



CROATIA:
**Submission to the Human Rights Committee's Country Report Task Force on
Croatia for the Adoption of List of Issues
for the 105th Session: 9 – 27 July 2012**

by
**The Advocates for Human Rights, a non-governmental organization in special
consultative status pursuant to HRC resolution 5/1 of 18 June 2007
and
Autonomous Women's House Zagreb, a non-governmental organization**

Statement of Interest

1. Founded in 1983, The Advocates for Human Rights (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. 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. Founded in 1990, Autonomous Women's House Zagreb 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—psychical, 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.
2. In partnership with the Bulgarian Gender Research Foundation, The Advocates and Autonomous Women's House Zagreb conducted fact-finding in 2010 and 2011 to monitor the implementation of Croatia's domestic violence legislation.
3. The Advocates for Human Rights and Autonomous Women's House Zagreb submit the following suggested issues for adoption by the Country Report Task Force on Croatia of the Human Rights Committee. This submission focuses on the State Party's domestic violence legislation and its implementation of such legislation to protect victim safety and promote offender accountability. This List of Issues submission is based on the forthcoming publication, *Implementation of Croatia's Domestic Violence Legislation*, as authored by the submitting parties.

List of Issues and Suggested Questions

4. Domestic violence is a serious problem in Croatia. Statistics from the Ministry of the Interior showed 15,189 reported domestic violence offenses in 2010.¹ Data on police interventions similarly reflect this prevalence. In 2008, the police received 16,885 requests for intervention in domestic violence cases,² followed by 9,833 requests for protective measures.³ Of particular concern are the high rates of domestic violence homicides; Autonomous Women's House Zagreb reports that 17 of the 25 murders committed in 2010 were among family members.
5. Domestic violence violates a woman's rights to life and security of person (Article 6), freedom from torture and ill-treatment (Article 7), equality before the courts (Article 14), equal protection before the law (Article 26), and protection of the family (Article 23), among others.
6. In 2009, the Human Rights Committee expressed concern over domestic violence and the low conviction rates in Croatia.⁴ It urged the State Party to increase its efforts through the "availability of adequate and sufficient provision of services to victims, including an adequate number of shelters."⁵
7. Croatia has taken steps to combat domestic violence in the direction toward fulfilling its obligations under the ICCPR. Importantly, it passed the misdemeanor Law on Protection against Domestic Violence (LPDV), which provides for six protective measures a victim can seek: 1) psychosocial batterers' treatment⁶; 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.⁷ Three of these measures—the restraining order, the stalking/harassment prohibition, and eviction—can be requested on an *ex parte* "urgent" basis, requiring the misdemeanor court to render a decision

¹ This statistic reflects both criminal and misdemeanor offenses. Government of the Republic of Croatia, *National Policy for Gender Equality 2011-2015*, (Zagreb, 2011), 31.

² Autonomous Women's House Zagreb, "PROTECT Daphne III: Croatia Overview," Presentation, March, 2010. Slide 21.

³ Autonomous Women's House Zagreb, "PROTECT Daphne III: Croatia Overview," Presentation, March, 2010. Slide 23.

⁴ Human Rights Committee Concluding Observations on Croatia, November 2009, para. 8.

⁵ Human Rights Committee Concluding Observations on Croatia, November 2009, para. 8.

⁶ The Croatian perpetrator psychosocial treatment is a counseling program that aims to modify perpetrators' violent behavior by teaching self-control and conflict resolution skills. The treatment is administered through a six-month program consisting of weekly, two-hour group meetings. The treatment also calls for victim involvement, on a voluntary basis, designed to inform the victim about the program, gather background information the perpetrator, and monitor changes in the perpetrator's behavior. Interview with Safehouse, Zagreb, February 11, 2011; Interview with NGO, Rijeka, February 7, 2011; Interview with NGO, Zagreb, February 11, 2011.

⁷ LPDV, Article 11(2).

within 24 hours.⁸ At a hearing, the judge may not only grant long-term protective measures but also impose a sentence or fine on the offender. Implementation of the LPDV, however, shows that there are several areas where the Croatian government is not in compliance with its obligations under the ICCPR.

8. **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. These arrests and charges are the result of several factors: 1) police do not conduct a predominant aggressor assessment to identify the physically violent party and instead defer that evaluation to judges; 2) police are not trained in identifying injuries inflicted out of self-defense and instead defer that evaluation to doctors; and 3) 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 equally culpable as a physical abuser. The misdemeanor judges to whom these charges are referred are poorly equipped to identify the predominant aggressor and have found victims guilty under the LPDV. 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.

Suggested Questions:

- What steps is the State Party taking to ensure that victims are not arrested, charged, and convicted when they seek protection from physical domestic violence?
- Will the State Party amend the LPDV to redefine psychological and economic violence to ensure that this includes only those acts that threaten the victim with physical harm or cause fear of such harm? What steps will the State Party take to ensure that definitions of psychological and economic violence are enforced in a manner that takes into account the context, severity, the use of power and control, repetition, and harassment in each case?
- To avoid the arrest of victims, will the State Party provide accompanying commentary/directive to the LPDV to aid authorities in identifying the predominant aggressor and acts which are performed in self defense?

9. **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

⁸ LPDV, Article 19(1), (3). Within eight days of the decision granting urgent measures, the applicant must file a proposal for a hearing on issuance of long-term protective measures.

injuries. Given the prevalence of dual arrests and the alarming rates of domestic violence murders, 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. For example, 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. Also, the lack of adequate training perpetuates insensitive attitudes; some Center for Social Welfare employees dismiss or trivialize victims' concerns and ultimately place them and their children in greater danger.

Suggested Questions:

- What steps will the State Party take to ensure immediate, gender-sensitive training on dynamics of domestic violence and the LPDV for all police, judges, prosecutors, health care workers, and Centers for Social Welfare employees?
- Will the State Party ensure that such trainings are created in consultation with NGOs that serve domestic violence victims and are grounded in international human rights standards that prioritize victim safety and offender accountability?

10. 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.

Suggestion Question:

- Will the State Party 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 with him?

11. 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 to report acts of domestic violence to the police or State Attorney's office.⁹ Failure to report such acts can result in a fine of 3,000 kunas (approximately 400 Euros).¹⁰ This requirement places NGOs and other responders in the difficult position of choosing between breaching client

⁹ LPDV, Article 8.

¹⁰ LDPV, Article 21.

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.

Suggested Question:

- Will the State Party amend the LPDV to repeal the mandatory reporting requirement, except in cases involving children or other particularly vulnerable victims?

12. An offender appeal automatically suspends protective measures from becoming effective. 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/harassment measures.¹¹ 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.

Suggestion Question:

- Will the State Party amend its legislation to allow protective measures to take immediate effect upon the decision of the court of first instance and to keep those measures in place throughout the duration of any appeals process?

13. The state and its statutory scheme hold victims responsible when children witness domestic violence. Currently, Croatia's law and practice hold victims responsible when their children witness domestic violence. If a child "appears as a victim," Article 6(3) of the LPDV requires authorities to immediately inform the social welfare institutions to "take measures in protecting the rights and welfare of the child." The Rules of Procedure in Cases of Family Violence clarify that if a child is a victim, either by being exposed to violence or having witnessed scenes of violence, the Centers for Social Welfare must propose a protective measure to the court and may also enact the measure at the same time.¹² Similarly, the Family Law deems a parent guilty of violating parental responsibility if he or she exerts violence on the child, and that law defines violence to "includ[e] exposing [the child] to violence among the adult members of the family."¹³ This broad definition and focus on children's exposure to violence means that, in effect, the actions of the Centers for Social Welfare and the family court marginalize and sometimes harm adult victims of domestic violence. For example, Centers for

¹¹ Misdemeanor Law, Articles 191(1), (3).

¹² Rules of Procedure, Section 1.B.5.

¹³ Family Law, Article 114.

Social Welfare workers often view such adult victims as responsible when a child witnesses the victim being abused, even though such abuse is not within her control. These misconceptions, mirrored in the statutory scheme, can deter a victim from reporting violence for fear she will be blamed for her children's exposure to it, and she will lose custody of her child.¹⁴ This practice of penalizing the victim for exposing her child to violence also runs counter to research that shows the best way to protect children in domestic violence situations is to protect the victim from her abusive partner.¹⁵

Suggested Questions:

- Will the State Party amend the Rules of Procedure in Cases of Family Violence and the Family Law to repeal provisions that hold victims responsible when children witness domestic violence?
- Will steps will the State Party take to ensure that Centers for Social Welfare workers and Family Court judges do not hold or threaten to hold victims responsible when a child witnesses domestic violence?

14. **The *Maresti v. Croatia* decision from the European Court of Human Rights renders the LDPV and the Criminal Law mutually exclusive, barring optimal remedies.** The Croatian government cannot prosecute an offense under both the misdemeanor and the Criminal Code—it must choose to use one or the other. If a prosecutor chooses to charge an offender under the Criminal Code, the victim is then precluded from obtaining protective remedies under the misdemeanor LPDV law. Conversely, if the victim seeks a protective measure under the LPDV, then the maximum penalty the offender can face for that act of violence is a misdemeanor sentence of 90 days or fine. Thus, victims have faced the difficult conundrum of obtaining protective measures for their own safety at the expense of a heavier prison sentence for their abusers, or losing the option of long-term protective measures should the prosecutor choose to pursue criminal-level sanctions. In addition, *Maresti* has created confusion over charging issues because there is no clear guidance for police, prosecutors, and judges as to what level of domestic violence constitutes a criminal or a misdemeanor charge. Police tend to default to charging under the misdemeanor LPDV system because it offers long-term protective measures and it operates more quickly than the Criminal Code system. When the new Criminal Code, which establishes security measures of restraining orders and evictions, takes effect in 2013, it will offer some long-term protection to a victim whose assault is prosecuted under the criminal system.

¹⁴ The Rules of Procedure grant the CSW authority to remove the child immediately from the mother by oral or written notification. See the Rules of Procedure, Section B.3, B.4, and B.5 for a discussion of the CSW's authority related to the rights and welfare of children in domestic violence cases.

¹⁵ Susan Schechter, "Expanding Solutions for Domestic Violence and Poverty: What Battered Women with Abused Children Need from Their Advocates," *National Resource Center on Domestic Violence*, 2000, <http://www.mincava.umn.edu/documents/expandin/expandin.html#id528962>. See also "Role of Child Protection Services," *The Advocates for Human Rights*, February 9, 2009, http://www.stopvaw.org/Role_of_Child_Protection_Services.html.

Upon conviction, such security measures may include a restraining order (up to five years) and eviction of the offender (up to three years). Corollary measures are needed, however, in the Criminal Procedure Code to provide victims with similar protective measures to protect her during the trial before a judgment of conviction is issued. Current precautionary measures in the Criminal Procedure Code are primarily aimed at securing the perpetrator's presence during the trial, rather than protecting the victim, and lack a stalking measure.

Suggestions Questions:

- What steps will the State Party take to provide clear guidelines to all legal actors on distinguishing between misdemeanor- and criminal-level cases of domestic violence?
- Will and when will the State Party amend the Criminal Procedure Code to provide victims with a stalking/harassment measures to protect them through the duration of the criminal trial? Will the State Party expressly define the purpose of these measures and enforce them in a way that protects the safety of the victim?

15. **Misdemeanor judges often punish offenders who violate protective measures under the LPDV with a fine, not jail.** 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 ten days.¹⁶ Best practices show that the violation of a protection order should be criminalized. Moreover, punishing the offender with a fine may have the unintended result of punishing a victim who shares joint financial resources or is economically dependent on the offender.

Suggested Question:

- What steps will the State Party take to increase the issuances of jail sentences over fines for violations of protective measures?
- Will the State Party explicitly criminalize the violation of a protective measure?

16. **The Precautionary Measures, as provided by the Misdemeanor Law, are rarely and inconsistently used throughout Croatia.** Precautionary Measures are an important means of protecting a domestic violence victim during misdemeanor proceedings, as they can be issued immediately and are effective through the duration of the misdemeanor trial, which can be lengthy. For example, they may prohibit the defendant from approaching a person or going to certain places. In addition, the punishment for the violation of a precautionary measure is weak, and defendants who do violate the measure face only a fine.

Suggested Question:

- What steps will the State Party take to ensure that authorities increase the use of precautionary measures in cases of domestic violence?

¹⁶ LDPV, Article 22.

- Will the State Party provide for the possibility of arrest for the violation of a precautionary measure, including in cases where the perpetrator does not expressly repeat the offense or commit another act of violence during the violation?
- Will the State Party amend the Misdemeanor Law to provide a jail sentence for the violation of a precautionary measure?

17. Croatia’s family and penal legislation forces victims of domestic violence to undergo mediation with their abuser. Spouses going through a divorce are required to undergo mediation with Centers for Social Welfare employees, and mediation is often geared toward reconciliation of the family.¹⁷ Mediation may be appropriate in some divorce proceedings, but when the relationship has a history of domestic violence, mediation is never appropriate because it is counterproductive and even dangerous. Moreover, Centers for Social Welfare employees do not always screen for domestic violence in divorce cases, nor do they offer separate mediation that allow parties to undergo mediation apart from each other on different days. Similarly, in domestic violence cases the State Attorney’s Law allows the prosecutor to bring the parties together to attempt conciliation.¹⁸ One underlying assumption of mediation is that both parties come to the mediation on equal footing. In cases involving domestic violence, however, that assumption is not only inaccurate but also dangerous, because an abuser holds tremendous power over a victim. If there is a long history of domestic violence, the victim is often afraid and reluctant to voice her concerns. The skills of the mediator or even the presence of a victim’s advocate or lawyer cannot remedy this power imbalance.¹⁹

Suggested Question:

- Will the State Party amend its Family Law and State Attorney’s Law to bar mediation in domestic violence cases?

18. Domestic violence shelters face severe funding shortages, resulting in shelter closures and employee furloughs. Croatia has approximately 16 domestic violence shelters, state and church homes, serving a population of 4.5 million. Thus, space for victims and their children is limited, and the importance of keeping these shelters and state homes operational is crucial. The ministries’ funding schemes for these shelters and state homes not only are complicated but also often do not reflect their actual needs. Of utmost concern, however, is that government funding is often delayed—sometimes by months at a time—and often falls short of what was promised. In the first half of 2011, 7 autonomous women’s shelters reached a crisis point, when the Ministry of Family, Intergenerational Solidarity and Veterans’ Affairs deferred automatic renewal of its existing

¹⁷ Family Law, Articles 44-52.

¹⁸ State Attorney’s Law, Article 62.

¹⁹ “Mediation,” The Advocates for Human Rights, February 2008, <http://www.stopvaw.org/Mediation.html>.

contracts with seven autonomous shelters.²⁰ The ministry explained it was waiting for state approval of the budget. This decision had a domino effect, prompting other cities and counties to adopt the same excuse to withhold their payments.²¹ Consequently, several NGOs went months without payment, with one NGO reporting it did not receive its first payment of 2011 until June 2011.²² Since then, at the urging of civil society, the government has created a working group to study the adoption of a finance law for shelters. There is inadequate representation on this working group from NGOs that serve victims of domestic violence, as well as the potential that shelters' autonomy may face compromise under the new bill.

Suggested Questions:

- What steps is the State Party taking to ensure that shelters and associated counseling centers receive funding that is both adequate to meet their needs and timely?
- What steps is the State Party taking to ensure adequate representation from autonomous shelters and NGOs serving domestic violence victims in the working group for the finance bill?
- How will the State Party ensure the autonomy of shelters that do accept government funding currently and under the proposed finance bill? How will the State Party ensure that these shelters can maintain their standards that prioritize victim safety and dignity?
- How will the State Party provide adequate and regular funding to increase the number of available shelters to meet international standards of shelter for every 10,000 members of the population, located in both rural and urban areas, which can accommodate victims and their children?

²⁰ Autonomous Women's House Zagreb, "Securing the Shelters: Activities Update," September 28, 2011 (summary, on file with authors).

²¹ Autonomous Women's House Zagreb, "Securing the Shelters: Activities Update," September 28, 2011 (summary, on file with authors).

²² Autonomous Women's House Zagreb, "Securing the Shelters: Activities Update," September 28, 2011 (summary, on file with authors).