



## **CROATIA**

### **Stakeholder Submission to the United Nations**

#### **Universal Periodic Review**

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**The Advocates for Human Rights,**

A NGO holding ECOSOC Special Consultative status since 1996,

and

**Autonomous Women's House Zagreb**

**The Advocates for Human Rights** (“The Advocates”) is a volunteer-based nongovernmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. The Advocates is committed to ensuring human rights protection for women around the world. The Advocates’ Women’s Human Rights Program has published 23 reports on violence against women as a human rights issue, frequently provides consultation and commentary on drafting laws on domestic violence, and trains lawyers, police, prosecutors, and judges to effectively implement new and existing laws on domestic violence.

**Autonomous Women’s House Zagreb** (“AZKZ”) is a feminist, non-governmental and non-profit organization, whose priority is working in civil society. The organization was founded to respond to the need for safe shelter for women and their children exposed to violence – physical, psychological, sexual, economic, or institutional. Its mission is to provide support and help to women who have survived violence and empowerment of women’s position in society.

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1. Domestic violence violates a woman's rights to freedom from discrimination, equal protection before the law, liberty and security of person, equality before the courts and equality with men before the law, recognition as a person before the law, and freedom from torture. In addition, when a State fails to ensure that its criminal and civil laws adequately protect women and consistently hold abusers accountable, or that its agents—such as police and prosecutors—implement the laws that protect victims of domestic violence, that state has not acted with due diligence to prevent, investigate and punish violations of women's rights.
2. Violence against women is a widespread problem in Croatia. According to research published in 2011, 31 percent of women in Croatia have experienced frequent domestic violence, and 44 percent have experienced it occasionally.<sup>1</sup> Femicides are also a serious problem in Croatia; 11 women were killed by their male partners in 2013,<sup>2</sup> and 12 women were killed by their male partners in 2012.<sup>3</sup>

#### I. Domestic Legislative Framework<sup>4</sup>

3. Although Croatia has enacted several laws, additional changes need to be made and challenges still exist in their implementation to effectively protect victims and hold perpetrators of domestic violence accountable. Relevant laws discussed in this report include the following:
4. Law on Protection against Domestic Violence (LPDV). The LPDV is a misdemeanor law and defines domestic violence as “any form of physical, mental, sexual or economic violence....”<sup>5</sup> Under the LPDV, victims can seek six protective measures: 1) psychosocial batterers' treatment;<sup>6</sup> 2) addiction treatment for the offender; 3) eviction of the offender from the home; 4) confiscation of firearms; 5) a restraining order; and 6) prohibitions

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<sup>1</sup> “Country Report: Croatia,” *Women Against Violence Europe*, 2013, 66.

<sup>2</sup> September 12, 2014 email from AZKZ to The Advocates.

<sup>3</sup> “Croatia 2013 Human Rights Report,” *U.S. Dep't of State*, 17.

<sup>4</sup> Methodological note: In partnership with the Bulgarian Gender Research Foundation, The Advocates and AZKZ conducted fact-finding in 2010 and 2011 to monitor the implementation of Croatia's domestic violence legislation. In 2012, the reporting organizations published a report with their findings and recommendations. “Implementation of Croatia's Domestic Violence Legislation,” The Advocates for Human Rights, *et al.*, 2012. The reporting organizations conducted additional interviews in June 2014 to prepare a follow-up report on the status of the implementation of Croatia's domestic violence laws. The reporting organizations have based this submission on their 2012 report, their 2014 interviews, and their ongoing monitoring of domestic violence issues in Croatia.

<sup>5</sup> LPDV, Art. 4.

<sup>6</sup> The Croatian 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 group meetings. The treatment also calls for victim involvement, on a voluntary basis, designed to inform the victim about the program, gather background information on the perpetrator, and monitor changes in the perpetrator's behavior. The Advocates for Human Rights, *et al.*, *Implementation of Croatia's Domestic Violence Legislation* (2012), 7.

against stalking and harassing the victim.<sup>7</sup> Three of the measures (restraining orders, stalking/harassment prohibition, and eviction) can be requested on an *ex parte* “urgent” basis. The court can impose fines or jail sentences (up to 90 days) on perpetrators,<sup>8</sup> in addition to the six protective measures. Importantly, perpetrators can be fined or imprisoned for violations of the protective measures.<sup>9</sup>

5. Criminal Code. In 2011, the Croatian Parliament amended the Criminal Code. Previously, domestic violence was primarily prosecuted under Section 215A, which broadly punished any violent, abusive or particularly insolent conduct that put another family member into a “humiliating position.”<sup>10</sup> Article 215A was eliminated in 2011, and domestic violence is now mostly prosecuted as bodily injury,<sup>11</sup> threats,<sup>12</sup> or sexual attacks.<sup>13</sup> The 2011 amendments also included two important post-conviction safety measures that offer protection to a victim after a criminal trial is concluded. After a criminal conviction, the court can order a restraining order (up to five years) and eviction of the offender (up to three years) as part of the criminal sentence. These two safety measures are intended to fill a major gap in victim protection after the conclusion of a criminal trial. The 2011 amendments entered into force in January 2013.
6. Family Law. Croatia’s Family Law governs, among other things, marriage and the relations of parents and children.<sup>14</sup> Amendments to the Family Law entered into force on September 1, 2014.
7. Free Legal Aid Act - The Free Legal Aid Act entered into force in 2009, and it was amended in 2011. It provides that victims have the right to legal representation in non-misdemeanor and criminal proceedings.<sup>15</sup> Further amendments were proposed in 2013.<sup>16</sup>
8. Of note, the misdemeanor (including the LPDV) and criminal laws are mutually exclusive in Croatia.<sup>17</sup> As a result, a victim of domestic violence cannot obtain remedies or protection under both the misdemeanor and criminal systems, and it is usually the police who determine whether they will apply the LPDV or Criminal Code after the victim reports the violence. Under the misdemeanor system, the two means of protection a victim can obtain

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<sup>7</sup> LPDV, Art. 11(2).

<sup>8</sup> LPDV, Art. 20.

<sup>9</sup> LPDV, Art. 22(2).

<sup>10</sup> Criminal Code, Article 215A.

<sup>11</sup> Criminal Code, Art. 117 (bodily injury), Art. 118 (heavy bodily injury), Art. 119 (especially heavy bodily injury), and Art. 120 (heavy bodily injury with a death outcome).

<sup>12</sup> Criminal Code, Art. 139.

<sup>13</sup> Criminal Code, Art. 154; interview with prosecutor, June 10, 2014.

<sup>14</sup> Family Law, Art. 1.

<sup>15</sup> Free Legal Aid Act, Art. 5.

<sup>16</sup> “Consideration of reports submitted by States parties under article 40 of the Covenant pursuant to the optional reporting procedure, Third periodic reports of States parties due in October 2013: Croatia,” CCPR/C/HRV/3, 25 February 2014, ¶¶17-19.

<sup>17</sup> *Maresti v. Croatia*, Euro. Ct. H. Rts. (2009).

include: 1) the Misdemeanor Act which has limited precaution measures to protect her during the proceedings, and; 2) the LPDV which provides immediate protective measures to protect her on a long-term basis before and after the misdemeanor proceedings. Under the criminal system, the Criminal Code includes limited precautionary measures to protect her during the proceedings and two post-conviction safety measures for protection. The Criminal Code's protections are not as quick, strong or encompassing as the LPDV protections, but it does impose higher sanctions for the perpetrator that more accurately reflect the seriousness of the offense.

## II. Status of Implementation of UPR Recommendations Accepted by Croatia and Other Human Rights Developments.

### A. Prosecution and punishment of domestic violence perpetrators under the Criminal Code.

9. During its first Universal Periodic Review in November 2010, Croatia accepted the following recommendations and indicated that they had already been implemented or were in the process of implementation:
  - a. 97.31 Prosecute and convict perpetrators of domestic violence (France); and
  - b. 97.32 Ensure prosecution and punishment for acts of violence against women (Ecuador).
10. **Status of Implementation:** In its Mid-term Report from December 2013, Croatia stated in response to these recommendations that the “State Attorney’s Office implements effective prosecution of perpetrators of domestic violence and maintains separate records by: the sex of the defendant, gender and age of the victim; types of state attorneys’ action and the type of judgment.”<sup>18</sup> As described below, however, major gaps in prosecutions and punishments of offenders remain.
11. **The new Criminal Code does not effectively hold offenders accountable for long-term domestic violence and coercive control (psychological) domestic violence.** The former Criminal Code contained a specific provision on domestic violence (Article 215A), which broadly prohibited “violent, abusive or particularly insolent conduct.” The new Criminal Code no longer contains a specific domestic violence offense; instead, prosecutors must rely on bodily injury and threat provisions. But in practice, many forms of domestic violence do not qualify as bodily injury or threats under the Criminal Code in Croatia.<sup>19</sup> Because it is injury-focused, Croatia’s Criminal Code prosecutes domestic violence on a single incident basis, when in reality, research shows domestic violence is actually a continuing pattern of

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<sup>18</sup> “Mid-term report on follow-up of the recommendations of the United Nations Human Rights Council under the Universal Periodic Review Mechanism (UPR),” *Republic of Croatia*, December 2013, 18.

<sup>19</sup> Interview with lawyer, June 4, 2014.

coercive control in which offenders use physical violence, intimidation, and isolation.<sup>20</sup> Long-term domestic violence for which a victim may not have proof of her injuries must now be handled as a misdemeanor offense, as must acts of coercive control that do not rise to the level of a threat to bodily integrity or life. In other words, the new Criminal Code does not recognize most domestic violence as a criminal level offense, thus relegating these offenses to the misdemeanor system.<sup>21</sup>

**12. Medical certificate requirements are preventing prosecution of domestic violence offenses.** Since 2013, prosecutors typically now prosecute domestic violence as bodily injury or threats because Article 215A (violent conduct within a family) was removed from the Criminal Code. Article 215A did not require qualification of the degree of injuries for prosecution,<sup>22</sup> and those crimes could be prosecuted based on the testimony of the victim or witnesses. In contrast, now instead of relying on police reports or testimony regarding injuries, prosecutors require medical certificates to pursue criminal charges for bodily injury.<sup>23</sup> Without a medical certificate, prosecutors are not charging perpetrators with these crimes. Yet, victims may face several barriers to obtaining a medical certificate. The perpetrator may prohibit the victim from visiting an emergency room or other doctor to obtain the certificate while her injuries are still visible.<sup>24</sup> The perpetrator may also be present during the examination, preventing open communication between the victim and the doctor or the victim's request for a medical certificate. And although all doctors are authorized to provide medical certificates, doctors may be hesitant to provide such documentation for fear that the perpetrators will retaliate against them.<sup>25</sup> As a result of the medical certificate requirements, offenders are not being held accountable and prosecuted for domestic violence. This sends a message to both perpetrators and society that the government condones violent behavior and allows perpetrators to act with impunity. Croatia should be urged to amend the Criminal Code to re-incorporate a crime of violent conduct within a family that also covers coercive control, so that domestic violence offenses do not have to be prosecuted as bodily injuries.

**13. Additional precautionary measures are needed to protect victims during criminal trials.** The Criminal Procedure Code currently provides for precautionary measures that the court may order before and during criminal proceedings, including prohibition from

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<sup>20</sup> Evan Stark, "Re-presenting Battered Women: Coercive Control and the Defense of Liberty," Prepared for Violence Against Women: Complex Realities and New Issues in a Changing World, Les Presses de l'Université du Québec (2012), at 7.

<sup>21</sup> Interview with Lawyer, June 4, 2014.

<sup>22</sup> "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 Code, Art. 215A (Violent Conduct Within a Family).

<sup>23</sup> The medical certificate is used to qualify the level of injury for purposes of criminal prosecution (bodily injury, heavy bodily injury, especially heavy bodily injury). Criminal Code, Arts. 117-119.

<sup>24</sup> Interview with lawyer, June 9, 2014.

<sup>25</sup> Interview with NGO, June 2, 2014.

approaching certain persons and from establishing or maintaining contacts with particular persons.<sup>26</sup> The courts recognize the purpose of such precautionary measures as a way to ensure the defendant's presence at trial, but this purpose should be expanded to include protecting victims during criminal proceedings until a final court decision when safety measures can be issued.

14. The use of precautionary measures before and during criminal trials is especially important now, in light of the *Maresti v. Croatia* decision that precludes a victim from obtaining misdemeanor LPDV protective measures after a criminal conviction.<sup>27</sup> Although criminal charges and convictions may be appropriate for the perpetrator's actions, if courts are not properly imposing precautionary measures to protect the victim during the pending criminal proceedings, the victim is left exposed and unprotected from her perpetrator. Such a result violates Croatia's obligations to hold perpetrators accountable and protect victims, and it should be urged to ensure the effective application of precautionary measures in criminal proceedings.
15. **The removal of Article 215A (Violent Conduct Within a Family) has resulted in domestic violence perpetrators escaping prosecution.** While Article 215A's vague language presented problems for holding offenders accountable, its removal without an appropriate replacement provision has presented new problems. Within a three-month period of time, NGOs had already identified several pending criminal cases in which prosecutors dropped criminal charges and would not proceed under the new Criminal Code.<sup>28</sup> These cases were brought to the attention of the Croatian Ministry of Justice.<sup>29</sup> The law states that where there are cases pending under an old law that has been amended, the defendant should be tried under the law with the smaller sentence.<sup>30</sup> Yet, there is no parallel crime in the Criminal Code after the removal of Article 215A.<sup>31</sup> As a result, perpetrators have not been held accountable for these serious offenses and victim's rights have been violated. The dismissal of these charges without holding these offenders accountable violates Croatia's international obligations.
16. **Judges need immediate training on safety measures under the Criminal Code and precautionary measures under the Criminal Procedure Code.** Two new safety measures under the Criminal Code – restraining orders<sup>32</sup> and evictions<sup>33</sup> - are important measures to protect victims after a criminal trial. This was a commendable advance made by Croatia to

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<sup>26</sup> Criminal Procedure Code, Art. 98(2)(1 – 8).

<sup>27</sup> The victim is precluded from availing herself of both systems' remedies for the same act of violence. If two or more acts of violence were to occur, they could be charged separately under the misdemeanor and criminal systems.

<sup>28</sup> Information from NGO (on file with authors).

<sup>29</sup> Interview with NGO, June 2, 2014.

<sup>30</sup> Criminal Code, Art. 3.

<sup>31</sup> Email from Valentina Andrasek to Rose Park, Feb. 13, 2013 (on file with authors).

<sup>32</sup> Criminal Code, Art. 73.

<sup>33</sup> Criminal Code, Art. 74.

protect victims after a criminal trial and fill a major gap; however, only one eviction security measure had been issued in the 18 months since the law entered into force, and even that is not a final ruling.<sup>34</sup> Indeed, courts have denied requests for safety measures from attorneys representing victims, incorrectly stating that they cannot give those measures for the victim but only to ensure the perpetrator's presence in court.<sup>35</sup> This demonstrates judicial confusion on the measures available and may explain why so few safety measures have been issued by criminal judges. As a result of judges not understanding these measures, victims are denied needed protections to which they are entitled under the law. Accordingly, Croatia should be urged to provide immediate training to criminal judges on the use and availability of both safety measures under the Criminal Code, which can protect victims after the perpetrator is convicted, and the precautionary measures under the Criminal Procedure Code discussed in paragraphs 13 and 14, which can be applied during the trial.

17. **The probation system is underutilized and underfunded.** The Law on Probation entered into force at the end of 2009, and the first of 12 probation offices opened in June 2011.<sup>36</sup> The probation offices supervise individuals on suspended sentences under the Criminal Code with protective supervision or community service or those who are on conditional release from prison.<sup>37</sup> Its purpose is to monitor perpetrators' compliance with their sentences; yet, the probation office is short on staff and resources to meet its current mandate. In 2013, the probation system supervised 2,909 perpetrators with approximately 70 staff,<sup>38</sup> and there are reports of the system not having sufficient cars to monitor all perpetrators under their supervision across the country.<sup>39</sup> In addition, the probation system currently only monitors those with criminal convictions, leaving unmonitored both conditional convictions without protective supervision and misdemeanor punishments. The probation offices conduct risk assessments of perpetrators. Courts and prosecutors could use these risk assessments not only in assessing penalties, but also in determining measures to protect victims. Despite this potential, individuals working in probation report that the use of probation in sentences is decreasing,<sup>40</sup> and others report that the probation system is not functioning, especially with respect to domestic violence cases.<sup>41</sup> Croatia should be encouraged to conduct trainings regarding the probation system, especially for judges and prosecutors, and expand the staffing, funding, and mandate of the probation system to meet its potential to hold perpetrators accountable and protect victims.

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<sup>34</sup> Interview with Ministry of Interior, June 2, 2014.

<sup>35</sup> Interview with Lawyer, June 4, 2014.

<sup>36</sup> Dijana Šimpraga, et al., "Probation in Europe: Croatia," 2014, 7; Interview with Individuals within the Probation Ministry, June 4, 2014.

<sup>37</sup> Interview with Probation Expert, June 10, 2014.

<sup>38</sup> Interview with Individuals within the Probation Ministry, June 4, 2014.

<sup>39</sup> Interview with Probation Expert, June 10, 2014.

<sup>40</sup> Interview with Individuals within the Probation Ministry, June 4, 2014.

<sup>41</sup> Interview with Ministry of Interior, June 2, 2014; Interview with NGO, June 2, 2014.

**B. Protection of victims of domestic violence.**

18. Croatia also accepted the following recommendation during its 2010 review and indicated that it had already been implemented or was in the process of implementation:

- a. 97.34 Implement an effective law to protect the women and child victims of domestic violence (Indonesia).

**19. Status of implementation:** In its mid-term report in December 2013, Croatia referenced its legal framework that included the LPDV and the National Strategy for Protection against Domestic Violence, as well as its public awareness activities about domestic violence. Croatia recognized the need of special care for victims of domestic violence and its financial support of shelters and civil society organizations that protect victims of domestic violence and the direct assistance provided through Centers for Social Welfare and family centers.<sup>42</sup> Yet, as described below, there are still gaps in Croatia’s efforts to protect victims, both in law and in practice.

**20. The LPDV does not protect victims of domestic violence in an intimate partner relationship.** Currently, the scope of the LPDV’s protection does not encompass intimate partners who do not have children in common or have not lived together for at least three years. Thus, many intimate or formerly intimate partners do not have access to the LPDV’s remedies and protections, and if they want to seek legal protection against domestic violence, they must pursue it as a private claim. This places the entire cost of the court proceedings on the victim, and an outcome in her favor is by no means certain.<sup>43</sup>

**21. Dual arrests and convictions of both the perpetrator and the victim remain prevalent throughout Croatia.** The effects of these charges and convictions on victim safety and offender accountability are devastating; a victim who reports domestic violence only to be arrested and convicted will never seek help again from the State. The Ombudsperson for Gender Equality expressed concern on the number of women arrested and charged as violent perpetrators – 43.2 percent;<sup>44</sup> yet in the majority of cases, men are the perpetrators of violent behavior in the family.<sup>45</sup> Dual arrests and charges are the result of several factors. First, Croatia’s domestic violence law classifies psychological and economic violence on par with physical violence. Indeed, police classify even verbal arguments between spouses as domestic violence under the LPDV, and they adopt an expansive definition of “domestic violence” that includes name-calling, cursing, shouting or insults.<sup>46</sup> Second, police do not

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<sup>42</sup> “Mid-term report on follow-up of the recommendations of the United Nations Human Rights Council under the Universal Periodic Review Mechanism (UPR),” *Republic of Croatia*, December 2013, 19.

<sup>43</sup> The Advocates for Human Rights, et al., *Implementation of Croatia’s Domestic Violence Legislation* (2012), 10.

<sup>44</sup> Interview with Ombudsperson for Gender Equality, June 3, 2014; Ombudsperson for Gender Equality, “Annual Report 2013,” Zagreb, March 2014, at 25.

<sup>45</sup> Ombudsperson for Gender Equality, “Annual Report 2013,” Zagreb, March 2014, at 25.

<sup>46</sup> “Implementation of Croatia’s Domestic Violence Legislation, 2012, fn. 180.

conduct a predominant aggressor assessment to identify the physically violent party and instead defer that evaluation to judges. In contrast, misdemeanor judges recognize the need for police officers to play a bigger role in identifying the primary aggressor and receive additional education.<sup>47</sup> And third, police are not trained in identifying injuries inflicted out of self-defense and instead defer that evaluation to doctors, who also do not receive training in defensive injuries.<sup>48</sup> As a result, victims are not only arrested and charged for defending themselves against attacks, but they are at times reported to receive a greater punishment than the offender.<sup>49</sup>

22. In Croatia's response to the Human Rights Committee regarding this issue, it asserted that the police always determine the facts of the case, determine the primary aggressor, and only arrest those victims who insult or attack the other person.<sup>50</sup> But, in practice, these assessments are not occurring either by the police or the judiciary, and actions that equate name calling or self-defense with physical violence are insufficient to fulfill Croatia's due diligence obligations to protect victims and hold offenders accountable. Croatia should be urged to take the following actions: 1) amend the LPDV to redefine psychological and economic violence to ensure that 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; 2) train police officers and misdemeanor judges in identifying a primary aggressor and self-defense; 3) develop protocols that will assist police officers in identifying the primary aggressor and self-defense to avoid arresting victims; and 4) ensure that misdemeanor judges assess who is the primary aggressor to avoid convicting victims.

23. **Protective measures requested and granted under the LPDV should focus on protecting the victim.** Police file for protective measures under the LPDV on behalf of victims in up to 90 percent of applications.<sup>51</sup> However, the measures requested by the police and granted by the courts overwhelmingly focus on perpetrator treatments – e.g., psychosocial or addiction treatment – and it has been reported that the police and judiciary are reluctant to impose and enforce protective measures that would protect victims, such as

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<sup>47</sup> Interview with Misdemeanor Judges, June 4, 2014.

<sup>48</sup> Interview with Police, June 2, 2014; Interview with ER Doctor, June 4, 2014; Interview with ER Surgeon, June 4, 2014.

<sup>49</sup> "Implementation of Croatia's Domestic Violence Legislation," The Advocates for Human Rights, *et al.*, 2012, 23, n. 181 (citing interviews with NGOs).

<sup>50</sup> "The police do not report or arrest persons who use passive or active resistance during the act of violence by physically trying to stop the perpetrator's attack, shouting or crying for help, but only those persons who insult or attack other persons, regardless of whether if they were attacked themselves. During their inquiries, the police determine the primary aggressor, i.e. the perpetrator of domestic violence, i.e. they distinguish between violent behavior and self-defence. In cases when the victim of violence reacts violently to committed violence, he/she also becomes a perpetrator and the judicial bodies will decide on the degree of guilt and responsibility." "Consideration of reports submitted by States parties under article 40 of the Covenant pursuant to the optional reporting procedure, Third periodic reports of States parties due in October 2013: Croatia," CCPR/C/HRV/3, 25 February 2014, ¶123.

<sup>51</sup> Interview with Misdemeanor Judges, June 4, 2013 (police are the ones issuing and filing for the measure in 90% of cases).

restraining orders.<sup>52</sup> As a result, victims are left unprotected during a dangerous period of time when she is leaving her abuser. Croatia should be urged to prioritize protective measures that protect victim safety over batterers' treatment and ensure that police always inform victims of these measures and propose restraining orders, eviction and stalking/harassment measures at the victim's request.

**24. Violations of protective measures and punishments under the LPDV must be enforced.**

Best practices show that the violation of a protection order should be criminalized.<sup>53</sup> The LPDV punishes the violation of a protective measure with a fine of at least 3,000 Kunas or a prison sentence of at least 10 days.<sup>54</sup> Yet in practice, reports indicate that the police and courts are not always enforcing these requirements. For example, one victim received a protective measure against her husband. He violated the order, which should result in jail time, but the police refused to do anything because there was no room in jail to keep him.<sup>55</sup> The same victim also reported that the husband only served 10 days of a 25-day jail sentence because of lack of space.<sup>56</sup> Croatia should be urged to ensure the punishment of violations of protective measures and enforce punishments of offenders under the LPDV.

**25. LPDV protective measures should not be stayed pending appeals.** The immediate enforcement of protective measures is crucial to victim safety because these measures are ordered at a time when the victim has chosen to separate from her offender--which is when her risk of lethality and further violence is at its greatest. In its 2012 List of Issues, the Human Rights Committee requested clarification on whether the filing of an appeal of protective measures under the LPDV by a perpetrator automatically stayed or suspended execution of all protective measures, including restraining orders.<sup>57</sup> Croatia's response was inconclusive, stating "[t]he appeal does not postpone the enforcement of the decision, unless determined otherwise by the Act on Misdemeanors, pursuant to the above, seeing as the appeal postpones the enforcement".<sup>58</sup> Unlike precautionary measures under the Criminal Procedure Code or precaution measures under the Misdemeanor Act, which are not stayed pending appeal,<sup>59</sup> the Misdemeanor Act currently states that an "appeal timely submitted by the person empowered prolongs the execution of the verdict."<sup>60</sup> In other words, the Misdemeanor Act states that an appeal postpones enforcement of LPDV protective

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<sup>52</sup> "Croatia 2013 Human Rights Report," *U.S. Dep't of State*, 16.

<sup>53</sup> UN Women, "Overview and protection orders," <http://www.endvawnow.org/en/articles/600-generalites-et-ordonnances-de-protection.html>.

<sup>54</sup> LPDV, Art. 22.

<sup>55</sup> Email from AZKZ to The Advocates, July 1, 2014 (on file with The Advocates).

<sup>56</sup> Email from AZKZ to The Advocates, July 1, 2014 (on file with The Advocates).

<sup>57</sup> "List of issues prior to the submission of the third periodic report of Croatia (CCPR/C/HRV/3) adopted by the Human Rights Committee at its 105<sup>th</sup> Session, 9-27 July 2012," CCPR/C/HRV/Q/3, 21 August 2012, ¶11.

<sup>58</sup> "Consideration of reports submitted by States parties under article 40 of the Covenant pursuant to the optional reporting procedure, Third periodic reports of States parties due in October 2013: Croatia," CCPR/C/HRV/3, 25 February 2014, ¶117.

<sup>59</sup> Criminal Procedure Code, Art. 98(7); Misdemeanor Act, Art. 130(8).

<sup>60</sup> Misdemeanor Act, Art. 191 (3).

measures. An amendment to the Misdemeanor Act is necessary to exempt appeals of protective orders from any stay of enforcement.

26. **Misdemeanor Act precaution measures should be used more frequently to protect victims.** The Misdemeanor Act currently provides for six different precaution measures that the court may order before and during misdemeanor proceedings, including banning visits to a certain location or area, banning coming near to a person, and banning maintaining or establishing connections with a particular person.<sup>61</sup> In addition, police can issue precaution measures for up to a period of eight days where there is a probability of a misdemeanor having been committed.<sup>62</sup> The courts recognize the purpose of such precaution measures as a way to ensure the defendant's presence in court and prevent the commission of new misdemeanors.<sup>63</sup> These measures can protect victims because they can keep the offender away from the victim, can be issued immediately by the police, and are not stayed pending appeals.<sup>64</sup> Training is needed for police officers and judges on these measures, and additional measures including a restraining order; prohibitions against stalking, harassment, and communication; and eviction should be added to strengthen their ability to protect victims.
27. **Funding for victim services needs to be established on a long-term basis.** The Council of Europe Taskforce Recommendations require 428 shelter spaces for victims of domestic violence.<sup>65</sup> Croatian shelters provide 267 spaces<sup>66</sup> in 7 autonomous women's shelters and 11 state, church, and city homes; thus, space for victims and their children is limited and keeping the shelters and state homes operational is crucial. Of particular concern since Croatia's last UPR was the delay in government funding – sometimes by months at a time – and shortfalls in funding from what was promised. In the first half of 2011, seven autonomous women's shelters reached a crisis point, when the Ministry of Family, Intergenerational Solidarity and Veterans' Affairs deferred automatic renewal of its existing contracts with those shelters.<sup>67</sup>
28. In its 2012 List of Issues, the Human Rights Committee requested updated information on support services for victims of domestic violence, including an explanation for the shortage of funding faced by shelters.<sup>68</sup> In its response, Croatia indicated that there are ten state homes that have contracted with the Ministry of Social Policy and Youth and provide shelter

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<sup>61</sup> Misdemeanor Act, Art. 130(2).

<sup>62</sup> Misdemeanor Act, Art. 130(6).

<sup>63</sup> Misdemeanor Act, Art. 130(1).

<sup>64</sup> Misdemeanour Act, Art. 130(8).

<sup>65</sup> "Country Report: Croatia," *Women Against Violence Europe*, 2014, at 65.

<sup>66</sup> *Ibid.*

<sup>67</sup> AZKZ, *Securing the Shelters: Activities Update*, September 28, 2011 (summary, on file with The Advocates)

<sup>68</sup> "List of issues prior to the submission of the third periodic report of Croatia (CCPR/C/HRV/3) adopted by the Human Rights Committee at its 105<sup>th</sup> Session, 9-27 July 2012," CCPR/C/HRV/Q/3, 21 August 2012, ¶10.

to victims.<sup>69</sup> Croatia further indicated that there were seven autonomous women’s shelters that received support from the Ministry of Social Policy and Youth.<sup>70</sup>

29. Changes made in 2013 by the Ministry for Social Policy and Youth have resulted in some improvements, and they are now providing three-year contracts in an effort to allow autonomous shelters to be secure in their work. In addition to funding from the Ministry, the seven autonomous shelters receive funding from the respective counties and cities, and also fund an additional portion of their operations on their own. However, the Ministry only provides for up to 30 percent of funding. Cities and counties are slated to provide 60 percent of funding, but they provide much less. Although the three-year contracts are a positive step, they are not a permanent secure solution, and longer-term funding should be established at the national, county, and city level because of the importance in ensuring the continuing operation and expansion of shelters. In addition, the Ministry and responsible parties at the county and city level should communicate with NGOs to ensure that funding and budget rules are compatible with the present realities of running a shelter and recognize the autonomy of the shelters and expertise of the NGOs.<sup>71</sup>

30. **The Family Law should be further amended because it punishes victims and puts them in danger.** The amendments to Croatia’s Family Law entered into force on September 1, 2014. The Croatia Parliament should be urged to make further amendments because the Family Law contains provisions that are dangerous to victims of domestic violence, including the following:

- a. **Mandatory mediation in divorce cases.** Even though the amendments indicate that mediation will not be mandatory in cases of domestic violence,<sup>72</sup> if there are no pending claims of domestic violence or victims are not properly screened, this could result in the victim still being compelled to participate in mediation against her perpetrator. Staff at Centres for Social Welfare, who routinely conduct mediations, do not usually screen clients for domestic violence or inform victims of their right to decline mediation in the presence of their perpetrator.<sup>73</sup> Thus, many cases of domestic violence may go undetected or still be routed through mediation. Although the goal of mediation is to bypass an overscheduled judicial system with a quick alternative, the assumptions underlying the use of mediation do not apply in domestic violence. Mediation assumes that both parties are equal, yet an abuser holds tremendous power over a victim. This imbalance of power between the parties cannot be remedied despite the skills of the mediator. Mediation in the divorce context is usually geared toward reconciling the family; thus, in situations of

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<sup>69</sup> “Consideration of reports submitted by States parties under article 40 of the Covenant pursuant to the optional reporting procedure, Third periodic reports of States parties due in October 2013: Croatia,” CCPR/C/HRV/3, 25 February 2014, ¶98.

<sup>70</sup> *Ibid.*, ¶99.

<sup>71</sup> Email from AZKZ to The Advocates, Feb. 13, 2013 (on file with authors).

<sup>72</sup> Family Law, Art. 332(1).

<sup>73</sup> “Implementation of Croatia’s Domestic Violence Legislation,” The Advocates for Human Rights, *et al.*, 2012, 78.

domestic violence, mediation by itself is problematic by encouraging the victim of violence to remain with her perpetrator.

**b. Prohibition on one parent leaving a city without the approval of another parent.**

This provision is a safety issue for victims of domestic violence; if she is unable to go to a shelter in another city for her safety or because the shelter in her city is not able to provide her with a space (or does not exist), this would require victims to remain in dangerous situations.<sup>74</sup> With only 18 shelters in the entire country, a victim may have no choice but to seek refuge in another city that can shelter her.

**c. The new Family Law asks that the parents cooperate in raising the children, with serious consequences for a parent who refuses to cooperate.**

For example, if the parents do not show sufficient willingness to cooperate, the CSW can propose special measures (Art 143), which range from oversight to removal of the child from the parent (Art 149). Article 171 even states that the parent can lose parental rights if the child witnesses violence in the family. While it is understood that perpetrators of domestic violence can lose parental rights because of violence, this rarely happens in practice. Conversely, women victims of violence have been known to lose custody of their children because the children witnessed violence against them.

**d. Fines for parents for not allowing contact with children.**

The Family Law includes fines of up to 30,000 kunas (approximately \$5,000) and the possibility of prison sentences for not complying with the court's decision regarding parenting time.<sup>75</sup> Yet, child visitation in domestic violence cases can present an opportunity for the offender to commit further violence and even murder.<sup>76</sup> Furthermore, visitation facilities with adequate security and supervision are rare in Croatia.<sup>77</sup> For women who are afraid of their perpetrators and want to protect themselves and their children from further attacks, such a provision could be used against the victims by alleging she is not permitting contact when, in reality, she is protecting herself and her children.<sup>78</sup>

**C. Legal Aid.**

31. Croatia also accepted the following recommendations in connection with its 2010 UPR:

- a. 97.52 Continue providing free legal aid to the most vulnerable citizens (Pakistan; Palestine)
- b. 97.53 Carry out an independent assessment on the effectiveness of the law on free legal aid and, depending on the results thereof, take the measures required to guarantee that the

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<sup>74</sup> Family Law, Art. 100; email from AZKZ to The Advocates, June 14, 2013 (on file with authors).

<sup>75</sup> Family Law, Art. 417(3).

<sup>76</sup> "Implementation of Croatia's Domestic Violence Legislation," *The Advocates for Human Rights, et al.*, 2012, 83.

<sup>77</sup> *Ibid.*

<sup>78</sup> Email from AZKZ to The Advocates, Sept. 21, 2013 (on file with authors).

most disadvantaged among the population have access to effective, comprehensive and non-discriminatory legal aid (Belgium)

- c. 98.10 Take necessary measures in order to guarantee to everyone who requests it, including those belonging to minorities, access to legal aid (France)<sup>79</sup>

32. Croatia did not accept the recommendation from the Netherlands to “[a]mend the strict eligibility requirements of the Free Legal Aid Act so that all who need it can make use of its provisions.”<sup>80</sup>

33. **Status of Implementation:** In its Mid-term report, Croatia indicated that it analyzed its free legal aid system and that the results indicated a need for improvement. The Free Legal Aid Act was submitted for parliamentary procedure in July 2013.<sup>81</sup> Croatia indicated that “[t]he Act provides for access to primary legal aid [i.e., legal information and counselling]<sup>82</sup> by compliance with minimum legal preconditions (without meeting special property census criteria), whereas the property criteria for the entitlement to secondary legal aid have been mitigated.”<sup>83</sup> Croatia indicated that it did not accept the recommendation from the Netherlands because the phrase “all who need it” was imprecise and Croatia deemed that it was necessary to meet certain preconditions to qualify. Croatia earlier stated that the Act sets the financial and property limit for the eligibility of free legal aid, as a solution which is applied in a great majority of countries.<sup>84</sup>

34. **Free legal services are difficult to obtain.** Despite the improvements Croatia recently made to the Free Legal Aid Act, the process to request free legal assistance is complicated.<sup>85</sup> This operates as a bar to victims of domestic violence who would otherwise qualify for free legal representation to, for example, initiate their own criminal or misdemeanor matters that are not pursued by prosecutors or file divorce proceedings.<sup>86</sup> Victims could also use free legal aid to request protective measures under the LPDV. One lawyer explained the benefits her clients receive by her free legal representation: “When victims of violence have a

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<sup>79</sup> “Report of the Working Group on the Universal Periodic Review: Croatia, Addendum Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review,” A/HRC/16/13/Add.1, 3.

<sup>80</sup> Ibid. (Recommendation 98.11).

<sup>81</sup> “Mid-term report on follow-up of the recommendations of the United Nations Human Rights Council under the Universal Periodic Review Mechanism (UPR),” *Republic of Croatia*, December 2013, 15.

<sup>82</sup> “Consideration of reports submitted by States parties under article 40 of the Covenant pursuant to the optional reporting procedure, Third periodic reports of States parties due in October 2013: Croatia,” CCPR/C/HRV/3, 25 February 2014, ¶18.

<sup>83</sup> “Mid-term report on follow-up of the recommendations of the United Nations Human Rights Council under the Universal Periodic Review Mechanism (UPR),” *Republic of Croatia*, December 2013, 15.

<sup>84</sup> “Report of the Working Group on the Universal Periodic Review: Croatia, Addendum Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review,” A/HRC/16/13/Add.1, 3.

<sup>85</sup> Interview with NGO, June 2, 2014.

<sup>86</sup> Ibid.

lawyer, it is obvious their situation is different because [the lawyer] knows what to say to the institutions. So for my clients, there is no harm.”<sup>87</sup> Based on a review of protective measures under the LPDV conducted by the Gender Equality Ombudswoman, victims initiated only 2 percent of applications for protective measures.<sup>88</sup> This reflected the need not only to support victims with free legal aid in misdemeanor and court proceedings, but raise awareness of their rights and provide quick and effective legal aid.<sup>89</sup> Because there is limited assistance available for those trying to navigate the complex legal aid approval process, Croatia should be encouraged to clarify and simplify its approval process to make it applicant friendly.

### III. Recommendations

35. The Advocates for Human Rights and Autonomous Women’s House Zagreb recommend the following:

- Train police officers, prosecutors, and judges on identifying the primary aggressor and assessing defensive injuries to reduce the number of dual arrests, charges and convictions of victims of domestic violence;
- Train criminal judges on the application of and promote their use of eviction and restraining order safety measures under the Criminal Code and precautionary measures under the Criminal Procedure Code in domestic violence cases;
- Amend the Criminal Code to return Article 215A and incorporate coercive control so that domestic violence offenses do not have to be prosecuted as bodily injuries;
- Amend the Misdemeanor Act to add precaution measures of a prohibition against stalking, harassment, and communication; and eviction, which can protect victim safety before a judgment is issued, and train and encourage judges and police officers to impose these measures;
- Promote the use and expansion of the probation system and ensure that it is supported with sufficient staff and resources;
- Amend the LPDV to redefine psychological and economic violence to ensure that domestic violence only includes those acts that threaten the victim with physical harm or cause fear of such harm and acts of coercive control;

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<sup>87</sup> Interview with Lawyer, June 4, 2014.

<sup>88</sup> Interview with Gender Equality Ombudswoman, June 3, 2014.

<sup>89</sup> Interview with Gender Equality Ombudswoman, June 3, 2014.

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- Ensure that the 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, harassment, and overall pattern of violence that constitutes coercive control;
- Amend the LPDV to ensure that protective measures remain in effect throughout the duration of any appeals process;
- Train judges, prosecutors, and police on the application and enforcement of safety measures under the Criminal Code in domestic violence cases;
- Ensure the punishment of violations of protective measures and enforce punishments of offenders under the LPDV;
- Increase the issuance of jail sentences over fines for violations of protective measures;
- 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;
- Provide adequate and consistent funding to shelters and adopt legislation that would guarantee such funding to the shelters while ensuring their autonomy; and
- Amend the Family Law to exclude mandatory mediation, the prohibition from leaving a city, non-compliance with a parenting agreement, and requirements to cooperate with their perpetrator in cases where domestic violence is present;
- Repeal legal provisions in the Family Law 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;
- Clarify and simplify the process to apply for free legal aid;
- Mandate a coordinated community response and greater interagency collaboration among judges, prosecutors, police, social workers, NGOs, the probation system, and autonomous women's shelters;
- Continue efforts to coordinate the community response among NGOs, the police, the courts, Centers for Social Welfare, health care providers, probation, autonomous women's shelters, and the media; and
- 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.