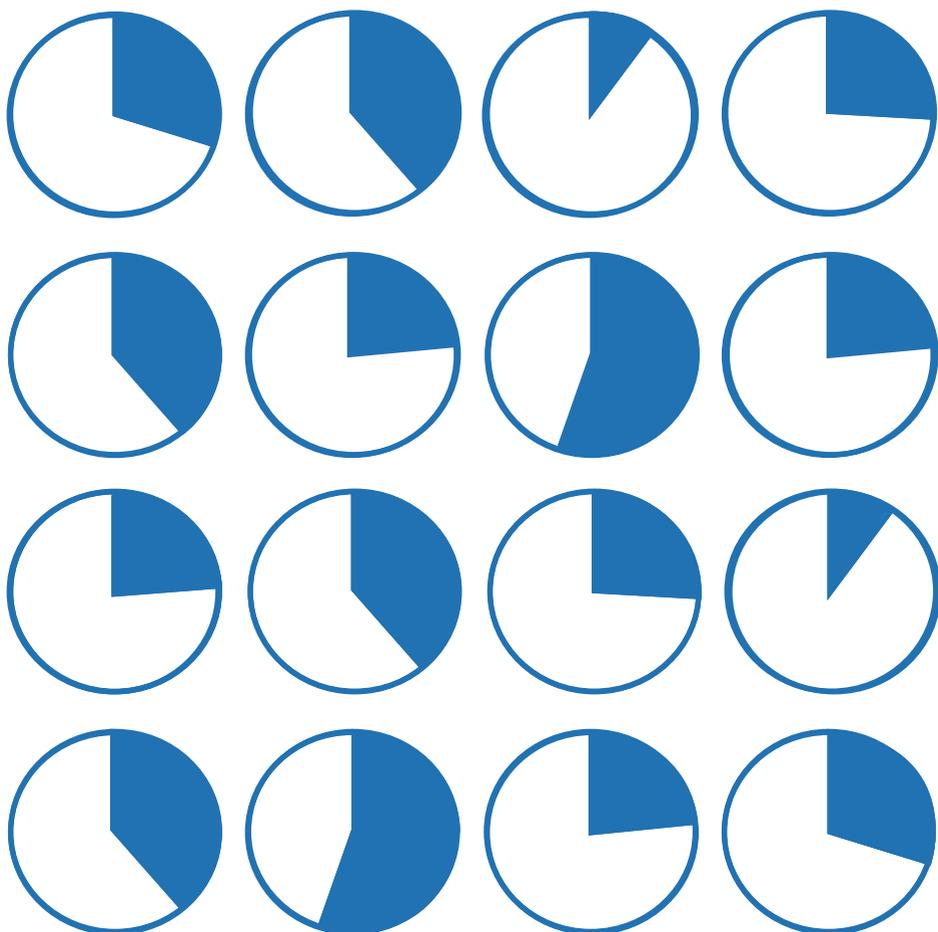


RULES OF PROCEDURE IN CASES OF SEXUAL VIOLENCE



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I. INTRODUCTION

Sexual violence, along with domestic violence, is the dominant form of gender-based violence; this is the type of violence where most perpetrators are men and where most victims are women. Gender-based violence is present in all parts of the world, regardless of the culture or the time period. Victims are exposed to mental, physical, sexual and economic violence, and systematic isolation, which makes them even more vulnerable and exposed to various forms of violence.

Certain forms of violence are recognised and adequately sanctioned, or are presently undergoing a speedy process of having clear procedures for their punishment and prevention established. Other forms of violence are, for many reasons, less recognised or even invisible, clouded by a veil of silence and prejudice, stigmatisation, and the absence of adequate mechanisms for protecting the victim and punishing the perpetrator. Sexual violence is one of such most serious and least reported crimes. It happens more frequently than one would think. Its consequences are more far-reaching than most people, including those who experienced it, are ready to admit; and its price in terms of mental health and its physical impact, as well as the economic one for the person, his/her family, and the wider community and society is immeasurable, leaving no room for tacit tolerance.

Rules of Procedure in Cases of Sexual Violence (hereinafter: Rules of Procedure) are based on legislation and subordinate legislation, and on the content and obligations arising from the *National Policy for Gender Equality for the Period 2011- 2015*, which was adopted by the Croatian Parliament on 15 July 2011, and the *Recommendation Rec(2002)5 of the Council of Europe Committee of Ministers to Member States on the Protection of Women against Violence and the Explanatory Memorandum*.

These Rules of Procedure include:

- a) obligations of the competent authorities and others taking part in the identification and suppression of sexual violence and in the provision of assistance and protection to persons exposed to sexual violence;

- b) the forms, manner and content of co-operation by and between the competent authorities and other stakeholders taking part in the identification and suppression of sexual violence and in the provision of assistance and protection to persons exposed to sexual violence;
- c) final provisions prescribing responses in accordance with the activities set out in these Rules of Procedure.

Definitions of certain forms of sexual violence are included in the *Criminal Code*, the *Gender Equality Act*, the *Employment Act*, the *Act on Protection against Domestic Violence*, and other legislation.

The World Health Organization in its World report on violence and health (2002) defines sexual violence as *any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances directed against a person and a person's sexuality, by any person regardless of their relationship to the victim, in any setting. It is characterised by the use of force, threats or blackmail to undermine the well-being and/or life of the victim, or of persons close to the victim.*" Although the definition itself is not usable for legal purposes, it is one of the most comprehensive definitions that emphasises all basic dimensions of the problem.

In line with Appendix II to the *Recommendation Rec(2002)5 of the Council of Europe Committee of Ministers to Member States on the Protection of Women against Violence*, sexual violence is "*any non-consensual sexual activity including sexual taunts and jokes, staring and leering, unwelcome comments, indecent exposure, offensive phone calls, unwanted sexual propositions, forced viewing of or participation in pornography, unwanted touching, coerced sex, rape, incest, performance of sexual acts which the woman finds painful or humiliating, forced pregnancies, trafficking in women, and their exploitation by the sex industry*".

The *Gender Equality Act* states that gender-based discrimination means "*any gender-based differentiation, exclusion or restriction with the effect or the purpose of which is to jeopardise or frustrate the recognition, enjoyment or exercise of human rights and fundamental freedoms in the political, economic, social, cultural, civil, educational or any other area on the grounds of equality between men and women*". Direct discrimination is "*any treatment where, on the grounds of gender, one*

person is treated or has been treated or might be treated less favourably than another in a comparable situation". Indirect discrimination occurs where "a neutral legal standard, criterion or practice puts persons of one gender in a less favourable position compared to persons of the other gender, unless such standard, criterion or practice is objectively justified by a legitimate aim, and the means of achieving such aim are appropriate and necessary". Harassment is "any unwanted conduct related to the gender of a person that occurs with the purpose or effect of violating the dignity of the person and of creating an unpleasant, hostile, degrading or offensive environment". Sexual harassment is "any form of unwanted verbal, non-verbal or physical conduct of a sexual nature that occurs with the purpose or effect of violating the dignity of a person, in particular when creating an unpleasant, hostile, degrading or offensive environment".

State bodies included in these Rules of Procedure must take measures necessary to ensure the structure, organisation, procurement of equipment, and a sufficient number of experts who deal with the problem of sexual violence in line with the prescribed competences, along with securing financial means from the State Budget of the Republic of Croatia in the line ministries.

The Rules of Procedure have been developed to ensure immediate, empathetic, gender and culturally sensitive comprehensive assistance and support by all competent institutions.

The aims of the Rules of Procedure are the following:

- 1) Introducing a standard procedure for the victims of sexual violence, regardless of their age, the place where violence occurred, their gender, and/or other personal characteristics. The standard procedure sets out the harmonised practice of all competent authorities and institutions in the Republic of Croatia, and the provision of quality and victim-oriented assistance and support;
- 2) Informing everyone in state institutions, authorities and civil society organisations who work on the problem of sexual violence about the possibilities, rights and obligations of each and every one of the stakeholders in the process of notifying and processing violence and of care for the victims of sexual violence;

- 3) Long-term impact on the reduction of sexual violence, with an expected increase in the probability of its reporting and processing, sentencing of the perpetrator, as well as the setting up of systematic and effective mechanisms for providing protection and assistance to the victims;
- 4) Providing for timely and empathetic victim-oriented care that ensures emotional support and reduces the risk of any further traumatic disorders in the victim;
- 5) Providing for standardised and adequate gathering of documents and the deposition of physical evidence by trained experts, leading to a greater probability of identification, processing and sentencing of the perpetrator of sexual violence;
- 6) Providing for quality medical care for the victims of sexual violence, including an examination, treatment and follow-up;
- 7) Enabling the use of an interdisciplinary approach in the provision of assistance to the victim by using the services of institutional and extrainstitutional forms of care for the victims of sexual violence at local level;
- 8) Providing for the confidentiality of data in accordance with the provisions of the *Personal Data Protection Act*, the *Official Statistics Act*, the *Media Act*, codes of ethics of professional entities, and international treaties to which the Republic of Croatia is a party relating to the protection of privacy.

Sexual violence is observable over a wide continuum: from sexual harassment and abuse to rape and trafficking in women for forced prostitution and/or pornography. In addition to the mentioned forms, sexual violence also includes ritual practices/customs, punishment for behaviour that transgresses social norms, rape during armed conflicts, and female genital mutilation.

The most frequent forms of sexual violence are the following:

- a) Sexual harassment and/or bullying are one of the most frequent forms of sexual violence that include unwanted sexual behavior that does not necessarily involve physical contact, by which a person is put into an uncomfortable and humiliating position, and causes a feeling of shame. In most cases, such behaviour is repetitive, taking place over a longer period of time, and the victim cannot find a way

out of the situation. The most frequent forms would be unwelcome sexual comments and advances, inappropriate attention, touching someone inappropriately, sexist, insulting and discriminating comments and jokes, spreading rumors about a person.

- b) Sexual abuse (assault) and/or forced sexual conduct include many forms of sexual violence that are more serious than sexual harassment, but are still not in the category of rape under the existing legislation. They include unwanted sexual conduct elicited by the use of force and/or threats involving physical contact with the offender—unwanted and forced touching of an intimate part of the body, sexual activities manipulated through lies, threats, pressure, and forced masturbation.
- c) Rape is the most serious form of sexual violence involving coerced penetration of the vulva, anus and/or the mouth using a penis and/or objects. It is regarded as a profoundly difficult and traumatic experience with serious consequences. In terms of the perpetrator, we can differentiate between rape as part of domestic violence (rape within marriage), rape in relationships/dating relationships, rape by strangers, gang rape, rape during armed conflicts and war. Other than murder, rape is the most serious form of violence against the body of a person, because it strips away a person's physical and emotional autonomy, freedom and privacy.

Factors that increase the risk of sexual violence would be primarily a victim's gender, age, consumption of alcohol or drugs, having previously experienced sexual or other forms of violence.

Considering that sexual violence is the dominant form of gender-based violence, the gender of a person is the most significant predictor. The second most important predictor of sexual violence would be a person's age. The Ministry of the Interior of the Republic of Croatia states that, in 2011, 94% of rape victims in the Republic of Croatia were women; and that girls and young women under 22 years of age accounted for 38% of rape victims¹. In addition to the

¹ The Ministry of the Interior of the Republic of Croatia, A Statistical Overview of the Basic Security Indicators and Work Results in 2011

above predictors, potential risk factors would also be partnership status, certain socioeconomic characteristics (lower educational level, poverty), refugee settings, war. A group at risk are also women with disability, regardless whether the disability is physical or mental, and women in prisons.

Factors that increase the probability that a man will become a sexual offender can be connected with the person himself, his family, but also factors within the social environment. The most frequent personal factors are the following: alcohol and drug consumption, sexual tendencies that include violence, hostility towards women, experiences of sexual abuse in childhood. The characteristic factors connected with the family are aggressive and delinquent behaviour, family environment characterised by violence, and strong patriarchal family environment. In terms of wider societal factors, ineffective police and legal protection and a high general level of tolerance towards violence against women in general should be singled out.

The question of the extent of sexual violence is marked by an extremely high proportion of unreported cases; in other words, the number of cases of violence recorded by the police is very low in comparison to the actual number of cases of violence. Data collected in research throughout the world tell us that there are 15-20 unreported cases of rape on one reported case, while in terms of certain less drastic forms of sexual violence the ratio is even more pronounced.

In an assessment of the extent of sexual harassment/bullying, world data show that from 30% to 60% of girls experienced some sort of sexual harassment in college. In terms of sexual harassment in school settings, data vary from 23% up to 58% of girls. In terms of sexual harassment at the place of work, the European Women's Lobby states that, in Europe, 40%-50% of women experience some sort of sexual harassment or unwanted sexual behaviour at the place of work, while Australian data mention 22% of women.

Data on the extent of sexual harassment in colleges in the Republic of Croatia indicate that 6% of female students experienced serious (e.g., direct blackmail for a grade), and 35% lighter forms of sexual

harassment, such as offensive jokes, staring and leering, sexual comments and allusions. Data on sexual harassment at the place of work, based on research conducted by the ombudsman for gender equality and the Women's Section with the Union of Autonomous Trade Unions of Croatia, show that 38% of women had such an experience. Research on sexual harassment at the place of work for persons who work at the Faculty of Humanities and Social Sciences of the University of Zagreb shows that on multiple occasions 40% of women witnessed the telling of jokes that depict women exclusively as sexual objects, 18% experienced unwanted touching, 12% witnessed open sexual propositions received by colleagues, while 5% received a proposition, at least once, where they were to provide sexual services for keeping their job or for advancement.

Regarding data on the extent of sexual harassment in public places and on public premises, it is concluded how this area is quite unknown and how data are rare. According to one such research, carried out by the Women's Room - Center for Sexual Rights, 55% of women received unwanted sexual comments and vulgar propositions, and 43% experienced unwanted touching of their body. In terms of the location, such forms of violence mostly occur precisely in public places, such as cafés, buses and trams, on the street, etc.

Having examined available global research on the extent of rape or attempted rape, we notice how data vary from 14% to 40% depending on the country from which they arrive, the initial definition of rape and sexual abuse, and research methodology. Most research ranges in assessment from 20% to 35%. For example, British research showed that 25% of women survived rape or attempted rape, Swedish research showed that 34% of women had such experiences, Canadian research states how 33% of women survived rape or attempted rape, and American research tells us how the percentage ranges from 18% to 20% of women.

In the Republic of Croatia, available data come from police statistics and research conducted by the Women's Room - Center for Sexual Rights. According to official data provided by the Ministry

of the Interior of the Republic of Croatia for the period from 2000 to 2010, the average number of criminal offences reported against sexual freedom and sexual morality ranges from 461 to 761. In the mentioned period, the total number of reported criminal offences of sexual violence was 6 625, where the most common ones are lewd acts 34% (2 252 offences), rape 15% (958 offences), satisfying lust in the presence of a child or a juvenile 14% (921 offences) and sexual intercourse with a child 10% (677 offences).

In terms of the criminal offences of rape, in the period from 2000 to 2010, the total number of reported cases was 1 228, where 958 account for rape and 270 account for attempted rape. Over the course of a year, the average number of reported cases is between 90 and 150 of such criminal offences. An analysis of the number of reported cases during the period shows that there is no clear trend in terms of an increased or decreased number of reported cases.

Data gathered in the research conducted by the Women's Room - Center for Sexual Rights in 2005 show that 17% of women experienced attempted rape or rape. Of that number, only 5% reported such violence to the police and/or the competent State Attorney's Office.

The number of reported cases of sexual violence is extremely low in comparison to research data, and depends on a whole series of factors. Some of the reasons why sexual violence is not reported arise from the wider societal context, which is contaminated by the typical myths and prejudices connected with sexual violence. Some of the reasons are closely related to the work of institutions, while some are of exclusively personal nature connected with the victim.

What would be the most frequent and dominant reasons for the failure to report such violence based on research data and experiences from direct work with the victims of violence? Some women believe that in some way they contributed to violence because of something they did or did not do, since this is the dominant societal message embraced through socialisation. It is saturated with the myths of sexual violence (e.g., "*she got what she asked for*" or "*she provoked it, and now she's complaining*"). Some victims are afraid to talk about the

violence they experienced because they are afraid of the offender and his retaliation. A large number of women find it hard to deal with the feelings of shame, they fear stigmatisation and reactions from their family and people close to them, which can range from accusations to complete rejection. An important reason for not disclosing sexual violence is distrust and fear of the police and the court, of the lengthy and difficult court process, inadequate and mild punishments for the perpetrator, and the absence of information about the possible mechanisms of protection and assistance.

Although over the past several years there was extensive research concerning the question of why women do not report violence, there is very little research that focuses on reasons why women do choose to report sexual violence; and it is precisely such cases that show us how factors that increase the probability of having sexual violence reported include the elements of the myth of "real rape": the unknown perpetrator, violence outside the home of the victim or the perpetrator (for example, on the street, in a park or hallway), the use of force and/or weapon, and serious physical injuries to the victim. However, such elements are the rarest, because in most cases the perpetrator of sexual violence is known to the victim, violence occurs inside the home of the victim or the perpetrator, the use of force is not necessary because fear is sufficiently great to facilitate violence, and consequently serious physical injuries do not exist. The only specific element that contributes to the likelihood of having the victim report the crime, which has nothing to do with the myth of real rape, is the existence of a robust network of support to the victim. It follows that it is essential to change the false beliefs, images and myths about sexual violence and to open the door to the possibility of reporting cases that are by far more frequent and common than the accepted myth of real rape.

Why is it necessary to have a larger number of reported cases of sexual violence if we are aware that reporting and processing the crime can be an additional traumatic experience for the victim? Such a small number of cases reported to the police influences the work of the judicial and criminal system in conducting the procedure, the sentencing and punishment of the perpetrator, and the non-existence

of a service for assistance to the victims of sexual violence, as well as the absence of a treatment programme for work with the offender-rapist. Furthermore, a small number of reported cases creates a false impression that this form of violence is extremely rare and that it should not be at the centre of societal interest.

A larger number of reported cases would provide a clearer picture about the extent of sexual violence in the community, perpetrators and the forms of behaviour of repetitive perpetrators, but also lead to the opening of much needed services for the provision of assistance to the victims of sexual violence. In the long-run, the foregoing has impact on the development of various prevention programmes for the young and society as a whole, but also on further focused education and sensitisation of experts who work on the problem. A larger number of reported cases is possible only if we do everything in our power as a society to make each step in the process of reporting sexual violence easier on the victims and if we provide them with adequate mechanisms for their protection and assistance; also, the perpetrator must be adequately punished. Availability and quality of the service for the victims of sexual violence is important not only for humanitarian reasons, but also to empower and support victims in reporting violence. Victims have little choice without adequate services and the provision of protection.

The Rules of Procedure are one of the most significant steps in ensuring standardised and effective assistance and support to the victims of sexual violence in reporting and in the processing of sexual violence.

II. OBLIGATIONS OF THE COMPETENT AUTHORITIES IN THEIR RESPONSE TO VICTIMS OF SEXUAL VIOLENCE

The competent authorities for responding to the victims of sexual violence are the following: the police, medical facilities (general and clinical hospitals, clinical research centres), judicial bodies (the court and the State Attorney's Office), social welfare centres, educational institutions, and institutions providing assistance and support in the protection of mental health.

1. THE POLICE

The aim of the police in cases involving sexual violence, other than providing adequate protection and support to the victim in order to diminish the risk of further victimisation, is effective identification of the perpetrator and collecting of evidence.

1.1. *Emergency measures and actions*

The regular police will take only such actions that cannot be postponed, such as the protection of life and health of the victim (eliminating an immediate threat, providing first aid, and organising emergency medical care), collecting initial information about the event, securing the scene of the crime, traces, etc.

The criminal investigation and response in cases involving sexual violence are within the exclusive competence of police officers specialised in sexual violence who work in the territory of the Republic of Croatia (the number of such officers depends on the category of the police department/police station).

In cases involving sexual violence where the victims are children or juveniles, the *Youth Courts Act* states that police officers specialised for youths are authorised to deal with and handle the criminal investigation in such cases.

It is recommended that the activities of police officers specialised in cases involving sexual violence are carried out by police officers

who have attended regular training for dealing with sexual violence, as well as by police officers who will be trained to deal with such cases through regular training programmes.

1.1.1. Collecting initial information from the victim

- a) It is necessary to immediately notify a police officer specialised in sexual violence of the event; such police officer will then be included in the investigation and assume further actions and coordination as soon as possible.
- b) The victim should be accommodated in appropriate facilities.
- c) Initial information from the victim is collected by a police officer designated by the competent managing police officer. Initial information, whenever possible, is collected by a police officer specialised in sexual violence, provided this would not result in considerable delay.
- d) With the aim of protecting the victim, it is necessary to ensure privacy during the process of collecting information and to remove any other police officers from the area where such initial information is collected.
- e) It is necessary to take into account that in those first moments after the sexual assault the victim is in a very sensitive mental state and that support and understanding are needed. The victim must not detect any disbelief, disapproval, hostility or judgemental attitude because of what has happened to her in the non-verbal conduct of the police officer.
- f) The police officer must immediately notify the competent state attorney of any information collected for further coordination in the procedure.

1.1.2. Duties of police officers specialised in sexual violence and of the state attorney in terms of the protection of the victim:

- a) To conduct and co-ordinate the criminal investigation and responses to the victim.

- b) Through efficient organisation of the criminal investigation, to enable fast issuing of an order for the carrying out of the required evidentiary actions, notify the victim before any actions are taken about her rights, and explain to her which actions will be taken and why they are necessary; to prevent unnecessary repetition of steps (making the victim take off her clothes, general physical, gynecological and other specialised examinations, photographing, taking the victim's clothing for crime evidence, traces, swabs, non-disputable samples, asking the victim to go to the police facilities) and instruct police officers and/or investigators in charge of such actions to act with special consideration and in a non-discriminating way towards the victim.
- c) If a police officer-investigator will be carrying out any evidentiary actions further to an order issued by the state attorney, such police officer, whenever possible, will be a police officer specialised in sexual violence - investigator who has already had contact with the victim in the matter at hand.
- d) In communication with the victim, it is necessary to prevent unnecessary additional victimisation through multiple interviews by police officers (by the head of shift, crime investigation officers, police officers in charge of forensics, driving the victim, police officers who make sketches/drawings, officers in charge of the identification process, etc.) and stigmatisation at the place where the victim lives (driving the victim in a police vehicle, officers in uniform, etc.).
- e) To carry out a detailed interview in line with the rules of the profession.
- f) To inform the victim about any options available in terms of receiving professional help to protect her physical and mental health.

1.1.3. The initial interview with the victim

- a) Police officers specialised in sexual violence must take into consideration the age of the victim, the physical and mental

condition of the victim, the way in which the sexual assault was committed, the consequences, and then adjust the technique of conducting the interview (by acknowledging the victim's traumatic experience, providing support, avoiding prejudices, building trust, using the terminology appropriate and understandable to the victim, adjusting the duration of the interview, etc.).

- b) Collecting information about the intimate life of the victim must be carried out with special consideration; the victim is not obligated to respond to any questions relating to her strictly personal life.
- c) Whenever possible, the victim must be permitted to choose whether she wants a female or male police officer to conduct the interview.
- d) Depending on the specific needs of the victim, it is necessary to ask a specialist to provide assistance (in terms of the victim's age, intellectual disability, deaf-muteness, not knowing the Croatian language, etc.).
- e) To permit that a person whom the victim trusts and in whose presence the victim feels safe is present at the interview, provided that does not hinder the progress of the interview.
- f) Enable the representatives of civil society organisations to have contact with the victim with respect to the provision of sufficient support to the victim if the victim agrees or asks for it, depending on the progress of the criminal investigation.

1.2. Protecting the identity of victims of sexual violence

Police officers carrying out an inquiry must provide for the protection of the identity of a victim of sexual violence from the very beginning of the criminal investigation. Data that could lead to the revelation of the identity of the victim must not be published.

The police must provide the victim with all the protection she needs based on a security assessment of the dangers of the repetition of sexual violence, threats to the health and the life of the victim, and tempering with the victim's testimony by the perpetrator.

1.3 Implementation of the Rules of Procedure

For the implementation of the Rules of Procedure, it is necessary:

1. Through regular education programmes organised by the Ministry of the Interior, to plan further training of police officers specialised in sexual violence.
2. To secure funds for the implementation.

2. HEALTH CARE SETTINGS

Examinations of the victims of sexual violence are performed in general hospitals, clinical hospitals and clinical hospital centres (hereinafter: medical facility).

Medical facilities must provide prompt and comprehensive medical care to the victims of sexual violence in order to preserve the physical and mental health of the victim in line with the contemporary standards and practices.

Medical facilities must comply with the Rules of Procedure and the relevant legislation and other acts connected with medical activities to protect victims and to collect, record, and preserve evidence in line with the relevant articles of the *Health Care Records Act* and the *Act on Medical Practice*.

2.1. Rules of procedure for medical examinations

A victim of sexual violence can arrive at the hospital on her own or escorted by the police. If a victim arrives at the hospital unescorted by the police, the medical staff must call the police without any delay; and if the victim is under age, it is also necessary to call the parents/legal guardians, or a social worker. The parent/legal guardian or a social worker may be present during the examination, but the victim under age has the right to request that they are not present, in line with the United Nations *Convention on the Rights of the Child*. During the office hours, the medical staff calls the social worker depending on the victim's residence, and outside the office hours, the medical staff calls the social worker who is on stand-by.

The victim is examined by the gynecologist on duty (the examination is performed by the senior staff, which is to say a specialist), and it is recommended that the examination is made by two doctors.

It is necessary to determine the causes and the way in which the injuries were sustained, and to perform a complete physical examination and the prophylaxis of diseases in sexual assault including:

2.1.1. Informed consent of the victim to the examination and therapy

The gynecologist on duty must explain to the victim why an examination is performed, what it includes, and that the examination is made subject to the victim's consent. If a victim refuses the examination, she must confirm that in writing.

2.1.2. Items on general anamnesis and examination

2.1.2.1. It is necessary to examine the entire body of the victim for potential injuries. Based on the victim's physical status, the victim is, where necessary, referred to another specialist.

2.1.2.2. The physical status of the victim is recorded in an anamnesis, which is a special form for conducting examinations on rape victims that includes the following:

- a) data about the victim of sexual violence;
- b) time of the examination/time that elapsed from the time the criminal offence was committed;
- c) a record of the victim's injuries (a detailed description, their location on the drawing of a body, photographs);
- d) the existence of chronic diseases or specific conditions that might affect the examination and the consequences, if any;
- e) photographing the injuries to take the evidence for the crime technician, provided that the victim gives her consent after it is explained to her why the photographs must be taken. If the victim, on objective grounds, cannot give her consent, the provisions of the *Act on the Protection of Patient Rights* apply.

2.1.2.3. In the case of a physical injury, the doctor must fill out the Reports on Injuries/Diseases No. 030911 or No. 03055, and mark the reports with a numeral that includes the hour, day, month and year on which the injury was sustained and of the examination. Such reports must be maintained in a special protocol and in the patient chart. In the event of a physical injury inflicted by a family member or an unknown offender, the doctors must fill out the Reports on Injuries/Diseases. The reports must be maintained in a special protocol and in the patient chart. The reports should be marked with a numeral that includes the hour, day, month and year on which the injury was sustained.

2.1.2.4. The said reports are submitted to the police and the regional office of the Croatian Institute for Health Insurance (HZZO) depending on the place of residence of the insured person.

2.1.3. Items on the gynecological anamnesis and examination

Includes the collection of the following:

- a) samples from the rape kit carried by the police (the set includes 11 envelopes for collecting trace evidence from the victim of sexual violence (such as the samples of blood, hair, pubic hair, swabs, nails, the underwear (panties) worn during the assault, etc.);
- b) taking samples for Pap and pregnancy tests;
- c) microbiological testing, including those for sexually transmitted diseases (syphilis, gonorrhoea, HIV, hepatitis B and C, etc.).

2.1.4. Providing basic medical care to the victim

With the aim of protecting the victim and her health and providing support, it is necessary:

- a) to prescribe medically indicated therapy and/or provide emergency postcoital contraception;
- b) to schedule a check-up of the victim at the latest within seven days, and where necessary even sooner;

- c) whenever necessary, to refer the victim, escorted by the medical staff, to the mental health protection ward, so that the victim might receive support and that the impact of the traumatic event might be alleviated;
- d) to inform the victim about the institutional and extrainstitutional bodies for assistance and support (such as social welfare centres, specialised civil society organisations providing assistance to the victims of sexual violence, etc.);
- e) to recommend to the victim to contact her primary general practitioner to receive further treatment and prescriptions, referrals, etc.;
- f) where it is established that the victim does not have health insurance, the medical facility must comply with the health insurance legislation in force.

2.1.5. Obligations towards other bodies

At a request of the State Attorney's Office or the police, medical facilities must submit all documents relevant for investigating and proving criminal offences.

The victim is entitled to the copy of her medical record, so it should be handed over to the victim at her request in accordance with Article 23 of the *Act on the Protection of Patient Rights*.

2.2. Responsibility of medical facilities

Medical facilities have the following obligations:

- a) to have trained and qualified staff available 24 hours a day in the case an examination after a sexual assault needs to be performed; b) to hold continued specialised training concerning sexual violence for the professional staff;
- c) to designate a person(s) to co-ordinate protection and assistance to the victims of sexual violence;
- d) to secure immediately available prophylaxis for sexually transmitted diseases and pregnancy.

3. JUDICIAL BODIES

The role of the judicial bodies involves effective use of all legally available options prescribed by the legislation of the Republic of Croatia in force to protect the victims of rape or other sexual violence and to enable court protection of their rights.

3.1. State attorney – investigating judge

The State Attorney's Office acts in accordance with the *Criminal Procedure Act*.

1. The state attorney may carry out an investigation himself/herself or instruct the police to carry out such an investigation.
2. The state attorney issues a decision on the implementation of an investigation against a particular person where there is justified suspicion that such person committed a criminal offence which is subject to the conducting of an investigation, and provided there are no legal obstacles to the criminal prosecution of such person.
3. The decision on the implementation of an investigation must be delivered to the accused at the latest within eight days of the date of the issuing of the decision, and it must include an instruction about legal remedies available.
4. The investigation is conducted by the state attorney, and the accused must be interrogated before the investigation is finalised. The interrogation is governed by the provisions relating to: personal data of the accused collected during the first interrogation, responding to the subpoena, rights of the accused, right to a defence attorney, right to an interpreter if he/she does not know the official language of the court, an audio or video recording of the interrogation of the accused, the manner and the process of the interrogation itself and the possibility of a face-to-face meeting between the accused and the witnesses or other accused persons if the court establishes that the testimonies do not match with respect to some important facts, except where the witness is a child.

5. The police is authorised to arrest a person: when enforcing an arrest warrant and a decision on detention or investigative prison, a person with respect to whom there is justified suspicion that she committed a criminal offence prosecuted *ex officio*, where one of the grounds for ordering investigative prison referred to in the *Criminal Procedure Act* is met (where there is danger that the suspect might escape, destroy evidence, tamper with witnesses, repeat the criminal offence or finish the attempted criminal offence, or commit a more serious criminal offence punishable by the sentence of imprisonment of five years or more, and in the case of criminal offences subject to the punishment of long term imprisonment if the circumstances of the criminal offence are particularly grave), and a person interrupted while committing a criminal offence which is prosecuted *ex officio*. The police officer must escort the arrested person to a prison unit and hand him/her over to the prison supervisor within 24 hours and, in the case of criminal offences punishable by imprisonment in the duration of up to one year, within 12 hours.
6. The state attorney must interrogate the arrested person at the latest 16 hours after the handover to the prison supervisor, and in the case of a person arrested for criminal offences punishable by imprisonment in the duration of up to one year at the latest 12 hours after the handover to the prison supervisor.
7. The state attorney orders detention against an arrested person in a written decision that includes a statement of reasons if it is established there is justified suspicion that the arrested person committed a criminal offence subject to the initiation of a criminal proceeding *ex officio*, if any of the grounds to order investigative prison are fulfilled, and detention is required to establish the identity and verify the alibi of the arrested person and collect data on the evidence. Detention may last up to 48 hours as of the moment of arrest, other than in the case of criminal offences punishable by imprisonment of up to one year, in which case detention may last 36 hours at most as of the moment of arrest. Upon the proposal of the state attorney, the investigative judge may extend detention in a decision that includes a statement of reasons for a further period of 36 hours if that is necessary to collect evidence concerning the criminal offence punishable by imprisonment in the duration of five years or more.

8. After the arrested person is interviewed, the state attorney may order the police in a written order to take the arrested person before the investigative judge within 48 hours as of the moment of arrest, or 36 hours as of the moment of arrest in the case of criminal offences punishable by imprisonment of up to one year, so that a decision ordering investigative prison could be issued. In the said case, the state attorney does not issue a decision on detention.
9. Investigative prison is ordered in a written decision issued by the competent court at a verbal hearing closed to the public conducted by the investigative judge until the indictment is submitted.
10. The investigative judge must issue a decision concerning the proposal of the state attorney to order investigative prison immediately, and at the latest within 12 hours of the submission of such proposal.
11. Investigative prison ordered in a decision of the investigative judge or tribunal may last one month as of the moment of arrest at most, and if there are justified reasons, at a proposal of the state attorney, the investigative judge may extend investigative prison for the first time by two months at most, and then for the criminal offences within the competence of the county court, or when stipulated in a special law, by three additional months at most.

3.2. Protecting the rights of the victim of sexual violence

1. The victim enjoys certain rights in the criminal procedure, and the court, the State Attorney's Office, the investigator, and the police must act with special consideration towards the victim of the criminal offence. The said authorities must provide the victim with instructions and take care of the interests of the victim when making decisions on criminal prosecution against the accused person, that is, when taking actions in the criminal procedure in which the victim must take part in person.
2. An interview with the victim of rape or sexual violence in the procedure is mandatory where:
 - a) If the victim is a child under 14 years of age, the interview is conducted via a video link (with mandatory audiovisual

recording). If the victim is a child over 14 years of age, but under 18 years of age, she may also be interviewed via a video link, but if the criminal offence is the criminal offence referred to in Article 113 of the *Youth Courts Act*, and the victim is under 16 years of age, she will also be interviewed via a video link.

b) Adult victims may also be interviewed via a video link, at their request, if their testimony in court could provoke further trauma.

3. The victim of a criminal offence is entitled to effective psychological and other professional assistance and support of the authority, organisation or institution for assistance to the victims of criminal offences in accordance with law. The victim is entitled to take part in the criminal procedure as an injured party, she is also entitled to a notification by the state attorney about actions taken further to her information or report about the offence, and to the submission of a complaint to a higher state attorney, as well as to other rights set out in law. In accordance with special legislation, the victim of a criminal offence punishable by imprisonment in the duration of five years or more, if she suffers from serious psychological and physical disorders or serious consequences of the criminal offence, is entitled to professional assistance by an advisor secured from budget funds before providing a testimony in the criminal procedure and at the time of filing a pecuniary legal claim. The victim of a criminal offence committed with intent is entitled to pecuniary compensation from the funds of the State Budget in accordance with a special law. If the victim has previously obtained a pecuniary legal claim, the amount of such claim will be taken into account when deciding on pecuniary compensation; the court will act in the same way when awarding a pecuniary legal claim if the victim has previously obtained pecuniary compensation from the State Budget. The court, the State Attorney's Office, the investigator or the police must notify the victim of her rights, and her rights as the injured party, at the time of taking the first action in which the victim takes part.

4. The victim of a criminal offence who is a child, other than the rights of the victim stipulated in the *Criminal Procedure Act*, is also entitled to the following: an attorney whose expenses are borne from the

State Budget, to be escorted by a person of trust during the taking of all actions, confidentiality of personal data, and the exclusion of the public. The court, the state attorney, the investigator, and the police must act with special consideration towards the child-victim of a criminal offence, bearing in mind the child's age, psychological and physical status, and other circumstances, in order to avoid consequences detrimental to the upbringing and development of the child. In the treatment of the child-victim, the competent authorities must primarily be guided by the best interests of the child. If the age of the victim is not known, it will be presumed that the victim is a child if there is a probability that the victim is under 18 years of age.

5. The victim of a criminal offence against sexual freedom (and of a criminal offence of human trafficking) is entitled to the following, in addition to the above mentioned rights stipulated in the *Criminal Procedure Act*: the right to talk to a counsellor before the interview, with expenses paid from the State Budget, to be interviewed at the police and the State Attorney's Office by a person of the same gender, to be interviewed in the presence of a person of trust, to refuse to answer any questions relating strictly to the personal life of the victim, to request to be interviewed via a video link, to the confidentiality of data, to request the exclusion of the public from the hearing. Before the first interview, the court, the state attorney, the investigator and the police must inform the victim about her rights.
6. The victim of a criminal offence and her attorney are entitled to full access to the file. Where earlier access to the file might influence the testimony of the victim, the right of access to the file is possible only after the victim has been interviewed.
7. If, after the investigation is finished, the competent state attorney suspends the investigation in a decision, the injured party will be notified accordingly with an instruction that she may undertake or proceed with the criminal prosecution. In addition, the injured party will be provided with an instruction which actions she may take to exercise her right to undertake or to proceed with the prosecution, and for that purpose will be provided with access to the file.

8. In the procedure, facts relating to the previous sexual behaviour of the victim and her sexual preferences may not be used in evidence. By way of derogation, it is permitted to prove that the sperm, other material traces or injuries described in the medical documents belong to another person, and not the accused.
9. The legislator has not limited the maximum number of hearings or the duration of the criminal procedure, but the court should make an attempt to resolve such cases in an urgent procedure.

4. SOCIAL WELFARE CENTRES

The role of social welfare centres is to provide adequate protection and support to the victim of sexual violence and to work on improving measures for the protection of persons exposed to sexual violence in conformity with the legislation of the Republic of Croatia presently in force.

Where sexual violence is part of domestic violence, the competent social welfare centre acts in accordance with the *Act on the Protection against Domestic Violence*, the *Social Welfare Act*, the *Family Act*, these Rules of Procedure and the *Rules of Procedure in Cases of Domestic Violence*.

4.1. General response rules

- a) With respect to the provision of adequate protection and support to adult victims, there are workers in every social welfare centre specialised in responding to cases involving children, youths and the family.
- b) If a victim needs a place to stay, material assistance or legal counsel, the social worker in charge of providing adequate protection and support to adult victims will act as an intermediary between the victim and another social worker in charge of social welfare rights.
- c) The social welfare centre is obligated to report violence to the police whenever it finds out about such violence.

When a social worker is informed in the course of work (in writing, by telephone, in person, etc.) that sexual violence has taken place, he/she must proceed as follows:

1. Immediately after finding out or receiving information about sexual violence, the social worker must notify the police promptly and without any delay, regardless whether another authority has already done so, and provide all information about the case received. The social worker must draw up an official note about the reported incident, including information about the victim, the perpetrator, and the type of violence committed, and promptly open a new file.
2. The social worker must take all steps necessary to assist and support the victim within the powers of the social welfare centre:
 - a) to make contact with the victim as soon as possible;
 - b) to provide the victim with all information about her legal rights, powers and the rules to be followed by the social welfare centre in the protection of the victim, which is particularly important for the protection of the victim's security;
 - c) to act as an intermediary and to help the victim of violence in the realisation of the right to free legal counsel and representation within the Croatian Bar Association;
 - d) to act as an intermediary and to help the victim in the realisation of the right to free medical protection as set out in the legislation in force;
 - e) to provide information about specialised civil society organisations that provide assistance to the victims of sexual violence that the victim can address for assistance.
3. In cases that do not permit postponement, in order to ensure immediate protection of the victim's security (sexual violence as part of domestic violence), the social welfare centre will issue an oral decision on temporary accommodation in crises and order immediate enforcement of such oral decision.
4. At the request of the State Attorney's Office or the police, the social welfare centre must submit all documents significant for making

a decision on the initiation of criminal prosecution (for example, including a report of the social worker and an opinion of the psychologist, as well as other documents about measures taken).

5. In further work with the victim of sexual violence, the social welfare centre will act according to the *Social Welfare Act*, i.e., its provisions regulating the realisation of the right to counsel and assistance services to the individual and the family, and the provision of psychosocial support.
6. In their contacts with the victim of sexual violence, social workers must act with special sensitivity and provide for the confidentiality and protection of the victim's personal data.

4.2. *Special rules for responding to children*

- a) With respect to the provision of adequate protection and support to victims who are under age, there are workers in the social welfare centre specialised in responding to cases involving children, youths and the family.
- b) If, apart from psychological support, a victim who is under age needs a place to stay, material assistance or legal counsel, the psychologist in the social welfare centre will act as an intermediary between the victim and another social worker in charge of social welfare rights.
- c) When it finds out, the social welfare centre is obligated to immediately report violence to the police and to notify the parents/legal guardian(s) of the child, unless they are the abusers.
- d) Further procedure conducted by the social welfare centre is set out in the *Family Act*, *the Social Welfare Act*, as well as in other rules and subordinate legislation.
- e) The social welfare centre will issue adequate measures for family legal protection without any delay in cases where the child is directly exposed to sexual violence in the family or if the child has witnessed such violence. The social welfare centre must regularly supervise the implementation of the said measures and, whenever necessary, propose to the court the issuing of other measures.

- f) In cases involving sexual violence against a child within the family, the social welfare centre will issue an oral decision, pursuant to the *Family Act*, to take the child away in order to ensure immediate protection of the child's security, and order immediate enforcement of such decision. The social welfare centre must issue a written decision within 72 hours of the issuing of the oral decision, and submit a proposal to the court within the same deadline to issue a decision on temporary entrusting the care for the child to another person, a social welfare institution, some other natural or legal person performing the activity of social welfare, or a foster family.
- g) The social welfare centre will take appropriate measures stipulated in the *Family Act* against the parent/other person taking care of a child who had information about sexual violence against the minor in the family, but who did nothing to protect the children.

The conduct of the competent staff in cases involving sexual violence will be set out in internal by-laws for all categories of social welfare homes.

5. EDUCATIONAL INSTITUTIONS

The Rules of Procedure in Cases of Sexual Violence includes important information about the conduct of educational institutions (kindergartens, primary and secondary schools, and pupils' homes) in cases involving sexual violence experienced by students in such institutions.

Where sexual violence is part of domestic violence, educational institutions must abide by these Rules of Procedure, *the Rules of Procedure in Cases of Domestic Violence, the Act on the Protection against Domestic Violence, the Family Act, and the Act on Education in Primary and Secondary Schools*.

The Rules of Procedure state that educational workers must take care of the realisation of the rights of the child in cases involving all forms of violence, to become sensitive to the existence of sexual violence experienced by minors, and to take appropriate measures to identify and report sexual violence to the relevant institutions providing assistance to the victims of sexual violence.

The Ministry of Science, Education and Sports will carry out the training of educational workers (especially expert assistants and headmasters), in co-operation with the Education and Teacher Training Agency, concerning the implementation of the Rules of Procedure and possibilities for institutional and extrainstitutional assistance and support to the child victims of sexual violence.

5.1. Rules of procedure to be followed by educational institutions in cases involving sexual violence

1. Immediately after receiving information that there is suspicion that a student has been exposed to sexual harassment or sexual violence, it is the duty of educational workers to first of all conduct an interview with the student for his/her protection. The interview should preferably take place in a safe environment, bearing in mind protection of the rights of the person.

If an expert assistant is not available or the student refuses to talk to him/her, the interview may be conducted by another educational worker in whom the student has trust (such as the class teacher, teacher, headmaster or school doctor).

Educational workers with information about possible sexual harassment or sexual violence must report the information to the headmaster of the educational institution, who is responsible to take further action according to these Rules of Procedure.

In the case of an event that has just happened, the victim should be provided with appropriate assistance and protection without any delay, and the police should be notified immediately.

2. The person conducting an interview with the student or the source of information must keep minutes. The educational institution must submit all documents relevant for making a decision about the initiation of criminal prosecution or for criminal prosecution whenever requested by the court, the State Attorney's Office of the Republic of Croatia or the police.

3. The person conducting an interview must inform the student about any further actions to be taken in detail. The student should

know what follows after which procedure, and he/she should also have information about obstacles and difficulties that might be encountered, as well as about the final objective of the procedure. Throughout the procedure, it is necessary to take care of the security of the student and other persons who are the source of information.

4. The responsible person must urgently notify the following persons of the event:
 - a) the parents,
 - b) the social welfare centre in charge,
 - c) where the parents are not available or where there is suspicion that they might be the abusers, the social welfare centre in charge depending on the place of residence of the abused person will be notified (outside the working hours of the social welfare centre, it is possible to contact the competent police station and obtain the number of a social worker who is on stand-by),
 - d) the police or the State Attorney's Office (outside the working hours of the State Attorney's Office, it is necessary to notify the state attorney on stand-by within the County Court Investigating Centre),
 - e) in the case of visible injuries or if the victim is perturbed, it is necessary to take measures to provide emergency medical assistance,
 - f) to notify the Ministry of Science, Education and Sports via a web form and report violent behaviour as soon as possible, and at the latest within 7 days. The form for reporting violence in educational institutions is available at the website of the line ministry for education,
 - g) the ombudsman for children.
5. The person conducting an interview must inform the victim and her parents about the possibilities available for extrainstitutional or institutional assistance and support.
6. If the perpetrator of sexual violence is an education worker in an educational institution (headmaster, expert assistant, teacher or other employee), the person with pertinent information must notify the police and/or the State Attorney's Office. If the perpetrator of

sexual violence is an education worker in an educational institution or if sexual violence occurred on the premises of an educational institution, regardless of the identity of the perpetrator, the educational institution should notify the Ministry of Science, Education and Sports without any delay.

7. In cases involving particularly serious forms or intensity of violent behaviour that has provoked or might provoke trauma to the child victim or other students, the educational institution must notify the line ministry for education and, if necessary, other ministries and institutions, and request adequate professional psychological or social/pedagogical/psychological assistance for the students of the educational institution. The competent ministry will ensure, whenever necessary, adequate professional psychological assistance for the students of the educational institution.

5.2. Responding to sexual harassment occurring in school facilities

In the case of sexual harassment by:

1. An adult who is an education worker in an educational institution, the procedure is the same as in the case of sexual violence,
2. Another student (or more of them) occurring on the premises of an educational institution, it is necessary to refer the students for counselling or mediation within the educational institution or counselling centre.

The responsible person is obligated to notify the parents of all students involved in the incident. The competent social welfare centre should also be notified.

III. PROTECTING THE MENTAL HEALTH OF VICTIMS OF SEXUAL VIOLENCE

It is necessary to ensure systematic protection of the mental health of the victims of sexual violence in the form of free, easily accessible, and timely assistance and support within institutional and extrainstitutional activities and/or services for the protection of mental health.

1. *Institutional assistance and support in the protection of mental health*

Whenever a victim of sexual violence reports a criminal offence to the police, she must be admitted to hospital escorted by the police to undergo a comprehensive medical examination, so that medical history and all samples could be taken, and to receive basic medical protection. As part of basic medical protection:

- a) it is necessary to provide the victim with basic information about the forms of assistance and support and to inform the victim about assistance and support services available (such as social welfare centres, specialised civil society organisations providing assistance to the victims of sexual violence, etc.),
- b) whenever necessary, the victim should be referred to a professional worker with the service for the protection of mental health trained to work with the victims of sexual violence (e.g., psychologist, psychiatrist) in order to receive support and so that the onset of any traumatic reactions might be prevented,
- c) the victim should be urgently included in therapeutic procedures within the professional service for the protection of mental health.

As part of institutional assistance, hospital services for the protection of mental health should have at least one professional worker who is the contact person for cases involving sexual violence, so that the process of providing the essential protection of mental health might be accelerated and co-ordinated.

2. Extraintitutional assistance and support in the protection of mental health

Persons providing assistance to victims must inform the victim of sexual violence about the possibilities available for extraintitutional assistance and support within specialised civil society organisations providing assistance to the victims of sexual violence. For example, the Centre for Victims of Sexual Violence has been providing assistance to the victims of sexual violence since 2008.

Extraintitutional assistance and support include wider measures for the provision of assistance and support to the victims of sexual violence. Other than counselling and/or psychotherapy (individual or group), the measures include work with family members, preparation for the court process and monitoring the victim during the process, and working on further improvement of the treatment of victims.

3. An essential precondition for protecting the mental health of victims of sexual violence

A condition precedent for persons engaged in the field of protection of mental health to work with the victims of sexual violence is that, in addition to basic professional education, they have specialised training in work with the victims of sexual violence and/or education in sexual therapy.

IV. THE FORMS, MANNER AND CONTENT OF CO-OPERATION OF THE COMPETENT AUTHORITIES IN RESPONDING TO VICTIMS OF SEXUAL VIOLENCE

The National Policy for Gender Equality for the Period 2011-2015 prescribes the improvement of co-operation of all competent authorities, and the implementation of these Rules of Procedure prescribes the establishment of co-operation by and between the competent authorities and other stakeholders taking part in the identification and suppression of sexual violence and in the provision of assistance, support, and protection to persons exposed to any form of sexual violence as soon as possible.

Obligations of the competent authorities, institutions and the media:

1. In the competent ministry/authority taking part in the identification and suppression of sexual violence and the provision of protection, assistance, and support to the victims of sexual violence, the obligation to monitor the implementation of these Rules of Procedure is entrusted to gender equality coordinators who are already appointed; once a year, they will request the authorities competent to implement the Rules of Procedure to issue a report on the implementation of the Rules of Procedure, and notify the Office for Gender Equality of the Government of the Republic of Croatia accordingly.
2. Gender equality co-ordinators in county state administration offices must co-operate with local and regional self-government units and civil society organisations engaged in the protection of the victims of sexual violence and the affirmation of their rights in order to exchange experiences and establish good practice.
3. All bodies in the procedure are obligated to protect the interests of the victims of sexual violence in accordance with the *United Nations Convention on the Elimination of All forms of Discrimination against Women*, the *United Nations Declaration on the Elimination of Violence against Women*, recommendations of the Committee of Ministers of the Council of Europe, and other relevant international obligations.
4. The media will dedicate special attention in their work to the protection of the rights and interests of the victims of sexual violence, especially children.

V. FINAL PROVISIONS

1. All state authorities taking part in the identification and suppression of sexual violence and the provision of assistance, protection, and support to the victims of sexual violence must abide by the activities set out in these Rules of Procedure.
2. These Rules of Procedure have been drawn up on the basis of the legislation currently in force; in the case of any changes of laws, the state authorities in charge must draw up a proposal of changes to the Rules of Procedure within 30 days of the adoption of such changes of legislation, and submit the proposal to the Office for Gender Equality of the Government of the Republic of Croatia.
3. The Office for Gender Equality of the Government of the Republic of Croatia is entrusted with the co-ordination and monitoring of the implementation of the Rules of Procedure; it reports to the Government of the Republic of Croatia accordingly in a two-year report on the implementation of the *National Gender Equality Policy for the Period 2011 - 2015*.
4. Following the adoption of these Rules of Procedure, all line ministries are entrusted with informing the authorities and institutions within their scope of work about its adoption, ensuring its availability, and taking measures necessary to ensure its consistent application.



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Project 'My voice against violence'



Government of the Republic of Croatia
Office for Gender Equality

