



**CROATIA:**

**53<sup>RD</sup> Session of the Committee Against Torture**

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**Written Statement submitted by**

**The Advocates for Human Rights, an NGO in special consultative status**

**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. The Women’s Human Rights Program also created training modules on access to justice and drafting legislation on violence against women in all its forms for UN Women’s Virtual Knowledge Centre.

**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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## **I. Introduction**

1. Domestic violence is a form of discrimination against women and violates women's human rights. It violates a women's right to life, bodily security and integrity, equal protection, and freedom from torture. Domestic violence continues to be 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> In 2013, there were approximately 14,335 domestic violence offenses under the domestic violence law;<sup>2</sup> the rate of domestic violence is actually greater, however, as this number does not include criminal-level domestic violence offenses.<sup>3</sup> Femicides are also a serious problem in Croatia; 12 women were killed by their male partners in 2012,<sup>4</sup> and 11 women were killed by their male partners in 2013.<sup>5</sup>

## **II. Croatia's Obligations under the Convention against Torture**

2. Croatia succeeded to the Convention against Torture on October 12, 1992. The Convention defines torture in Article 1 as severe mental or physical pain or suffering that is intentionally inflicted either by a State actor or with the consent or acquiescence of a State actor for an unlawful purpose. The Convention also obligates Croatia to protect victims from torture and hold perpetrators accountable in: Article 2 (non-derogable requirement of effective legislative, administrative, judicial or other measures to prevent acts of torture, including acts by private actors); Article 4 (acts of torture must be identified as offenses under criminal law and receive the appropriate penalty); Article 7 (criminalized cases of torture should be submitted to authorities for prosecution); Article 12 (prompt investigation by impartial and competent authorities); Article 13 (victim's right to complain and to have their complaint examined by competent authorities; State's obligation to protect victim and witnesses); and Article 14 (victims' right to redress and compensation, including rehabilitation).
3. The Committee has clarified that domestic violence falls under the purview of the obligations set forth in the Convention. Violence against women, such as domestic violence, contravenes the Convention when the government fails to prevent such violence from taking place and does not prosecute or punish perpetrators of the violence. As stated in General Comment No. 2:

“... where State authorities or others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the Convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts. Since the failure of the State to

exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State's indifference or inaction provides a form of encouragement and/or de facto permission. The Committee has applied this principle to States parties' failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation, and trafficking.”

4. The Committee has also recognized State party obligations to report on violence against women by private actors in communities and homes and the measures taken to prevent and punish such violence,<sup>6</sup> ensure adequate care and protection for victims to avoid re-traumatization during legal procedures,<sup>7</sup> provide adequate legal aid to victims lacking the necessary resources to bring complaints and make claims for redress,<sup>8</sup> take measures to protect victims against intimidation and retaliation “at all times before, during and after judicial, administrative or other proceedings that affect the interests of victims,”<sup>9</sup> and not impede the enjoyment of the right to redress through, for example, “evidential burdens and procedural requirements that interfere with the determination of the right to redress” or the “failure to provide sufficient legal aid and protection measures for victims.”<sup>10</sup>
5. Pursuant to Article 19 of the Convention, Croatia submitted its Fourth and Fifth periodic report on March 19, 2013.

### **III. Barriers That Exist That Allow Domestic Violence in Croatia to Continue**

6. Although Croatia has enacted several laws that address domestic violence, 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:
7. 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>11</sup> Under the LPDV, victims can seek six protective measures: 1) psychosocial batterers’ treatment;<sup>12</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 against stalking and harassing the victim.<sup>13</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>14</sup> in addition to the six protective measures. Importantly, perpetrators can be fined or imprisoned for violations of the protective measures.<sup>15</sup>
8. 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>16</sup> Article 215A was eliminated in 2011, and domestic violence is now mostly prosecuted as bodily injury,<sup>17</sup> threats,<sup>18</sup> or sexual attacks.<sup>19</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.

9. Family Law. Croatia’s Family Law governs, among other things, marriage and the relations of parents and children.<sup>20</sup> Amendments to the Family Law entered into force on September 1, 2014.
10. 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>21</sup> Further amendments were proposed in 2013.

**A. Croatian laws and practices are ineffective in preventing acts of torture, in violation of Article 2 of the Convention.**

11. **Dual arrests and convictions of both the perpetrator and the victim are prevalent throughout Croatia.** When police respond to domestic violence, they at times arrest and even charge the victim along with the perpetrator. The effects of these dual 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 government. These arrests and charges are the result of several factors:
  - 1) Croatia’s domestic violence law classifies psychological and economic violence on par with physical violence, thus holding a victim who makes verbal insults or spends too much money as culpable as a physical abuser. Police officers insist that name-calling and physical violence are both forms of domestic violence under the LPDV.<sup>22</sup> Yet, the misdemeanor judges who preside over these charges are also poorly equipped to identify the predominant aggressor and have found victims guilty under the LPDV.<sup>23</sup>
  - 2) Police do not conduct a predominant aggressor assessment to identify the physically violent party and instead defer that evaluation to judges. Police acknowledged they do not determine who is truthful when both parties give conflicting accounts of what happened but instead arrest and detain both parties.<sup>24</sup> An officer explained that, “[w]e don’t make those calls. It is for the court to decide who is telling lies.”<sup>25</sup>
  - 3) Police are not trained in identifying injuries inflicted out of self-defense and instead defer that evaluation to doctors. Yet, the only way a medical professional can document self-defense injuries is if the perpetrator goes to the hospital or signs a statement that his injuries were sustained by the victim defending herself.<sup>26</sup> An ER surgeon who herself sees patients with these injuries recommended that police play a larger role in documenting injuries.<sup>27</sup>

12. Police and judges also limit offender accountability for violence under the LPDV by favoring perpetrator treatment over remedies that provide immediate protection to victims. 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. A misdemeanor judge recently admitted that she does not order eviction and restraining orders, as she believes psychosocial treatment to be adequate for perpetrators "who do not yet deserve eviction."<sup>28</sup> Yet, police first responders state that evictions and restraining orders are actually the most effective protective measures.<sup>29</sup>
13. **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.<sup>30</sup> One NGO described how their client's abuser was ordered into both psychosocial and addiction treatment, but no one questioned his failure to attend either program. Eventually, the doctor and psychosocial treatment administrator informed the court that he never attended.<sup>31</sup> 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.<sup>32</sup> Judges have continued to order psychosocial treatment measures even though they are unavailable in many locations due to lack of funding.<sup>33</sup> The absence of funding means lengthy delays before the perpetrator even begins treatment, and misdemeanor judges described how clinics have informed them that they initiate contact with the perpetrator several months after the ruling ordering the treatment.<sup>34</sup> Moreover, batterers' treatment programs run the risk of diverting much needed and scarce resources away from services for the victim, such as shelters.<sup>35</sup>
14. **Additional security measures are needed under the Criminal Code to prevent further violence, specifically stalking and harassment.** Although Croatia's recent amendments to the Criminal Code included the addition of post-conviction safety measures for eviction and restraining orders, offenders have been known to skirt the limits of restraining orders to remain a certain distance away from persons or locations.<sup>36</sup> Police often disregarded an offender's behavior when the offender is "passing by" or merely in the vicinity's outskirts by happenstance or when his transgressions into a prohibited area or intentions are unclear. For example, one victim who left a shelter and returned to her apartment saw her perpetrator driving through her street, despite a restraining order. Police refused to enforce the restraining order because, "Well, he has a right to drive through the street." In another case, a perpetrator followed his child from

school and found the victim at a shelter. When reported to the police, the perpetrator defended himself by saying that he accidentally found the shelter. The police would not do anything, despite a restraining order against him, because there was no law against walking in the street.<sup>37</sup> In such cases, security measures against harassment or stalking would serve to strengthen protection for victims and prevent further abuse by perpetrators.

15. **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>38</sup>

16. **Mandatory reporting compromises victim safety and autonomy.** The LPDV requires that health care workers, social welfare employees, educational and religious workers, humanitarian organizations, and civil society organizations working in the scope of children and families report acts of domestic violence to the police or State Attorney's office.<sup>39</sup> Failure to report such acts can result in a fine of 3,000 kunas (approximately 400 Euros).<sup>40</sup> This requirement places NGOs and other responders in the difficult position of choosing between breaching client confidentiality by reporting domestic violence or facing a potential fine. In domestic violence cases, identifying information should never be disclosed without the victim's fully informed consent. One of the most dangerous times for many victims is when they separate from their abusers. It is important for an adult female victim of domestic violence to make her own decision to report the domestic violence because she is the best judge of the potential danger her abuser poses to her.<sup>41</sup> One doctor opined that her requirement to report domestic violence to police was poor practice, because it could escalate the violence and also drive the woman to change doctors.<sup>42</sup> The doctor also expressed concern over mandatory reporting requirements without proper training on domestic violence for doctors.<sup>43</sup>

17. The new Family Law was adopted on September 1, 2014. Despite vocal criticism by a number of groups, the Family Law passed with a number of problematic provisions in the law itself. **Dangerous provisions in the new Family Law punish victims and place them at risk of further violence by their abuser.** The following provisions in the new Family Law are of concern:

- **Mandatory mediation in divorce cases.** The amendments indicate that mediation will not be mandatory in cases of domestic violence;<sup>44</sup> however, a victim may still be compelled to undergo mediation with her abuser in cases where there are no pending claims of domestic violence or there is a lack of

proper screening. Center for Social Welfare staff, who routinely conduct mediations, do not typically screen clients for domestic violence or inform victims of their right to decline mediation in the presence of their perpetrator.<sup>45</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. Because mediation in divorce is usually geared toward reconciling the family, mediation in domestic violence cases is problematic by encouraging the victim of violence to remain with her perpetrator.

- **The new Family Law requests 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,<sup>46</sup> which range from oversight to removal of the child from the parent.<sup>47</sup> 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 their mothers.
- **Fines for parents for not allowing contact with children.** The Family Law punishes parents who do not comply with the court's decision on parenting time with fines of up to 30,000 kunas (approximately \$5,000) and prison sentences.<sup>48</sup> Yet, child visitation in domestic violence cases can present an opportunity for the offender to commit further violence and even murder.<sup>49</sup> Visitation facilities with adequate security and supervision are rare in Croatia,<sup>50</sup> and women have been harmed and even murdered during child visitation.<sup>51</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>52</sup>

18. **Regular and gender-sensitive trainings are critically important.** Such trainings should address the dynamics of domestic violence and implementation of the LPDV are needed for all sectors, including police, judges, prosecutors, health care workers, and Centers for Social Welfare employees. None of these actors receives training on identifying the primary aggressor or on conducting risk assessments, and legal actors do not receive training on assessing defensive injuries. Given the prevalence of dual arrests and the alarming rates of domestic violence murders,<sup>53</sup> both of these trainings are essential to protecting victims. Trainings on domestic violence and related laws are irregular and often manifest in actors' misunderstanding and misapplication of the laws. Misdemeanor judges use a troubling technique called "facing" to assess credibility by forcing a victim and abuser to tell their versions of what happened while confronting each other a few meters apart.<sup>54</sup> One lawyer described how poor bench practices compel them to resort to

requesting recusals of judges; in one case, the judge encouraged the parties to reconcile after the hearing and failed to intervene when the offender began verbally abusing the victim in court.<sup>55</sup> In other cases, judges continue to order child visitation with the father, in spite of risks to the non-violent parent, because “the child has a right to [see] his father.”<sup>56</sup>

**B. The new Criminal Code does not effectively hold offenders accountable for long-term domestic violence and coercive control (psychological) domestic violence, in violation of Article 4 of the Convention.**

19. The former Criminal Code contained a specific provision on domestic violence (Article 215A), which broadly prohibited “violent, abusive or particularly insolent conduct.” Croatia provided data on Article 215A in its 2013 report to the Committee against Torture;<sup>57</sup> however, it did not note that the new Criminal Code no longer contains a specific domestic violence offense. Prosecutors now 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>58</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 control in which offenders use physical violence, intimidation, and isolation.<sup>59</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>60</sup>

**C. The adoption of the new Criminal Code creates a loophole for offenders with pending cases under the former Criminal Code and fails to hold them accountable, in violation of Article 7 of the Convention.**

20. For cases that are pending when a new law enters into effect, Croatia’s legal system is obliged to use the criminal law provision with the lesser punishment.<sup>61</sup> **This created a loophole for cases under Article 215A that were initiated prior to the new Criminal Code and were still ongoing when the new code entered into force. Because there was no corollary domestic violence article in the new Criminal Code, prosecutors reduced or even dropped charges for these domestic violence offenders.** For example, Autonomous Women’s House Zagreb reported how one husband abused his wife for 15 years. He threatened to kill her and committed severe physical violence against her, including slapping, kicking, and suffocating her, slamming her head against the floor, throwing objects (including knives) at her, and holding a knife to her throat. Charges were brought against the husband under Article 215A, but once the new Criminal Code entered into force, the Municipal State Attorney in Zagreb dismissed the charges. There



have been no further actions brought against the offender for his domestic violence.<sup>62</sup> Autonomous Women’s House Zagreb has identified at least 14 other cases where charges were dropped or reduced to lesser charges because of this loophole. The NGO has brought this information to the Ministry of Justice’s attention, but as of the time of this submission, the government has not taken further action to remedy the problem.

**D. Croatian laws and practices deny victims’ rights, in violation of Articles 13 and 14 of the Convention.**

21. **An offender appeal automatically suspends protective measures from becoming effective, leaving the victim unprotected.** Upon the filing of an appeal, the LPDV calls for the immediate suspension of all protective measures, including those important to victim safety, such as restraining orders, evictions, and stalking or harassment measures.<sup>63</sup> As a consequence, the victim is unprotected at one of the most dangerous times for her, *i.e.* after she has chosen to separate from her offender. In its report to the Human Rights Committee, the State Party insists that an appeal does not postpone the enforcement of the decision unless the Misdemeanor Law states otherwise.<sup>64</sup> But Article 191(3) of the Misdemeanor Law states that an appeal submitted within the 8-day deadline by the authorized person “prolongs the execution of the verdict;”<sup>65</sup> in other words, an appeal against LPDV protective measures halts their entry into force. When the perpetrator does appeal against protective measures, those appeals can take up to one month or even far longer—during which time, the victim has no protection against her abuser.<sup>66</sup>
22. Additionally, police do not always have sufficient capacity to appeal on behalf of the victim when her order for protection is denied. Police file for protective measures under the LPDV on behalf of victims in up to 90 percent of applications.<sup>67</sup> However, according to a High Misdemeanor Judge, if these protective measures are not granted, police appeal very few cases on behalf of the victim.<sup>68</sup> The Gender Equality Ombudsperson further explained that police surrendered their right to appeal in 16% of cases and appealed in only 1% of surveyed cases. She stated, “We think [the number of appeals] is a really low level.”<sup>69</sup> Yet, because the police become the official party when they initiate proceedings, victims and their lawyers are often precluded from making the appeals themselves.<sup>70</sup> Indeed, a High Misdemeanor Judge remarked that when the LPDV allows a victim to act as a prosecutor, *i.e.* seek the protective measures herself, that is “when she has the best rights.”<sup>71</sup> 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.<sup>72</sup>
23. The new Criminal Code has created evidentiary burdens by requiring victims to obtain medical evidence for prosecution of injuries.<sup>73</sup> Because domestic violence is prosecuted under injury-based provisions, actors are requiring proof of physical bodily harm. Yet, police—the first responders to the scene—only document injuries that are readily visible

to them.<sup>74</sup> Even when police do document injuries, prosecutors will not accept these injury reports as the basis for prosecution. Prosecutors require a medical certificate that can only be issued by a doctor to pursue criminal charges.<sup>75</sup> Yet, victims may face several barriers to obtaining a medical certificate. While a victim could obtain medical documentation at the scene from the ambulance crew, that setting does not provide the privacy required to perform an examination in detail (to identify injuries beneath clothing) or with specialized diagnostic tools.<sup>76</sup> Ambulance ER personnel do offer further medical treatment, but it is the victim's decision whether she wants to go to the hospital.<sup>77</sup> The perpetrator may prohibit the victim from visiting an emergency room while her injuries are still visible, or she may have young children who cannot be left alone. The perpetrator may also be present during the examination, preventing open communication between the victim and the doctor. One ER physician explained that although she stresses to her patients she will keep their information confidential, women are too frightened to explain the cause of their injuries because their abuser may be waiting in the near vicinity.<sup>78</sup> 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. Unless the victim admits her injuries are from domestic violence, doctors do not opine on the cause of injury but only document what the patient says was the cause.<sup>79</sup> Finally, because many women will endure long-term domestic violence over several years before reporting, most victims will not visit the doctor unless and until their domestic violence injuries are severe.<sup>80</sup>

24. Reluctance to use the new Criminal Code and the medical certificate requirement also results in repeat domestic violence being charged multiple times as misdemeanor offenses, for which the maximum penalty is just 90 days' prison sentence and a fine. For example, a victim in one recent case had seven misdemeanor decisions against her abusive husband; the police continued to charge him under the Misdemeanor Law, despite the history of violence and his threats to kill her and stab her with a needle to infect her.<sup>81</sup> Her lawyer expected the seventh ruling to result in a prison sentence but it instead was merely a fine.<sup>82</sup>
25. 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>83</sup> and evictions<sup>84</sup> - are important measures to protect victims after a criminal trial. 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; 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>85</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>86</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.

26. The Criminal Procedure Code currently provides for precautionary measures that the court may order before and during criminal proceedings, including prohibition from approaching certain persons and from establishing or maintaining contacts with particular persons.<sup>87</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.** The use of precautionary measures before and during criminal trials is especially important now, in light of the *Maresti v. Croatia* decision from the European Court of Human Rights that precludes a victim from obtaining misdemeanor LPDV protective measures after a criminal conviction.<sup>88</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.
27. Under the Croatian Free Legal Aid Act, victims have the right to legal representation, yet free legal services are difficult to obtain.<sup>89</sup> Despite the improvements Croatia recently made to the Free Legal Aid Act, the process to request free legal assistance is complicated.<sup>90</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>91</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 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>92</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>93</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>94</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.
28. **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>95</sup> Croatian shelters provide 267 spaces<sup>96</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>97</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>98</sup>

#### **IV. Recommendations**

30. 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 include a specific provision on domestic violence that incorporates coercive control<sup>99</sup> so that domestic violence offenses do not have to be prosecuted as bodily injuries;
  - Amend the Criminal Code to include safety measures against harassment and stalking;
  - 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;

- 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;
- 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;
- 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, 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; 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.

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<sup>1</sup> Women Against Violence Europe (WAVE) 2012 Report, at 66.

<sup>2</sup> Croatian Ministry of Interior, *Survey of Basic Safety Indicators in 2013 the Republic of Croatia, 2013*. Public Order. Offences Under. 14.

<sup>3</sup> Croatia’s legislation allows the government to respond to domestic violence through either the misdemeanor system (where the domestic violence law is housed) or the criminal system.

<sup>4</sup> Country Reports on Human Rights Practices: Croatia, U.S. Dep’t of State (2013).

<sup>5</sup> Personal Communication from Valentina Andrasek to Theresa Dykoschak, via email, Sept. 12, 2014 (on file with authors).

<sup>6</sup> General Comment No. 2, para. 22.

<sup>7</sup> General Comment No. 3, paras. 21 and 33.

<sup>8</sup> General Comment No. 3, para. 30.

<sup>9</sup> General Comment No. 3, para. 31.

<sup>10</sup> General Comment No. 3, para. 38.

<sup>11</sup> LPDV, Art. 4.

<sup>12</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.

<sup>13</sup> LPDV, Art. 11(2).

<sup>14</sup> LPDV, Art. 20.

<sup>15</sup> LPDV, Art. 22(2).

<sup>16</sup> Criminal Code, Article 215A.

<sup>17</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>18</sup> Criminal Code, Art. 139.

<sup>19</sup> Criminal Code, Art. 154; interview with prosecutor, June 10, 2014.

<sup>20</sup> Family Law, Art. 1.

<sup>21</sup> Free Legal Aid Act, Art. 5.

<sup>22</sup> Interview with Police, June 3, 2014.

<sup>23</sup> The Advocates for Human Rights, et al., *Implementation of Croatia’s Domestic Violence Legislation* (2012).

<sup>24</sup> Interview with Police, June 3, 2014.

<sup>25</sup> Interview with Police, June 3, 2014.

<sup>26</sup> Interview with ER Doctor, June 4, 2014.

<sup>27</sup> Interview with ER Surgeon, June 4, 2014.

<sup>28</sup> Interview with Misdemeanor Judge, June 4, 2014. The judge further clarified that such a perpetrator would include someone who committed domestic violence one or two times; she explained, “In every marriage, we have fights or quarrels, and these can then turn to domestic violence, and these are the ones that are not hard core [for purposes of eviction or restraining orders].” *Id.*

<sup>29</sup> Interview with Police, June 3, 2014.

<sup>30</sup> The Advocates for Human Rights, et al., *Implementation of Croatia’s Domestic Violence Legislation* (2012), at 54-57.

<sup>31</sup> Interview with NGO, June 2, 2014.

<sup>32</sup> The Advocates for Human Rights, et al., *Implementation of Croatia’s Domestic Violence Legislation* (2012), at 54-57.

<sup>33</sup> Interview with Misdemeanor Judges, June 4, 2014; Interview with NGO, June 2, 2014.

<sup>34</sup> Interview with Misdemeanor Judges, June 4, 2014.

<sup>35</sup> The Advocates for Human Rights, et al., *Implementation of Croatia’s Domestic Violence Legislation* (2012), at 4.

<sup>36</sup> *Ibid.*, 35.

<sup>37</sup> *Ibid.*, 35.

<sup>38</sup> See The Advocates for Human Rights, et al., *Implementation of Croatia’s Domestic Violence Legislation* (2012).

<sup>39</sup> LPDV, Article 8.

<sup>40</sup> LDPV, Article 21.

<sup>41</sup> See The Advocates for Human Rights, et al., *Implementation of Croatia’s Domestic Violence Legislation* (2012).

<sup>42</sup> Interview with General Practitioner Doctor, June 10, 2014.

<sup>43</sup> Interview with General Practitioner Doctor, June 10, 2014.

<sup>44</sup> Family Law, Art. 332(1).

- <sup>45</sup> *Implementation of Croatia's Domestic Violence Legislation*, The Advocates for Human Rights, et al., 2012, 78.
- <sup>46</sup> Family Law, Art. 143.
- <sup>47</sup> Family Law, Art. 149.
- <sup>48</sup> Family Law, Art. 417(3).
- <sup>49</sup> *Implementation of Croatia's Domestic Violence Legislation*, The Advocates for Human Rights, et al. (2012), at 83.
- <sup>50</sup> Ibid.
- <sup>51</sup> *Implementation of Croatia's Domestic Violence Legislation*, The Advocates for Human Rights, et al. (2012), at 82-83.
- <sup>52</sup> Email from AZKZ to The Advocates, Sept. 21, 2013 (on file with authors).
- <sup>53</sup> The Ombudsperson for Gender Equality expressed concern on the rate of women arrested and charged as violent perpetrators--43.2 percent. Interview with Ombudsperson for Gender Equality, June 3, 2014; Ombudsperson for Gender Equality, "Annual Report 2013," Zagreb, March 2014, at 25. Yet in the majority of cases, men are the perpetrators of violent behavior in the family. Ombudsperson for Gender Equality, "Annual Report 2013," Zagreb, March 2014, at 25.
- <sup>54</sup> Interview with Misdemeanor Judges, June 4, 2014; The Advocates for Human Rights, et al., *Implementation of Croatia's Domestic Violence Legislation* (2012).
- <sup>55</sup> Interview with Lawyer, June 4, 2014.
- <sup>56</sup> Interview with Lawyer, June 4, 2014.
- <sup>57</sup> Replies by the Ministry of Interior of the Republic of Croatia, Compiled and final version of the 4<sup>th</sup> and 5<sup>th</sup> periodic report of the Republic of Croatia before the Committee against Torture according to the new reporting procedure (LOIRP), response to Question 23.
- <sup>58</sup> Interview with Lawyer, June 4, 2014.
- <sup>59</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>60</sup> Interview with Lawyer, June 4, 2014.
- <sup>61</sup> Criminal Code, Art. 3.
- <sup>62</sup> Fifteen Case Profiles, Autonomous Women's House Zagreb (on file with authors) (2014).
- <sup>63</sup> Misdemeanor Law, Articles 191(1), (3).
- <sup>64</sup> Third Periodic Reports of States Parties Due in October 2013: Croatia, Human Rights Committee [Advance Unedited Version], Feb. 25, 2014, U.N. Doc. CCPR/C/HRV/3, para. 117.
- <sup>65</sup> Misdemeanor Law, Art. 191(3).
- <sup>66</sup> Interview with High Misdemeanor Court, June 5, 2014; Personal Communication from Valentina Andrasek to Rosalyn Park, via email, Oct. 2, 2014 (on file with authors). Although a precaution measure under the Misdemeanor Law could be used (Articles 130), they are not typically used to protect victims. The Advocates for Human Rights, et al., *Implementation of Croatia's Domestic Violence Legislation* (2012), at 49. Interview with High Misdemeanor Court, June 5, 2014.
- <sup>67</sup> Interview with Misdemeanor Judges, June 4, 2013 (police are those issuing and filing for the measure in 90% of cases).
- <sup>68</sup> Interview with High Misdemeanor Court, June 5, 2014.
- <sup>69</sup> Interview with Gender Equality Ombudsperson, June 3, 2014.
- <sup>70</sup> See The Advocates for Human Rights, et al., *Implementation of Croatia's Domestic Violence Legislation* (2012), at 33.
- <sup>71</sup> Interview with High Misdemeanor Court, June 5, 2014.
- <sup>72</sup> See The Advocates for Human Rights, et al., *Implementation of Croatia's Domestic Violence Legislation* (2012), at 33.
- <sup>73</sup> Interview with Lawyer, June 4, 2014.
- <sup>74</sup> Interview with Police, June 2, 2014; Interview with ER Doctor, June 4, 2014; Interview with ER Surgeon, June 4, 2014.
- <sup>75</sup> Interview with NGO, June 2, 2014; Interview with Lawyer, June 4, 2014; see also Interview with Prosecutor, June 10, 2014 (stating that without medical papers, the court will encounter challenges in proceeding further).
- <sup>76</sup> Interview with ER Doctor, June 4, 2014.
- <sup>77</sup> Interview with ER Doctor, June 4, 2014.
- <sup>78</sup> Interview with ER Surgeon, June 4, 2014.

<sup>79</sup> Interview with ER Surgeon, June 4, 2014.

<sup>80</sup> Personal Communication from Valentina Andrasek to Rosalyn Park, via email, Oct. 2, 2014.

<sup>81</sup> Interview with Lawyer, June 4, 2014.

<sup>82</sup> Interview with Lawyer, June 4, 2014.

<sup>83</sup> Criminal Code, Art. 73.

<sup>84</sup> Criminal Code, Art. 74.

<sup>85</sup> Interview with Ministry of Interior, June 2, 2014.

<sup>86</sup> Interview with Lawyer, June 4, 2014.

<sup>87</sup> Criminal Procedure Code, Art. 98(2)(1 – 8).

<sup>88</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>89</sup> The Ministry of Justice and county governments administer this legal representation. The Croatian Bar Association also provides pro bono lawyers to those in need. Interview with CSW, June 6, 2014.

<sup>90</sup> Interview with NGO, June 2, 2014.

<sup>91</sup> Ibid.

<sup>92</sup> Interview with Lawyer, June 4, 2014.

<sup>93</sup> Interview with Gender Equality Ombudswoman, June 3, 2014.

<sup>94</sup> Interview with Gender Equality Ombudswoman, June 3, 2014.

<sup>95</sup> "Country Report: Croatia," *Women Against Violence Europe*, 2014, at 65.

<sup>96</sup> Ibid.

<sup>97</sup> AZKZ, *Securing the Shelters: Activities Update*, September 28, 2011 (summary, on file with The Advocates)

<sup>98</sup> Email from AZKZ to The Advocates, Feb. 13, 2013 (on file with authors).

<sup>99</sup> Coercive control should be defined as "*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 victim. This control includes a range of acts designed to make victims 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 behavior.*"