victim that her husband could not be the abuser, because the victim was bigger than her husband.⁴⁸² Another judge could not recall having to

⁴⁷⁵ When asked about courtroom security, one judge stated that a police officer could be present to provide security for victims in urgent cases. But when relating a story about how her own personal security was breached by a defendant who threatened and insulted her, she described the misdemeanor court's protection as inadequate because there are only two police officers. Interview with Judges, City B, February 16, 2011.

⁴⁷⁶ Interview with Judges, City F, February 7, 2011 (but stating that the week prior saw only two cases with dual charges).

⁴⁷⁷ Interview with Judge, City A, February 14, 2011. In 2009, 234 of 1,243 perpetrators were female; in 2010, 84 of 550 perpetrators were female; in 2011, 6 of 36 perpetrators were women. *Id.*

⁴⁷⁸ Rogić-Hadžalić and Kos, 27. In criminal domestic violence cases, women offenders are rarer, and only constitute 4.4% of perpetrators under Article 215A. *Id.* at 28.

⁴⁷⁹ Interview with Lawyer, City K, October 13, 2010. The victim appealed, and the guilty verdict was reversed. *Id.*

⁴⁸⁰ See e.g., Interview with NGO, City K, February 16, 2011.

⁴⁸¹ Interview with Judges, City J, February 9, 2011.

⁴⁸² Interview with State Home, City I, February 7, 2011.

decide whether self-defense was used despite the high number of females charged in cases before her.⁴⁸³ Indeed, judges admit they find it very difficult to determine if a victim used self-defense, particularly without witnesses.⁴⁸⁴

When both the perpetrator and victim face dual charges, the misdemeanor court frequently finds the victim not guilty and releases her⁴⁸⁵ or issues a lighter sentence, such as a fine, warning, or suspended sentence.⁴⁸⁶ For example, some misdemeanor judges tended to regard psychological or economic violence as less serious and not levy a heavy or any punishment.⁴⁸⁷ She still suffers the effects, however, of being arrested and charged.

Dual charges of economic violence were rarer, but misdemeanor judges in one large city stated that economic violence is more common than psychological violence in their docket.⁴⁸⁸ Judges reported that a wife might be excessively using the credit card, so her husband abuses her physically.⁴⁸⁹ In such cases, the judges stated that “both are guilty of specific forms of domestic violence.”⁴⁹⁰ The husband might get a suspended sentence for first-time violence or jail sentence for repeat violence, while she might receive a lighter punishment of a smaller fine. The judge explained that even just a symbolic ruling that finds her guilty can be sufficient to change that “mindset of spending too much.”⁴⁹¹

One victim of physical violence had medical documentation for the bruises she sustained from his blows. The offender told the police that she verbally insulted him. They were both arrested and charged. In the first instance court, she was punished by ten-day suspended sentence for her verbal violence, and he was punished by a thirty-day suspended sentence for his physical violence. On appeal, she was released from liability, and he was fined 3,000 kunas.⁴⁹² But in the worst cases, the sentence imposed on the victim is even more severe than for the perpetrator.⁴⁹³

Municipal judges explained the criminal legal framework only allows one party to be charged with a crime, while the other party has the status of a witness.⁴⁹⁴ Thus, only one party can be charged under the Criminal Code, in contrast to the Misdemeanor Law.⁴⁹⁵ This, as well as the low usage of Article 215A discussed earlier, may help alleviate the risk of dual charges and explain the reduced rates of charging victims under Article 215A.⁴⁹⁶

⁴⁸³ Interview with Judge, City A, February 14, 2011.

⁴⁸⁴ Interview with Judges, City F, February 7, 2011 (further explaining they look to the parties' statements and witness accounts); Interview with Judges, City B, February 16, 2011.

⁴⁸⁵ Interview with NGO, City K, February 15, 2011; Interview with NGO, City H, February 10, 2011; Interview with State Home, City K, February 11, 2011 (describing a case where the judge identified the predominant aggressor and threw out the charges).

⁴⁸⁶ Interview with NGO, City K, February 15, 2011; Interview with NGO, City C, February 10, 2011; Interview with State Home, City I, February 7, 2011; Interview with Judges, City J, February 9, 2011; Interview with Judge, City A, February 14, 2011; Interview with Judges, City B, February 16, 2011.

⁴⁸⁷ Interview with State Home, City A, February 14, 2011; Interview with Judges, City K, October 13, 2010; Interview with Judges, City F, February 7, 2011 (explaining that they would absolve or only levy a low fine on the victim for using psychological violence).

⁴⁸⁸ Interview with Judges, City K, October 13, 2010.

⁴⁸⁹ Id.

⁴⁹⁰ Id.

⁴⁹¹ Id.

⁴⁹² Interview with Lawyers, City K, February 17, 2011.

⁴⁹³ See e.g., Interview with NGO, City K, October 11, 2010; Interview with NGO, City K, October 10, 2010. The authors note that some judges tell victims who are convicted along with their offender that they should waive their right to appeal, and the victims will be released with just a fine or suspended sentence. If they do not waive this right, the victim will go to jail.

⁴⁹⁴ Interview with Judges and Office for Victim and Witness Support Office, City F, February 9, 2011.

⁴⁹⁵ Id.

⁴⁹⁶ Interview with Judge, City J, February 9, 2011.

EVIDENTIARY REQUIREMENTS

Prosecution of domestic violence in Croatia is heavily dependent on victim testimony. As discussed in the Prosecutor's section, absent-victim prosecutions do not occur.⁴⁹⁷ The exemption from the duty to testify against one's spouse in misdemeanor and criminal proceedings further compounds this problem.⁴⁹⁸ Croatian law requires a judge to notify a victim in open court about this option.⁴⁹⁹ A lawyer stated that this notification greatly influences victims to invoke this right, especially when the perpetrator's presence in the courtroom heightens their fear.⁵⁰⁰ In addition, the lengthiness of criminal proceedings increases the likelihood that victims will exercise this right.⁵⁰¹

A misdemeanor judge estimated that victims refuse to testify in 10 percent of cases, and while they can still go forward with the proceedings, it is very difficult, as "no one sees anything."⁵⁰² This right is more frequently invoked in criminal proceedings, and when asked how frequently victims invoke this right in his court, a criminal judge estimated it happens "quite often."⁵⁰³ A lawyer elaborated, "This is a very bad practice in Croatia. So, we have cases like this when the victims (women) say they will not testify, that they are calling their right not to testify and the criminal case is then closed."⁵⁰⁴

For misdemeanor proceedings, judges often rely on other supporting evidence, such as injuries and witnesses, in addition to the victim's testimony.⁵⁰⁵ But judges may deem even supporting evidence insufficient. One interviewee described how the judge ruled there was no violence, because the social workers and victim's parents who witnessed the violence were not convincing enough in court.⁵⁰⁶

Of grave concern is a commonly used technique called "facing" that misdemeanor judges employ to assess credibility of the parties' statements as evidence:⁵⁰⁷

Then we confront them. What happens is we tell them the subject of the confrontation, and we ask them to stand up five to six feet apart, face each other, and tell their own version, looking the other in the eyes. We let them get into an argument even, but not a physical fight...⁵⁰⁸

Judges use facing whenever the parties contradict each other, or there are no witnesses.⁵⁰⁹ For example, in cases of facing, the judge asks the parties questions, both parties can respond, and both parties can ask each other questions.⁵¹⁰ One judge explained they can give credibility to a party's statement based on how they react, like if the victim cannot look the perpetrator in the eye.⁵¹¹ In that case, the judge would interpret the victim's

⁴⁹⁷ Interview with Lawyer, City K, October 13, 2010.

⁴⁹⁸ Criminal Procedure Code, Article 285. Interview with Police, City D, February 11, 2011; Interview with Police, City B, February 15, 2011.

⁴⁹⁹ Criminal Procedure Code, Article 285(3); Interview with Judges, City B, February 16, 2011.

⁵⁰⁰ Interview with Lawyer, City K, October 13, 2010.

⁵⁰¹ Interview with Judge, City J, February 9, 2011; Interview with Police, City F, February 8, 2011.

⁵⁰² Interview with Judges, City B, February 15, 2011. See also Interview with Police, City D, February 11, 2011.

⁵⁰³ Interview with Judge, City J, February 9, 2011.

⁵⁰⁴ Interview with Lawyer, City K, October 13, 2010.

⁵⁰⁵ Interview with Judges, City J, February 9, 2011.

⁵⁰⁶ Interview with Police, City K, October 12, 2010 (explaining that the judge found the evidence was not valid because of inconsistencies about minor details and the witnesses' stress during testimony).

⁵⁰⁷ Interview with Lawyer, City K, October 13, 2010; Interview with Judges, City F, February 7, 2011; Interview with Judges, City K, October 13, 2010; Interview with Judge, City A, February 14, 2011; Interview with Judges, City B, February 16, 2011.

⁵⁰⁸ Interview with Judges, City K, October 13, 2010.

⁵⁰⁹ Id.; Interview with Judge, City A, February 14, 2011.

⁵¹⁰ Interview with Judge, City A, February 14, 2011.

⁵¹¹ Id.; Interview with Judges, City K, October 13, 2010. See also Interview with Judges, City F, February 7, 2011.

behavior to mean she is lying. This practice is dangerous, threatening to victims, and an unreliable way to assess the truth since offenders' controlling and coercive tactics will likely frighten victims and affect their testimony.

PROTECTIVE MEASURES ISSUED BY MISDEMEANOR JUDGES

The LPDV gives misdemeanor judges the authority to grant protective measures. Orders issued by judges, however, most often focus on treatment for perpetrators rather than orders to stay away from the victim. Police often apply directly to the court for protective measures on behalf of the victims of domestic violence. In these applications, the police commonly recommend psychosocial or addiction treatment for the perpetrator, two remedies that do not provide protection for the victim.⁵¹² Misdemeanor judges often follow these recommendations.⁵¹³ For example, in 2010, approximately half of the protective measures issued by one court prescribed psychosocial treatment, and one-quarter prescribed alcohol treatment.⁵¹⁴ Spanning a four-year period, the pattern shows an even greater inclination toward psychosocial treatment: psychosocial treatment constituted 71.6% of protective measures, while restraining orders were just 11.8%.⁵¹⁵ Even the manner in which some courts track their statistics demonstrates the judicial emphasis on treatment of offenders and weapons over measures that focus on victim protection.⁵¹⁶

Psychosocial and Addiction Treatment

Often, psychosocial and addiction treatments are ordered along with a suspended sentence.⁵¹⁷ There were reports of this occurring even in high-risk cases. In one case, a man slapped, yelled, and fired weapons at his 14-year-old son who was trying to protect his mother. He received a suspended sentence and alcohol treatment.⁵¹⁸

Interviewees cited several possibilities behind the judicial inclination to focus on batterer's treatment. One explanation is that alcohol abuse is widely misperceived to be a cause of domestic violence throughout Croatia, predisposing judges to order addiction treatment.⁵¹⁹ Judges also broadly perceived psychosocial treatment to be more effective at changing behavior than a jail sentence, although in one interview, several admitted they do not know how the programs are actually conducted.⁵²⁰

Several interviewees questioned the actual effectiveness of the psychosocial treatments for domestic violence. For example, one doctor opined that psychosocial treatments are "not at all" effective.⁵²¹ Overall, the efficacy of

⁵¹² See the discussion in Protective Measures That Police Prioritize in the Police section on page 31.

⁵¹³ Interview with NGO, City B, February 15, 2011; Interview with State Home, City A, February 14, 2011; Interview with State Home, City K, February 11, 2011; Interview with CSW, City L, October 14, 2010; Interview with CSW, City I, February 7, 2011; Interview with NGO, City K, February 16, 2011. See also the discussion on Protective Measures That Police Prioritize in the Police section on page 31.

⁵¹⁴ Interview with Judges, City F, February 7, 2011. These statistics are consistent with those officially reported in 2007 and 2008. In 2007, there were 4,936 measures of psychosocial treatment and 3,618 measures of addiction treatment out of a total of 11,099 proposed protective measures. In 2008, there were 4,607 measures of psychosocial treatment and 3,517 measures of addiction treatment out of a total of 9,833 proposed protective measures. "Report on the Implementation of the Family Violence Procedure Protocol during 2007 and 2008," *Ministry of Family, Veterans' Affairs and Intergenerational Solidarity*, 2009, 5-6.

⁵¹⁵ Rogić-Hadžalić and Kos, 55 (spanning the years 2007-2010). Confiscation of weapons constituted 8.3%, and stalking/harassment, addiction treatment, and eviction orders together composed 8.3% of protective measures issued from 2007-2010. Id.

⁵¹⁶ Misdemeanor court judges in one city showed the authors their 2009 and 2010 statistics. The rates of protective measures granted were disaggregated by psychosocial treatment, addiction treatment, confiscation of weapons, and "other." Presumably, "other" category collectively encompasses the other three protective measures: eviction, restraining order, and stalking and harassment. City B Misdemeanor Court Statistics, on file with the authors.

⁵¹⁷ See e.g., Interview with CSW, City E, February 14, 2011.

⁵¹⁸ Id.

⁵¹⁹ Id.; Interview with Judges, City J, February 9, 2011. See also Interview with Judges, City B, February 16, 2011 (stating that addiction to some substance is the trigger for domestic violence).

⁵²⁰ Interview with Judges, City F, February 7, 2011.

⁵²¹ Interview with Doctor, City K, February 15, 2011.

the MoHSC's psychosocial program in preventing domestic violence is unclear.⁵²² No independent studies have been conducted regarding the effectiveness of the psychosocial treatment program in Croatia.⁵²³ In fact, UNDP recently highlighted the need for studies to evaluate and monitor the success and cost-effectiveness of these treatment programs.⁵²⁴

NGO personnel also expressed concern that Croatia's emphasis on perpetrator treatment may divert limited government funds from victim services, conveying the unfortunate message that the state cares more for the welfare of perpetrators than victims.⁵²⁵ This is a very legitimate concern, given the funding challenges that shelters have faced.⁵²⁶

Challenges in Implementation of Psychosocial Treatment Measures

While the Croatian government plainly considers psychosocial treatment to be a key weapon in the fight against domestic violence, numerous interviewees have deplored not only the efficacy but the implementation of psychosocial treatment.⁵²⁷ Whether this protective measure is executed often depends on whether the jurisdiction has the funding or personnel to administer the treatment.⁵²⁸ Further exacerbating this problem, judges noted that funding limits from the Ministry of Justice restrict the number of perpetrators for whom treatment can be ordered, and the fact that perpetrators cannot be required to travel more than 50 kilometers for the treatment curtails judges' ability to order treatment in areas with insufficient providers.⁵²⁹ In one case, the judge ordered the perpetrator to contact the psychosocial treatment facility within three days, but orally informed the victim that it would not be possible to realize that measure for a few months.⁵³⁰ CSW personnel in another city reported that their local psychosocial treatment program had filled up and could not accept any new patients.⁵³¹

One source of these frustrations is the potentially cumbersome division of labor between the MoJ and the Ministry of Health and Social Care (MoHSC) in terms of funding the treatment and executing the programs. Implementation of psychosocial treatment is hampered by the arduous process. People must first become certified by the MoHSC, sign a contract, then receive licensing from the Ministry of Justice, and wait a few more

⁵²² The MoHSC reported that the Dutch program on which Croatia's treatment program is based boasts a 60-70% success rate and explained that treatment is considered "successful" if no further incidents of domestic violence occur during the six-month treatment period. Interview with Ministry of Health and Social Care, Zagreb, February 18, 2011; Interview with NGO, City K, October 10, 2010. Similarly, interviewees observed indicators of lower recidivism rates among perpetrators who undergo the treatment. Interview with NGO, City K, February 11, 2011; Interview with Ministry of Justice, Zagreb, February 16, 2011.

⁵²³ Risser and Tanay, 41; Interview with NGO, City K, February 11, 2011; Interview with Ministry of Health and Social Care, Zagreb, February 18, 2011; Interview with Lawyers, City K, February 17, 2011.

⁵²⁴ Risser and Tanay, 42-43.

⁵²⁵ Interview with NGO, City K, October 10, 2010; Interview with NGO, City K, October 12, 2010.

⁵²⁶ See the discussion on Shelters in the NGO section.

⁵²⁷ See e.g., Interview with NGO, City K, February 11, 2011; Interview with NGO, City K, February 15, 2011; Interview with Lawyers, City K, February 17, 2011.

⁵²⁸ Interview with State Home, City K, February 11, 2011. See also Interview with CSW, City D, February 11, 2010 (explaining that psychosocial treatment is still not being implemented in their area because of funds, even though they have two people undergoing training to administer the treatment); Interview with CSW, City I, February 7, 2011; Interview with Ombudsperson for Gender Equality, Zagreb, October 11, 2010; Interview with Judges, City F, February 7, 2011; Interview with Judges, City J, February 9, 2011; Interview with NGO, City C, February 10, 2011; Interview with NGO, City F, February 7, 2011; Interview with State Home, City A, February 14, 2011. See the Psychosocial Treatment discussion in the Misdemeanor and Criminal Judiciary section. In addition, restrictions on eligibility result in many of the perpetrators who are ordered to undergo psychosocial treatment being rejected from the program during the screening phase. Interview with State Home, City K, February 11, 2011; Interview with NGO, City K, February 11, 2011. Prior to entering the program, perpetrators must undergo screening to determine whether they are good candidates. Individuals with alcohol or drug addictions or psychological problems are ineligible to participate in the program. Interview with NGO, City K, February 11, 2011; Interview with NGO, City F, February 7, 2011; Interview with State Home, City K, February 11, 2011.

⁵²⁹ Interview with Court Judges, City F, February 7, 2011; Interview with Court Judges, City B, February 16, 2011.

⁵³⁰ Interview with NGO, City B, February 15, 2011.

⁵³¹ Interview with CSW, City J, February 8, 2011.

years to get funding from the Ministry of Justice to actually administer the treatment.⁵³² One interviewee remarked, “[T]his matter should be given to just one of the Ministries... whichever one, one for the whole issue.”⁵³³

A second barrier to implementation is funding, and many working in the field note that treatment programs are severely underfunded by the government.⁵³⁴ Judges noted that the high cost of treatment limits the number of perpetrators for whom psychosocial treatment can be ordered.⁵³⁵ Specifically, interviewees reported that psychosocial treatment costs 7,000-7,500 kunas (approximately 930-997 Euros) for a single perpetrator.⁵³⁶

The MoJ is responsible for partially funding such treatment.⁵³⁷ The MoJ provides a significant portion of the funding for these programs; officials stated that the MoJ secured 820,000 kunas (approximately 108,971 Euros) in the state budget for psychosocial treatment.⁵³⁸ Not every area benefits from the ministry funding—as one court explained, they did not receive their funds from the ministry, but from a local charity.⁵³⁹

Interviewees complained that the Ministry’s funding is inconsistent, unpredictable, and often delayed.⁵⁴⁰ One NGO heavily involved in the psychosocial treatment program stated:

The contract [between the Ministry of Justice] with the treatment center is the basis for the courts to refer perpetrators into treatment...[for] paying for this service. The Ministry of Justice has not actually signed the contracts with any of the centers in 2010, and they have not paid [for] any of the services. It is likely they will pay, but that is a huge source of frustration and destabilization of the whole process. The Ministry has had a budget line item for that since three to four years ago, and that was major progress, and they have allocated money, but the last year they have not paid anything.⁵⁴¹

Another problem is the lack of qualified providers to administer the treatments.⁵⁴² While many judges are supportive of psychosocial treatment, the number of treatment providers remains small and is growing slowly, with many areas lacking certified professionals or facilities for the treatment.⁵⁴³ A police officer explained, “We have

⁵³² Interview with Member of Parliament, Zagreb, February 16, 2011. The LPDV charges the MoHSC with prescribing the manner and place for psychosocial treatment, and adopting implementing regulations for addiction treatment. LPDV, Articles 12(3), 16(3). The MoHSC develops program standards and determines the qualifications required to deliver treatment services. Interview with NGO, City K, February 11, 2011. These professionals must undergo training provided by a non-governmental organization, the Society for Psychological Assistance (the “SPA”).⁵³² After completing such training, the professionals sign a contract and are licensed by the Ministry of Justice, which also assumes partial responsibility for funding the psychosocial treatments. Interview with Prosecutors, City K, October 14, 2010.

⁵³³ Interview with Member of Parliament, Zagreb, February 16, 2011.

⁵³⁴ Interview with Court Judges, City J, February 9, 2011; Interview with Prosecutors, City K, October 14, 2010; Interview with Ministry of Justice, Zagreb, February 16, 2011.

⁵³⁵ Interview with Judges, City B, February 16, 2011.

⁵³⁶ Id.; Interview with Judges, City F, February 7, 2011.

⁵³⁷ Interview with Prosecutors, City K, October 14, 2010.

⁵³⁸ Interview with Ministry of Justice, Zagreb, February 16, 2011.

⁵³⁹ Interview with Judges, City J, February 9, 2011. In fact, the local community is expected to contribute further, and the level of funding varies from city to city. Zagreb has the most resources for administering psychosocial treatment, followed by Rijeka, Split, and Zadar. Interview with State Home, City K, February 11, 2011; Interview with CSW, City E, February 14, 2011 (explaining that psychosocial treatment is administered only in large cities). In Rijeka, for example, the city pays for 100% of the treatment and funds two full-time employees. Interview with NGO, City K, February 11, 2011. See also Interview with Judges, City J, February 9, 2011 (explaining that a religious charity partially finances psychosocial treatment in their area).

⁵⁴⁰ Interview with NGO, City K, February 11, 2011; Interview with NGO, City F, February 7, 2011.

⁵⁴¹ Interview with NGO, City K, February 11, 2011.

⁵⁴² See also the text describing *A. v. Croatia* on page 67.

⁵⁴³ Interview with NGO, City K, February 11, 2011; Interview with NGO, City F, February 7, 2011; Interview with State Home, City A, February 14, 2011, page 5; Interview with NGO, City C, February 10, 2011.

several who have been trained but we are still waiting for approval on these. That is what is missing in our system.”⁵⁴⁴ One officer described:

The problem is that only certified experts can implement the measures, and there are not enough certified experts throughout the country. They are usually based in the towns and in rural areas, not enough. So when the judge rules the offender must receive psychosocial treatment, there are no experts. And if the treatment is not made in two years, then the statute of limitations tolls—you must do it within two years to bring a violation [for not complying with the treatment measure]. After that, the statute of limitations tolls.⁵⁴⁵

Only recently has the Ministry of Justice, which is responsible for granting licenses to psychosocial treatment providers, suggested that the health providers assist by assuming responsibility in some areas.⁵⁴⁶

Judges identified an additional barrier to ordering psychosocial treatment in that it cannot occur simultaneously with addiction treatment. By way of illustration, a judge explained that an alcoholic cannot enter psychosocial treatment until he first undergoes treatment for the addiction.⁵⁴⁷

NGOs have also raised concerns that attendance at psychosocial treatment programs is not adequately monitored or enforced to ensure that perpetrators actually complete the program.⁵⁴⁸ The discussion on Monitoring and Violations of Protective Measures in this section further elaborates on this issue further.

Eviction, Stalking/Harassment, and Restraining Orders

Eviction, restraining orders, and stalking/harassment measures are highly important to victim safety, especially for those who fear consequences after they testify against their abuser.⁵⁴⁹ If denied those protective measures, the victim is at risk of further violence or even death from her abuser.⁵⁵⁰ Interviews revealed, however, that these important protective measures are ordered far less frequently than batterers’ treatment.⁵⁵¹

In a few cities, courts are more amenable to issuing these measures when police request them, particularly in cases of repeat violence.⁵⁵² One interviewee described a positive experience where the misdemeanor judge not only issued the restraining order, but did so in a timely and sensitive manner. The shelter worker described the judge who responded quickly to the client’s applications for urgent and long-term protective measures:

⁵⁴⁴ Interview with Police, City E, February 14, 2011. Although the SPA reports training more than 100 experts as of February 2011, there remains a dearth of personnel. Interview with Police, City E, February 14, 2011; Interview with NGO, City K, February 11, 2011. According to a government official, there were 31 persons and institutions authorized to conduct the treatment and an additional 30 to be authorized in 2011. Interview with Ministry of Justice, Zagreb, February 16, 2011.

⁵⁴⁵ Interview with Police, City K, October 12, 2010.

⁵⁴⁶ Interview with CSW, City D, February 11, 2010.

⁵⁴⁷ Interview with Judges, City J, February 9, 2011. Interview with Judges, City B, February 16, 2011.

⁵⁴⁸ Interview with NGO, City K, February 16, 2011; Interview with NGO, City K, February 11, 2011.

⁵⁴⁹ Interview with NGO, City B, February 15, 2011; Interview with Ombudsperson for Gender Equality, Zagreb, October 11, 2011. But see Interview with Judges, City K, October 13, 2010 (stating that they often use these measures); Interview with Judge, City A, February 14, 2011 (stating that she views restraining orders as the most effective in protecting the victim from the perpetrator).

⁵⁵⁰ See, e.g., Interview with NGO, City H, February 10, 2011.

⁵⁵¹ See also Rogić-Hadžalić and Kos, 54-55.

⁵⁵² Interview with Police, City D, February 11, 2011; Interview with State Home, City E, February 14, 2011; Interview with Police, City E, February 14, 2011; Interview with Judges, City K, October 13, 2010. Some judges explained that physical violence is not always necessary to order eviction and a restraining order, but they will look for a risk of repeat violence. Interview with Judges, City K, October 13, 2010.

... the misdemeanor judge who accepted us was very sensitive to us and we got it in a couple of hours. She was in the waiting room for two hours, with one hour of talking to the judge....The violence was really severe...he was on one occasion strangling her with his hands, then he pushed her up so her feet did not touch the ground, and then slammed her whole body against the kitchen cabinet in front of the three children. On one occasion while she was showering, he came into the shower. He slapped her so hard, she fell and broke the glass in the shower. Blood was everywhere, her injuries, and she had cuts and bruises....With his threats and slapping, he made her go to ATMs as soon as her paycheck came, and he accompanied her and made her withdraw all the money she had and to give him all the money. He would determine what would be bought—how much milk and bread. The most demeaning thing he did was make her beg for sanitary pads. Sometimes he would give her them and sometimes he would not. Most cases, he would not, and she was forced to use newspapers...There were threats, like “I will kill you, I will finish what I started.”...He was violent to the children....The children also had severe consequences. The older child was doing badly in school. The small boys were traumatized.

The judge granted the victim and her children an urgent restraining order, specifying a distance of 200 meters for one year. At the misdemeanor hearing, the judge imposed a fine, restraining order, and suspended sentence. In his final decision, the judge affirmed the restraining order for one year for the woman and her children, and told the victim that, when it expires, “you come and we will prolong it for you, but we will see if there’s a need to prolong it for the children, also.”⁵⁵³

Overall, however, several interviewees voiced concerns that judges do not order stalking/harassment and expulsion measures despite their tremendous capacity to protect victims.⁵⁵⁴ One officer estimated there were only two to three of these measures issued per year; another had none during his three years’ service.⁵⁵⁵

While many judges claimed they ordered eviction,⁵⁵⁶ several other interviewees voiced frustrations that judges did not often use this measure.⁵⁵⁷ For example, in the entire time a lawyer and social worker had been working in a safehouse (six years and seventeen years, respectively), neither of them had heard of eviction being ordered.⁵⁵⁸ One counseling center reported that there is not a single eviction order among its clients.⁵⁵⁹ A CSW recalled only two eviction orders over a six-month period.⁵⁶⁰

The need for orders prohibiting stalking/harassment is illustrated by the following example of one victim’s experience:

She told me that he will find her one day or another, and she knows that he will kill her. She knows that. We have lots of measures in misdemeanor court—restraining orders, for her and her kids, because the

⁵⁵³ Interview with NGO, City K, February 15, 2011.

⁵⁵⁴ Interview with Police, City I, February 7, 2011; Interview with Police, City B, February 15, 2011; Interview with NGO, City K, February 16, 2011; Interview with Ombudsperson for Gender Equality, Zagreb, October 11, 2011. But see Interview with Judges, City K, October 13, 2010 (stating that they often use these measures); Interview with Judge, City A, February 14, 2011 (stating that she views restraining orders as the most effective in protecting the victim from the perpetrator).

⁵⁵⁵ Interview with Police, City I, February 7, 2011.

⁵⁵⁶ Interview with Judges, City K, October 13, 2010; Interview with Judges, City J, February 9, 2011.

⁵⁵⁷ Interview with NGO, City K, February 11, 2011 (stating that eviction is not implemented in Zagreb at all); Interview with NGO, City F, February 7, 2011 (stating that she had never heard of an order for eviction in the city); Interview with NGO, City B, February 15, 2011; Interview with State Home, City K, February 11, 2011; Interview with CSW, City H, February 10, 2011.

⁵⁵⁸ Interview with State Home, City K, February 11, 2011.

⁵⁵⁹ Interview with NGO, City B, February 15, 2011.

⁵⁶⁰ Interview with CSW, City I, February 7, 2011.

children are emotionally stressed and are going to the clinic to speak to the experts dealing with children problems, and she is living like a person who has to be careful. She does not have a legal address anywhere, because she is hiding. She is afraid he will find her. That is another problem here. We have here an expression, “Living in black.” Nobody knows where she is. She does not have legal residence anywhere. When he finds her, she moves and lives somewhere else.⁵⁶¹

The last time he discovered her location, he dragged her through the street and blamed her for not being able to see his children, despite a court order forbidding him from seeing them. He threatened to kill her. When witnesses threatened to call the police, he stopped. The police arrested him and began misdemeanor proceedings. The lawyer asked the court to issue a stalking and harassment measure, but the judge denied it. The judge explained that since she already had a restraining order, it was clear he would not be able to do any further harm. The case began two years ago, and the offender is still stalking and harassing the victim.⁵⁶²

On the rare occasions that judges order eviction, they generally require a history of violence,⁵⁶³ visible or criminal-level violence, the presence of children, or visible fright by the victim.⁵⁶⁴ Only one judge depicted a broad basis upon which she orders eviction: any kind of physical violence, including first-time violence, that makes the victim feel endangered, is enough to merit eviction.⁵⁶⁵

Interviews also revealed a tendency to prioritize property rights over victim safety.⁵⁶⁶ If the residence was acquired by both parties during the marriage, one NGO explained that the judge will not expel the perpetrator.⁵⁶⁷ If the perpetrator or his parents are the sole owners of the property, they “certainly won’t expel him.”⁵⁶⁸ In addition, judges commonly express concern over where offenders will go, especially war veterans.⁵⁶⁹

In other cases, where the parties are already separated by virtue of custody or a shelter, judges may not see any purpose for protective measures. To these judges, jail adequately addresses the need for protective measures.⁵⁷⁰ When a victim is in a shelter, interviewees explained that courts similarly do not order protective measures because judges believe victims are already protected.⁵⁷¹ But this practice fails to recognize that offenders can find other ways to harm a victim even if she is in a shelter. Offenders may stalk and follow the children en route to school or the victim en route to her workplace. In one case, a husband telephoned his children to communicate threats to kill to his wife, who was in a shelter.⁵⁷² Denial of protective measures also fails to take into account that offenders may find the shelter location.⁵⁷³ Finally, denying measures fails to take into account that shelters are short of funding and may be susceptible to closure, leaving victims without a safe place.⁵⁷⁴

⁵⁶¹ Interview with Lawyer, City K, October 13, 2010.

⁵⁶² Id.

⁵⁶³ Id.

⁵⁶⁴ Id.

⁵⁶⁵ Interview with Judge, City A, February 14, 2011.

⁵⁶⁶ Interview with NGO, City K, February 16, 2011; Interview with NGO, City K, February 11, 2011; Interview with State Home, City K, February 11, 2011.

⁵⁶⁷ Interview with NGO, City K, February 11, 2011.

⁵⁶⁸ Id.

⁵⁶⁹ Interview with NGO, City K, February 16, 2011; Interview with CSW, City I, February 7, 2011; Interview with Police, City H, February 10, 2011; Interview with Police, City J, February 8, 2011; Interview with Judges, City J, February 9, 2011; Interview with Lawyer, City K, October 13, 2010; Interview with Judge, City K, February 15, 2011; Interview with Judge, City A, February 14, 2011.

⁵⁷⁰ Interview with Police, City B, February 15, 2011. But see the discussion in Offenders Granted Leave from Prison in the Prison section on page 69.

⁵⁷¹ Interview with NGO, City F, February 7, 2011; Interview with NGO, City J, February 7, 2011.

⁵⁷² Interview with CSW, City J, February 8, 2011.

⁵⁷³ Interview with NGO, City J, February 8, 2011.

⁵⁷⁴ Interview with NGO, City K, October 12, 2010. See the discussion on Shelters in the NGO section.

In one case, it took the court 18 months to issue a decision that denied the victim protective measures because she was in a shelter.⁵⁷⁵ The shelter worker explained:

That man had 147 criminal and misdemeanor offenses until killing that woman. He was part of organized crime, but he also had the status of police informant. So, the court has protected him a little bit. She did not have protective measures, she did request them, but she waited for [up to] 18 months to get denial. Because the judge who was supposed to give her the protective measures wrote in his report, that those measures would not be effective or useful to her, because she is in a shelter in Zagreb and does not need them. So, the judge probably meant that she is only allowed to be in the house and not walk freely in the city.⁵⁷⁶

Ultimately, the offender killed the victim.⁵⁷⁷

When judges do order these protective measures, complications can arise from orders that are impractical or inappropriate. Of prime concern is that durations ordered for both eviction and restraining orders are often too short. Police reported that a perpetrator is generally evicted for 15 to 30 days, well short of the minimum 1-month/maximum 2-year timeframe.⁵⁷⁸ An NGO advocate stated she knew of one case of eviction that was ordered for three months. When the order expired, the perpetrator rang the doorbell and threw the victim off the property.⁵⁷⁹ Similarly, judges do not issue restraining orders for the full term allowed under the law. The LPDV allows for a restraining order to be issued for one month to two years.⁵⁸⁰ One lawyer stated that judges typically order restraining orders for only six months.⁵⁸¹

Another complication in the issuance of protective measures is the lack of clear directives in the LPDV on the distance abusers should stay away from the victim. This omission has resulted in problems that undermine the effective implementation of protective measures. For example, one judge, whose goal was to avoid eviction of the abuser from the home he shared with the victim, issued a restraining order that directed the abuser not to come within a few meters of the victim. Living in the same apartment, this was an impractical and dangerous situation.

Furthermore, a failure to order one measure, e.g. eviction, but not another, e.g. restraining order, can lead to conflicts that compromise victim safety. A misdemeanor judge recalled how one husband who was violent against his family had received five prison sentences and a two-month eviction order from his home for beating his children and threatening his wife with a knife. The protective measure only banished him from his home.⁵⁸² He did not have a restraining or stalking protective measure that would have guarded against going to her workplace, so that is what he did:

[T]here is this person who received two sentences from each judge here, and a fifth prison sentence from the judge last Friday...His wife has a private home for elderly persons. When he is drunk, he regularly

⁵⁷⁵ Interview with NGO, City K, October 12, 2010.

⁵⁷⁶ *Id.*

⁵⁷⁷ *Id.*

⁵⁷⁸ Interview with Police, City D, February 11, 2011.

⁵⁷⁹ Interview with NGO, City K, February 11, 2011.

⁵⁸⁰ LPDV, Article 13(3).

⁵⁸¹ Interview with Lawyers, City K, February 17, 2011 (the lawyer did recall receiving one year in a case, because they pressured the judge for a longer order).

⁵⁸² Interview with Judges, City J, February 9, 2011.

creates troubles and problems both for his family and the elderly people...He got the measure of expulsion for two months...During the measure, he would come to her place of work and lie drunk next to the steps and that was the issue, whether it was a breach of the protection order. He was banished from the household, and this was not a household. The police did not make a report, but they made an inquiry to the judges by telephone. The restraining order was for the house. Is there a violation or not? As the ruling was just to banish him from entering the house, they could not decide if this was breaching of the order.⁵⁸³

Barriers to Issuance of Urgent Protective Measures

The high standard set forth in Article 19 of the LPDV creates a serious barrier to obtaining urgent protective measures.⁵⁸⁴ Articles 19(2) and (3) state that urgent protective measures shall be issued to eliminate a “direct threat to that person’s life or other family members.” Lawyers reported that they encounter difficulties obtaining an emergency protection order under this standard, because the law requires circumstances that directly endanger life.⁵⁸⁵ Lawyers explained that the LPDV’s language requiring “immediate life danger” more closely reflects a criminal rather than a misdemeanor standard.⁵⁸⁶ A lawyer illustrated this in a case where the abuser harassed the victim via text messages several times, with messages such as, “I’m following you. I have an eye on you.”⁵⁸⁷ The judge did not consider these communications a personal threat because there was no express statement that he would kill her, and he declined to issue the order.⁵⁸⁸

Judges have denied this lawyer urgent protective measures in the nine applications she has filed because the victim did not prove her life was in that high level of danger.⁵⁸⁹ This lawyer is not alone in her experience, as none of her colleagues in the city have received such protections for their clients.⁵⁹⁰ The lawyer described the experience of her client, who was unable to obtain urgent protective measures:

In one case, he just went out of prison, and he called his wife 30 times during the night. She has a little baby who woke up when the phone rang every time, and her parents were in distress. It happened continuously, so they bought another phone and to make a picture of the phone every time he called, with the date and time, because I said we don’t have proof that we have a problem....Every two minutes, every four minutes. Then, I asked the court to give me this emergency measure, and I said that my clients could not live in this kind of distress, because he’s harassing her. We put all those pictures with everything, and the misdemeanor court denied it and said it is not a state of life danger for my client, and they are not obligated to give her any measures to protect her... It is hard to work with victims with this problem in misdemeanor court.⁵⁹¹

In a few cases, judicial practice reflects a positive interpretation of this standard, as they look to the intention of the offenders or victim’s fear, rather than the severity of injuries.⁵⁹² But in general, judicial practice suggests a very high level of danger must be present before they will issue urgent protective measures.

⁵⁸³ Id.

⁵⁸⁴ LPDV, Article 19(2), (3).

⁵⁸⁵ Interview with Lawyers, City K, February 17, 2011; Interview with Lawyer, City K, October 13, 2010.

⁵⁸⁶ Id.

⁵⁸⁷ Interview with Lawyers, City K, February 17, 2011.

⁵⁸⁸ Interview with Lawyers, City K, February 17, 2011.

⁵⁸⁹ Interview with Lawyer, City K, October 13, 2010.

⁵⁹⁰ Interview with Lawyer, City K, October 13, 2010.

⁵⁹¹ Interview with Lawyer, City K, October 13, 2010.

⁵⁹² Interview with Judges, City J, February 9, 2011; Interview with Judge, City A, February 14, 2011.

ENFORCEMENT OF PROTECTIVE MEASURES

Monitoring of Protective Measures

There is a serious lack of systematic monitoring of addiction and psychosocial treatments. The LPDV requires NGOs that administer the treatment to report a perpetrator's failure to attend to the authorities.⁵⁹³ The Addiction Treatment Rules state that if a perpetrator does not report to the health facility for completion of the addiction treatment, the treatment personnel are to inform the court within 14 days of the court order's deadline for the addiction treatment start.⁵⁹⁴ In addition, when the perpetrator does not appear for treatment or the treatment personnel determine the treatment will not change behavior, they are to inform the competent authority and submit a criminal misdemeanor proposal.⁵⁹⁵

There is no reliable system in place for ensuring judicial notification of violations of these measures. In some cases, misdemeanor judges reported that the institution conducting the treatment will inform them if the offender does not appear.⁵⁹⁶ In other cases, judges admitted they have no way of knowing if the perpetrators violate the treatment measures because they are dependent on the police filing a report.⁵⁹⁷ Yet another judge stated that judges are the ones responsible for enforcing and monitoring the protective measures of addiction treatment by calling and checking at the hospital.⁵⁹⁸ As the enforcing judge, she calls the hospital head facilitating the treatment, but concedes it requires a high degree of personal engagement and effort.⁵⁹⁹

One organization noted that in 2010, only 53% of the perpetrators whom the courts referred to the psychosocial program actually underwent the treatment.⁶⁰⁰ Another illustrated the problem of enforcing compliance with psychosocial treatment:

One perpetrator was sentenced to go to psychosocial treatment. He never went, no one asked him why. He was never asked. No one did anything. The judge said, "you have to go to treatment." He never went, and he was never punished for that kind of criminal act. He repeated the violence. Nothing happened.⁶⁰¹

Even highly dangerous cases lack a clear monitoring and implementation protocol:

For 20 years, there was serious psychological, physical, and economic violence. It started when they were young...He was abusing the children all the time, no special reason for this. He isolated the children from family and friends and forbade them to hang out with friends and from her family. He would say terrible things to them, like he would kill them all with a hatchet, bash their brains, and film it with a camera. He wanted to throw a daughter from the balcony, and he threw one of the sons against a radiator so the son got heavy injuries...He isolated his wife so she would be completely dependent upon him. He hit her and kicked her.⁶⁰²

⁵⁹³ LPDV, Article 22(3).

⁵⁹⁴ Ordinance on the Implementation of Protective Measures Mandatory Treatment of Addiction, Official Gazette No. 05/2011, Article 10.

⁵⁹⁵ Id., Article 11; LPDV, Article 22(3).

⁵⁹⁶ Interview with Judges, City K, October 13, 2010; Interview with Judges, City B, February 16, 2011; See also Interview with NGO, City K, February 11, 2011.

⁵⁹⁷ Interview with Judges, City F, February 7, 2011.

⁵⁹⁸ Interview with Judge, City A, February 14, 2011.

⁵⁹⁹ Interview with Judge, City A, February 14, 2011.

⁶⁰⁰ Interview with State Home, City K, February 11, 2011.

⁶⁰¹ Interview with NGO, City B, February 15, 2011.

⁶⁰² Interview with State Home, City E, February 14, 2011.

The court sentenced him to a few months in jail, a fine, and three protective measures of a six-month restraining order, psychosocial treatment, and alcohol abuse treatment. Interviewees claimed this was the most comprehensive punishment any victim had obtained in their area. Unfortunately, the implementation of the psychological or alcohol treatment did not occur, and the interviewees' request for an extension of the restraining order is still pending. Since then, he has continued to attempt to contact his children and his wife and has written a threatening message on his Facebook profile.⁶⁰³

Sanctions for Violations of Protective Measures

According to the LPDV, a perpetrator who violates the protective measure may be punished by a fine of 3,000 kunas minimum or imprisonment of ten days minimum.⁶⁰⁴

Interviewees perceive that there are few repercussions for perpetrators who fail to attend court-ordered treatment, notwithstanding the LPDV provision that makes non-compliance with a protective measure a separate misdemeanor.⁶⁰⁵ Some police officers stated that judges take violations of protection orders seriously and order jail.⁶⁰⁶ But other times, the court may only issue a reprimand⁶⁰⁷ or order a return to treatment.⁶⁰⁸ One shelter worker explained how a client's husband was sentenced to psychosocial treatment. He attended only one session before he decided not to go again. When she told the court he was not attending treatment, there were no sanctions.⁶⁰⁹

Offenders have found ways to manipulate these sanctions and thwart the protective measure. For example, some offenders use third parties to continue to approach or harass the victim.⁶¹⁰ In many cases, judges do not treat offenses as a violation because of technicalities or a refusal to recognize them as such.⁶¹¹

SENTENCING

Misdemeanor Sentencing

"Based on our experience, the misdemeanor court has almost never issued a jail sentence."⁶¹²

⁶⁰³ *Id.*

⁶⁰⁴ LPDV, Article 21. One interviewee clarified that the judge ordering the protective measures can also specify punishment for violations in the decision. Another judge would punish them by imposing a 30-day sentence on them, but she stated the period of incarceration for the violation is too short to be effective. Interview with State Home, City K, February 11, 2011; Interview with Ombudsperson for Gender Equality, Zagreb, October 11, 2011; Interview with Judge, City K, October 11, 2011.

⁶⁰⁵ LPDV, Article 22; Interview with NGO, City K, February 15, 2011; Interview with NGO, City K, October 10, 2010; Interview with NGO, City B, February 15, 2011.

⁶⁰⁶ Interview with Police, City K, October 12, 2010; Interview with Police, City B, February 15, 2011.

⁶⁰⁷ Interview with Police, City J, February 8, 2011.

⁶⁰⁸ Interview with NGO, City K, February 11, 2011.

⁶⁰⁹ Interview with NGO, City K, February 15, 2011.

⁶¹⁰ The LPDV does not provide a protective measure against using third parties nor does it qualify it as a violation. One shelter worker, whose client obtained a one-year restraining order of 100 meters, described how the batterer has managed to avoid violating his order despite stalking his victim. She stated "There have been no violations," because he has found a way to track his victim's actions through his parents:

But what he does, his parents now live close to her and what he does is he contacts his parents, and they sit in front of the building and watch what she does and where she's going...When he had a suspended sentence, he was smart and did not break it because he didn't want to go to jail. Now, he won't break the restraining order, because he knows he will have to go to jail. He is a smart perpetrator and keeps good contact to prevent going into jail.

Interview with NGO, City K, February 15, 2011.

⁶¹¹ In one case, the judge failed to specify the number of meters in a restraining order, so the party had to request that the judge write a new order with a specific distance. By the time the judge ordered the new protective measure, the perpetrator discovered the shelter's location. To the judge, the perpetrator's appearance in front of the shelter was not a violation of the protective order. Interview with NGO, City B, February 15, 2011.

In addition to issuing protective measures, the court may impose a maximum imprisonment of 90 days or a fine of at least 1,000 kuna on the defendant under the LPDV for domestic violence.⁶¹³ Interviewees explained that it takes repeat violence, heavy violence, such as a broken nose, or the involvement of children for a judge to order incarceration.⁶¹⁴ The rise in femicides, however, has resulted in an increase in jail sentences in some areas.⁶¹⁵ In the past four years, there was a murder in one region each year, so judges in that area began to order stricter sentences.⁶¹⁶ These actions demonstrated that greater penalties may be related to a decrease in homicides; in 2010, following the higher sentences, no domestic violence murders occurred in that region.⁶¹⁷

In the few instances where judges do order jail sentences, the duration is short and often limited to ten to fifteen days for first offenses.⁶¹⁸ The short jail sentence does not provide victims with adequate time to take safety measures. In one case, the court punished one client's husband with a jail sentence of ten days for hitting her with a closed fist until he broke her lip and had bruises on her face. Ten days was too short for her to make any new living arrangements to plan for her safety.⁶¹⁹

In one astonishing example, a misdemeanor judge actually placed the responsibility on the victim herself to decide the offender's punishment in his presence. She had been physically abused by kicking and slapping for nine years. The judge asked the woman, in front of her abuser, whether he should be jailed or not—it was up to the victim to decide. When the woman was uncertain how to respond, the judge sent them into the other room to resolve it. The victim's husband told her that she could put him in jail, but "you know what will happen when I come out."⁶²⁰ The victim returned to the courtroom and told the judge not to place him in jail.⁶²¹

Fines from the Misdemeanor Court

Judges commonly order fines as punishment for domestic violence misdemeanors.⁶²² For example, misdemeanor judges reported that in 294 domestic violence misdemeanors, 128 fines were imposed.⁶²³ Country-wide, judges issue fines in 50.8% of misdemeanor domestic violence cases.⁶²⁴ Interviews revealed that courts are inclined to impose fines in first-time physical violence⁶²⁵ and sometimes even the second time.⁶²⁶

⁶¹² Interview with NGO, City F, February 7, 2011.

⁶¹³ LPDV, Article 20(2). This punishment increases up to a minimum prison sentence of 15 days or 5,000 kuna fine for repeat offenders, and up to a minimum prison sentence of 30 days and minimum fine of 6,000 kuna for violence committed in the presence of children, minors, or disabled persons. LPDV, Article 20(3), (4). Increased penalties are available for repeat misdemeanors involving children, minors, or persons with disabilities. See LPDV, Article 20(5-7).

⁶¹⁴ Interview with NGO, City C, February 10, 2011; Interview with State Home, City I, February 7, 2011; Interview with Judges, City J, February 9, 2011. Interview with Judges, City B, February 15, 2011; Interview with Lawyer, City K, October 13, 2010; Interview with NGO, City K, February 11, 2011; Interview with State Home, City A, February 14, 2011; Interview with NGO, City D, February 11, 2011.

⁶¹⁵ Interview with CSW, City E, February 14, 2011.

⁶¹⁶ Interview with CSW, City E, February 14, 2011.

⁶¹⁷ Interview with CSW, City E, February 14, 2011.

⁶¹⁸ Interview with CSW, City I, February 7, 2011; Interview with NGO, City K, February 15, 2011; Interview with Judges, City B, February 16, 2011 (cases meriting a high jail punishment usually are criminal, not misdemeanor cases); Interview with NGO, City K, February 11, 2011.

⁶¹⁹ Interview with NGO, City K, February 15, 2011.

⁶²⁰ Interview with NGO, City K, October 13, 2010.

⁶²¹ Id.

⁶²² Interview with NGO, City C, February 10, 2011; Interview with CSW, City I, February 7, 2011 (stating that the most common punishments are a fine and short jail sentence); Interview with Police, City E, February 14, 2011; Interview with Lawyer, City K, October 13, 2010.

⁶²³ Interview with Judges, City J, February 9, 2011.

⁶²⁴ Rogić-Hadžalić and Kos, 52 (reflecting figures from 2007-2010).

⁶²⁵ Interview with State Home, City A, February 14, 2011; Interview with NGO, City D, February 11, 2011.

⁶²⁶ Interview with NGO, City D, February 11, 2011.

Numerous interviewees find fines to be ineffective, because the perpetrators may not pay, and the victims remain unprotected.⁶²⁷ Another judge elaborated that if the perpetrator does pay, then there is no further punishment or supervisory measure over him.⁶²⁸ Fining the perpetrator can also have the unintended impact of punishing the victim, particularly where the victim is economically dependent on the perpetrator or when the fine must come from joint family financial resources.⁶²⁹ One interviewee described a case where the victim had to pay the perpetrator's fine herself.⁶³⁰ This punishment can deter victims from reporting the violence again.⁶³¹ Police gave their opinion of fines:

I think the jail punishment would be more effective and protective measures. I think the protective measures should be issued more often because they are influencing the perpetrator to change his behavior and do things differently, so whatever punishment BUT financial punishment.⁶³²

Suspended Sentences from the Misdemeanor Court

In practice, interviews revealed that judges are widely ordering suspended sentences that allow an offender to avoid incarceration.⁶³³ For example, statistics from one misdemeanor court showed that the number of suspended sentences was more than double the number of jail sentences (84 conditional convictions and 40 jail sentences).⁶³⁴ From 2007-2008, the Croatian courts issued 223 prison sentences and 1,067 suspended sentences.⁶³⁵

Judges often order suspended or reduced sentences at the request of the victim who is financially dependent on the abuser.⁶³⁶ Other reasons courts do not order jail sentences is that they perceive there is no need for the perpetrator to go to jail if the victim is already safe in a shelter,⁶³⁷ the prisons are at capacity,⁶³⁸ or that psychosocial or addiction treatments are more effective at changing behavior.⁶³⁹

⁶²⁷ See e.g., Interview with Police, City B, February 15, 2011.

⁶²⁸ Interview with Judge, City A, February 14, 2011.

⁶²⁹ Interview with NGO, City C, February 10, 2011; Interview with NGO, City F, February 7, 2011; Interview with NGO, City B, February 15, 2011; Interview with State Home, City A, February 14, 2011; Interview with Police, City E, February 14, 2011; Interview with Police, City B, February 15, 2011; Interview with Judge, City K, February 15, 2011; Interview with Judges, City J, February 9, 2011.

⁶³⁰ Interview with NGO, City C, February 10, 2011.

⁶³¹ Interview with Police, City B, February 15, 2011; Interview with NGO, City C, February 10, 2011 (describing a woman who asked, "Why would I report him, because I will punish myself?")

⁶³² Interview with Police, City B, February 15, 2011.

⁶³³ Interview with NGO, City C, February 10, 2011; Interview with CSW, City D, February 11, 2010; Interview with Police, City K, October 12, 2010; Interview with Lawyer, City K, October 13, 2010; Interview with Lawyers, City K, February 17, 2011.

The Misdemeanor Law allows for conditional convictions where the prison sentence is suspended pending compliance of certain conditions. The court can impose a suspended sentence when the punishment's goal can be realized without execution of the sentence, "especially having in mind the relation of the misdemeanor perpetrator toward this misdemeanor or the damaged party and the compensation of damages caused by the misdemeanor." The court may recall the conditional conviction in cases where the offender does not comply with the obligations imposed. Misdemeanor Law, Article 44(1), (2), (4).

⁶³⁴ Interview with Judges, City J, February 9, 2011.

⁶³⁵ PROTECT Daphne III: Croatia Overview. Autonomous Women's House Zagreb Shelter and Counseling Center for Women Survivors of Domestic Violence. March 2010. Slide 24.

⁶³⁶ Interview with Judges, City B, February 16, 2011; Interview with NGO, City K, February 11, 2011.

⁶³⁷ Interview with NGO, City H, February 10, 2010.

⁶³⁸ Interview with Police, City E, February 14, 2011.

⁶³⁹ Interview with Judges, City F, February 7, 2011. A president of a misdemeanor court lauded the suspended sentence as providing the conditions for an offender to change by undergoing psychosocial and addiction treatment under threat of jail or fine. But the jail-or-treatment option offered to some perpetrators especially frustrates accountability: if the court offers a perpetrator to go to jail or attend six months' treatment, he will be inclined to choose treatment. Interview with Judge, City K, February 15, 2011; Interview with Judges, City F, February 7, 2011; Interview with Judge, City A, February 14, 2011; Interview with NGO, City K, October 13, 2010.

When asked if she had a case of reoffending after a suspended sentence, one judge responded, “Yes, yes, yes.”⁶⁴⁰ Referring to the offender repeatedly returning to court, the judge stated, “he is going around and around in circles.”⁶⁴¹

Criminal Sentencing

[I]f the judiciary did their job and put every measure on the perpetrator, it would definitely matter....I think the punishments are too mild, because the suspended sentence or mild punishments do not have any effect and lead to repetition of the violence. The perpetrator thinks, ‘I was not even specially guilty, because my punishment is not too severe so it leads to repetition of domestic violence.’⁶⁴²

- *Interview with a Police Officer*

Interviewees described that repeat offenses, long-term violence spanning years, and severe consequences on the victim would merit a criminal prison sentence under the law, but prison sentences are often far shorter than the five-year maximum.⁶⁴³ Lawyers confirmed that the typical duration of a jail sentence is one year.⁶⁴⁴ One shelter worker stated that she recalled one perpetrator who received three years’ imprisonment, but otherwise, none of the abusers of the eleven women in the shelter were sentenced to jail.⁶⁴⁵

Article 67 of the Criminal Code allows a court to issue a suspended sentence when it finds that the realization of the goals of punishment can be expected, particularly taking into account the relationship between the perpetrator and injured party and the compensation for the damage caused. As with the misdemeanor law, there were reports of criminal court judges issuing suspended sentences, particularly in cases of first-time violence.⁶⁴⁶ Yet, for cases to even reach the criminal court, there must have been very severe violence (such as threats to kill), at least three police interventions, or weapons involved.⁶⁴⁷ In one case brought against a first-time offender under Articles 215(A) and 213, the offender hit the victim, locked her in a room, made threats to kill, and frightened the children with a mask. For these actions, he received a suspended sentence. The victim sought safety by moving to a secret address, so he has not been able to repeat the violence.⁶⁴⁸

Officers illustrated the dangers a suspended sentence can pose when an offender goes free in a criminal case where the husband beat the mother and the children:⁶⁴⁹

We have someone in jail right now who violated the protective measure. This person was punished under Article 215A of Criminal Law. He got a suspended sentence, but then he was punished after that with the Misdemeanor Law and got protective measures which he violated after his release from jail. He was

⁶⁴⁰ Interview with Judge, City A, February 14, 2011. See also Interview with Judges, City F, February 7, 2011.

⁶⁴¹ Interview with Judge, City A, February 14, 2011.

⁶⁴² Interview with Police, City B, February 15, 2011.

⁶⁴³ Interview with Judge, City J, February 9, 2011; Interview with Lawyers, City K, February 17, 2011.

⁶⁴⁴ Interview with Lawyers, City K, February 17, 2011

⁶⁴⁵ Interview with State Home, City A, February 14, 2011 (most of the perpetrators receive a fine or treatment).

⁶⁴⁶ Interview with Judge, City J, February 9, 2011; Interview with Police, City B, February 15, 2011. Many of these criminal sentences are suspended. From 2007 to 2010, 2,055 of 2,472 sentences were suspended, and 408 of the 2,472 sentences were imprisonment. Rogić-Hadžalić and Kos, 71.

⁶⁴⁷ See the section on Legal Framework and Charging Issues on page 15.

⁶⁴⁸ Interview with Lawyers, City K, February 17, 2011.

⁶⁴⁹ This case preceded the *Maresti* decision. See the section on Legal Framework and Charging Issues in the Police section on page 15 for background information about this decision.

released, violated the [restraining order] protective measure, and in the meantime, they revoked the suspended sentence and he is in prison for 215A.⁶⁵⁰

A. v. Croatia: A violation of the right to respect for private and family life

In *A. v. Croatia*, the European Court of Human Rights found that Croatia violated Article 8 protecting the right to respect for private and family life of the European Convention on Human Rights.⁶⁵¹ Between November 2003 and August 2005, the perpetrator repeatedly physically and verbally abused A., his wife and mother of his daughter. They divorced in 2006. The perpetrator was found to suffer from various mental disorders, including post-traumatic stress disorder, anxiety, paranoia, and epilepsy. Between 2004 and 2009 seven different sets of proceedings were initiated against B, including three sets of criminal proceedings and four sets of misdemeanor offenses. Both courts issued several orders and sentences, but the Croatian authorities failed to execute several of them.

Specifically, the misdemeanor court ordered the offender to complete psychosocial treatment in October 2006. The psychosocial treatment was never executed, because there were no licensed individuals and institutions to carry it out. The perpetrator also received a misdemeanor fine of 6,000 kuna; the offender paid 1,000 kuna and was to serve a prison term in lieu of the remaining 5,000 kuna. He never served his prison term, however, because the prisons were full. In the same month, the perpetrator also received a criminal sentence of eight months' imprisonment, and he had not begun to serve that sentence, either. Finally, the perpetrator was under a criminal court judgment to complete psychiatric treatment while in detention. There was no evidence, however, that Croatian prison officials ever developed a psychiatric program for the offender during his prison term.

The European Court of Human Rights' prior jurisprudence establishes that, under Article 8, the concept of private life includes a person's physical and psychological integrity. States therefore have an obligation to enact and apply an adequate legal framework to protect individuals from acts of violence by other private persons. The European Court of Human Rights held that, by failing to enforce the judgments ordered by the courts in a timely manner, Croatian authorities had failed to fulfill their positive obligations to protect the victim and ensure her right to respect for her private life. The Court ordered Croatia to pay the applicant 9,000 Euros in non-pecuniary damages and 4,470 Euros for costs and expenses.

⁶⁵⁰ Interview with Police, City I, February 7, 2011.

⁶⁵¹ Case of Branko Tomašić and Others v. Croatia, Application No. 55164/08, October 14, 2010.

PRISONS

The Execution of Prison Sentence Act governs the treatment of prisoners, including domestic violence offenders, sentenced under both criminal and misdemeanor acts.⁶⁵² Even if judges do sentence offenders to a prison term, accountability for offenders is undermined by problems with the prison system, including delays in the execution of sentences and benefit leaves that allow temporary release of a prisoner. The following section discusses these two challenges in more detail.

OVERCROWDING LEADS TO DELAYS IN INCARCERATION

The overcrowded nature of prisons in Croatia can lead to delays in incarceration and early releases for domestic violence offenders.⁶⁵³ There are fourteen prisons, seven penitentiaries, and two juvenile corrections facilities in Croatia.⁶⁵⁴ Reports revealed that these facilities are often at or over capacity. One prison official acknowledged that prisons are 140% to 150% over capacity.⁶⁵⁵

A prison official stated that there was no waiting list or possibility for delays to place misdemeanor convicts—including domestic violence offenders—in prison, and they must accept them “immediately.”⁶⁵⁶ Nevertheless, some interviewees reported delays in sending sentenced persons to prison or jail.⁶⁵⁷ Another NGO agreed that because jails are overcrowded, it could take up to a year before the perpetrator is sent to prison.⁶⁵⁸ As one police officer explained, there could be 50 beds in prison, 10 of which might be reserved for domestic violence offenders—those beds are always full.⁶⁵⁹

One interviewee suggested that media reports on overcrowding in prisons mean the public is generally aware of the situation. As the interviewee explained, an offender “might know he won’t have to go immediately for the whole sentence.”⁶⁶⁰ Indeed, a police officer suggested that the lack of space in the prisons results in a judicial reluctance to order jail sentences.⁶⁶¹ In describing one case, CSW staff in a smaller town (pop. 30,000) reported that the perpetrator beat the victim to the point where “she didn’t have any place on her skin that wasn’t bruised.”⁶⁶² The interviewees noted that, although sentenced, he was never sent to jail because the prisons are full.⁶⁶³

OFFENDERS GRANTED LEAVE FROM PRISON

The Execution of Prison Sentence Act grants concessions to offenders that can be dangerous for domestic violence victims without appropriate safeguards. One of the provisions that poses a risk to victims is the benefit

⁶⁵² Execution of Prison Sentence Act, Article 1(4).

⁶⁵³ Concluding Observations of the Human Rights Committee, Nov. 4 2009, U.N. Doc. CCPR/C/HRV/CO/2, para. 13. Irma Kovčo Vukadin, Vladimira Žakman-Ban, Anita Jandrić Nišević. Prisoner Rehabilitation in Croatia, *VarstvoSlovje*, Journal of Criminal Justice and Security 143, 160, No. 2 (2010), available at <http://www.fvv.uni-mb.si/varstvoslovje/articles/VS-2010-2-Croatia.pdf>.

⁶⁵⁴ Interview with Prison Official, City K, February 17, 2011.

⁶⁵⁵ Interview with Prison Official, City K, February 18, 2011.

⁶⁵⁶ Id.

⁶⁵⁷ See also the text box on *A. v. Croatia* on page 67.

⁶⁵⁸ Interview with NGO, City K, February 16, 2011.

⁶⁵⁹ Interview with Police, City F, February 6, 2011.

⁶⁶⁰ Interview with CSW, City E, February 14, 2011.

⁶⁶¹ Interview with Police, City E, February 14, 2011. A prison official did not think that the over-capacitated prisons affected judicial sentencing decisions, because the judiciary is independent and knows its job is to convict for any crime. Interview with Prison Official, City K, February 18, 2011.

⁶⁶² Interview with CSW, City E, February 14, 2011.

⁶⁶³ Interview with CSW, City E, February 14, 2011.

leave. Article 129 allows prisoners, who have served a minimum portion of their sentence and meet other requirements, to leave the prison for certain periods of time.⁶⁶⁴ This benefit leave is very much in use, and as one NGO worker stated “seems to have become a fashion in recent times.”⁶⁶⁵

The leave is granted based on the length of sentence served, whether the punishment plan is being exercised successfully and whether cooperating institutions believe the perpetrator will not be a danger if released.⁶⁶⁶ The warden makes the final decision on whether to grant benefit leave and the necessity of supervision or prisoner registration with the local police.⁶⁶⁷ The prison system can consult with other institutions, such as the police and CSWs, to render an opinion of the target location where the perpetrator will be released, by speaking to victims, perpetrators and families.⁶⁶⁸ If officials find a domestic violence offender has a high risk of recidivism, an absence of family relationships, a restraining order or eviction measure against him, and the victim does not wish to see him, they rarely grant him benefit leave.⁶⁶⁹ A prison official stated, however, that the re-offense rate for 72-hour popular weekend leave was only about 0.4% last year, and most violations were because of late returns to prison or use of alcohol.⁶⁷⁰ The official admitted, “We do have some who go back and beat their wives, but it’s not so many.”⁶⁷¹

Even if the rate of recidivism for domestic violence offenders is low, it still poses an unacceptable danger to those women who are assaulted or otherwise harmed during benefit leaves. One criminal judge described how a man beat his partner whenever he was drunk. In the criminal trial, he was sentenced to several months in prison. Two-thirds into the sentence, he was released for the weekend and again committed a felony against her under the influence of alcohol. During this offense, he committed “all the violence” against her, resulting in many low-level injuries.⁶⁷² For his offense, committed while on benefit leave, he received a sentence of 18 months, which was added to his unfinished sentence.⁶⁷³

Offenders convicted of non-domestic violence offenses may also pose an insidious risk to victims of domestic violence. In these cases, there may be no protection order or conviction for domestic violence, and therefore officials have less notice of the risk to victims. Also, it is unclear whether prison officials closely scrutinize inmates convicted of a non-domestic violence offenses to determine whether measures such as supervision and a restraining order are needed. Such safeguards are needed given that domestic violence offenses have been committed during benefit leave by offenders convicted of other crimes. In one case, lawyers described how a prisoner serving a sentence for murdering his father-in-law began to use the benefit leave:

⁶⁶⁴ Prisoners serving a sentence of ten years or less may be eligible for the benefit leave after serving one-third of their sentence. Prisoners serving more than ten years’ imprisonment may be eligible for the benefit after serving half of the sentence. Article 131(1), (2), Execution of Prison Sentence Act. The purpose of these benefits is to promote trust in inmates, ease prison discipline, reduce the detrimental effects of custody, maintaining and promoting relations with family, others and public services, and encourage individual participation in implementing the execution program, strengthen inmates’ responsibility, self-confidence and preparation for a lifestyle that complies with the law and their civic duties. Id. Article 128(1). The benefit grants a prisoner several allowances including, among others, to take an annual leave outside of the place of incarceration; leave a high-security penitentiary under supervision for four hours to visit relatives or conduct private business; visit the local community between 2-24 hours (with visitors); visit the local community between two to eight hours (without visitors); and visit relatives or other persons “not more than two times in a month in total duration of four days (96 hours), and in the month of Easter, Christmas and Statehood Day—in duration of up to six days (144 hours).” Article 129 (3)(4-8)), Execution of Prison Sentence Act.

⁶⁶⁵ Interview with NGO, City K, February 11, 2011.

⁶⁶⁶ Interview with Prison Official, City K, February 17, 2011.

⁶⁶⁷ Article 132(1), (3), Execution of Prison Sentence Act.

⁶⁶⁸ Interview with Prison Official, City K, February 17, 2011.

⁶⁶⁹ Id.

⁶⁷⁰ Id.

⁶⁷¹ Id.

⁶⁷² Interview with Judge, City J, February 9, 2011.

⁶⁷³ Id.

There is no supervision of them when they go out. That is a problem because they do not have any supervision during the leave. We had one case, where a guy killed the father of his wife and after a few years of imprisonment, he began to use that benefit of leave. During the leaves, he threatened the wife and kids, and he was also convicted for those threats. He got something like one year and two months for those threats. He was threatening that he is going to kill his wife, and he told the kids that she was guilty because he murdered their grandfather. There were no protective measures against him.⁶⁷⁴

In another case, one man was convicted and sentenced to prison for robbery. During one of his benefit leaves, he came home for the weekend and beat his wife heavily “head to toe.”⁶⁷⁵ He beat her over her body until she was “black and blue,” broke her nose, then threw her down the stairs, leading to a concussion. The victim’s injuries were so severe, she sought medical help and ended up in a mental hospital for one month.⁶⁷⁶

INDIVIDUAL PROGRAMS AND TREATMENT IN PRISONS

Although offenders can be sentenced to undergo psychosocial treatment under the LPDV, the organization responsible for carrying out these treatments does not work within prisons.⁶⁷⁷ The offender must complete such court-ordered treatment outside of prison. The authors learned of at least one instance where completion of this treatment program delayed the perpetrator’s entry into prison. Similarly, there were reports of addiction treatment replacing incarceration. Misdemeanor judges stated that while treatment of addiction can be imposed when offenders begin or serve their jail sentence, they have made decisions to place offenders in treatment in lieu of the jail sentence.⁶⁷⁸

The Execution of Prison Sentence Act envisions individual treatment programs for prisoners while serving their sentence. A prison official acknowledged they lack the capacity to cover all inmates who have committed domestic violence, but they do strive to provide them to the most dangerous offenders. While this program has a three-prong focus, there is a high degree of emphasis placed on alcohol treatment program. The prison official reported that most of the domestic violence offenders are alcoholics or have some problem with alcoholism. As a result, treatment of domestic violence offenders is mainly targeted toward alcohol or drug abuse, in the belief that if the substance abuse is treated, then the likelihood for repeat domestic violence is reduced.⁶⁷⁹

⁶⁷⁴ Interview with Lawyers, City K, February 17, 2011.

⁶⁷⁵ Interview with NGO, City K, February 11, 2011.

⁶⁷⁶ Id.

⁶⁷⁷ Interview with NGO, City K, February 11, 2011; interview with Prison Official, City K, February 17, 2011.

⁶⁷⁸ Interview with Judges, City F, February 7, 2011.

⁶⁷⁹ Interview with Prison Official, City K, February 17, 2011.

Tomašić v. Croatia: A violation of the right to life

In *Tomašić v. Croatia*, the European Court of Human Rights found that the treatment program was not adequately implemented to comply with Article 2 of the European Convention on Human Rights protecting the right to life. In this case, the perpetrator voiced his intention to bomb his wife/children to the Center for Social Welfare and police on different occasions. The perpetrator was charged, sentenced, and released after serving his prison term. Approximately six weeks post-release, the defendant shot and killed his wife, daughter and himself.

The defendant was detained in February 2006, and in March 2006, the Municipal Court sentenced him to five months' imprisonment and compulsory psychiatric treatment during and after his prison sentence as necessary.⁶⁸⁰ In this case, the defendant had served nearly three of his five-month sentence before the decision ordering his compulsory psychiatric treatment became final.⁶⁸¹ The defendant remained in prison during the appeal of his sentence, and in April, the County Court reduced the psychiatric treatment duration to that of his prison sentence. After the County Court's decision, the defendant began receiving treatment through conversational sessions with the prison staff, prison governor, and prison doctor. He saw the prison doctor approximately five times and did not receive any pharmacotherapy.

The European Court of Human Rights found that the state was aware that the threats were serious, was obligated to take all reasonable steps to protect the victims, but failed in its obligations to protect in violation of Article 2.⁶⁸² Because of the appeal and the County Court's decision to limit psychiatric treatment to his prison sentence, the longest course of treatment the defendant could have undergone was two months and five days.⁶⁸³ Within such a short period, the Court reasoned that his psychiatric problems could not adequately have been addressed.⁶⁸⁴ Further, the state did not take adequate measures to reduce the likelihood of the defendant executing his threats.⁶⁸⁵ The Enforcement of Prison Sentence Act does not properly address the issue of enforcing such treatment and its lack of specific guidance leaves it up to the discretion of prison authorities. Also, the court judgment also failed to provide sufficient details. The psychiatric treatment was not only inadequate, but there was also no evaluation of his condition or intention to make good on his threats prior to his release from prison.⁶⁸⁶

⁶⁸⁰ Para. 8.

⁶⁸¹ Case of Branko Tomašić and Others v. Croatia, Application No. 46598/06, January 15, 2009, para. 55.

⁶⁸² Para. 53. Para. 61.

⁶⁸³ Para. 55.

⁶⁸⁴ Para. 55.

⁶⁸⁵ Para. 60.

⁶⁸⁶ Para. 58.

CENTERS FOR SOCIAL WELFARE

“Maybe you should make him a better lunch, and then he will not kick you.”⁶⁸⁷

- *Shelter workers quoting the recommendation of the CSW to their client*

The Center for Social Welfare (CSW) has a major role in the government response to domestic violence in Croatia because of the services they provide and their responsibilities under the LPDV and Family Law. Along with the police, the CSW is often a first responder to cases of domestic violence.⁶⁸⁸ Interviews revealed a consensus that victims of domestic violence frequently seek assistance from their local CSW.⁶⁸⁹ The CSW’s broad responsibilities and the fact that its employees are often first responders heighten the importance of their treatment of victims of domestic violence. While some centers under the umbrella of the CSW act sensitively and supportively toward victims of domestic violence, the weight of the information revealed that the CSW response often undermines victim safety.

The CSW is authorized to respond broadly to victims: they may send them to shelter, award victims a one-time financial stipend, require victims, perpetrators, and children to attend treatment, make recommendations to the court for perpetrator punishment and, importantly, make recommendations to the court for custody of children. CSWs are a principal linchpin between victims and shelter: even if they have gone to the police, victims are required to register with the CSW to be placed in certain safehouses.⁶⁹⁰ In addition, the CSW must comply with mandatory reporting requirements and conduct investigations. The CSW has broad responsibilities in cases of violence against children, including the authority to intervene, propose, and monitor protective measures.

CSW WEAKNESSES IN PROTECTING THE VICTIM

The Rules of Procedure require CSW employees to provide a “safe and supportive environment for the victim to relate all information about the case.”⁶⁹¹ In rare instances, some CSW workers demonstrated such sensitivity. One CSW employee explained the process she uses:

I try to conduct an interview with a victim of domestic violence in such a way that I do not interrupt her, and I let her tell me her story and let her tell me all the facts such as how long the violence has been happening and what kind of violence it is. Every aspect of the violent situation....⁶⁹²

A shelter worker reported, “Some women told us that the best people who helped them the most were the CSW people.”⁶⁹³ One judge noted that although the CSW works in “impossible conditions,” sometimes without rooms or computers, but “...everyone works with “enthusiasm and love for the job or there would not be such results.”⁶⁹⁴

⁶⁸⁷ Interview with NGO, City K, October 13, 2010.

⁶⁸⁸ Interview with NGO, City K, October 10, 2010.

⁶⁸⁹ See e.g., Interview with NGO, City C, February 10, 2011.

⁶⁹⁰ Interview with State Home, City I, February 7, 2011; Interview with NGO, City F, February 7, 2011; Interview with NGO, City H, February 10, 2011; Interview with State Home, City E, February 14, 2011.

⁶⁹¹ Rules of Procedure, Section 1.B.2.4.

⁶⁹² Interview with CSW, City K, October 14, 2010.

⁶⁹³ Interview with NGO, City B, February 15, 2011.

⁶⁹⁴ Interview with Judges, City K, October 13, 2010.

The majority of interviews revealed, however, that the local CSWs do not prioritize victim safety. A lawyer reported, “Women have a bad experience in their first contact with the CSW, in the sense of ‘just go home, everything will be okay.’”

Numerous other stories showed that many CSW workers were unhelpful or insensitive to victims. A shelter worker noted that, “[The centers] are so impolite to women. The thing women most often report to us is ‘they don’t believe me.’”⁶⁹⁵ Another stated:

Our clients say frequently and most often that the [CSW] workers do not understand them, are not sympathetic or empathetic, do not take them seriously, do not listen to them, do not give them enough time, and they just sit and don’t pay attention. Sometimes they say good things, but very rarely...the women have to force themselves to come to the Center, it is hard, and then they find someone who will judge them and not support them and do the opposite of what they should.⁶⁹⁶

Some interviewees reported that CSWs were insensitive to the point of dismissing victims’ safety. One victim related:

I suffered so much, but [the CSW] behaved like they didn’t believe me...they told me they had to fill in papers, and the papers are the most important, because if anything happened to me, if I was injured or killed, they would be responsible for that.⁶⁹⁷

In another case, a victim was arrested for defending herself, but later released. At the police station, she encountered a CSW employee, who brushed aside her queries about her children:

The CSW was there waiting for me. Before that I had never seen a social worker. I asked her to see my children again, and the social worker said ‘I don’t know where they are, and I don’t know if you will live with them again.’⁶⁹⁸

In the worst cases, the CSW fails to respond at all. Interviews revealed that in many cases, CSW staff took no action in response to domestic violence. A victim illustrated her experience:

Many times I visited social services, well, they should be at your service, but they are not at your service...my experience was awful...from the social service center, I expected more from them, I expected them to say, ‘All right. Come here or go somewhere.’ But they didn’t give me advice or a solution for anything....When [a shelter] was an option, they tried to make me change my mind. That was awful...they are guilty because of not doing anything... my ex-husband was not charged for any of the domestic violence, but now it isn’t so important to me....But, the refusing attitude that social service had to me—that was awful to me.⁶⁹⁹

⁶⁹⁵ Interview with NGO, City K, October 13, 2010.

⁶⁹⁶ Interview with NGO, City F, February 7, 2011.

⁶⁹⁷ Interview with Victim, City K, February 17, 2011.

⁶⁹⁸ Interview with Victim, City F, February 9, 2011.

⁶⁹⁹ Interview with Victim, City K, February 17, 2011.

This failure to help victims not only compromises victim safety but can even have fatal results. The Ombudsperson for Gender Equality noted a case where the CSW did not respond to a victim, which ended in her death:

She went to see the Center for Social Welfare and they refused to even talk to her or help her, saying it was not their authority, and later they even denied that the woman came to see them. After investigating a little, this office has concluded that the woman has really been there, and that the Center for Social Welfare did not protect her the way it should and the way that is prescribed by the law....She was killed. She did not have any injuries before she went to the Center for Social Welfare, she was just threatened by a knife.⁷⁰⁰

Interviews indicated that the CSW's failure to respond appropriately stems from misunderstandings about domestic violence. At times, CSW workers subscribe to stereotypes of victims. One victim reported that an employee of the CSW "...told me that I looked too good, that they can't believe that I'm abused or that I have any problems and to wait for more times, that he might get better. They asked me if I had a lover, and if my husband caught me or saw me somewhere with my lover, and that could be the reason why he acts like that."⁷⁰¹ They also demonstrate a misunderstanding of victims' needs. An NGO related the local CSW director's attitude at the opening of a shelter:

[He said] they don't need a shelter in this area, that all we need is actually a room or an apartment, but that a room would do...The media said, "What if you have a case where there's two women?" Then he said, "Well, if you have two women, have them go there for fourteen days, have a little bit of a rest, and then they can go back." The media said, "What if they have children?" "Well, then let the women have a rest, and the children can go to foster homes."⁷⁰²

Interviews also revealed that many CSWs prioritize preservation of the family in their response.⁷⁰³ Shelter workers illustrated, "The centers nurture the idea of the family, so it's better to be in a family whatever that is, and to have a father figure no matter what he does."⁷⁰⁴ In some instances, the CSW has advised victims to return home, saying the violence is not severe.⁷⁰⁵ Also, the CSW has tried to reconcile the couple when the woman comes in for help:

So what happens is the woman comes to the Center for Social Welfare and says, 'I am a victim of domestic violence,' and it usually happens after seven, twelve, fifteen years of living in a violent situation or it can happen the first time after he attacks the children....The Center for Social Welfare calls him immediately but not with the purpose to help her and the children. Not with the intention to help her and the children but to put him and her in the same room and tell her that 'are you really sure that you want to report and get divorced? Look at him, he is really decent and he told me that he loves you, adores you, there is only one paycheck—his paycheck and two children, and you are unemployed.'⁷⁰⁶

⁷⁰⁰ Interview with Ombudsperson for Gender Equality, Zagreb, October 11, 2010.

⁷⁰¹ Interview with Victim, City K, February 17, 2011.

⁷⁰² Interview with NGO, City H, February 10, 2010.

⁷⁰³ Interview with NGO, City K, October 13, 2010; Interview with NGO, City C, February 10, 2011.

⁷⁰⁴ Interview with NGO, City K, October 13, 2010.

⁷⁰⁵ See e.g., Interview with Victim, City K, February 17, 2011.

⁷⁰⁶ Interview with NGO, City K, October 11, 2010.

Interviewees revealed that some CSW employees also lack an understanding that batterers may appear affable, masking the danger they present to victims. A shelter worker noted that, “Whenever I have spoken to CSW...maybe from 19 clients, in 17 of those cases, the social workers say, ‘Well, she says that it happened, but he seems really nice.’”⁷⁰⁷ Another shelter worker reported, “They say, ‘He is a lovely and nice person. Why are you complaining about him?’”⁷⁰⁸

TRAINING FOR CSW EMPLOYEES

CSW employees noted that they had not received training on domestic violence from the state in 10 years.⁷⁰⁹ In addition, interviews revealed that many CSW employees have not undergone training on risk assessment, which would give them tools to identify high-risk cases.⁷¹⁰

CSW workers themselves express a desire for additional training.⁷¹¹ Where there has been domestic violence training, it appears to be inconsistent and inadequate.⁷¹² Interviews confirmed marked differences in the trainings received by different members of the same team within one CSW.⁷¹³ The impact of this lack of uniformity manifests in the sharp differences between CSWs in their treatment of clients.⁷¹⁴

REPORTING AND DOCUMENTING DOMESTIC VIOLENCE

Under the LPDV, CSW employees are required to report to the police or the State Attorney’s office acts of violence in the family that they learn about in the course of their duties.⁷¹⁵ They must also notify the authorities and submit a criminal misdemeanor complaint to the court if they learn that the perpetrator of violence is not complying with the protective measure.⁷¹⁶

Interviews with CSW employees indicated that they reported domestic violence in many cases.⁷¹⁷ Mandatory reporting undermines victim autonomy and safety by denying victims the ability to make their own decisions about the safest and most appropriate course of action.⁷¹⁸ For example, one CSW employee not only reported the violence to the police, but also invited the perpetrator in to warn him that the abusive behavior was known and must be stopped.⁷¹⁹ Such a warning, without a sanction, may further endanger the victim.

More disconcerting is that frequently employees neither view nor treat the cases as “urgent” as required by the LPDV. Even when a victim requests they report the violence, the CSW does not always do so.⁷²⁰ One CSW employee noted that if a woman comes in at the end of her shift, she would not report the violence to the police until the next day.⁷²¹ Another CSW interviewee explained they only notify the police on the same day “when we

⁷⁰⁷ Interview with NGO, City K, February 15, 2011.

⁷⁰⁸ Interview with NGO, City D, February 11, 2011.

⁷⁰⁹ Interview with CSW, City I, February 7, 2011.

⁷¹⁰ Interview with CSW, City K, October 14, 2010.

⁷¹¹ Interview with CSW, City F, February 7, 2011; Interview with CSW, City D, February 11, 2011; Interview with CSW, City I, February 7, 2011.

⁷¹² Interview with CSW, City K, October 14, 2010; Interview with CSW, City I, February 7, 2011; Interview with CSW, City F, February 7, 2011.

⁷¹³ Interview with CSW, City H, February 10, 2011.

⁷¹⁴ Interview with NGO, City C, February 10, 2011.

⁷¹⁵ LPDV, Article 8; Rules of Procedure, Section 1.B.1.

⁷¹⁶ LPDV, Article 22(3).

⁷¹⁷ See e.g., Interview with CSW, City K, October 14, 2010.

⁷¹⁸ See Commentary on the Law on Protection from Domestic Violence, Appendix D.

⁷¹⁹ Interview with NGO, City J, February 8, 2011.

⁷²⁰ Interview with NGO, City F, February 7, 2011.

⁷²¹ Interview with CSW, City K, October 14, 2011.

think she is in danger, the perpetrator has been in the war and has firearms, or he drinks too much, we send it by fax immediately. When not, we send it by mail.”⁷²²

The CSW is required to keep records of the incidents of violence under the Rules of Procedure.⁷²³ Yet, interviews revealed that this is not consistently done.⁷²⁴ One shelter worker explained the CSW’s inconsistent pattern of record-keeping: “In certain cases if violence is repeated. And sometimes it’s a matter of personal judgment whether to file or not, like if [a victim] comes 15 times, there are 2 official notes and there should be 15 notes.”⁷²⁵ Such inconsistent record-keeping can later impact a misdemeanor court’s decision on protective measures.

SUPPORT FOR VICTIMS

The LPDV charges the CSW, along with other related authorities, with allowing victims “access to appropriate services.”⁷²⁶ CSW employees frequently do not provide victims with information about their right to urgent protective measures under the LPDV, long-term protective measures of the LPDV, their right to free legal assistance, health care, counseling services, shelters, and safety plans or follow up to help victims obtain these services.⁷²⁷

Interviews indicated that CSW employees gave misleading and harmful information to victims of domestic violence, which jeopardized their safety. For example, one victim reported:

[T]he last time I went to social service, I told them I would move with my children...and they told me it was a stupid idea because he would find me....They told me that shelters are the worst idea because the children, after a shelter...hate their mothers because they think that the mothers are guilty for leaving the fathers....They told me that near the town there was a shelter, but everyone knew where it was so they didn’t recommend that one, and in Zagreb, there was no place for new women.⁷²⁸

Another victim stated, “I plan to sue CSW because [the social worker] told me she can put only me in the safehouse and not my children, not my boys [age 12 and 13] because no shelter in Croatia would admit them, which was a lie.”⁷²⁹ A CSW in another small town that did not want a shelter in the area initially refused to send women there.⁷³⁰

The CSW has the ability to award a victim a one-time financial payment for basic expenses, but it is not always an accessible or sufficient option for victims. These awards may not be as much as a victim needs to cover her living or legal costs. One victim recounted how she only received a one-time payment to pay for her children’s schoolbooks.⁷³¹ Another shelter employee noted that a forensic certificate might cost from 150-500 kunas, and that “[w]omen can get the money for it from CSW, but few know it.”⁷³² Further, some CSWs do not inform the

⁷²² Interview with CSW, City I, February 7, 2011.

⁷²³ Rules of Procedure, Section 1.B.2.6.

⁷²⁴ Interview with Lawyer, City K, October 13, 2010; Interview with NGO, City J, February 8, 2011.

⁷²⁵ Interview with Shelter, City J, February 8, 2011.

⁷²⁶ LPDV, Article 6(1).

⁷²⁷ Interview with CSW, City K, October 14, 2010; Rules of Procedure, Section 1.B.2.2.

⁷²⁸ Interview with Victim, City K, February 17, 2011.

⁷²⁹ Interview with Victim, City F, February 9, 2011.

⁷³⁰ Interview with NGO, City H, February 10, 2011.

⁷³¹ Interview with NGO, City F, February 7, 2011.

⁷³² Id.

victims that this is a possibility.⁷³³ Yet, when women do apply for the one-time aid, "...that is not reliable or guaranteed. She has to fight to get it...."⁷³⁴ Long-term financial assistance is another possibility, but that award is even rarer than the one-time financial payment.

ROLE IN DIVORCE CASES

The CSW also plays an important role in divorce cases in Croatia and is required to provide mediation to all parties who seek a divorce.⁷³⁵ Mediation in this context is usually geared toward reconciling the family. During one case of court-ordered mediation as part of a divorce, one CSW social worker told an indigent victim the state would give her a better place to stay if she preserved the family.⁷³⁶ Mediation by itself is problematic in domestic violence cases, and its risks are compounded by the CSW role.⁷³⁷

CSWs do not usually screen for domestic violence when clients come to them for divorce mediation,⁷³⁸ and CSW staff do not routinely inform victims they have the right to decline mediation in the presence of the perpetrator.⁷³⁹ In addition, CSWs rarely use shuttle or separate mediation to alleviate the unequal bargaining power of mediation. In fact, some CSWs require domestic violence victims to attend mediation sessions with their offender.⁷⁴⁰

The CSW also makes recommendations regarding the custody and visitation of children in domestic violence cases.⁷⁴¹ Where the parties do not agree, the CSW may convene an evaluation of the family by a CSW team of a psychologist, lawyer, and social worker.⁷⁴² While one judge praised the CSW reports that the team produces, this process is fraught with practices that re-victimize women.⁷⁴³ A shelter worker explained that the CSW holds at least three meetings before deciding who gets custody after the divorce. She explained, "This is where the problems occur, because this is the place women have to prove they are hard-working, fair, and a good mother, and the father doesn't have to prove anything. It is useful to say she is a bad mother and then the investigation into her mothering begins..."⁷⁴⁴

Interviewees reported that CSW workers minimize and even omit serious issues of domestic violence in their reports:

⁷³³ Interview with NGO, City K, October 13, 2010.

⁷³⁴ Interview with NGO, City C, February 10, 2011.

⁷³⁵ See Articles 44-52 of the Family Law for information about mediation in Croatia. For a discussion of the dangers of mediation in domestic violence, see "Mediation," *The Advocates for Human Rights*, February 14, 2012, <http://www.stopvaw.org/Mediation.html>.

⁷³⁶ Interview with NGO, City J, February 8, 2011.

⁷³⁷ For a discussion of the dangers of mediation in domestic violence, see "Mediation," *The Advocates for Human Rights*, February 14, 2012, <http://www.stopvaw.org/Mediation.html>.

⁷³⁸ Interview with State Home, City E, February 14, 2011.

⁷³⁹ Interview with NGO, City K, October 13, 2010; Interview with NGO, City B, February 15, 2011.

⁷⁴⁰ Interview with NGO, City B, February 15, 2011; Interview with CSW, City I, February 7, 2011; Interview with CSW, City F, February 7, 2011 ("Sometimes we do not invite them to come together" when it is especially dangerous); Interview with CSW, City J, February 8, 2011 (stating they see victims separately only if they are in shelter or if there is a restraining order); Interview with CSW, City H, February 10, 2011 (explaining the procedure is the same for mediation in domestic violence cases); Interview with CSW, City E, February 14, 2011 (describing holding mediation with the victim, the perpetrator, and a police officer); Interview with NGO, City K, February 15, 2011 (describing a situation where a batterer was going to be at the same table as the victim for mediation and she only received separate mediation because the NGO asked for it).

⁷⁴¹ Interview with NGO, City K, February 15, 2011.

⁷⁴² Interview with State Home, City A, February 14, 2011.

⁷⁴³ Interview with Judges, City J, February 9, 2011.

⁷⁴⁴ Interview with NGO, City D, February 11, 2011.

I recall some written reports from the centers that didn't mention at all the fact of family violence. I remember one case, it was a woman from the shelter. [The CSW] wrote the report on several pages, but there was no mention of family violence at all. It was very complex, heavy violence⁷⁴⁵

An NGO described how the CSW downplays references to domestic violence:

When we are starting divorce cases, we put violence as the main reason in divorce proceedings. But the center puts as the reason for divorce: "disturbed marital relations." We haven't seen a single verdict that states it is due to family violence. They put something very vague, even if there is a ruling. For example, in this case, the guy was in prison for two months because of family violence, but it won't appear in the CSW expert opinion as a factor. Nor the fact that he threw knives at his children.⁷⁴⁶

CSW reports have a pivotal role in judicial decisions, as courts nearly always follow the team's recommendations.⁷⁴⁷ "The CSW opinion is very important," noted a family court judge.⁷⁴⁸ Several interviewees corroborated this high deference judges give to CSW reports.⁷⁴⁹ Another judge, speaking about the custody decision, acknowledged that the court decision is basically "made in the CSW."⁷⁵⁰ Domestic violence victims have lost temporary custody based upon the recommendation of the CSW, and afterward, it is very difficult to have their situation re-evaluated fairly.

When the case involves immigrant or minority groups, interviews revealed devastating results after CSW intervention. One interviewee described the experience of a young immigrant woman from Kosovo who was neither a Croatian citizen nor spoke Croatian:

Her husband beat her severely while she was pregnant, to the point of serious injuries...When the child was three months old, he drugged [the victim] with medication. He put her on the bus almost unconscious...to Kosovo where his aunt lived. The aunt was on the bus with the victim...the baby was with the perpetrator. So then when she and the aunt were on the bus, the aunt called her family [in Kosovo] and said, "Here she is, come and get her."

The victim suffered such great physical and psychological harm that she sought medical treatment in Kosovo. After one month, she wrote to police in Croatia, stating that she wanted her baby. The aunt had taken her documents, so the victim could not re-enter Croatia, and it took several months to resolve the situation. Eventually, she was able to return to Croatia, where she stayed in a shelter, requesting that they help her get her baby from the father, who was now the guardian after claiming she abandoned the infant. She and the police filed criminal charges before the State Attorney, who refused to pursue the case because it lacked the requisite elements for a charge. The only option left for her was to apply for a divorce:

The court looked for the written opinion from CSW...the written opinion was that the child should be under the father's custody because during the two months...of the court process, the baby and the father were

⁷⁴⁵ Interview with NGO, City B, February 15, 2011.

⁷⁴⁶ Interview with NGO, City J, February 8, 2011.

⁷⁴⁷ Interview with NGO, City K, October 11, 2010; Interview with CSW, City J, February 8, 2011.

⁷⁴⁸ Interview with Judge, February 18, 2011.

⁷⁴⁹ Interview with NGO, City K, October 11, 2010; Interview with CSW, City J, February 8, 2011, interview with CSW, City I, February 7, 2011, interview with CSW, City E, February 14, 2011, Interview with Judge, City K, February 18, 2011.

⁷⁵⁰ Interview with Judge, City A, February 14, 2011.

bonded...Based on the fact that the court takes the written opinion of the [CSW] very seriously, I think there is a small chance that she will get the baby permanently...she sees the baby for two hours on Wednesday and Saturday...She works two shifts and has a flat, and she is really trying so hard...Now the CSW says she works all day so how can she take care of the child? The CSW heard her whole story...[they] say the child should live with the violent parent. They concluded this on the basis of material circumstances—he has the bigger salary.⁷⁵¹

A lawyer described a case involving a Roma woman who lost her children after suffering 14 years of heavy injuries, fractures, and bruises. The CSW removed the children for witnessing domestic violence and placed them in a state home. The lawyer concluded, “This case is typical of what would happen to a Roma woman...and during this period there were no protective measures because she went to a shelter...”⁷⁵²

PENALIZING VICTIMS WHEN CHILDREN WITNESS DOMESTIC VIOLENCE

The key role of the CSW in making custody and visitation recommendations is affected by the emphasis that the LPDV and Rules of Procedure place upon the best interests of the child. The LPDV emphasizes the welfare of children and prioritizes the interests of the children who are exposed to family violence.⁷⁵³ Article 6(3) requires the authorities to immediately inform the social welfare institutions to “take measures in protecting the rights and welfare of the child” if a child “appears as a victim.” The Rules of Procedure state that if a child is a victim, either by being exposed to violence or having witnessed scenes of violence, the CSW must propose a protective measure to the court and may also enact the measure at the same time.⁷⁵⁴

CSW employees frequently blame victims for violence and undermine victim safety when children witness the violence. When they do so, they re-victimize the woman by holding her responsible for the results of the offender’s criminal conduct. In one case, the husband, who had a long history of violence, and his father kidnapped and attempted to kill the husband’s wife. She escaped and filed for a protective measure against approaching or stalking her, but it still had not been granted in the four months preceding her murder. The CSW removed the child because they saw the woman as “[in]capable of protecting the child from a violent atmosphere in the family.”⁷⁵⁵ The woman moved to a shelter, and her lawyer requested the child be returned to her because she had a job, a safe place to live, and was no longer in a violent relationship. The CSW responded that a shelter is where highly traumatized women and children live, and thus a bad environment for children’s psychological development. Thus, the child must continue to live in an institutional home. The woman was later killed by her husband while she was visiting her child.⁷⁵⁶

In fact, interviews revealed that the CSW often view victims as responsible when a child witnesses domestic violence.⁷⁵⁷ When asked who allows the exposure if one parent is the offender and the other is the victim, a CSW employee replied, “They are both equally guilty.”⁷⁵⁸ A CSW employee summarized: “We tell her it is mostly her

⁷⁵¹ Interview with NGO, City F, February 7, 2011.

⁷⁵² Interview with NGO, City K, February 16, 2011.

⁷⁵³ LPDV, Article 6(4). See also Rules of Procedure, Section 1.B.3 (stating that the CSW is to ensure the child’s rights and interests are fully observed) and Section 1.B.5.

⁷⁵⁴ Rules of Procedure, Section 1.B.5.

⁷⁵⁵ Interview with NGO, City K, October 12, 2010.

⁷⁵⁶ Id.

⁷⁵⁷ Interview with Victim, City K, February 17, 2011; Interview with NGO, City B, February 15, 2011. See also “Effects of Domestic Violence on Children,” *The Advocates for Human Rights*, February 14, 2012, http://www.stopvaw.org/Effects_of_Domestic_Violence_on_Children.html.

⁷⁵⁸ Interview with CSW, City I, February 7, 2011. See also Interview with CSW, City D, February 11, 2011.

responsibility to protect the children. And if she doesn't do it, she is responsible for the violence they are witnessing or experiencing in domestic violence."⁷⁵⁹

A victim shared how the CSW held her responsible when her children saw the violence:

Because they tried to put me in the same position that I was a bad parent, because my children were watching everything and I had to protect them. Then I asked them how to protect my children. Put them in another room, then run across the house while he is chasing you? [The CSW] said, 'Tell your children to stay in the room,' but they open the door to see why mom is crying and all the noise and what's going on.⁷⁶⁰

The impact of such unrealistic expectations deters a woman from reporting violence out of fear she will be blamed for her children's exposure to it. Another deterrent for the victim to report domestic violence to the CSW is the threat of temporary removal of the children to a foster home.⁷⁶¹

Representatives of the Ministry of Health and Social Care stated:

We are now asking for powers in certain cases to take the child immediately out of the family for a short period of time without asking the judges...when we know the child is experiencing the abuse, but we have to wait for the judge to confirm this, and the judge does not go out into the field. We should get these powers in cases where the child is just witnessing domestic violence....⁷⁶²

Although removal does not appear to be widespread practice yet, some victims still fear their children will be removed should they seek help from the CSW.⁷⁶³ Indeed, interviews revealed that these concerns are well-grounded as victims of domestic violence are often warned about choosing to remain in the violent situation and that they could lose their children.⁷⁶⁴ An interviewee from a CSW noted that when speaking with victims, they discuss "the children in the family and the commitment to protect them...This is a warning like, to protect children from being in family violence, because some women decide to stay."⁷⁶⁵

A victim corroborated this use of warnings. She reported that the CSW gave her a first warning, "because I'm 'abusing my children,' because I don't 'protect them from the violence.' Because my ex-husband never was or has been violent to them. But [the children] had to listen to everything [he said] about me..."⁷⁶⁶ She continued, "Every time when the police came to our house, I would get a note from social service that I'm guilty, and I'm not a good mother because I don't protect them."⁷⁶⁷

⁷⁵⁹ Interview with CSW, City E, February 14, 2011.

⁷⁶⁰ Interview with Victim, City K, February 17, 2011.

⁷⁶¹ Interview with NGO, City B, February 15, 2011.

⁷⁶² Interview with Ministry of Health and Social Care, Zagreb, February 18, 2011.

⁷⁶³ Interview with NGO, City D, February 11, 2011.

⁷⁶⁴ See e.g., Interview with State Home, City K, February 11, 2011.

⁷⁶⁵ Interview with CSW, City K, October 14, 2010.

⁷⁶⁶ Interview with Victim, City K, February 17, 2011.

⁷⁶⁷ Id.

VISITATION RECOMMENDATIONS

Interviews indicate that the CSW employees have an idealized view of the nuclear family to the extent that they may recommend dangerous perpetrators have visitation with the children.⁷⁶⁸ This practice is especially dangerous given the homicides that have occurred during visitation. The CSW uses a very high threshold before they will bar or restrict visitation for offenders. One CSW employee explained that, “Only when we suspect sexual abuse from the father would I suggest no visitation.”⁷⁶⁹ A CSW worker explained:

We try to separate their relationship as partners from the parental status...there are situations where someone can be an abusive partner, but a good parent....There is a problem, e.g., if the woman is living in the shelter with the children, and the father asks for visitation rights...formally, she is still married to the abuser, and he is denied his parental right to see the children [because he cannot enter the shelter] so there is this issue of whose right are we going to protect?⁷⁷⁰

A shelter worker reported:

When [victims] come to us and bring their children, the CSW insists on contact being made with the father as soon as possible and for visitation rights to be enforced, even though it’s a case of violence and abuse that the children have witnessed. The CSW still asks for this to be done.⁷⁷¹

Another shelter corroborated the CSW’s approach, explaining, “The CSW pressures her to bring him, explaining that the violator was not violent to the children but to the woman only and they are forgetting that children are secondary victims...”⁷⁷²

One CSW employee, however, explained that awarding visitation requires a process that involves assessment and potentially supervision. The employee stated that “if the violent father wants to see the child, he has to request permission from the court and then the court asks for the official opinion of CSW. We write this after a big assessment process where the most important person is the psychologist who talks with the father, mother, and child, and an assessment is made if it is better to have supervised contact. And most of the time it is supervised.”⁷⁷³

The focus of supervised visitation is on the children’s welfare, and victims’ safety is generally overlooked. A lawyer noted that the role of the CSW during supervised visitation is to monitor the interactions of the parents with the child, not to protect the victim of violence.⁷⁷⁴ Another lawyer reported that CSW staff tend to dismiss victims’ fears regarding supervised visitation. The interviewee explained that when women express fear about bringing their child to visitation, the CSW tells her the child has the right to see the father and she should deal with her fear by going to a psychiatrist.⁷⁷⁵

⁷⁶⁸ Interview with NGO, City J, February 8, 2011; Interview with NGO, City K, February 11, 2011. Interview with State Home, City K, February 11, 2011.

⁷⁶⁹ Interview with CSW, City E, February 14, 2011.

⁷⁷⁰ Interview with CSW, City J, February 8, 2011.

⁷⁷¹ Interview with NGO, City K, February 11, 2011.

⁷⁷² Id.

⁷⁷³ Interview with CSW Karlovac, February 11, 2011.

⁷⁷⁴ Interview with State Home, February 11, 2011.

⁷⁷⁵ Interview with Lawyer, City K, October 13, 2011.

When the court orders supervised visitation for particularly dangerous perpetrators, there are few such facilities in Croatia.⁷⁷⁶ A staff member of the MoHSC mentioned that “the way that these measures are being implemented are like going to the cinema, meeting in a café, a park, a playroom, and shopping center, where neither the person meeting or the person implementing this supervision are protected.”⁷⁷⁷ Interviews revealed that the CSWs can supervise visitation on their premises, but rarely do so because they are not properly equipped, do not have time to do it, or are even fearful for their own safety.⁷⁷⁸ The MoHSC representative suggested the need for dedicated spaces for visitation with adequate security that would enable personnel to conduct the supervised visitation professionally and in safety.⁷⁷⁹ At the time of publication, such visitation spaces had not yet been created.

In practice, this lack of infrastructure, along with the general dismissal of victims’ fears, has resulted in the commission of further violence, including murder, against victims during visitation.⁷⁸⁰ One shelter recalled the murder of their client:

So, it was the doctor’s fault. But first, it was the fault of the courts—they did not assign any protective measures, not even compulsory psychosocial treatment. We just managed to get supervised visitation for when he sees the children. He supposedly checked himself into a mental asylum....[T]he doctor called the now-deceased woman to go and visit him, because she believed that this would be of great help to him. She went to Zagreb to do this, and a week later, he was released....[W]e managed...to get separation of property, divorce, custody of the children...But every week...she had to go to another city...for the father to be able to do his visitation. Ten days before the event occurred, she called me to ask what she should do, because she has to go every week, and the father does not turn up. He turns up every third time. I told her to call the Center for Social Welfare (CSW) to find out whether the husband was going to come or not. Ten days later, the thing happened....at the latest visitation, they stepped out of the CSW and he said, “Please could you let me play with the kids in the park for a little while longer?”....Two police officers passed by while they were sitting on the bench. They were searching for him and told him that he had to come with them, because his mother called him saying he called to say he wanted to take his own life. He asked him not to take him now; he would come of his own free will, because he was there with his children....Soon after the police left, he took out a gun and shot her. One child was holding onto her skirt, and the other child was in her arms. Once she was shot, she fell to the floor on top of the child she was holding, and the other child ran across the road screaming...

It was three years [of physical violence] ever since they got together. We don’t know why he wasn’t given protective measures. Leading up to that, he had 14 different charges brought against him for disturbing the peace, for violent conduct. We know she reported him before. Because when we went to pick her up and her child and her things, the police officers said, “Thank god that you’ve come to pluck this child out of this situation so that we don’t have to keep on coming here.” She was very young. This happened on August 25, 2010.⁷⁸¹

⁷⁷⁶ Interview with CSW, City D, February 11, 2011.

⁷⁷⁷ Interview with Ministry of Health and Social Care, Zagreb, October 18, 2010.

⁷⁷⁸ Interview with NGO, City K, October 13, 2010.

⁷⁷⁹ Interview with Ministry of Health and Social Care, Zagreb, February 18, 2011.

⁷⁸⁰ Interview with Lawyer, City K, October 13, 2010; Interview with NGO, Zagreb October 12, 2010; Interview with NGO, City K, October 10, 2010. See an example of murder during visitation on page 80.

⁷⁸¹ Interview with Shelter, Sisak, February 10, 2011.

CSW EMPLOYEES' FEARS OF PERPETRATOR

Several interviewees noted that CSW employees are concerned for their own personal safety when dealing with violent perpetrators, which influences their responses to the victims.⁷⁸² A CSW worker described an incident during a mediation session when a perpetrator with no record of previous violence attacked his wife, broke her arm in three places, broke her nose, and hurt the leg of the worker when she tried to protect the woman.⁷⁸³ A CSW employee in a different town stated that, "Very often we experience aggression towards us at CSW. We do not have any treatments or supervisions so workers can work on their trauma."⁷⁸⁴ One shelter worker stated:

...we know [the CSW workers] are in hard positions, e.g., ten days ago we had a woman who we received in our shelter and since that day, on a daily basis, from ten to fifteen times per day, her husband, the violator, barged into the [CSW offices] and threatened to kill them all because he is an invalid from the war, is a soldier, and has a rifle, and he will kill them all...⁷⁸⁵

A victim who was married to a perpetrator stated, "When both of us were at the CSW, he jumped on me across the table and said, "I will kill you and slaughter you. The headmistress and the social worker, they said that if I testified that that happened in their center they would deny that."⁷⁸⁶ Her current shelter advocate noted, "I cooperate a lot with that CSW, and I think that the Center is afraid of him and they want to wash their hands of the whole situation...."⁷⁸⁷

Even in very brutal cases of violence, the CSW's fear for their own security can impede their decision to render assistance to the victim. A lawyer reported:

A woman was seriously molested by her husband. I will tell you one fragment. He raped her with a rifle and then afterward, he put her naked on the street. They have children. [The CSW] gave the recommendation a few years ago that the children should live with the father, and they know everything about this. He was sentenced because of these criminal acts. The woman doesn't have work capability because of the injuries and the emotional injuries, because no one helped her. She cried for help in the CSW, and no one helped her. My opinion is that they were afraid.⁷⁸⁸

⁷⁸² Interview with State Home, City E, February 14, 2011; Interview with CSW, City L, October 14, 2010; Interview with CSW, City F, February 7, 2011 (stating "I try not to provoke him, I don't know martial arts"); Interview with CSW, City D, February 11, 2011 (describing her fear of placing a colleague in a car with a victim and their workers' trauma from aggression towards them); Interview with NGO, City B, February 15, 2011 (stating support is needed for CSW workers).

⁷⁸³ Interview with CSW, City F, February 7, 2011.

⁷⁸⁴ Interview with CSW, City D, February 11, 2010.

⁷⁸⁵ Interview with NGO, October 11, 2010.

⁷⁸⁶ Interview with Victim, City F, February 8, 2011.

⁷⁸⁷ Id.

⁷⁸⁸ Interview with Lawyer, City K, October 13, 2010.

FAMILY LAW JUDICIARY

Family law judges often encounter domestic violence in cases of divorce, and interviews revealed they do not consistently assess the risk of future violence by the perpetrator nor do they demonstrate sensitivity to victims' safety or their needs.⁷⁸⁹ In one particularly troubling case, a family judge told a victim that her husband would be more motivated to attend an alcohol recovery program if she and the children would come home. The victim had endured six years of abuse from her husband, who threw knives at her and the children, beat her, and raped her.⁷⁹⁰

One family law judge expressed an inaccurate and harmful stereotype about women, stating that women often lie about domestic violence charges:

Also, women are putting things in a negative context, and women have the tendency to make up stories more than men do, and they do it more often if men find a new lover. Men do not have the tendency to lie or make up stories.⁷⁹¹

Interviews also revealed that some family law judges perceive that finalization of a divorce renders a response to domestic violence claims unnecessary.⁷⁹² One judge stated to a victim, "You're divorced now. Is this [claim of domestic violence] going to be dropped now that it is over?"⁷⁹³ In fact, research shows divorce frequently does not end a perpetrator's use of violence.

INDEPENDENT JUDICIAL SCRUTINY OF CSW ROLE IN DIVORCE CASES

As discussed in the CSW section, parties to a divorce in Croatia are required to go through a mediation process, whether the divorce is consensual or not.⁷⁹⁴ Although mediation can take place in the CSW, a marriage counseling office, or with a mediator,⁷⁹⁵ mediation most often occurs in the CSW.⁷⁹⁶

Interviews revealed that family law judges do not provide adequate supervision of CSW mediation in divorce cases which involve domestic violence. Some judges are not familiar with the evidence-based research that shows that mediation in the presence of an abuser should never occur in cases where domestic violence is present.⁷⁹⁷ Despite a claim of domestic violence, one judge stated that "...the point is to get the clients together to resolve issues of marriage or children so they invite them together..."⁷⁹⁸ This practice is further complicated by the CSW's infrequent use of separate mediation in divorce cases involving domestic violence.⁷⁹⁹

⁷⁸⁹ Interviews revealed that family law judges encounter domestic violence cases in cases of divorce quite often. "It is not possible to give a percentage...but we can say that it is between 20 percent and 30 percent with a tendency to grow higher..." Interview with Judge, City F, February 9, 2011. According to another judge, "...it is hard to estimate the number. There may be only a few per year with the woman in the safehouse and the direct evidence of violence...but there are many more where there is no such information but we find out from the procedures." Interview with Judge, City K, February 18, 2011.

⁷⁹⁰ Interview with Shelter, City J, February 8, 2011.

⁷⁹¹ Interview with Judges, City F, February 9, 2011.

⁷⁹² See e.g., Interview with Victim, City K, February 17, 2011.

⁷⁹³ Id.

⁷⁹⁴ Family Law, Article 44.

⁷⁹⁵ Id., Article 46.

⁷⁹⁶ Interview with Judge, City F, February 9, 2011. See the discussion Role in Divorce Cases in the CSW section on page 78.

⁷⁹⁷ For further discussion about the dangers of mediation, see "Mediation," *The Advocates for Human Rights*, February 2008, <http://www.stopvaw.org/Mediation.html>.

⁷⁹⁸ Interview with Judge, City K, February 18, 2011.

⁷⁹⁹ See the discussion on the Role in Divorce Cases in the CSW section on page 78.

After the mediation, the CSW files a written report to the Family Court with recommendations on who should have custody, how much alimony should be awarded, and what the visitation schedule should be.⁸⁰⁰ CSW mediation teams are not required to have training on domestic violence,⁸⁰¹ and interviews revealed that some CSWs do not include the claim of domestic violence in their report to the Family Court.⁸⁰² Despite these inadequacies, interviewees agreed that family judges place great importance on the recommendations of the Center for Social Welfare.⁸⁰³ An advocate noted "... it is the practice for judges not even to read the written reports, not even to think about it, but just put their signature on it."⁸⁰⁴

CONSIDERATION OF DOMESTIC VIOLENCE IN DIVORCE AND CUSTODY CASES

During a divorce proceeding, family judges have the authority to take measures to protect the safety of children, such as custody determinations and supervised visitation.⁸⁰⁵ Both the law and practice consider only the safety of the child in these decisions, and there is no provision that directs family law judges to take similar measures to protect adult victims. Interviews revealed that some family law judges did in fact consider claims of domestic violence when they decided custody and visitation.⁸⁰⁶ One judge said, "Especially if one parent has been violent against the other and there is visitation, I make sure the mother isn't the one bringing the child to visitation ...so he cannot be violent."⁸⁰⁷

In general, however, interviews showed that family law judges, in their efforts to comply with Article 87(3) of the Family Law, prioritize the father's rights to see his children over the victim's safety, or believe that a victim is seeking to penalize an abuser by asking that visitation be denied.⁸⁰⁸ In one example that revealed little understanding of safety concerns, a judge stated:

But most often, cases are that one parent is violent to another parent, but not at all toward the children. She or he has great qualities as a parent and is not aggressive to the child at all. This is a problem situation, because you cannot determine the lines clearly. There is also another situation which often happens, that the parent who has endured the violence now has the opportunity to "get back" at the other parent, and for example, to ban or prohibit the contacts and say no, and then...you have to protect the 'batterer' in court.⁸⁰⁹

Interviews revealed that, despite obvious risk factors such as threats to kill and long histories of domestic violence, family law judges have ordered visitation with dangerous perpetrators who have even later murdered the victims.⁸¹⁰ In one dangerous case, the family court did not award supervised visitation. An advocate described the situation:

⁸⁰⁰ Interview with CSW, City I, February 7, 2010. See the discussion on the Role in Divorce Cases in the CSW section on page 78.

⁸⁰¹ Interview with CSW, City I, February 7, 2011.

⁸⁰² Interview with NGO, City B, February 15, 2011; Interview with NGO, City J, February 8, 2011.

⁸⁰³ Interview with CSW, City J, February 8, 2011, Interview with CSW, City I, February 7, 2011, Interview with CSW, City E, February 14, 2010, Interview with Judge, City K, February 18, 2011.

⁸⁰⁴ Interview with NGO, Zagreb October 11, 2010.

⁸⁰⁵ Interview with Municipal Court Judge, City B, February 14, 2011; Family Law, Articles 100 and 294.

⁸⁰⁶ Interview with Lawyers, City K, February 17, 2011; Interview with Judges, City F, February 9, 2011; Interview with Judge, City B, February 16, 2011.

⁸⁰⁷ Interview with Judges, City F, February 9, 2011.

⁸⁰⁸ Article 87(3) of the Family Law states that "a child has the right to life with its parents, in accordance with its well-being. If it lives apart from one or both parents, the child has the right to meetings and association with the parent(s).

⁸⁰⁹ Interview with Judge, City B, February 14, 2011.

⁸¹⁰ Interview with NGO, City K, October 10, 2010. See pages 80 and 83 for descriptions of such murders.

I had a case where a woman was physically abused and she was heavily beaten head to toe. She sustained a broken nose and a concussion...he got the right to see his children despite his being the abuser.⁸¹¹

In addition, overlooking or disregarding domestic violence in civil proceedings also places the victim's safety in jeopardy in the courtroom. This risk is heightened in civil proceedings where there is little or no notice of the danger because the perpetrator is regarded as a party to a divorce, not a defendant in penal proceedings.

LENGTH OF DIVORCE PROCESS

Interviews revealed that the divorce process can be very slow even if judges are aware the case involves domestic violence. A shelter advocate described that it takes approximately two years to get a divorce. One client initiated divorce proceedings in February 2010, and the first hearing was in October 2010. Her husband failed to appear, and one year after her initial filing, she is still waiting for the next hearing to be scheduled.⁸¹² Another advocate noted that one client was in the shelter for 13 months and has since begun living on her own; she is still waiting for her divorce to be resolved after two years.⁸¹³

Even when decisions such as temporary custody are at issue, the family courts do not act quickly. A lawyer noted that "courts actually prolong the process and the verdict, and we see cases where the first hearing actually happens after the period of the time when the whole process should have been over."⁸¹⁴ This practice endangers victims by continued exposure to abusers.⁸¹⁵

CONFIDENTIALITY IN COURT FORMS

Family court procedures do not provide adequate safeguards for victim safety when they require revealing the victim's residence. A lawyer noted that when a victim of domestic violence applies for temporary custody or for the divorce, her physical address must be on the form. If she is in a shelter, the abuser can potentially discover where she is staying. Even a post office box number address identifies the recipient.⁸¹⁶

PENALIZING VICTIMS WHEN CHILDREN WITNESS DOMESTIC VIOLENCE

Article 115 of the Family Law allows family court judges the authority to impose measures set forth in Articles 111 and 114 on "a parent that has not protected the child from the parent that abused parental responsibility, duties, and rights, for the sake of the good of the child...."⁸¹⁷ The severe standard set forth in Article 114 punishes the victim by holding her responsible for her offender's violent behavior and has a chilling effect upon a victim reporting domestic violence:

- (1) In a non-litigation procedure, a court will deprive a parent who abuses or grossly violates parental responsibilities, duties and rights of the right to parental care.
- (2) A parent is deemed to abuse or grossly violate parental responsibility, duties and rights if he or she

⁸¹¹ Interview with NGO, City K, February 11, 2011.

⁸¹² Interview with NGO, City H, February 10, 2011.

⁸¹³ Interview with NGO, City K, February 15, 2011.

⁸¹⁴ Interview with State Home, City K, February 11, 2011.

⁸¹⁵ United Nations, Handbook for Legislation on Violence against Women (2010), Sec. 3.9.2.

⁸¹⁶ Interview with State Home, City K, February 11, 2011.

⁸¹⁷ Family Law, Article 115.

1. exerts physical or mental violence on the child, *including exposing it to violence among the adult members of the family.*" (emphasis added)

These provisions fail to differentiate between the abusing parent and the protective parent, and between the primary aggressor and the victim acting in self-defense.

A family court judge confirmed a victim of domestic violence could be held responsible for allowing the child to see the violence. He added that a typical response would be the imposition of surveillance of the family for one year.⁸¹⁸

⁸¹⁸ Interview with Judge, City B, February 16, 2011. Article 111(1) of the Family Law states:

"In a non-litigation procedure the court will take away from a parent who to a major extent neglects the raising and upbringing of a child or where there is a danger to the proper raising of the child, the right to live with and bring up the child, and will confide the child to the care and upbringing of another person, an institution or another legal entity that carries out the activity of welfare."

HEALTH CARE INSTITUTIONS

The Rules of Procedure direct Health Institutions to offer “comprehensive health care with the aim of preserving physical and mental health of the victim and recovery from possible injuries and psychological traumas.”⁸¹⁹ Health care professionals are also involved in implementing addiction treatment under the LPDV. Thus, the health care sector plays an important role in terms of treating victims for their injuries, giving them information and referrals, providing documentation and evaluation of their injuries, and implementing and monitoring addiction measures.

RELUCTANCE TO REPORT AND HANDLE DOMESTIC VIOLENCE CASES

The Rules of Procedure state that when there is a “reasonable suspicion” that a patient’s health condition is the result of domestic violence, health workers must address the victim in a “very considerate manner” and encourage the victim to provide as much information as possible about the violence and the circumstances in which the injury or change in health occurred.⁸²⁰ The attitudes and demeanors of health care workers are influential in encouraging victims to speak up about the violence. This sensitivity is extremely important given that some victims in Croatia will delay receiving medical treatment for domestic violence injuries due to the stigma of being a victim. “I think our people aren’t accustomed to [talking about violence] and they need a lot of time to pass before they can talk to the doctor about violence,” stated a physician. “...it is still very shameful to go to the doctor or the hospital for that reason.”⁸²¹

Even if victims overcome their shame and seek help, they may encounter another barrier when the doctors are unwilling to examine them. Article 6 of the LPDV requires health institutions, social services, and related authorities to “take care of all the needs of victims and allow them access to appropriate services.”⁸²² Yet, interviews revealed that when a woman does seek medical attention, doctors have refused to examine her because her injuries were domestic violence-related. A CSW employee explained that if the woman’s primary care physician is not available when she seeks help, other doctors are reluctant to see the victim unless the police have accompanied her. The interviewee opined that the health care workers do not want to expose themselves to “danger or discomfort” in these cases.⁸²³ A shelter worker agreed with this assessment:

...I think part of them don’t want to be handling the domestic violence cases. We also had problems when calling the doctors to see if we can enroll our women in the shelter as their patients. As soon as you introduce yourself coming from this shelter, ‘Can you accept this client?’ They say, ‘No, I can’t. We don’t have any space [for her as a patient].’⁸²⁴

One interviewee suggested that a doctor’s fear of the perpetrator is also another reason for reluctance to assist domestic violence victims:

My doctor said, ‘I am a little bit scared. I don’t want to have any problems if the husband comes, in case he comes to look for them.’ It’s easier for [the doctors] not to deal with the problems...⁸²⁵

⁸¹⁹ Rules of Procedure, Section 1.C.

⁸²⁰ Id., Section 1.C.

⁸²¹ Interview with Doctor, City K, February 15, 2011.

⁸²² LPDV, Article 6 (1).

⁸²³ Interview with CSW, City E, February 14, 2011.

⁸²⁴ Interview with State Home, City A, February 14, 2011.

⁸²⁵ Interview with State Home, City A, February 14, 2011.

Yet, the doctor's report is often a key element in documenting and evaluating a domestic violence case, whether criminal or misdemeanor. Upon the General Attorney's Office or police request, the medical institutions must submit all evidence and documentation relevant for a criminal case.⁸²⁶ For example, a health care workers' certificate can also serve as an important piece of evidence and support victim veracity when compared with her testimony.⁸²⁷ If she recants due to fear or threats, the certificate serves as independent documentation of the assault.

Importantly, the doctor's examination determines the degree of injury and provides important documentation for the police and state attorney. This role is especially critical because many police rely on doctors to document injuries for their police reports.⁸²⁸ One officer noted:

To every victim I say the same: if you don't want the doctor to come to the house, go to the emergency room and bring me the medical report, and I will put that in the file. Otherwise, there is no documentation of the injuries.⁸²⁹

In addition, the Rules of Procedure require health care workers to identify the causes and means of the injury and conduct a complete medical check-up.⁸³⁰ This assessment is crucial given the high numbers of dual arrests and the police deferral to health professionals for identification of defensive injuries.⁸³¹

Interviews revealed that physicians do not consistently provide victims with an opportunity to safely tell the cause of their injuries. In one case, a woman suffered a broken nose when her husband threw her down and kicked her head. She stated that the doctor who treated her nose did not examine the rest of her body nor did he ask her any questions about the cause of the injury.⁸³² A shelter worker reported that a young woman was beaten severely by her husband during her pregnancy. During her visits to the emergency room, the husband or his mother, who was also violent, remained with the victim so that she could not openly tell the doctors about the violence.⁸³³

PATIENT CONFIDENTIALITY CONCERNS

Interviews revealed physicians' concerns over the lack of data privacy for the insurance forms and police forms they must complete.⁸³⁴ As discussed earlier, the LPDV imposes mandatory reporting requirements on health care workers when they encounter a case of domestic violence.⁸³⁵ The Rules of Procedure also obligate an emergency or primary care doctor to complete and file a formal injury report and deliver the report to the police and local health insurance office.⁸³⁶

⁸²⁶ Rules of Procedure, Section 1.C.6.

⁸²⁷ Interview with Police, City B, February 15, 2011.

⁸²⁸ See the discussion on Investigation in the Police section on page 18.

⁸²⁹ Interview with Police, City F, February 8, 2011.

⁸³⁰ Rules of Procedure, Section 1.C.2.

⁸³¹ See the section discussing dual arrests and self-defense on page 25.

⁸³² Interview with NGO (Park), City K, February 11, 2011.

⁸³³ Interview with Shelter, City F, February 7, 2011.

⁸³⁴ See e.g., Interview with Doctor, City K, February 15, 2011.

⁸³⁵ LPDV, Article 8.

⁸³⁶ Rules of Procedure, Sections 1.C.1, 1.C.4, 1.C.5. The physician is obligated to fill out Report of Injury/Illness Form No. 030911 or No. 030055.

The law presents health care professionals with a difficult choice in these circumstances. Many patients want and need confidential medical care, but health care professionals face a substantial fine if they fail to report to the police or the State Attorney.⁸³⁷ A physician revealed the following:

A victim begged me not to call the police because the situation would be worse at home. For example, sometimes the accused will be in custody for 24 hours or less and then he will get out. I told the police on the phone about the victim and the family violence...the victim asked me not to report, but [the police] had to go. It is a catch-22, and in small towns the perpetrator can know who told the police about him, and he could beat the doctor too.⁸³⁸

Furthermore, victims of domestic violence may need medical attention, but may not be ready for the intervention of the criminal justice system. Thus, the obligation for health care workers to report may deter victims from seeking treatment for their injuries if they know about this mandatory reporting.⁸³⁹

TRAINING FOR HEALTH CARE WORKERS

Interviews revealed an overall lack of sufficient training in all aspects of treating victims of domestic violence. Only one interviewee reported that medical professionals are trained to identify whether an injury was inflicted in self-defense in Croatia.⁸⁴⁰ Far more interviews suggested that physician training on screening for domestic violence injuries, how to talk to victims, and how to identify injuries, is just beginning in Croatia, with perhaps 10 to 15 doctors in the country participating.⁸⁴¹ In fact, an interview revealed that doctors at one of the largest emergency rooms in Croatia have not received training on the broader issue of screening, treatment, and documentation of domestic violence injuries.⁸⁴² Further, an emergency room supervisor noted that students in medical schools are not trained to identify domestic violence injuries.⁸⁴³

⁸³⁷ Interview with Police, City E, February 14, 2011; LPDV, Article 21.

⁸³⁸ Interview with Doctor, City K, February 15, 2011

⁸³⁹ Victims may expect the doctor is likely to determine that their injuries are from domestic violence. Interview with NGO, City K, February 15, 2011. They may also fear or know that the doctor is obligated to report a domestic violence injury to the police or the State Attorney without her consent under the LPDV (Article 8). In other words, if a victim seeks medical care, her case may become known to the criminal justice authorities regardless of her wishes.

⁸⁴⁰ Interview with Police, City D, February 11, 2011.

⁸⁴¹ Interview with Doctor, City K, February 15, 2011.

⁸⁴² Interview with Director of Emergency Center, City K, February 18, 2011.

⁸⁴³ Id.

NON-GOVERNMENTAL ORGANIZATIONS AND OTHER ACCOMMODATION SERVICES

[T]hat shelter saved me....[The shelter worker] gave me the strength for everyday struggles. She helped me a great deal.... Life is good again. Sometimes, you need someone to put you on your legs again...the girls at the shelter did [that] for me.⁸⁴⁴

Non-governmental organizations (NGOs) play a critical role in the implementation of Croatia's laws on domestic violence.⁸⁴⁵ These organizations engage in a wide array of activities, including providing much-needed services to victims, promoting public awareness and education campaigns, and helping coordinate the response among the many sectors involved in domestic violence. However, unpredictable and insufficient funding threatens the important work of these service providers. Funding shortages have forced NGOs to furlough employees and even close shelters.⁸⁴⁶

SHELTERS

Many NGOs provide shelters for victims of violence and their children.⁸⁴⁷ In addition, shelters provide more than just a place to stay for victims and their children. Shelters provide daily empowerment and assistance to victims, which is key to successful, long-term prevention of further violence.

Adequate safe housing for victims is still, however, very much in need in Croatia. As discussed above, given the reluctance of the judiciary to grant protective measures evicting perpetrators from their family homes as permitted under the LPDV, the need to provide a secure place for victims to live is even more essential.⁸⁴⁸

There is an important distinction to be made between autonomous women's shelters run by grassroots women's organizations and accommodation services run by the government. Autonomous women's shelters are operated by NGOs founded by women's groups that are an integral part of the women's movement. These shelters work based on the principle of women's self-help (women helping women). They are self-regulating and are independent of state bodies, political parties, religious organizations, and private companies. On the other hand, a "state home," as it is referred to throughout this report, is a state, city, or county institution that may or may not have been opened in cooperation with an existing NGO or through the creation of a new NGO. Such a home may offer care to wards of both sexes, victims of domestic violence, addicts, homeless persons, victims of trafficking,

⁸⁴⁴ Interview with Victim, City K, February 17, 2011.

⁸⁴⁵ When used in this report, the term NGO refers to an organization that is a legal entity separate from the formal institutions of government, that retains autonomy over its programming, and that funds some portion of its expenses through non-governmental sources. This is not to say that NGOs operate completely free of government regulations, however. As discussed later in this report, many NGOs dealing with domestic violence receive a substantial portion of their funding (up to 90% in some instances) from government sources, and such funding often comes with restrictions regarding use of the funds and requirements as to the NGO's operations. Interview with NGO, City K, October 10, 2010; Interview with NGO, City D, February 11, 2011. State and city-operated homes for adult and child victims of domestic violence are referred throughout this report as "state homes." Citations to an "NGO" throughout the footnotes may refer to an organization that also operates as a shelter for victims of domestic violence victims. Citations to a "state home" throughout the footnotes refers to a shelter that is not entirely independent of the government and may be operated by state employees, or to an accommodation facility that operates in compliance with the Regulations for the Type and Activities for Social Welfare Homes, the Manner of Providing Care out side of Family, Conditions of Space, Equipment and Employees of Social Welfare Homes, Therapeutic Communities, Religious Institutions, NGOs and Other Legal Entities and Centers for Help and Aid in the Home.

⁸⁴⁶ Interview with NGO, City B, February 15, 2011; Interview with NGO, City J, February 8, 2011.

⁸⁴⁷ Interview with NGO, City K, February 15, 2011; Interview with NGO, City C, February 10, 2011.

⁸⁴⁸ Eviction is very infrequently ordered as a protective measure. Risser and Tanay, 52; Interview with NGO, City B, February 15, 2011; Interview with State Home, City E, February 14, 2011; Interview with NGO, City K, February 15, 2011; Interview with Police, City D, February 11, 2011. In one region in northwestern Croatia, the protective measure of eviction accounted for only 3 percent of all protective measures ordered in domestic violence cases in 2010. Interview with Police, City F, February 6, 2011.

asylum seekers, and migrants, among others. State, city, and county homes must comply with regulations, as must NGOs that sign these regulations and contract with the Ministry of Social Policy and Youth.⁸⁴⁹ These NGOs have typically been founded by employees or former employees of state institutions or are actual NGOs that opened shelters in cooperation with the government; they therefore are not truly autonomous shelters, particularly as government officials often serve on the shelter's board.

Shelters in Croatia face numerous challenges. First, lack of capacity is a serious problem.⁸⁵⁰ The UNDP noted that Croatia's shelter capacity on a per capita basis fell at least 20 percent below European Council standards.⁸⁵¹ According to UNDP, there were 18 shelters and homes for adult and child victims of domestic violence in Croatia in 2010.⁸⁵² The exact number of operational shelters fluctuates, however, since shelters are highly vulnerable to closure when funds are scarce. These shelters range in size, housing anywhere from 10 to 40 individuals.⁸⁵³ Even at its high point, the availability of shelter space is grossly inadequate for the number of victims, which the MoI reported was 20,566 reported victims of misdemeanor-level domestic violence in 2008.⁸⁵⁴ Many autonomous women's shelters and state homes report that they are often full, forcing them to turn women away.⁸⁵⁵

Another barrier to safe refuge for victims is the state home referral system. State homes funded by the MoHSC can only accept victims referred by the CSW or police; most often, personnel at these state homes will even redirect clients to the CSW or police first.⁸⁵⁶

This referral requirement, coupled with the common practice of referring victims to state homes and not autonomous shelters, can inhibit shelter access for victims who are not ready to report their experience of violence to the authorities. One state home worker illustrated, "...few institutions refer people here... This is nonsense because this home has sixteen places, and we cover many counties. Five hundred thousand people, half empty. Something is wrong."⁸⁵⁷ One state home worker recounted a victim who was unable to access their help, because of her fear in reporting the violence:

I told her to go to CSW and tell them she wants to go to the safehouse, but she said she doesn't trust them or the police, and she didn't want to say her name. So, there was no help provided. She didn't trust anyone, but she had to have the paper from CSW because of our contract with them.⁸⁵⁸

⁸⁴⁹ The law, Regulations for the Type and Activities for Social Welfare Homes, the Manner of Providing Care out side of Family, Conditions of Space, Equipment and Employees of Social Welfare Homes, Therapeutic Communities, Religious Institutions, NGOs and Other Legal Entities and Centers for Help and Aid in the Home ("Rules for State Homes"), governs the operations of these homes.

⁸⁵⁰ Interview with NGO, City K, October 13, 2010; Interview with State Home, City K, February 11, 2011; Risser and Tanay, 36. While some interviewees reported empty beds in shelters, funding criteria and the referral system may impact victim eligibility to access these spaces.

⁸⁵¹ Risser and Tanay, 2.

⁸⁵² *Id.*, at 19. Current, accurate statistics on shelters can be difficult to obtain both because of the confidential nature of the location of many shelters and the recent, periodic shelter closures due to funding shortfalls.

⁸⁵³ Interview with NGO, City K, October 13, 2010; Interview with NGO, City F, February 7, 2011.

⁸⁵⁴ "Report on the Implementation of the Family Violence Procedure Protocol during 2007 and 2008," *Ministry of Family, Veterans' Affairs and Intergenerational Solidarity*, 2009, 6.

⁸⁵⁵ Interview with NGO, City K, October 13, 2010; Interview with NGO, City H, February 10, 2011; Risser and Tanay, 36.

⁸⁵⁶ Interview with State Home, City E, February 14, 2011; Interview with State Home, City A, February 14, 2011; Interview with State Home, City K, February 11, 2011. But some NGOs reported concerns that police and CSW workers sometimes refrain from referring victims to shelters, either because they are unaware of the shelter or to avoid acknowledging that domestic violence exists in their region. Interview with NGO, City H, February 10, 2011; Interview with NGO, City F, February 7, 2011; Interview with NGO, City F, February 7, 2011. The mandatory referral requirement can impact funding for state homes that receive funding per bed when accommodation is contingent on referrals, as discussed in the following section.

⁸⁵⁷ Interview with NGO, City F, February 7, 2011.

⁸⁵⁸ Interview with State Home, City E, February 14, 2011.

Because authorities in most cases do not refer women to autonomous shelters, where there is no reporting requirement, women who do not wish to report violence and are unaware of these autonomous shelters are then left without safe refuge.

Problems with Funding Eligibility and Adequacy

The greatest threat facing shelters is funding. Shelters and state homes receive funding from a variety of sources, including private donations, international bodies, other NGOs, and earned income.⁸⁵⁹ Most NGOs, however, receive the bulk of their funding from government agencies, both at the national and local levels.⁸⁶⁰ Government financing is often seriously delayed or insufficient to meet shelters' needs—since 2010, nearly all shelters in Croatia have experienced funding cuts.⁸⁶¹ Moreover, NGOs reported difficulty in financing that portion of their expenses not paid by the government.⁸⁶² The effects of these funding challenges are devastating and have led to prolonged furloughs for shelter employees and shelter and state home closures.

At the time of the authors' fact-finding, there were two primary, Ministry-driven funding schemes in Croatia: 1) a tripartite financing plan from the (then) Ministry of Family, Veterans' Affairs and Intergenerational Solidarity (MoF) and local governments for autonomous women's shelters; and 2) a per-bed budgeting scheme from the Ministry of Health and Social Care (MoHSC) for state homes and those NGOs that must comply with the Rules for State Homes.⁸⁶³ Both of these funding schemes pose problems for shelters in terms of strict eligibility requirements, protracted delays in disbursements, and insufficient funds.

In the first scheme, NGOs are in theory to receive 30 percent of their funding from each of three government entities: 1) the MoF at the national level; 2) the city; and 3) the county in which the NGO is located (hereinafter, referred to as the "30-30-30 plan").⁸⁶⁴ The NGO must satisfy the remaining 10 percent of its funding needs through other sources.⁸⁶⁵ This scaled plan is problematic as one government level often waits for other governments levels to disburse its funds before it will do so. In addition, as this section discusses further, this tiered plan has not functioned successfully since it began in 2009; subsequent cuts in 2010 have resulted in this plan not being achieved in reality.

In the second scheme, the state and city institutions that shelter adult and child victims of family violence, as well as NGOs founded by the state or city (i.e. state homes), receive funding from the MoHSC. The amount of funding is determined by the number of filled beds.⁸⁶⁶ A MoHSC official explained that the number of spaces funded at each state home is periodically reevaluated and adjusted based on data about domestic violence rates in the area

⁸⁵⁹ Interview with State Home, City I, February 7, 2011; Interview with NGO, City J, February 8, 2011; Interview with State Home, City E, February 14, 2011; Interview with NGO, City F, February 9, 2011.

⁸⁶⁰ Interview with NGO, City K, October 12, 2010; Interview with NGO, City C, February 10, 2011; Interview with NGO, City F, February 9, 2011.

⁸⁶¹ Risser and Tanay, 3.

⁸⁶² Interview with State Home, City I, February 7, 2011; Interview with NGO, City K, February 16, 2011; Interview with NGO, City J, February 8, 2011; Interview with NGO, City F, February 9, 2011; Interview with NGO, City H, February 10, 2011.

⁸⁶³ As of 2012, both the MoF and the MoHSC have been reorganized to form three new ministries, the Ministry for Social Policy and Youth, the Ministry for Veterans, and the Ministry for Health. This report refers to the (then) Ministry of Family, Veterans' Affairs and Intergenerational Solidarity and the Ministry of Health and Social Care by MoHSC by their former names to more accurately reflect findings.

⁸⁶⁴ Interview with NGO, City K, October 12, 2010; Interview with NGO, City J, February 8, 2011; Interview with NGO, City D, February 11, 2011; Interview with NGO, City K, February 11, 2011.

⁸⁶⁵ Interview with NGO, City K, October 12, 2010; Interview with NGO, City J, February 8, 2011; Interview with NGO, City K, February 11, 2011.

⁸⁶⁶ Interview with State Home, City A, February 14, 2011; Interview with NGO, City F, February 9, 2011; Interview with NGO, City F, February 7, 2011. The MoHSC reported that, as of February 2011, the funding rate was 3,200 kunas (approximately 426 Euros) per-person per-month. Interview with Ministry of Health and Social Care, Zagreb, February 18, 2011.

served by the state home and whether the home has routinely been full.⁸⁶⁷ It is unclear whether such periodic funding adjustments adequately capture the true extent of the home's client base. Indeed, one state home reported that the number of beds for which it receives MoHSC funding is significantly fewer than the actual number of beds it provides and the number of clients it serves.⁸⁶⁸ Interviewees also reported that per-person funding can be ineffective when provision of accommodation is contingent on receiving client referrals.⁸⁶⁹

Shelters and state homes can and do receive funding under both systems from the MoF and the MoHSC.⁸⁷⁰ Working with multiple government agencies with different and sometimes complicated funding requirements adds to the administrative costs.⁸⁷¹ Shelter personnel noted that different government bodies often have distinctive eligibility criteria for funding and their own application procedures.⁸⁷² This is, in part, necessary because of the significant differences in principles and programs of work between the state homes and autonomous shelters. For example, shelters that have funding contracts with the MoHSC must comply with a variety of MoHSC regulations regarding shelter staff, premises, and operations, including prescribing the maximum permitted stay.⁸⁷³

The strict conditions set by the MoF, on the other hand, pose even greater obstacles for many NGOs not only because of the various inconsistent requirements but also because they do not reflect the actual needs of the shelter.⁸⁷⁴ As the State Secretary of the MoF explained, "...every single kuna has to be justified....We know exactly how much is needed, and we provide it with that."⁸⁷⁵ According to one NGO worker, however, the government's criteria does not reflect an understanding of the operations of a shelter, and new 2011 criteria was developed without any consultation with the shelters.⁸⁷⁶ It imposes restrictive rules on them that do not reflect the actual costs of running the shelter. She provided the following example:

In the financing section, the criteria stipulate that 10 percent of all costs should be travel costs, which is 10-20 times more than the shelters need. Similarly, 30 percent should be spent on food—again, much more than is necessary—while the actual salaries for shelters workers, lawyers, and psychologists should be only 30 percent, even though their work constitutes the entire program.⁸⁷⁷

The MoHSC's per-bed funding is unworkable for smaller state homes and those serving less populated areas, and it does not account for the many victim services that NGOs provide aside from housing.⁸⁷⁸ One shelter that did not contract with the MoHSC explained its sense of relief of not being yoked to the instabilities of the per-bed basis scheme:

⁸⁶⁷ Interview with Ministry of Health and Social Care, Zagreb, February 18, 2011.

⁸⁶⁸ Interview with NGO, City F, February 9, 2011.

⁸⁶⁹ See e.g., Interview with NGO, City F, February 7, 2011.

⁸⁷⁰ Interview with State Home, City I, February 7, 2011; Interview with NGO, City B, February 15, 2011.

⁸⁷¹ Interview with NGO, City D, February 11, 2011; Interview with NGO, City B, February 15, 2011.

⁸⁷² Interview with NGO, City D, February 11, 2011; Interview with NGO, City B, February 15, 2011; Interview with Ministry of Health and Social Care, Zagreb, February 18, 2011; Interview with Ministry of Family, Veterans' Affairs and Intergenerational Solidarity, Veterans' Affairs and Intergenerational Solidarity, Zagreb, February 18, 2011.

⁸⁷³ Interview with Ministry of Health and Social Care, Zagreb, February 18, 2011; Interview with NGO, City B, February 15, 2011.

⁸⁷⁴ See e.g., Interview with NGO, City B, February 15, 2011; Interview with NGO, City D, February 11, 2011. One NGO explained: "[I]t's very hard for us as an organization to manage because everyone has their own conditions, so it's like a magic circle and you cannot break through it. So, everyone can say, 'Yes, we are willing to give money, but [the criteria] didn't apply...' Everyone is willing but there is something wrong with us as an organization because 'we cannot fulfill criteria,' and all we are doing is trying to fulfill all these kinds of criteria. It's very frustrating." Interview with NGO, City B, February 15, 2011.

⁸⁷⁵ Interview with Ministry of Family, Veterans' Affairs and Intergenerational Solidarity, Zagreb, February 18, 2011.

⁸⁷⁶ Autonomous Women's House Zagreb, "Securing the Shelters: Activities Update," September 28, 2011 (summary, on file with authors).

⁸⁷⁷ Id.

⁸⁷⁸ Interview with NGO, City F, February 7, 2011.

“[W]e are not tied to a number of victims, which is important because we are a small shelter and we might only have two women, but the expenses are the same except for food. So, it is good to have the same amount every month.”⁸⁷⁹

Finally, CSW workers explained that the CSW pays for victim accommodations only at state homes and NGOs that contract with the MoHSC.⁸⁸⁰ Similarly, the modest “pocket-money” allowance that the CSW provides to victims is only available to those who go to a MoHSC-contracted home.⁸⁸¹ Victims at MoF-funded autonomous women’s shelters are not eligible to receive this pocket-money or the CSW housing allowance.⁸⁸²

The unpredictability of government funding has also proven difficult for NGOs providing shelters and services to domestic violence victims, because it results in extensive delays and fund reductions. Many NGOs receive state funding on an annual basis, with funding for each calendar year requiring reapplication by the NGO and sometimes execution of a new contract with the relevant agency.⁸⁸³ The negotiation and execution of annual contracts is an inefficient process that takes considerable time, leading to serious delays in funding pending approval of the state budget.⁸⁸⁴ As a result, the first disbursement of funds is often received in May for the current calendar year. Also, these funds are often inadequate and inconsistent, as their amounts have tended to diminish further each year.

Compounding the problem, funding delays by the MoF leads to delays in funding from the counties and cities that should be participating in the 30-30-30 plan, as local officials wait to learn the amount of national funding paid before allocating local funds.⁸⁸⁵ Interviews revealed that local governments delay in providing their portion of a shelter’s budget, even if the money is available, before the state has determined what its contribution will be.⁸⁸⁶

This protracted nature of funding disbursement has a negative impact on shelters throughout Croatia, disrupting services to victims and causing significant frustration for NGOs.⁸⁸⁷ One NGO explained this was a problem common to all shelters across the country, and since none of them had signed a contract yet, none had received any payment.⁸⁸⁸ Another NGO illustrated its predicament in February 2011:

“[The Ministry of Family and the city and county governments] said they would give us continuous funding, but it is not until now that the Ministry of Family has paid us, and it is not continuous, and the city and county are doing the same thing. So it is mid-February, and we have no money in our bank account for our shelter....the first payment should be in May, but how we will live until then, I don’t know.”⁸⁸⁹

⁸⁷⁹ Id.

⁸⁸⁰ Interview with CSW, City J, February 8, 2011; Interview with CSW, City F, February 7, 2011.

⁸⁸¹ Interview with CSW, City J, February 8, 2011.

⁸⁸² Id.

⁸⁸³ Interview with NGO, City J, February 8, 2011; Interview with Ministry of Health and Social Care, Zagreb, February 18, 2011; Interview with NGO, City F, February 7, 2011.

⁸⁸⁴ Interview with Ministry of Family, Veterans’ Affairs and Intergenerational Solidarity, Zagreb, February 18, 2011.

⁸⁸⁵ Interview with Member of Parliament, Zagreb, February 16, 2011. Moreover, a government official noted that nothing in the 30-30-30 financing scheme among the Ministry of Family and city and county governments obligates the city and county to pay their share and that local funding therefore varies with the level of commitment of the individuals in office in each jurisdiction. Id.

⁸⁸⁶ Id.

⁸⁸⁷ Interview with NGO, City K, October 12, 2010; Interview with NGO, City F, February 7, 2011; Interview with NGO, City D, February 11, 2011; Interview with NGO, City J, February 8, 2011.

⁸⁸⁸ Interview with NGO, City J, February 8, 2011.

⁸⁸⁹ Interview with NGO, City D, February 11, 2011.

Because of the MoF's policy, shelters reached a crisis point in the first half of 2011, when the MoF deferred automatic renewal of its existing contracts with seven autonomous shelters.⁸⁹⁰ The MoF explained it was waiting for the Finance Minister to approve the budget for the new National Strategy of Protection against Family Violence. This decision had a domino effect, with cities and counties adopting the same excuse to withhold their payments.⁸⁹¹ Consequently, several NGOs went months without payment, with one NGO reporting it did not receive its first payment until June 2011.⁸⁹²

Even when the government funding does eventually come through, the amounts actually disbursed by government agencies often fall well short of the amount promised.⁸⁹³ One NGO described that most shelters do not always receive the promised 30 percent from the ministry, city, and county. A shelter staff person explained they while they received 30 percent from the city, they only received 13 percent from the county and 26 percent from the Ministry.⁸⁹⁴

Similarly, interviewees reported that MoHSC funding is often insufficient to provide for the needs of shelters and their clients.⁸⁹⁵ These organizations are forced to make up deficiencies through emergency funds, fundraisers, and other ad hoc channels. When asked how they raise the remaining funds, one NGO responded "With great difficulty." She further explained that although the UNHCR paid some of their grocery and gas bills during a recent visit, they still owe approximately 20,000 kunas (approximately 2,658 Euros) in utility bills from last year.⁸⁹⁶

Finally, the current stipulation that shelters receive funding contingent on the state budget's capacities poses the additional threat that funds will be further reduced toward the year's end.⁸⁹⁷ These difficulties indicate a need for increased research on shelters' financial needs, a dedicated line item in the state budget, and a firm commitment to funding shelters.⁸⁹⁸ For example, one state official noted with concern that the National Strategy does not specify the amounts needed to fund the initiatives it proposes, nor does it identify the source of such funds.⁸⁹⁹

These problems have led a coalition of autonomous women's shelters to push for the adoption of a law on shelter financing. While it has received wide support from women members of parliament, ombudspersons, and the

⁸⁹⁰ Autonomous Women's House Zagreb, "Securing the Shelters: Activities Update," September 28, 2011 (summary, on file with authors).

⁸⁹¹ Id.

⁸⁹² Id.

⁸⁹³ One NGO participating in the 30-30-30 funding scheme reported receiving only 56 percent of the amount promised by government sources in 2010. Interview with NGO, City J, February 8, 2011. In 2010, it received only 10 percent, instead of the promised 30 percent, from the MoF, and total government funding received comprised just 51 percent of its annual funding, rather than the 90 percent expected. Interview with NGO, City J, February 8, 2011. One NGO noted that both the Ministry of Family and the county provided reduced funding in 2010 and 2011, while another NGO reported that the city and county each reduced funding by 30 percent and 70 percent, respectively, in its first year. A third NGO lost 50 percent of its city funding in 2010. In 2011, it received only 5 percent from the county and 1 percent from the city. Interview with NGO, City K, October 12, 2010; NGO, email to Rosalyn Park, August 26, 2011, on file with authors; Autonomous Women's House Zagreb, "Securing the Shelters: Activities Update," Sept. 28, 2011 (summary, on file with authors); See also Interview with NGO, City D, February 11, 2011; Interview with State Home, City A, February 14, 2011; Interview with NGO, City F, February 9, 2011; Interview with NGO, City F, February 7, 2011; Interview with NGO, City D, February 11, 2011; Interview with NGO, City K, February 11, 2011.

⁸⁹⁴ Valentina Andrasek, email to Rosalyn Park, October 26, 2011, on file with authors.

⁸⁹⁵ Interview with State Home, City A, February 14, 2011; Interview with NGO, City F, February 9, 2011; Interview with NGO, City F, February 7, 2011.

⁸⁹⁶ Interview with Shelter, City H, February 10, 2011.

⁸⁹⁷ Autonomous Women's House Zagreb, "Securing the Shelters: Activities Update," September 28, 2011 (summary, on file with authors).

⁸⁹⁸ In a 2010 report, the UNDP remarked on the absence of research to identify the amount of funding needed to fully finance programs serving domestic violence victims in Croatia. Risser and Tanay, 18.

⁸⁹⁹ Interview with Member of Parliament, Zagreb, February 16, 2011; *National Strategy of Protection against Family Violence for the Period 2008 – 2010*, 91, 93. For most measures called for by the National Strategy, the National Strategy simply states: "Required financial resources will be provided from the State Budget, within competent bodies' budgetary positions," without specificity as to the amount or source. Government of the Republic of Croatia, *National Strategy for Prevention of Family Violence for the Period 2008 – 2010*. (Ministry of Family, Veterans' Affairs and Intergenerational Solidarity. Zagreb, 2008), 86-87; 90-98.

public, the law met with resistance from the MoF, which suggested that the shelters become government-sponsored homes instead.⁹⁰⁰ This not only poses the risk that the shelters lose their autonomy, but also that the funding matter will remain unresolved.⁹⁰¹ For example, one shelter that did contract to become a state home has since closed, ironically, due to a lack of funding.⁹⁰² The new government has demonstrated greater willingness to adopt such a law, but the bill's working group has poor representation from autonomous NGOs and is composed of state home employees, church officials, and representatives of perpetrator treatment programs. There are only two autonomous shelter representatives in the eleven-person working group. The inadequate representation of autonomous women's shelters in the working group means a lower, disproportionate voting power and the increased likelihood that their interests will be excluded from the law. In addition, the working group was established not for the purpose of proposing a law on shelter financing, but a law on financing all types of accommodation for adult victims of violence. This positions the working group to address the funding for both state homes and autonomous shelters in one law, which fails to reflect their different financial structures, obligations, and operations. Further, the government's priority of state homes has persisted, and early reports suggest the bill may force all shelters to become state homes and thus compromise their autonomy and principles. Finally, although the group met twice in the spring 2012, the process appeared to be stalled at the time of publication.⁹⁰³ There has been no further progress on the bill despite a July 2012 deadline for the bill's first draft.⁹⁰⁴

Effects of Funding Challenges: Shelter Furloughs and Closures

In an interview, the State Secretary of the MoF minimized the impact of these delays on shelters, stating that shelters should function "normally" during these delays and that shelter personnel "know they have their livelihoods guaranteed in the state budget."⁹⁰⁵ When asked if funding to combat domestic violence is sufficient in Croatia, the State Secretary of the MoF replied, "Definitely. Definitely I think there is enough money for combating domestic violence in Croatia. The shelters get as much as they themselves say they need."⁹⁰⁶ Yet, this comment was in stark contrast to the information the authors received from other sources, including the shelters themselves.

Funding delays and shortfalls have led shelters to cut staff wages, lay off staff, and, in the worst cases, close doors.⁹⁰⁷ The authors met several shelter employees who had agreed to forego or reduce their salaries so that the shelter's other expenses could be paid.⁹⁰⁸ One shelter reported that funding delays had resulted in employee furloughs, while another shelter bridged the funding gap by having employees take on additional work without increases in pay.⁹⁰⁹ One NGO explained:

"[A]ll of [our] teams, the social worker, head of NGO and shelter, all worked the entirety of last year for 40 percent of pay. And now, we are all volunteering – we are working with the heart now."⁹¹⁰

⁹⁰⁰ Autonomous Women's House Zagreb, "Securing the Shelters: Activities Update," September 28, 2011 (summary, on file with authors).

⁹⁰¹ Id.

⁹⁰² Id.

⁹⁰³ Valentina Andrasek, email to Rosalyn Park, July 19, 2012, on file with authors.

⁹⁰⁴ Id.

⁹⁰⁵ Interview with Ministry of Family, Veterans' Affairs and Intergenerational Solidarity, Zagreb, February 18, 2011.

⁹⁰⁶ Id.

⁹⁰⁷ Interview with NGO, City B, February 15, 2011; Interview with NGO, City J, February 8, 2011.

⁹⁰⁸ Interview with NGO, City J, February 8, 2011; Interview with NGO, City H, February 10, 2011; Interview with NGO, City D, February 11, 2011.

⁹⁰⁹ Interview with NGO, City D, February 11, 2011; Interview with NGO, City J, February 8, 2011.

⁹¹⁰ Interview with NGO, City H, February 10, 2011. This NGO has also been forced to take out loans to continue operating. Id.

Of great concern, many shelters faced the possibility of closure in April 2011 as a result of the loss in financing pending approval of the National Strategy.⁹¹¹ In a poignant example, one shelter – the only shelter in its county – was forced to close for more than a year due to a lack of funding.⁹¹² The shelter had reopened at the time of the authors' mission, but has since closed again as a result of funding shortages.⁹¹³

Other Shelter Considerations

Shelter Restrictions

Shelters typically provide housing to victims for a limited period of time, often between six and twelve months.⁹¹⁴ Many NGOs allow extended stays where circumstances warrant, but due to capacity constraints, shelters are unable to provide a long-term solution.⁹¹⁵ Once they leave a shelter, victims' housing options are limited. There is no state-subsidized housing specifically for victims of domestic violence, although the status of victims of violence can increase eligibility in some cases.⁹¹⁶

In general, domestic violence victims as a class do not receive prioritization for government housing, so they could face a wait of several years.⁹¹⁷ Further, interviews revealed that married victims are sometimes ineligible for government-subsidized housing until they have obtained a divorce, particularly if they have community property with their spouses.⁹¹⁸ The divorce process in Croatia, however, can take years.⁹¹⁹ In one locale that actually gives domestic violence victims priority, shelter employees noted that victims are required to provide a court decision conclusively finding domestic violence no older than a year to qualify for city-funded public housing, but the proffer for such city-subsidized housing takes place only every five years.⁹²⁰ Other limitations preclude individuals from applying more than once every five years, so most victims are unable to satisfy the criteria in the first place. Thus, in practice, these requirements severely limit the availability of public housing to domestic violence victims.⁹²¹ Moreover, this absence of affordable housing can further the cycle of violence by forcing abused women to return home to their abusers.⁹²² One worker estimated that one-third of women who leave their safehouse return to their abusers.⁹²³

While many shelters also house victims' children, older, male children can complicate a woman's decision to seek shelter. Most shelters have policies prohibiting adolescent boys (usually defined as boys over the age of 14 or 15 years) from staying at the shelter.⁹²⁴ Older boys may be placed in foster homes or remain with the perpetrator.⁹²⁵

⁹¹¹ Autonomous Women's House Zagreb, "Securing the Shelters: Activities Update," September 28, 2011 (summary, on file with authors).

⁹¹² Interview with NGO, City B, February 15, 2011.

⁹¹³ Autonomous Women's House Zagreb, "Securing the Shelters: Activities Update," September 28, 2011 (summary, on file with authors).

⁹¹⁴ Interview with State Home, City I, February 7, 2011; Interview with NGO, City K, February 11, 2011; Interview with NGO, City D, February 11, 2011; Interview with State Home, City A, February 14, 2011. At times, these durations are not determined by the shelters but dictated by the government agency that funds them. Interview with NGO, City B, February 15, 2011.

⁹¹⁵ Interview with NGO, City K, February 11, 2011; Interview with NGO, City F, February 7, 2011; Interview with NGO, City C, February 10, 2011.

⁹¹⁶ Interview with NGO, City C, February 10, 2011; Interview with Ministry of Health and Social Care, Zagreb, February 18, 2011; Interview with NGO, City D, February 11, 2011; Interview with NGO, City F, February 7, 2011; Interview with NGO, City J, February 8, 2011; Interview with Judge and Office for Victim and Witness Support, City F, February 9, 2011; Interview with Ministry of Health and Social Care, Zagreb, February 18, 2011.

⁹¹⁷ Interview with NGO, City D, February 11, 2011.

⁹¹⁸ Interview with NGO, City J, February 8, 2011; Interview with Victim, City F, February 7, 2011.; Interview with State Home, City I, February 7, 2011.

⁹¹⁹ See the discussion in Length of Divorce Process in the Family Law Judiciary section on page 87.

⁹²⁰ Interview with State Home, City K, February 11, 2011.

⁹²¹ Interview with State Home, City E, February 14, 2011.

⁹²² Interview with NGO, City D, February 11, 2011.

⁹²³ Interview with State Home, City K, February 11, 2011.

⁹²⁴ Interview with Ministry of Health and Social Care, Zagreb, February 18, 2011; Interview with State Home, City E, February 14, 2011; Interview with NGO, City C, February 10, 2011; Interview with NGO, City B, February 15, 2011.

Thus, a woman may have to choose between remaining with her son(s) and seeking safety in a shelter. The risk of being separated from their children is not only a deterrent to victims' use of shelters, but also increases risks to their safety when they must leave its refuge to see their children.

Shelter Security

Security, both for victims and shelter workers, is of paramount concern, particularly given the prevalence of firearms in Croatia.⁹²⁶ For those shelters whose location is known, maintaining security through safeguards and police response is crucial. As one shelter interviewee stated, "It is a small town, and everyone knows where we are."⁹²⁷ Organizations take extraordinary measures to maintain the safety of those living and working at their shelters, including installing security cameras, engaging private security companies to provide around-the-clock protection, and furnishing victims with free cell phones or pagers connecting directly to the local police.⁹²⁸ On occasions when a perpetrator has located a victim at a shelter, NGOs generally report that police respond quickly and effectively.⁹²⁹

Many NGOs also strive to keep the location of their shelter confidential to further bolster security. Indeed, some NGOs so carefully guard the location of their shelter that they refrain from sharing it even with police, in case a perpetrator has connections on the police force.⁹³⁰ One NGO was forced to relocate its shelter after its location became known. In particular, NGOs in small cities face challenges in maintaining the secrecy of their shelter location.⁹³¹ If a perpetrator finds a victim at a shelter, the victim may have to be relocated, which may require moving her to another town.⁹³²

The court system also imposes challenges on maintaining shelter secrecy. One shelter worker expressed dismay that court filing procedures require a victim to provide her address, even when she is staying at a secret shelter.⁹³³

OTHER VICTIM SERVICES PROVIDED BY NGOS

In addition to shelter, NGOs also provide victims a wealth of other services, the vast majority of which are provided free-of-charge.⁹³⁴ NGOs offer victims material assistance, providing items such as clothing, food, and toiletries to supplement the limited state financial assistance available to victims, which can be difficult to access and insufficient.⁹³⁵ This assistance is particularly important, since many victims flee the violence carrying little to no belongings.⁹³⁶ While assistance from the CSW is a possibility, it is only a one-time grant of approximately 700-

⁹²⁵ Interview with State Home, City E, February 14, 2011.

⁹²⁶ Interview with NGO, City K, October 13, 2010; Interview with NGO, City C, February 10, 2011; Interview with NGO, City K, February 15, 2011. Gun Policy estimates that between 950,000 to 969,160 guns are civilian-held in Croatia. "Croatia — Gun Facts, Figures and the Law," Gun Policy, <http://www.gunpolicy.org/firearms/region/croatia>, last visited Jan. 20, 2012 (citations omitted).

⁹²⁷ Interview with State Home, City E, February 14, 2011.

⁹²⁸ Interview with NGO, City F, February 9, 2011; Interview with State Home, City K, February 11, 2011; Interview with NGO, City K, February 16, 2011.

⁹²⁹ Interview with State Home, City E, February 14, 2011; Interview with NGO, City D, February 11, 2011; Interview with NGO, City K, February 16, 2011.

⁹³⁰ Interview with NGO, City H, February 10, 2011; Interview with NGO, City K, February 15, 2011.

⁹³¹ Interview with NGO, City C, February 10, 2011; Interview with NGO, City H, February 10, 2011; Interview with State Home, City A, February 14, 2011; Interview with State Home, City E, February 14, 2011.

⁹³² Interview with NGO, City B, February 15, 2011.

⁹³³ Interview with State Home, City K, February 11, 2011. The shelter employee reported having raised this issue with local judges, to no avail.

Id.

⁹³⁴ Interview with NGO, City K, October 11, 2010; Interview with NGO, City H, February 10, 2011.

⁹³⁵ Interview with NGO, City F, February 7, 2011; Interview with NGO, City H, February 10, 2011; Interview with NGO, City C, February 10, 2011; Interview with NGO, City F, February 7, 2011.

⁹³⁶ Interview with NGO, City H, February 10, 2011.

800 kunas (approximately 94-107 Euros) that is difficult to obtain.⁹³⁷ A prolonged divorce process can also impact victim eligibility for state assistance, and one victim reported that she did not qualify for social housing or single mother aid since her divorce was still in progress.⁹³⁸

NGOs assist victims in formulating individualized safety plans to reduce their risk of future attack and/or injury.⁹³⁹ They also develop safety plans for the children, addressing, for example, what to do should they see the offender en route to school.⁹⁴⁰ In addition, NGOs help victims navigate the complex legal and social welfare systems, educating them on their rights, and referring them to the appropriate agencies.⁹⁴¹ One NGO observed that government institutions, including the CSW and the court system, respond to and cooperate with victims more readily when victims are assisted by NGO personnel.⁹⁴² Further, some NGOs have attorneys on staff and offer free legal services to victims, while others assist women in obtaining state-subsidized legal assistance.⁹⁴³ NGOs report that the process for accessing state-funded legal assistance is complicated and often requires their clients to seek help in completing the application or with the application process.⁹⁴⁴ Securing legal assistance is particularly critical, as legal representation can improve outcomes for victims with respect to criminal prosecution, protective measures, divorce, and child custody.⁹⁴⁵

NGOs provide valuable counseling services, including support groups and individual therapy.⁹⁴⁶ Also, NGOs help victims strive for economic independence. To that end, some NGOs help women find employment, provide continuing education where such projects exist, assist them in locating long-term housing, and refer clients to other service providers for needs the NGO cannot fulfill.⁹⁴⁷

In addition, several NGOs offer hotlines for victims of domestic violence.⁹⁴⁸ For some NGOs, the hotline is the first point of contact with the victim.⁹⁴⁹ Many of these hotlines have limited hours of operation, however, such as one regional hotline that is available two hours per day. Croatia currently does not have a nationwide 24-hour hotline dedicated to domestic violence victims.⁹⁵⁰ Moreover, victims typically have to pay for these telephone calls, although one NGO offers to call victims back to minimize their phone charges.⁹⁵¹

Victims who have used NGO services bear testimony to the significant positive impact that NGOs have on victims' lives. One woman described her experience at a shelter as follows:

⁹³⁷ Interview with NGO, City C, February 10, 2011.

⁹³⁸ Interview with NGO, City F, February 7, 2011.

⁹³⁹ Interview with NGO, City K, October 13, 2011; Interview with NGO, City F, February 9, 2011.

⁹⁴⁰ Interview with NGO, City H, February 10, 2010.

⁹⁴¹ Interview with NGO, City K, October 11, 2011; Interview with NGO, City F, February 7, 2011; Interview with NGO, City J, February 8, 2011.

⁹⁴² Interview with NGO, City K, February 15, 2011.

⁹⁴³ Interview with NGO, City K, October 11, 2010; Interview with NGO, City K, February 11, 2011; Interview with NGO, City F, February 9, 2011; Interview with NGO, City D, February 11, 2011.

⁹⁴⁴ Interview with NGO, City K, February 16, 2011; Interview with NGO, City F, February 7, 2011; Risser and Tanay, 3.

⁹⁴⁵ Interview with NGO, City K, October 13, 2010.

⁹⁴⁶ Interview with NGO, City F, February 9, 2011; Interview with NGO, City J, February 8, 2011; Interview with NGO, City K, February 11, 2011.

⁹⁴⁷ Interview with NGO, City K, October 13, 2010; Interview with NGO, City C, February 10, 2011; Interview with NGO, City F, February 9, 2011; Interview with NGO, City H, February 10, 2011; Interview with NGO, City K, February 11, 2011; Interview with State Home, City E, February 14, 2011; Interview with NGO, City F, February 7, 2011; Interview with NGO, City B, February 15, 2011.

⁹⁴⁸ Interview with NGO, City K, February 11, 2011; Interview with NGO, City C, February 10, 2011; Interview with NGO, City F, February 7, 2011.

⁹⁴⁹ Interview with NGO, City D, February 11, 2011.

⁹⁵⁰ Interview with NGO, City F, February 7, 2011; Interview with NGO, City C, February 10, 2011; Interview with State Home, City I, February 7, 2011.

⁹⁵¹ Interview with NGO, City C, February 10, 2011; Interview with NGO, City D, February 11, 2011.

They do everything for me. They treat me better than my deceased parents. I really have to say they do everything for me, and they don't just treat me like they're doing a job, but like they're friends....I am also happy that I can talk to them about anything, and I really love it here....It is pleasant and calm here.⁹⁵²

Government officials also recognize the value of services provided by NGOs, even when compared to similar state-provided services. One government official remarked:

[T]his office has very good cooperation with women's NGOs, so we would rather send a victim of domestic violence to an NGO than institutional services. One of the reasons why is because the NGOs are more gender-sensitive and aware than the public institutions related to this matter.⁹⁵³

In acknowledging the commendable work of NGOs, it is important to note that several challenges remain regarding the provision of their services. For example, there is significant disparity in access to services across the country. It is particularly pronounced between large cities and rural areas, which tend to have few NGOs and limited, if any, victim services.⁹⁵⁴

Several NGOs also noted the challenges they encounter in working with victims who are not Croatian citizens.⁹⁵⁵ Non-citizens experience difficulty accessing state aid, such as free legal assistance, subsidized healthcare, and financial assistance.⁹⁵⁶ NGOs strive to assist non-citizens as best they can, but without access to crucial government aid, they are limited in their ability to meet these victims' needs.⁹⁵⁷

TRAININGS, EDUCATION, AND OUTREACH

While the National Strategy notes the various training efforts targeting professionals working in fields related to domestic violence,⁹⁵⁸ neither the LPDV nor the Rules of Procedure specifically address training. NGOs have assumed a key role in educating the public about domestic violence and training the professionals who work with victims. Over the last decade, media campaigns by NGOs in Croatia have helped raise the profile of domestic violence as an issue of national concern.⁹⁵⁹ A few NGOs also run educational programs aimed at preventing domestic violence.⁹⁶⁰ In one large city, police and NGOs together host a program in schools to educate students and their parents about domestic violence.⁹⁶¹ As part of their educational efforts, NGOs also compile and publish reports on topics relating to domestic violence and assist with government-sponsored research projects.⁹⁶²

A few NGOs also train professionals who work with domestic violence victims, although the availability of these trainings varies across regions. One state home has held numerous trainings on intersectoral collaboration for

⁹⁵² Interview with Victim, City K, February 11, 2011.

⁹⁵³ Interview with Ombudsperson for Gender Equality, Zagreb, October 11, 2010.

⁹⁵⁴ Risser and Tanay, 2, 20, 32, 37.

⁹⁵⁵ See e.g., Interview with NGO, City K, February 15, 2011; Interview with NGO, City B, February 15, 2011.

⁹⁵⁶ Interview with NGO, City K, February 15, 2011; Interview with NGO, City B, February 15, 2011; Risser and Tanay, 3, 30.

⁹⁵⁷ Interview with NGO, City K, February 15, 2011; Interview with NGO, City B, February 15, 2011.

⁹⁵⁸ Government of the Republic of Croatia, *National Strategy for Prevention of Family Violence for the Period 2008 – 2010*. (Ministry of Family, Veterans' Affairs and Intergenerational Solidarity, Zagreb, 2008), 75-79.

⁹⁵⁹ Interview with NGO, City C, February 10, 2011; Interview with State Home, City K, February 11, 2011; Interview with NGO, City K, October 10, 2010; Interview with NGO, City K, February 15, 2011.

⁹⁶⁰ Interview with NGO, City C, February 10, 2011; Interview with NGO, City J, February 8, 2011; Interview with NGO, City K, February 15, 2011.

⁹⁶¹ Interview with Police, City B, February 15, 2011.

⁹⁶² Interview with Ministry of Family, Veterans' Affairs and Intergenerational Solidarity, Zagreb, February 18, 2011; Interview with NGO, City K, October 10, 2010; Interview with NGO, City K, February 15, 2011.

individuals who serve domestic violence victims, including police, judges, social workers, and NGO personnel.⁹⁶³ Other NGOs provide periodic training seminars for police, CSW employees, and healthcare professionals to build their capacity to effectively respond to domestic violence.⁹⁶⁴ Many of these trainings, however, are not conducted by experts from autonomous women's shelters, but rather employees of state homes or NGOs founded by the city or state, in cooperation with the perpetrator programs. In the opinion of some women's NGOs, this has led to trainings that are focused more on the family and perpetrators instead of victims and their safety.

As discussed earlier, many in Croatia recognize the need for training to further build the expertise of those working with domestic violence victims, particularly in sectors where the response to domestic violence is still perceived as weak.⁹⁶⁵

⁹⁶³ Interview with NGO, City K, February 11, 2011; Interview with Police, City E, February 14, 2011.

⁹⁶⁴ Interview with NGO, City J, February 8, 2011; Interview with NGO, City K, February 16, 2011; Interview with CSW, City J, February 8, 2011; Interview with Doctor, City K, February 15, 2011. Police, in particular, have undergone significant training on domestic violence in recent years, much of which is sponsored by the Ministry of Internal Affairs, although some NGOs participate in educating police. Interview with Police, City K, October 12, 2010; Interview with Former Misdemeanor Court Judge, City K, October 11, 2010; Interview with Police, City E, February 14, 2011; Interview with Police, City J, February 8, 2011. As a result of this training, NGOs report substantial improvement in police response to domestic violence incidents. Interview with NGO, City K, February 11, 2011; Interview with NGO, City K, October 13, 2010.

⁹⁶⁵ Interview with Ministry of Health and Social Care, Zagreb, February 18, 2011; Interview with State Home, City I, February 7, 2011. The National Strategy also calls for further education of professionals working in the domestic violence field. *National Strategy of Protection against Family Violence for the Period 2008 – 2010*, 75-82. See the discussion in the Centers for Social Welfare, Health Care Institutions, Police, Prosecutors, Misdemeanor and Criminal Judiciary sections for further discussion about the need for training.

COLLABORATION AND COMMUNICATION

The Rules of Procedure charge authorities and competent bodies with: establishing cooperation and sharing of information; holding regular meetings with these representatives; and establishing cooperation with other bodies that could be helpful.⁹⁶⁶ Despite the directive in the Rules of Procedure, interviews showed there is no system in place in Croatia for regular communication and collaboration.⁹⁶⁷ This gap undermines victim safety and offender accountability in many ways. For example, victim safety is jeopardized if judges or prosecutors do not communicate information to the victim about court orders issued against perpetrators.⁹⁶⁸

Interviews revealed some efforts to improve coordination. Cooperation is evident in the intersectoral meetings that have been held in Croatia, both at the national and local levels, to improve the community response. For example, the MoI launched an effort to foster interagency cooperation in the Zagreb area, assembling a group of experts from various institutions, including police, social services, the education sector, the healthcare sector, the judiciary, and NGOs.⁹⁶⁹ The NGO shelters providing aid to women and children are excluded from this group, however, thus omitting a crucial component of the victim assistance process. In another example, the city of Zagreb arranged a workshop with criminal and misdemeanor judges, CSWs, and police.⁹⁷⁰ NGOs have also been instrumental in organizing intersectoral meetings and have participated in other meetings organized by government agencies.⁹⁷¹ However, interviewees report that some sectors – the judiciary and healthcare professionals, in particular – appear reluctant to participate in such meetings.⁹⁷²

In some regions, workers in the domestic violence field have begun holding intersectoral meetings with a more case-specific focus to share information and coordinate efforts with respect to particular victims' cases.⁹⁷³ These case management meetings appear to be quite successful in fostering an effective, coordinated response, especially in complex cases.⁹⁷⁴

In general, communication among the police, CSWs, and state homes appears to have made the most progress. For example, the referral system among victim service providers is one area of growing intersectoral cooperation. Police and CSW workers fairly consistently refer victims to state homes, other government and sometimes NGO services, in keeping with the Rules of Procedure's requirement.⁹⁷⁵ In fact, state homes and some NGO shelters generally noted good cooperation with the police, both in terms of referrals, shelter security, and prosecution of domestic violence cases.⁹⁷⁶ The cooperation appears stronger, however, between the state-run institutions.

⁹⁶⁶ Rules of Procedure, Section 2.2, 2.3, 2.5.

⁹⁶⁷ For further discussion, see "Coordinated Community Response," *The Advocates for Human Rights*, February 1, 2006, http://www.stopvaw.org/Coordinated_Community_Response.html.

⁹⁶⁸ The Rules of Procedure state that, "upon personal request," the courts are required to inform the victim or her lawyer of the outcome of the proceedings and deliver a copy of the court ruling. Rules of Procedure, Section E.5. See the discussion on Judicial Timelines in the Misdemeanor and Criminal Judiciary section on page 48.

⁹⁶⁹ Risser and Tanay, 22.

⁹⁷⁰ Interview with Ombudsperson for Gender Equality, Zagreb, October 11, 2010.

⁹⁷¹ Interview with NGO, City K, October 10, 2010; Interview with State Home, City A, February 14, 2011.

⁹⁷² Interview with State Home, City A, February 14, 2011; Interview with NGO, City B, February 15, 2011; Interview with Police, City E, February 14, 2011.

⁹⁷³ Interview with NGO, City C, February 10, 2011; Interview with CSW, City J, February 8, 2011; Interview with Police, City I, February 7, 2011.

⁹⁷⁴ Interview with NGO, City C, February 10, 2011; Interview with CSW, City J, February 8, 2011.

⁹⁷⁵ Interview with NGO, City B, February 15, 2011; Interview with State Home, City E, February 14, 2011; Interview with NGO, City K, February 15, 2011; Interview with NGO, City F, February 9, 2011; Rules of Procedure, Section 1.A.3.4, Section 1.B.2.2. As mentioned above, this referral requirement can compromise a victim's autonomy and access to shelter services.

⁹⁷⁶ Interview with NGO, City K, February 11, 2011; Interview with NGO, City F, February 7, 2011; Interview with NGO, City H, February 10, 2011.

Autonomous NGO shelters reported fewer positive experiences. Where there is positive cooperation between NGO shelters and government institutions, it is because of good-willed, sensitized individuals working in those institutions and is therefore not consistent across all cities. NGOs and state homes also observed that healthcare workers rarely refer victims to NGOs.⁹⁷⁷ A doctor at one emergency center explained that she does not refer victims to NGO services because she views that responsibility to fall to the patient's general practitioner.⁹⁷⁸

Also, state homes and police are diligent about sending specific case information to the CSW and meeting with them regularly to discuss ongoing cases.⁹⁷⁹ A high-ranking police officer has directed police stations to hold weekly meetings with CSWs to discuss particular cases.⁹⁸⁰ Confirming this policy, multiple police officers stated that they meet with the CSW weekly to exchange case information.⁹⁸¹ One police officer noted the superiority of these dynamic in-person meetings over the mere exchange of written reports and encouraged more widespread use of intersectoral case-management meetings.⁹⁸²

In a notable example of protecting victim safety through cooperation, police send a state home all of their domestic violence reports and will even go there to take a woman's statement so she does not have to leave and risk her safety.⁹⁸³ An officer explained the police and the local NGO call each other when needed, and he referred to the NGO as "our partners on fighting domestic violence."⁹⁸⁴ This is not always the case, and autonomous shelters that do not contract with the MoHSC face greater challenges in garnering cooperation from the police.

Many interviewees expressed frustration over communication with the judiciary. NGOs observed that victims often do not receive timely feedback from the court system about the status of their case, including the perpetrator's detention status and judicial rulings.⁹⁸⁵ Judges also often fail to provide copies of court decisions to police and CSW personnel, limiting their ability to effectively serve and protect victims.⁹⁸⁶ Another interviewee summarized the overall frustration felt by her community about the lack of information sharing by judges:

[T]he judges seem to be the least interested in sharing and giving information. They are like an isolated island, which is not good. We had some meetings with other institutions and we all complained about judges the most....For example, in one of these meetings, the CSW complained that they do not get any feedback as to whether any sort of sentence occurred or not. I think that it did, but nobody knows about it, neither the centers nor the police nor anyone. In one of those intersectoral meetings, what we have

⁹⁷⁷ Interview with NGO, City K, October 12, 2010; Interview with NGO, City F, February 7, 2011; Interview with NGO, City B, February 15, 2011.

⁹⁷⁸ Interview with Emergency Center Director, City K, February 18, 2011. To facilitate referrals to NGOs, the Croatian government periodically publishes a directory of NGO service providers, which police, CSW employees, and medical professionals can distribute to victims. Interview with Police, City B, February 15, 2011; Interview with Doctor, February 15, 2011; Interview with CSW, City K, October 14, 2010; Risser and Tanay, 23. Conversely, NGOs commonly put victims in touch with police, the CSW, and healthcare providers, when their services are needed. Interview with NGO, City K, February 11, 2011; Interview with NGO, City C, February 10, 2011; Interview with NGO, City B, February 15, 2011; Interview with NGO, City F, February 7, 2011; Interview with NGO, City F, February 7, 2011; Interview with NGO, City K, October 13, 2010. Some NGO employees, however, expressed reluctance to refer women to the CSW because of the perception that the CSW often fails to prioritize victims' safety and needs. Interview with NGO, City K, February 11, 2011; Interview with NGO, City C, February 10, 2011; Interview with NGO, City H, February 10, 2011.

⁹⁷⁹ See e.g., Interview with Shelter, City C, February 10, 2011.

⁹⁸⁰ Interview with Police, City K, October 12, 2010.

⁹⁸¹ Interview with Police, City I, February 7, 2011; Interview with CSW, City J, February 8, 2011.

⁹⁸² Interview with Police, City K, October 12, 2010.

⁹⁸³ Interview with NGO, City F, February 7, 2011.

⁹⁸⁴ Interview with Police, City J, February 8, 2011.

⁹⁸⁵ Interview with NGO, City K, October 11, 2010; Interview with NGO, City F, February 7, 2011; Interview with NGO, City B, February 15, 2011; Interview with NGO, City D, February 11, 2011.

⁹⁸⁶ Interview with State Home, City A, February 14, 2011; Interview with NGO, City B, February 15, 2011; Interview with CSW, City J, February 8, 2011.

concluded and pled for judges to do is do their best for the verdict to be sent back to the CSW or police, so the CSW and police know what is going on in this situation.⁹⁸⁷

A lack of communication between misdemeanor and municipal courts can also reduce the efficacy of legal protections for victims when decisions from these two courts conflict. In one case, a family judge ordered visitation rights for an offender with the children, who were living with their mother in a shelter about 50 km away. The judge failed to check where she was residing, so the decision actually ordered visitation at the safehouse.⁹⁸⁸

Interviews also revealed little exchange of information between health care professionals and legal officials on perpetrator sentencing, treatment, and release.⁹⁸⁹ As noted throughout this report, key factors in the success of such treatment are lacking, including the enforcement of compliance and the reporting of non-compliance to law enforcement or victims. One doctor took note of the problems related to compliance with court orders for psychosocial treatment:

His family came to me with a court referral saying he needs to be referred by me for three months of compulsory psychosocial treatment....His release letter said that this stay in the hospital was due to alcohol and domestic violence but the worst thing is he stayed only for three weeks. The psychologist released him, and the police did not know it....The police told me I was the first person to report [an early release]....The worst thing in this chain is I don't know what the sentences of the perpetrators are....There is no exchange of data or cooperation.⁹⁹⁰

Similarly, prosecutors do not consistently share needed information.⁹⁹¹ One shelter worker stated, "We rarely get any feedback about whether they have even brought charges against anyone."⁹⁹² A police officer also described his frustration over the lack of information sharing by prosecutors in a brutal beating case under Article 215A:

We don't get information from the prosecutor, so we don't know if the case has been finished. I don't know how it ended. They only give us information if we ask for it or we have to remove an object. They don't automatically inform us. If they had temporary removal of the [weapon]...then they call us because the police have to act on it, but otherwise they don't call.⁹⁹³

Mandatory Reporting

The mandatory reporting requirement as set by the LPDV poses problems for victims and compromises their autonomy.⁹⁹⁴ Article 8 requires civil society groups working on children and families to register cases of domestic violence they have learned about through their duties with the police or prosecutor's office.⁹⁹⁵

Some NGOs and health care personnel comply with this requirement and report domestic violence to the authorities.⁹⁹⁶ But others recognize the danger in this directive. One NGO expressed concern with this reporting

⁹⁸⁷ Interview with State Home, City A, February 14, 2011.

⁹⁸⁸ Interview with NGO, City H, February 10, 2011.

⁹⁸⁹ See e.g., Interview with Doctor, City K, February 15, 2011.

⁹⁹⁰ Id.

⁹⁹¹ Interview with Police, City F, February 8, 2011; Interview with Police, City E, February 14, 2011; Interview with Shelter, City H, February 10, 2011.

⁹⁹² Interview with Shelter, City H, February 10, 2011.

⁹⁹³ Interview with Police, City E, February 14, 2011.

⁹⁹⁴ LPDV, Article 8.

⁹⁹⁵ Failure to comply with this reporting requirement can subject the reporter to a fine of 3,000 kunas. LPDV, Article 21.

requirement and the related punishment for non-compliance, as they may have to report to police what a victim has chosen, for safety or other reasons, not to report.⁹⁹⁷ An NGO worker expressed her dismay over the position in which the law places them:

[I]t is a misdemeanor if the persons don't report violations, and they put NGOs in that! We told them we have to be able to not report if the victims don't want us to. We send women to the police, but if she doesn't want to report, we don't. This is a big problem. Police and social workers need to report, but we guarantee anonymity....No one has sued us so far for not reporting. But all of our statistics are published, with the number of women victims of violence we worked with. If they ask us why we didn't report any of these cases, maybe we just say that we don't know their names.⁹⁹⁸

In effect, this reporting requirement may destroy victims' confidence in NGOs and their confidential treatment of clients' cases and discourage use of much-needed services.⁹⁹⁹

⁹⁹⁶ Id., Article 8; Interview with NGO, City B, February 15, 2011; Interview with NGO, City K, February 11, 2011; Interview with Doctor, City K, February 11, 2011.

⁹⁹⁷ Interview with NGO, City K, October 10, 2010; LPDV, Article 8.

⁹⁹⁸ Interview with NGO, City K, October 10, 2010.

⁹⁹⁹ Risser and Tanay, 26.

CONCLUSION

This report examines the laws, policies and practices that constitute the Croatian government's response to a serious and pervasive problem of domestic violence. By passing one of the first domestic violence laws in the region, the Croatian government has not only demonstrated its commitment to combating domestic violence but also presented itself as a leader in this effort. The Croatian government should be commended and further encouraged to serve as a model for the region by ensuring effective implementation of the LPDV.

Enacting legislation to address violence against women is a critically important first step in combating violence against women. As this report shows, comprehensive and regular *monitoring* of how those laws are implemented and their effect on the daily lives of women is very important to identify gaps and weaknesses that undermine victim safety and offender accountability.

In Croatia, there are serious gaps and weaknesses not in only the language of the laws but in their implementation. These problems are proving devastating to battered women. In particular, arrests of victims when abusers claim psychological violence or when victims have acted in self defense is an extremely harmful development and deters victims from reporting violence. Also, the penalization of victims with misdemeanor charges or loss of custody when their children witness the violence seriously re-victimizes women.

While the justice system has taken important steps to improve its response to domestic violence, other significant problems remain. These include the practice of dismissing criminal charges upon reconciliation or mediation, widespread failure to order protective measures that direct abusers out of the home, and the lack of strong and swift consequences for domestic violence misdemeanor and criminal offenses.

In addition, inadequate support for shelter and other services for domestic violence victims in Croatia affects victims' ability to find safety and security and escape the violence.

Research and practice from around the world shows that domestic violence laws and policies work best to protect victim safety when community and state agencies are working together to communicate and collaborate in developing an effective, coordinated response to domestic violence. While Croatia has undertaken admirable efforts to do this, improvements are necessary to ensure that all relevant parties are participating and committed to the process.

Many of those mandated to implement domestic violence legislation, including police, prosecutors, judges, CSW workers, and health care personnel, demonstrated both a lack of understanding of the dynamics of domestic violence and knowledge of the LPDV and Rules of Procedure necessary to implement these laws and protocols in an appropriate and gender-sensitive manner. They reported a serious lack of training on these issues which is an essential component to improving implementation of the LPDV

Finally, adequate funding from the Croatian government is needed to implement all aspects of the law, including training, the collection of comprehensive statistics on domestic violence, monitoring of the law, public education, and victim services, including shelters. Doing so will ensure that actors can most effectively implement provisions, and service providers can support victims.

CONCLUSION

In conclusion, the authors refer the government of Croatia to the following section of this report where concrete recommendations are offered to address these and other challenges to promoting victim safety and offender accountability.

RECOMMENDATIONS

PRIORITY RECOMMENDATIONS

- Amend the LPDV to **redefine psychological and economic violence** to ensure it includes only those acts that threaten the victim with physical harm or cause fear of such harm or constitute serious coercive or controlling behaviors.¹⁰⁰⁰ Take steps to ensure that definitions of psychological and economic violence are enforced in a manner that takes into account the context, severity, the use of power and control, repetition, and harassment in each case.
- Amend the LPDV to ensure the definition of domestic violence specifically **includes stalking**, or a pattern of harassing or threatening behaviors.
- Immediately implement policies that direct legal system officials, particularly police, to **identify the primary aggressor** in domestic violence cases so as to avoid continued arrests of domestic violence victims when they are acting in self-defense.
- Amend the LPDV to allow urgent protective measures to be issued if there is a **fear of imminent physical harm**.
- Repeal legal provisions that hold **victims responsible when children witness** domestic violence and amend laws and policies to ensure that violence by one parent against another is identified and taken into account in custody decisions.
- Expand the scope of the LPDV to protect victims of domestic violence who have never lived with their offender, but are in or have been in an **intimate relationship**.
- Amend the LPDV to allow the judiciary to issue an **urgent protective measure that will stay in place for the full term** (two years) allowed under the law, unless and until the respondent requests a hearing.
- Provide victims with a **civil protective measure remedy** that includes both an emergency, ex parte protective measure and a long-term protective measure. Ensure that the criminal system includes comparable long-term protective measures for the victim that last beyond the duration of trial to address the effects of *Maresti*.
- Amend the LPDV so that an **appeal does not preclude entry into force of** a decision on protective measures. Any decision to issue protective measures should have immediate effect and last through an appeal.
- Provide and fund **mandatory and regular gender-sensitive training** to judges, police, CSW personnel, prosecutors, health care workers, and psychosocial treatment administrators on the dynamics of domestic violence and coercive control, in collaboration with women's feminist NGOs.
- **Eliminate mandatory reporting** requirements except for cases where weapons are used, where victims are especially vulnerable, such as persons with intellectual or physical disabilities, or where children are subjects of physical abuse themselves.
- Develop guidelines and provide immediate training to police, judges and prosecutors on **distinguishing between misdemeanor- and criminal-level cases** of domestic violence post-*Maresti*.
- Provide adequate and consistent **funding to shelters** and adopt legislation that would guarantee such funding to the shelters while ensuring their autonomy.

¹⁰⁰⁰ Coercive control can be described as “an act or a pattern of acts by which an adult partner seeks to coerce and/or control another by intent, design or consequence. Coercion includes an act or a pattern of acts of assault, sexual coercion, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten a partner. Control includes a range of acts designed to make a partner subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.” Against Violence & Abuse (AVA), AVA's Response to Cross-Definition of Domestic Violence: A Consultation, 4 (on file with the authors).

- Eliminate legal provisions, including Article 62 of the State Attorney's Law and Article 44 of the Family Law, allowing for or mandating **mediation or conciliation** in domestic violence cases.
- Foster a **system for regular communication and collaboration** that involves all sectors—judicial, law enforcement, criminal, social welfare, health, educational and women' NGOs—to address domestic violence (a coordinated community response). These sectors should be mandated to communicate and meet regularly to promote cross-communication and coordination locally.
- Develop **formal and uniform policies, as well as risk assessment tools**, in all agencies involved in the response to domestic violence.

Parliament

- Amend the LPDV to allow misdemeanor judges to **order financial support, child support, temporary child custody, and supervised visitation and/or prohibition against visitation** as part of the protective measures. Expand the scope of the restraining order to specifically prohibit a perpetrator from approaching the victim and children's place of work, social contacts, schools and other relevant places they frequent.
- Amend the LPDV to allow for **extensions of protective measures** or, ideally to be left in place permanently until the court finds there is no longer any danger to the victim.
- Upon amending the LPDV, review and take into consideration all other recommendations issued in the authors' **commentary on the LPDV** (Appendix D).
- Amend the **Criminal Procedures Code to provide precautionary measures** with the specific purpose of protecting the victim during criminal proceedings until the final court decision when safety measures can be issued. Precautionary measures should include: a restraining order; prohibitions against stalking, harassment, and communication; and eviction.

Ministries

- **Promote coordination of Ministerial funding criteria.** Delineate a single set of eligibility criteria if possible to simplify the process for NGOs seeking funding from more than one agency. Consider creating a single unified approach to funding shelters among the Ministry for Social Policy and Youth, county, and city governments while ensuring the autonomy of shelters and principles of confidentiality for victims.
- Ensure **adequate funding and personnel** for the implementation of psychosocial treatment and addiction treatment programs. Consolidate the **certification and funding of psychosocial treatment** within just one ministry.
- **Prioritize victim services and shelter funding** over psychosocial and addiction treatment programs.
- Establish and fund a free, 24-hour **nationwide hotline** for domestic violence victims staffed by personnel trained by feminist women's NGOs.
- Require state bodies, such as police, CSWs, and health care institutions, to **prioritize referrals for domestic violence victims to autonomous women's shelters** over city and church homes, which allow women to stay there longer, are subject to fewer mandatory admission requirements, and provide important self-empowerment skills to clients.
- Enforce the **independent review and sanctions process** for cases of negligence, corruption, or incompetence by all legal actors. Establish an independent and confidential reporting mechanism for victims to file complaints.
- **Work with all organizations and bodies** that support survivors of domestic violence to enhance community awareness of the state's commitment to end domestic violence.

- Give victims of domestic violence and their children priority access to **long-term, state-subsidized housing**, without having to obtain a divorce or meet other residential requirements.
- Sponsor and fund programs aimed at **increasing employment and economic independence** for women and girls.

Ministry of Interior

- Develop a comprehensive and mandatory **risk and lethality assessment**, in consultation with NGOs, for police to use for all domestic violence cases.
- Direct that police refrain from arresting victims of domestic violence by developing protocols that assist them in **identifying the predominant aggressor** and on **evaluating defensive injuries**.
- Establish **specialized police units** and dedicated police officers trained on dynamics of domestic violence.
- Expand the **police intervention report form to include questions** on the existence of protective measures, probation, warrants, and prior convictions; names of other contact persons who can always reach the victims; risk and lethality assessment questions; and definitions of self-defense and considerations for predominant aggressor identification.
- Allocate **greater resources to appeals** of decisions that deny victims protective measures in domestic violence cases, particularly increasing officer capacity to make these appeals.

Ministry of Justice

- **Specialized dockets or courts on domestic violence** should be organized in Croatia in order to expedite cases and promote expert handling on all levels.
- Develop a standardized and mandatory protocol for **bench risk assessments** to identify high risk offenders and promote victim safety.
- **Sentencing guidelines** should be developed to ensure consistency in sentencing outcomes for domestic violence cases, particularly for fines and suspended sentences.¹⁰⁰¹
- Develop a **standardized application form**, in cooperation with autonomous women's shelters, for victims seeking protective measures.
- Systematically **track and release statistics** on domestic violence, including numbers of protective measures requested, granted, their terms, and violations, as well as information on convictions and sentencing. Statistics should be disaggregated by sex and include information on relationship to the offender.
- Provide **regular and compulsory training** on domestic violence to all levels of the judiciary.

Ministry for Social Policy and Youth (formerly Family, Intergenerational Solidarity and Veterans' Affairs and Ministry of Health and Social Care)

- Amend the Rules of Procedure to mandate that **courts must immediately forward a copy of decisions** made under the LPDV to the local CSW, police, and the victim and her lawyer.
- **Sign and fund contracts** covering a given calendar year at or before the start of the year, to prevent gaps in funding. Where possible, longer-term funding commitments (e.g., three-year contracts) would help NGOs better ensure continuity of service to victims.
- **Refrain from tying funding exclusively to the number of beds** in a shelter, but rather to the overall services and programming provided by an NGO.
- **Increase funding** to shelters and crisis centers for victims.

¹⁰⁰¹ UN Handbook for Legislation on Violence against Women, UN Division for the Advancement of Women, para. 3.11.1 (2010).

- **Commission independent studies** to assess the efficacy of psychosocial treatment in preventing further violence. NGOs not involved in administering the treatment should conduct this research, with government funding. If studies confirm the efficacy of psychosocial treatment, the treatment programs should be adequately funded by the government to ensure that there are enough trained professionals to administer treatment when it is ordered. Where financial resources are limited, priority should be given to shelters and victim services over batterers' programs.

Police

- Create and implement policies that require front line officers to aggressively act to protect victim safety and ensure accountability for perpetrators by **detaining violent perpetrators** as legally allowed and **requesting precautionary measures** in all cases.
- Adopt a **probable cause standard of arrest** allowing police to arrest and detain an offender even if they did not witness the act, if they determine based on evidence at the scene that there is probable cause that an offense has occurred.
- **Prioritize protective and precautionary measures** that protect victims' safety over batterers' treatment and ensure that police always inform victims of these measures and propose restraining orders, evictions and stalking/harassment at the victim's request.
- Create and implement policies that require police to **determine the predominant aggressor** in a domestic violence situation and arrest only that offender if there is probable cause that an offense has occurred.
- Use best practice standards for **determining self-defense** in domestic violence situations and desist from arresting victims.
- Arrest and detain perpetrators for all violations of protective measures. When the offender **does not violate the protective measure per se** but his intent to track the victim is clear, police should treat those actions as stalking and harassment and file for misdemeanor proceedings and protective measures accordingly.
- **Establish forum partnerships and working relationships with community groups** that support survivors of domestic violence.
- Participate in a **coordinated community response**.

Misdemeanor Judges

- Immediately **cease forcing parties to confront each other in hearings in the practice called "facing"** which is used to attempt to establish credibility in domestic violence cases.
- Refrain from imposing **suspended sentences that place victims in danger of further harm and fines that punish victims** who share joint financial resources with their offenders in domestic violence cases, including violations of protective measures. Judges should prioritize the issuance of prison sentences and protective measures that promote victim safety.
- Refrain from requiring any **evidence other than the victim's statement** in order to issue protective measures.
- Consistently offer and allow for **separate testimony** in domestic violence cases.
- Ensure **separate waiting areas** and consistent and adequate security, including court escorts and security personnel, for victims upon arrival, within and upon departure from the courthouse.
- Ensure that a **risk assessment** is performed in all cases which involve domestic violence.
- Comply with the **24-hour deadline for issuing urgent protective measures** in all cases. Judges should take care to **expedite decisions on regular protective measures** and issue decisions on a timely basis.

- Promote **sentences for domestic violence that are commensurate** with the gravity of crimes of violence against women;¹⁰⁰² in other words, implementation of the law should strive to promote sanctions that “are comparable to those for other violent crimes.”¹⁰⁰³
- **Give priority to protective measures that protect victim safety**, including eviction, restraining order, stalking and harassment protections and confiscation of firearms. These measures should be ordered for the maximum period allowed under the law. While psychosocial and addiction treatment can be important measures, they should never replace or take priority over protective measures that provide immediate protection to a victim and her children. When ordered, psychosocial treatment should be ordered in conjunction with other protective measures necessary to ensure victim safety, such as restraining orders or eviction, and jail time.
- **Send copies of all decisions** to victims and their lawyers immediately without waiting for requests.
- **Mandate communication and information sharing** between family law and misdemeanor judges regarding the existence of protective measures that may affect decisions on child visitation or prohibition of visitation and custody.
- Allow for the **extension of protective measures** or a permanent protective measure that can only be terminated by a court finding, based on clear evidence, that there is no longer any danger to the victim.
- Specify a **specific minimum distance** in the restraining order, e.g. 200 meters. Specify the **scope of the restraining order** to prohibit the perpetrator from approaching the victim and her place of work, the children’s school, and other relevant places they frequent.
- **Work with all community groups** that support survivors of domestic violence to enhance community awareness of the state’s commitment to end domestic violence.
- **Ensure regular training** on all aspects of domestic violence, including the dynamics of domestic violence, sensitivity to victims, risk assessment, defensive injuries, and promoting victim safety through regular communication of court processes.
- Participate in a **coordinated community response**.

Criminal Court Judges

- Promote **sentences for domestic violence that are commensurate** with the gravity of crimes of violence against women;¹⁰⁰⁴ in other words, implementation of the law should strive to promote sanctions that “are comparable to those for other violent crimes.”¹⁰⁰⁵
- Refrain from imposing **suspended sentences and fines** in domestic violence cases, including violations of protective measures. Judges should prioritize the issuance of prison sentences and protective measures that promote victim safety.
- Assign **high priority to domestic violence cases** and take measures to expedite these cases.
- Consistently offer and allow for **separate testimony** in domestic violence cases.
- Base decisions for **continued detention or release of perpetrators on the law and victim’s safety**, rather than when the victim testifies. Consistently and immediately inform the victim of release of the offender.
- **Ensure regular training** on all aspects of domestic violence, including the dynamics of domestic violence and coercive control, sensitivity to victims, risk assessment, defensive injuries, and promoting victim safety through regular communication of court processes.

¹⁰⁰² UN Handbook for Legislation on Violence against Women, UN Division for the Advancement of Women, para. 3.11.1 (2010).

¹⁰⁰³ MODEL STRATEGIES AND PRACTICAL MEASURES ON THE ELIMINATION OF VIOLENCE AGAINST WOMEN IN THE FIELD OF CRIME PREVENTION AND CRIMINAL JUSTICE, <http://www.icclr.law.ubc.ca/Publications/Reports/VIOMODEL.pdf>, para. 9(a)(iv).

¹⁰⁰⁴ UN Handbook for Legislation on Violence against Women, UN Division for the Advancement of Women, para. 3.11.1 (2010).

¹⁰⁰⁵ MODEL STRATEGIES AND PRACTICAL MEASURES ON THE ELIMINATION OF VIOLENCE AGAINST WOMEN IN THE FIELD OF CRIME PREVENTION AND CRIMINAL JUSTICE, para. 9(a)(iv).

- Participate in a **coordinated community response**.

Prosecutors

- Strive for a policy that promotes **victim-absent prosecutions** in cases of victim recantation or exercising the right not to testify. Prosecutors should consider the totality of evidence in a case that might support or corroborate the victim's statement, including a history of abuse, and ensure that all available evidence has been collected by the police investigating body.
- Assign **high priority to domestic violence cases** and take measures to expedite these cases. Prosecutors should make the decision whether to pursue criminal charges in a timely manner so that cases are not further delayed.
- Work with police to ensure that all criminal cases of domestic violence are brought to their attention and **aggressively prosecute cases** of criminal domestic violence.
- Train and communicate **with police on gathering evidence** such as tapes of emergency calls, witness statements, and detailed descriptions of crime scenes. Prosecutors should press for changes so that police take photos of relevant evidence, such as bruises, missing teeth, and the crime scene.
- Aggressively seek the protection of victims and accountability for perpetrators by **detaining violent perpetrators** until sentencing and **requesting precautionary measures** in all cases.
- **Work with all community groups** that support survivors of domestic violence to enhance community awareness of the state's commitment to end domestic violence.
- Participate in a **coordinated community response**.

Prison Administration

- **Screen and deny benefit leave** for offenders with a history of domestic violence. The decision to grant or deny benefit leave in domestic violence cases should not rest solely on offenders' behavior in prison or criminal record, but also take into account the offender's history of domestic violence.
- Establish a **data tracking system of misdemeanor convicts** in the prison system coordinated with police, misdemeanor courts, and the CSW.

Family Law Judges

- **Provide active supervision of all divorce cases** that are mediated by others to ensure victims of domestic violence are not forced into situations that put them at risk of further violence, that best practices are followed, and that fact situations receive expert review. Active supervision should include a careful reading and evaluation of all facts and opinions in reports submitted by outside experts, including the CSW.
- **Independently review the facts** in a custody dispute and use the CSW report as one factor among many to determine the best interests of the child.
- **Ensure regular training** on all aspects of domestic violence, including the dynamics of domestic violence and coercive control, sensitivity to victims, risk assessment, and promoting victim safety through regular communication of court processes. Family law judges should receive training on the effects of a violent parent on children and their long-term health and best practices in handling custody decisions involving one parent who is violent.
- **Screen all divorcing parties** for domestic violence, in accordance with best practice screening techniques.
- **Expedite divorce proceedings** where domestic violence is involved.

- Protect **confidentiality of victims' addresses**, which includes their home address, work address, children's child care or school address, and all other relevant addresses the knowledge of which could place the victim at risk of repeat violence.
- Mandate communication and information sharing between family law and misdemeanor judges regarding the **existence of protective measures** that may affect decisions on child visitation and custody.
- Ensure that a **risk assessment** is performed in all cases which involve domestic abuse.
- Take all possible measures to **protect victim safety in divorce proceedings** which involve domestic violence, such as custody determinations, supervised visitation, or prohibited visitation.
- **Impose security measures** in their courtrooms for divorce and custody cases which involve domestic violence, such as keeping the victim and aggressor apart, providing separate waiting rooms, providing escorts to a victim's car, and imposing penalties on aggressors who seek to intimidate victims.
- Require that **visitation take place in secure and supervised facilities** in the CSW or court offices, under the supervision of specialized, trained personnel.

CSW

- **Ensure gender-sensitive training** on all aspects of domestic violence, including the dynamics of domestic violence, sensitivity to victims, risk assessment, the effects of a violent parent on children, dangers of mediation, and promoting victim safety. Require that all family law mediators, including CSW mediators, be trained in best practices for mediation.
- **Treat all cases of domestic violence as urgent** and comply with the Rules of Procedure to guarantee victim safety. While the Rules of Procedure direct the CSW focus to the child's welfare, best practices show the safety of the children in domestic violence cases is best guaranteed by protecting the non-violent parent.
- Allocate resources to ensure **supervised and secure facilities for child visitation** in domestic violence cases. Take adequate steps to enhance victim safety during supervised visitation, such as arranging schedules so the victim can arrive and depart before the perpetrator. Ensure that visitation is supervised by specialized, trained personnel to prevent further traumatization of the child and any attempts by the offender to elicit information about the mother that could place the victim at risk.
- **Screen all divorcing parties** for domestic violence, in accordance with best practice screening techniques.
- **Refrain from carrying out mediation** in divorce cases involving domestic violence. Where that is not possible, **require separate mediation for parties** who have experienced domestic violence, regardless of whether there is a protective measure.
- **Work with all community groups** that support survivors of domestic violence to enhance community awareness of the state's commitment to end domestic violence.

Health Care Workers

- **Complete training** on the dynamics of domestic violence and coercive control, the identification of domestic violence injuries, victims' rights and resources, and how to safely discuss the cause of the injury with victims.
- **Exercise diligence to identify and document injuries** likely caused by domestic violence while respecting the victim's privacy and wishes about reporting.
- Refrain from assuming that victims of domestic violence **will pursue further medical** care.
- Consistently **inform victims of their rights** and referrals to available support organizations.
- **Work with all community groups** which support survivors of domestic violence to enhance community awareness of the state's commitment to end domestic violence.

APPENDIX A. LAW ON PROTECTION FROM DOMESTIC VIOLENCE

CROATIAN PARLIAMENT

3314

Pursuant to Article 88 of the Croatian Constitution, I hereby issue
A DECISION PROMULGATING THE LAW ON PROTECTION FROM DOMESTIC VIOLENCE

I am promulgating the law on protection from domestic violence that the Croatian Parliament approved at its session on October 30, 2009.

Class: 001-01-/09-01/190

Registry number: 71-05-03/1-09-2

Zagreb, November 6, 2009.

President

Republic of Croatia

Stjepan Mesić, MP

LAW ON PROTECTION FROM DOMESTIC VIOLENCE

1. GENERAL PROVISIONS

Article 1.

(1) This Act stipulates what domestic violence is, what people are considered family members under this Act and the different kinds and purpose of sanctions for committing domestic violence.

(2) The purpose of this Act is prevention, punishment and suppression of all types of family violence, the use of appropriate measures against the perpetrators, as well as mitigation for the perpetration of violence by providing protection and assistance to victims of violence.

(3) Words and concepts that have gender significance, regardless of whether the law is used in the masculine or feminine gender, shall apply equally to male and female gender.

Article 2.

In all procedures related to domestic violence, the provisions of criminal law, Code of Criminal Procedure and Juvenile Courts are applied, unless otherwise defined by this law.

Article 3

(1) For the purposes of this Act, the family consists of:

- Woman and man in marriage, their common children and children of each of them,
- Woman and man in common-law marriage, children of each of them and their common children,
- Blood relatives in a direct line without limitation,
- Blood relatives in the lateral lineage ended with the third degree,
- Relatives by marriage ended with second degree in both marriage and common-law marriage,
- People who have common children
- Guardian and ward,
- Foster parents, users of accommodation in foster families and their family members while such relations exist.

(2) For the purposes of this Act, the family consists of both women and men who lived together in a marriage or common-law marriage, the children of each of them and their common children, if after the break of marriage or common-law marriage the cause of conflict was still the former marital or common-law marital relationship.

Article 4.

Domestic violence is any form of physical, mental, sexual or economic violence, in particular:

- Physical violence or the use of physical force, regardless of whether physical injury resulted or not,
- Corporal punishment and other forms of degrading treatment of children in the educational purposes
- Psychological violence, or the application of psychological pressure that caused a feeling of fear, danger, distress or injury to dignity, verbal violence, verbal assaults, insults, cursing, name calling, or otherwise crude verbal harassment, stalking or harassment through all means of communication or through electronic and printed media or otherwise, or to communicate with third parties, illegal isolation or threat to freedom of movement (hereinafter referred to as spying and harassment),
- Sexual violence or sexual harassment,
- Economic violence such as damage or destruction of personal and common property, banning or preventing the use of personal and joint property including the attempts to do so, as well as deprivation of rights or prohibition of having personal income and property acquired by inheritance or personal work at your disposal, exclusion from employment or work, forced economic dependence, denial of funds for maintenance of the common household and care for children or other dependents of a common household.

Article 5.

(1) Any authority to take action related to domestic violence shall act urgently.

(2) Any proceedings instituted under this Act are urgent.

Article 6.

(1) In any proceeding related to domestic violence, social services and health institutions and other related authorities shall take care of all the needs of victims and allow them access to appropriate services.

(2) Perpetrators of the violence mentioned in paragraph 1 of this Article will be provided with appropriate information on all of their rights.

(3) In cases of legal proceedings in which the child appears as a victim, the authorities shall, without delay, inform the social welfare institutions to take measures in protecting the rights and welfare of the child.

(4) The interests of children exposed to family violence are a priority in all cases.

Article 7.

The provisions of this Act shall apply mutatis mutandis to persons who are under special regulations living in same-sex community.

Article 8.

Health care workers, professional workers in the sector of social welfare, family prevention and care, education and professional workers in religious institutions, humanitarian organizations, civil society organizations in the scope of children and families are obliged to register with the police or the State Attorney's Office acts of violence in the family referred to in 4th Article of this Law that they learned in carrying out their duties.

Article 9.

To protect the security of persons exposed to violence, the court shall issue an order that the police accompany that person exposed to violence to the home, apartment or other living space to take their personal belongings and personal possessions of others who are leaving the above premises with them, that are necessary to meet daily needs.

II. CRIMINAL SANCTIONS

Purpose and kinds of criminal sanctions for protection from domestic violence

Article 10.

(1) The purpose of prescribing and use of sanctions is the special protection of vulnerable families and family members exposed to violence, respect for the legal system and the prevention of re-committing domestic violence with appropriate sanctioning of the offender.

(2) Criminal sanctions for domestic violence are protective measures, imprisonment, fines and other sanctions prescribed by Criminal law.

Protective measures

Article 11.

(1) The purpose of protective measures is to prevent the use of violence in the family, to provide essential health and safety to the person subjected to violence and eliminate conditions that foster or stimulate opportunities for new offenses, and they are applied to eliminate threats to persons exposed to violence and other family members.

(2) Besides the safeguards prescribed by misdemeanor law, the Court may apply the following safeguards for the perpetrator of domestic violence:

- Mandatory psychosocial treatments,
- Prohibition of approaching the victim of domestic violence,
- Prohibiting harassment or stalking of the person exposed to violence,
- Removal from the apartment, house or other living space,
- Mandatory treatment of addiction,
- Confiscation of the object intended to be uses or was used in committing the offense.

Protective measure of mandatory psychosocial treatment

Article 12.

(1) Protective measure of mandatory psychosocial treatments may be applied to the perpetrator of family violence in order to remove the violent behavior or if there is a risk that the offender could once again commit violence against the person under Article 3 this Act.

(2) The measure referred to in paragraph 1 of this article can be ordered for at least six months.

(3) The Minister responsible for social welfare implementation and regulation shall prescribe the manner and place where psychosocial treatment for perpetrators of domestic violence shall be conducted.

Protective measures prohibit approaching the victim of domestic violence**Article 13.**

- (1) Protective measure of prohibiting approaching the victim of domestic violence can be applied to the perpetrator of domestic violence if there is a danger of a recurrence
- (2) In a verdict with which the court applies a measure prohibiting approaching the victim of domestic violence, the place or area and the distance below which the offender cannot come closer to the victim will be determined.
- (3) Measures from paragraph 1 this Article shall be determined for a term, which cannot be shorter than one month or longer than two years.
- (4) The Minister responsible for internal affairs shall prescribe the implementing regulations of the police officer acting in execution of the measures referred to in paragraph 1 this article.

Protective measure prohibiting stalking and harassment a person exposed to violence**Article 14.**

- (1) Protective measures prohibiting spying and harassment of persons exposed to violence can be applied to the perpetrator of family violence when the violence was committed by spying or harassment and there is a danger of recurrence towards persons under Article 3 this Act.
- (2) The measure referred to in paragraph 1 this Article shall be determined for a term which can not be shorter than one month or longer than two years.
- (3) The Minister responsible for internal affairs shall prescribe the implementing regulations of the police officer acting in execution of the measures referred to in paragraph 1 this article.

Protective measures of removal from the apartment, house or other living space.**Article 15**

- (1) Protective measures of removal from the apartment, house or other living space can be applied to the perpetrator of domestic violence who commits violence against a family member with whom they lived in an apartment, house or other residential premises, if there is a danger that without enforcement of these measures the violence could happen again.
- (2) The person subject to the measures referred to in paragraph 1 this Article shall immediately leave the apartment, house or other residential premises in the presence of police officers.
- (3) The measure referred to in paragraph 1 this Article shall be determined for a term which can not be shorter than one month or longer than two years.

(4) The Minister responsible for internal affairs shall prescribe the implementing regulations of the police officer acting in execution of the measures referred to in paragraph 1 this article.

Protective measure of mandatory treatment for addiction.

Article 16.

(1) Protective measures of mandatory treatment of addiction may be applied to the perpetrator of family violence when the violence is committed under the influence of alcohol or drug when there is a danger that because of this addiction they will commit violence again.

(2) The measure referred to in paragraph 1 this Article shall be determined for a term that cannot be longer than one year.

(3) The Minister in charge of health shall adopt implementing regulations on the manner of implementation of protective measures.

Protective measures of confiscation of objects

Article 17

Protective measures of confiscation will be applied when there is danger that the object will be re-used for the perpetration of violence or for protection of general or public safety.

Application of protective measures

Article 18

(1) Protective measures referred to in Article 11 of this Act may be applied independently and without penalty or other sanctions.

(2) Protective measures can be applied ex officio or at the request of the authorized prosecutor or at the request of a person subject to violence.

Article 19

(1) Protective measures referred to in Article 11 Paragraph 2 subparagraph 2, 3 and 4 this Act may be applied before the legal proceedings.

(2) Protective measures referred to in paragraph 1 this Article shall apply to the proposal of the person exposed to violence or authorized prosecutors with the prior consent of the victim to eliminate a direct threat to that person's life or other family members.

(3) The court shall make a decision under paragraph 1 this Article, immediately, without delay, and no later than twenty-four hours of the submission of proposals.

(4) The court will abrogate the decision under paragraph 3 of this Article if the applicant referred to in paragraph 2 of this Article does not submit the accusatory motion within eight days from the date of the decision

(5) The court is obliged to warn applicants under paragraph 2 of this article of the consequences due to intolerance of accusatory proposals in terms of paragraph 4 of this article.

Provisions

Article 20

(1) The court may impose a sentence of imprisonment or a fine on the perpetrator of family violence.

(2) The family member who commits violence described in Article 4 of this Act shall be subject to a fine of at least 1.000,00 HRK or imprisonment not exceeding 90 days.

(3) A fine of HRK 5,000.00 or imprisonment for at least 15 days shall be imposed on a family member who is a repeat offender.

(4) Adult family member who commits domestic violence in the presence of children, minors or disabled persons shall be imposed a fine of at least HRK 6.000,00 or imprisonment for a term of at least 30 days.

(5) Adult family member who is a repeat domestic violence offender as described in paragraph 4 this Article shall be responsible for a fine of at least HRK 7000.00 or imprisonment for a term of at least 45 days.

(6) If the violence described in Paragraph 5 of this Article is committed to the detriment of children, minors or persons with disabilities, the perpetrator shall be punished by a fine of at least HRK 7000.00 or imprisonment for a term of at least 45 days.

(7) Adult family member who repeats violence in the family as described in paragraph 6 of this Article shall be responsible for a fine of at least HRK 15,000.00 or imprisonment for a term of at least 60 days.

Article 21

A fine of at least HRK 3,000.00 shall be imposed on individuals described under Article 8 of this Act who do not report to the police or the State Attorney's Office the acts of domestic violence described in Article 4 of this Act of which they became aware of through their work.

Responsibility for failure to act according to the protective measures

Article 22

(1) The perpetrator of domestic violence shall act in accordance with the applied protective measure.

(2) If the perpetrator does not follow the imposed protective measures a fine of at least HRK 3,000.00 shall be imposed or imprisonment of at least 10 days.

(3) Persons referred to in Article 8 of this Act who within the scope of their activities learn that the perpetrator of violence is not acting in accordance with the applied preventive, shall notify the authorities and submit a criminal misdemeanor court proposal.

Article 23

(1) The Minister responsible for Family Affairs will establish an expert committee to monitor and improve the work of the body and criminal proceedings and enforcement of sanctions related to protection from domestic violence. The Minister will also write the ordinances of his work.

(2) Members of the expert committee shall be appointed from among judges, prosecutors, lawyers, government officials of the ministry responsible for internal affairs specializing in domestic violence crimes, civil servants ministry in charge of legal affairs, ministry in charge of Health and Welfare and the Ministry in charge of the family.

(3) The expert Committee, within its mandate, has the authority to submit to the ministers in charge of legal affairs, internal affairs, social welfare, health and family suggestions and opinions concerning the application of this Act and other laws that protect victims of domestic violence.

II. COLLECTION, PROCESSING AND STORAGE OF STATISTICAL DATA

Article 24

(1) Ministry in charge of the family is authorized for the collection, processing and storage of statistical data from the area of jurisdiction of this Act.

(2) The Court, Municipal State Attorney's Office, police and other bodies authorized to act under this Act shall keep a record of actions taken under this Act and have the obligation to submit to the ministry responsible for family semi-annual and annual reports on the number of initiated or completed cases or taken other measures taken under this Act.

(3) The Minister responsible for family affairs shall prescribe the regulations for the contents of records and reports referred to in paragraph 2 this Article and the method of collecting, processing and storage of statistical data.

(4) A responsible person of the authority under paragraph 2 this article, or other authorities responsible for implementing this Act, that compromises the delivery of statistical information to the ministry of family affairs shall be fined HRK 1,000.00 as prescribed by regulation under paragraph 3 this Article.

IV. TRANSITIONAL AND FINAL PROVISIONS

Article 25

(1) The Minister of health shall issue a regulation on the implementation of protective measures under Article 16 of this Act within 30 days from the date promulgation of this Act.

(2) The Minister responsible for Family Affairs will establish an expert committee under Article 23 this Act and make rules about its work within six months from the date of promulgation of this Act.

(3) Expert Committee established pursuant to the provisions of Article 22 Law on Protection from Domestic Violence («Narodne Novine» no. 116/03) will execute the tasks that have been appointed until the appointment of a new composition in accordance with the provisions in paragraph 2 this article.

(4) The Minister in charge of the family will bring the Ordinance from Article 24 Paragraph 3 of this Act within six months from the date of promulgation of this Act.

Article 26

(1) Ministers responsible for social welfare and internal Affairs shall adopt implementing regulations under Article 12 Paragraph 3, Article 13 Paragraph 4, Article 14 paragraph 3 and Article 15 Paragraph 4 within six months from the date of promulgation of this Act.

(2) Until the implementing regulations referred to in paragraph 1 of this Article, implementing regulations adopted on the basis of the Law on Protection from Domestic Violence shall remain in effect («Narodne Novine», no. 116/03.)

- Regulation on the manner and place of conducting psychosocial treatment of perpetrators of domestic violence («Narodne Novine», 05.29. And 78/06.) and

- Regulations on the conduct of the protective measures that the Law on Protection from Domestic Violence placed within the jurisdiction of the Police («Narodne Novine», 27/04.).

Article 27

Criminal proceedings instituted before the promulgation of this Act shall continue and finally complete according to the Act on Protection against Domestic Violence («Narodne novine», 116/03.).

Article 28

Upon entry into force of this Law, the Law on Protection from Domestic Violence is no longer valid («Narodne novine», 116/03.).

Article 29

This Law shall come into force on the eighth day following its publication in the «Narodne novine»

Class: 551-01/09-01/02
Zagreb, October 30th, 2009.

CROATIAN PARLIAMENT

President
Croatian Parliament
Luka Bebic, MP

APPENDIX B. RULES OF PROCEDURE IN CASES OF FAMILY VIOLENCE

**PROTOKOL O POSTUPANJU U SLUČAJU
NASILJA U OBITELJI**

**RULES OF PROCEDURE IN CASES
OF FAMILY VIOLENCE**

Vlada Republike Hrvatske

Ministarstvo obitelji, branitelja i međugeneracijske solidarnosti

Government of the Republic of Croatia

**Ministry of Family, Veterans' Affairs and
Intergenerational Solidarity**

Zagreb, 2008.

PROTOKOL O POSTUPANJU U SLUČAJU NASILJA U OBITELJI

RULES OF PROCEDURE IN CASES OF FAMILY VIOLENCE

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INTRODUCTION

Taking into account official data on the current situation, trends and forms of violence in the Republic of Croatia, it is obvious that the victims of violence are predominantly female persons of various ages and family statuses, while the perpetrators are predominantly male, present or former marital or extramarital partners, fathers or sons of victims.

The aim of these Rules is to ensure the conditions for efficient and coherent functioning of the competent authorities for the purpose of improving the protection of victims in the family and helping the perpetrators to change their behaviour and system of values, in other words promoting a non-violent way of conflict resolution and a respect for gender equality.

These Rules of Procedure in Cases of Family Violence (hereinafter: Rules) are based on national laws and regulations and on the obligations prescribed by the National Strategy for Protection against Family Violence for the Period from the Year 2005 till the Year 2007, endorsed by the Government of the Republic of Croatia on 9 December 2004 (hereinafter: National Strategy). They contain:

- **the obligations of competent bodies and other factors** involved in identification and elimination of violence and in providing help and protection to the persons exposed to family violence;
- **forms, means and areas of cooperation between competent bodies and other factors** involved in identification and elimination of violence and in providing help and protection to persons exposed to family violence;
- **other activities and obligations related to actions of competent bodies and other factors** involved in identification and elimination of violence and in providing help and protection to persons exposed to family violence;
- **final provisions** regulating procedures in accordance with these Rules.

The notion (definition) of family violence and the persons entitled to protection are defined by the Act on Protection against Family Violence (Official Gazette 116/03) and the Penal Code of the Republic of Croatia (Official Gazette 110/97, 27/98, 129/00, 51/01, 111/03, 105/04 and 84/05), in particular in the Article 215.a.

The Act on Protection against Family Violence defines family violence as *“every use of physical force or psychological pressure against the integrity of a person; every other behaviour of a family member which can cause or potentially cause physical or psychological pain; causing feelings of fear or being personally endangered or feeling of offended dignity; physical attack regardless of whether or not it results in physical injury, verbal assaults, insults, cursing, name-calling and other forms of severe disturbance, sexual harassment; spying and all other forms of disturbing; illegal isolation or restriction of the freedom of movement or communication with third persons; damage or destruction of property or attempts to do so.”*

The Penal Code defines violent behaviour in the family as a situation in which *“one member of the family puts another member of the family into a humiliating position by means of force, abuse or particularly impertinent behaviour.”*

The main provisions of the Act on Protection Against Family Violence (Official Gazette 116/03) particularly stress the obligation of reporting family violence, which implies that medical personnel, providers of social welfare, psychologists, social workers, social pedagogues, and educational institutions' employees have an obligation to report to the police or to the competent Municipal State Attorney's Office on any acts of violence which they became familiar with in the line of their duties. Failure to act in accordance with these provisions is to be qualified as a misdemeanour.

Public administration bodies identified by these Rules are obliged to perform immediate measures to provide a system, organization and equipment, and a sufficient number of specialized professionals dealing

with the issues of family violence, and to provide appropriate allocation of the State Budget funds by the relevant Ministries.

1. OBLIGATIONS OF COMPETENT BODIES:

A) POLICE

The aim of the Rules of Procedure for the police is to protect the victim from family violence, i.e. to work with the goal of elimination of family violence in the interest of the protection of the integrity of the family and family health, and prevention of intergenerational transfer of violence in the family. Furthermore, these Rules are in the function of implementing a proactive strategy of the prevention of: murders, suicides, causing severe physical injuries, physical and psychological harassment, sexual abuse, removal of children and minors from home, i.e. of the victim from the family; as well as in the function of elimination of juvenile delinquency, strengthening of legal protection of children and minors, elimination of narcotic drugs' abuse and other addictions, and direct contribution to gender equality in the Republic of Croatia

In cases of receipt of a notification (by whoever and by any means whatsoever) of violence or registering a request to help a person exposed to any form and modality of family violence, the responsible person is obliged to proceed as follows:

1. One must immediately and with no delay send, when possible, at least two police officers (preferably of both sexes) to the location of the reported event for the purpose of intervention, i.e. verification of the report or request for help (verification must be made even in cases the house or apartment is closed). Upon examining the situation, measures must be undertaken to immediately protect the victimized person and offer any necessary medical and other help, as well as to prevent the perpetrator from further aggressive behaviour;
2. One must gather evidence and all necessary information for the clarification and presentation of evidence for misdemeanour or

criminal offence classified as *Violent behaviour in the family* or other type of misdemeanour or criminal offence related to family violence which must be processed in the line of duty;

- 2.1. One must gather evidence and all information in such a way that the person reported or presumed to be the victim of violence is able to cooperate and provide all relevant information, necessary for the identification of perpetrated violence, in an interview conducted in a separate room, in an undisturbed manner and without fear, and in absence of the perpetrator. In this interview all information connected to the circumstances of violence must be taken into account, such as duration, continuity, form of violence, possible earlier aggressive behaviour, and a possible official record of earlier violence and police intervention, and the scope of the intervention. It is particularly necessary to take into account the exposure of children to violence, or their witnessing the scenes of family violence. An official note must be written with regard to this, containing detailed evidence provided by the victim.
- 2.2. The perpetrator of the violence must be informed about the measures that will be undertaken against him/her, with the aim of immediate cessation of aggressive behaviour, and providing support to the perpetrator in change of behaviour;
 - 2.2.1. If the perpetrator of violence possesses a licensed weapon, it will be temporarily confiscated to prevent possible abuse. Also, proposal will be made for the appropriate procedure of weapon seizure and the withdrawal of firearm license.
 - 2.2.2. If information is obtained about an unlicensed weapon, all measures will be undertaken to locate and confiscate it, and to file criminal charges.

3. One must bring the perpetrator of family violence to the police station and keep him/her in detention, and file a request for a misdemeanour procedure due to misdemeanour *Violent behaviour in the family*, or file a criminal charge for the offence *Violent behaviour in the family*. The perpetrator will be escorted to the police-court judge or investigating magistrate, in accordance with existing statutory regulations.
 - 3.1. Depending on the circumstances and fulfilled conditions, the request for misdemeanour procedure must contain, along with the proposal for detention of the accused person until the ruling is passed, a request for the appropriate protective measures, i.e. measures of precaution;
 - 3.2. Police officers escorting the accused person to the Misdemeanour Court, or to the investigating magistrate with the proposal for keeping this person in detention, i.e. custody, are obliged to wait for the judge's ruling, and if the police-court judge does not order detention, or the investigating magistrate does not rule that the accused person is kept in custody, the police officers must immediately inform the victim accordingly;
 - 3.3. If a child or a minor is victimized, or has witnessed family violence (which provides grounds for reasonable suspicion of the criminal offence *Neglect and abuse of a child or a minor*) or if there is reasonable suspicion for the criminal offence *Violent behaviour in the family*, police officers specialized in juvenile delinquency are appointed to the case, they take over the proceedings and coordinate police system teamwork focused on protection against family violence;
 - 3.4. In the course of proceedings the police officers are obliged to inform the victim of violence in an appropriate and clear way of his/her legal rights, particularly with regard to protective measures and circumstances of their ruling and their implementation, and on measures and activities which

the police will undertake in further proceedings against the perpetrator of violence, which are of particular importance for the safety of the victim (e.g. about escorting of the perpetrator to the police station, ruling the measure of detention and the length of detention, escorting of the perpetrator to the police-court judge or the investigating magistrate with the proposal of the perpetrator's detention, possible releasing of the perpetrator following the investigation of the police-court judge or the investigating magistrate, the importance of self-defensive behaviour and cooperative behaviour of the victim being to benefit of her own safety, the address-book of institutions and organizations that offer help, support and protection to victims of family violence, possibilities of finding shelter in a safe house for victims of family violence, or placement in a Home for Children and Adult Victims of Family Violence);

- 3.5. If the victim of violence asks for placement in a shelter or the Home for Children and Adult Victims of Family Violence, the competent social welfare centre will be asked to undertake immediate measures to place the victim in an appropriate shelter. In case the centre is not able to perform this transfer due to justifiable reasons, the police officers will transfer the victim to the shelter, always respecting secrecy and safety concerns of the shelter;
 - 3.6. If urgent care must be provided to a victim of family violence, particularly a child or minor, or an interview must be conducted with a child or minor, an immediate presence and intervention of a social worker from a social welfare centre will be asked for, for the purpose of providing care and assuring the child's well-being, bearing in mind that the child's stay at the police premises should be as short as possible.
4. One must write and send a written notice to the social welfare centre about performed activities, with the aim of undertaking social and intervention measures and legal measures of the family protection;

5. One must enter the data about the offence, the perpetrator and the victims, as well as proposed and undertaken police protection measures in the Records of Offences of *Violent behaviour in the family*.
6. The work of the police system in the prevention of family violence is being coordinated, directed and monitored by police officers specialized for juvenile delinquency and criminal-law protection of children and minors. The purpose of this responsibility is to ensure a timely, legal and comprehensive action, full intersectoral cooperation, and the achievement of the conditions necessary for the protection, proper upbringing and integral development of the children and minors, the implementation of principles of gender equality, and lodging timely appeals against the decisions of Misdemeanour Courts;
7. In order to undertake actions in accordance with these Rules, operative officers on duty at a police station are obliged to inform the police officer specialized for juvenile delinquency of any report and performed intervention connected to family violence. By monitoring and directing the police actions this officer will ensure that the efficient measures are undertaken for the clarification of events, informing of the victim of legal rights and possibilities of protection from future violence, undertaking appropriate legal procedure related to family violence, and timely notification and involvement of other competent bodies, institutions, services, and NGOs;
8. In order to ensure that police actions are undertaken in accordance with point 7 of these Rules, and in order to ensure the approval of undertaken actions and established facts, and the approval of the proposals and demands intended for adequate sanctioning of the perpetrators of violence in the legal procedure, as well as ensuring efficient protection of the victim of family violence, it is mandatory that upon the examination of the case the police officer specialized for juvenile delinquency signs the *Request for Starting Misdemeanour Procedure* i.e. for filing criminal charges, which will be filed with

appropriate judicial authorities. This must be done before the signing of the request by the responsible official at the police station;

9. In case the violence is committed by a person treated for alcoholism or other addictions and/or by a person with mental disturbances, the social welfare centre will be immediately notified in order to undertake measures stipulated by law.

B) SOCIAL WELFARE CENTRES

The aim of the Rules of Procedure regarding the social welfare centres is the improvement of the family violence victims' protection, prevention of new violence and development of measures for protection of rights and for the welfare of the persons exposed to family violence.

When an employee of the social welfare centre is informed, by whoever and in any way whatsoever (in writing, by phone, verbal report, from the media or in the course of work on another case) of a case of family violence or gets any information leading to reasonable suspicion of family violence, he/she is obliged to do the following:

1. Immediately upon receipt of such information, one must report the case to the police, disregarding whether or not it had already been reported by another body, and include in this report all the available evidence. In addition, the employee of the centre will write an official note about the reported incident, containing data about the victim, the perpetrator and the committed violence and open a file on the case immediately;
2. One must start other activities directed at helping the victim within the competence of the social welfare centre, paying particular attention to the following:
 - 2.1. The contact with the victim must be established as soon as possible;

- 2.2. The victim of violence or his/her legal representative or guardian must be informed about relevant legal rights, particularly the rights of the child to protection against any form of violence or neglect, about the competence and procedures of the social welfare centre regarding protection of citizens, and the measures that the social welfare centre intends to undertake in that particular case, which are of vital importance for the protection of safety of the victim or child, particularly information relating to placing of the victim and child in a shelter or home for victims of family violence, in cooperation with appropriate NGOs. If the victim of violence is a female, the plan of her safety protection will be worked out together with the victim, and she will be assisted in accessing free legal aid and free services of a lawyer from the Croatian Bar Association, as well as free medical aid. She will also be referred to an appropriate counselling centre. In contacting a victim of family violence the social welfare centre is obliged to act particularly sensitively regarding the problem of family violence, its causes and various forms, showing particular understanding towards the victim in all the actions undertaken by the centre;
- 2.3. In the cases where criminal or misdemeanour procedures due to family violence have been started, in every particular case the centre will carefully consider whether the rights and interests of the child are fully observed. If not, a special guardian will be nominated to represent the interests of the child in legal procedures;
- 2.4. The victim will be provided the opportunity to give, in a safe and supporting environment, all information relevant for identification of the violence committed against her/him and the children, particularly all facts related to the children witnessing the acts of violence or their exposure to violence in any way (in case of need for an urgent and comprehensive protection of the children, immediate measures will be undertaken on the basis of verbal order). In completing the report, particular

attention will be given to the circumstances related to duration, continuity and forms of committed violence, possible instances of earlier violence and earlier exposure of the victim and children to violence, as well as possible former interventions of the competent bodies regarding violence in that family and their scope. In the proceedings the social welfare centre shall pay particular attention to the protection of victims of violence in front of official bodies, bearing in mind the safety of the victim and ensuring separate court hearings for her/him and the perpetrator;

- 2.5. The employees of the social welfare centre will urgently, without delay, establish all evidence pertaining to the case, by means of investigation and other appropriate means. This includes interviews with the staff of educational institutions, family physician and all other persons who could provide valid evidence on the circumstances of committed violence;
 - 2.6. The employees of the social welfare centre are obliged to write a note or a report or create other kind of written record about every action undertaken relating to a case of family violence;
3. Having gathered all relevant evidence, the social welfare centre undertakes action for the realization of the rights of victims of violence and the rights of children, as prescribed by the Act on Social Welfare, and the implementation of measures of legal protection of the family in accordance with the Family Act, particularly those relating to the protection of the rights and welfare of the child taking into consideration the best interest of the child.
 - 3.1. For the sake of a child's wellbeing protection, in cases of family violence committed by a parent who does not live with the child, the social welfare centre is obliged to forward, without delay, a proposal to the court to issue a verdict, ruling that the parent who does not live with the child is forbidden to meet the child and spend time with the child, in order to protect the health and other vital interests of the child,

i.e. the social welfare centre shall propose, without delay, to the court to issue a verdict, ruling that the relevant family member is forbidden to get close to the child on certain locations without authorization or at a certain distance, and to disturb the child. The social welfare centre will inform about it the non-abusive parent and also, in an appropriate and considerate way, the child;

4. In urgent cases, for the sake of the immediate protection of a family violence victim, the social welfare centre care shall pass a verbal decision on the care outside the victim's family, and rule the effectuation of the decision without delay. The written decision must be issued by the centre within eight days' period subsequent to the day of application for the care outside the victim's family, or of the information of the emergency care provided to the user, which will be delivered to the centre by a corporate person indicated in the Articles 93 and 105 of the Act on Social Welfare. The decision will be forwarded as additional note to the police as well.

Simultaneously, the social welfare centre will propose to the court the enacting of the measure resolving the status of a minor child and its immediate protection from further abuse;

5. In case a child was the victim of family violence either by being exposed to violence, or having witnessed scenes of violence, the social welfare centre will propose, without delay, to the court the enacting of the appropriate measure of family-legal protection. The social welfare centre can also simultaneously enact the appropriate measure within its competence, taking account of all circumstances of the case, and regularly (at least twice a month) and carefully monitor the implementation of these measures as well as achieved results, in which process the centre must provide appropriate report or an official note. In the evaluation of the results of the enacted measure, the opinion of the child about the conditions in which it lives will be particularly carefully taken into account, and the centre will ask for help of appropriate professional services and institutions. If necessary, in case enacted measure fails to achieve expected results, the centre

- will propose to the court enacting of another measure, taking particular care about the specific circumstances and needs in the process of a new measure selection;
6. If requested by the General Attorney's Office or the police, the social welfare centre must submit all documentation relevant for the clarification and presentation of evidence for the relevant criminal offence (for example, report by the social worker, monitoring report, opinion of the psychologist and other documents on implementation of relevant measures);
 7. An employee of the social welfare centre is obliged to respond immediately to the call from the police for the purpose of providing immediate care to a child or minor, and for an interview in deciding on the measures connected to family violence;
 8. While making decisions which concern the rights and interests of the child, the social welfare centre is particularly obliged to verify the existence of family violence.

C) HEALTH INSTITUTIONS

The application of the Rules to health institutions aims at offering comprehensive health care with the aim of preserving physical and mental health of the victim and recovery from possible injuries and psychological traumas.

In cases of reasonable suspicion that an injury or other characteristics of the health condition is a consequence of family violence, the health worker is obliged to talk to the relevant person in a very considerate manner and encourage it to provide as many data as possible about family violence and the circumstances in which the injury or the change of the health condition occurred.

If it is apparent that an act of family violence was perpetrated, the health worker is obliged to do the following:

1. One must report the case to the police in accordance with the Act on Protection against Family Violence;
2. One must identify the causes and means by which the injury was performed and conduct a complete medical check-up;
3. One must talk with the victim about the possibilities of resolving the problem, inform the female victim of other means of support provided by NGOs, as well as of her statutory rights, and refer her to further medical examinations if necessary. The health worker will also maintain permanent contact with the social service and the police;
4. In cases of physical injury performed by a member of the family, the physician in Emergency Care, or primary care physician is obliged to fill in the Report of Injury/Illness Form No. 030911 or No. 030055, in accordance with the Act on Protection against Family Violence, and mark the form with the number containing the date, month and year in which the injury was performed (marked section 4). The form must be entered into a separate protocol and the file of the patient;
5. Aforementioned form must be delivered to the police and local branch of the Croatian Health Insurance Office, according to place of residence of the insured person. The number is placed in the left corner of the health insurance card;
6. Upon request of the General Attorney's Office or police, the medical institutions are obliged to submit all documentation relevant for the clarification of the case and presentation of evidence related to the criminal offence;
7. If the victim of family violence is a person with mental disturbances or has been treated for alcoholism or other addictions, it may be referred to treatment or compulsory hospitalization. The social welfare centre and the police must be notified of such action.
8. If the perpetrator of family violence is a person with mental disturbances or has been treated for alcoholism or other addictions, it may be

referred to treatment or compulsory hospitalization. The social welfare centre and the police must be notified of such action. Before discharge of such a person from the hospital the health workers must notify the victim.

D) EDUCATIONAL INSTITUTIONS

The application of the Rules to educational institutions aims at raising awareness of the educational institutions' employees about the family violence experienced by children and pupils and undertaking measures for identifying and reporting on such problems and helping the child.

Teachers and expert educational associates are obliged to undertake measures to protect the rights of the child/pupil and to report immediately on every infringement of those rights, particularly on all forms of physical or psychological violence, sexual abuse, neglect or negligent behaviour, maltreatment or exploitation. They are in particular obliged to do the following without delay:

1. If the child/pupil is injured in the extent which requires medical attention, or if it is assumed that such an intervention or check-up is necessary, one must immediately call the ambulance, or otherwise in the most expedient way escort or arrange that the child is escorted by a qualified professional to the physician. The accompanying person must wait for the physician's instructions on further steps to be taken;
2. The head-master must be informed without delay. He/she must report the case to the police and the social welfare centre and inform them on all the facts and circumstances of the case and performed activities. On the request of the General Attorney's Office or the police the head-master will deliver all documentation relevant for the clarification of the case and possible presentation of evidence concerning the criminal offence without delay;
3. In cases of particularly severe form, intensity or duration of the violence which caused a trauma, one must consult a professional

counselling service of the relevant educational institution, qualified professionals from the relevant social welfare centre and, if necessary, professionals in other institutions on the best way to provide support to the child – victim of family violence, within the competence of the educational institution;

4. A written record on all the performed activities, interviews, statements and personal observations must be compiled and it will be submitted to other competent bodies upon their request.

E) JUDICIAL BODIES

The application of Rules in the scope of work of judicial bodies aims to utilize in the most efficient way all legal options currently in force in the Republic of Croatia, with the purpose of protecting family members exposed to family violence and offer them legal protection, in accordance with the basic rights to personal integrity and life without violence.

Judicial bodies (courts and/or General Attorney's Office) shall:

1. Act urgently in all matters related to family violence;
2. When passing the decisions from the field of the family-legal protection, for the sake of immediate discontinuation of exposure of the child to family violence, the courts will be acting without delay, and will take particular care of the protection of the child's interests, in the process of which the opinion of the child will be obtained either directly from the child or through the competent centre for social care;
3. The court processing the misdemeanour or criminal case connected to the protection and interest of the child will inform the competent social welfare centre and the police on the start of the proceedings and the valid rulings passed in the misdemeanour or criminal proceedings;
4. In the course of the proceedings, the party who is a victim of family violence will be informed, upon request, on the relevant legal rights,

taking into account the occasional need to explain these rights to a legally ignorant victim, i.e. party;

5. The courts will, upon personal request of the party who is a victim of family violence or of the relevant legal representative or guardian, notify that person on the outcome of the proceedings and deliver the copy of the valid court ruling;
6. The courts will keep a record of the implemented protection measures as prescribed by the Act on Protection against Family Violence, and submit them to the Ministry in charge of justice affairs;
7. Organize the work of Misdemeanour Courts in such a way that they can conduct the proceedings during weekends and holidays;
8. In cases of family violence the judges of the Misdemeanour Courts and investigating magistrates will ensure the reception of the defendant or suspect for the purpose of ordering detention in misdemeanor proceedings or custody in criminal offences' proceedings, and question the defendant or suspect and decide on further proceedings;
9. The courts will ensure protection of the victim upon arrival to court and inside the court premises, and enable the victim to give evidence separately from the perpetrator, as well as provide physical protection of the victim in cooperation with the police.

2. FORMS, MODES AND CONTENT OF COOPERATION

The implementation of measures of the National Strategy and of these Rules of Procedure in Cases of Family Violence implies a prompt establishment of cooperation of competent bodies and other factors (educational institutions, residential homes, social welfare centres, health institutions, police, judicial bodies, General Attorney's Offices, local and regional self-administration units and NGOs) dealing with the identification and elimination of violence and with providing protection and help to the person exposed to any form of family violence.

The obligations of competent bodies and other factors participating in the identification and elimination of family violence and offering support and protection to persons exposed to any form of family violence, are the following:

1. In every competent Ministry which participates in the identification and elimination of violence and in offering help and protection to the persons exposed to family violence, nominated coordinators for gender equality are entrusted with monitoring of the adherence to these Rules. They shall demand a report on the implementation of the Rules twice a year, and report on it to the Ministry of Family, Veterans' Affairs and Intergenerational Solidarity, which shall submit a comprehensive report to the Government of the Republic of Croatia;
2. Establishment of cooperation and information exchange with local and regional self-administration units, i.e. coordinators for gender equality in the public administration offices, in the commissions for gender equality in counties and NGOs dealing with programmes intended for the protection of the victims of violence and recognition of their rights. The purpose of this effort is sharing the experiences and establishing good practices;
3. In local and regional self-administration units regular meetings must be held with the presence of the representatives of competent bodies, i.e. coordinators for gender equality in the public administration offices, in the commissions for gender equality in counties and representatives of the NGOs dealing with programmes intended for the protection of the victims of violence and recognition of their rights concerning the problems of individual family violence cases, bearing in mind the realized achievements in coping with this problem;
4. Based on data collected from competent bodies and NGOs dealing with programmes intended for the protection of victims of violence and recognition of their rights, the coordinators for gender equality in public administration offices will produce reports on family violence and submit them to the Ministry in charge of family, Ministry in charge of justice affairs, the Commission for the Monitoring and Improvement of the Work of Bodies in Charge of Criminal and Misdemeanour

Procedure and Execution of Sanctions Related to Family Violence, the Ombudsperson for Gender Equality, the Ombudsperson for Children and the Office for Gender Equality of the Government of the Republic of Croatia, twice or three times a year (these reports must be treated as particularly confidential; the data should be expressed numerically, by sex and age, or in some other appropriate manner providing that the right to privacy is not jeopardized);

5. Establishment of cooperation with other factors which could be particularly helpful in a particular case, such as NGOs, religious communities, family counselling centres and experts in the field of family violence;
6. All competent bodies are obliged, in the course of their actions, to protect the interests of the child pursuant to the Convention on the Rights of the Child;
7. All competent bodies are obliged, in the course of their actions, to protect the interests of women exposed to family violence, pursuant to the Convention on the Elimination of all Forms of Discrimination against Women and the Recommendations of the UN Committee in charge of monitoring the implementation of this Convention and other international regulations.

3. OTHER ACTIVITIES AND OBLIGATIONS

In accordance with the measures defined by the National Strategy on Protection against Family Violence it is necessary to work out the manners of raising public and professional awareness for the issues of family violence. It is necessary to develop a multi-disciplinary approach to victims of family violence and encourage them to report on all such incidents in a safe environment created by competent bodies and NGOs.

Appropriate action related to the issues of family violence demands the cooperation of all public administration bodies. Should it be left to one factor alone, be that the school, the police or the social welfare centre, this

effort would turn inefficient in the long run. Therefore, aforementioned cooperation is a precondition for a comprehensive and efficient protection of family members.

All public administration bodies are obliged:

1. When dealing with victims, in order to avoid secondary victimisation, to behave considerately, respecting the victims' dignity. In their proceedings the competent bodies and institutions are obliged to ensure a gender-sensitive treatment.
 - 1.1. When dealing with the children, the competent bodies and institutions are obliged to behave in accordance with the best interest of the child, with particular attention given to protecting all the rights and interests of the child, bearing in mind the child's age and level of psychophysical development, its health and emotional state. For this purpose, it is necessary to consult and follow the recommendations of experts on the treatment of children – victims of family violence;
2. The perpetrator of the violence must be informed of the possibility of attending a psychosocial treatment programme, without any prejudication of the misdemeanour/criminal liability, with the aim of assisting the perpetrator in achieving the change of behaviour;
3. On personal request, the party – victim of family violence must be informed on the course and/or outcome of judicial proceedings;
4. The party – victim of family violence must be informed on all further actions;
5. To keep a unified record of ruled sanctions and applied measures, and submit these data to the Ministry competent for justice affairs.

4. FINAL PROVISIONS

1. Every public administration body involved in the identification and elimination of violence and providing help and protection to the persons exposed to family violence is obliged to act in accordance with the provisions of these Rules.
2. These Rules have been drafted on the basis of statutory regulations. In cases of amendments or additions to specific acts, every public administration body is obliged, within its scope of competence, to draw up a proposal for the amendment of the Rules within 30 days of the passing of amendments or additions to the act, and submit this proposal to the Ministry of Family, Veterans' Affairs and Intergenerational Solidarity.
3. All institutions competent within the scope of these Rules are obliged to ensure 24-hour duty service, in the manner of establishing and organizing a back-up duty service of experts for family violence.
4. Upon entry into force of these Rules all relevant Ministries must inform the bodies and institutions within their scope of competence about the existence and purpose of these Rules and must ensure their availability. Furthermore, all necessary actions must be undertaken to provide their consistent implementation.
5. All persons of competent bodies responsible for the implementation of these Rules will verify with their signature that they are acquainted with the provisions thereof and will accept responsibility for their implementation.

APPENDIX C. RELEVANT EXCERPTS FROM LEGISLATION

Misdemeanor Law

Conditional Conviction

Article 44

(1) The conditional conviction is a misdemeanour legal sanction that, as a warning measure, consists of the prison penalty or minors' prison penalty pronounced, and the deadline until which this penalty is not executed under the conditions as determined by this Act.

(2) The court can apply conditional conviction when they have appraised that, even without the execution of the penalty, they can expect the realization of the purpose of punishment, especially having in mind the relation of the misdemeanour perpetrator towards this misdemeanour or the damaged party and the compensation of damages caused by the misdemeanour.

(3) The conditional conviction prolongs the execution of the penalty pronounced, during a period that cannot be shorter than three months, nor longer than one year.

Obligations of a Conditionally Convicted Person

Article 45

(1) Along with the application of the conditional conviction, the court can determine one or more obligations to the misdemeanour perpetrator; namely:

1. To compensate damages caused,
2. To return the gain obtained through misdemeanour, or
3. To fulfil other obligations foreseen by the law, that are appropriate to the type of misdemeanour.

(2) The deadline for the fulfilment of the obligations from Paragraph 1 of this Article is determined by the court within the set verification period.

Recall of the Conditional Conviction

Article 46

(1) The court can recall a conditional sentence and determine the execution of the punishment pronounced if the convict commits one or more misdemeanours during the verification period for which he/she was pronounced the same or more severe punishment than the one pronounced by the conditional sentence.

(2) When the court recall a conditional sentence and determine the execution of the punishment pronounced, in cases from Paragraph 1 of this Article, they shall proceed according to the provisions of this Act on weighing the punishment for accumulated misdemeanours, regarding punishments pronounced.

(3) When the court do not recall a conditional sentence for a new misdemeanour, they can pronounce punishment or apply a conditional sentence. If they apply the conditional sentence, previously pronounced and newly pronounced punishment shall be governed by the provisions of this Act on weighing the punishment for accumulated misdemeanours, but a new deadline shall be determined, during which the total punishment pronounced shall not be executed.

(4) The court shall recall a conditional sentence and determine the execution of the punishment pronounced, if the convict does not meet the obligations determined for the verification period, and that he/she could meet. In case the inability of meeting obligations is determined, the court can replace these obligations with others, or release the convict from obligations.

(5) Regardless of the reasons for recall, the conditional sentence cannot be recalled following the end of one year since the expiry of the verification period.

Conditional Conviction with Protective Supervision

Article 47

(1) In case conditions for applying the conditional sentence have been realized, but given the circumstances in which misdemeanour perpetrator lives, and given his/her personality, the court appraise that he/she needs help, protection and supervision, for the purposes of meeting obligations, and in order that he/she does not commit a new misdemeanour during the verification period, it can apply the conditional conviction with protective supervision.

(2) Protective supervision is performed by expert personnel of the state entity of authority for the execution of criminal legal sanctions.

(3) Protective supervision can last during the whole verification period, but can be removed by a court ruling earlier, if the requirements of the need for help, protection and supervision have ceased.

Special Obligations in Protective Supervision

Article 48

By applying the conditional sentence with protective supervision, along with the obligations from Article 45, Paragraph 1, of this Act, the court can determine one or more obligations to misdemeanour perpetrator during the verification period, namely:

1. Committing to medical treatment necessary for removing physical or mental hindrances that can instigate the committal of a new misdemeanour,
2. Committing to therapy for dependencies to alcohol and intoxicating drugs in a medical institution or therapeutic community,
3. Participation in the process of psycho-social therapy in specialized institutions, within the framework of state entities, for the purposes of removing violent behaviour,
4. Banning visits to certain locations, bars and shows, that can provide opportunities for and instigate the committal of a new misdemeanour.

Recall of the Conditional Sentence with Protective Supervision

Article 49

The provisions of this Act on the recall of the conditional sentence are fully applied in the recall of the conditional sentence with protective supervision, provided that special obligations connected to protective supervision must be handled as other obligations connected to the conditional sentence (Article 46, Paragraph 4, of this Act).

Types of Protective Measures

Article 50

(1) Protective measures proscribed by this Act and one or more of which the court can apply to the misdemeanour perpetrator are the following:

1. Mandatory psychiatric treatment,
2. Mandatory addiction therapy,
3. Ban of conducting a vocation, certain business activities, jobs or duties on a natural person,
4. Ban of conducting certain business activities or affairs on a legal entity,
5. Banishment of foreigners from the country,

6. Dispossession of objects,
7. Ban of driving a motor vehicle.

(2) Apart from the protective measures proscribed by this Act (Paragraph 1 of this Article), the law can also proscribe other types of protective measures, that must be aligned with the provisions of this Act, according to their duration and purpose. These protective measures are applied under equal conditions as proscribed for the application of the protective measures from Paragraph 1 of this Article.

(3) Protective measures proscribed by this Act and separate acts can, if this Act does not proscribe otherwise, be proscribed and applied in the duration which cannot be shorter than one month, nor longer than two years. The protective measure of object dispossession is applied permanently.

(4) Protective measures envisioned for natural persons are also applied to the responsible person in a legal entity, the craftsman or other person performing an independent business activity.

Authorized plaintiff Article 109

(1) Authorized plaintiffs are the following:

1. State attorney,
2. State administration entity,
3. Legal entity with public authority,
4. Damaged party.

(2) In case two or more authorized plaintiffs have submitted proposals for indictment against the same defendant for the same misdemeanour before the main hearing was convened or the defendant was invited for interrogation, and one of the submitting parties is the state attorney, proceedings shall be conducted according to the request from the state attorney.

(3) If proposals for indictment against the same defendant and the same misdemeanour were submitted by the authorized plaintiffs of a state administration entity i.e. a legal entity with public authority and by the damaged party, within the deadline from Paragraph 2 of this Article, proceedings shall be conducted based on the indictment proposal by state administration entity i.e. legal entity with public authority.

4) If the same misdemeanour by the defendant damaged several persons, and but one of them, or all of them submitted the indictment proposal against this defendant within the deadline from Paragraph 1 of this Article, proceedings shall be merged, with all submitted indictment proposals, and single proceedings shall be conducted, and one verdict reached.

(5) If, during proceedings, the plaintiff on whose indictment proceedings are conducted cancels the indictment proposal, proceedings shall be continued based on already submitted indictment proposal by another authorized plaintiff, according to the rules in Paragraphs 2 through 4 of this Article. If in this case another authorized plaintiff had not, in the sense of Paragraphs 2 through 4 of this Article, submitted a proposal for indictment, the state attorney only is authorized to take the misdemeanour persecution over, or submit a new indictment proposal against the same defendant, for the same misdemeanour.

(6) If several authorized plaintiffs submitted indictment proposals, the court shall not proceed according to those indictment proposals according to which proceedings are not conducted, in accordance with this Article. They shall reject these indictment proposals by a ruling, following legal validity of the ruling on misdemeanour. Appeal is not allowed against this ruling.

(7) The plaintiff can cancel the indictment proposal until as yet legally invalid misdemeanour ruling has been reached.

(8) According to this Act, entities of the units of local and regional self-governing have the same authority, rights and obligations for misdemeanours of their jurisdiction. The provisions of this Act referring to entities of state administration are applied in a corresponding manner also to entities of the units of local and regional self-governing, regarding misdemeanours in their jurisdiction.

State Attorney

Article 110

- (1) The state attorney can submit the indictment proposal for all misdemeanours.
- (2) The municipal state attorney has actual authority over misdemeanour persecution before the misdemeanour court.
- (3) The local municipal state attorney of authority is determined according to provisions valid for the authority of the court in the area the state attorney was appointed for.
- (4) The Chief State Attorney of the Republic of Croatia acts before the High Misdemeanour Court of the Republic of Croatia.
- (5) The state attorney undertakes all actions in proceedings that he/she is legally authorized for, himself/herself or through persons who are legally empowered to represent him/her in misdemeanour proceedings.

State Administration Entity

Article 111

- (1) State administration entity authorized to directly conduct or supervise the execution of regulations that envision misdemeanours is authorized to submit proposals for indictment for that misdemeanour and those regulations. If the entity does not submit the indictment proposal, this can be done by a state administration entity of higher degree that supervises the execution of the same regulations on misdemeanour.
- (2) State administration entity as the submitter of the indictment proposal undertake all actions in proceedings they are authorized for by law through an empowered person.

Legal Entity with Public Authority

Article 112

- (1) Legal entities that have public authority are authorized for misdemeanour persecution of all those misdemeanours proscribed in the area of public authority they have.
- (2) Legal entity with public authority undertakes all actions it is legally authorized for during misdemeanour proceedings through the person it authorizes as its representative.

Damaged Party as Plaintiff

Article 113

- (1) Damaged party, that was harmed or whose certain material or personal rights were jeopardized through misdemeanour is authorized to submit the indictment proposal before the court.
- (2) Damaged party can be interrogated as a witness in proceedings.
- (3) The damaged party as a plaintiff undertakes all actions he/she is legally authorized for in proceedings himself/herself or through an authorized empowered person i.e. representative.
- (4) Indictment proposals for minor damaged parties or a person devoid of business abilities are submitted by their legal representative, who undertakes all actions in proceedings, and can also have an authorized empowered person.

(5) Senior minors as damaged parties (persons with sixteen years of age) can submit the indictment proposal themselves, and perform related actions in proceedings.

(6) In case the damaged party dies during the period allowed for submitting the indictment proposal or during proceedings conducted according to his/her indictment proposal, his/her spouse, extra-marital spouse, children, parents, brothers and sisters, foster parent and adoptee can submit the indictment proposal within a month following his/her death, or submit a statement that they continue proceedings.

Purpose, Types and Principles for Applying Precaution Measures

Article 130

(1) The court can, according to its official duty or upon a proposal from the plaintiff, order through a ruling with an explanation that one or several precaution measures be applied against the defendant during proceedings for misdemeanour proscribed by law, 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 misdemeanours or preventing or aggravating establishing evidence in proceedings.

(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.

(3) Precaution measures cannot limit the defendant's right to own flat, and the right of undisturbed relations with flatmates, marital, extra-marital or ex-marital partner, and the children of each of them, parents, adoptee, foster parent and a person he/she has children with, with a same-sex partner that he/she lives together in a life community, and ex-same-sex partner he/she lived with in a life community, unless proceedings are conducted on account of misdemeanours connected to family violence.

(4) Precaution measures can be determined during the entire misdemeanour proceedings.

(5) Precaution measures can last as long as there is need for them, and until the legal validity of the misdemeanour ruling at the longest. The court shall verify, according to its official duty, every two months, counting from the day of the legal validity of the previous ruling on the precaution measure, whether precaution measures are still needed, and prolong them or cancel them, if no longer required, by a ruling. Precaution measures shall be cancelled even before the expiry of the two-month deadline if the need for them ceased or if there are no longer any legal conditions for their application.

(6) In case of probability of misdemeanour proscribed by law having been committed, the police and inspection entities of state administration can temporarily determine through a command one or more precaution measures from Paragraph 2 of this Article, and for eight days longest, towards a person for which there is reasonable doubt he/she is the perpetrator of the misdemeanour.

(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.

(8) No appeal is allowed against a ruling rejecting a proposal for determining i.e. extending precaution measures and a ruling cancelling the measure applied. The defendant has the right to appeal against the ruling determining or extending the precaution measure. The appeal does not prolong the execution of the ruling.

(9) If, prior to or during the proceedings, a precaution measure was determined against the defendant that according to its contents and purpose corresponds to the protective measure applied to the defendant by the ruling on misdemeanour, the duration of the precaution measure is calculated into the time of duration of the protective measure applied.

Determining Precaution Measures

Article 131

(1) The location where the defendant must reside during the precaution measure being effective and the boundaries he/she must not leave are determined in the ruling determining the precaution measure of banning leaving the domicile without court approval. The measure of banning leaving the domicile can relate as well to leaving for abroad only.

(2) The location or area and the shortest distance the defendant can approach are determined in the ruling determining the precaution measure of visiting certain locations or areas.

(3) The shortest distance the defendant can approach to a certain person and persons establishing or maintaining direct or indirect connection with is determined in the ruling determining the precaution measure of banning approaching a certain person and banning establishing or maintaining connection with a certain person.

(4) The type and the content of a business activity is determined in more detail in the ruling that determines the precaution measure of banning undertaking a certain business activity.

(5) Personal data, the entity that issued the document, the number and the date of issue, and the ban to leave the Republic of Croatia shall be stated in the ruling that determines the precaution measure of temporary dispossession of travel and other documents for crossing the state border. If he/she has no other documents for determining his/her identity, the defendant can prove his identity by the written ruling on document dispossession.

(6) The data on the permit (personal data, the entity that issued the permit, the number, the date, the type of vehicle or other means of transport etc.) shall be stated in the ruling determining the precaution measure of temporary dispossession of driving licence for driving a motor vehicle, steering a vessel, flying an airplane or other means of transport.

Executing Precaution Measures

Article 132

(1) The ruling determining precaution measures is delivered to the defendant and to the entity executing the precaution measure.

(2) The precaution measures from Article 130, Paragraph 2, of this Act are executed by the police, except for the measure from Article 130, Paragraph 2, Item 4, that is executed by the state administration entity authorized for supervision this business activity.

(3) The court can request a verification of the execution of precaution measures at any time, and a report from the police or other entity executing the precaution measure. The entity executing the precaution measure shall urgently execute the verifications requested and immediately notify the court regarding them.

(4) The entity executing the precaution measure immediately notifies the court regarding the acts on the part of the defendant contrary to the ban or his/her failing to fulfil the commitment as determined by the precaution measure.

(5) Based on the report obtained, the court can fine the defendant who acts contrary to the precaution measure determined, or who does not fully or partially fulfil it, by the financial penalty of up to HRK 10,000.00. The financial penalty pronounced thus does not influence the misdemeanour legal sanction that shall possibly be pronounced for the misdemeanour committed. The defendant has the right to appeal against the ruling pronouncing the penalty.

(6) The court can, by a special ruling, ban the person other than the defendant the activities that disrupt precaution measures towards the defendant. If this person acts contrary to the ruling, he/she can be fined by a ruling with a financial penalty of up to HRK 10,000.00.

(7) The court can pronounce the financial penalty of up to HRK 20,000.00 for repeated breach of ordered precaution measures of ban of activities from Paragraph 6 of this Article.

Arrest

Article 134

(1) The police is authorized to arrest the person found committing misdemeanour proscribed by law, if there are reasons for detention from Article 135 of this Act.

(2) Following arrest, the police must:

1. Immediately notify the arrestee of the reasons for his/her arrest,
2. Upon arrestee's request, notify his/her family of the arrest within 12 hours. Arrested minor's parent or foster-parent shall be notified of the arrest independently of arrestee's wishes,
3. Notify the authorized social care entity if measures regarding the care of arrestee's child and other family members he/she cares of need to be undertaken, and – in proceedings connected to family violence – mandatorily immediately notify the same, for the purposes of possible care for family members damaged by this violence.

(3) The police shall bring the arrestee to the judge, along with an indictment proposal, or release him/her as soon as the necessity of depriving him/her of liberty ceases, and at the latest within 12 hours from the arrest. The police shall take personal and other necessary data from the arrestee. If the stated deadline for arrest is outside of court's working hours or duty shifts, the arrestee shall be brought until the end of the time court operates in. If this is not possible due to arrest circumstances or other important reasons, the police shall bring the arrestee to the judge, along with a written explanation, at the start of next day's working hours or duty shift. Arrest in no case can last longer than 24 hours.

(4) Following the arrested person being brought to him/her, according to Paragraph 3 of this Article, the judge must immediately question the arrested person regarding the statements in the indictment proposal and, upon a request from the police, or according to his/her official duty, determine by an explained ruling regarding his/her detention or release.

Detention

Article 135

(1) If an indictment proposal for misdemeanour proscribed by law was submitted against a certain person, and the misdemeanour refers to breaching public order, is connected to family violence, or is a misdemeanour that can be pronounced with a prison penalty or a financial penalty of over HRK 10,000, the court can, of its own accord or upon a proposal from the plaintiff, following the interrogation of the defendant and determining that there are no reasons for dismissing the indictment proposal from Article 161 of this Act, determine detention of this person if:

1. There are circumstances that point to the danger of him/her escaping (he/she is hiding etc.),

2. There is the danger that he/she shall destroy, hide, change or forge evidence or traces important for misdemeanour proceedings or that he/she shall disrupt misdemeanour proceedings by influencing witnesses or participants,
3. Special circumstances justify the fear of him/her repeating the same misdemeanour.
 - (2) Detention determined according to Paragraph 1 of this Article can last until there are reasons on account of which it was determined, but not longer than fifteen days, counting into this the time of arrest as well, and against a minor, it can last twenty-four hours, counting from the moment the court ordered detention.
 - (3) Following a legally as yet invalid verdict being reached, detention against the defendant can be extended or determined if a prison penalty or minors' prison penalty have been pronounced, and special circumstances justify the fear that he/she shall commit the same misdemeanour.
 - (4) Detention according to Paragraph 3 of this Article can last fifteen days, but not longer than the penalty pronounced, and the defendant can, upon his/her request, be sent to undergo the penalty pronounced even before the legal validity of the verdict.
 - (5) If the defendant is in detention during the moment of the verdict becoming legally valid, he/she shall remain in detention until being sent to undergo the penalty, and until the expiry of the penalty pronounced at the longest.
 - (6) Detention according to Paragraphs 1 and 3 of this Article is determined or extended by a written and explained ruling that is immediately submitted to the defendant detained. The time of the submittal of the ruling is indicated in the file and the defendant confirms this by his/her signature.
 - (7) The defendant has the right to appeal against the ruling determining or extending detention within the deadline of 48 hours. The appeal does not prolong the execution of the ruling.
 - (8) The court proceeds exceptionally urgently in the case where detention is determined, and has the official duty to verify whether the reasons and the legal conditions for further duration of detention ceased, and in this case immediately cancels detention.
 - (9) When the court has determined detention against the defendant, it shall proceed in the manner as proscribed in Article 134, Paragraph 2, Items 2 and 3, of this Act.
 - (10) No appeal is allowed against the ruling rejecting the proposal for the determination of extension of detention and the ruling cancelling detention.
 - (11) The total duration of detention in misdemeanour proceedings cannot be longer than 15 days prior to an as yet legally invalid verdict being reached, along with further 15 days at most following the as yet legally invalid verdict being reached, according to Paragraph 3 of this Article, except in the case from Paragraph 12 of this Article and Article 136 of this Act.
 - (12) If the High Misdemeanour Court cancels the as yet legally invalid verdict and returns the case for re-trial, it shall verify the foundation for defendant's detention from Paragraph 3 of this Article, and can extend detention for fifteen days at most. Such detention can be, unless the case includes the person from Article 136, Paragraph 1, of this Act, determined but once during the duration of proceedings, and its duration is not limited according to Paragraph 11 of this Article. In relation to the person from Article 136, paragraph 1, of this Act, such detention can last in the total of 30 days following the expiry of the deadline from Paragraph 11 of this Article maximum.

Special Police Measure for Immediate Prevention of Misdemeanour Perpetrator under the Influence of Intoxicating Drugs Committing Further Misdemeanours

Article 137

- (1) The police can determine the following measures by a command, for the purposes of immediate prevention of further misdemeanour committal, against the person under the influence of intoxicating drugs that was found committing misdemeanour, in case special circumstance point to him/her continuing to commit misdemeanours:

1. Placing in a special room until the intoxicating drug has ceased with its effects, but not for the duration longer than 12 hours,
 2. Transferring a motor vehicle to a certain location until the intoxicating drug has ceased with its effects, but not longer than 12 hours. The police notify the person against whom this measure was determined and the vehicle owner regarding the location of vehicle transfer, in case this person is different from the driver, as soon as possible, and at the latest until the measure has ceased. Following the cessation of the measure taken, the driver or the owner can repossess the vehicle. If the police hold this does not endanger the realization of the purpose of the measure, the police can give the vehicle to the owner of a person empowered by him/her even before the expiry of the deadline the measure lasts until. The costs of the transfer and handling of the vehicle are borne by the driver.
- (2) The Minister authorized for internal affairs shall proscribe the manner of executing the measure from Paragraph 1, Item 2, of this Article, in detail, through regulations.
- (3) In case of unfounded or illegal application of the measure from Paragraph 1 of this Article, the person against whom the measure was undertaken has the right to damage compensation.

Criminal Code

Suspended Sentence

Article 67

1. A suspended sentence is a criminal sanction which, as a non-custodial measure, consists of the pronounced punishment and the term within which such a punishment shall not be executed if the convict does not commit another criminal offense and under other conditions prescribed by law.
2. The court may apply a suspended sentence when it establishes that even without the execution of the punishment the realization of the purpose of punishment can be expected, particularly taking into account the relationship of the perpetrator towards the injured person and the compensation for the damage caused by the criminal offense.
3. A suspended sentence may be applied to the perpetrator of a criminal offense for which the statute prescribes the imprisonment of up to five years and for criminal offenses for which the imprisonment of up to ten years is prescribed, if the provisions of mitigation of the punishment have been applied.
4. A suspended sentence may be applied to the perpetrator of a criminal offense as specified in paragraph 3 of this Article when the court, by determining the type and the range of the punishment, pronounces imprisonment not exceeding two years or a fine, either for a single offense or for concurrently adjudicated offenses.
5. A suspended sentence shall postpone the execution of the pronounced punishment for a period of time which cannot be shorter than one or longer than five years, and such time shall be assessed in full years only.
6. When under conditions of this Code, both imprisonment and a fine are pronounced, the court may decide to postpone only the execution of imprisonment.

Obligations of the Person Under Suspended Sentence

Article 68

1. Together with imposing a suspended sentence, the court may order the following obligations: that the perpetrator of a criminal offense shall compensate for the damage he caused, that he restitutes the gain

acquired by the offense, or that he fulfills other statutory obligations regarding the perpetration of the offense.

2. The period for the fulfillment of an obligation referred to in paragraph 1 of this Article shall be determined by the court within the assessed period of probation.

Revocation of Suspended Sentence

Article 69

1. The court shall revoke a suspended sentence and order the execution of the pronounced punishment if the convicted person, within the period of probation, commits one or more criminal offenses for which the court has imposed imprisonment of two years or a more serious punishment.
2. The court may revoke a suspended sentence and order the execution of the pronounced punishment if the convicted person, within the period of probation, commits one or more criminal offenses for which the court has imposed imprisonment of up to two years or a fine.
3. When, in the cases referred to in paragraphs 1 and 2 of this Article, the court revokes a suspended sentence and orders the execution of the pronounced punishment, it shall act pursuant to the provisions of this Code on the assessment of punishment for the concurrently adjudicated offenses.
4. When the court does not revoke a suspended sentence (paragraph 2), it may for the new criminal offense impose a punishment or a suspended sentence. If it imposes a suspended sentence, both the previously pronounced and the newly pronounced punishment shall be treated pursuant to the provisions of this Code on the assessment of punishment for the concurrently adjudicated offenses, but a new term within which such an aggregate punishment will be suspended shall be determined.
5. The court shall revoke a suspended sentence and order the execution of the pronounced punishment if the convicted person, within the course of the probation period, does not fulfill the obligations imposed on him in cases where he could have fulfilled them. In the case of the impossibility of fulfilling the obligations, the court may replace such obligations with others, or relieve the convicted person of the obligations.
6. The court shall revoke a suspended sentence when, after its imposition, it finds that the person under a suspended sentence has previously committed a criminal offense, if it deems that the conditions required for the application of a non-custodial measure would not have existed had this criminal offense been known. Both the pronounced punishment in the case of revocation of a suspended sentence and the punishment for the previously committed criminal offense shall be treated pursuant to the provision of paragraph 3 of this Article. If the court does not revoke a suspended sentence, it shall act pursuant to the provision of paragraph 4 of this Article.
7. Regardless of the reasons for revocation, a suspended sentence may not be revoked after a period of two years has elapsed.

A Suspended Sentence With Supervision

Article 70

1. When the conditions to impose a suspended sentence exist but the circumstances in which the perpetrator lives and his personality suggest that he needs assistance, protection or supervision in order to fulfill the obligation not to commit another criminal offense within the period of probation, the court may impose a suspended sentence with supervision.
2. The supervision shall be performed by experts of a governmental body responsible for the execution of criminal sanctions.

3. The supervision may last throughout the period of probation, but may also, by court order, be canceled sooner if the requirements for assistance, protection and supervision have ceased to exist.

Special Obligations Accompanying Supervision

Article 71

When pronouncing a suspended sentence with supervision, the court may, beside the obligations specified in Article 68 of this Code, order the perpetrator to fulfill one or more obligations during the probation period, such as:

- a) to undertake vocational training for a certain profession which he chooses with the professional assistance of a probation officer;
- b) to accept the employment which corresponds to his professional qualifications, skills and actual abilities to perform the working tasks suggested or offered to him by a probation officer;
- c) to dispose of his income in accordance with the needs of persons he is bound to provide for under law and in accordance with advice offered by the probation officer;
- d) to undergo medical treatment necessary to eliminate physical or mental disorders which may induce the perpetration of a new criminal offense;
- e) to undergo alcohol and drug rehabilitation in a medical institutions or a therapy community,
- f) participation in the process of psychosocial therapy in specialized institutions within the framework of competent state bodies in order to eliminate violent behavior,
- g) to avoid visiting certain places, bars and events which could offer an opportunity and motive to commit another criminal offense;
- h) to regularly keep in touch with the probation officer so as to be able to report on the circumstances which could induce the perpetration of another criminal offense.

Revocation of a Suspended Sentence With Supervision

Article 72

In the case of revocation of a suspended sentence with supervision, the provisions of this Code on the revocation of a suspended sentence shall apply, with the proviso that special obligations accompanying supervision shall be treated in the same way as any other obligations accompanying a suspended sentence (Article 69, paragraph 5).

Murder

Article 90

Whoever kills another person shall be punished by imprisonment for not less than five years.

Aggravated Murder

Article 91

Punishment by imprisonment for not less ten years or by long-term imprisonment shall be imposed on a person who:

1. murders a child or a minor;
2. murders a pregnant woman;
3. murders another and by doing so intentionally endangers the life of one or more persons;
4. murders another in a very cruel or treacherous way;
5. murders from greed;
6. murders another in order to commit or to cover up another criminal offense;

7. murders a judge, a lay judge, the State Attorney, a deputy of the State Attorney or an attorney in the execution of their duties;
8. murders an official person at the time when such a person acts in the execution of his duty of protecting the constitutional order, safeguarding persons or property, discovering criminal offenses, bringing in, arresting or preventing the escape of a perpetrator of a criminal offense, applying criminal sanctions and measures and keeping public order and peace.

Manslaughter

Article 92

Whoever kills another on the spur of the moment, after being brought without his fault into a state of strong irritation or fright by another person's attack, maltreatment or serious insult, shall be punished by imprisonment for one to ten years.

Bodily Injury

Article 98

Whoever inflicts bodily injury on another or impairs a person's health shall be punished by a fine or by imprisonment not exceeding three year.

Aggravated Bodily Injury

Article 99

1. Whoever inflicts a serious bodily injury on another or severely impairs a person's health shall be punished by imprisonment for six months to five years.
2. If bodily injury is inflicted on a person, or if a person's health is impaired so severely that the life of the injured person is endangered, or if an important part of the person's body or an important organ of the person is permanently weakened to a significant degree or destroyed, or if permanent work disability is caused to the injured person, or if permanent and severe damage to his health or permanent disfigurement is caused, the perpetrator shall be punished by imprisonment for one to ten years.
3. If the injured person dies due to serious bodily injury, the perpetrator shall be punished by imprisonment for three to fifteen years.

Impulsive Bodily Injury

Article 100

1. Whoever inflicts serious bodily injury on another, or severely impairs a person's health (Article 99, paragraph 1) on the spur of the moment, after being brought without his fault into a state of strong irritation or fright by another person's attack, maltreatment or serious insult shall be punished for three months to three years.
2. Whoever inflicts particularly serious bodily injury on another, or very seriously impairs a person's health (Article 99, paragraph 2) on the spur of the moment, after being brought without his fault into a state of strong irritation or fright by a person's attack, maltreatment or serious insult, shall be punished by imprisonment for six months to five years.
3. If the criminal offense of bodily injury resulting in death (Article 99, paragraph 3) is committed on the spur of the moment, the perpetrator shall be punished by imprisonment for one to eight years.

Negligent Bodily Injury

Article 101

Whoever inflicts serious bodily injury referred to in Article 99, paragraphs 1 and 2 of this Code by negligence shall be punished by a fine or by imprisonment not exceeding three years.

Institution of Criminal Proceedings for Criminal Offenses of Bodily Injury

Article 102

Criminal proceedings for the criminal offense of bodily injury (Article 98) shall be instituted upon a private charge.

Coercion

Article 128

1. Whoever coerces another by force or serious threat to an action, omission or acquiescence, shall be punished by a fine or by imprisonment not exceeding six months.
2. Imprisonment for three months to five years shall be inflicted on a perpetrator who commits the criminal offense referred to in paragraph 1 of this Article as a member of a group or criminal organization.
3. Criminal proceedings for the criminal offense referred to in paragraph 1 of this Article shall be instituted by a private charge.

Threat

Article 129

1. Whoever seriously threatens another with some evil so as to frighten or disturb him shall be punished by a fine or 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 against more persons, or if it has caused a major disturbance to citizens, or if the threatened person is thus put in a difficult position for a longer period of time, or if it is committed while the perpetrator is a member of a group or a criminal organization, the perpetrator shall be punished by imprisonment from six months to five years.
4. Criminal proceedings for the criminal offense referred to in paragraphs 1 and 2 of this Article shall be instituted by a private charge and for the criminal offense referred to in paragraph 2 of this Article following a motion.

Rape

Article 188

1. Whoever coerces another by force or by threat of immediate attack upon his life or limb, or the life or limb of a person close to him, to sexual intercourse or an equivalent sexual act shall be punished by imprisonment for one to ten years.
2. Whoever commits the criminal offense referred to in paragraph 1 of this Article in a particularly cruel or humiliating way, or if on the same occasion a number of perpetrators perform a number of acts of sexual intercourse or equivalent sexual acts against the same victim shall be punished by imprisonment for three to fifteen years.

3. If, by the criminal offense referred to in paragraph 1 of this Article, the death of the raped person is caused, or serious bodily injury is inflicted on the raped person or his health is severely impaired, or the (raped) female becomes impregnated, the perpetrator shall be punished by imprisonment for three to fifteen years.
4. If the criminal offense referred to in paragraph 1 of this Article is committed against a juvenile, the perpetrator shall be punished by imprisonment for three to fifteen years.
5. If the criminal offense referred to in paragraphs 2 and 3 of this Article is committed against a juvenile, the perpetrator shall be punished for not less than five years.
6. If the criminal offense referred to in paragraph 2 of this Article causes the consequences referred to in paragraph 3 of this Article, the perpetrator shall be punished by imprisonment for not less than five years.

Sexual Intercourse by Duress

Article 190

Whoever forces another person to sexual intercourse or to an equivalent sexual act with a serious threat of serious harm shall be punished by imprisonment for three months to five years.

Neglect and Maltreatment of a Child or a Juvenile

Article 213

1. A parent, adopter, guardian or another person who severely neglects his duties in maintaining or educating a child or a juvenile shall be punished by imprisonment for three months to three years.
2. The same punishment as referred to in paragraph 1 of this Article shall be inflicted on a parent, adopter, guardian or another person who maltreats a child or a juvenile or forces him to work in a way that is unsuitable for his age or to work excessively or to beg or who induces him for personal gain to behave in a manner which is harmful to his development.
3. If, by the criminal offense referred to in paragraphs 1 and 2 of this Article, serious bodily injury to a child or a juvenile is inflicted, or his health is severely impaired, or a child or a juvenile engages in begging, prostitution, or other forms of asocial behavior or delinquency, the perpetrator shall be punished by imprisonment for one to five years.

Violent Conduct Within a Family

Article 215a

A family member who by his or her violent, abusive or particularly insolent conduct puts another member of the family into a humiliating position shall be punished by imprisonment for three months to three years.

Criminal Procedure Code

Article 98

1. When circumstances exist as referred to in Article 123 of this Act which constitute the ground for investigative detention, or the detention is already determined, the court and the State Attorney shall, if the same purpose may be achieved by any of the precautionary measures, issue a ruling with a statement of reasons to carry out one or more such precautionary measures. The defendant shall be warned that in the case of failure to carry out the ordered precautionary measure it may be replaced by investigative detention.
2. Precautionary measures are:
 - 1) prohibition to leave a residence;

- 2) prohibition to visit a certain place or territory;
 - 3) obligation of the defendant to call periodically a certain person or authority;
 - 4) prohibition to approach a certain person;
 - 5) prohibition to establish or maintain contacts with a certain person;
 - 6) prohibition to engage in a certain business activity;
 - 7) temporary seizure of passport or other document which serves to cross the state border;
 - 8) temporary seizure of a license to drive a motor vehicle.
3. Precautionary measures may not entail the restriction of a defendant's right to his own apartment, to unimpeded connections with members of his household, spouse or common-law spouse, parents, children, adopted child or adoptive parent, except where the proceedings are conducted on account of a criminal offence committed to the detriment of any of these persons. The prohibition of the pursuit of a business activity may also include a lawful professional activity if the proceedings have been instituted for the criminal offence committed within the activity in question.
 4. Precautionary measures may not restrain the right of a defendant to unimpeded communication with his defence counsel.
 5. Precautionary measures may be ordered before and during the criminal proceedings. Prior to the indictment, the precautionary measures shall be ordered, prolonged and vacated by the State Attorney by a decision. When the indictment is preferred until the judgment becomes final, the measures shall be ordered, prolonged and vacated by the court before which proceedings are conducted.
 6. Precautionary measures may last as long as they are necessary and at the longest until the judgment becomes final. Duration of precautionary measures shall not be limited by duration terms of investigative detention. The State Attorney before the indictment, or the court conducting the proceedings shall examine every two months by virtue of the office whether the need for precautionary measures still exists and issue a ruling prolonging them or vacating them if they are not needed any more. The precautionary measures may be vacated before the expiry of two months if the need for them ceases to exist or if there are no longer legal conditions for their application.
 7. The parties may file an appeal against the ruling ordering, prolonging or vacating a precautionary measure, which does not stay the execution of the ruling. A decision on the appeal until preferring the indictment shall be made by the investigating judge.

Article 99

1. In the ruling ordering the precautionary measure of the prohibition to leave a residence, the competent authority shall determine the place where the defendant must be as long as the precautionary measure is in effect as well as the borders beyond which he must not go.
2. In the ruling ordering the precautionary measure of the prohibition to visit a certain place or a territory, the competent authority shall determine the place or the territory and the distance the defendant is not allowed to cross to approach them.
3. In the ruling ordering the precautionary measure of the obligation of the defendant to call periodically a certain person or an authority, the competent authority shall appoint an officer whom the defendant must call, the terms for the calls and the method for keeping record of the calls the defendant made.
4. In the ruling ordering the precautionary measure of restraint order regarding a certain person, the competent authority shall determine the distance the defendant must not cross to approach a certain person.

5. In the ruling ordering the precautionary measure of prohibition to establish or maintain contacts with a certain person, the competent authority shall prohibit establishing or maintaining direct or indirect contact with a certain person.
6. In the ruling ordering the precautionary measure of prohibition of engaging in a certain business activity, the competent authority shall determine the type and the subject of the business activity in more detail.
7. In the ruling ordering the precautionary measure of temporary seizure of a passport or another document that serves to cross the state border, the competent authority shall state the personal data, the authority that issued the document, the number and the date of issue.
8. In the ruling ordering the precautionary measure of temporary seizure of a license to drive a motor vehicle, the competent authority shall state the particulars of the license (personal data, the authority that issued the license, the number, the date, the type of vehicle, etc.).

Article 100

1. The competent authority shall submit the ruling ordering a precautionary measure to the authority executing the precautionary measure as well.
2. The precautionary measure of prohibition to leave a residence, prohibition to visit a certain place or territory, prohibition to approach a certain person and prohibition to establish or maintain contacts with a certain person, temporary seizure of a passport or another document that serves to cross the state border and temporary seizure of a license to drive a motor vehicle, issued by the court or the State Attorney, shall be executed by the policy authority.
3. The order of a precautionary measure of the obligation of the defendant to call periodically a certain person or an authority shall be executed by the police or another state authority which the ruling determined as the authority that the defendant shall call.
4. The order of a precautionary measure of prohibition of engaging in a certain business activity shall be executed by the authority competent for monitoring the business activity.
5. The minister responsible for justice, with the prior approval of the minister responsible for interior affairs and the minister responsible for defence, shall bring regulations to regulate the manner for the execution of precautionary measures.

Article 101

1. The authority ordering a precautionary measure may order an examination of its execution and require a report from the police or any other authority executing the precautionary measure. The authority executing the precautionary measure shall urgently conduct the examinations ordered and forthwith inform the competent authority thereof.
2. The authority executing the precautionary measure shall forthwith inform the competent authority about any conduct of the defendant contrary to the prohibition or his failure to comply with the obligation imposed by means of the precautionary measure.
3. The investigating judge may by a special ruling prohibit a person other than the defendant to engage in activities interfering with the precautionary measures related to the defendant. If that person fails to comply with the ruling, he shall be fined with an amount not exceeding HRK 50,000.00.

Article 106

1. Any person may prevent the flight of a person who is in the act of committing a criminal offence subject to public prosecution.

2. A person is considered to be caught in the act of committing a criminal offence when he is noticed by somebody while committing a criminal offence or if he is immediately after the commission of the criminal offence caught under circumstances indicating that he is the one who has just committed a criminal offence.
3. A person whose flight was prevented shall be turned over to the police and may be detained until the arrival of the police.

Article 107

The police authority shall be entitled to arrest:

1. a person against whom the ruling for compulsory appearance or a ruling on pre-trial detention or investigative detention is being executed;
2. a person against whom there are grounds for suspicion of having committed a criminal offence subject to public prosecution, for which a sentence of imprisonment for three years or longer is prescribed, and if any of the grounds exist for ordering investigative detention as referred to in Article 123 of this Act;
3. a person who is caught in the act of committing an offence subject to public prosecution.

Grounds for Ordering Investigative Detention

Article 123

(1) Investigative detention may be ordered if there exists reasonable suspicion that a person committed an offence and if:

- 1) the person is on the run or there are special circumstances indicating a danger of flight (the person is in hiding, his identity cannot be established, etc.);
- 2) if there are special circumstances indicating that he will destroy, hide, alter or forge items of evidence or traces of importance to the criminal proceedings or that he shall impede the criminal proceedings by influencing witnesses, expert witnesses, coprincipals or accessories after the fact;
- 3) if there are special circumstances indicating a danger that he will repeat the offence, or complete the attempted one, or perpetrate a felony he threatens to commit, for which the law foresees imprisonment for a term of five years or more;
- 4) if investigative detention is deemed necessary for undisturbed conducting of the proceedings due to especially grave circumstances of the offence and a sentence of longterm imprisonment is prescribed for such an offence;
- 5) if the duly summoned defendant evades appearance at the trial;

(2) Investigative detention shall not be ordered pursuant to the provision referred to in paragraph 1, item 2 of this Article if the defendant pleads guilty.

(3) When pronouncing a judgment of imprisonment for a term of five years or more, investigative detention against the defendant shall always be ordered or prolonged.

(4) When a first instance court renders a judgment of imprisonment for a term not longer than five years, after pronouncement of the judgment investigative detention may not be ordered or prolonged in accordance with paragraph 1, item 4 of this Article.

(5) Investigative detention shall not, contrary to the fact that circumstances referred to in paragraph 1 of this Article exist, be prolonged if the maximum term of duration of detention has expired (Article 133).

Article 285

1. The following persons are exempted from the duty to testify:
 - 1) the defendant's spouse or common-law spouse,

- 2) the defendant's linear relatives by blood, collateral relatives by blood to the third degree and relatives by affinity to the second degree,
 - 3) the defendant's adopted child and the defendant's adoptive parent,
 - 4) notaries public, tax consultants within the scope of a legally binding confidentiality obligation,
 - 5) attorneys, physicians, dentists, psychologists and social workers regarding information disclosed to them by the defendant while performing their respective professions,
 - 6) journalists and their editors in the media regarding sources of information and data coming to their knowledge in the performance of their profession and provided that their sources were used in the editorial process, except in criminal proceedings for offences against honour and reputation committed by the means of the media in a case prescribed by special law.
2. Persons referred to in paragraph 1 items 4 to 6 of this Article cannot refuse to give a statement if a legal ground exists exempting them from their duty to keep information confidential.
 3. The authority conducting the proceedings is bound to remind the persons referred to in paragraph 1 of this Article that they are exempt from testifying before their examination or as soon as the court finds out about their relation to the defendant. The reminder and the answer shall be entered into the record.
 4. A minor who due to his age and mental development is unable to understand the meaning of the right to exemption from testifying cannot testify as a witness; however the information obtained from him through experts, relatives or other persons who have been in contact with him may be used as evidence.
 5. A person entitled to refuse to testify in respect of one of the defendants shall be exempted from the duty to testify in respect of other defendants as well if his testimony cannot be, by the nature of the matter, limited only to other defendants.
 6. Persons referred to in paragraph 1 items 1 to 6 of this Article, except the defence counsel, cannot not refuse to testify with regard to criminal offences of criminal law protection of children and minors referred to in Article 117 of the Juvenile Court Act.

2011 Criminal Code, Official Gazette 125/2011 (unofficial translation)

Restraining Order

Article 73

- (1) A restraining order prohibiting approaching the victim, another person or a group of persons, or a specific location as a security measure will be imposed on the perpetrator of a criminal act against sexual freedom or sexual assault or abuse of a child, or any other criminal violence or an act or assault on another person's freedom, or any unlawful possession, production or trade of drugs and substances that are banned from sport activities and competitions, whenever there is a possibility that the perpetrator will repeat one of these criminal acts against the same persons or in the same locations.
- (2) Along with section 1 of this article, the court can impose a fine or imprisonment.
- (3) The measure from section 1 of this article cannot be shorter than one year or longer than five years.
- (4) The measure from section 1 of this article becomes valid with its pronouncement by the court. After the final judgment, time spent in a prison, facility or penitentiary will not count toward the duration of the measure.
- (5) One year after the pronouncement of the measure by the court, based on section 1 of this article, the court can, upon the prisoner's petition, stop the implementation of the measure if it is determined that there is no longer a danger related to section 1 of this article. The perpetrator can repeat the petition, but no sooner than one year after the evaluation of the previous petition.

(6) The court will inform the competent authority for probation and police administration about possible changes in the duration of the measure.

Eviction from common household
Article 74

(1) The security measure of eviction from common household can be ordered by the court against a perpetrator of violence toward a member of the same household if there is a high risk that the perpetrator could re-offend.

(2) A court-ordered security measure of eviction from the household may be imposed with a fine or imprisonment for a period that cannot be shorter than three months nor longer than three years.

(3) A person who has been sentenced to eviction from the common household, based on section 1 of this article, is obliged to, in the presence of police officers and immediately after the security measure becomes valid, leave the place of residence, with the understanding that time spent in prison, a facility or penitentiary will not count toward the duration of the measure.

(4) After the duration of one year from the court order issuance, based on section 1 of this article, the court can, upon the prisoner's petition, stop implementation of the measure if it is determined that there is no further danger related to section 1 of this article. The perpetrator can repeat the petition, but no sooner than six months after the evaluation of the previous petition.

(5) The court will inform the competent authority for probation and police administration about possible changes in the duration of the measure.

Protective Supervision after the Full Execution of Sentence
Article 76

(1) If the perpetrator has been sentenced to five or more years for an intentional criminal act or two or more years for an intentional criminal act with elements of violence, or any other criminal act from chapters 16 and 17 of this Law, and if the perpetrator served his sentence, protective supervision as a protective measure will be imposed and implemented, according to article 64 of this Law and special requirements under article 62, section 2, point 7-13, if probation was ordered.

(2) The period of probation is one year. The court may, during the probation period and prior to its expiration, upon a proposal from the probation officer, extend probation for one year if there is a danger that one of the criminal acts from section 1 of this article will be repeated.

(3) The court can abolish the protective measure of supervision if there is a reason to believe that the perpetrator will not repeat the criminal act.

Murder
Article 110

Whoever kills another shall be sentenced to at least five years in prison.

Aggravated Murder
Article 111

A sentence of at least ten years in prison or the sentence of long-term imprisonment will be imposed upon a person who:

1 Murders another in a cruel or vicious way.

2 Murders a person who is especially vulnerable due to his or her age, a serious physical or mental impediment or a pregnancy.

3 Murders a family member who he or she has previously abused.

4 Murders another for personal gain, ruthless vengeance, hatred or other low motives.

5 Murders another for the purpose of committing or hiding another criminal act.

6 Murders an official serving in the line of duty.

Manslaughter

Article 112

(1) Whoever kills another without fault, brought on by assault, aggravated insults or abuse leading to a state of long-term suffering, strong irritation or fear, will be sentenced to one to ten years of imprisonment.

(2) A mother who kills her child based under the influence of a strong mental burden due to pregnancy or childbirth will be sentenced between six months to five years of imprisonment.

(3) Whoever kills another upon their specific and solemn request, out of sympathy with their difficult health condition, will be sentenced to up to three years of imprisonment.

Female Genital Mutilation

Article 116

(1) Whoever completely or partially removes or permanently changes the external female genitalia of another will be sentenced to imprisonment between six months to five years.

(2) Whoever encourages or helps a female person subject herself to the acts under section 1 of this article will be sentenced up to three years in prison.

(3) Whoever commits an act from sections 1 and 2 of this article out of hatred, toward a child or a family member, will be sentenced to between one and eight years of imprisonment.

Bodily Injury

Article 117

(1) Whoever physically injures another or endangers another person's health will be sentenced up to one year in prison.

(2) Whoever commits an act from section 1 of this article out of hatred, or toward a family member, or toward a person who is especially vulnerable because of his or her age, physical or mental impediment or pregnancy, or toward an official serving in the line of duty, will be sentenced up to three years in prison.

(3) The criminal act from section 1 of this article will be prosecuted based on a private lawsuit.

Heavy Bodily Injury

Article 118

(1) Whoever physically injures another or endangers another person's health in a severe way will be sentenced between six months to five years in prison.

(2) Whoever commits an act from section 1 of this article out of hatred, or toward a family member, or toward a person who is especially vulnerable because of his or her age, physical or mental impediment or pregnancy, or toward an official serving in a line of duty, will be sentenced to between one and eight years in prison.

Especially Heavy Bodily Injury

Article 119

(1) If the criminal act from article 116, section 1 and 2 and from article 118, section 1 of this law, endangered the injured person's life or has resulted in the destruction or permanent injury of any of his vital body parts or organs, or in a permanent impediment that causes a diminished ability to work, or permanently and severely affected his or her health, or resulted in permanent disfigurement of any kind, or a permanent inability to reproduce, the perpetrator will be sentenced to imprisonment between one to ten years' imprisonment.

(2) Whoever commits an act from section 1 of this article out of hatred, or toward a family member, or toward a person who is especially vulnerable because of his or her age, physical or mental impediment or pregnancy, or toward an official serving in a line of duty, will be sentenced to imprisonment between one and ten years.

(3) Whoever deliberately causes any of the harm under section 1 of this article will be sentenced to imprisonment between three and twelve years.

Heavy Bodily Injury with a Death Outcome

Article 120

If the criminal acts committed under articles 116, 118 and 119 from this Criminal Code results in the death of the injured person, the perpetrator will be sentenced to imprisonment between three and fifteen years.

Heavy Bodily Injury Caused by Negligence

Article 121

(1) Whoever commits a criminal act under article 118 out of negligence will be sentenced to imprisonment up to one year.

(2) Whoever commits a criminal act under article 119 out of negligence will be sentenced to imprisonment up to three year.

Criminal Acts against Personal Freedom

Coercion

Article 138

(1) Whoever by force or serious threat coerces another to an action, omission or acquiescence will be sentenced to up to three years of imprisonment.

(2) A criminal act from section 1 of this article will be prosecuted through a private lawsuit unless it is committed out of hatred, toward a child or a family member.

Threat

Article 139

(1) Whoever threatens another with harm in order to intimidate (frighten) or upset will be sentenced to up to one year of imprisonment.

(2) Whoever seriously threatens to kill another or one close to him or her, or threatens serious bodily injury, kidnapping or deprivation of freedom, or causes harm by fire, explosion, ionized radiation, a weapon, dangerous tools or any other dangerous means, or destroying social status or material assets, will be sentenced to up to three years of imprisonment.

(3) If the criminal act from sections 1 and 2 of this article has been committed toward a person of authority, or against a journalist on duty, or if it is directed toward a larger group of people, or if it caused a major disturbance of the larger population, or if the threats have put the threatened person in a difficult position for a longer duration, the perpetrator will be sentenced to imprisonment between six months and five years.

(4) The criminal act under section 1 of this article is prosecuted through a private lawsuit, and the criminal act from section 2 of this article is prosecuted upon suggestion, unless the act from section 1 or 2 has been committed out of hatred, toward a child, a person with a disability or a family member.

Criminal Acts against Sexual Freedom

Serious Criminal Acts against Sexual Freedom

Article 154

(1) A sentence of imprisonment between one and ten years will be imposed on a person who commits the criminal acts from article 152 section 1 of this Law:

1. toward a family member.
2. toward a victim who is especially vulnerable because of her/his age, illness, addiction, pregnancy, disability, difficult physical or mental impediment.
3. in a particularly cruel or humiliating way.
4. out of hatred.
5. together with one or more perpetrators who engage in multiple instances of sexual intercourse or equivalent sexual acts against the victim.
6. by using weapons or dangerous tools.
7. in such a way that causes serious bodily injury to the victim or results in pregnancy.

(2) Whoever commits the criminal act under article 153, section 1 of this Law will be sentenced to between three and fifteen years' imprisonment.

(3) If the criminal act from articles 152, section 1 or 153, section 1 of this law resulted in the death of the person raped, the perpetrator will be sentenced to a minimum of five years' imprisonment.

Sexual Abuse of a Child Who Has Reached 15 Years of Age

Article 159

(1) A person entrusted with the upbringing, learning, guarding, spiritual guidance or care of a child who has reached 15 years of age and engages in sexual intercourse or an equivalent sexual act, or induces that child to commit sexual intercourse or an equivalent sexual act with another person or with herself/himself will be sentenced to between six months and five years' imprisonment.

(2) The sentence from section 1 of this article will be imposed on a blood relative or by adoption of a child in a direct line, a stepfather or stepmother who, with a child who has reached 15 years of age, engages in sexual intercourse or an equivalent sexual act, or induces that child to engage in sexual intercourse or an equivalent sexual act with another person or with herself/himself.

Serious Criminal Acts of Sexual Abuse and Exploitation of a Child

Article 166

(1) If a criminal act under article 158, section 1, article 162 sections 1 and 2, article 163 sections 1 and 2, article 164, section 1 resulted in heavy bodily injury of the child, or it has compromised the child's physical or emotional development, or resulted in the child's pregnancy, or there were multiple perpetrators, or the criminal act was committed toward an especially vulnerable child, or was committed by a family member or by a person who lives with the child in a common household, or it was committed in an especially cruel or humiliating way, the perpetrator will be sentenced to between three and fifteen years' imprisonment.

(2) If a criminal act under article 158, section 5, article 162 section 3, article 163 section 3, and article 164 section 2 resulted in a heavy bodily injury of the child, or it has compromised the child's physical or emotional development, or resulted in the child's pregnancy, or there were multiple perpetrators, or the criminal act was committed toward an especially vulnerable child, or was committed by a family member or by a person who lives with the child in common household or it was committed in an especially cruel or humiliating way, the perpetrator will be sentenced to at least five years' imprisonment.

(3) If the criminal act from article 158, article 162, article 163 and article 164 resulted in death of the child, the perpetrator will be sentenced to at least ten years up to long-term imprisonment.

Taking of a Child

Article 174

(1) Whoever takes away a child from his or her parents, adoptive parents, guardians, or an institution to which the child was entrusted, unlawfully holds the child or prevents the child from living with the person or institution to whom the child was entrusted, will be sentenced to between six months and five years of imprisonment.

(2) If the criminal act from section 1 of this article is committed by a parent or a guardian, the perpetrator will be sentenced to up to three years' imprisonment.

(3) Whoever commits the criminal act from section 1 of this article with a goal to permanently keep the child, or as a result of criminal act from section 1 of this article the child has been removed from the territory of the Republic of Croatia, or endangered the child's health, upbringing, or education or in another way severely compromised the child's welfare, will be sentenced to between one and ten years' imprisonment.

(4) A parent or adoptive parent who commits the criminal act from section 1 of this article with the goal to permanently keep the child, or in a way that the child leaves the territory of the Republic of Croatia, will be sentenced to between six months and five years' imprisonment.

(5) If the criminal act from sections 1, 2, 3, 4, caused the death of a child, the perpetrator will be sentenced to between three and fifteen years' imprisonment.

(6) For an attempt to commit the criminal act from section 2 of this article, the perpetrator will be punished.

(7) A perpetrator who returns the child before the start of criminal proceedings can be pardoned from the punishment.

Change of Family Status

Article 175

(1) Whoever by forging, replacement, giving false information or in any other way changes the family status of a child will be sentenced to up to three years' imprisonment.

(2) Whoever commits an act under section 1 of this article through negligence will be sentenced up to one year in prison.

(3) For an attempted criminal act under section 1 of this article, the perpetrator will be punished.

Abandoning a Child

Article 176

Whoever leaves his/her child with the goal of permanent abandonment will be sentenced to up to three years' imprisonment.

Neglect and Abuse of Child's Rights

Article 177

- (1) A parent, adoptive parent, guardian or other person who harshly neglects the responsibilities of raising, caring for a child and his or her education will be sentenced to up to three years' imprisonment.
- (2) Whoever coerces a child to excessive labor, or labor not appropriate for a child of that age, begging, or leads the child to other behavior that is harmful for the child's development, or in another way harshly abuses the child's rights will be sentenced to between six months and five years' imprisonment.
- (3) If, based on the criminal act under section 1 and 2 of this article, a child starts to beg, engage in prostitution, or engages in socially unacceptable behavior, or the act causes heavy bodily injury of a child, the perpetrator will be sentenced to between one and eight years' imprisonment.
- (4) If, by a criminal act under sections 1 and 2 of this article, death of a child was caused, the perpetrator will be sentenced to between three and fifteen years' imprisonment.

Prosecutor's Law

Article 62

1. When deciding on criminal charges regarding a criminal offence with elements of domestic violence among relatives and other related persons which carries a fine or maximum sentence of five years in prison, the State Attorney can drop charges if s/he believes that instituting proceedings would not be efficient due to the nature of a criminal offence, circumstances under which it has been committed, personal characteristics of the perpetrator and injured person, and nature of their relation.
2. In view of determining these circumstances, the State Attorney can call the party pressing charges, the victim and the suspect to attend a hearing. At the hearing, the State Attorney can try reaching conciliation assisted by expert associates of the State Attorney's Office and advisors of the Social Welfare Centre. Attempt to conciliation can be entrusted to municipal court or social welfare institution before issuing an indictment, with a warning regarding nondisclosure of confidential information the institution has collected. In a warrant regarding entrusting, State Attorney states the deadline within which conciliation must be performed, i.e. within which the institution must be informed about the result of conciliation.

Execution of Prison Sentence Act

The content and the types of benefits

Article 128

- (1) Benefits are a set of encouraging measures aimed at trusting inmates, easing prison discipline, reduction of detrimental effects of custody, at maintenance and promotion of relations with family, other persons and public services, as well as at encouraging individual participation in implementation of execution program, at strengthening of responsibility and self-confidence and at preparing inmates for life in compliance with legal order and for fulfillment of civic duties.
- (2) Benefits can be regular or exceptional.
- (3) Regular benefits shall comprise the following:
1. easing conditions within prison or jail,
 2. reducing restrictions for movement within prison or jail,
 3. more frequent contacts with the world outside of the prison or jail,
 4. transfer to prison or jail with more lenient conditions of the execution of sentence in compliance with Article 153 of this Law.
- (4) Exceptional benefits shall be extra leaves from prison or jail.

Regular benefits

Article 129

(1) Benefits easing conditions within prison or jail shall be the following:

1. use of private television set,
2. individual preparation of food and beverages,
3. arrangement of living environment with personal things,
4. more frequent receiving packages and an enhanced permissible weight of packages,
5. free use of certain amount of money deposited within prison or jail,
6. awards consisting of money or things.

(2) Benefits reducing restrictions of movement within prison or jail shall be the following:

1. unlocking of the room where inmate is accommodated,
2. extended stay in common premises (reading room, library, common room, classrooms, gymnasium, sport courts, dining room, and other spaces and premises envisaged for free time activities),
3. extended stay in open air.

(3) Benefits enabling more frequent contacts with the world outside of prisons and jails shall be the following:

1. more frequent and longer visits of family members and third persons, either supervised or not supervised, within prison or jail,
 2. private telephone conversations,
 3. stay with a spouse or a common law spouse in a separate room without supervision,
 4. annual leave or part of annual leave in medium security or low security wards of prisons or jails, or outside prisons or jails,
 5. leave from high security prison or jail under supervision for purpose of visiting family or pursuing private business up to four hours plus time necessary for travel,
 6. going out to local community with visitors in length between two and twenty-four hours,
 7. going out to local community without visitors in length between two and eight hours.
 8. going out to visit family members or other persons at free time, not more than two times in a month in total duration of four days (96 hours), and in month of Eastern, Christmas and Statehood Day - in duration of up to six days (144 hours),
 9. transfer to a ward with more lenient conditions of serving sentence within the same prison or jail,
- (4) Decision on approval and denial of benefits shall be entered to the personal file.
- (5) An arrest warrant shall be issued if an inmate does not return from benefit of leave without justified reason within 24 hours following the time of scheduled return.

Conditions for approval of benefits of leave

Article 131

(1) Benefit of leave from high security prison or jail may be granted to an inmate after he or she served one third of the final sentence not exceeding ten years of prison.

(2) Benefit of leave from high security prison or jail may be granted to an inmate after he or she served one half of the final sentence of ten years or more.

(3) When deciding on whether to grant a benefit of leave or not, opinion of appropriate state authorities and other persons may be asked for.

(4) Opinion mentioned in Paragraph 3 of this Article shall be asked for if the inmate concerned was sentenced for or has a criminal record of serious crimes from Article 181, Point 1 and 2 of the Law on Criminal Procedure.

(5) Before granting a benefit of leave to an inmate serving sentence of ten years of prison or more, in addition to an opinion mentioned in Paragraphs 3 and 4 of this Article, an opinion of the Ministry of Justice shall be asked for.

(6) Benefit of leave can not be exercised outside territory of the Republic of Croatia.

Deciding on benefits

Article 132

(1) Warden shall decide whether to grant a benefit, on basis of assessment of execution program, by enacting a decision.

(2) When deciding whether to grant a benefit warden shall have principle of individual the execution of sentence in mind.

(3) Warden decides whether it is necessary to provide for supervision or compensation of costs and whether inmate has to register with police in place where he or she plans to exercise the benefit, as well as whether the inmate fulfilled his or her obligations determined by execution program.

(4) Reporting to police administration in place where the benefit is planned to be exercised shall be compulsory for inmates specified in Article 131, Paragraph 4 of this Law.

(5) More detailed regulations concerning benefits of inmates shall be enacted by the Minister of Justice.

Family Law

Article 3

~~The provisions of this Law concerning the consequence of an extramarital union are applied to the life union of an unmarried woman and an unmarried man who do not live in some other extramarital union, which lasts for at least three years or even shorter if a joint child is born in it.~~

Provisions of this Law regulating the effects of cohabitation shall be applied to a relationship between an unmarried woman and unmarried man which lasts at least three years or less, under the condition that a child has been born during the period of cohabitation.

3. Mediation before divorce

Article 44

The mediation procedure is carried out when a divorce procedure is started with a suit or with a consensual application, and the spouses have minor joint or adopted children or children of whom they have parental care after their majority.

Divorce mediation will be started when:

- 1) divorce action has been initiated by a divorce complaint,
- 2) divorce action has been initiated by a request for divorce in which both parties have agreed to all of the terms of the divorce, under the condition that spouses have their own minor or adopted children or children in parent care which extends after they have reached majority.

Article 45

(1) The mediation procedure is not carried out if one or both spouses have been pronounced legally incompetent, unless the court determines that they are capable of understanding the significance of marriage and the obligations that derive from it.

(2) The mediation procedure is not carried out if the whereabouts of one or both of the spouses have been unknown for a period of at least six months.

(3) The mediation procedure is not carried out if one or both of the spouses lives abroad.

(4) Exceptionally to Paragraph 3 of this Article, the mediation procedure will be carried out if the spouses have minor joint or adopted children or children over whom they exercise parental care even after their majority if the court considers that there are no major difficulties in the way of the spouses taking part in the mediation procedure.

Article 46

(1) When the court receives a suit or a consensual application as defined in Article 44 of this Law, at the first hearing it will ask the spouses at once to state to which welfare centre, marriage counselling office or person authorised to give expert assistance (a mediator) they wish to turn for the sake of obviating their marital dissensions or for the sake of an agreement about settling the legal effects of the divorce.

(2) The court will ask the parties if there is any agreement about with which parent the children will live, about their meetings and association with the other parent, or about the accommodation of the child during the divorce proceedings.

(3) If the spouses have not agreed on whom they will carry out the mediation proceedings with, the court will make an ex officio decision concerning the choice of mediator.

(4) In cases as defined in Paragraphs 1 and 3 of this Article the court will without delay make a decision about before whom the mediation procedure will be carried out and deliver it to the mediator. No separate appeal is permitted against a decision as defined in Paragraph 3 of this Article.

(5) Spouses are bound to initiate the mediation procedure within 15 days of the making of a decision as defined in Paragraph 4 of this Article.

Article 47

(1) The institution or individual that carries out the mediation will call the spouses, according to the rules for personal delivery, to attend the procedure in person without an attorney.

(2) If the plaintiff or if both the spouses who have submitted a consensual application do not heed the call to mediation and do not justify their failure to attend, the mediator will at once inform the court about this in writing.

(3) If the spouses give up the mediation procedure, the mediator will at once inform the court about this in writing.

(4) In a case as defined in Paragraphs 2 and 3 of this Article, the court will deem the suit or the consensual application to have been withdrawn.

Article 48

(1) A mediator will question the parties about the causes that have led to the breakdown of their marital relations and endeavour to obviate the causes and to reconcile the spouses.

(2) The mediator is bound to supply a professional and expert opinion to the spouses according to the rules concerning personal delivery in a period of fifteen days of the conclusion of the mediation procedure.

Article 50

(1) An establishment or individual that has carried out the mediation procedure will also supply a professional opinion to the welfare centre if the spouses have a minor child or adopted child or child over whom they exercise parental care even after majority.

(2) A professional opinion is delivered to the welfare centre that has not carried out the procedure according to the registered residence of the parent with whom the children live.

(3) If the children live apart from both parents the professional opinion is delivered to the welfare centre in the area in which lies the seat of the body that determined on the placement of the child. If the child has been placed

without any decision from a competent body the professional opinion will be delivered to the welfare centre of the child's temporary whereabouts.

(4) A welfare centre is bound to consider at once the professional opinion and to take the necessary measures for the protection of the child's well-being.

Article 51

If the spouses do not deliver the professional opinion to the court in a period of a year from the delivery [reception] of the decision of the court as defined in Article 46 of this Law, it will be deemed that the suit or the consensual application for divorce has been withdrawn.

Article 114

(1) In a non-litigation procedure the court will deprive a parent who abuses or grossly violates parental responsibility, duties and rights of the right to parental care.

(2) A parent is deemed to abuse or grossly violate parental responsibility, duties and rights if he or she:

1. exerts physical or mental violence on the child, including exposing it to violence among the adult members of the family
2. takes sexual advantage of the child,
3. exploits the child by forcing it to work too hard or to do work that is not appropriate to its age,
4. allows the child to consume alcohol, drugs or other narcotic substances,
5. encourages the child to socially unacceptable behaviour
6. has abandoned the child
7. does not care for a child with which he or she does not live for more than three months,
8. in a period of one year does not create the conditions for life together with the child with which he or she does not live without having any particularly good reason for this,
9. does not care for the basic necessities of life of a child with which he or she lives or does not adhere to the measure that have been previously imposed by a competent body for the sake of the protection of the rights and well-being of the child
10. in some other way grossly abuses the rights of the child.

(3) The proceeding for deprivation of the right to exercise parental care must be instituted by a welfare centre as soon as it learns of the circumstances as defined in Paragraph 2 of this Article, and it can also be initiated by the other parent, the child or the court ex officio.

(4) The right to exercise parental care will be restored in a decision of the court when the reasons because of which the right was taken away have ceased.

(5) The non-litigation proceeding as defined in Paragraph 4 of this Article can be initiated by a parent who has had the right taken away from him or her or the welfare centre.

(6) In the event that a proceeding for the deprivation of the right to exercise parental care is instituted with respect to both or the only parent the welfare centre will appoint the child a guardian ad litem.

(7) The provisions concerning guardianship for special cases will be applied in an appropriate way to the guardian ad litem as defined in Paragraph 6 of this Article.

(8) A decision with legal effect on depriving or restoring the right to the exercise of parental care will be supplied to the competent registrar for the sake of entry into the register of births and parents, to the ministry competent for justice affairs for the sake of keeping a register concerning persons deprived of the right to exercise parental care, and if the child has some right to real estate the decision will be delivered to the land register department of the municipal court for the sake of an annotation being made.

(9) After the majority of the child data about the deprivation of the right to exercise parental care are not shown in documents from the register of births.

Article 115

The court will impose on a parent that has not protected the child from the parent that abused parental responsibility, duties and rights, for the sake of the good of the child, measures as defined in Articles 111 and 114 of this Law, taking account of the circumstances of the case.

APPENDIX D. COMMENTARY ON THE LAW ON PROTECTION FROM DOMESTIC VIOLENCE

The authors have reviewed the Law on Protection from Domestic Violence enacted October 30, 2009 (the “Law”). The government of Croatia is to be commended for undertaking the difficult, but important process of enacting legislation to protect its citizens from domestic violence. In doing so, Croatia took a vital step towards fulfilling its obligations under the international conventions and treaties it has ratified, including the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).¹⁰⁰⁶ These obligations include guaranteeing an individual’s right to be free from violence and a state’s responsibility to protect individuals not only from violations of their rights by government entities, but also against acts of violence committed by private actors.

The following specific comments on the law are offered, which are based upon information found in the U.N. Handbook for Legislation on Violence against Women,¹⁰⁰⁷ UNIFEM Virtual Knowledge Centre to End Violence against Women and Girls,¹⁰⁰⁸ the Stop Violence against Women website,¹⁰⁰⁹ and other sources.

Because the Law uses the term “protective measure,” which is also commonly known as an order for protection, these comments will retain that language.

Review of the Law on Protection from Domestic Violence

Many positive aspects of the Law were noted. The Law envisions an order for protection, referred to as a “protective measure,” and also establishes a process for emergency orders for protection, including provisions against contacting the victim, against harassing or stalking the victim, and requiring the removal of the perpetrator from the home. The Law requires social service and health institutions to provide for the victim’s needs, and requires courts to order police to accompany the victim to the home to retrieve personal effects. The Law clearly classifies both domestic violence and the violation of orders of protection as separate criminal offenses, and states that protective measures may be applied without the application of criminal penalties. That the Law explicitly includes violence between persons of the same sex is also a positive aspect of the Law. In addition, the Law establishes an administrative framework for implementing its provisions and monitoring its effects.

The authors recommend that the government of Croatia continue to revise and strengthen the Law. The Law should be amended to include “intimate partners” who are not necessarily married or living together within the scope of persons covered by its provisions. Domestic violence often involves people in such relationships.

¹⁰⁰⁶ International Covenant on Civil and Political Rights (ICCPR), Arts. 2 and 3 (1976), *available at* <http://www1.umn.edu/humanrts/instree/b3ccpr.htm> (last visited Aug. 8, 2011); Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Art. 2 (1981), *available at* <http://www1.umn.edu/humanrts/instree/e1cedaw.htm> (last visited Aug. 8, 2011); *see also* General Recommendation 19 (11th Session, 1992), Art. 16(24), *available at* <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm> (last visited Aug. 8, 2011).

¹⁰⁰⁷ *Available at* <http://www.un.org/womenwatch/daw/vaw/v-handbook.htm>.

¹⁰⁰⁸ *Available at* <http://www.endvawnow.org>.

¹⁰⁰⁹ Stop Violence Against Women, <http://www.stopvaw.org>.

The Law should also be amended to separate the legal process for obtaining protective measures from the legal process for holding perpetrators criminally accountable. In jurisdictions where domestic violence laws have been in place for twenty to thirty years, domestic violence laws have evolved to include three primary components:

- Civil law provisions that promote the safety of domestic violence victims (orders for protection, hotlines, shelters, and other victim services);
- Criminal law provisions that provide for prosecution of perpetrators of domestic violence (laws that prohibit assault of an intimate partner, terroristic threats, criminal sexual conduct, interference with an emergency call, and other criminal laws); and
- An infrastructure to promote prevention of domestic violence (government offices to coordinate and award funding to the private sector).

Each of these components – Protection, Prosecution, and Prevention – is important for a government to undertake when addressing domestic violence. However, governments must sometimes prioritize one component over another when resources are scarce. When that is the case, it is vital that resources are directed to protecting domestic violence victims. Without such protection, victims are often unable to cooperate in the prosecution of the perpetrators of domestic violence. In addition, any prevention efforts must address the immediate need for the safety and security of domestic violence victims.

The Law should also include training and protocols for police who respond to incidents of domestic violence, including:

- A requirement that police give victims notice of their rights and legal remedies, referrals for economic, legal and social support services, and transportation to a shelter or healthcare provider on the victim's request;
- A protocol for collecting evidence and accurately documenting domestic violence incidents;
- A risk assessment protocol for evaluating the level of risk to victims;
- A protocol for determining the primary aggressor in an incident of domestic violence;
- A requirement that police escort victims to retrieve their personal effects without a court order; and
- A requirement that, once a determination is made that a domestic violence offense has occurred, the perpetrator must be arrested and detained immediately.

The Law should also be amended to strengthen the criminal penalties against perpetrators of domestic violence. Currently, the Law characterizes domestic violence as a misdemeanor offense. In cases involving serious injuries to the victim or repeated violations, felony level penalties may be appropriate. The Law should ensure that stronger penalties are imposed for each successive incident of domestic violence and for each successive violation of an order for protection. The Law should include clear language requiring police and prosecutors to pursue domestic violence cases, including those involving low-level injuries.

Although the Law includes a process for victims to obtain emergency orders for protective measures, it does not clearly allow victims to seek and obtain such measures *ex parte*. The Law should allow emergency protective measures to be awarded without notice to perpetrators, and should require court authorities to be available 24 hours a day, seven days of the week, so that a victim's application for such measures can be decided immediately. The Law includes many other important protections for victims of domestic violence, however, these protections should be strengthened. The Law should authorize protective orders to address financial support for victims and their children, temporary custody arrangements, and the use and possession of property.

Finally, the government of Croatia should allocate financial resources dedicated to the provision of victim services, including social services, shelters, legal aid, health care and other services. Funds should also be allocated to train police, prosecutors, judges and court administration regarding appropriate handling of domestic violence cases. Funding should be allocated for regular and independent monitoring of the Law's effectiveness.

Review of Model Legislation

In the process of revising and strengthening the Law, it is recommended that the drafters revisit the following important models for legislation on domestic violence:

- The U.N. Handbook for Legislation on Violence against Women (2010);¹⁰¹⁰
- The U.N. Supplement to the Handbook for Legislation on Violence Against Women: "Harmful Practices" Against Women (2010);¹⁰¹¹
- Family Violence: A Model State Code (1994);¹⁰¹²
- Sample National Domestic Violence Laws on the StopVAW website;¹⁰¹³ and
- The Minnesota Domestic Abuse Act.¹⁰¹⁴

Domestic violence laws also impact police, prosecutors, and courts. Police, prosecutors, and judges should review internal policies and procedures on crime victim assistance, arrest, detention, and release of those suspected of violating criminal laws; and standards for the admission of evidence in administrative, civil, and criminal proceedings to ensure that they are consistent with, and support the remedies for domestic violence victims in the Law.

I. GENERAL PROVISIONS

Article 1.

The Law should be broad enough to address violence between intimate partners who are not members of the same family. Currently, the Law defines "family" as: woman and man in marriage, their common children and children of each of them; woman and man in common-law marriage, children of each of them and their common children; blood relatives in a direct line without limitation; blood relatives in the lateral lineage ended with the third degree; relatives by marriage ended with second degree in both marriage and common-law marriage; people who have common children; guardian and ward; and foster parents, users of accommodation in foster families and their family members while such relations exist. References to "family members" should be omitted to avoid an overly narrow interpretation of its application. The Law uses the phrases "domestic violence" and "family violence" interchangeably throughout. This has the potential to confuse readers, and could lead to claims from perpetrators

¹⁰¹⁰ U.N. Department of Economic and Social Affairs Division for the Advancement of Women, *available at* <http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf> (visited Sept. 6, 2011).

¹⁰¹¹ U.N. Department of Economic and Social Affairs Division for the Advancement of Women, *available at* <http://www.un.org/womenwatch/daw/vaw/handbook/Supplement-to-Handbook-English.pdf> (visited Sept. 6, 2011).

¹⁰¹² National Council of Juvenile and Family Court Judges, *available at* http://www.ncjfcj.org/images/stories/dept/fvd/pdf/modocode_fin_printable.pdf (visited Aug. 30, 2011).

¹⁰¹³ Stop Violence Against Women, <http://www.stopvaw.org> (visited Sept. 6, 2011).

¹⁰¹⁴ Minn. Stat. § 518B.01 (2010), *available at* <https://www.revisor.mn.gov/statutes/?id=518B.01> (visited Sept. 6, 2011).

who do not have clear familial ties with their victims that the Law does not apply to them. Replacing “family violence” with “domestic violence” wherever it appears would strengthen the Law and eliminate confusion.

Article 2.

Protective measures should be available through a separate legal process from the criminal process that impose fines, imprisonment, and other accountability measures against perpetrators. The provisions of civil law should apply to proceedings for protective measures, while the provisions of criminal law should apply to accountability measures against perpetrators. Both processes should be available and can proceed simultaneously in domestic violence cases.

Civil protective orders have several advantages over criminal proceedings. Criminal cases can be complex and protracted over months or years. Ideally, a civil proceeding for a protective measure is a quick and efficient process. The standard of proof required for a criminal conviction should be higher (beyond a reasonable doubt) than that required for issuance of a protective measure (preponderance of the evidence). If only criminal penalties are sought, sometimes the victim will have no legal protection from abuse during the proceeding unless the perpetrator is imprisoned during that time. Protective measures are also more flexible than criminal penalties and can be tailored to the needs of the victim. Finally, civil proceedings, such as the protective measures described here, offer victims the opportunity to participate in the proceeding and to choose her remedy; criminal proceedings may proceed without the victim’s participation.

Article 3.

The word “family,” when used to define the relationships covered by the Law is too narrow, and can be interpreted to exclude victims of violence in other significant relationships whom the Law should also protect. “*Intimate Partners*” would cover such relationships.

Article 3 should be extended to include, in addition to the relationships listed, “*persons involved in a significant romantic or sexual relationship who do not necessarily reside in the same household,*” and “*persons who reside together or have resided together who are not necessarily married by law or common law.*” This extension would better protect more victims of domestic violence. Many situations of domestic violence involve people in such relationships.

Article 4.

The Law should focus the definition of “domestic violence” on physical harm, bodily injury, or assault; the infliction of fear of imminent physical harm, bodily injury, or assault; terroristic threats; and criminal sexual misconduct, including sexual assault within a marriage.

Language in the Law that defines domestic violence as “economic violence” or “psychological violence,” including “distress or injury to dignity, verbal violence, verbal assaults, insults, cursing, name calling, or otherwise crude verbal harassment” is vague, and opens the Law to potential abuse by offenders. The inclusion of psychological and economic violence in the definition of domestic violence in some cases has had the unintended consequence of creating opportunities for perpetrators to counter-claim psychological or economic abuse against their victims.

For example, an angry or disgruntled violent abuser may seek protective measures against his wife for using property owned by him. Police officers may arrest the victim for arguing with a violent perpetrator for perceived verbal insults. Or a perpetrator may claim that physical violence is an appropriate response to an act he sees as economically disadvantageous to himself. *Countries that include such provisions in their definitions of domestic violence have seen increases in arrests of battered women.* If a victim is arrested, there is little likelihood that she will report further incidents of violence. Also, claims of psychological and economic violence may be very difficult to prove in legal proceedings.

Instead, the Law should redefine psychological and economic violence to ensure that this includes only those acts that threaten the victim with physical harm or cause fear of such harm. Legislation should state that psychological or economic violence is not a defense to charges of physical domestic violence. Also, trainings on identifying the predominant aggressor for police, judges, and other actors who implement the law are essential to implementing the law in a manner that respects the principles of gender equality.¹⁰¹⁵

Article 6

(1) The requirement that social services and health institutions and other authorities must care for the needs of victims is a positive aspect of the law. Without more, however, this requirement may not be met in practice. The Law should also include a provision stating that the government should ensure that adequate and consistent funding will be provided to guarantee effective implementation of the Law. Funding provisions should include all, or a combination of the following:

- Create a general obligation on the government to provide an adequate budget for implementation;
- Request allocations of funding for specific implementation activities;
- Allocate funds for use by civil society organizations to assist in implementation of the Law;
- Provide incentives for private funding related to implementation of the Law; and
- Remove restrictive provisions in laws that may negatively impact funding for implementation.

(2) The Law should require police to notify victims of their rights. The statement of rights should inform them of their legal remedies (such as obtaining an order for protective measures) and provide them with information about social services, health institutions, legal services and other organizations available to assist them. The Law should provide that such services are not conditional on cooperation with authorities.

It is also important to include language in the Law that obligates law enforcement officers to assess the risk to victims at the scene of a domestic assault. Provisions requiring officials to conduct risk assessments in domestic violence cases also should be included in the Criminal Code. Research has documented a number of indicators of increased risk.¹⁰¹⁶ For example, the Law should require that police interview the victim and the alleged perpetrator separately at the scene of the reported assault. The police report should include a notation regarding whether a weapon was used. The report should document any evidence of strangulation (the impeding of normal breathing or circulation of blood). It should document the presence of children and any report of the victim or others that there has been a history of assaults by the alleged perpetrator or threats to kill the victim or her children by the alleged perpetrator. This information is an indication that there is an increased risk of more serious harm to the victim, and the legal authorities, at every level, should consider this risk in their response. These risk

¹⁰¹⁵ See "Determining the Predominant Aggressor," Stop Violence Against Women, the Advocates for Human Rights, available at http://stopvaw.org/Determining_the_Predominant_Aggressor.html.

¹⁰¹⁶ See Assessing Risk Factors for Intimate Partner Homicide, <https://www.ncjrs.gov/pdffiles1/jr000250e.pdf> (visited Aug. 30, 2011).

assessment tools can be used by criminal justice system officials to better protect victims.¹⁰¹⁷ All officials should be aware of these high risk cases and take particular precautions. However, risk assessment should never be a substitute for arrest where an assault has occurred. Police should always be able to arrest and detain offenders under the criminal law if they determine a domestic violence offense has occurred.

In addition, the Law should more clearly state the specific duties of police officers upon receiving a report of domestic violence. The efforts of officials exercising preventive control are best focused on enforcement and ensuring the safety of the victim. The Model Code on Family and Domestic Violence outlines the duties of law enforcement officers, including, but not limited to:

- Taking action necessary to provide for the safety of the victim or of any household member;
- Confiscating any weapon involved in the alleged domestic abuse
- If the victim so requests, transporting or obtaining transportation for the victim and any child to a shelter or place of safety;
- Assisting the victim in removing essential personal effects; and
- Assisting the victim and any child in obtaining medical treatment, including obtaining transportation to a medical facility.¹⁰¹⁸

The Law should also clearly mandate law enforcement to document all domestic violence calls in written reports. The Law should ensure that if police determine that a domestic violence offense has occurred, law enforcement must arrest and detain the offender. If a police officer receives complaints of domestic violence from two or more opposing persons, the Law should direct the officer to evaluate each complaint separately to determine who the primary aggressor was, and arrest only that person. Police should avoid making dual arrests at the scene of an assault.

(3) and (4) The Law should ensure that juvenile children who witness domestic violence are not necessarily categorized as abused or neglected children. Such a categorization could result in battered women and their children being further harmed by the removal of the children from their mother's care. This will deter victims from reporting assaults. The Law should make clear that victims and their children are entitled to apply for, and receive, protective measures.

Article 8

Article 8 should be amended to require mandatory registration of domestic violence incidents only when the victim is a juvenile child, the victim's life is at risk, or the victim suffers from a mental impairment. Mandatory registration requirements may place victims in danger of retaliation, and victims who fear retaliatory violence against themselves or their children, or who for any other reason do not want to report the violence, may forego necessary medical care. Concealing the cause of the injuries may also impede proper treatment. Victims who do not want the police to intervene may conceal the real cause of their injuries. Perpetrators of domestic violence may also prevent victims from seeking medical care, knowing that the doctor would be required to report suspicions of abuse. Victims may have been told by their abusers that they would lose custody of their children if the abuse is reported. Mandatory registration requirements also undermine patient autonomy and confidentiality

¹⁰¹⁷ Available at http://www.stopvaw.org/Sample_National_Family_Violence_Laws.html.

¹⁰¹⁸ Model Code on Domestic and Family Violence, 1994 National Council of Juvenile and Family Court Judges, Section 204, page 4, available at http://www.ncjfcj.org/images/stories/dept/fvd/pdf/modocode_fin_printable.pdf (visited Aug. 30, 2011).

by denying victims the ability to make their own decisions about the safest and most appropriate courses of action. These requirements also conflict with patient privacy rights. At a minimum, mandatory registration requirements must be crafted with caution in order to respect the integrity and privacy of victims.¹⁰¹⁹

Article 9

See Comments on Article 6, Section 2. The requirement that courts must order police escort for victims retrieving their belongings is a positive aspect of the Law. A court order should not be necessary, however. Instead, the Law should require police officers to notify victims of their right to police escort, and to accompany them to retrieve their belongings when requested. A court order should be required only if the police fail to carry out this duty.

II. CRIMINAL SANCTIONS

Article 10 – Purpose and Kinds of Criminal Sanctions for Protection from Domestic Violence

(1) Accountability for perpetrators and safety for victims and the public should be the primary purpose of criminal sanctions. See also Comments on Article 1. References in the Law to “families and family members” are too restrictive because they exclude violence among intimate partners outside of marriage or family relationships.

(2) See Comments on Article 2. Protective measures should be available through a separate civil process and should not be categorized as criminal sanctions.

Article 11 – Protective Measures

(1) See Comments on Article 1. References in the Law to “violence in the family” and “family members” are too restrictive because they exclude violence among intimate partners outside of marriage or family relationships.

The victim’s conduct should never be directed or limited by a protective measure. The Law should clarify that orders for protective measures apply only to the perpetrators, and not the victims. The Law should also provide that courts have the authority to order protective measures based solely on the affidavit or testimony of the victim. Evidence in addition to the statement or testimony of the victim should not be required in any proceeding. The victim’s ability to access the courts for civil protective measures must not depend upon her cooperation in criminal proceedings.

The Law should also clarify that protective orders may be lifted or modified only upon a finding of clear and convincing evidence that there is no longer any danger to the victim.

(2) See Comments on Article 20. Defining the crime of domestic violence as a misdemeanor understates its seriousness in many cases. Felony charges should be imposed in cases involving serious injuries or repeat offenses.

¹⁰¹⁹ See OSCE, Response to Domestic Violence and Co-ordinated Victim Protect in the Federation of Bosnia and Herzegovina Republika Srpska, Section 4.1, page 10, available at http://www.stopvaw.org/uploads/implementation_of_the_lop_in_fbih_and_rs_final_for_distribution_eng.pdf (visited Aug. 30, 2011); see also “Documentation and Reporting, StopVAW, The Advocates for Human Rights, http://stopvaw.org/Documentation_and_Reporting.html (visited Aug. 30, 2011).

Article 11(2) summarizes the Protective Measures described in Articles 12-18. Specific comments on these Articles are included separately below. Article 11(2) describes some of the important elements that should be included in a domestic violence law. Additional elements, however, should be included in the Law. The court should have authority to provide other relief to ensure the victim's safety and security, including, but not limited to an order providing for:

- Temporary financial support for the victim and the children of the victim and perpetrator;
- Temporary custody of the children or temporary parenting time to the non-violent parent, which gives primary consideration to the safety of the victim and children—decisions about custody and parenting time should never delay the issuance of protective measures;
- Temporary use and possession of property, including the residence or dwelling, and restraining one or both parties from transferring or disposing of any property rights; and
- Possession and use of an automobile and other essential personal effects.

The inclusion of these additional measures is important to allow the victim to maintain independence from the perpetrator and to stay safe. Providing the victim with temporary support, use of property and custody of the children are important means of facilitating her independence and safety. In addition, at least one study has concluded that protective orders increase a victim's quality of life, and when these measures are enforced, the victim's increased safety and sense of well-being result in less cost to society as a whole.¹⁰²⁰ These forms of relief can provide victims with a measure of protection while allowing them time to determine how to stay safe over the long term without immediately having to file for divorce or seek criminal sanctions.

Article 12 – Protective Measure of Mandatory Psychosocial Treatment

In some cases, perpetrator's intervention programs may be appropriate where economically feasible and where the programs adhere to recognized standards.¹⁰²¹ But the primary purpose of preventive measures is the safety of the victim, not re-education of the offender. Victim safety is promoted by ordering the perpetrator not to contact or harass the victim, to be removed from the home, not to possess firearms, and other orders as necessary to ensure the safety of the victim. The Law should make clear that mandatory psychosocial treatment does not replace these other protective measures.

To the extent that the Law provides for mandatory psychosocial treatment for perpetrators, it should state that any expenses related to the perpetrator's participation in such treatment shall not be borne by the victim or her children, but rather, will be paid for by the perpetrator. The Law should prioritize the use of any government funds for victim services over treatment services for perpetrators when economic resources are scarce.

When psychosocial treatment is ordered, the Law should provide mechanisms to ensure the perpetrator's compliance with the treatment by requiring treatment providers to notify police or the court of non-attendance.

Article 13 – Protective Measures Prohibit Approaching the Victim of Domestic Violence

¹⁰²⁰ See TK Logan et al., *The Kentucky Civil Order Protective Study: A Rural and Urban Multiple Perspective Study of Protective Order Violation Consequences, Responses and Costs* at 165 (2009), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/228350.pdf> (visited Sept. 6, 2011).

¹⁰²¹ See "Batterers Intervention Programs," *The Advocates for Human Rights*, http://stopvaw.org/Batterers_Intervention_Programs.html.

(1) Courts should not be required to find “a danger of recurrence” to issue an order against approaching the victim (a “no contact order”). A victim may credibly fear the perpetrator who has abused her even if she can produce no evidence that he will do so again. Requiring proof of potential recurrence too narrowly limits the application of this protective measure. The phrase “if there is a danger of a recurrence” should be deleted.

The Law should prohibit perpetrators from violating no contact orders indirectly through third parties. The Law should expand this protective measure to include, where appropriate, a prohibition against approaching the victim’s children and the children’s schools.

Article 14 – Protective Measure Prohibiting Stalking and Harassment of a Person Exposed to Violence

(1) See Comments on Article 1. The phrase “family violence” should be replaced with “domestic violence. See also Comments on Article 13. The phrase “if there is a danger of recurrence” should be deleted. Courts should be able to issue an order against spying and harassment (a “harassment order”) to protect the victim even if the violence was not committed by spying or harassment.

The Law should also prohibit perpetrators from violating harassment orders indirectly through third parties.

Article 15 – Protective Measures of Removal from the Apartment, House, or Other Living Space

(1) See Comments on Article 1. The phrase “family member” should be replaced with “victim.” See also Comments on Article 13. The victim should not be required to prove “a danger that without enforcement of these measures the violence could happen again.”

Article 16 – Protective measure of mandatory treatment for addiction

See Comments to Article 12.

Article 17 – Protective measures of confiscation of objects

The Law should make clear that Article 17 does not undermine the authority of police to confiscate objects used for the perpetration of domestic violence in any case where the objects might be evidence in a criminal case against the perpetrator. The Law should also authorize police to confiscate firearms and other weapons to protect the victim, even if the perpetrator did not use them previously in connection with the violence.

Adding the following language to Article 17 is recommended:

“A person who is subject to a protective order or a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or a child or family member of the intimate partner, or that restrains such persons from engaging in conduct that would place an intimate partner in reasonable fear of bodily injury to the partner, child or family member, is forbidden to possess or purchase any firearm during the term of the court order. Said person’s firearms shall be surrendered immediately to the police. The police shall notify the victim upon the return of the firearms to the person at the end of the term of the court order.”

Article 18 – Application of Protective Measures

(1) The drafters are commended for authorizing protective measures independent of criminal penalties. In addition, protective measures should be available through an entirely independent civil proceeding from the criminal case against the perpetrator. See Comments to Article 2.

(2) This Article might be interpreted as conflicting with Article 19(2), in that it appears to allow protective measures at the request of the prosecutor or on the authority of the court (*ex officio*) without consent of the victim. To avoid confusion, this Article should clarify that the protective measures described in Article 11, Paragraphs 2, 3, and 4 are not available at the request of the prosecutor or on the court's authority without the victim's informed consent. It is very important for an adult victim of domestic violence to make her own decision to leave a relationship because she is in the best position to assess the potential danger. The victim's wishes should be the final factor in determining who may apply for protective measures because victims are most often the best judges of the dangers presented to them by violent offenders. These dangers have been shown to increase when a victim seeks help from authorities, including when she applies for protective measures. A different standard should apply to criminal prosecution of the perpetrators, where the discretion of the public prosecutor takes precedence

This Article should also clarify that adult guardians, family or household members can apply for protective measures on behalf of victims who are minors.

Article 19

(1) The drafters are commended for authorizing emergency interim orders for protective measures without a hearing or other legal proceedings. To protect the victim, the Law should also make clear that a victim may apply for and receive the protective measures described in Article 11, Paragraphs 2, 3, and 4 *ex parte* (without prior notice to the perpetrator) on an emergency interim basis. The Law should state that the victim's statement alone is sufficient evidence to grant an emergency interim order, and no other evidence is necessary.

(2) The drafters are commended for requiring the victim's consent to the protective measures described in Article 18, Paragraphs 2, 3, and 4.

(3) The drafters are commended for requiring the court to rule on the victim's application for protective measures "immediately, without delay," and for shortening the period in which the court must decide from 48 to 24 hours. The Law would better protect the victim's safety, however, if it required a court authority to be available to issue emergency orders for protective measures 24 hours a day, seven days a week, and to make the decision immediately upon application. Allowing even a 24-hour delay puts the victim at risk when her life is in immediate danger.

(4) The Law should permit a period longer than 8 days for the applicant to move for permanent protective measures. Experience has shown that if the proceedings are expedited too quickly, the victim may withdraw if she feels that they are out of her control. For example, in Spain, the law provided that court hearings in domestic violence cases should come before a judge within 15 days. Ideally, the *ex parte* urgent measures should be left in place until the defendant requests a hearing, during which a decision on long-term protective measures may be made.

See Comments to Article 2. The victim's motion for permanent protective measures should take place in a civil court hearing and should be separate from the prosecutor's accusatory complaint against the perpetrator. This Article illustrates one reason why proceedings for protective measures and proceedings for criminal penalties should be separate. To protect the victim's safety, the victim's need for protective measures should be addressed as quickly as possible. In contrast, the prosecutor's decision to file criminal charges (and if so, which charges to apply and the allegations to assert in the charging documents) should be carefully deliberated. The criminal charging process should not be driven by the need for immediate protective measures.

(5) The drafters are commended for requiring courts to notify applicants that a failure to move for permanent protective measures within the deadline will result in the abrogation of any interim protective measures. Consider using the word "notify" instead of the more accusatory word "warn."

Article 20 – Provisions

(1) See Comments to Article 1. Replace the phrase "family violence" with "domestic violence."

The drafters are commended for increasing the maximum sentence of imprisonment for domestic violence from 60 days to 90 days in the new Law, however, continuing to treat domestic violence as a misdemeanor, and limiting the potential prison sentence for this offense to just 90 days, significantly understates its seriousness. The Law should be amended to establish felony-level sentences in cases involving serious injury or threat of serious injury to the victim, permanent disfigurement, or death, and in such other cases where the court finds circumstances warrant the imposition of a felony-level sentence. The Law should ensure that crimes involving domestic violence are not treated less seriously than other crimes. The Law should also clarify that police and prosecutors are obligated to pursue all cases of domestic violence, including assaults resulting in low-level injuries such as bruises, cuts, scrapes, and burns.

The Law should also establish higher minimum penalties for repeat offenders, with increasing penalties mandated for each subsequent offense. For example, three or more convictions for assaults involving low-level injury could become a felony with more severe sanctions. The 15, 30, 45 and 60-day minimums imposed under the statute for repeat offenses and offenses affecting children and disabled persons are not sufficient to deter perpetrators. In addition, these low sentencing provisions for repeat offenses are not commensurate with the criminality of the conduct.

Article 21

See Comments to Article 8. Registration requirements should not be applied if the victim is a competent adult and is not in immediate danger.

Article 22 – Responsibility for Failure to Act According to Protective Measures

The drafters are commended for making it clear that violating an order for protective measures is a criminal offense that will subject the perpetrator to criminal penalties. The drafters are also commended for making it clear that such penalties may be imposed only against the perpetrator, and not the victim, of domestic violence.

In addition, the Law should make clear that, when the violation of an order for protective measures constitutes a separate criminal offense, this provision does not supersede any other criminal law that applies. For example, if the order for protective measures prohibits the perpetrator from future acts of violence and the perpetrator then assaults the victim, he should be subject to criminal penalties both for the assault and for violating the protection order.

The Law should also provide that, if the perpetrator repeatedly violates an order for protective measures, the criminal penalties will become more severe with each successive violation.

Articles 23-26

Articles 23-26 follow the best practice of naming an agency or agencies that are responsible for implementing the Law and clearly describing the responsibilities of the agency or agencies, including the issuance of implementing regulations and rules, the appointment of an expert committee to monitor and improve its application and enforcement, and the collection of statistical data regarding domestic violence cases. The drafters are commended for including these provisions in the Law.

In addition, the Law should require the court administration system that handles cases of domestic violence to maintain a staff that will provide assistance to domestic violence victims.¹⁰²²

The Law should also include provisions that require agency collaboration and communication in addressing domestic violence. NGO advocates who directly serve domestic violence victims should have leadership roles in such collaborative efforts. When policy, judicial officials, NGOs that provide direct service to victims of domestic violence, and medical providers coordinate their efforts to protect victims and hold perpetrators accountable, these efforts are more successful. Coordination helps to ensure that the system works faster and better for victims; that victims are protected and receive the services they need; and that perpetrators are held accountable and cease their abusive behavior.

¹⁰²² Model Code on Domestic and Family Violence, 1994 National Council of Juvenile and Family Court Judges, Section 313, page 31, available at http://www.ncjfcj.org/images/stories/dept/fvd/pdf/modecode_fin_printable.pdf (visited Aug. 30, 2011).

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