Code of Conduct in Cases of Online Violence against Women

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I – ABOUT THE PROJECT

The code of conduct in the cases of online violence against women was created as part of the project named "SURF and SOUND - Support, Unite, Respond, Fight to Stop Online violence". The holder and implementor of this project is a Croatian non-governmental organization B.a.B.e. (Be active. Be emancipated). The main goal of the project is to suppress internet/online violence against women by means of accumulating legal and IT knowledge as well as by raising awareness about online violence against women, both among the victims themselves and among the relevant members within the system, and also raising awareness among the general public with the special emphasis on social risks and perniciousness of various forms of online violence for individual victims.

In the focus of the project are various forms of online violence against women, and the project activities consist of collecting women’s individual testimonies, providing free legal and psychological counseling services, monitoring, and collecting case law and media reports, and proposing appropriate changes aimed at improving the legal framework. One of the project activities is creating this simple and understandable code of conduct in the case of online violence against women, which aims to ensure effective prosecution of perpetrators as well as to overcome obstacles present while bringing the perpetrators to justice, with an emphasis on a sensitized approach to the victim in all stages of the procedure and in the presence of various authorities.

This code of conduct can be applied to all forms of online violence against women, for example sexual harassment, online stalking, and other forms of intrusive behaviors on the Internet, threats in the online sphere, coercion, or extortion, hate speech, publication of personal data, but also all other forms of online violence that unfortunately change very dynamically, taking on increasingly complex forms. The code of conduct is primarily intended for experts who work with victims of violence, however we believe that it will also be useful to victims of online violence themselves. While creating this code of conduct, we had in mind that women victims of online violence primarily turn to the police, social welfare centers and civil society organizations, which is why we believe it is extremely important to contribute to better understanding of terms and to clarify legal mechanisms available to victims.
ABOUT ONLINE VIOLENCE

Online violence against women is a form of gender-based violence. We call it gender-based because it affects women in a disproportionate way and with more severe consequences than it does to men. Due to omnipresence of Internet, this form of violence affects women today in all parts of the world and in different spheres of life. It is not disputed that victims of online violence can also be men, but they usually experience relatively milder forms of violence on the Internet than women (such as insults and embarrassment)\(^1\).

In numerous international documents dealing with the topic of online violence, one can find different definitions of this type of violence, which is also called Internet, cybernetic, ICT violence (Information and Communication Technology), i.e. violence committed using information and communication technology, however due to the fact that the term "online" is part of the name of this project itself, stated term will also be used in this code of conduct. Generally speaking, there is no unique definition of online violence, just as there are no unique definitions of individual forms of online violence, however, we believe that for the purposes of this code of conduct we can simply define online violence as the use of computer systems and modern communication technology as means of committing violence against women which leads to various forms of non-pecuniary damage due to violation of personality rights (mental health, physical health, personal freedom, honor and reputation, privacy, protection of personal data, family life, sexual freedom) as well as to various forms of pecuniary damage.

Namely, numerous studies have determined the psychological consequences of online violence in victims, such as high levels of anxiety, stress disorders, depression, trauma, panic attacks, loss of self-esteem and a feeling of powerlessness due to the inability to resist abuse. Unfortunately, some victims of violence committed suicide due to their inability to stand up to online abuse\(^2\), therefore online violence can lead to violation of the right to life, but can also cause a state of severe and long-term suffering for the victims. In addition to psychological, victims often suffer physical consequences in the form of health

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\(^{1}\) European Institute for Gender Equality, Violence against women and girls on the Internet

\(^{2}\) Ibid 2
deterioration and economic damage due to loss of employment, inability to find employment or inability to start or continue education, especially in situations where they are exposed to online violence in a business or academic environment or when the perpetrator in his illegal behaviour involved people from the above-mentioned areas.

The concept of online violence is also associated with its different manifestations, for which there are also different terms that most often will not coincide with the names of criminal or misdemeanor offenses in national legislation. Terms such as hacking, impersonation, identity theft (illegal or unauthorized access to computer systems), revenge pornography (threat to publish and/or publish videos of sexually explicit content), blackmail, hate speech (public incitement to violence and hatred) etc. are not terminologically consistent with the terms contained in the Criminal Code, which of course does not mean that the actions described by these terms are not criminal offenses and that as such they are not subject to criminal prosecution.

Croatian legislation currently does not have a definition of online violence against women, nor does it include the concept of gender-based violence, which is why laws should be applied synergistically with the provisions of the Istanbul Convention. Illegal actions on the Internet that can be described as online violence against women are currently criminalized through descriptions of criminal offenses for the so-called “offline” forms of violence. The above however does not represent any obstacle for the online dimension to appear as a subject of procedure through criminal law practice, which is regularly the case, and in such circumstances, it would be incorrect to say that the legal framework for criminal acts of online violence does not exist. It is generally known that criminal acts that were usually committed offline and which are defined as such in national legislation, in recent years have a particularly emphasized online presence, such as for example sexual harassment, threats or stalking via the Internet.

What must certainly be the guiding idea when considering the intervention of the legislator, the conduct of proceedings, but also the punishment of perpetrators is the often repeated phrase in public discourse that what is illegal offline should also be illegal online. Namely, although by its nature virtual, the Internet is a space where the same standards of protection of fundamental human rights should exist and where something that is illegal in the real world should not be allowed. The fact that certain forms of violence are more difficult to recognize or are less visible due to the fact that the online element of the crime is not explicitly described in the law, should not be an obstacle for undertaking criminal prosecution and activating the appropriate mechanisms for protecting victims and punishing perpetrators.
ABOUT THE CODE OF CONDUCT

The purpose of this code of conduct is to contribute to ensuring the necessary conditions for effective and comprehensive work of competent authorities involved in detecting acts of online violence, misdemeanor or criminal prosecution, in conducting judicial and administrative proceedings, providing support to victims, monitoring the outcome of proceedings, as well as in monitoring statistical data related to occurrence of online violence against women in order to improve preventive activities as well as criminal and misdemeanor prosecution of perpetrators of online violence against women. With this code of conduct we want to convey concrete, vital and effective advices to experts who are usually the victims' primary contact with the system, so that they can respond to the needs of victims in a timely and appropriate manner within the framework of existing legislation, provide them with useful, practical and complete information in life crisis situations and to facilitate and simplify the legal path of protection.

This code of conduct also draws attention to the needs of victims which we have recognized based on practical experience through providing legal and psychological support and through direct work with victims, and in that way it also “maps” the system by indicating different ways of achieving legal protection.

The focus of this code of conduct is to point out the necessity of fulfilling positive obligations that are expected from member states and their competent authorities in accordance with The Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention) and The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention). In this regard, it is emphasized that positive obligations in cases of online violence do not differ from positive obligations for other forms of violence, and they primarily relate to the establishment of an adequate legal framework and the implementation of an effective investigation, and a quick and effective court procedure, as well as adequate punishment of the perpetrator if it is established that a criminal offense has been committed.

The goals to be achieved are to encourage the adoption of official and binding Protocol on handling cases of online violence against women by the Government of the Republic of Croatia, to contribute to creating good practice by competent authorities, to encourage the collection of statistical data on online violence, and to contribute to the goal that all competent authorities acting in cases of online violence against women act with a high level of professionalism and without stigmatization and prejudice towards the victims of this form of violence.
III – LEGAL FRAMEWORK

CONSTITUTION AND INTERNATIONAL DOCUMENTS

The fundamental legal framework related to the protection of victims of violence will be presented hierarchically, according to the binding force that certain documents have in the Republic of Croatia.

The Constitution of the Republic of Croatia, the hierarchically highest legal act in the Republic of Croatia, prescribes gender equality and respect for human rights as some of the highest values. In the catalog of human rights and fundamental freedoms, the Constitution prescribes that human freedom and personality are inviolable, that no person may be subjected to any form of abuse, that every person is guaranteed respect and legal protection of his/her personal and family life, dignity, reputation and honor, that the freedom and secrecy of correspondence and all other forms of communication is guaranteed and inviolable, and that any encouragement or incitement to the use of violence or any form of intolerance is prohibited and punishable. The importance of the Constitution lies, among other things, in the fact that its provisions serve as the foundation for operation of the Constitutional Court of the Republic of Croatia, which has been increasingly important in protecting the rights of victims in individual cases in recent years, especially in situations where the competent authorities have not conducted an effective investigation and thereby have not protected the rights of victims of criminal acts.

The most important and most frequently applied international document is The Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention) with Protocols to the Convention. The importance of the Convention lies, among other things, in the fact that by its provisions the European Court of Human Rights in Strasbourg has been established, which is competent to make decisions in cases of violations of rights in respect of citizens of Republic of Croatia. One of the competences of European Court of Human Rights is to make decisions regarding violation of the right to an effective investigation, and its competence will exist, among others, in cases where the victims of violence did not receive adequate protection, whether due to slowness, non-transparency or lack of independence of the investigation, or the inadequate punishment of the perpetrators of the crime. The provisions of the Convention represent an integral part of the legal order of Republic of Croatia.
Some of the cases of the European Court of Human Rights that are related to the issue of online violence are contained in the judgments of Volodina v. Russia (no. 2), September 2021, Buturugă v. Romania, February 2020 and Khadija Ismayilova v. Azerbaijan, January 2019. In this regard, it is important to point out that the European Convention is not the only source of law that is applied in the Republic of Croatia, but also the judgments of the European Court and that the determinations presented in these cases are binding for the actions of domestic authorities.

In Buturuga v. Romania, the European Court considered online violence in the context of domestic violence and found that actions such as unauthorized monitoring, access and storage of correspondence of a spouse or partner should be taken into account by domestic authorities when investigating cases of domestic violence. Volodina case number 2 refers to the failure of domestic authorities to protect victims of domestic violence from repeated acts of online violence and also failure to sanction the perpetrator.

Failure of domestic authorities to comply with the standards set forth in the judgments of the European Court can lead to violations of the Convention and consequently to the responsibility of the Republic of Croatia for the damage caused to the victims of violations, and finally to the responsibility of individual officials who acted in specific cases. Common to all cases of the European Court of Human Rights with an online dimension is that so far all forms of online violence against women have been considered from the aspect of Article 8 of the Convention, which guarantees the protection of the private life of an individual. The fulfillment of positive obligations that are expected from member states in cases of online violence in accordance with Article 8 of the Convention, do not differ from positive obligations for other forms of violence and they primarily relate to the establishment of an adequate legal framework and the implementation of effective investigation and court proceedings, as well as appropriate punishment of a criminal act if it occurs.

The Council of Europe’s Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) is a more recent document of the Council of Europe and is a kind of extension of the Convention for the Protection of Human Rights and Fundamental Freedoms. The Convention is in force in the Republic of Croatia since October 1, 2018. The provisions of the Convention stem from the fact that women are exposed to a greater risk of gender-based violence, and its basic purpose is to protect women from all forms of violence as well as to prevent, prosecute and eliminate violence against women. The goal of the Istanbul Convention is to combat all forms of violence and discrimination, promote full equality between women and men, develop comprehensive frameworks, policies and measures for the protection and assistance of victims of all forms of violence, and provide support and assistance to organizations and institutions in establishing efficient cooperation and adopting a comprehensive approach in combating violence against women and domestic violence. The provisions of the
Istanbul Convention also represent an integral part of the legal order of the Republic of Croatia.

It is important to emphasize that in accordance with the Istanbul Convention, “violence against women” is considered a violation of human rights and a form of discrimination against women and signifies all acts of gender-based violence that result or are likely to result in physical, sexual, psychological, or economic harm or suffering of women, including threats of such acts, coercion, or intentional deprivation of liberty, whether occurring in public or private life. The Convention requires the active involvement of state authorities in combating violence against women, and in order to comply with the positive obligations assumed by the Convention, it prescribes that the signatory states should take the necessary legislative and other measures to prevent, investigate, punish and provide compensation for violent acts covered by the scope of the Convention that are committed by private persons. Although “online violence” against women is not specifically mentioned under this name in the Convention, it is undeniably one of the forms of violence to which the Convention refers. The international instrument of protection in case of violations of the Istanbul Convention is the European Court of Human Rights in Strasbourg.

An important document in the context of protecting women from violence is also the UN Convention on the Elimination of All Forms of Discrimination against Women - CEDAW, which the Republic of Croatia ratified on September 9, 1992, while the Optional Protocol to the Convention was ratified on March 7, 2001. The Convention is a legal instrument that has established an international monitoring mechanism. Namely, the Committee for the Elimination of Discrimination against Women supervises how the Convention is applied in individual member states by considering periodic reports, but it is also authorized to consider individual complaints submitted by individuals to the Committee.

Utterly important source of law in the context of protecting the rights of victims is the Directive 2012/29/EU of the European Parliament and the Council from October 29, 2012, about the establishing minimum standards on the rights, support, and protection of victims of crime, which is in force since November 15, 2012. The Directive stipulates that victims of criminal acts should be recognized and treated with respect, in a sensitive and professional manner without discrimination of any kind. It also states that in all contacts with the competent authorities acting within the framework of criminal proceedings and all services that contact with victims, such as victim support services or damage repair services, should consider the personal situation, and immediate needs of victims of criminal offenses while fully respecting their physical, mental, and moral integrity. The Directive stipulates that it is necessary to protect the victims of criminal acts from secondary and repeated victimization, from intimidation and retaliation and provide them with adequate support to facilitate recovery and provide them with sufficient access to justice.
It should be emphasized that all services within the system that come into contact with victims of online violence are obliged to protect women's rights in accordance with the fundamental principles, purpose, goals and provisions of the aforementioned documents, even in the case when a specific legal provision has not been implemented in domestic legislation.

**DOMESTIC LAW**

The relevant domestic legal framework for protection against online violence against women is found in the area of criminal, misdemeanor, anti-discrimination and civil legislation, as well as in the area of the right to the protection of personal data and fundamental human rights and freedoms. We can still say that the legal framework of criminal law and misdemeanor law are the two basic pillars of victim protection. Civil law has limited victim protection mechanisms, however, victims of criminal acts in civil proceedings can achieve the right to compensation for damages. Case law related to online violence against women in the Croatian legal system is quite scarce at the moment, and elements of online forms of violence in the available sources are most often found by prosecution of criminal offenses committed against children, as well as in factual descriptions of other more serious criminal offences, especially criminal offenses against sexual freedom. However, despite the lack of publicly published case law, there is no doubt that the conditions for its development in this area have been fully met.

What certainly distinguishes cases of online violence from cases of offline violence is that in certain cases there are fewer opportunities to find the perpetrator, as well as investigation that may be associated with specific difficulties. The European Court of Human Rights states in one of its decisions that both the investigation and the prosecution of online violence is faced with many challenges, because it can involve methods that are particularly difficult for police authorities to investigate, and victims can be told - sometimes correctly, sometimes incorrectly - that nothing can be done\(^3\). Bearing in mind the above and the legal framework presented in the rest of this code of conduct, its effectiveness should always be viewed through the prism of availability of the perpetrator and knowledge of his identity, which unfortunately can remain unknown in many cases.

**CRIMINAL LAW FRAMEWORK**

\(^3\) European Court of Human Rights, Volodin judgment no. 2, section 24
The criminal law framework for the prosecution of online forms of criminal offenses is established through the existing descriptions of criminal offences, and criminal offenses with an online dimension are for the time being subsumed under the “offline” forms of criminal offences.

Before analyzing individual criminal offenses related to the online sphere, it is useful to point out that most of the relevant criminal offenses are found in the sections of the Criminal Code that refer to the protection of privacy, the protection of personal freedom, the protection of sexual freedom and the protection of honor and reputation.

Furthermore, it should be said that the amendments to the Criminal Code that were adopted on July 31, 2021, expanded the circle of close persons in such a way that the term “close persons” also includes a current or former partner in an intimate relationship. The purpose of the aforementioned changes was to introduce into law the provisions that will provide stronger criminal protection of intimate partners by punishing the perpetrators of certain criminal offenses (e.g. the criminal offense of threat, coercion, domestic violence) in situations when the offense committed to the detriment of a close person is foreseen as a more serious form of criminal offense and in those cases where for the commission of an offense against a close person is stipulated that criminal prosecution will be undertaken ex officio (e.g. in the case of the criminal offense of coercion).

Close persons are family members, former spouse or extramarital partner, former life partner or informal life partner, current or former partner in an intimate relationship, persons who have a child together and persons living in a joint household.

In relation to the issue of online violence, in practice the question could be raised as to whether, with these changes, a close person and a partner with whom a person was in an online relationship enters the category, especially bearing in mind that there are even long-term relationships that imply an exchange of intimacy, but exclusively in the online sphere. Whether or not victims of criminal acts and misdemeanours committed by partners in an online relationship can be classified under the definition of a close person is likely to be determined by judicial practice. It should be noted that the extended definition of a close person has also been included in the Protection against Domestic Violence Act, and in practice there will probably be forms of misdemeanours where the same question will be raised.

The most common form of criminal offense with an online dimension is the abuse of a sexually explicit footage. It is a criminal act that is relatively new in our legal system, and its description is contained in Article 144a of the Criminal Code. For a better understanding of the terminology related to this offense, it should be noted that the actions that make up the content of this criminal offense in practice and professional
literature are very often called revenge porn or pornography without consent. Under this description in practice we most often come across actions or situations that arise after breaking emotional relationships. Namely, the abuse of a sexually explicit footage is most often preceded by the voluntary sharing of intimate photos between partners for the duration of an emotional relationship in such a way that either one of the partners or partners mutually send or make photos and videos of intimate content available to each other, or they are filmed in sexually explicit situations by mutual consent, but solely with the intention that the said contents will be then and forever intended only for personal use and with the trust that the partner will never misuse such contents in the future. Revenge pornography typically occurs in situations where a relationship has ended and when the ex-partner wants to take revenge, most often because of the breakup and then resorts to publishing private photos or videos, which will usually cause the victim to feel fear, shame, anxiety and other negative emotions.

Regarding this criminal act it should be additionally emphasized that the criminal prosecution is also foreseen for the publication of recordings created using artificial intelligence, i.e. without the consent and without any previous action by the victim in reality, by creating virtual explicit images or recordings with the help of software (photoshop, deepfake) or by altering the real recordings, in such a way as to show sexually explicit content that violates the privacy of the victim. In such a case we are talking about the publication of virtual pornography without consent, which has the same devastating effects as the publication of recordings that were created in reality. The criminality of such behaviour is provided for in Article 144.a. paragraph 2 of the Criminal Code.

Inquiries from victims most often relate to the criminal offense regarding the abuse of a sexually explicit footage. Bearing in mind that the description of this criminal offense was introduced into the catalog of criminal offenses only in August 2021, the temporal effect of the same should certainly be kept in mind. Namely, with the introduction of this form of criminal offense into the criminal legislation, hope arose among numerous victims who experienced this type of treatment before the entry into force of the legal provision, that they will be able to report the perpetrators for actions that took place before August 2021. However, due to the application of the principle of legality which guarantees the application of the law for the future and that no one can be punished for an act that was not established by law as a criminal offense before it was committed, it should be clarified that the criminal legal effects of this criminal offense refer only to those actions that were committed after the entry into force of the legal provision.

For this criminal offense, the legislator has prescribed for the time being the initiation of criminal prosecution at the motion of the victim, which implies a very short three-month deadline for initiating criminal prosecution, and whether this provision will be changed is going to be observed by the life dynamics and effectiveness of prosecution for these criminal offenses in the future period, especially having in mind that a large number of
victims reluctantly decide to initiate criminal prosecution within the three-month period stipulated by law. What should definitely be kept in mind is that victims should be encouraged to report a criminal offense because once the deadline is missed, victims are left with less effective protection mechanisms, such as protection through civil proceedings.

In the case where the element of “consent” and “relationship of trust” is absent, i.e. when the recording of explicit content was made without the knowledge and consent of the victim, the criminal offense of unauthorized video recording from Article 144 of the Criminal Code will be applicable. It follows from the description of this criminal offense that it will be applicable in situations where someone takes an unauthorized picture of another person who is in an apartment or in an area specially protected from view, or uses such a picture or makes it available to a third person and thus violates the privacy of the person in the picture. It is also specific to this criminal offense that it is prosecuted by the motion of the victim, so the prosecution is left at the victim's disposal for a limited time period of three months, which is why it is extremely important in these types of criminal offenses to encourage the victim to report the criminal offence immediately after learning about the crime and the perpetrator, in which the greatest influence is exerted by professional persons, such as police officers to whom victims usually turn for help and support.

Furthermore, violation of the confidentiality of letters and other shipments (Article 142 of the Criminal Code) is also an offense that can be committed in the online sphere. It is a crime whose description consists in the unauthorized opening or in some other way of breaching the confidentiality of someone else's shipment, including electronic mail or in the unauthorized retention, concealment, destruction or handing over to somebody someone else's closed shipment or letter, telegram, electronic mail, or any other other means of correspondence. The description of this criminal offense can be linked to the earlier presented case of Buturuga v. Bulgaria, in which the European Court of Human Rights stated that actions such as unauthorized monitoring, access and storage of the correspondence of a spouse or partner should be taken into account by domestic authorities when investigating cases of domestic violence. In this regard, it should be said that precisely controlling e-mail and monitoring the communication of a spouse/partner or ex-spouse/partner is a very common complaint made by victims of violence, whereby it should be noted that examples of persecution of such behaviour in practice have so far been very rare. Of course, it should be emphasized that this crime is by no means limited to family members and that the perpetrator or victim can be any person, including close persons, that is, those people who were in an intimate relationship. Regarding the legal description of this criminal act, it should be noted that it is one of the few that explicitly refer to the online modality of commission, since the method of commission foresees the violation of the confidentiality of electronic mail. For this criminal offense as well,
prosecution is undertaken by the motion of the victim, which is why care should be taken to report it within three months.

Unauthorized sound recording and eavesdropping is also one of the acts that could find its place in the online sphere, since it is realistically possible to imagine situations in which someone would make an unauthorized sound recording of another’s privately spoken words or eavesdrop on someone else and use recorded words or make them available to a third party or presented publicly, via the Internet. This criminal offense is described in Article 143 of the Criminal Code and is also prosecuted by the motion of the victim.

Finally, in the context of online violence against women related to the violation of privacy, it is important to mention the criminal offense of unauthorized use of personal data from Article 146 of the Criminal Code, which incriminates actions by which personal data of natural persons are collected, processed or used contrary to the conditions specified by law. The more serious form of this criminal offense is predicted for the export of personal data from the Republic of Croatia for the purpose of further processing, for the publication of said data, or if the data is otherwise made available to other persons or if the collection, processing, or use of personal data brings a substantial financial benefit or causes substantial harm. Collecting, processing or using personal data of natural persons related to their sexual life also presents a more serious form of this criminal offense. Before the criminal offense of the abuse of a sexually explicit footage was introduced into the catalog of criminal offenses, the acts of publishing recordings of sexually explicit content were included precisely under the description of this criminal offense, as evidenced by the case law of judicial authorities.

An example of behaviour that can be brought under this criminal offense is the often mentioned as doxing, which is the act of disclosing information suitable for identifying a person in the online space, such as name and surname, home address, workplace, phone number, financial and other personal information with the purpose of harassing, threatening, or harming the victim. The creation of the so-called creepshots, which mean taking photos of women in public in a discreet way by men or upskirting, which represents the act of taking photos or filming from a position that allows the perpetrator to have a look inside the woman's clothing - skirt or dress, without the victim's permission, are some examples of actions which could be brought under this criminal offense.

All the aforementioned criminal offenses are found in the chapter of the Criminal Code which contains descriptions of criminal offenses that violate the privacy of the victim.

The next category of criminal offenses that we can set in the online context are criminal offenses aimed at endangering the personal freedom of the victim. Criminal acts most often associated with the online context are coercion, threat, and intrusive behavior (stalking).
Regarding the crime of coercion (Article 138 of the Criminal Code), it should be said that it is an act in which the action consists in making another person with force or serious threat to do something, not to do something or to suffer. In practice, it is possible to imagine a situation in which the victim is forced to send a sexually explicit photo or video to the perpetrator or a third person, to upload/post the video to a website, a page containing pornographic content, etc. or to otherwise make it available to the perpetrator. Force in this criminal offense assumes absolute, i.e. physical force, while the threat is a type of psychological coercion that the victim cannot oppose due to fear of some threatening evil.

We often find the use of coercion between ex-partners in which the victim is asked to repeatedly send new sexually explicit videos so that the ex-partner does not publish or send the videos he has from earlier to a third person. The most common fear described by victims in such situations is that the recordings will be shared with family members, employers or a wider circle of people via websites, social networks, etc. For the actions described by this crime in practice is often used the term “blackmail” which used to represent a separate form of criminal offense, however it does not exist under such a name in the Criminal Code today. Prosecution of this criminal offense is undertaken by a private lawsuit, unless the offense was committed out of hatred, against a child, a person with a severe disability, a close person, a lawyer on duty or a responsible person in the performance of public authority. Former and current partners in an intimate relationship are close persons, which means that in the case of committing this form of violence against a current or former partner in an intimate relationship or against a family member, prosecution will be undertaken ex officio. In a significantly disadvantageous position for prosecuting this crime will be the victims who are not in a close relationship with the perpetrator, as prosecution against the perpetrator will have to be undertaken independently, by filing a private lawsuit which is always associated with the risk of failure in court proceedings and incurring costs which should then be compensated to the opposite party.

One of the possible forms of criminal offenses closely related to online violence is beyond any doubt the criminal offense of threat. A threat uttered in the online space is a frequent form of this criminal act. Content-wise, the threat must have a hint for the victim that something bad could happen to them, and that harm must be serious and realistically achievable in concrete circumstances. Bearing in mind the above, in addition to the threat to the life, body, safety of the victim or other goods, which threat can be expressed online, it is also possible to imagine a situation in which a threat to publish sexually explicit content is made. It should be said that the formulation of the criminal offense of threat, whose constitutive element is the threat of some kind of evil, is very general and may leave some room for doubts about the term “evil”. We are of the opinion, however, that the threat of publishing explicit videos may well represent “evil”, objectively suitable to cause a feeling of fear or anxiety in any average person, provided that the threat is serious one.
Therefore, we believe that under the description of the criminal act of threat, that is the threat of "evil", could certainly be included the threat of publishing sexually explicit videos.

Moreover, it is possible to imagine a situation in which the victim would be threatened with the destruction of their social position or material survival, whereby the means of committing the crime would be the publication of sexually explicit videos. It should be emphasized that until now, during the implementation of this project, we have encountered a large number of situations in which the main reason for the victims' addressing our counseling center was precisely the threat of publishing a recording of sexually explicit content and the fear that the perpetrator would carry out such threats.

Regarding the procedural position of the victim, that is the way of undertaking criminal prosecution for the criminal offense of threat, it should be recalled that the criminal offense of threat has a basic and qualified form. In the case of the basic form of the criminal offense (threat of a certain “evil/harm”), prosecution is undertaken based on a private lawsuit, while in the case of a qualified form (e.g. threat of destruction of social position), prosecution is undertaken on the basis of a victim’s motion. In both cases, the deadline for initiating the procedure is three months. However, these deadlines will not apply in the case when the criminal offense was committed against a close person, because then the prosecution is undertaken according to official duty. In the context of the criminal offense of threat for which prosecution is undertaken ex officio, it is important to mention female journalists as frequent victims of online threats, and the importance of protecting this category of women is also evidenced by the previously mentioned case of the European Court of Human Rights, Khadija Ismailova v. Azerbaijan.

Intrusive behaviour (stalking) from Article 140 is one of the criminal offenses that is typical and most often easily connected to the online sphere. It consists in persistent and long-term monitoring or stalking of another person or in an effort to establish unwanted contact with them or in another way intimidate them and thereby cause them anxiety or fear for their safety or the safety of people close to them. This criminal offense is prosecuted by the motion of victim unless it is committed against a child or a close person. For this criminal offense the term harassment is often used because the actions that describe this offense are terminologically marked as harassment or stalking in some legislation. Many victims are not familiar with the term intrusive behavior, since the name of this crime sounds much milder than what its actions actually represent. Examples we encountered in practice are different. Very often they refer to following profiles on social networks and leaving seemingly neutral comments that, despite this, cause fear and anxiety in the victim because they are framed in such a way that it is clear to the victim that they come from the perpetrator, while to any other person who is not familiar with the relationship between the victim and perpetrators, they may appear completely neutral.
Perpetrators in this type of offence very often hide behind fake profiles that they change frequently.

Patterns of behaviour in case of intrusive behaviour are described in great detail by the Istanbul Convention, with the fact that unlike the name “intrusive behaviour” mentioned in the Criminal Code, it uses the term “stalking”. The Convention defines the same as the intentional conduct of repeated threatening behaviour towards another person that causes them to fear for their own safety. Threatening behaviour can consist of repeatedly following another person, engaging in unwanted communication with another person or letting another person know that they are being watched. This includes also tracking the victim in the virtual world (chat, social networks, etc.). Engaging in unsolicited communication includes attempts to make any active contact with the victim through any available means of communication, including modern communication tools and information and communication technology. Furthermore, threatening behaviour can include diverse behaviour such as creating false identities or spreading false information online. This provision refers to a pattern of behaviour that consists of repeated incidents, and its purpose is to determine the criminal nature of a behavioural pattern whose individual elements, if taken separately, do not necessarily represent criminal behaviour.4

As far as criminal offenses against sexual freedom are concerned, the criminal offense of sexual harassment will probably more and more often have the characteristics of an online form of violence in criminal law practice. Bearing in mind that this criminal offense is related to the relationship of subordination and is typically placed in the work sphere, in circumstances where nowadays an increasing number of jobs can be performed online, it is expected that a large number of such criminal offenses will move to the online sphere. The novelty compared to the previous regulation of this criminal offense is the removal of the preclusive three-month deadline for reporting the offense, which turned out to be too short for the victims to decide to report illegal behaviour. A typical way of acting in the online sphere regarding this criminal offense would be sending unwanted photos, comments, etc. via online communication channels. In relation to other criminal acts that protect the sexual freedom of the victim, although the acts of the criminal offence of rape or fornication are usually equated with those that take place offline, in the recent practice of judicial authorities there has even been a case of rape connected to the use of modern information and communication technologies, in which case the perpetrator with a threat forced the victim to perform a sexual act on herself, which according to the Criminal Code is equated with rape.

We also point out the criminal offense of domestic violence stipulated by Article 179a of the Criminal Code, which is described as a serious violation of regulations on protection

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4 Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)
against domestic violence that causes a family member or close person to fear for their safety or the safety of people close to them or leads them to a humiliating position or state of long-term suffering, and with that a more serious crime has not been committed. It is clear that the description of this offense is also applicable in the online sphere, and this is evidenced by the case law of judicial authorities which the publication of sexually explicit videos between family members and close persons before a separate criminal offense was introduced, in certain cases have prosecuted as a criminal offense of domestic violence, of course, only in cases of violence between family members and close persons.

It is also important to mention the criminal offense from the chapter of the Criminal Code that refers to the protection of property. It is a criminal offense of extortion from Article 243 of the Criminal Code which is committed by a person who, with the aim of obtaining an illegal property benefit for himself or another by force or with serious threat forces another to do something, not do something or suffer to the detriment of his or someone else’s property. The criminal offense of extortion is similar to the criminal offense of coercion, but it differs in that the person subjected to extortion does something to the detriment of their property. We can often hear in the context, either of coercion or extortion, for the term sextortion, which as an action can manifest itself in different forms, and in the online sphere it often consists of the threat of publishing explicit videos, in order to force a person to do something to the detriment of their property.

Unauthorized access to a computer system or any part of it or to computer data is also an act that could be linked to online violence, in some cases as a kind of preparatory action for another criminal offense that can be committed online, although unauthorized access to a computer system or its part or computer data has the character of an independent criminal act.

An important example of a criminal offense with an online element is also public incitement to violence and hatred from Article 325 of the Criminal Code, which is committed by anyone who, through the press, radio, television, computer system or network, at a public meeting or in any other way publicly encourages or makes publicly available leaflets, images or other materials that call for violence or hatred directed towards a group of people or a member of a group because of their racial, religious, national or ethnic affiliation, language, origin, skin color, sex (gender), sexual orientation, gender identity, disability or whatever of other characteristics. As sex (gender) is one of the grounds, the hate speech can be directed to women because of their sex (gender). One example of such behaviour is the so-called flaming, which consists of presenting violent content, marked by explicit language and misogyny. In Croatia in 2021, a new Protocol in the case of hate crime was adopted, in which it was emphasized that hate crimes are monitored with particular attention, given that the commission of such punishable acts endangers human rights and fundamental freedoms guaranteed by the Constitution of the Republic of Croatia and international legal acts.
From the remaining criminal acts whose actions could be carried out in the online sphere, we can also single out abuse at work, and the same applies to actions of insulting, humiliating, abusing, or harassing at work or in connection with work, which caused damage to the victim’s health. Although somewhat similar to the criminal offense of sexual harassment which is most often associated with the workplace, sexual harassment in contrast to bullying at work refers to actions of a sexual nature with the aim or effect of violating the dignity of a person, especially if it creates an intimidating, hostile, degrading, or offensive atmosphere.

After all, the acts that are perhaps the most frequently encountered in everyday life in the online sphere are criminal offenses of insult and defamation. In contrast to an insult, which generally implies uttering offensive words about another person, defamation refers to uttering an untrue statement that may harm the honor or reputation of another person. A qualified form of this criminal offense will exist when the criminal offense is committed through the press, radio, television, computer system or network, at a public meeting or in another way, due to which it has become accessible to a larger number of people. For both criminal offences, prosecution is undertaken by private lawsuit within three months from the date of knowledge of the offense and the perpetrator. Trolling, when manifested as leaving an offensive message on the Internet with the intent to upset, confront, discredit, or silence another person, is an example of an act that could be treated as an insult under our criminal law.

MISDEMEANOR LAW FRAMEWORK

The most widespread and constantly present form of violence against women in Croatia is domestic violence and it also has numerous forms in the online sphere. As already mentioned, in the case of Buturuga v. Romania, the European Court considered online violence in the context of domestic violence and found that actions such as improper monitoring, access and storage of correspondence of a spouse or partner should be taken into account by domestic authorities when investigating cases of domestic violence. The law that will be applied among family members, marital partners, extramarital partners and intimate partners, both current and former, in the sphere of misdemeanors is the Protection against Domestic Violence Act, which foresees various forms of violence, and we are of the opinion that online forms could constitute psychological violence - when it caused a violation of the victim's dignity or distress; sexual harassment and in certain situations even economic violence.
If the features of no criminal offense have been realized, the competent authorities should not miss the opportunity to prosecute at least in the misdemeanor sphere, of course if it is violence between persons to whom the Protection against Domestic Violence Act applies.

In relation to the issue of online violence, in misdemeanor courts’ case law the question could also be raised as to whether the circle of persons who are provided with protection also includes an intimate partner with whom the person was exclusively in an online relationship, bearing in mind that there are even long-term relationships that imply an exchange in intimacy, but exclusively in the online sphere. For now, there are no publicly available decisions of misdemeanor courts that would take a position on the above mentioned and in the future it will be worthwhile to investigate the practice of misdemeanor courts in this regard.

The Antidiscrimination Act and the Gender Equality Act are also applicable to online forms of violence. Both laws prohibit discrimination based on sex and harassment based on sex, and foresee both acts as misdemeanor. Harassment is defined by the Antidiscrimination Act as any unwanted behaviour caused by any of the discriminatory grounds (including gender) that is intended or actually represents a violation of a person’s dignity and that causes fear, hostile, humiliating or offensive environment. The definition contained in the Gender Equality Law is very similar. Sexual harassment is defined by the Antidiscrimination Act as any unwanted verbal, non-verbal or physical behaviour of sexual nature, which is aimed at or represents a violation of a person’s dignity, especially if it creates an intimidating, hostile, humiliating, degrading or offensive environment. The Gender Equality Act contains a similar definition.

Sexual harassment as a misdemeanor is defined in a similar way to sexual harassment as a criminal offense, however in the case of a misdemeanor unlike a criminal offense, the important characteristic of the offense is not a relation of superiority or dependence, so there is no vertical relationship between superiors and subordinates, but anti-discrimination laws are applied when harassment occurs on a horizontal level and as such is subject to misdemeanor punishment. A typical example of such harassment would be online harassment/sexual harassment among work colleagues, however harassment and sexual harassment can also happen in all other areas of life (for example, in the sphere of providing different types of services, education, etc.).

**CIVIL LEGAL FRAMEWORK**

Among the available sources of legal protection, civil law options for the protection of victims should not be left out. According to the Civil Obligations Act (Article 19), every natural person has the right to the protection of his personality rights. Personality rights
are understood as the right to life, physical and mental health, reputation, honor, dignity, name, privacy of personal and family life, freedom, etc. According to the provisions of the Civil Obligations Act, the civil court is always tied by the final sentence of the criminal court regarding to the existence of the criminal act and the responsibility of the perpetrator (Article 12, paragraph 3), which affords the victim with easier possibility of obtaining compensation for damage for the violation of personality rights in connection with criminal act, of course, provided that the criminal court itself has not decided on the property claim. However, a conviction in criminal proceeding is not a necessary precondition for requesting compensation for damage from a civil court for illegal behavior in the online sphere, the only thing being that in that case the victim will have a greater burden of proving the illegal behaviour of the perpetrator. Compensation for damage can also be requested for actions that were committed as misdemeanor. All of the above is possible under the condition that the perpetrator is known to the victim.

In addition to compensation for damage due to the violation of the right to personality, the victim can also claim compensation for property damage that may have occurred to them due to the illegal actions, as well as compensation for possible lost earnings if the consequences of any form of online violence have led to circumstances that prevent the victim from achieving the right to work and earnings. Claims for compensation for damage become time-barred within three years, but when the damage is caused by a criminal act, the claim for compensation for damage becomes time-barred when the time specified for the statute of limitations for criminal prosecution expires.

The Civil Obligations Act also foresees the possibility of filing a lawsuit requesting from the court to order the cessation of the action that violates the right of personality and the removal of the consequences caused by it (Article 1048 of the Civil Obligations Act). It is the competence of the civil court to decide on any type of action in which the plaintiff has a legal interest, including the removal of disputed content from the Internet. Although these types of lawsuits are not particularly common in practice and their effectiveness can be associated with various difficulties, especially if the perpetrator is outside the Republic of Croatia, we believe that they can still find their application in a certain number of cases in the protection of victims of online violence.

Responsibility from the civil legal aspect is not only borne by individuals, but also by owners of various portals who can also be responsible, in relation to the practice of the European Court of Human Rights which has been developing for several years, starting with the case Delfi AS v. Estonia (application number 64569/09), as well as the case law in the area of personal data protection. According to the position taken by the European Court of Human Rights in the mentioned case, when online comments constitute hate speech or incitement to violence, the signatory states of the Convention have the right to determine the responsibility of Internet portals, if they do not remove without delay the obviously illegal comments.
Civil protection institutes are also lawsuits provided for by the Antidiscrimination Act and the Gender Equality Act, which provide that within the same court proceedings victim can ask the determination and prohibition of harassment/sexual harassment or other forms of discrimination as well as compensation of damage.

The Electronic Commerce Act is also in force in the Republic of Croatia. Regarding storage (hosting) this Act stipulates that the service provider (a legal or natural person that provides information society services, for example the owner of a website, portal, social network) is responsible for the content of the stored data if it has or could have had knowledge of illegal activity and if as soon as provider found out or became aware that it was illegal activity or data, he did not remove or disable access to such data.

In addition to the liability provisions from the Directive on Electronic Commerce and the Electronic Commerce Act, self-regulation should not be overlooked as a means of combating illegal content meaning the voluntary cooperation of information society service providers with criminal prosecution authorities. In this regard, it should be noted that on May 2016 the European Commission together with four large IT companies (Facebook, Microsoft, Twitter and YouTube) published the Code of conduct in the case of hate speech on the Internet with the aim of considering and resolving requests for the removal of content in a minimal amount of time.

PROTECTION BY THE PERSONAL DATA PROTECTION AGENCY

The Personal Data Protection Agency as an independent state authority responsible for supervising the implementation of the General Data Protection Regulation also should not be left out of the possible ways of protecting victims. The protection provided by the Agency is generally based on the so-called “right to be forgotten”, i.e. the right to delete personal data and content about the victim, which is achieved by submitting a request to publishers, websites, web portals, social networks, etc. Information on removing content from social networks can be found at the Agency's website, where there are instructions for removing them from social networks and Google, for reporting a fake profile on Facebook and Instagram and submitting a request to remove videos from YouTube.

As a rule, victims should contact internet service providers in person, however they can also contact the Agency, while it should be borne in mind that very often these providers are not based in the Republic of Croatia, so contacting the Agency will be appropriate when the provider is based in the Republic Croatia or one of the member states of the European Union because a cooperation mechanism has been established between the member states and it is possible to send a request for removal or other way of protection to the competent authority of another member state where the service provider is located. In situations
where the service provider is based outside the European Union, the Agency's options are significantly limited.

In addition, in its daily practice the Agency addresses media publishers with requests for the removal of harmful content, for example those relating to victims of criminal acts, i.e. those that may directly or indirectly lead to the identification of the victim and victims may also contact the Agency in such situations.

IV – PROCEDURE OF COMPETENT AUTHORITIES

POLICE OFFICERS

As a rule, the first encounter that victims have with criminal and misdemeanor prosecution authorities is often with representatives of the police, whom victims turn to file a criminal report due to the violence they experienced. During the first contact with the victim, it is necessary to immediately assess whether there is any danger to the victim's life, safety or health and in that case take measures and actions aimed at immediate protection of the victim.

Sometimes it will happen that the victim will come to the police station just to check what would happen in case of submitting a report/motion for prosecution, and especially in situations where the deadline for submitting a report/motion is short, the victim needs to be empowered and encouraged to submit a criminal report as soon as possible.

If a criminal offense is prosecuted ex officio, the consent or proposal of the victim, nor the act of filing a criminal report is not necessary for the police officers in order to take further actions and the police officers should start acting urgently upon learning of the crime committed in accordance with regulations that mandate prosecution, regardless of whether it is a misdemeanor or a criminal offense.

Police officers should restrain from insisting that the victims declare whether they want to file a report and insist on prosecuting the perpetrator and should avoid behaviours and procedures that leave the prosecution of the perpetrator to the victim’s choice. Regarding the observed practice of making notes when the victim approaches the police station,
instead of formally receiving a criminal complaint, it is necessary to explain to the victim what it means to submit a criminal complaint, i.e. a proposal for prosecution.

Bearing in mind the victim's vulnerability and the fact that police officers are often the victim's first point of contact with the system, it is necessary for police officers to act with particular caution when receiving a criminal report. From a police officer's non-verbal behaviour, a victim must not feel condemnation for what happened to them. It should always be remembered that the perpetrator of violence is solely responsible for their violent behaviour.

If possible, the report of violence should be reported to a police officer professionally trained for online violence.

It is necessary for the victim to be able to present information about the committed criminal act or misdemeanor without hindrance and without fear in separate facilities, where their privacy will be completely ensured.

At the first contact, the victim should be referred to civil society organizations that provide psychological support and legal counseling in cases of online violence.

Since reporting online violence often involves viewing intimate videos, whenever possible, it is necessary to ensure that the report is received by a female person.

The police officer should make an individual assessment of the victim’s need for protection. It is necessary to teach the victim and to explain their rights in an understandable way, and to hand over a list of organizations that provide support to victims. The above implies, in addition to the formal obligation to inform the victim about their rights, an effective explanation of the rights that the victim can achieve during police treatment.

Bearing in mind the strong consequences that this form of violence can have on victims, it is necessary to make sure that the victim has fully understood the information about their rights and that they have been referred to a public institution or civil society organization where they can receive appropriate help and support. If necessary, it is recommended that the police officer makes the first contact with the appropriate institution (for example, an institution that provides medical assistance) or an organization.

The victim should be informed in a comprehensible manner that they have the right to participate in misdemeanor or criminal proceedings and that they have the right to hire a representative from the ranks of lawyers for representation in the said proceedings. In addition, they should be informed about the cases when they can achieve their right to free legal aid and how they can do it. The victim should also be provided with information
about the protective measures/precautionary measures that can be imposed on the offender and how they will be implemented.

Regardless of whether the violence is happening at the moment or if the perpetrator has taken illegal actions previously, it is important to react quickly, bearing in mind that in many cases of online violence it is necessary to secure evidence urgently and that any delay in action reduces the possibility of identifying the perpetrator and consequently criminal prosecution. If the victim did not provide the evidence themselves, they need to be helped to do so in the best and fastest possible way without delay.

Attention should be paid to the victim's statement and enough time should be left to take it. It is not advisable to rush the victim when presenting the facts or to comment that certain events are not important, but one should show understanding in order to create a safe environment and establish a relation of trust with the victim.

When submitting a report, one should always support the presence of a person of trust and to instruct the victim that a person of trust can be present during all activities in front of the criminal prosecution authorities. It is necessary to teach the victim that the person of trust should not be the person who will be a witness in the later stages of the procedure.

All the allegations of the victim must be written down in detail and the victim must be given access to the record/note, and the victim must be clearly and comprehensibly informed about their rights and the further course of action must be explained.

It is unacceptable (regardless of the personal assessment of police officers that in a specific case it may not be about a “serious” event), to influence the victim in any way to give up on the report. In this sense, negative behavior patterns of police officers in the form of expressing personal attitudes that contribute to the secondary victimization of the victim should definitely be avoided.

Police officers should take into account all the facts concerning the circumstances of the commission of violence, all the facts pointing to the identity of the perpetrator and the place where they are located. It is also necessary to take into account any possible previous violence and whether the competent authorities have already acted in the case of violence and to what extent.

If the complaint is filed due to any type of abuse of a recording of intimate content, it is important to determine the location where the recording was made, the device with which the photo or video was taken, the time and circumstances of the recording, especially whether the victim was aware that they were being filmed and whether they gave their consent, whether they showed the recording/s to third parties, i.e. whether a third person could get into possession of the recording/s, whether the victim knows to whom the perpetrator made available the recording that was not made public, etc. It is also important to determine through which communication channels the perpetrator and
victim communicated (for example Facebook, Instagram, Whatsapp, Viber), whether there was livestreaming involved, whether the victim and the perpetrator physically met, and to obtain as much information as possible about the perpetrator. It is also important to obtain information about the perpetrator's behaviour before, during and after the creation of certain content, and especially whether actions that represent a threat, coercion, extortion, etc. have been carried out.

If the violence was committed through social networks or other Internet service providers who are willing to cooperate directly with the police, it is necessary to contact them via Police Directorate without delay with a request to reveal the identity of the perpetrator, the place and time of the committing of the criminal offence and other important facts, as well as for securing evidence and removing disputed content from the Internet.

If the perpetrator is outside the territory of the Republic of Croatia and direct contact with the Internet service provider is not possible, it is necessary in accordance with the rules of international police cooperation to contact the competent authorities in the country where the Internet service provider is based, i.e. the authorities of the country where the perpetrator of the criminal offence is located.

If the perpetrator and the victim are close persons (current or former married/extramarital/intimate partners, people who have children together or family members), it is necessary to act in accordance with the Rules of Procedure for Cases of Domestic Violence. If the victim and the perpetrator have children together, it is necessary to take into account the possible exposure and presence of children to violence.

In a case where it is determined that the elements of one of the criminal acts against sexual freedom have been committed, it is necessary to apply the provisions of the Rules of Procedure for Cases of Sexual Violence.

It is necessary for police officers to take into account the broader context of the event during their actions in each individual case and to take into account the possible history of other forms of violence, since online violence is in a large number of cases connected with other, offline forms of violence, which is why it is necessary to give the opportunity to the victim to tell about all forms of violence experienced and to file a report for them, in order to ensure that the perpetrator is responsible for all committed actions.

In cases where victims suffer violence over a longer period, without reporting it, it is necessary to avoid questioning why the victim reported violence only in that moment, i.e. (un)consciously suggesting to them that due to the passage of time the report is not credible, in any case to suggest to the victim that it is their fault that reduces their real chances of success in the procedure, and in that way knowingly or unknowingly dissuade the victim from reporting the violence.
One should definitely try to avoid referring victims to initiate civil proceedings due to a belief that the police is not competent or authorized to act on the report.

It is expedient for the police officers to explain to the victim the further course of the procedure and what the police will do upon receiving the report, i.e. explain that they will initiate misdemeanor proceedings by submitting an indictment proposal to the competent misdemeanor court or that they will forward the report to the competent state attorney's office in order to make a decision on initiating criminal proceeding.

Also, it is expedient to provide the victim, after submitting the report, taking their statement and referring the victim to their rights, with the contact number of a police officer who will be available to the victim for all information related to the further course of the police procedure and for any questions they may have. Even in cases where the victim for any reason refuses to file a report against the perpetrator, one should take into account the obligation to prosecute ex officio and with their behavior encourage the victim to file the report. In situations where the victim nevertheless refuses to file a report and when police officers assess that there are no conditions for ex officio prosecution, the victim should be informed about their rights and let them know that they can report the violence later.

When police officers assess that the deadlines for initiating criminal prosecution have passed due to the onset of preclusive deadline, it is necessary to check whether there is a possibility of filing an indictment with the competent misdemeanor court in accordance with the provisions of the Protection against Domestic Violence Act or in accordance with the provisions of other laws containing misdemeanor provisions.

When police officers estimate that there are no elements for initiating criminal or misdemeanor proceedings, the victim should be carefully informed about it and should be instructed that they can submit an indictment proposal to the misdemeanor court in order to initiate misdemeanor proceedings or file a criminal complaint in person at the premises of the competent state attorney's office.

It is important to point out that some criminal offenses that enter the online sphere will be criminal offenses for which prosecution is undertaken by private lawsuit. In such situations, the victim should be carefully informed that it is not possible to act ex officio and refer the victim to those civil society organizations where they can receive more detailed legal advice and instructions regarding the preparation of this type of lawsuit.

Leaving the case to private prosecution is especially problematic when the victims are not aware of the perpetrator's identity, because private lawsuits cannot be filed against unknown persons. In such situations, it is necessary to apply Article 63 of the Law on Police Duties and Powers, which stipulates that if, when filing a criminal report or conducting an investigation, it is determined that it is a criminal offense that is prosecuted
under a private lawsuit, at the request of a victim as person authorized to file private lawsuits, the police officer is obliged to take actions to identify the likely perpetrator that the victim cannot take alone.

If the case is referred to the state attorney’s office for further processing, police officers are obliged without delay, at the request of the victim, provide them with information about when and in what form the case was referred to the state attorney's office for further processing.

In the case of initiating proceedings before the misdemeanor court, it should be ensured that the role of the police does not end with the formal submission of the indictment, but it is necessary for the police, through an authorized police officer as an authorized prosecutor, to actively participate in the further course of the misdemeanor proceedings by responding to court summons for hearings during the misdemeanor proceeding, propose evidence and sanctions, participate in the questioning of the defendant and possibly other witnesses, and actively and effectively represent the prosecution at the trial and submit legal remedies in the event of an unfavourable outcome of the proceeding.

In the statistical monitoring system, it is necessary to carefully enter information about the reporting of the criminal offense committed by using information and communication technologies, and about the initiation of misdemeanor proceeding for this type of offense.

It is recommended that the instructions contained in this code of conduct, depending on the case, are to be synergistically applied with the Protocol on Procedure in the Case of Domestic Violence, the Protocol on Procedure in the Case of Sexual Violence, and the Protocol on Procedure in the Case of Hate Crimes.

SOCIAL WELFARE CENTERS

It is to be expected that victims of online violence will in certain cases turn to social welfare centers, especially in situations where online violence occurs between close persons (spouses, extramarital partners, intimate partners), and most often in situations where the perpetrator and the victim have children together.

When online violence occurs between close persons, the employees of the centers are obliged to act in full compliance with the obligations stipulated in the Protocol on Procedure in the Case of Domestic Violence. It is the duty of the Center's staff to familiarize the victim with their rights and the powers and actions of the social welfare center for the purpose of protecting the victim, and in case of danger to the victim’s life and safety, the victim must be provided with accommodation in a safe house.
Regardless of the eventual assessment of the center’s staff that in an individual case no violence has occurred, every report must be taken seriously, and it is not advisable to leave it to one’s own judgment whether the allegations of the report are credible or not. In the event of a report of violence, it is by no means sufficient to formally record knowledge of the violence, but it is necessary to inform the police about it without delay or to file a criminal complaint with the state attorney, regardless of whether the aforementioned has already been done by another body or organization. In the case of a different treatment, the employees of the centers bear the risk of possible misdemeanor liability for not reporting violence, as provided for in Article 23 of the Protection against Domestic Violence Act.

Employees of the centers are obliged to inform themselves about online domestic violence and its negative effects on the victims, to recognize it as gender-based violence and as a form of violation of human rights and as a way of discrimination against women. Regarding the above, it is not acceptable to hold joint meetings or counseling treatments in which the victim and the abuser both participate and to refer victims to any form of agreement with the abuser, reconciliation procedures or family/partner therapy. It is necessary to take into account that counseling about working on a partner relationship can only deepen the already unfavourable position of the victim and put them in an additional disadvantageous position in relation to the perpetrator, which can constitute discrimination. On the contrary, employees of social welfare centers should enable the victim to conduct the conversation separately from the perpetrator, to establish a relationship of trust with the victim, provide them with support and create a safe environment in which the victim will be encouraged to report the violence.

While in contact with a victim of violence it is undesirable to question their motives, and it is especially inappropriate to blame the victim for not reporting the violence earlier, to point out that in this way they enabled children to be exposed to violence and therefore to label them as a participant in violence in any way. Instead, it is important that the employees of the centers treat the victim with understanding and respect and let them know that they will be provided with all the help they need as a victim of violence, as well as the necessary support in protecting the interests and well-being of the victim’s underage children.

When providing any of the services in the field of social welfare, it is necessary to refrain from any identification of the responsibility of the victim and the perpetrator and any reduction of the significance of the experienced violence, discouraging or dissuading the victim from reporting the violence.

Since the role of social welfare centers is very important in the civil legal sphere of victim protection in relation to regulating the way parental care is exercised over minors, it is necessary to take into account Article 31 of the Council of Europe’s Convention on preventing and combating violence against women and domestic violence, which
stipulates the obligation to take measures which will ensure that, when determining the
care of children and the right to visit children, occurrences of violence that are covered by
the scope of application of the Convention should be taken into account, as well as the
necessary measures to ensure that the realization of any right to access or care for children
does not endanger the rights and safety of the victim or children.

JUDICIAL BODIES

The conduct of judicial bodies is largely conditioned by the application of various legal
acts that describe in detail the conduct at all stages of the procedure and regulate the rights
of victims, and it is not necessary with this type of document to refer to the certain legal
acts, since it is understood that judicial employees with due care and high professionalism
take care of them in all stages of the procedure. However, with this code of conduct, we
will refer to those ways of acting within which we believe that there is a possibility for more
expedient action.

First, it is pointed to the practice observed in certain number of the cases of online violence
in which urgent action was missed. In this regard, we certainly consider it advisable to
state that the urgency of acting in cases of online violence is one of the conditions for
effective criminal prosecution, since any delay, given the dynamics of online violence, can
lead to difficulty obtaining proof or to the loss of evidence, as was stated by the European
Court of Human Rights in Volodina No. 2 v. Russia.

Also, it is advisable to promptly respond to the victims' inquiries about the actions taken
in connection with the criminal report, in accordance with Article 206a of the Criminal
Procedure Act. It is certainly not advisable to start handling the case only after the victim's
inquiry has been received about what actions have been taken according to the criminal
report since its submission, which has been observed in a certain number of cases.

In the same way, it is necessary to take into account the deadlines for filing an indictment
or making a decision on a criminal complaint in the form of possible dismissal of the same,
since these are matters of crucial importance for the victims, for whom the legal deadlines
for action are already too long according to their understanding, as a result of which they
rely on the fact that at least within the prescribed legal framework they will have concrete
information about the further course of the procedure and exceeding the legal deadlines
creates additional uncertainty for them, prolongs the agony and represents a huge
psychological burden. If there are justified reasons for exceeding the legal deadlines, it is
advisable to inform the victim about this in order to let them know that the case is being
actively worked on and that, in order to fully establish the facts and collect evidence, it is
necessary to carry out actions that require additional time for processing.
It is certainly advisable to interrogate the victim as soon as possible, since it is one of the victims' basic rights, which, in addition to obtaining all relevant information for further processing of the report and obtaining evidence, is also important to do so that the victim can begin the process of their own recovery and elimination of the psychological consequences that they suffered as a victim of a criminal act. Namely, it is not expedient to wait with questioning the victim for a long period of time, since in this way the victim's sense of uncertainty and insecurity is deepened, and by doing so and by putting the victim in a situation where they relive the traumatic event after a long time has passed since its commission, additional victimizes the victim what practice should therefore be avoided.

Before questioning the victim, each authority conducting the questioning is obliged to carry out an individual assessment of the victim in order to determine whether there is a need to apply special measures to protect the victim, what the competent authority should teach the victim about and allow the victim to comment on all the circumstances that may be relevant to the assessment of whether in the specific case it is necessary to apply special measures to protect the victim and in what form and scope. The victim must be informed that the data connected to individual assessment are collected for the purpose of protection of the victim, and the victim has to be informed about the results of the assessment and the special protection measures that can be applied.

When questioning the victim, care must be taken to immediately obtain as complete a statement as possible, taking into account that additional questioning of the victim can be requested and carried out again only in exceptional circumstances and that repeated questioning of the victim in front of different bodies of the criminal procedure is not purposeful and can be considered a form of victimization of the victim.

After being questioned, the victim should be given access to the case file without being told that they can do it only through a proxy, that is, the victim should be made clear that they can access the file personally. Bearing in mind that the victim has the right to participate in the criminal proceedings also as an injured party, the competent authorities should make sure that the victim has understood what the term injured party means in the criminal proceedings and what powers this status gives them during the proceedings itself, that is, what is the difference between participation in the proceedings as a victim and as an injured party.

If during the procedure precautionary measures were imposed on the perpetrator in order to prevent the repetition of the criminal act, that is, to protect the victim, during the reexamination of the measures it is necessary to take care that the voice of the victim is also heard. It is not advisable to make decisions that directly concern the victim and their safety without allowing the victim to make a statement or to participate in the procedure that precedes the making of such decisions, since by omitting the victim from the decision-making process the victim is reduced to the object of criminal proceedings, which should
definitely be avoided since it causes resentment on the part of the victim and encourages them to create an attitude of distrust in the system.

If the victim submits a report to the state attorney's office for an event that constitutes a misdemeanor and not a criminal offense, one should avoid referring the victim to the initiation of misdemeanor proceedings, and keep in mind that there is no obstacle for the state attorney, as one of the authorized prosecutors in accordance with the Misdemeanor Act, to initiate misdemeanor prosecution themselves, that is, submits an indictment for the reported offense to the competent misdemeanor court. This also applies to cases of rejection of a criminal report when the state attorney's office, after examining the criminal report, determines that there are no prerequisites for further criminal prosecution, especially in cases where the rejection of the criminal complaint occurs due to procedural reasons (for example the expiration of the preclusion period for filing the complaint i.e. proposal for prosecution) when the possibility of starting misdemeanor proceedings should definitely be considered if the reported offense can be brought under one of the misdemeanors prescribed by the Protection against Domestic Violence Act or another law that contains misdemeanor provisions, for example the Gender Equality Act and the Antidiscrimination Act.

V – CIVIL SOCIETY ORGANIZATIONS

In addition to previously mentioned stakeholders in the system, a special review deserve civil society organizations, which are often either the victims' first contact with the system, or they come into contact with victims after the violence has been reported. Organizations are providers of psychological and legal support and some of them provide the accompaniment of a person of trust when reporting violence. Some organizations, when conditions exist, also provide social services such as accommodation in safe houses and provide some other types of social services depending on the individual needs of the victim. In addition, victims very often rely on the assistance of organizations for the purpose of communicating with the competent authorities, most often when sending written inquires to the police about how they proceeded after a report for violence has been submitted or when sending inquires to the state attorney about the circumstances of the actions taken after submission criminal charges, etc.
It should be emphasized that civil society organizations have been uncompromisingly working for many years on preventing and suppressing gender-based violence and effective legal prosecution and sanctioning of gender-based violence, identifying problems in legislation and the functioning of the system, in mapping the system and communicating with the media and the general public, which is one of the most important tasks while raising awareness of the problem of violence and its prevention.

In many situations, civil society organizations will be the victim's first contact with the system, and it can be decisive for the victim's further decisions in reporting criminal offenses and misdemeanours. For this reason, the first contact of a representative of a civil society organization with a victim of online violence should be encouraging, the victim should be directed to the relevant institutions to report the violence, and wherever possible, it is preferable for the victim to report the violence accompanied by a representative of the organization as a person of trust.

Namely, the aforementioned practice has proven to be very effective in reporting online forms of violence, especially for the reason that such cases can be complex, different types of violence can overlap and victims need support so that they can present all the important facts as focused as possible, while it makes them feel safe and protected. If the organization is the victim's first point of contact with the system, whenever possible, it is advisable to help the victim secure and select evidence that can help them while reporting violence, and in certain cases provide assistance to the victim in writing a chronological sequence of events for easier guidance of the competent authorities when submitting a report, since the mentioned procedure has proven to be effective in practice when submitting reports for online violence.

In the Republic of Croatia today, there is a wide network of civil society organizations that provide protection and support to victims of violence, and some of them, such as the association B.a.B.e., have profiled themselves in providing legal advice and psychological support specifically in cases of online violence. Regardless of whether a civil society organization has had a situation of assisting in cases of online violence, it is expedient to provide support to the victim in such a situation, and the association's employees are advised that specific information about online violence and assistance to victims can, among other sources be found on the website of the B.a.B.e. organization, at the link: https://babe.hr/neon-savjetovaliste/.
# VI – Overview Table for Some of the Criminal Offenses from the Online Sphere

<table>
<thead>
<tr>
<th>Description of perpetrator’s behaviour</th>
<th>Criminal offense</th>
<th>Protected right</th>
<th>Mode of persecution</th>
<th>Deadline for reporting a criminal offense/initiating criminal proceedings</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Threat with publication of recordings of intimate content</td>
<td>Threat, Article 139 of the Criminal Code</td>
<td>Personal freedom</td>
<td>A private lawsuit is submitted directly to the court, except if the victim is a close person (family member or intimate partner) – persecution is undertaken ex officio</td>
<td>Three months</td>
<td>Imprisonment for up to one year</td>
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<td></td>
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<td></td>
<td>No restrictions</td>
<td>Imprisonment from six months to five years</td>
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<tr>
<td>Publishing a recording of sexually explicit content</td>
<td>Article 144A Criminal Code</td>
<td>Privacy</td>
<td>Submission of a motion for prosecution - to the police or the state attorney's office</td>
<td>Three months</td>
<td>Imprisonment for up to one year/ Imprisonment for up to three years (if the recording has become available to a large number of people).</td>
</tr>
<tr>
<td>Harassment by a superior in the workplace (for example sending sexually explicit messages, photos, videos, jokes, etc., with sexually explicit content, commenting on physical appearance, making sexual allusions, “fixing” dates, calling by inappropriate nicknames, etc.)</td>
<td>Article 156 of the Criminal Code</td>
<td>Sexual freedom</td>
<td>Ex officio - by filing a criminal report with the police or the state attorney's office</td>
<td>No restrictions</td>
<td>Imprisonment for up to two years</td>
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<td>Stalking on the Internet, establishing unwanted contact via the Internet that caused the victim anxiety or fear for their safety</td>
<td>Article 140 of the Criminal Code</td>
<td>Personal freedom</td>
<td>Submitting a motion for prosecution - to the police or the state attorney's office, unless the victim is a close person – in that case, persecution is undertaken ex officio</td>
<td>Three months</td>
<td>Imprisonment for up to one year</td>
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<tr>
<td>Filming without the victim's</td>
<td>Article 144 of the Criminal Code</td>
<td>Privacy</td>
<td>Submission of a motion for</td>
<td>Three months</td>
<td>Imprisonment for up to one year</td>
</tr>
<tr>
<td>Description</td>
<td>Article</td>
<td>Rights and Remedies</td>
<td>Sanctions</td>
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<td>knowledge and consent in an apartment or other area protected from view</td>
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<td>prosecution - to the police or the state attorney's office</td>
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<td>Forcing the victim to send an intimate video</td>
<td>Article 138 of the Criminal Code</td>
<td>Personal freedom</td>
<td>Three months</td>
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<td></td>
<td></td>
<td>unless the victim is a close person – in that case, prosecution is undertaken ex officio</td>
<td>No upper limit</td>
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<td>Insulting or telling untruths about the victim in online space</td>
<td>Article 147 (insult) and 149 (defamation) of the Criminal Code</td>
<td>Honor and reputation</td>
<td>Three months</td>
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<td>Private lawsuit</td>
<td>Money fine</td>
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<td>Extorting material benefit from the victim in “exchange” for not publishing an intimate recording</td>
<td>Article 243 of the Criminal Code</td>
<td>Assets</td>
<td>No restrictions</td>
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<td></td>
<td>Ex officio - by filing a criminal report with the police or the state attorney's office</td>
<td>Prison sentences from six months to eight years</td>
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