

Legislative roadmap for prevention
of gender-based violence perpetrated
through information and communication
technology (ICT) in Bosnia and
Herzegovina, North Macedonia, Serbia
and Kosovo*



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* All references to Kosovo in this document shall be understood to be in the context of the UN Security Council resolution 1244 (1999).

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Legislative roadmap for prevention of gender-based violence perpetrated through information and communication technology (ICT) in Bosnia and Herzegovina, North Macedonia, Serbia and Kosovo*¹

Summary

The Generation Equality Action Coalitions aim at achieving concrete results in advancing gender equality under the Sustainable Development Agenda over the course of the United Nations (UN) current Decade of Action. Depending on the context of each country and national priorities and in view of the new crises caused by socio-economic effects, including those caused by the COVID-19 pandemic, certain priority Action Coalitions include: *bodily autonomy and sexual and reproductive health and rights, gender-based violence and economic justice and law*. Intertwined with bodily autonomy is the right to *bodily integrity* which ensures that people can live the life free from non-consented physical acts.

Available information indicates that violations of bodily integrity are increasingly perpetrated using information and communication technology (ICT). Digital violence against women and girls is violence. Like all other forms of violence, it is rooted in gender inequality and discrimination against women and girls. In 2021, UNFPA launched Bodyright, a global initiative to protect women against acts of gender-based violence perpetrated through technology. As part of this initiative, a **Legislative Roadmap for the Prevention of Gender-Based Violence Perpetrated Through Information and Communication Technology (ICT) in Bosnia and Herzegovina, North Macedonia, Serbia and Kosovo (Legislative Map)** was created for the purpose of analyzing the existing legislation for the prevention of gender-based violence perpetrated through ICT and making expert recommendations for its improvement.

The States covered by the Legislative Map ratified all relevant international standards related to gender equality and gender-based violence, primarily CEDAW and the Istanbul Convention, as well as the Council of Europe Convention on Cybercrime. The reports of the structures set up to monitor the implementation of the Conventions (committees) and other bodies indicate that the States have achieved substantial progress in implementing their obligations, although some obligations, including those related to legislation, are yet to be implemented.

CEDAW and the Istanbul Convention do not mention specifically violence in the digital environment, which is understandable in view of the time of their adoption. Nevertheless, the fact that societies and thereby societal processes are constantly developing requires that States adapt their policies and legislation to the needs and demands of their citizens. It should be recalled that the international standards constitute the minimum framework which the States gave their formal consent to through ratification. This means that the States Parties should strive to establish and develop higher standards than those provided for in international legal instruments. That the issue of ICT-facilitated gender-based violence is a serious social issue is proven by the fact that the Council of Europe GREVIO adopted on 20 October 2021, under Article 69 of the Istanbul Convention, its **General Recommendation No. 1 on the digital dimension of violence against women**². The Recommendation clearly defines the digital dimension of violence against women and proposes certain actions based on the four pillars of the Istanbul Convention - Prevention, Protection, Prosecution and Coordinated Policies. In its Recommendation, GREVIO coined the term “*digital dimension of violence against women*”, which emphasizes the fact that this harmful behavior “disproportionately targets women and girls and is central to their experience of gender-based violence against women”. This Recommendation introduced the obligation of the States Parties to the Istanbul Convention to criminalize and punish the numerous forms of violence against women perpetrated through digital technology, especially online psychological violence, online stalking and online or technology-facilitated sexual harassment. Among the measures proposed to combat violence against women are: to review the relevant legislation in respect of the digital dimension of violence; to undertake the initiatives aiming to eradicate gender stereotypes and discrimination, to promote inclusion of digital literacy and online safety; to develop and disseminate information on the legal avenues and support services.

All the countries covered by the Legislative Map adopted anti-discrimination laws; the laws on gender equality and the laws on the protection against domestic violence. Gender-based violence, including gender-based discrimination, and domestic violence, are defined differently in different criminal codes of the States, and in BiH, also in the Law on Gender Equality. An analysis of these laws shows that the States took some action to harmonize them with the provisions of the Istanbul Convention, which resulted in different levels of compliance. This was also pointed out by GREVIO following their consideration of the reports of the States on their progress in implementing the Convention. Nevertheless, it can be concluded that a comprehensive, systematic approach, which would include simultaneous and coordinated interventions in all the laws regulating the issues related to gender-based violence directly or indirectly, is missing. The consequence of this approach, among other things, is that the laws define the same terms differently, which should be remedied through vertical harmonization. Gender-based violence committed through ICT requires further intervention in all the laws covered by the Legislative Map, where GREVIO General Recommendation No. 1 on the digital dimension of violence against women should serve as a basis for harmonization, especially considering that it was adopted in 2021.

¹ All references to Kosovo in this document shall be understood to be in the context of the UN Security Council resolution 1244 (1999).

² GREVIO General Recommendation No. 1 on the digital dimension of violence against women adopted on 20 October 2021, <https://rm.coe.int/grevio-rec-no-on-digital-violence-against-women/1680a49147>

Introduction

The Generation Equality Action Coalitions aim at achieving concrete results in advancing gender equality under the Sustainable Development Agenda over the course of the United Nations (UN) current Decade of Action.³ Depending on the country's context and national priorities, and taking into account new crises caused by socio-economic effects, including those caused by the COVID-19 pandemic, certain priority Action Coalitions include: ***bodily autonomy and sexual and reproductive health and rights, gender-based violence and economic justice and law***.

Many indicators show that individuals, especially women and girls, face limitations in their bodily autonomy, which may have devastating consequences for their health, well-being and potential in life. Intertwined with bodily autonomy is the right to *bodily integrity*, which ensures that people live the life free from physical non-consented acts. ***Bodily integrity*** is the inviolability of the physical body and it emphasizes the importance of personal autonomy, self-ownership and self-determination of human beings over their own body. In the context of human rights, violation of bodily integrity of another person is considered unethical, intrusive and possibly criminal. Available information indicates that violations of bodily integrity are increasingly perpetrated using information and communication technology (ICT). Digital violence against women and girls constitutes violence. Like all other forms of violence, it is rooted in gender inequality and discrimination against women and girls. In 2021, UNFPA launched Bodyright, a global initiative to protect women from gender-based violence perpetrated through technology. Bodyright is a brand new "copyright" symbol to claim and seek protection from digital violence. The overall goal is to encourage tech companies and policymakers to take action against violence against women and protect bodily autonomy on the internet as seriously as they take action against copyright infringements.

The issue of violation of human rights through high-tech activities is a challenge not only for lawyers and people who are dealing with the protection and promotion of human rights but also for every person, considering that high technologies penetrate into all spheres of life. High technologies gain importance when they are used to perform activities which affect the rights of individuals, especially when they penetrate into the sphere of his/her private life and when they become an object through which ***the right to privacy*** is violated and/or ***a person's safety is threatened***. According to international human rights standards, in such situations the States are required to provide protection mechanisms. An additional challenge is when high technologies are used to jeopardize the rights of people who are considered particularly vulnerable, such as children, women and people with disabilities. This form of violence against women and girls is rooted in both gender inequality and discrimination against women and girls and is perpetrated in various forms, such as cyber harassment, the use of hidden cameras and spyware, control of women's access to technology, tracking women's movements with the GPS technology, hate speech, doxxing and the non-consented use of images and videos, such as deepfakes.

1. Purpose and Scope of Work

Free and safe use of resources, including ICT, without fear of violence or harassment, is a prerequisite for women and girls to exercise effectively their right to bodily autonomy. This requires both protection from and prevention of acts of online violence, while respecting the right to freedom of expression and the right to privacy and data protection. This, in turn, requires that the States have legislation, efficient institutions and clear procedures in place to provide protection and prevention from violence perpetrated through ICT.

Therefore, in order to be able to operationalize the bodyright, changes are needed on four systemic levels:

a) *legislation* (how to harmonize the existing legislative frameworks so as to protect women and girls from violence against women);

b) *context/framework* (how to simplify the overall understanding of what bodyright really means for women and girls, decision makers and people of influence, and the general public);

c) *technology* (which technological solutions, policies and practices need to be changed in order for the body-right to be actually implemented) and

d) *advocacy, communication and public attitudes* (how to build the alliances and coalitions needed to ensure that changes on all levels are desired and accepted).

The scope of this work is limited to an analysis of the existing legal provisions governing the prevention of gender-based violence perpetrated through ICT in Bosnia and Herzegovina, Serbia, North Macedonia and Kosovo* (hereinafter: the analysis) and expert recommendations aimed at improving the relevant legislation. Since the legislative framework serves as a basis for establishing institutional mechanisms which ensure implementation of the laws, the analysis will also include the mapping of established institutional mechanisms.

2. Work Principles

The analysis process respects fully the principles of human rights and responsibilities as well as of the rule of law and rationality. This implies that the existing legislation in the States covered by this study was analyzed against international human rights standards for the protection from gender-based violence, with a special reference to its causal relationship with ICT. Based on the analysis, proposals are made for its improvement, with maximum respect for the already established structures. The principle of cost-effectiveness and rationality demands that the recommendations focus on improving the existing structures through their adjustments, innovation and optimization.

3. Methodology

The analysis is structured in such a way that it describes the country's state of implementation of the obligations arising under international standards; the legislation preventing gender-based violence, which includes the legislation prescribing gender equality and prohibition of discrimination, gender-based violence, and domestic violence; the legislation regulating information and communication technology, including prevention and punishment of abuse of ICT, especially for the purpose of committing criminal acts against women and girls; the criminal legislation, and the legislation relating to freedom of access to information and personal data protection.

³ Action Coalition leaders worked together to develop a plan of acceleration actions in key areas for the lives of women and girls. The Generation Equality Forum, which took place in Paris on 30 June-2 July 2021, was the largest meeting on gender equality since Beijing in 1995 and represents a key moment for the states, leaders, activists and organizations to commit themselves to transformative change for future generations.

Bosnia and Herzegovina

Bosnia and Herzegovina has an obligation arising under Article II of the Constitution of Bosnia and Herzegovina to ensure the highest level of internationally recognized human rights and fundamental freedoms, while “*the general principles of international law are an integral part of the legal order of Bosnia and Herzegovina and both entities*”. The Constitution prohibits discrimination and guarantees the enjoyment of the rights and freedoms provided for in this document to all persons without distinction on any ground, including sex.

Bosnia and Herzegovina (BiH) ratified most of the international human rights standards, including those related to the protection of women against gender-based violence. The most important among them are the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)⁴ and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention).

1. Implementation of International Obligations

1.1. Implementation of Obligations Under the Convention on the Elimination of All Forms of Discrimination Against Women

In its Concluding Observations on the Sixth Periodic Report of BiH⁵, the Committee on the Elimination of Discrimination against Women (CEDAW) welcomes the progress achieved since the consideration in 2013 of the combined Fourth and Fifth Periodic Reports⁶ and is concerned, however, about the general lack of awareness in the State Party of the Convention, the Optional Protocol and the Committee’s General Recommendations (point 9). Bosnia and Herzegovina is recommended to intensify its efforts to distribute the present concluding observations of the Committee, the Convention, the Optional Protocol and the Committee’s general recommendations among all stakeholders in the State Party, in particular government officials, politicians and the judiciary, at all levels of government, and to raise awareness of the public at large, including men and women, of women’s rights under the Convention, the Optional Protocol and legislation prohibiting discrimination against women (point 10).

In the *section on legislation*, recalling its General Recommendation No. 28 (2010) on the core obligations of States parties under Article 2 of the Convention, the Committee recommends that Bosnia and Herzegovina, without further delay, amend its legislation to incorporate a comprehensive definition of discrimination against women that covers direct and indirect discrimination in the public and private spheres and intersecting forms of discrimination, in line with Article 1 of the Convention⁷, and continue its efforts to harmonize legislation and policies at all levels to enhance the enjoyment by women of their rights in all areas covered by the Convention, including with regard to protection from domestic violence, health and rural development, and allocate sufficient human, technical and financial resources to monitoring and assessing the impact of legislation on gender equality at the state, entity, district and canton levels (point 11).

⁴ Bosnia and Herzegovina took it over by succession on 1 September 1993 and it became effective on 1 October 1993.

⁵ CEDAW/C/BIH/CO/6, 8 November 2019, available at: https://arsbih.gov.ba/wp-content/uploads/2020/06/BOS_CEDAW-C-BIH-Concluding-Observations-6_AsAdopted.pdf, accessed on: 4 October 2022.

⁶ CEDAW/C/BIH/4-5

⁷ The same was recommended to the authorities in BiH in the Concluding Comments of the Committee in the previous periodic cycle, (CEDAW/C/BIH/CO/4-5, para. 14)

The Committee also points to the persistence of *discriminatory stereotypes* concerning the roles and responsibilities of women and men in the family and in society. In particular, the Committee reiterates its concern about the absence of a comprehensive strategy and dialogue to eliminate discriminatory stereotypes that perpetuate sexist and misogynistic attitudes within society and online threats at women politicians, journalists, human rights defenders and women’s non-governmental organizations, including by high-level politicians, and the lack of effective sanctions for such acts, as well as the persistence of sexist portrayals of women in the media. The authorities are recommended to develop a comprehensive strategy to eliminate discriminatory gender stereotypes concerning the roles and responsibilities of women and men in the family and in society and harmonize relevant legislation in line with Recommendation CM/Rec (2019) 1 on preventing and combating sexism, adopted by the Committee of Ministers of the Council of Europe, and to conduct nationwide awareness-raising and education campaigns on gender equality targeting women and men at all levels of society, including political leaders. The importance of establishing a mechanism to monitor the use of sexist and misogynistic language and hate speech in public discourse and sexist portrayals of women in the media was also emphasized. The Committee also recommends that the State party raise awareness among journalists and media professionals of the importance of positive portrayals of women as active agents of change and adopt effective measures for the protection of women politicians, journalists, human rights defenders and women’s non-governmental organizations to enable them to freely undertake their important work without fear or threat of violence or harassment (points 23 and 24).

Regarding *gender-based violence against women*, the Committee expresses its concern about underreporting of cases of gender-based violence, including domestic violence, by women and girls owing to social stigma and the lack of trust in the law enforcement authorities; the fact that judges, prosecutors, lawyers, police officers, health professionals and staff of the Social Welfare Centers who work with victims of gender-based violence lack specialized knowledge on gender issues; and the low prosecution and conviction rates in cases of non-physical violence against women, such as psychological violence, and the lack of disaggregated data on all forms of gender-based violence (point 25).

Recalling its General Recommendation No. 35 (2017) on gender-based violence against women, updating General Recommendation No. 19, the Committee recommends that BiH provide women who are victims or survivors of gender-based violence, including those belonging to disadvantaged groups, with adequate support and assistance⁸.

1.2. Implementation of Obligations Under the Istanbul Convention

Bosnia and Herzegovina was among the first countries in Europe to sign and ratify the Istanbul Convention⁹, which entered into force on 1 August 2014. For the purpose of implementing the Istanbul Convention, BiH adopted in 2015 a Framework Strategy for the Implementation of the Istanbul Convention for the period 2015-2018.

⁸ Support and assistance should include: free legal aid, access to accessible shelters, medical treatment and psychosocial counselling, and provision of financial support to civil society organizations that give assistance to such victims/ survivors of gender-based violence. It is necessary to allocate adequate funding to civil society organizations that operate hotlines for victims/ survivors of domestic violence and to ensure that all forms of gender-based violence against women, including domestic violence, are duly investigated and prosecuted, that perpetrators are adequately punished and that victims have access to appropriate redress, including compensation. The Committee emphasized the importance of assessing the capacities of the judiciary, the police and other law enforcement officers involved in the prevention of gender-based violence against women, and creating a uniform data collection system on all forms gender-based violence, disaggregated by age, ethnicity, disability, type of violence and the relationship between the perpetrator and the victim. (item 26).

⁹ BiH signed the Istanbul Convention on 8 March 2013, and ratified it on 7 November 2013.

2. Legislation Related to Prevention of Gender-based Violence

The relevant legislation in BiH which ensures gender equality and the prevention of gender-based violence consists of the laws passed at the level of BiH - the Law on Prohibition of Discrimination and the Law on Gender Equality - as well as the laws passed at the entity level and in the Brčko District of BiH.

2.1. Law on Prohibition of Discrimination

The Law on Prohibition of Discrimination¹⁰ (LPD) establishes a framework for the realization of equal rights and opportunities by all persons in Bosnia and Herzegovina and regulates the system of protection against discrimination, defines responsibilities and obligations of the legislative, judicial and executive authorities, as well as of the legal entities and individuals with public authority, to provide, through their actions, the protection, promotion and creation of conditions for equal treatment. The LPD defines discrimination, both direct and indirect, and its forms (harassment, sexual harassment, mobbing, segregation, issuing orders to other persons to commit discrimination and abetting in discrimination), competent authorities, areas of its application, procedures for the protection against discrimination, including the issue of the burden of proof where the burden of proof lies with the opposite party if the person considered to be discriminated against makes it probable that discrimination has occurred. The LPD defines discrimination as follows:

„any different treatment, including any exclusion, limitation or preference based on real or perceived grounds of any person or group of persons, their relatives or persons otherwise associated with them, on the grounds of their race, skin color, language, religion, ethnicity, disability, age, national or social background, belonging to a national minority, political or other conviction, property, membership in a trade union or any other association, education, social status and sex, sexual orientation, gender identity, sexual characteristics or any other circumstance with the purpose or effect of preventing or endangering recognition, enjoyment or realization, on an equal footing, of the rights and freedoms of any person in all areas of life” (Article 2, paragraph 1).

Regarding ICT-facilitated violence, it is necessary to mention the provisions of Article 4, paragraphs 1 and 2 of the LPD, which define harassment and sexual harassment as special forms of discrimination. Under these provisions:

(1) „**Harassment** shall be considered to be any unwanted conduct motivated by some of the grounds specified in Article 2, paragraph (1) of this Law, which aims at, or has the effect of, violating the dignity of a person and creating an intimidating, hostile, degrading, demeaning or offensive environment.

(2) **Sexual harassment** shall be considered to be any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, especially when it creates intimidating, hostile, degrading, demeaning or offensive environment.”

The LPD also provides for civil liability for discrimination. It requires that other regulations be harmonized with its provisions, it has priority over other law and in case of inconsistency, the LPD takes precedence. All public institutions and other legal entities were obliged to embody the principles of equal treatment into their general legal acts which are already in place or into separate legal acts which they will adopt and to ensure effective internal procedures for the protection against discrimination (Article 24).

By analyzing the LPD it can be concluded that paragraphs 1 and 2 of Article 4 can be linked to violence against women in the digital environment, because any unwanted form of behavior motivated by any ground specified in Article 2, paragraph 1 of the LPD is considered harassment, while sexual harassment is any form of unwanted verbal, non-verbal or physical behavior of a sexual nature with the purpose or effect of violating the dignity of a person, especially when it creates intimidating, hostile, degrading, demeaning or offensive environment.

¹⁰ An unofficial consolidated version of the Law on Prohibition of Discrimination, which includes the provisions of the Law on Prohibition of Discrimination, (“Official Gazette of BiH”, 59/09 and 66/16).

Recommendation

Article 4 (Other Forms of Discrimination) should be amended by adding a new paragraph as follows:

“Online sexual harassment’ is any form of verbal, non-verbal or other conduct of a sexual nature, with the purpose or effect of violating the dignity of a person or creating an intimidating, hostile, degrading or offensive environment, approach or practice, through electronic means of communication”.

2.2. Law on Gender Equality

The Law on Gender Equality¹¹ (LGE) guarantees gender equality for all, in all spheres of society, including, but not limited to, education, economy, employment and labor, social and health care, sports, culture, public life and the media. The law prohibits discrimination on the grounds of sex and sexual orientation. Discrimination on the grounds of sex exists, if a person or a group of persons is placed in a less favorable on grounds of sex. The LGE determines that discrimination based on sex can be: direct, indirect, harassment, sexual harassment, incitement to discrimination and gender-based violence (Article 3).

Acts of harassment and sexual harassment are defined in the LGE in the same way as in the LPD. The LPD also prohibits gender-based violence, defines what is considered to be this form of violence, as well as the obligations of the competent authorities in terms of elimination and prevention of this unwanted social phenomenon (Article 6).

Gender-based violence is *any action that causes or may cause physical, psychological, sexual or economic harm or suffering, as well as the threat of such actions that prevent a person or group of persons from enjoying their human rights and freedoms in the public and private spheres of life* (Article 6, paragraph 2). Under the LPD, gender-based violence includes, but is not limited to: violence that occurs in the family or household; violence that occurs in a wider community; violence committed or tolerated by the authorities and other authorized bodies and individuals; gender-based violence in an armed conflicts (Article 6, paragraph 3).

Competent authorities are obliged to take appropriate measures to eliminate and prevent gender-based violence in the public and private spheres of life and to provide instruments for protection of, and assistance and compensation to victims. The obligation of the competent authorities to undertake measures in education, without limitation, in order to eliminate prejudices, customs and all other practices based on the idea of inferiority or superiority of any sex and stereotyped roles of male and female persons is particularly emphasized (Article 6, paragraphs 4 and 5).

The LGE also establishes a criminal offense as follows: whoever commits an act of gender-based violence, harassment or sexual harassment which threatens peace, psychological health and physical integrity shall be punished by imprisonment for a term between 6 months and 5 years (Article 29). The normative approach to criminal law in Bosnia and Herzegovina is such that all criminal offenses are defined by the Criminal Code of BiH and the Criminal Codes of the entities and the Brčko District of BiH. The only exception is the LGE because the Criminal Code did not exist at the state level in BiH when the LGE was drafted and adopted and given the specificity of the criminal offense and the lack of case law, the intention was to establish a good practice through responses of the Prosecutor’s Office of BiH and the Court of BiH. Unfortunately, almost 20 years since the passage of the law, this provision has not yet been implemented, which raises the question of the need to add this criminal offense to the Criminal Code of BiH.

The LGE also prescribes civil liability for a legal entity and a responsible officer in the legal entity in case of their failure to take appropriate measures and to use effective protection mechanisms against gender-based discrimination, harassment and sexual harassment (Article 30, paragraph 1, sub-paragraph a). According to the LGE, all state and entity-level laws and other relevant regulations should be harmonized with its provisions within 6 months at the latest.

¹¹ “Official Gazette of BiH”, Nos. 16/03, 102/09 and 32/10.

Analyzing the LGE from the perspective of its impact on gender-based violence perpetrated through ICT, it can be concluded that the provision of Article 5, which defines the terms “harassment” and “sexual harassment”, can be linked to violence against women in the digital environment. In this context, the provisions of Article 6, paragraphs 2 and 3, can be considered, especially in terms of defining the elements of gender-based violence.

Recommendation

Article 5 of the LGE should be amended by adding a new paragraph as follows:

“Online sexual harassment” is any form of verbal, non-verbal or other conduct of a sexual nature, with the purpose or effect of violating the dignity of a person or creating an intimidating, hostile, degrading or offensive environment, approach or practice, through electronic means of communication;

Paragraph 3, Article 6 should be amended by adding a new sub-paragraph as follows:

- violence in the digital environment

Article 29 of the LGE, which defines the crime of gender-based violence, should be added to the BiH Criminal Code.

2.3. Law on the Protection from Domestic Violence

Domestic violence is prohibited by the Law on the Protection from Domestic Violence of the BiH Federation¹² (LPfDV FBiH), the Law on the Protection from Domestic Violence of the Republika Srpska¹³ (LPfDM RS) and the Law on the Protection from Domestic Violence of the Brčko District of BiH¹⁴ (LPfDM BD) and is criminalized by the entity-level Criminal Codes and the Criminal Code of the Brčko District of BiH. These laws define domestic violence as acts by which a family member causes physical, psychological or sexual pain or suffering and/or economic harm and as threats causing fear of physical, psychological or sexual violence and/or economic harm to another family member (Article 7, paragraph 1 of the LPfDV FBiH; Article 6 of the LPfDV RS; and Article 2, paragraph 1, sub-paragraph c) of the LPfDV BD). The acts which are considered domestic violence are not uniformly defined in all of the Domestic Violence Laws.

For example, the LPfDV RS defines the act of “sexual violence”; the LPfDV FBiH defines the act of “sexual harassment”, while the LPfDV BD does not define this act at all. The LPfDV RS and the LPfDV BD define that acts of violence may be perpetrated against a member of the family or domestic union, while the LPfDV FBiH defines it only in relation to a family member. Also, the LPfDV RS contains a provision under which “any other act that constitutes violence in the family or domestic union” is also considered as domestic violence (Article 6, paragraph 2, sub-paragraph p). The LPfDV BD contains a provision under which “other acts of domestic violence which do not contain the characteristics of a criminal offence of violence in the family or domestic union” are also considered as domestic violence (Article 5, paragraph 1, sub-paragraph l), which raises the issue of different definitions of domestic violence in this law and the Criminal Code of BD BiH, and thereby of the possibility to prosecute perpetrators of domestic violence.

Furthermore, it is evident from the above analysis that the laws on protection against domestic violence, by their definitions of domestic violence, do not include cases of violence perpetrated through information and communication technology. However, experience leads to a conclusion that people who live together in a marriage, a cohabiting union or a domestic partnership, often share, on the basis of a relationship of trust, intimate photos or videos and other materials which contain personal data, which are sometimes abused after such a union or partnership terminates. These are cases of the so-called revenge pornography, when an unhappy or abandoned partner distributes pornographic photos or videos showing his/her former partner through various social networks or in another way, without his/her partner’s knowledge and consent. Photos or videos may

have been taken with the prior consent of another person, but, most often, after the end of the relationship, their distribution and sharing to other persons take place without the consent of that person, with the aim of discrediting or psychologically harming him or her.

Recommendation

1.

In order to ensure equal protection from domestic violence, regardless of where the violence occurs, **horizontal harmonization of the laws on the prohibition of domestic violence** should be carried out, primarily in the definitions of acts considered to constitute domestic violence.
2.

To amend the provisions of the Law on the Protection from Domestic Violence of the Federation of BiH, the Law on the Protection from Domestic Violence of the Republika Srpska and the Law on the Protection from Domestic Violence of the Brčko District of BiH, which define acts of domestic violence by adding the following provisions:

• Photographing or filming a member of the family or domestic union with the aim of discrediting him or her or belittling his or her personality,

• Unauthorized release of photos or videos of a member of the family or domestic union through information and communication technology i.e. unauthorized sharing of photos or videos of a member of the family or domestic union through social networks, regardless of whether they were taken with or without the consent of a member of the family or domestic union.

2.4. Criminal Law Protection from Gender-Based Violence

The most important form of protection against gender-based violence is criminal law protection. The Istanbul Convention specifies various forms of gender-based violence and the obligations of the States to criminalize them. The complexity of the structure of BiH has led to a situation where gender-based violence is covered by the four Criminal Codes: the Criminal Code of BiH (CC BiH); the Criminal Code of the Federation of BiH¹⁵ (CC FBiH), the Criminal Code of the Republika Srpska¹⁶ (CC RS) and the Criminal Code of the Brčko District of BiH¹⁷ (CC BD). These Codes define domestic violence as a criminal offense and establish a number of other criminal offenses which are defined in a gender-neutral manner, except those offenses which by their nature refer only to women as victims. Both entity-level Criminal Codes and the Criminal Code of BD define a hate crime, although there are differences in the grounds specified in the definitions. Under Article 2, paragraph 11 of the CC FBiH, a hate crime is any crime committed on the grounds of another person’s race, skin color, religion, national or ethnic origin, language, disability, **sex, sexual orientation or gender identity**.¹⁸ Such behaviors will be taken as an aggravating circumstance unless this law explicitly prescribes a more severe punishment for an aggravated form of hate crime.”

It is also important to point out that the gender-based violence provisions in the CC RS differ from the provisions in the CC FBiH and the CC BD as a result of the reform of the legislation in 2017 which brought them into line with the provisions of the Istanbul Convention by introducing new offences, such as: female genital mutilation, forced marriage, forced sterilization, stalking and sexual harassment. Changes were made also to the provisions on mitigation of criminal sentencing, which prohibit mitigation in the sentencing for the criminal offenses of rape, sexual intercourse with a person who is helpless, sexual intercourse with a child under the

¹² “Official Gazette of FBiH”, Nos. 20/2013 and 5/2021
¹³ “Official Gazette of the Republika Srpska”, Nos. 102/2012, 108/2013, 82/2015 and 84/2019
¹⁴ “Official Gazette of the Brčko District of BiH”, No. 7/2018

¹⁵ Criminal Code of the Federation of Bosnia and Herzegovina (“Official Gazette of the FBiH”, Nos. 36/2003, 21/2004 - corrigendum, 69/2004, 18/2005, 42/2010, 42/2011, 59/2014, 76/2014, 46/2016 and 75/2017).
¹⁶ Criminal Code of Republika Srpska, (“Official Gazette of the RS”, Nos. 64/2017, 104/2018 – Constitutional Court decision, 15/2021 and 89/2021).
¹⁷ Criminal Code of the Brčko District of BiH (“Official Gazette of the Brčko District of BiH”, No. 19/2020 – consolidated version).
¹⁸ Article 2, paragraph 42 of the CC of BD prescribes: “...on the basis of real or perceived ethnic or national origin, language or script, religious beliefs, race, skin color, gender, sexual orientation, political or other belief, social origin, social position, age, health status or other characteristics, or because of being associated with persons who have any of the aforementioned different characteristics”. In Article 123, paragraph 1, sub-paragraph 21: “Hate crime is an act committed in whole or in part on grounds of racial, national or ethnic background, language, religious belief, skin color, sex or sexual orientation, health status or gender identity of a person”.

age of 15 etc. Depriving of a life a member of the family or domestic union who was previously abused etc. is established as a separate form of aggravated murder but violence against women in the digital environment remains outside the criminal law. Gender-based violence in the CC of BD and the CC FBiH is regulated in a similar way. In view of the above, the criminal legislation of FBiH, BD BiH and RS is presented separately.

However, considering the specific form of digital violence against women and girls, often referred to as “revenge pornography”, there is a need to establish this act as a criminal offense in the Criminal Codes in Bosnia and Herzegovina. Revenge pornography is the distribution - mostly online - of explicit photos or videos of persons without their consent with the aim of humiliating or embarrassing them. Perpetrators are ex-partners or the men to whom sexually explicit videos or photos were sent in confidence but also hackers who by hacking someone else’s computer or mobile phone come into possession of such photos or videos without the consent of the person concerned, and share them on social networks. However, in addition to the perpetrator and the victim, the chain of revenge pornography includes all those individuals who further share such a photo or video and post comments on their content, and once a photo or video has reached the digital space, it remains there forever. Revenge pornography is an attack on bodily autonomy, on the privacy of every person and their right to express their sexuality. Sometimes, the identity of the victim, residence or workplace address etc. are provided with the shared content and all this leads to further violence against the victim perpetrated in the form of rude comments, offers and the like, which in turn leads to a violation of the dignity of the person concerned.

Such and similar acts must be criminalized and adequate criminal sanctions with a significant general preventive effect introduced, as was done in the Criminal Code of the Republic of Croatia¹⁹.

Recommendation

The CC FBiH, CC RS and CC BD should be amended by adding a new criminal offence - abuse of a sexually explicit photo or video - as follows:

- 1. *Whoever abuses a relationship of trust and without the consent of another person makes available to a third party a photo or image with sexually explicit content that was made with the consent of that person for personal use and thus violates the privacy of that person, shall be punished by imprisonment for a term of up to two years.*
- 2. *The sentence from paragraph 1 herein shall be imposed on anyone who creates a new or alters an existing sexually explicit photo or video of another person and uses that photo or video as if it was authentic and thus violates the privacy of that person.*
- 3. *If the criminal offense referred to in paragraphs 1 and 2 of this Article was perpetrated through a computer system or network or in another way which made it possible for a photograph or video to become available to a larger number of persons, the perpetrator shall be punished by imprisonment for a term between 6 months and 4 years.*
- 4. *Photographs and videos and means used to commit the criminal offense referred to in this Article shall be confiscated.*

2.4.1. Criminal Legislation of the BiH Federation and the Brčko District of BiH

The criminal offences of gender-based violence exist in various groups of crimes. In CC FBiH and CC BD, these are, for example, the following criminal offences: unlawful termination of pregnancy (Article 171, paragraph 2 of the CC FBiH and Article 168, paragraph 2 of the CC BD); the more serious form of the offence of inflicting a serious bodily injury - Article 172, paragraph 2 of the CC FBiH and Article 169, paragraph 2 of the CC BD) and the offence of inflicting a light bodily injury - Article 173, paragraph 2 of the CC FBiH and Article 170, paragraph 2 of the CC BD).

¹⁹ Article 144a criminalizes abuse of a sexually explicit video.

In case of the criminal offense punishable under Articles 172 and 173 of the CC FBiH and Articles 169 and 170 of the CC BD, the qualifying circumstance is the fact that the offense was perpetrated against a spouse or a person with whom the perpetrator lives in a domestic partnership or the parent of a child with whom the perpetrator does not live in a domestic partnership, which is in accordance with the provisions of the Istanbul Convention. Health in terms of this provision should be understood to mean physical and psychological health, and in this context, we can relate these offences to violence in the digital environment which quite often leads to a violation of the psychological integrity of the person who is the object of digital violence, that is, to significant psychological problems, anxiety, insomnia, restlessness, etc.

Acts of gender-based violence include all offences from the group of crimes against sexual freedom and morality (Chapter XIX) because the passive subject of these offences is usually a woman or a girl. However, we will not present them in detail here because they are not directly related to the subject matter of the research - digital violence against women and girls. However, it should be pointed out that these offences are not harmonized with the provisions of the Istanbul Convention. In addition, the CC FBiH and the CC BD do not contain a number of criminal offenses listed in the Istanbul Convention. These are: female genital mutilation, forced marriage, forced sterilization, stalking and sexual harassment. This is why, it is necessary to harmonize the provisions of the CC FBiH and the CC BD with the Istanbul Convention.

In the context of sexual violence in the digital environment, the relevant criminal offense is the one punishable under Article 189 of CC FBiH and Article 186 of CC BD - Unauthorized optical recording - and Article 186 of CC FBiH and Article 183 of CC BD - Violation of privacy of letters or other mail. We believe that this offence, especially its form mentioned in paragraph (2) could extend to situations in which the content of someone else’s letter or other mail refers to photos, recordings or videos depicting intimate parts of another person’s body or another person in an intimate relationship.

Recommendation

- 1. **The basic form of the criminal offense from Article 189 of the CC FBiH and Article 186 of the CC BD - Unauthorized optical recording** - should be redrafted in paragraph 1 to provide for punishment for every unauthorized recording that violates or jeopardizes the privacy of another person, regardless of where it was made, and not only if such a recording was made “on the person’s premises”. In this sense, the basic form of the offence in paragraph 1 could read as follows: *“Whoever makes a photograph, film, video or other recording of another person without authorization and thereby interferes with his/her personal life or whoever hands such a recording to a third party or shows him or her such a recording or enables him or her to familiarize themselves with the content thereof in some other way shall be punished by a fine or imprisonment for a term of up to three years”.*
- 2. **To introduce a criminal offense of unauthorized publication and presentation of other people’s texts, portraits and recordings** (such an offense exists in the Criminal Code of Serbia, Article 145 - Unauthorized publication and presentation of other people’s texts, portraits and recordings). The offence could be defined as follows:

Unauthorized publication and presentation of other people’s texts, portraits and recordings

(1) Whoever publishes or presents a text, portrait, photograph, video, film or phonogram of a personal nature without the consent of the person who made the text or to whom the text refers, i.e. without the consent of the person shown in the portrait, photograph, video or film or whose voice is recorded on a phonogram, or without the consent of another person whose consent is required by law, and thus interferes with the personal life of that person, shall be punished by imprisonment for a term of up to two years.

(2) If the offence referred to in paragraph 1 of this Article is committed against a member of the family or domestic union or against another person with the intention of causing harm to that person’s reputation, the perpetrator shall be punished by imprisonment for a term between 6 months and three years.

(3) If the offence referred to in paragraphs 1 and 2 of this Article is committed by an official while performing his duties, he shall be punished by imprisonment for a term between 1 and 5 years.

CC FBiH (Article 222) and CC BD (Article 218) define the crime of domestic violence in the same way.²⁰

Recommendation

Article 222 of the FBiH CC and Article 218 of the BD CC should establish a special form of domestic violence: *“Unauthorized publication or sharing of photographs and recordings related to the intimate life of a member of the family or domestic union through information and communication technology, regardless of whether the perpetrator came into possession of recordings or photographs with or without the consent of the victim”.*

2.4.2. Criminal legislation of the Republika Srpska

The criminal offense of sexual harassment is punishable under the **CC RS** (Article 170): the person who sexually harasses another person who is in a relationship of subordination to or dependency on him or who is particularly vulnerable due to age, illness, disability, addiction, pregnancy, severe physical or mental impairments, shall be punished by imprisonment for a term of up to two years. The law also defines that sexual harassment is any verbal, non-verbal or physical unwanted behavior of a sexual nature aimed at causing harm to the dignity of a person in the sphere of sexual life, which causes fear or creates a hostile, humiliating or offensive environment. Since violence against women in the digital environment often contains the characteristics of sexual harassment, the criminal offense from Article 170 of the Criminal Code of the RS should be amended by introducing a more severe form of the offense that would exist if sexual harassment is perpetrated through information and communication technology.

Recommendation

Article 170 of the CC RS should be amended by adding the criminal offence as follows:

- 1. KWhoever sexually harasses another person who is in a relationship of subordination to or dependency on him or who is particularly vulnerable due to age, illness, disability, addiction, pregnancy, severe physical or mental disability, shall be punished by imprisonment for a term of up to two years.
- 2. If sexual harassment is perpetrated through information and communication technology, the perpetrator shall be punished by imprisonment for a term between 6 months and three years.
- 3. Sexual harassment is any verbal, non-verbal or physical unwanted behavior of a sexual nature with the purpose of violating the dignity of a person in the sphere of sexual life, and which causes fear or creates a hostile, humiliating or offensive environment.

20 Domestic violence

(1) Whoever by violence, insolent or arrogant behaviour violates peace, physical integrity or mental health of a member of his family, shall be punished by a fine or imprisonment for a term not exceeding one year.

(2) Whoever perpetrates the criminal offence referred to in paragraph 1 of this Article against a member of his household, shall be punished by a fine or imprisonment for a term not exceeding three years.

(3) If in the course of the perpetration of criminal offence referred to in paragraphs 1 and 2 of this Article, a weapon, dangerous object or other instrument suitable to inflict grave bodily injury or impair health has been used, the perpetrator shall be punished by imprisonment for a term between three months and three years.

(4) If, by the criminal offence referred to in paragraph 1 through 3 of this Article, a serious bodily injury was inflicted on a family member or his health is severely impaired; or if the criminal offence referred in paragraph 1 through 3 of this Article is perpetrated against a child or juvenile, the perpetrator shall be punished by imprisonment for a term between one and five years.

(5) If, by the criminal offence referred to in paragraphs 1 through 4 of this Article, a death of a family member is caused, the perpetrator shall be punished by imprisonment for a term between two and fifteen years.

(6) Whoever deprives of a life a family member whom he has been previously abusing, shall be punished by imprisonment for a term of no less than ten years or by long-term imprisonment.

The Criminal Code of the RS also prescribes the criminal offense of violation of privacy of letters or other mail (Article 153). If the content of the letter or other mail, which was obtained in the manner as described in paragraph 1 of this Article, refers to photographs or recordings of another person with sexual content and is shared without authorization over the internet, it could be treated as the above offence.

Further, the CC RS also defines the criminal offense of unauthorized photography (Article 156). This criminalization refers to the sharing of photos or recordings made without authorization, that is, photos and recordings made without the consent of the person to whom they refer. However, in practice, there are more frequent cases of sharing photos or recordings made by another person or photos and recordings that were made with the consent of the person to whom they refer, but are further distributed to third parties without their consent.

Recommendation

The CC RS should be amended by adding the following offence:

“Unauthorized publication and presentation of other people’s texts, portraits and recordings

- 1. *Whoever publishes or presents a text, portrait, photograph, recording, film or phonogram of a personal nature without the consent of the person who made the text or to whom the text refers, i.e. without the consent of the person depicted in the portrait, photograph, video or film or whose voice is recorded on a phonogram, or without the consent of another person whose consent is required by law, and thus interferes with the personal life of that person, shall be punished by imprisonment for a term of up to two years.*
- 2. *If the offence referred to in paragraph 1 of this Article is committed against a member of the family or domestic union or against another person with the intention of causing harm to that person's reputation, the perpetrator shall be punished by imprisonment for a term between 6 months and three years.*
- 3. *If the offence referred to in paragraphs 1 and 2 of this Article is committed by an officer while performing his duties, he shall be punished by imprisonment for a term between 1 and 5 years.”*

The criminal offence of domestic violence in the family or domestic union is punishable under the provisions of Article 190 of the CC RS.

Recommendation

Izvršiti dopunu člana 190 KZ RS na način da se kao poseban oblik ovog djela propiše radnja: *„neovlašteno objavljivanje ili dijeljenje fotografija i snimaka koji se odnose na intimni život člana porodice ili porodične zajednice putem informaciono komunikacione tehnologije, bez obzira na činjenicu da je učinilac u posjed snimaka ili fotografija došao sa ili bez pristanka žrtve“.*

2.5. Legislation Governing Information and Communication Technology

The Council of Europe Convention on Cybercrime is the first international agreement, i.e. legal act, which regulates the substantive, procedural and international legal framework of criminal offenses committed through computers, computer networks or by using the internet and other computer networks of an international or local character.

The criminal offences established by the Convention are: 1. unauthorized (illegal) access, 2. unauthorized (illegal) interception, 3. data interference, 4. system interference, 5. misuse of a device, 6. computer-related forgery, 7. computer-related fraud, 8. offenses related to child pornography and 9. offenses related to infringements of copyright and related rights.

Section 2 of Title II, when it comes to the procedural provisions, prescribes: 1. expedited preservation of stored computer data, 2. expedited preservation and partial disclosure of traffic data, 3. production order, 4. search and seizure of stored computer data, 5. real-time collection of traffic data, 6. interception of content data.

The criminal offenses defined in the Council of Europe Cybercrime Convention represent the minimum regulation and prescription of the criminal law norms in domestic legislation of the countries which have ratified the Convention.

The Convention defines in Chapter 1 such terms as computer system, computer data, service provider, traffic data, etc. which are transposed to a significant extent into domestic legislation.

With its decision to ratify the 2006 Convention on Cybercrime, Bosnia and Herzegovina undertook to adopt the concepts relating to computer-related crime, established by the Convention, to harmonize its substantive and procedural criminal law and to establish international cooperation in combating computer-related crime. By ratifying the 2006 Additional Protocol to the Convention on Cybercrime concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems, BiH committed itself to criminalizing the acts of a racist and xenophobic nature, perpetrated through computer systems, which were not covered by the previously adopted Convention.

The **CC BiH** does not define the terms relevant for computer-related crime. It does not define cybercrime, i.e. computer-related crime, except that such terms as computer program and the like are used in legal descriptions of some criminal offences (see, for example, the criminal offense of unauthorized use of copyright, Article 243, paragraph 3).

The **CC FBiH** and **CC BD**²¹ criminalize the offenses within computer-related crime - criminal offenses against electronic data processing systems. Criminal prosecution is conducted ex officio. These Codes do not provide definitions of the terms relevant for computer-related crime.

Regarding violence against women in the digital environment, *unauthorized access to a protected system and network of electronic data processing* is criminalized in Article 397 of the CC FBiH and Article 391 of the CC BD. We believe that this offence could cover cases where someone gains an unauthorized access to someone else's profile on a social network without authorization and takes intimate photos or recordings and later shares them over the internet.

The **CC RS** only partially defines the meaning of the terms relevant for computer-related crime. Under Article 123, paragraph 18, *“a movable object is also any produced or collected energy for providing light, heat or movement, a telephone impulse as well as registered data that is the result of electronic data processing (computer data or program).”*

The law establishes criminal offenses of computer-related crime in Chapter XXXII under the title “Criminal Offences against Security of Computer Data” (Articles 407 - 413). Within this group of criminal acts, the act punishable under Article 411 - *unauthorized access to a protected computer, computer network, telecommunication network and electronic data processing* - is relevant for violence against women in the digital environment.

Recommendation

It is necessary to harmonize the Criminal Codes in BiH with the Convention on Cybercrime and its Protocol.

²¹ Chapter XXXII of the CC FBiH and CC of BD BiH: “Criminal Offences Against Electronic Data Processing System” Articles 393–398 and Chapter XXXII of the CC BD BiH: entitled “Criminal Offences Against Electronic Data Processing System, Articles 387–392.

2.6. The Criminal Procedure Code of Bosnia and Herzegovina

The Criminal Procedure Code of Bosnia and Herzegovina (CPC) provides in Article 20, sub-paragraphs u) and v), definitions of the terms “computer system” and “computer data”, under which *“computer system”* is any device or a group of mutually connected or linked devices, one or more of which are automatically processing data on the basis of a program, and *“computer data”* denotes any presentation of facts, information or concepts in a form suitable for processing in a computer system, including any program that is able to cause the computer system to execute certain function.

The Criminal Procedure Code of the BiH Federation (**CPC FBiH**), the Criminal Procedure Code of the Brčko District of BiH (**CPC BD**) and the Criminal Procedure Code of the Republika Srpska (**CPC RS**) also provide the same definitions of these terms.

2.7. Law on Communications of Bosnia and Herzegovina

The 2003 Law on Communications of Bosnia and Herzegovina governs the area of communications in BiH and establishes and regulates the work of the Regulatory Communications Agency of Bosnia and Herzegovina (CRA) in accordance with the Constitution of Bosnia and Herzegovina, which provides for the establishment and functioning of common and international means of communication. The Ministry of Communications and Transport of BiH and the Communications Regulatory Agency (CRA) play a significant role in regulating the system of providing communication and telecommunication services in BiH and thereby also in providing certain cybercrime prevention.²²

Regarding the criminal law protection against various forms of violence perpetrated through modern technologies, i.e. through ICT in criminal legislation in Bosnia and Herzegovina, it is worth mentioning **the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (also known as the Lanzarote Convention)**, which was signed and ratified by BiH and almost completely implemented in the Republika Srpska legal system through the provisions of Chapter XV - Criminal offences of sexual abuse and exploitation of children - and the adoption of the Law on a Special Registry of Persons Convicted of Criminal Offences of Sexual Abuse and Exploitation of Children, which establishes the so-called “registry of pedophiles”. This refers primarily to the protection of children from sexual exploitation and abuse, and it is related to the subject matter of the analysis as the analysis focuses on “digital violence against women and girls”. Bearing in mind the fact that a child as a victim of a criminal offense is defined in the RS Criminal Code as a person under 18 years of age, we believe that it is necessary to include this part of the legal norms in this analysis.

The criminal offence of abuse of a child for pornography falls under the group of crimes in Chapter XV (Article 176). Under this Article, *“whoever without authorization records, produces, offers, makes available, distributes, disseminates, imports, exports, obtains for himself or for another, sells, gives, shows or possesses child pornography or knowingly accesses it through a computer network”* shall be punished.²³ Under the definition of the criminal offence of introducing children to pornography, *“Whoever sells, gives, shows or publicly presents, through a computer network or other forms of communication or otherwise makes accessible to the child below the age of 15 texts, images, audio-visual material or other pornographic content or shows him or her a pornographic performance, shall be punished by imprisonment for a term between six months and three years”* (Article 177, paragraph 1).

²² The Ministry of Communications and Transport of Bosnia and Herzegovina carries out activities related to the drafting and proposing of legal regulations in the field of communications and telecommunications, monitoring the implementation of the laws and other regulations, activities related to international cooperation, etc. The CRA, on the other hand, as an operationally independent and non-profit institution with the status of a legal entity under the laws of BiH, performs its duties in accordance with the objectives and regulatory principles such as regulation of broadcasting and public telecommunication networks and services, including the issuance of licenses, pricing, interconnection and defining the basic conditions for securing shared and international means of communication, etc.

²³ Under Article 176, paragraph 3, the criminal offense of “Exploiting Children for Pornographic Performances”: “The prison sentence from paragraph 1 of this Article shall be imposed on anyone who watches a pornographic performance live or through means of communication if he or she knew or should have known that a child participates in such a performance”.

The criminal offense of using a computer network or communication by other technical means to commit crimes of sexual abuse or exploitation of a child, Article 178, reads as follows:

1.

“Whoever arranges a meeting with a child above the age of fifteen, using a computer network or communication by other technical means, for the purpose of having a sexual intercourse or equivalent sexual acts or producing pornographic material or other forms of sexual exploitation, and appears at the agreed place for the purpose of meeting the child, shall be punished by imprisonment for a term between one and five years.
2.

If the offense referred to in paragraph 1 of this Article was committed against a child under the age of fifteen, the perpetrator shall be punished by imprisonment for a term between two and eight years.”

The CC FBiH and CC BD do not contain the above provisions.

Recommendation

To harmonize the CC FBiH and CC BD with the Council of Europe Convention for the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention).

2.8. Personal Data Protection Legislation

The issue of personal data protection in BiH is governed by the Personal Data Protection Law (PDPL)²⁴. According to the PDPL, personal data includes any information related to an individual who is identified or identifiable, while special categories of data are considered to be all the personal data that reveals, among other things, racial origin, national or ethnic origin, political opinion or party affiliation, or trade union membership, religious, philosophical or other convictions, health condition, genetic code and sex life. The consent of the data owner is required for the processing of personal data. It implies any specific and conscious indication of the data owner’s freely expressed desire by which the data owner gives his consent for their personal data to be processed (Article 3). The issue of responsibility for the processing of personal data is primarily related to the public authorities, which raises the issue of relevance of the PDPL if personal data is processed by an individual through ICT. The space used by ICT is considered a public space or public good, which imposes an obligation on the authorities to ensure that the use of this space is legal and that it may not be abused in a way that causes harm to other persons. This is especially important if acts are committed through social networks. A failure to provide adequate legal regulation of this area and specify punishments for ICT- facilitated violence represents a serious violation of human rights.

Recommendation

Article 3 of the PDPL should be amended by adding that *also a photograph or a video of a person showing intimate body parts shall be considered personal data*.

The Table below lists changes to the legal texts that could sanction violence against women in the digital environment. No changes are proposed for the secondary legislation because it will be drafted on the basis of primary legislation, that is, after the primary legislation is amended.

²⁴ “Official Gazette of BiH”, Nos. 49/2006, 76/2011 and 89/2011 – corrigendum.

Activity Plan for Harmonization of Legislation With International Obligations in the Area of Prevention of Gender-based Violence Through Information and Communication Technology in BiH

Name of the law	Add a new provision	Change the existing provision
Law on Prohibition of Discrimination ²⁵		Amend Article 4 (other forms of discrimination), by adding, among other things, the following: “Online sexual harassment’ is any form of verbal, non-verbal or other conduct of a sexual nature, with the purpose or effect of violating the dignity of a person or creating an intimidating, hostile, degrading or offensive environment, approach or practice, through electronic means of communication”.
Gender Equality Law		To amend Article 5 by adding the following: “Online sexual harassment’ is any form of verbal, non-verbal or other conduct of a sexual nature, with the purpose or effect of violating the dignity of a person or creating an intimidating, hostile, degrading or offensive environment, approach or practice, through electronic means of communication”. To amend paragraph 3, Article 6, by adding a new sub-paragraph as follows: - violence in the digital environment
Law on the Protection from Domestic Violence in FBiH ²⁶		To amend Article 7 by adding the following acts of domestic violence: - unauthorized photographing or filming of a member of the family or domestic union with the purpose of discrediting him or her or belittling his or her personality, - unauthorized publication of photos or recordings of a member of the family or domestic union through information and communication technology i.e. unauthorized sharing of photos or recordings of a member of the family or domestic union through social networks, regardless of whether they were taken with or without the consent of a member of the family or domestic union.
Law on the Protection from Domestic Violence of BD BiH ²⁷		To amend Article 5 by adding the following acts of domestic violence: - unauthorized photographing or filming of a member of the family or domestic union with the aim of discrediting him or her or belittling his or her personality, - unauthorized publication of photos or recordings of a member of the family or domestic union through information and communication technology i.e. unauthorized sharing of photos or recordings of a member of the family or domestic union through social networks, regardless of whether they were taken with or without the consent of a member of the family or domestic union.

²⁵ Harmonization with the CEDAW.
²⁶ Harmonization with the Istanbul Convention.
²⁷ Harmonization with the Istanbul Convention.

Name of the law	Add a new provision
Law on the Protection from Domestic Violence of the RS ²⁸	
Criminal Code of the Federation of Bosnia and Herzegovina ²⁹	<p>To add new criminal offences:</p> <p>Unauthorized publication and presentation of other people's texts, portraits and recordings</p> <p>(1) Whoever publishes or presents a text, portrait, photograph, video, film or phonogram of a personal nature without the consent of the person who made the text or to whom the text refers, i.e. without the consent of the person shown in the portrait, photograph, video or film or whose voice is recorded on a phonogram, or without the consent of another person whose consent is required by law, and thus interferes with the personal life of that person, shall be punished by imprisonment for a term of up to two years;</p> <p>(2) If the offence referred to in paragraph 1 of this Article is committed against a member of the family or domestic union or against another person with the intention of causing harm to that person's reputation, the perpetrator shall be punished by imprisonment for a term between 6 months and three years;</p> <p>(3) If the offence referred to in paragraphs 1 and 2 of this Article is committed by an officer while performing his duties, he shall be punished by imprisonment for a term between 1 and 5 years.</p> <p>Abuse of sexually explicit photos and videos:</p> <p>(5) Whoever abuses a relationship of trust and without the consent of another person makes available to a third party a photo or recording with sexually explicit content that was made with the consent of that person for personal use and thus violates the privacy of that person, shall be punished by imprisonment for a term of up to two years,</p> <p>(6) The punishment from paragraph 1 of this Article shall be imposed on anyone who creates a new or alters an existing sexually explicit photo or recording of another person and uses that photo or recording as if it was authentic and thus violates the privacy of that person.</p>

²⁸ Harmonization with the Istanbul Convention.

²⁹ Harmonization with the Istanbul Convention.

³⁰ Harmonization with the Istanbul Convention.

Change the existing provision
<p>To amend Article 6 by adding the following in paragraph 2:</p> <p>- unauthorized photographing or filming of a member of the family or domestic union with the aim of discrediting him or her or belittling his or her personality,</p> <p>- unauthorized publication of photos or recordings of a member of the family or domestic union through information and communication technology i.e. unauthorized sharing of photos or videos of a member of the family or domestic union through social networks, regardless of whether they were taken with or without the consent of a member of the family or domestic union.</p> <p>To amend Article 189, paragraph 1, by adding:</p> <p>“Whoever makes a photograph, film, video or other recording of another person without authorization and thereby interferes with his/her personal life or whoever hands such a recording to a third party or shows him or her such a recording or enables him or her to familiarize themselves with the content thereof in some other way shall be punished by a fine or imprisonment for a term of up to three years”.</p> <p>To add a new form of criminal offence under Article 222. Domestic violence:</p> <p>“Whoever publishes or shares without authorization a photo or recording of an intimate life of a member of the family or domestic union through information and communication technology regardless of whether he or she came into possession of the recording or photo with or without the victim's consent, shall be punished by imprisonment for a term of up to two years.”</p>

Name of the law	Add a new provision
Criminal Code of BD BiH ³⁰	<p>(7) If the criminal offense referred to in paragraphs 1 and 2 of this Article was committed through a computer system or network or in another way that made it possible for a photograph or recording to become available to a larger number of persons, the perpetrator shall be punished by imprisonment for a term between 6 months and 4 years.</p> <p>(8) Photographs and recording and the means used to commit the criminal offense referred to in this Article shall be confiscated.</p> <p>To add new criminal offences</p> <p>Unauthorized publication and presentation of other people's texts, portraits and recordings</p> <p>(1) Whoever publishes or presents a text, portrait, photograph, video, film or phonogram of a personal nature without the consent of the person who made the text or to whom the text refers, i.e. without the consent of the person shown in the portrait, photograph, video or film or whose voice is recorded on a phonogram, or without the consent of another person whose consent is required by law, and thus interferes with the personal life of that person, shall be punished by imprisonment for a term of up to two years</p> <p>(2) If the offence referred to in paragraph 1 of this Article is committed against a member of the family or domestic union or against another person with the intention of causing harm to that person's reputation, the perpetrator shall be punished by imprisonment for a term between 6 months and three years</p> <p>(3) If the offence referred to in paragraphs 1 and 2 of this Article is committed by an officer while performing his duties, he shall be punished by imprisonment for a term between 1 and 5 years.</p> <p>Abuse of sexually explicit photos and recordings:</p> <p>“(1) Whoever abuses a relationship of trust and without the consent of another person makes available to a third party a photo or recording of sexually explicit content that was made with the consent of that person for personal use and thus violates the privacy of that person, shall be punished by imprisonment for a term of up to two years.</p> <p>(2) The punishment from paragraph 1 of this Article shall be imposed on anyone who creates a new or alters an existing sexually explicit photo or recording of another person and uses that photo or recording as if it was authentic and thus violates the privacy of that person.</p> <p>(3) If the criminal offense referred to in paragraphs 1 and 2 of this Article was committed through a computer system or network or in another way that made it possible for a photograph or recording to become available to a larger number of persons, the perpetrator shall be punished by imprisonment for a term between 6 months and 4 years.</p>

Change the existing provision
<p>To amend the predicate office from Article 186. Unauthorized optical recording by adding the following:</p> <p>“Whoever makes a photograph, film, video or other recording of another person without authorization and thereby interferes with his/her personal life or whoever hands such a recording to a third party or shows him or her such a recording or enables him or her to familiarize themselves with the content thereof in some other way shall be punished by a fine or imprisonment for a term of up to three years.”</p> <p>To amend the criminal offence of domestic violence in Article 218 by adding a new form of the offence:</p> <p>“Whoever publishes or shares a photograph or video of an intimate life of a member of the family or domestic union through information and communication technology, regardless of whether he or she came into possession of the video or recording with or without the victim's consent shall be punished by imprisonment for a term of up to two years”.</p>

Name of the law	Add a new provision	Change the existing provision
	<p>(4) Photographs and recordings and the means used to commit the criminal offense referred to in this Article shall be confiscated.</p>	
Criminal Code of the RS ³¹	<p>To add new criminal offences</p> <p>Unauthorized publication and presentation of other people's texts, portraits and recordings</p> <p>(1) Whoever publishes or presents a text, portrait, photograph, video, film or phonogram of a personal nature without the consent of the person who made the text or to whom the text refers, i.e. without the consent of the person shown in the portrait, photograph, video or film or whose voice is recorded on a phonogram, or without the consent of another person whose consent is required by law, and thus interferes with the personal life of that person, shall be punished by imprisonment for a term of up to two years.</p> <p>(2) If the offence referred to in paragraph 1 of this Article is committed against a member of the family or domestic union or against another person with the intention of causing harm to that person's reputation, the perpetrator shall be punished by imprisonment for a term between 6 months and three years.</p> <p>(3) If the offence referred to in paragraphs 1 and 2 of this Article is committed by an officer while performing his duties, he shall be punished by imprisonment for a term between 1 and 5 years."</p> <p>Abuse of a sexually explicit photo or video:</p> <p>"(1) Whoever abuses a relationship of trust and without the consent of another person makes available to a third party a photo or recording of sexually explicit content that was made with the consent of that person for personal use and thus violates the privacy of that person, shall be punished by imprisonment for a term of up to two years.</p> <p>(2) the sentence from paragraph 1 of this Article shall be imposed on anyone who creates a new or alters an existing sexually explicit photo or recording of another person and uses that photo or recording as it was authentic and thus violates the privacy of that person.</p> <p>(3) If the criminal offense referred to in paragraphs 1 and 2 of this Article was committed through a computer system or network or in another way that made it possible for a photograph or recording to become available to a larger number of persons, the perpetrator shall be punished by imprisonment for a term between 6 months and 4 years.</p> <p>(4) Photographs and recordings and the means used to commit the criminal offense referred to in this Article shall be confiscated.</p>	<p>To amend Article 170 by adding a new form of the criminal offence of sexual harassment:</p> <p>(2) If sexual harassment is committed through information and communication technology, the perpetrator shall be punished by imprisonment for a term between 6 months and three years.</p> <p>To add a new form of the criminal offence of violence in the family or domestic union in Article 190:</p> <p>Whoever publishes or shares without authorization a photo or recording related to the intimate life of a member of the family or domestic union through information and communication technology, regardless of whether the perpetrator came into possession of the video or recording with or without the consent of the victim shall be punished by imprisonment for a term of up to 2 years".</p>
Law on Personal Data Protection		<p>To add to Article 3 that a photo or recording of the person revealing intimate body parts shall also be considered as personal data.</p>

³¹ Harmonization with the Istanbul Convention.

The Republic of North Macedonia

1. Implementation of International Obligations

Gender-based violence against women and the crime perpetrated through ICT are the issues recognized and regulated by international agreements which the Republic of North Macedonia (**Macedonia**) ratified over the past several decades, including the United Nations Convention on the Elimination of All Forms of Discrimination against Women with all additional comments and recommendations³²; the Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse³³; the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence³⁴; and the Council of Europe Convention on Cybercrime.

2. Legislation Related to Prevention of Gender-based Violence

The documents adopted at the international and regional levels, especially the Istanbul Convention, undoubtedly influenced the national system for the protection of human rights of women and marginalized communities in Macedonia. Starting from the fact that violence against women is a manifestation of the historically unequal distribution of power between women and men, which leads to discrimination against women by men, it is important to gain insights into the legal framework for preventing and protecting against discrimination, which includes:

1. Law on Preventing and Protecting against Discrimination, from 2020
2. Law on Equal Opportunities for Women and Men, from 2012
3. Law on Preventing and Protecting from Violence against Women and Domestic Violence, from 2021
4. The Criminal Code, from 1996, including all amendments
5. Personal Data Protection Law, from 2020
6. Law on Free Access to Information of Public Importance, from 2019.

Based on the analysis and in relation to the previously identified obligations arising under international law, recommendations were drawn to improve the legal framework and harmonize it with international standards for the protection of women and girls from gender-based violence in the digital environment.

³² The state ratified the Convention and its Optional Protocol in 1994.

³³ Macedonia ratified the Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Seual Abuse in 2010 and has been obliged to implement the Convention as from 2012.

³⁴ Macedonia was among the first countries to sign the Istanbul Convention, while in December 2017 the Parliament of the Republic of North Macedonia adopted the Law on Ratification of the Convention on Preventing and Combating Violence Against Women and Domestic Violence. The instrument of ratification was submitted on March 23, 2018, and the Convention entered into force on July 1, 2018.

2.1. Law on the Protection against Discrimination

The basic principle on which the Law on Preventing and Protecting against Discrimination (LPPD) is based on the principle of equality. This Law contains an extensive list of prohibited grounds for discrimination, such as: race, color, origin, national or ethnic origin, sex, gender, sexual orientation, gender identity, belonging to a marginalized group, language, nationality, social origin, education, religion or religious conviction, political opinion, other opinion, disability, age, family or marital status, property status, state of health, personal property and social status or any other ground (Article 5, LPPD).

The LPPD is one of the few documents that recognizes belonging to a marginalized group as a basis for protection against discrimination. In order to facilitate the application of this provision, the legislator defines a marginalized group as a *“group of individuals who share a specific position in society, who are subject to prejudices, who have special characteristics that make them susceptible to discrimination and/or violence and who have less opportunities to exercise and protect their rights and freedoms”*. The persons who are more likely to be discriminated against on various grounds may be considered protected on this ground. The Law on Preventing and Protecting from Violence against Women and Domestic Violence recognizes certain groups of women vulnerable to violence, which should be taken into account in the context of prevention of discrimination and violence in the digital environment. In this regard, it is important to point out that the LPPD defines intersectional discrimination as a more severe form, defining it as discrimination on two or more discriminatory grounds which are simultaneous and inextricably linked (Articles 4 and 13 of the LPPD). The LPPD recognizes direct and indirect discrimination, calling for discrimination, incitement to discrimination promotion of discrimination, harassment, sexual harassment, victimization and segregation as special forms of discrimination. Harassment is defined as any form of unwanted treatment of a person or a group of persons in a discriminatory manner, with the purpose or effect of violating the dignity of a person or creating a threatening, hostile, humiliating or intimidating environment, approach or practice (Article 10, paragraph 1, LPPD). A separate paragraph defines sexual harassment as a form of unwanted verbal, non-verbal or physical behavior of a sexual nature, with the purpose or effect of violating the dignity of a person or creating a threatening, hostile, humiliating or intimidating environment, approach or practice (Article 10, paragraph 2).

The LPPD does not specifically recognize the internet as a space where discrimination can occur, although the list of potential spaces includes public information and the media, and there is also an open list of other spaces where discrimination in the digital sphere can occur (Article 3, paragraphs 6 and 10, LPPD).

In accordance with the LPPD, the Commission for Preventing and Protecting against Discrimination was established as an independent and professional body comprising seven members who examine citizens' grievances seeking protection against discrimination and harassment on all grounds and in all spaces, including online sexual harassment. In addition to the Commission for Preventing and Protecting against Discrimination, victims of discrimination can seek protection and compensation for the damage they suffered in court.

2.2. Law on Equal Opportunities for Women and Men

The main goal of the Law on Equal Opportunities for Women and Men, adopted in 2012, (LEOWM) is to achieve gender equality and mainstream gender perspective in policies. The LEOWM defines equal treatment and elimination of direct and indirect gender-based discrimination. There is no recognition of the multiple meanings and scope of gender, including the structural and political intersectionality of gender with other axes of social division and inequalities, which results in a limited understanding of the concept of gender equality and its reduction to a person's biological sex. Accordingly, this understanding is also reflected in concrete policies, activities, measures and mechanisms for the protection against discrimination and promotion of gender equality, which is also evident from the fact that the LEOWM completely excludes from protection women of homosexual or bisexual orientation and transgender women, that is, people.

The LEOWM provides definitions of the terms used in the law, especially the definitions of discrimination and different manifestations of discrimination (Article 4). The law prohibits gender-based discrimination, harassment and sexual harassment in the public and private sectors and in all spheres of life (Article 3, paragraph 3). Gender-based harassment is defined by the LEOWM as unwanted behavior related to a person's sex, with the purpose or effect of violating a person's dignity and creating a frightening, hostile, humiliating, and offensive environment (Article 4, paragraph 6). Gender-based sexual harassment is defined as any form of unwanted verbal, non-verbal or physical behavior of a sexual nature, with the purpose or effect of violating a person's dignity, especially when it creates a frightening, hostile, humiliating or offensive atmosphere (Article 4, paragraph 7).

The LEOWM is one of the few laws that recognizes ICT as a potential space where inequality between women and men can be perpetuated, resulting in discrimination and violence against women and girls in the digital sphere. Accordingly, the LEOWM proposes the basic measures to achieve the principle of equal opportunities for women and men by introducing normative measures in the IT sector. During the preparation of this study, a working group was formed at the Ministry of Labor and Social Affairs, which is responsible for drafting a Gender Equality Law, which should replace the existing LEOWM and be in line with modern legal standards for achieving gender equality. The final text is not publicly available, but there is no doubt that the drafting and adoption of a new law in this area is an opportunity to advance the framework in a way that recognizes a gender dimension of discrimination and harassment of women, including online harassment.

Under the applicable LEOWM, representatives of the Ministry of Labor and Social Welfare, the Ombudsman, the Commission for Preventing and Protecting against Discrimination and the relevant court are all responsible for the protection of the right to equal treatment of women and men (Article 20).

2.3. Law on the Protection from Violence Against Women and Domestic Violence

In Macedonia, a system of civil law protection against domestic violence was established for the first time in 2004, through an amendment to the Family Law (2004), and ten years later, by adopting a separate Law on Preventing and Protecting against Domestic Violence. (2014). This Law defines domestic violence, establishes the responsibilities of institutions in the system of prevention of domestic violence and protection of victims of domestic violence as well as temporary measures for the protection of victims of domestic violence. The Law on Preventing and Protecting from Violence against Women and Domestic Violence, adopted in 2021, (LPPVWDV) is the key legal document for a response to violence against women and girls, which takes into account a gender dimension of violence against women, recognizes the causes and consequences of domestic violence and gender-based violence in general and proposes adequate prevention measures and activities and also those for support and assistance to women survivors of violence.³⁵ This Law indicates that preventing and protecting from gender-based violence against women and domestic violence is no longer the goodwill of individuals, but the obligation of the State to act through all relevant institutions in a responsible, adequate, quick and efficient manner. Bearing in mind that oppression in society comes from several sources and that some groups of women are more vulnerable to violence than others, the National Council of Women recognizes vulnerable women and their needs for which specific measures and activities are required in the prevention of gender-based violence and protection of victims of gender-based violence. It also foresees appropriate adjustments of the measures, activities and services for victims to the specific needs of women with disabilities.

The LPPVWDV recognizes all forms of gender-based violence, such as: physical, psychological, economic violence, stalking, sexual violence and rape, sexual harassment, forced marriage, female genital mutilation, forced abortion and forced sterilization and human trafficking. This is the only law that recognizes sexual harassment over the internet and defines it as verbal, non-verbal or other behavior of a sexual nature with the purpose or effect of violating a person's dignity or creating a threatening, hostile, humiliating or intimidating environment, approach or practice, through electronic means of communication. For the first time, the LPPVWDV explicitly defines and indicates the specificity of sexual harassment over the internet. In order to comprehensively and effectively protect victims of digital violence, it is necessary to reflect the characteristics of harassment and other forms of digital violence in the criminal legislation.

Victims of gender-based violence are entitled to judicial protection in civil and criminal proceedings before the court (Article 82 of the LPPVWDV). In order to eliminate the immediate and serious danger to the life and physical and psychological integrity of the victims and their family members, the court may impose an emergency protection measure - removing the perpetrator from the house and prohibiting him from approaching the home. In order to stop the violence, eliminate its consequences and take effective measures against the perpetrator of the violence, and in order to eliminate the reasons for the perpetrator's relapse into violence again, the court may impose a series of temporary measures of protection on the abuser, including bans on harassment, telephone calls, contact or other direct or indirect communication with the victim. This measure can be applied also when gender-based violence occurs online.

³⁵ Службен весник на РСМ бр. 24/2021. Закон за спречување и заштита од насилство врз жените и семејното насилство, available at: <https://www.mtsp.gov.mk/content/pdf/2021/1a28a922f364401e94935d4d694b9d75.pdf>, accessed on: 9 October 2022.

In cases where relevant institutions do not treat the victim with due care and do not take effective and timely actions to prevent violence or do not provide adequate protection to the victim, the victim may file a lawsuit with a civil court seeking determination of responsibility for the institution's failure to act with due care, the responsible person or employees of the institution (Article 83 LPPVWDV).

2.4. Criminal Law Protection

Domestic violence is defined for the first time in the amendments to the Criminal Code of Macedonia (CC) from 2004, which prescribe more severe punishments for the nine criminal offenses against the life, body and safety of victims if the criminal offense was committed in the context of domestic violence. These offences are: homicide (Article 123, paragraph 2, sub-paragraph 2); premeditated murder (Article 125); inflicting a bodily injury (Article 130, paragraph 2); inflicting a serious bodily injury (Article 131, paragraphs 2 and 6); coercion (Article 139, paragraph 2); unlawful deprivation of liberty (Article 140, paragraph 2); threatening safety (Article 144, paragraph 2); sexual intercourse by abuse of office (Article 189, paragraph 2); and prostitution mediation (Article 191, paragraph 3).

The CC provisions, including those on domestic violence, are gender neutral and there is no specific prohibition of violence against women and girls. Women, as a protected subject, are mentioned in criminal offences related to illegal fertilization, illegal termination of pregnancy and sterilization, which represent specific criminal offences against women's reproductive freedom. The CC does not recognize rape committed in the context of domestic violence, thus leaving a significant number of victims outside the system of protection against sexual violence. The CC section with definitions of terms defines that violence against a child, in addition to domestic violence, includes psychological violence, online violence, peer violence, as well as stalking and following the child (Article 122, paragraph 41). This is the only provision of the applicable Criminal Code that mentions violence over the internet.

During the preparation of this study, two parallel processes began to harmonize the CC with the Istanbul Convention and create a complementary legal framework which will provide civil law protection (LPPVWDV) and criminal law protection (CC). Namely, in August 2021, the Government of the Republic of North Macedonia submitted to the Assembly of the Republic of North Macedonia the Proposal for Amendments to the Criminal Code, which significantly align the Criminal Code with the Istanbul Convention. The proposed amendments change the characteristics of the criminal offense of rape in such a way that the key element of the criminal offense is the lack of consent of the victim, unlike the previous one where resistance and opposition of the victim and coercion and threat by the perpetrator were defined as the key elements. The rape committed in the context of domestic violence is still not recognized as a qualifying element, despite the recommendations of the Committee for the Elimination of All Forms of Discrimination against Women from 2018, which require the State to criminalize marital rape and remove "penetration" from the substantive definition of the crime of rape.³⁶

The proposed amendments to the Criminal Code recognize for the first time the criminal offenses of stalking and sexual harassment, but do not recognize a separate form of sexual violence over the internet. This is why, the legal gap in punishment of these forms of violence against women and girls still exists.

The Department for Computer-related Crime and Digital Forensics operates within the Ministry of the Interior, where there are key resources and expertise for dealing with cases of violence and crime committed over the internet. Victims of gender-based violence committed online can address this Department and request that the perpetrator be identified and prosecuted and the Ministry of the Interior is obliged to inform the Public Prosecutor's Office of the allegations contained in a crime report, and the Public Prosecutor's Office decides whether it will open an investigation and prosecute the perpetrator. The victim may file a crime report directly with the Public Prosecutor's Office against the perpetrator of a criminal offense committed over the internet. The public prosecutor, if he or she decides to prosecute the perpetrator, may issue an indictment and initiate court proceedings in which the victim may participate as an injured party and claim compensation.

2.5. The Legislation on Information and Communication Technology

Regarding the general protection against criminal offenses perpetrated through information and communication technology, the CC provides definitions of computer system and computer data. A computer system is any device or group of interconnected devices, one or more of which performs automatic data processing according to a specific program (Article 122, paragraph 26), while computer data represents facts, information or concepts in a form suitable for processing through the computer system, including the program that the computer system can run (Article 122, paragraph 27). Regarding special criminal offences, the legislator specifically prescribed actions that are performed through a computer system, that is, a special form of the already established criminal offences when they are perpetrated through a computer system.

The predicate criminal offense of *threatening safety* includes a grave threat to the life or body of the victim or the life and body of a person closely associated with the victim (Article 144). The qualifying element is the perpetration of a criminal offense in the context of domestic violence (Article 144, paragraph 2), in which case the perpetrator shall be punished by imprisonment for a term of up to three years; whoever, by way of information system, threatens to commit a crime for which a sanction of imprisonment of five years or a more severe sanction is prescribed, against another person because of his or her gender, race, skin color, class, belonging to a marginalized group, ethnic background, language, nationality, social origin, religious belief, other beliefs, education, political affiliation, personal or social status, mental or physical impairment, age, family or marital status, property, state of health or any other ground defined by law or a ratified international agreement, shall be sentenced to imprisonment for a term between one and five years (Article 144, paragraph 4). It is only with regard to this criminal offence that there is a legal provision granting protection to the victims of domestic violence, including protection to the victims if the offence is perpetrated through the information system.

Entering personal data into a computer information system with the intention of obtaining some benefit for oneself or another person or causing harm to another is considered a criminal offense - abuse of personal data (Article 149). The legal provision does not have a qualifying element that would protect victims from the abuse of personal data on grounds of gender. On the other hand, the legislator also defines unauthorized prevention or restriction of access to the public information system as a criminal offense (Article 149a).

The CC prohibits production, distribution, offering and transmission of child pornography as well as the possession of child pornography (Article 193a). If the elements of the predicate criminal offense - production and distribution of child pornography - were committed through a computer system or by other means of mass communication, the perpetrator will be punished more severely. In addition, the legislator also provided a punishment for the perpetrator who, by using computer and means of communication, by scheduling a meeting or in any other manner entices a child who is younger than 14 to engage in sexual intercourse or other sexual activities or to produce child pornography, and with such intent meets with the child directly (Article 193-b).

The CC is harmonized with the Council of Europe Convention on Cybercrime in such a way that it contains special criminal offenses which cause damage, including unauthorized access to a computer system (Article 251 CC). This includes unauthorized deletion, alteration, damage, concealment or any other action that will render unusable the computer data, program or the information system maintenance device or will disable or impede the use of the computer system, data or program or computer communication. Under the same provision, it is punishable to break into someone else's computer or system with the intention of using its data or programs for the purpose of procuring an economic or other benefits for oneself or other persons or causing property or other damage, as well as to intercept data without authorization, using technical means. It is also punishable to create a computer virus and/or infect another's computer or computer network with that virus (Article 251-a CC).

In accordance with the Council of Europe Convention on Cybercrime, the CC contains a provision that punishes computer fraud, including entering untrue data into a computer or information system, failing to enter true data, altering, deleting or suppressing computer data, falsifying data and using an electronic signature, which may affect a false result of electronic data processing and transmission (Article 251-b).

The Criminal Code also prohibits computer forgery. Namely, actions aimed at using computer data that was created, entered, altered or deleted without authorization or is unusable and could serve as evidence of the facts that have value for legal relations or if such data or programs are used as if they were authentic (Article 379-a).

³⁶ Committee on the Elimination of Discrimination against Women. Concluding observations on the sixth periodic report of the former Yugoslav Republic of Macedonia, 2018, CEDAW/C/MKD/CO/6.

In 2009, the Criminal Code was amended to include the criminal offense of spreading racist and xenophobic material via a computer system, and in 2014, the list of grounds on which a criminal offense may be committed was amended. Namely, the legal provision prohibits dissemination of racist and xenophobic written material, images or other presentations of ideas or theories that aid, promote or incite hatred, discrimination or violence against any person or group, on the grounds of sex, race, skin color, gender, belonging to a marginalized group, ethnicity, language, nationality, social origin, religion or religious conviction, other beliefs, education, political affiliation, personal or social status, mental or physical disability, age, family or marital status, property, state of health or on any other ground provided by law or confirmed by an international agreement (Article 394-d). The provision defined in this way, although it does not specifically refer to gender-based violence against women and girls, can be used in the existing legal system to criminalize certain acts perpetrated against women and girls in the digital sphere. In addition, the legislator prohibited the denial, minimization, approval or justification of genocide and crimes against humanity, with the intention of inciting hatred, discrimination or violence against a person or a group of persons because of their race, skin color, nationality, ethnicity, origin, religion or belief, mental or physical disability, sex, gender identity, sexual orientation and political belief (Article 407a).

2.6. Legislation Governing Personal Data Protection

The Constitution of the Republic of North Macedonia sets a general framework for the development of the principle of personal data protection as a fundamental right. Citizens are guaranteed security and confidentiality of personal data and protection against a violation of personal integrity resulting from the registration of their data through data processing (Article 18). Additionally, in Article 25, the Constitution provides that *“every citizen is guaranteed respect and protection of privacy of his or her personal and family life, dignity and reputation.”*

With the adoption of the Law on the Protection of Personal Data in 2005, a new concept was established, which includes the incorporation of the right to privacy into the legal system, the protection of the right to privacy of citizens, or more precisely, the protection of their personal data. The legal framework for the protection of personal data was amended by the Law on Ratification of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, as well as by the Law on Ratification of Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, in relation to supervisory authorities and cross-border data transfer.

An increased electronic processing of personal data and the expansion of the use of the internet require modernization and expansion of the personal data protection regulation in Europe. The General Data Protection Regulation was adopted on 27 April 2016, which launched the reform processes in the field of personal data protection. In order to transpose the Regulation into the national legislation, in 2020, a new Personal Data Protection Law (**PDPL**) was adopted. It provides, among other things, definitions of the terms used in the Law. Any information relating to an identified or identifiable individual (the subject of personal data) is considered as personal data, and an identified individual is a person whose identity can be determined directly or indirectly, in particular on the basis of such identifiers as first and last name, citizen identification number, location data, online identifier or on the basis of one or more characteristics specific for an individual's physical, physiological, genetic, mental, economic, cultural or social identity.

The definition of personal data does not explicitly refer to photos and videos as formats containing personal data, however, the practice of the relevant national institutions as well as the case law of the European Court of Human Rights include photos and videos as protected objects of the right to privacy. The consent of the subject of personal data to data processing is any freely given, specific, informed will unequivocally expressed by way of a statement or a clearly confirmed action, which gives consent to the processing of personal data. A personal data security breach is any security breach that results in accidental or unlawful destruction, loss, alteration, unauthorized disclosure of or access to personal data being transmitted, stored or otherwise processed. Special categories of personal data are personal data that reveals racial or ethnic origin, political views, religious or philosophical beliefs or trade union membership as well as genetic data, biometric data, data related to health or data about sex life or sexual orientation. Data related to health are personal data related to the physical or psychological health of an individual, including data on received health care that reveal the information on a person's health (Article 4).

The PDPL guarantees the protection of personal data of every individual without discrimination on the grounds of his or her nationality, race, skin color, religious convictions, ethnicity, sex, language, political or other beliefs, financial status, origin by birth, education, social origin, citizenship, place or type of residence or any other

personal characteristic (Article 5). Collection, processing and storage of personal data can only be done for specific, clear and legitimate purposes. The PDPL clearly establishes the method and procedure for data collection, processing and storage, and any deviation from the prescribed rules constitutes a violation of the right to personal data.

There are certain restrictions on when it is possible to deviate from the personal data protection rules, which are detailed in the PDPL and can be applied in a limited number of situations. The obligation to protect personal data can be limited in accordance with the essence of fundamental rights and freedoms and when it represents a necessary and proportionate measure to ensure: national security; defense; public security; prevention, investigation, detection or prosecution of perpetrators of criminal offences or enforcement of criminal sanctions, including prevention of threats to public security; other important goals of general public interest for the Republic of North Macedonia, and especially important economic or financial interest of the Republic of North Macedonia, including monetary, budgetary and tax issues, public health and social protection; protection of independence of courts and court proceedings; prevention, investigation, detection and prosecution of violations of ethical rules for regulated professions; monitoring, inspection or regulatory functions that are at least occasionally related to the fulfillment of the responsibilities of state authorities in the cases referred to under 1) to 5) and 7) in this paragraph; protection of the subject's personal data or the rights and freedoms of other individuals; implementation of requests in civil proceedings.

In all other situations, when there is a violation of the provisions prescribing the method of personal data collection, processing and storage, the subject of personal data has the right to submit, independently or through an association, a request for the protection of personal data to the Agency for the Protection of Personal Data (Articles 97 and 100 of the PDPL). In addition to the protection before the Agency, the injured party can file a lawsuit seeking protection of personal data to the relevant court, by which he or she can also seek compensation for material and non-material damage caused by the violation of the protection of personal data.

In addition to the prohibition of discrimination in procedures for the protection of personal data on grounds of gender, the PDPL is gender neutral and does not contain special provisions which would protect the right to privacy of women and girls.

2.7. Legislation on Freedom of Access to Information

The Law on Free Access to Information of Public Relevance, adopted in 2019, (**LFAIPR**) regulates the conditions, method and procedure for exercising the right to free access to information of public relevance available to state authorities, municipal authorities, the City of Skopje and the municipalities in the City of Skopje, institutions and public services, public companies, legal entities and individuals exercising public powers established by law and activities of public interest, and political parties in the area of revenue and expenditure. An essential element of the right to access to information, which is public in nature, is the public interest and the right of legal entities and individuals to be informed of information that may indicate abuse of office and corrupt behavior; illegal acquisition or spending of budget funds; a potential conflict of interest; or which may prevent and detect serious threats to people's health and life; prevent and detect threats to the environment; help understand issues for which public policy is created or parliamentary discussion is conducted; and which will enable equal treatment of every citizen before the law (Article 3).

Holders of information can reject a request for access to personal data, the publication of which would constitute a violation of the protection of personal data (Article 6). According to the procedure for exercising the right to access to information of a public nature, the Agency for the Protection of the Right to Access to Information of a Public Nature decides an appeal against the decision of the holder of the information to reject the request for the provision of information, and not when the information restricted by law, that is, the information which contains personal data, is sought. In the event of a violation of the right to personal data, the injured party may seek protection under the Personal Data Protection Law. The LFAIPR is gender neutral and does not contain specific provisions that would protect the right to privacy of women and girls.

3. Recommendations

In order to further harmonize the Macedonian legislation with international human rights standards for the purpose of protection against gender-based violence committed through ICT, it is necessary to make changes to the existing regulations. In the Law on Prevention and Protection Against Discrimination, it is necessary to ensure that the internet is recognized as space where discrimination can occur. As a working group was formed at the Ministry of Labor and Social Affairs in charge of preparing a Draft Law on Gender Equality, which should replace the existing Law on Equal Opportunities of Women and Men and be harmonized with modern legal standards for achieving gender equality, it is necessary to ensure that the gender dimension of discrimination against women and harassment of women, including online harassment, is recognized. It is necessary to adopt the proposed amendments to the Criminal Code, which for the first time recognize the criminal offense of stalking and sexual harassment, while a separate form of sexual violence over the internet should also be introduced in order to close the legal gaps in the punishment of these forms of violence against women and girls. The Table below provides a detailed overview of the legal provisions that need to be adopted or changed.

Activity Plan for Harmonization of Legislation With International Obligations in the Area of Prevention of Gender-based Violence Through Information and Communication Technology in North Macedonia		
Name of the law	Add a new provision	Change the existing provision
Law on Preventing and Protecting Against Discrimination ³⁷		Article 10 should be amended by adding paragraph 3 as follows: “Sexual harassment over the internet is any form of verbal, non-verbal or other conduct of a sexual nature, with the purpose or effect of violating the dignity of a person or creating a threatening, hostile, humiliating or intimidating environment, approach or practice, through electronic means of communication.”
		- In Article 3, paragraph 2, the following should be added after the words “sexual harassment”: “Sexual harassment over the internet”. - In Article 3, paragraph 3, the words “and gender” should be added after the word “sex”. - In Article 4, paragraphs 2, 3, 5, 6 and 7, the words “and gender” should be added after the word “sex”. - In Article 4, paragraph 4, the words “and gender” should be added after the word “sex”. - In Article 4, after paragraph 7, a new paragraph, 7-a should be added to read as follows: “Sexual harassment over the internet is any form of verbal, non-verbal or other conduct of a sexual nature, with the purpose or effect of violating the dignity of a person or creating a threatening, hostile, humiliating or intimidating environment, approach or practice, through electronic means of communication.”
Law on Equal Opportunities of Women and Men		- In Article 5, paragraph 1, the period should be deleted and the word “gender” added. - In Article 9, paragraph 1, the words “and gender” should be added after the word “sex”. - In Article 17, paragraph 2, the period should be deleted and the words “and gender” added.

³⁷ Harmonization with CEDAW and the Istanbul Convention.

Naziv zakona	Odredba koju treba usvojiti	Odredba koja se mijenja/dopunjava
Criminal Code	Two new articles should be added after Article 144, as follows: 144-a Stalking “1) Anyone who repeatedly and without authorization follows, pursues or otherwise interferes in the personal life of another, or establishes or attempts to establish unwanted contact with that person, by moving into the space where that person is, by abusing the use of personal data through means of communication or otherwise psychologically abuses, harasses or intimidates and thereby causes a feeling of unsafety, anxiety or fear for his safety or the safety of a person closely related to him, shall be punished by a fine or imprisonment for a term of up to three years. 2) If the offence referred to in paragraph (1) of this Article was committed against a person with whom the perpetrator was or is in a close relationship or against a child, he shall be punished by imprisonment for a term between six months and five years. 3) Prosecution for the offense referred to in paragraph (1) of this Article shall be undertaken upon a motion.” 144-b Psychological violence “1) Whoever commits psychological violence and intentional repetitive threatening behavior directed at another person, which violates the psychological integrity of that person, shall be punished by imprisonment for a term between 6 months and 1 year. (2) If the offense referred to in paragraph 1 was committed through a computer system, it shall be punished by imprisonment for a term from 6 months to one year. (3) Prosecution of the criminal offense referred to in paragraph (1) of this Article shall be undertaken ex officio.” New Article 190-a should be added to read as follows: “(1) Anyone who, by verbal or physical action that has a direct or indirect, real or symbolic meaning of inducing, making indecent offers, enticing, expressing sexual desire or any other action that clearly resembles sexual intercourse or other similar sexual acts, harassment of a person subordinate to or dependent on him, another person at work or in a public space, or a person who is vulnerable due to age, illness, disability, drug addiction, pregnancy, or severe physical or mental disability, and will thereby violate his dignity, cause feelings of discomfort, anger, humiliation or fear, shall be punished by a fine or imprisonment for a term of up to one year. (2) The punishment from paragraph 1 shall also be imposed for sexual harassment over the internet.”	In Article 122, paragraph 21 should be deleted and the following added: “Domestic violence is defined as harassment, offending, threat to safety, physical injury, sexual or other psychological, physical or economic violence that causes a feeling of unsafety, threat or fear, including threats of such actions against a spouse, parents or children or other persons living in a marriage or domestic union or a joint household, as well as against the current or former spouse, domestic partner or persons who have a common child or are in a close personal relationship, regardless of whether or not the perpetrator shares or shared the same place of residence with the victim”. After Article 122, paragraph 21, three new paragraphs, 21-a; 21-b and 21-c, should be added as follows: 21-a “Violence against women is a violation of human rights, discrimination against women and refers to all acts of gender-based violence that lead or could lead to physical, sexual, psychological or economic injuries or suffering of women, including direct and indirect threats and intimidation with such actions, extortion, arbitrary restriction and/or deprivation of liberty, regardless of whether they occur in public or private life”. 21-b “Gender-based violence against women is violence directed against a woman because she is a woman or something that disproportionately affects her. Gender-based violence against women includes the causes and the result of unequal power relations between women and men as a result of a social, not an individual, problem”. 21-c “A victim of gender-based violence is every woman and girl under the age of 18 against whom a criminal offense has been committed under these circumstances”. In Article 139, paragraph 2 , the words “or gender-based violence” should be added after the word “violence”. In Article 139, paragraph 2 should be amended to read as follows: “If the criminal offense referred to in paragraph (1) of this Article was committed during the perpetration of gender-based violence against women, violence against women or domestic violence or hate-motivated violence or against a person who is particularly vulnerable due to age, disability or pregnancy, the perpetrator shall be punished by imprisonment for a term between six months and three years. In Article 139, a new paragraph should be added to read as follows:

Naziv zakona	Odredba koju treba usvojiti	Odredba koja se mijenja/dopunjava
	<p>(3) Prosecution of the criminal offense referred to in paragraph (1) of this Article shall be undertaken upon motion.”</p>	<p>Anyone who commits the criminal offense referred to in paragraph 1 through information system shall be sentenced to imprisonment for a term between six months and three years.</p> <p>Article 144 should be amended to read as follows:</p> <p>”1) Whoever seriously threatens another to attack his or her life or body or the life or body of a person closely associated with him or her with the intention of disturbing or intimidating him, thereby causing a feeling of insecurity, anxiety or fear, shall be punished by a fine or imprisonment for a term of up to one year.</p> <p>2) Whoever commits the criminal offense referred to in paragraph (1) of this Article by committing gender-based violence, violence against women or domestic violence or hate-motivated violence or against a person who is particularly vulnerable due to age, severe physical or psychological impairment or pregnancy, shall be punished by imprisonment for a term between three months and three years.</p> <p>3) The punishment from paragraph (3) of this Article shall be imposed also on anyone who commits the criminal offense from paragraph (1) of this Article against an officer while performing their duties, a lawyer, a doctor or another health worker, a journalist or another media worker or another person who performs tasks of public interest while performing their professional duties or in connection with the performance of professional duties that they undertake within the scope of their authority or against several persons.</p> <p>4) Whoever publicly or through the information system threatens to commit a criminal offense for which a prison sentence of five years or a more severe punishment is prescribed, against another person because of his race, skin color, national or ethnic background, gender, sex, sexual orientation, gender identity, belonging to a marginalized group, language, nationality, social origin, education, religion or religious belief, political affiliation, other belief, disability, age, family or marital status, property, state of health, personal characteristic and social status or any other ground defined by law or an international agreement confirmed by the Constitution of the Republic of North Macedonia, shall be sentenced to imprisonment for a term between one and five years.</p> <p>5) Prosecution for the criminal offence referred to in paragraph (1) herein shall be launched in response to a private lawsuit.”</p> <p>In Article 148, a new paragraph should be added to read as follows:</p> <p>”If the criminal offense was committed through an information system, the perpetrator shall be punished by imprisonment for a term of up to three years.”</p>

The Republic of Serbia

1. Introduction

The **Constitution of the Republic of Serbia**³⁸ stipulates that: “generally accepted rules of international law and ratified international treaties shall be an integral part of the legal order of the Republic of Serbia and shall apply directly” (Article 16, paragraph 2). The Republic of Serbia (Serbia) ratified a whole series of international documents relating to various areas of social life and the protection of human rights and freedoms.³⁹ By signing the Convention on Cybercrime 185 and its Additional Protocol, the Republic of Serbia⁴⁰ undertook to create normative and institutional prerequisites necessary for a successful fight against computer-related crime. Different pieces of criminal and criminal procedure legislation which ensure the implementation of certain provisions of this Convention were adopted, which creates the legal foundation for the establishment of different institutional mechanisms. In addition to significant success achieved in national legal regulation, some areas still remain legally unregulated and unsanctioned. Serbia also ratified a number of documents adopted by the Council of Europe, namely: *the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data*⁴¹, *the Convention on Protection of Children against Sexual Exploitation and Sexual Abuse*⁴², *the Convention on the Prevention of Terrorism*⁴³, *the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data ETC No. 108*⁴⁴ and *Recommendation of the Committee of Ministers to Member States on the protection of human rights with regard to social networking services*⁴⁵.

³⁸ The Constitution of the Republic of Serbia (“Official Gazette of the Republic of Serbia”, Nos. 98/2006 and 115/2021).

³⁹ **Universal Declaration of Human Rights** adopted by a special resolution of the UN General Assembly on 10 December 1948 guarantees everyone equality regardless of nationality, religion, sex, social position and political status. **The International Covenant on Civil and Political Rights** (Law on Ratification of the International Covenant on Civil and Political Rights, “Official Gazette of the SFRY - International Treaties”, number 7/1971) stipulates that the member states of this Covenant are committed to respecting and guaranteeing all persons in their territory and subject to their jurisdiction the rights recognized by this Covenant, regardless of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or any other circumstance. Regarding the prohibition of discrimination, apart from these two instruments, the Republic of Serbia is bound by the **Convention on the Elimination of All Forms of Racial Discrimination** (Law on Ratification of the International Convention on the Elimination of All Forms of Racial Discrimination (“Official Gazette of the SFRY”, No. 31/67), the **Convention on the Elimination of All Forms of Discrimination against Women** (Law on the Ratification of the Convention on the Elimination of All Forms of Discrimination against Women, “Official Gazette of the SFRY - International Treaties”, No. 11/81), **ILO Convention No. 111 in Respect to Employment and Occupation** (Regulation on the Ratification of the Convention of the International Labor Organization No. 111, which refers to discrimination with respect to employment and occupation, Official Gazette of the FNRJ - International Treaties No. 3/61), as well as the **UNESCO Convention against Discrimination in Education** (Convention against Discrimination in Education was adopted in 1960 and entered into force in 1962. SFR Yugoslavia ratified this Convention in 1964), European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), **Vienna Declaration on Human Rights** (1993).

⁴⁰ On April 7, 2005, the Republic of Serbia signed the Convention and the Additional Protocol in Helsinki during the existence of the State Union of Serbia and Montenegro, and in 2009 the National Assembly of the Republic of Serbia ratified both documents. The obligation to implement the ratified Convention began in August 2009.

⁴¹ The Law on Ratification of the Convention on the Protection of Persons in Relation to Automatic Processing of Personal Data (“Official Gazette of the SFRY - International Treaties” No. 1/92, “Official Gazette of the SCG - International Treaties, No. 11/2005- Dr. Law and “Official Journal of the RS - International Agreements” No. 98/2008-dr. Law and 12/2010).

⁴² Law on Ratification of the Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse (“Official Gazette of RS - International Treaties” No. 1/10).

⁴³ Law on Ratification of the Council of Europe Convention on the Prevention of Terrorism (“Official Gazette of the Republic of Serbia - International Treaties No. 19/2009).

⁴⁴ Council of Europe Convention on Protection of Individuals with regard to Automatic Processing of Personal Data, CETS No. 108, <http://conventions.coe.int/Treaty/en/Treaties/Html/108.htm>

⁴⁵ Recommendation CM/Rec(2012)4 of the Committee of Ministers to member States on the protection of human rights with regard to social networking services, 2012, <https://wcd.coe.int/ViewDoc.jsp?id=1929453>.

Serbia is one of the first countries to have signed the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention).⁴⁶ In accordance with Article 78, paragraph 2 of the Istanbul Convention, Serbia has reserved the right not to apply the provisions of Article 30, paragraph 2 and Article 44, paragraphs 1e, 3 and 4 of the Convention pending completion of harmonization of domestic criminal legislation.⁴⁷ By signing the Istanbul Convention, Serbia undertook to harmonize its legislation, policies and practices with international standards related to protection of women against violence, which implies criminalization of various forms of violence against women and introduction of sanctions which are effective and proportionate and which deter from the commission of criminal acts (special and general prevention).

2. Implementation of International Obligations

At its seventy-second session⁴⁸, the CEDAW Committee, considering the Fourth Periodic Report of Serbia on the Implementation of the Convention on the Elimination of All Forms of Discrimination highlighted Serbia's progress since 2013⁴⁹ and welcomed the fact that in the period since the previous report, Serbia acceded to the Council of Europe Convention on preventing and combating violence against women and domestic violence, also known as the Istanbul Convention. At the same time, the Committee recommended, among other things, that Serbia should continue to emphasize the importance of implementing the CEDAW Committee's recommendations, ensuring their constant monitoring, evaluation of impact and visibility and their inclusion in the achievement of sustainable development goals by the State Party as key to women's progress and empowerment.

Regarding the *legislative framework and discrimination*, the CEDAW Committee expressed their concern over difficult adoption in the National Assembly of a new draft of the Law on Prohibition of Discrimination, which defines and prohibits direct and indirect discrimination, sexual harassment and incitement to discrimination, and a draft Law on Gender Equality due to the lack of political consensus. Serbia was recommended to adopt these laws without further delay; to review, for the purpose of adoption, the new Law on Gender Equality against the Convention, in cooperation with civil society organizations for women's rights, while ensuring that it covers direct and indirect forms of discrimination, including discrimination on the grounds of sexual orientation and gender identity; to provide a sufficient budgetary allocation for regular monitoring and evaluation of the impact of anti-discrimination laws in order to ensure that all women, including the most vulnerable groups, fully benefit from this law, and to raise the level of public awareness of these laws, especially among women from vulner-

able social groups (points 11 and 12). The CEDAW Committee recommended that the Law on Free Legal Aid, the Law on Prevention of Domestic Violence and the new Draft Law on Gender Equality be reviewed with the aim of providing victims of all forms of gender discrimination, including vulnerable groups of women, access to free legal aid and that different actors, including civil society organizations and universities, be allowed to provide legal assistance; that the knowledge of the judiciary, prosecutors and lawyers about the Convention and their capacity to refer to it and directly apply it in court proceedings be strengthened, while ensuring that capacity-building initiatives adequately address the needs of women and girls (point 14).

The CEDAW Committee expressed its concern about the reports on the high level of discriminatory gender stereotypes that hinder the advancement of women's rights in the Republic of Serbia, and especially about an increased number of examples of anti-gender discourse in the public and public reaction in the perception of gender equality; misogynistic statements expressed in the media, as well as by high-level politicians, religious leaders and academics, who go unpunished, as well as the promotion of an extremely conservative idea of the traditional family, with women primarily considered mothers.⁵⁰ Serbia was recommended, among other things, to develop a special strategy and implement broad public campaigns, aimed at women and men at all levels of society, including religious leaders, in order to confirm the gender equality policy⁵¹ (point 22).

In the area of gender-based violence, the CEDAW Committee made recommendations that include the need to conduct an analysis of the prevalence and causes of gender-based violence against women and girls, develop a comprehensive strategy and an action plan to eliminate all forms of gender-based violence against women, review and revise the Criminal Code, the Family Law and other relevant laws and policies, ensuring that cases of all forms of violence against women, including rape, are properly investigated, that perpetrators are prosecuted and punished with sanctions commensurate with the gravity of the crime, that victims are protected from re-victimization and have access to effective reparations, including compensation; ensure timely and efficient issuance, implementation and maintenance of emergency protection orders for women at risk; support programs for offenders to prevent recidivism; strengthen multisectoral cooperation to prevent and combat all forms of gender-based violence and provide services to victims, including Centers for Social Welfare and civil society organizations; ensure that all women victims of gender-based violence, including women from vulnerable social groups, have unimpeded access to effective protection against violence, including provision of free legal aid; improve the system for collecting and monitoring cases of all forms of gender-based violence (points 23 and 24).⁵²

The (Baseline) Evaluation Report of the Group of Experts for Action against Violence against Women and Domestic Violence⁵³ (**GREVIO**) on legislative and other measures giving effect to the provisions of the Istanbul Convention for the Republic of Serbia emphasizes that all forms of violence against women, including domestic violence, disproportionately affect women, which is why GREVIO urged Serbia to strengthen the application of the gender perspective in the implementation of the Istanbul Convention, including its implementation when it comes to laws and policies related to domestic violence (paragraph 8), to harmonize the legal definitions of violence against women, gender-based violence and domestic violence in all areas of law with the definitions from the Istanbul Convention and to ensure their effective implementation in practice (Article 3, paragraph 12).

GREVIO's Report also indicates that it is necessary for the State to continue solving multiple forms of discrimination, to harmonize the legal definitions of violence against women, gender-based violence and domestic violence in all areas of law with the definitions from the Istanbul Convention and to ensure their effective im-

⁴⁶ The Convention signed on April 4, 2012 and ratified on November 21, 2013. The Law on Ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence ("Official Gazette of the Republic of Serbia - International Treaties", No. 12/13).

⁴⁷ This reservation is valid for five years from the date of entry into force of the Convention in Serbia and may be extended. GREVIO may request an explanation of the grounds for the extension of the reservation and accordingly provide suggestions and proposals. GREVIO believes that activities towards abolishing reservations in order to ensure the full implementation of the Convention are an integral part of the assessment procedure.

⁴⁸ Held between 18 February and 8 March 2019, Committee on the Elimination of Discrimination against Women Fourth Periodic Report submitted by Serbia under article 18 of the Convention, due in 2017,

https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/SRB/CEDAW_C_SRB_4_7321_E.pdf

⁴⁹ The following were particularly positively assessed: the adoption of the Law on Free Legal Aid (2018), which established a national free legal aid mechanism; Law on Asylum and Temporary Protection (2018), which prohibits persecution based on "sex, gender, gender identity, gender-based violence"; Law on Prevention of Domestic Violence (2016), which introduces emergency measures for perpetrators of domestic violence, and the Law on the Budget System (2015), which guides gender-responsive budgeting. Also positively assessed were the improvements of the institutional and political framework aimed at accelerating the elimination of discrimination against women and the promotion of gender equality, through the adoption and establishment of the following documents and mechanisms: National Strategy for the Prevention and Elimination of Trafficking in Human Beings, Especially Women and Children, and the Protection of Victims (2017-2020) and Action Plan (2017-2019); National Action Plan (2017-2020) for the Implementation of Resolution 1325 (2000) of the United Nations Security Council on Women and Peace and Security; National Program for Preservation and Improvement of Sexual and Reproductive Health (2017); National Strategy for Gender Equality (2016-2020) and Action Plan (2016-2018); National Strategy for Social Inclusion of Roma Women and Men (2016-2025) and the Council for Monitoring the Implementation of the Recommendations of the UN Human Rights Mechanism (2014).

⁵⁰ This is exacerbated by the national campaign to encourage childbirth and the passage of the Law on Financial Support to Families with Children, which offers incentives to mothers with three or more children.

⁵¹ It is necessary to promote positive images of women who actively participate in social, economic and political life; monitor the use of misogynistic language in public statements and media coverage, encourage the media to establish an effective self-regulatory mechanism that would deal with this language and implement legal amendments to hold the authors accountable; use the education system to improve positive and non-stereotypical portrayals of women.

⁵² In addition to the aforementioned recommendations, the Committee made a series of other recommendations related to the prevention of human trafficking and the exploitation for prostitution), women's participation in political and public life; employment, position of women in rural areas; the position of women who belong to sensitive social groups, equality before the law, marriage and family relations.

⁵³ GREVIO is an independent expert body responsible for monitoring the implementation of the Istanbul Convention by member states.

⁵⁴ Adopted on 29 November 2019, Final GREVIO Report on Serbia, <https://rm.coe.int/executive-summary-and-recommendations-in-serbian/pdfa/16809987eb>

plementation in practice (Art. 3 para. 12). It emphasizes the importance of providing a stronger criminal law response to most of the forms of violence against women, especially domestic violence, and eliminating difficulties related to prosecution of criminal offenses prescribed by the new Criminal Code and ensuring further harmonization with the Istanbul Convention.

In the area of *implementation of substantive criminal law*, a recommendation was made to expand the scope of application of the criminal offence of domestic violence to all types of relationships, including all former partners, married or not, and regardless of whether the perpetrator shares or has shared the same residence with the victim or whether they have a child together. It urged the country to develop a better understanding of the concept and danger of sexual stalking, to change the definition of sexual harassment and to harmonize it with Article 40 of the Istanbul Convention, to urgently reform the provisions of the Criminal Code related to sexual violence.⁵⁵

3. Legislation Related to Prevention of Gender-based Violence

Under Article 15 of the Constitution of the Republic of Serbia, *“the State shall guarantee the equality of women and men and develop a policy of equal opportunities”*.⁵⁶ The Constitution prohibits any form of discrimination, direct or indirect, on any ground, especially on the grounds of race, sex, ethnicity, social origin, birth, religion, political or other belief, property, culture, language, age and mental or physical disability” (Article 21, paragraph 3).⁵⁷

3.1. Law on Prohibition of Discrimination

The Law on Prohibition of Discrimination⁵⁸ (LPD) prescribes general prohibition of discrimination, all forms and cases of discrimination as well as procedures for protection against discrimination, and the establishment of the Commissioner for the Protection of Equality as an independent state body (Article 1). The Law defines the terms “discrimination” and “discriminatory treatment” (Article 2); direct and indirect discrimination, violation of the principle of equal rights and obligations, responsibility, association for the purpose of discrimination, hate speech, harassment, humiliating treatment and sexual and gender harassment and incitement to discrimination as well as segregation, as an act by which an individual or a legal person segregates, without objective and reasonable justification, other persons or groups of persons based on their personal characteristics. A form of discrimination is also considered to be incitement to discrimination, in terms of giving instructions on how to undertake discriminatory actions or inciting discrimination in a similar way (Article 5).

The LPD prohibits hate speech, stipulating that it is prohibited to express ideas, information and opinions that incite discrimination, hatred or violence against a person or group of persons on the grounds of their personal characteristics, in media and other publications, at gatherings and places accessible to the public, by writing and presenting messages or symbols or in another way (Article 11).

⁵⁵ In the area of substantive civil law enforcement, GREVIO strongly encourages the state to ensure that all available legal remedies are fully used in cases of misconduct or failure of state officials to take appropriate action in cases of domestic violence, especially when the victims are later killed by their abusers, as well as all other forms of violence covered by the Istanbul Convention.

⁵⁶ Article 16 stipulates that: “the foreign policy of the Republic of Serbia rests on generally recognized principles and rules of international law”, and that “generally accepted rules of international law and confirmed international treaties are an integral part of the legal order of the Republic of Serbia and are directly applicable. Ratified international agreements must be in accordance with the Constitution”.

⁵⁷ Discrimination is not considered “special measures that the Republic of Serbia can introduce in order to achieve full equality of persons or groups of persons who are essentially in an unequal position with other citizens” (Art. 21, paragraph 4). The right to protection of personal data is guaranteed as a constitutional right (Art. 42 of the Constitution), and “the use of personal data beyond the purpose for which it was collected, in accordance with the law, is prohibited and punishable, except for the purposes of conducting criminal proceedings or protecting security of the Republic of Serbia, in the manner provided by law.”

⁵⁸ Law on Prohibition of Discrimination (“Official Gazette of the Republic of Serbia”, Nos. 22/2009 and 52/2021)

Under the LPD, *“harassment, humiliating treatment and sexual and gender-based harassment, which aims at or represents a violation of the dignity of a person or a group of persons based on their personal characteristics, is prohibited, especially if it creates an intimidating, hostile, degrading, humiliating and offensive environment”* (Article 12). Under the Law, sexual harassment means: *“any verbal, non-verbal or physical unwanted behavior, which aims at or constitutes a violation of the dignity of a person or his personal integrity, and which causes fear or creates an intimidating, hostile, degrading, humiliating or offensive environment”*. Severe forms of discrimination are defined in Article 13⁵⁹, as well as special cases of discrimination (Articles 15-27). The law stipulates that the Commissioner for the Protection of Equality is responsible for protection against discrimination (Article 33). Civil law liability and fines are prescribed for violations of the provisions of the LPD. In order to improve the implementation of the Law, the Republic of Serbia adopted a *Strategy for Preventing and Protecting against Discrimination 2022- 2030*⁶⁰, while the adoption of the Action Plan to implement the Strategy is in the process of being adopted.⁶¹

3.2. Law on Gender Equality

The Law on Gender Equality⁶² (LGE) regulates the concept, meaning and policy measures for achieving and improving gender equality, types of planning documents in the field of gender equality and the manner of reporting on their implementation, an institutional framework for achieving gender equality, supervision over the implementation of the law and other issues of importance for achieving and improving gender equality. Measures to achieve and improve gender equality include the creation of equal opportunities for participation and equal treatment of women and men in all spheres of life, including the field of technological development, information and communication technologies and information society, as well as measures to suppress and prevent all forms of gender-based violence, violence against women and domestic violence (Article 1).

According to the LGE, discrimination on the basis of sex, sexual characteristics or gender (Article 4) is any unjustified distinction, unequal treatment or omission (exclusion, restriction or giving priority), in an open or covert manner, in relation to persons or groups of persons as well as members of their families or persons otherwise closely associated with them, based on sex, gender characteristics or gender, in access to rights. The law also defines direct gender-based discrimination.

Discrimination on the grounds of sex, sexual characteristics or gender also includes harassment, humiliating treatment, threats and conditionality, sexual harassment and sexual blackmail, gender-based hate speech, violence based on sex, sexual characteristics, i.e. gender or gender change, violence against women, unequal treatment on the basis of pregnancy, maternity leave, leave for child care, leave of mothers and fathers for special care of a child (parenthood), adoption, foster care, guardianship and incitement to discrimination as well as any less favorable treatment of a person as a result of refusing or tolerating such behavior. In Article 6, the LGE defines certain terms, namely: gender, sensitive social groups, sex, equal opportunities, gender mainstreaming, balanced representation of sexes, gender-based violence, violence against women, domestic violence, harassment, incitement to gender-based discrimination, sexual harassment, sexual blackmail, gender-sensitive language, unpaid housework, gender stereotypes, gender equality bodies.

Article 32 of the LGE *“prohibits harassment, sexual harassment and sexual blackmail in the workplace or in connection with work on the basis of sex or gender by employers, employees or other persons engaged in work against other employees or other persons engaged in work.”* The LGE prohibits any form of violence based on sex, sexual characteristics, i.e. gender and violence against women in the private and public spheres (Article

⁵⁹ Serious forms of discrimination include: causing and inciting inequality, hatred and intolerance based on national, racial or religious affiliation, language, political affiliation, sex, gender identity, sexual orientation and disability and age; promoting or committing discrimination by public authorities and in proceedings conducted by public authorities; promoting discrimination through public media; slavery, human trafficking, segregation, apartheid, genocide, ethnic cleansing and their promotion; discrimination against persons based on two or more personal characteristics, regardless of whether the influence of certain personal characteristics can be separated (multiple discrimination) or not (intersectional discrimination); discrimination that has been committed several times (repeated discrimination) or that is being committed over a longer period of time (prolonged discrimination) against the same person or group of persons; discrimination that leads to severe consequences for the person being discriminated against, other persons or property, especially if it is a punishable offense where the predominant or exclusive motivation was hatred or intolerance towards the injured party, which is based on his personal characteristics.

⁶⁰ Strategy for the Prevention and Prevention Against Discrimination for the period 2022-2030 (“Official Gazette of the Republic of Serbia”, No. 12/2022)

⁶¹ The Republic of Serbia – Ministry for Human and Minority Rights and Social Dialogue, <https://www.minljpdd.gov.rs/lat/javne-rasprave.php>

⁶² “Official Gazette of the Republic of Serbia”, No. 52/2021

51) and prescribes the duty of every person, public authority, employer, association and institution to report any form of violence based on sex and gender and violence against women in the private and public spheres (Article 53). A violation of the provisions of the LGE is treated as a civil liability.⁶³

3.3. Law on Prevention of Domestic Violence in the Republic of Serbia

The Law on Prevention of Domestic Violence⁶⁴ (LPDV) regulates prevention of domestic violence and actions of state bodies and institutions in preventing domestic violence and providing protection and support to victims of domestic violence, while it does not apply to minors who commit acts of domestic violence. The goal of the law is to regulate the organization and actions of state bodies and institutions in a general and uniform manner and thereby enable effective prevention of domestic violence and urgent, timely and effective protection of and support for victims of domestic violence (Article 2).

Domestic violence is defined in Article 3 of the LPDV and represents an “an act of physical, sexual, psychological or economic violence of the perpetrator against a person with whom the perpetrator is either presently or has previously been in a matrimonial relationship or common-law marriage or partnership relationship, or with a person he/she is blood-related to in the direct line, or side line up to the second degree or with whom he/she is in an in-law relationship up to the second degree or to whom he/she is an adoptive parent, adopted child, foster parent or foster child or with another person with whom he/she lives or has lived in a common household.”⁶⁵

The police, public prosecutor’s offices, courts of general jurisdiction and civil courts, as competent state authorities, and centers for social welfare as institutions are all responsible for preventing domestic violence and providing protection and support to victims of domestic violence and victims of criminal offences defined by this law (Article 7). Noncompliance entails disciplinary responsibility.

3.4. Criminal Law Protection against Gender-Based Violence and Digital Violence – a Gender Dimension of Violence in the Digital Space

In Serbia, in recent years, a number of changes have been made to the criminal and criminal procedure legislation, so it can be said that there is a relatively satisfactory system of legal protection against gender-based violence in place. However, the existing favorable legal arrangements and inter-institutional cooperation do not have a quick positive effect, given that negative trends in mass culture, prejudices and stereotyped understanding of the position and role of women in society, culturally accepted patterns of violence, difficult economic conditions, global and local increase in violence and crime, inconsistent social policies and practice etc. contribute to the general increase in gender-based violence. This is confirmed by the findings of official reports of the state bodies, independent reports of women’s non-governmental organizations and also of the concluding observations of CEDAW and GREVIO, which, among other things, encourage the State to strengthen its efforts in overcoming stereotyped attitudes towards the roles and responsibilities of women and men in the family and society and to continue to make legal changes in accordance with the Istanbul Convention and implement measures to eliminate gender stereotypes by promoting a positive image and essential equality of women and men.⁶⁶

⁶³ For the purpose of better implementation of the Law, the Republic of Serbia adopted the Gender Equality Strategy 2021- 2030 and the Action Plans for 2022 and 2023 for the implementation of the Gender Equality Strategy 2021- 2030 (Official Gazette of the RS, No. 103/2021), https://www.paragraf.rs/glasila/rs/Old/reg/rs_2022/r22099_023.htm

⁶⁴ “Official Gazette of the Republic of Serbia”, No. 94/2016.

⁶⁵ The Law on Prevention of Domestic Violence also applies to cooperation in the prevention of domestic violence (Articles 24-27) in criminal proceedings for the following crimes: stalking (Article 138a of the Criminal Code); rape (Article 178 of the Criminal Code); sexual intercourse with a helpless person (Article 179 of the Criminal Code); sexual intercourse with a child (Article 180 of the Criminal Code); sexual intercourse by abuse of office (Article 181 of the Criminal Code); illicit sexual acts (Article 182 of the Criminal Code); sexual harassment (Article 182a of the Criminal Code); pimping and facilitating sexual intercourse (Article 183 of the Criminal Code); mediation in prostitution (Article 184 of the Criminal Code); showing, procuring and possessing pornographic material and exploiting minors for pornography (Article 185 of the Criminal Code); inducing a child to participate in sexual acts (Article 185a of the Criminal Code); neglect and abuse of a minor (Article 193 of the Criminal Code); domestic violence (Article 194 of the Criminal Code); failure to provide support (Article 195 of the Criminal Code); violation of family obligations (Article 196 of the Criminal Code); incest (Article 197 of the Criminal Code); human trafficking (Article 388 of the Criminal Code); other criminal acts, if the criminal act is the result of domestic violence.

⁶⁶ Petrušić, N., Žunić, N., Vilić, V.: The Crime of Domestic Violence in Court Practice: New Tendencies and Challenges, OSCE Mission to Serbia, Beograd, 2018., p. 12.

The Criminal Code of the Republic of Serbia (CC) contains a number of provisions and articles that can be related to gender-based violence. Article 54a of the CC takes as a special aggravating circumstance when determining punishment for hate crimes, among other things, sex and gender identity, which brings sex and gender into relation with hatred as a motive for committing a criminal offence.⁶⁷ So, the CC does not provide for hate crime as a separate criminal offense. However, given the high level of social danger, violent nature, discrimination against members of a certain social group, the existence of prejudices and stereotypes against members of a certain social group, the creation of a “hate culture” model, the high “dark numbers of crime”, this form of criminal behavior should be defined as a separate criminal offence.

In Chapter XIII, for crimes against life and body and the crime of aggravated murder (Article 114), more serious, qualified forms of these criminal offenses are causing death of a child or a pregnant woman (Article 114, point 9) and causing death of a member of the family whom the perpetrator previously abused (Article 114, point 10). Although Article 114 (10) does not specifically emphasize gender of the family member who was previously abused, studies of femicide show that the victim is most often female. Given the frequency of criminal acts of murder where the victims are women and perpetrators are men, we suggest that femicide be defined as a separate form of aggravated murder, as any gender-motivated murder of a woman, based on misogyny, discrimination and disrespect for a woman’s life and bodily integrity.⁶⁸

In criminal offense of *instigating someone to commit suicide and aiding to commit suicide* (Article 119), the use of the internet and social networks for *instigating someone to commit suicide and aiding to commit suicide* should be considered as a separate form of this criminal offense, which would be punished with the same punishment as if the offense was committed against a child.

Criminal offences against freedoms and human and civil rights are listed in Chapter XIV. The relation with gender-based violence exists in Article 128 of the CC, which criminalizes violation of equality. Imprisonment of up to three years is provided for the perpetrator who, among other things, due to differences in sex, sexual orientation and gender identity denies or limits the rights of a person or a citizen guaranteed by the Constitution, laws or other regulations or general acts or ratified international treaties or gives a person or a citizen privileges or preferences on the basis of such differences. An aggravating circumstance (paragraph 2) is when the perpetrator is an official and commits this criminal offense while performing his duties (punishable by imprisonment for a term between three months and five years).

The criminal offense of *endangerment of security* (Article 138) is not gender determined nor is it foreseen in what way and by what means it can be perpetrated. Given that practice shows that threats to security can be made by using the internet and social networks and that women are often victims of this form of crime, we recommend that one of the forms of this criminal offense be *online endangerment of security*.

Regarding the criminal offense of *stalking* (Article 138a), several acts of execution are foreseen.⁶⁹ When enumerating the acts of the criminal offence of stalking, we believe that it was necessary to include a very widespread form of stalking - stalking over the internet and social networks. As one of the methods of execution of stalking, under the description of the criminal offense, stalking can be carried out through the means of communication, although they are not specified. In this way, there was a lack of precision in formulating and emphasizing the prohibition of misuse of the internet and social networks. There is no explanation of what means of communication include in Article 112 of the CC (definition of terms), although this Article, among other things, defines computer data, computer network, computer program, computer virus and computer system.⁷⁰

⁶⁷ Konstantinović Vilić, S., Petrušić, N., Beker, K.: Društveni i institucionalni odgovor na femicid u Srbiji, I, Udruženje građanki FemPlaz, Pančevo, 2019., p. 97.

⁶⁸ Ibid, p. 97.

⁶⁹ This criminal offense exists when the perpetrator over a certain period of time: follows another person without authorization or undertakes other actions with the aim of physically approaching that person against that person’s will; against the will of another person tries to establish contact with him directly, with the help of a third person or through various means of communication; abuses the personal data of another person or a person closely related to him for the purpose of offering goods or services; threatens to attack the life, body or freedom of another person or a person closely related to him, as well as undertakes other similar actions in a way that can significantly endanger the life of the person against whom these actions are undertaken. A fine or a prison sentence of up to three years is provided for the aforementioned acts.

More serious forms of the criminal offense of persecution exist if the perpetrator, with the aforementioned actions, caused a danger to the life, health or body of the person against whom the crime was committed or a person closely related to him or if another person or a person closely related to him dies. The prescribed punishment for the first severe form is a prison sentence of three months to five years, while for the other severe form, a prison sentence of one to ten years is prescribed.

In the criminal offense of *violation of privacy of letters and other mail* (Article 142), an unauthorized opening of someone else's letter, telegram or other closed correspondence or consignment or otherwise violating their privacy or unauthorized withholding, concealing, destroying or delivering someone else's letter, telegram or other consignment to another person or violating privacy of electronic mail or other mail is criminalized. In this way, the legislation regulates also wiretapping and recording chatrooms, which is so frequent in social networks. Still, here we should add delivering photographs, recordings, videos showing intimate parts of another person's body or another person in an intimate relationship.

Regarding the criminal offense of *unauthorized wiretapping and recording* (Article 143), it is not specified whether this offense also applies to communication in the virtual world. Considering the frequency of surveillance of communication on social networks and in chatrooms, it is necessary to extend the act of this offense to electronic communication and not just limit it to a conversation, statement or announcement.

Unauthorized photography is a criminal offense in which the perpetrator takes a photograph, film, video or other recording of a person without authorization and thereby interferes with his personal life or who hands over or shows such a recording to a third party or otherwise enables him to familiarize himself with the content thereof (Article 144). The more serious form of this criminal offense is when the perpetrator is an official who commits this criminal offense while performing his duties.

The Criminal Code criminalizes *unauthorized publication and presentation of other people's texts, portraits and recordings* (Article 145). The perpetrator who publishes or presents a text, portrait, photograph, film or phonogram of a personal nature without the consent of the person who made the text or to whom the text refers, i.e. without the consent of the person shown on the portrait, photograph or film or whose voice was recorded on phonogram or without the consent of another person whose consent is required by law and thereby significantly interferes with the personal life of that person, shall be fined or punished by imprisonment for a term of up to two years.⁷¹ Due to the prevalence of the so-called revenge pornography, publishing and showing to others sexually explicit photos and videos (photos and videos that show the intimate parts of another person's body or another person in an intimate relationship) should be criminalized as a separate form of this criminal offence, as is the case with the criminal offense of violating privacy of letters and other mail (Article 142). In addition, in the criminal offenses of unauthorized photography (Article 144) and unauthorized publication and presentation of someone else's texts, portrait or recordings (Article 145), when establishing the act of crime, abuse of photographs or unauthorized publication of data published on the internet or social networks should be taken into account.

As the violation of privacy can be committed in a number of ways in the virtual space, as part of the criminal offense of *unauthorized collection of personal data* (Article 146), the violation of privacy of data published by users on social networks for the purpose of informal communication with other users should be punishable. This kind of problem can also occur in cases where employers collect data about employees from their posts on social networks (cyber mobbing).

Perpetration of the crimes against honor and reputation (Chapter XVII), insult (Article 170) and dissemination of information about personal and family life (Article 172) through an unauthorized use of computer services or a computer network is not criminalized. For the criminal offense of insult, the following should be added in paragraph 2 of Article 170: "If the act referred to in paragraph 1 of this Article was committed over the internet or on social networks".

⁷⁰ Vilić, V., Proganjanje putem interneta – ko su izvršioci i žrtve?, Godišnjak Pravnog fakulteta u Istočnom Sarajevu, godina III, 2/2012, 2013, UDK: 004.738.5 : 343.3/.7 DOI: 10.7251/GPFIS1302123V

⁷¹ TA more severe form exists if the criminal offence is committed by an officer while performing his duty (imprisonment for a term of up to three years).

⁷² The Criminal Code adopted a new concept of the criminal offense of rape, which ensures equal legal protection for all victims, regardless of the gender of the victim and perpetrator (the victim and perpetrator are defined in a gender-neutral sense) and their sexual orientation, as well as a new way of defining the act of committing rape and other sexual offenses, which, in addition to sexual assault, includes an act equated to it (Art. 178). However, the legislator still foresees only "classical rape", which consists of coercion of the victim (passive subject) into sexual intercourse or an act equivalent to it, using force or threatening to directly attack the life or body of that person or a person closely related to him (so-called qualified threat). The emphasis is on coercion, and not on the absence of the victim's free consent to sexual intercourse, so the definition of the act of execution is still not fully aligned with the Istanbul Convention. Nor are the definitions of the criminal acts of sexual assault (of a helpless person, a child and by abuse of office) fully harmonized with the Istanbul Convention, because not all actions from Article 36, paragraph 1 of the Convention is covered.

Criminal law protection against sexual violence is provided through criminalization of behavior that protects sexual freedom (Chapter XVIII): rape (Article 178), sexual intercourse with a helpless person (Article 179), sexual intercourse with a child (Article 180), sexual intercourse by abuse of office (Article 181), illicit sexual acts (Article 182), sexual harassment (Article 182a), pimping and facilitating sexual intercourse (Article 183), mediation in prostitution (Art. 184), showing, procuring and possessing pornographic material and exploiting a child for pornography (Article 185), inducing a child to attend sexual acts (Article 185a), abuse of computer networks or other technical means of communication for committing criminal offences against sexual freedom of a child (Article 185b).⁷²

Criminalization of *sex-based harassment* can be evaluated positively, although the name of the offence is not adequate because it is about illegal behavior of a sexual nature, and a more appropriate name would be *sexual harassment*, and the description of the act of execution is insufficiently defined.

The section of the CC that refers to criminal offenses against sexual freedom defines a number of criminal offenses related to child pornography, which fully corresponds to Article 9 of the Convention on Cybercrime and the Convention on Protection of Children against Sexual Exploitation and Sexual Abuse. The necessity of defining and criminalizing these criminal offences in the CC stems from the fact that the abuse of juveniles and children for pornography, along with the abuse of payment cards and piracy, is the most common form of cybercrime.

Abuse of computer networks or other technical means of communication for committing criminal offences against sexual freedom of the minor by arranging a meeting and arriving at an agreed place to meet with the minor is a criminal offense punishable under Article 185b of the CC.

Under the Criminal Code, the crime of domestic violence (Article 194) has one basic, one light and three serious forms. The basic form of the criminal offense is domestic violence: "Whoever by use of violence, threat of attacks against life or body, insolent or ruthless behavior endangers the tranquility, physical integrity or mental condition of a member of his family shall be punished by imprisonment for a term between three months to three years" (Article 194, paragraph 1)⁷³. Given that the expansion of digital violence has been noticed in recent years, threats sent via SMS messaging or via social networks should be included as one of the forms of execution of this criminal offence.

Article 112, paragraph 28 of the CC provides a definition of a family member which excludes from criminal law protection against domestic violence ex-spouses who do not live in a common household and do not have a child together, ex-common-law partners who may still live in a common household, as well as parents of common-law partners. This definition of family members is not in accordance with the standards set in international documents and ignores the fact that very often violence does not end with termination of a marital or domestic union. In this way, the possibility of criminal law protection of all victims of intimate partner violence and domestic violence was reduced. In addition, the definitions of a family member are not harmonized in the Criminal Code, Family Law and the Law on Prevention of Domestic Violence.

The Criminal Code contains regulations of a substantive legal nature in relation to computer-related crime:

⁷³ Another form of this criminal offense exists: "if a weapon, dangerous tool or other means suitable for seriously injuring the body or seriously harming health was used during the execution of the offense referred to in paragraph 1 of this Article, the perpetrator shall be punished by imprisonment for a term from six months to five years."

The third form exists in the case where the violence caused serious bodily injury or severe damage to the health of a family member, or the act was committed against a minor. This form of criminal offense is punishable by imprisonment for a term from two to ten years.

The fourth, most serious form of the crime of domestic violence exists when, as a result of the acts of the crime, a family member died. The penalty for this most severe form is imprisonment for a term of three to fifteen years.

The fifth form exists when the perpetrator violates the measures of protection against domestic violence that the court imposed under the law governing family relations. In that case, the perpetrator will be punished by imprisonment for a term from three months to three years and a fine.

⁷⁴ In this sense, criminal acts of computer-related crime established as an offence in the Criminal Code can be classified into three groups: (1) all criminal offences that have the security of computer data as a group object of protection; (2) criminal offenses against intellectual property, other property, the economy and legal traffic, in which computers, computer networks, computer data and their products in physical or electronic form appear as the object or the means of execution, if the number of copies of copyright works exceeds 2,000 or the material damage is above one million dinars and (3) criminal offences against the freedoms and human and civil rights, sexual freedom, public order and peace, constitutional order and security of the Republic of Serbia, which due to the method of execution or the means used undoubtedly belong to computer-related crime.

Chapter XXVII provides for criminal offenses against security of computer data as well as other criminal offenses which are considered under the Convention on Cybercrime and applicable legal regulations as computer-related crime.⁷⁴ The provisions on computer-related crime are contained primarily in the general part of the Criminal Code which refers to the “meaning of terms” (Article 112, (16-20) and (33-34) of the CC). Unauthorized use of computers and computer networks can occur as part of the crimes against honor and reputation (Chapter XVII of the CC), especially criminal offenses of insult (Article 170), dissemination of information about personal and family life (Article 172) and damage to reputation due to racial, religious, ethnic or other affiliation (Article 174). However, the CC does not criminalize an unauthorized use of computer services or computer networks as a method of perpetration of those criminal offences.

The Criminal Code of the Republic of Serbia defines a large number of criminal offenses which should be harmonized with the provisions of the Convention on Cybercrime. The criminal legislation does not contain provisions to protect users of social networks against harassment, sexual harassment, cyber mobbing, peer abuse - bullying, false representation, creation of a false identity, internet fraud, etc.

3.5. Criminal Procedure Code and Procedural Provisions on Computer-related Crime

The Criminal Procedure Code of the Republic of Serbia (**CPC**) contains provisions which refer to procedural mechanisms and powers of those involved in criminal proceedings, identification of perpetrators, collection of evidence, prosecution and trial. The CPC does not contain special provisions on the collection and securing of evidence relating to criminal acts of computer-related crime nor does it define electronic evidence which has the same value as physical evidence. Unlike the Cybercrime Convention which indicates the specificity and importance of electronic evidence (information or data important for the investigation, stored in a computer or submitted via a computer), the CPC does not specifically distinguish or recognize the importance of electronic evidence in the process of proving criminal acts of computer-related crime.

Nevertheless, the CPC contains several provisions which could be relevant for gaining access to the content of stored computer data. Under Article 152, paragraph 3 of the CPC, devices for automatic data processing and equipment on which electronic records are or can be stored can be subject to search (searches of apartments and other premises or persons). Unlike the search of an apartment and other premises or persons, which can be carried out in certain cases even without a court decision, search of devices and equipment is not possible without a court order, and it can be concluded that a court order is necessary in any case. This means that when the law enforcement officers find a computer with data related to the commission of a computer-related crime, they can only take security measures, that is, with the aid of an expert, they can find, secure or describe traces, but may not search the computer before they receive a court decision⁷⁵. Other provisions of the CPC refer to seizure (Article 147). Objects that can be seized and used as evidence in criminal proceedings include devices for automatic data processing and devices and equipment on which electronic records are stored or can be stored.⁷⁶ The CPC does not provide for the application of these rules to computer data, but given that computer data is considered to be a document if it can or will serve as evidence, it could also be seized.

Article 162, paragraph 1 of the CPC also lists criminal offences that may be related to the use of computers and computer technology: showing, procuring and possessing pornographic material and exploiting minors for pornography (Article 185, paragraphs 2 and 3 of the CC), instigating national, racial and religious hatred and intolerance (Art. 317 of the CC), human trafficking (Article 388 of the CC) and the criminal offense from Article 98, paragraphs 3 to 5 of the Law on Data Secrecy.⁷⁷ Special evidentiary actions may also be undertaken, under the conditions provided for by the CPC, in relation to these criminal offences.

⁷⁵ For more information see: Pisarić, Milana: „Pretresanje računara radi pronalaženja elektronskih dokaza”, Zbornik radova Pravnog fakulteta u Novom Sadu, 1/2015, p. 233

⁷⁶ Knežević, Saša: „Krivično procesno pravo: opšti deo”, Niš: Pravni fakultet, Centar za publikacije, Niš, 2015, p. 318

⁷⁷ Art. 98 of the Law on Data Secrecy (“Official Gazette of the RS”, No. 104/2009) provides for imprisonment for the criminal offense of unauthorized communication, handing over or making available data or documents that have been entrusted and represent classified information designated as a “state secret” to an unknown person, if the offence was committed out of self-interest or for the purpose of publishing or using secret data or if it was done during a war or a state of emergency or if the offence was committed out of negligence.

⁷⁸ “Official Gazette of the RS”, No. 32, 8 April 2013.

3.6. Law on Special Measures for the Prevention of Criminal Offences against Sexual Freedom of Minors

The Law on Special Measures for the Prevention of Criminal Offences Against Sexual Freedom of Minors⁷⁸ the so-called “Mary’s Law”) prescribes special measures to be implemented against perpetrators of criminal offenses against sexual freedom committed against minors as defined by law and regulates the maintenance of special records of the persons convicted for these crimes. The purpose of the law is to prevent sexual delinquency against minors. The scope of application of the law includes precisely defined criminal offenses committed against minors, among which are the criminal offenses of computer-related crime, i.e. presenting, procuring and possessing pornographic material and exploiting a minor for pornography (Article 185 CC) and exploiting a computer network or communication by other technical means for committing crimes against sexual freedom of minors (Article 185b of the CC). Special measures provided for by law apply to the perpetrators of the aforementioned criminal offences after they served the prison sentence. The provision of Article 5, paragraph 3 is particularly important, which stipulates that criminal prosecution and enforcement of sentences for the crimes against sexual freedom committed against minors are not subject to statute of limitations. On the basis of the aforementioned provisions, as well as the provisions of the CC, it can be concluded that legislative and other measures provided for in Article 9 of the Convention on Cybercrime with regard to crimes related to child pornography are transposed into the Serbian legislation.

3.7. Law on Personal Data Protection

The Personal Data Protection Law⁷⁹ (**PDPL**) ensures the protection of the basic rights and freedoms of individuals, especially their right to the protection of personal data. The Law applies to the processing of personal data that is carried out, in whole or in part, in an automated manner, as well as to the non-automated processing of personal data which is part of data collection or is intended for data collection (Article 3).

Article 4 of the Law defines the meaning of certain terms.⁸⁰ By reviewing those terms, we have noticed that this Law does not contain the terms which are directly related to violence against women in the digital environment, that is, which could be linked to the bodily autonomy of a person and the protection of bodily autonomy from abuses through information and communication technology.

3.8. Family Law

The civil law protection against domestic violence is provided in the Family Law⁸¹ (**FL**), which prescribes family law protection measures and regulates the procedure for their imposition. The Family Law prohibits domestic violence, which is defined as “*behavior by which one family member endangers the physical integrity, mental health or tranquility of another family member*”, and in particular: causing or attempting to cause physical injury; causing fear by threatening to kill or cause bodily harm to a family member or a person closely associated with him; coercion into sexual intercourse; inducing sexual intercourse or sexual intercourse with a person who has not reached the age of 14 or a disabled person; restricting freedom of movement or communication with a third party; insulting, as well as any other insolent, reckless and malicious behavior (Article 197 of the Family Law).

As stated above, apart from the FL, the concepts of domestic violence and a family member are also defined in both the CC and LPDV, but the definitions are not harmonized, which means that protection against domestic violence is not equally available to all victims.

The court may impose on a family member who has committed violence one or more measures of protection against domestic violence (Article 198 of the FL), namely: an eviction order, regardless of the right of possession or lease of real estate; an order to move into a family apartment or house, regardless of the right of pos-

⁷⁹ “Official Gazette of the RS”, No. 87/2018

⁸⁰ Such as: personal information; the person to whom the data refers; personal data processing; pseudonymization; data collection; handler; processor; receiver; third party; consent; violation of personal data; genetic data; biometric data; health information; commissioner for information of public importance and personal data protection; information society service.

⁸¹ “Official Gazette of the RS”, Nos. 18/05, 72/2011- separate law and 6/2015.

session or lease of real estate; prohibition of approaching a family member at a certain distance; prohibition of access to the area around the family member’s place of residence or work; prohibition of further harassment of a family member. Protection measures can last for one year maximum, but can be extended as long as there are reasons for imposing them.

Activity Plan for Harmonization of Legislation With International Obligations in the Area of Prevention of Gender-based Violence Through Information and Communication Technology in Serbia

Name of the law	Add a new provision	Change the existing provision
Law on Prohibition of Discrimination (“Official Gazette of the Republic of Serbia”, Nos. 22/2009 and 52/2021) ⁸²		<p>To amend Article 1, paragraph 1 to read as follows:</p> <p>Scope of the Law</p> <p>Article 1</p> <p>This law regulates the general prohibition of discrimination, <i>regardless of whether the offence is committed in real space or by using digital and/or information and communication technology</i>, forms and cases of discrimination, as well as procedures for the protection against discrimination.</p> <p>To amend Article 2, paragraph 1, sub-paragraph 1 to read as follows:</p> <p>Terms</p> <p>Article 2</p> <p>In this law:</p> <p>1) the terms “discrimination” and “discriminatory treatment” shall mean any unjustified distinction or unequal treatment, i.e. omission (exclusion, limitation or priority), in relation to persons or groups as well as members of their families, or persons closely associated with them, in an open or covert manner, which is based on race, skin color, ancestry, citizenship, national or ethnic origin, language, religious or political beliefs, sex, gender, gender identity, sexual orientation, gender characteristics, income level, financial status , birth, genetic characteristics, state of health, disability, marital and family status, convictions, age, appearance, membership in political, trade union and other organizations and other real or perceived personal characteristics (hereinafter: personal characteristics), <i>whether done in real space or using digital and/or information communication technology</i>”;</p> <p>To amend Article 5 to read as follows:</p> <p>Forms of discrimination</p> <p>Article 5</p> <p>The forms of discrimination are direct and indirect discrimination, as well as violation of the principle of</p>

⁸² Relevant international standards: GREVIO General Recommendation No. 1 on the digital dimension of violence against women; Council of Europe Convention on Cybercrime 185 of 2001 (“Budapest Convention”, CETS 185); Recommendation Rec (2002)5 of the Committee of Ministers to member States on the protection of women against violence.

Name of the law	Add a new provision	Change the existing provision
Law on Gender Equality (“Official Gazette of the Republic of Serbia”, No. 52/2021) ⁸³		<p>equal rights and obligations, responsibility, association for the purpose of discrimination, hate speech, harassment, humiliating treatment and sexual and gender harassment and incitement to discrimination. Segregation is any act by which an individual or legal person separates, without objective or reasonable justification, other persons or a group of persons on the basis of a personal characteristic referred to in Article 2, paragraph 1, sub-paragraph 1) of this Law. Voluntary separation from other persons based on personal characteristics does not constitute segregation. Incitement to discrimination is also a form of discrimination. Discrimination exists if a person or a group of persons is induced to discriminate by giving instructions on how to undertake discriminatory actions or by inducing them to discriminate in another similar way.</p> <p>To amend Article 1 (3) to read as follows:</p> <p>“The law also regulates measures to suppress and prevent all forms of gender-based violence, <i>regardless of whether the offence is committed in real space or by using digital and/or information communication technology</i>, violence against women and domestic violence.”</p> <p>To amend Article 6 (1) (11) to read as follows:</p> <p>11) violence against women <i>means any act of gender-based violence, violence against women because they are women, i.e. violence which disproportionately affects women</i>, as well as any violation of human rights and forms of discrimination against women and all acts of gender-based violence that lead or can lead to: physical, sexual, psychological and financial damage or suffering for women, including threats of such acts, coercion or arbitrary deprivation of liberty, either in public or in private life;</p> <p>To amend Article 51 to read as follows:</p> <p>“Prohibition of violence based on sex, sexual characteristics or gender and violence against women”</p> <p>Article 51</p> <p>Any form of violence based on gender, gender characteristics or gender and violence against women in private and public spheres is prohibited, <i>regardless of whether the offence is perpetrated in real space or using digital and/or information and communication technology.</i>”</p>

⁸³ Relevant international standards: GREVIO General Recommendation No. 1 on the digital dimension of violence against women; the Council of Europe Convention on Cybercrime 185 of 2001 (“Budapest Convention”, CETS 185); Recommendation of the Committee of Ministers to member States on the protection of human rights with regard to social networking services; relevant international standards: the Istanbul Convention; Recommendation Rec (2002)5 of the Committee of Ministers to member States on the protection of women against violence.

Name of the law	Add a new provision	Change the existing provision
Law on Prevention of Domestic Violence (“Official Gazette of the Republic of Serbia”, No. 94/2016) ⁸⁴	<p>Article 32 should be amended by adding paragraph 1 as follows:</p> <p><i>“All institutions that keep records are expected, as a minimum obligation, to disaggregate the recorded data on victims and perpetrators by gender, age, type of violence, as well as the relationship between the perpetrator and the victim, geographical location and other factors that the institution considers to be important for the procedure. In addition to data on the victim, it is necessary to collect data on the percentage of convicted perpetrators of all forms of violence covered by the Convention and the number of protective measures imposed”</i></p>	
Criminal Code (“Official Gazette of the Republic of Serbia”, Nos. 85/2005, 88/2005 – corrigendum, 107/2005 - corrigendum, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019) ⁸⁵	<p>Article. 145a should read as follows:</p> <p><i>“Unauthorized publishing and showing to others other people's photos and videos with sexually explicit content.”</i></p> <p>Article 145a <i>(1) Whoever publishes or shows another person's photo and video with sexually explicit content without the consent of the person shown in the photo or video or to whom the photo or video refers, shall be punished by a fine or imprisonment for a term of up to two years.</i> <i>(2) If the offence referred to in paragraph 1 of this Article is committed by an officer while performing his duties, he shall be punished by imprisonment for a term of up to three years.”</i></p>	<p>To amend Article 54 (1) to read as follows:</p> <p>General rules on sentencing Article 54 <i>(1) The court will impose a punishment on the perpetrator of a criminal offense within the limits prescribed by law for that offense, taking into account the purpose of punishment and all the circumstances that influence the severity of the punishment imposed (mitigating and aggravating circumstances), and in particular: the degree of guilt, motives for the crime committed, the severity of the threat or violation of protected good, the circumstances under which the crime was committed, the previous life of the perpetrator, his personal circumstances, his behavior after the crime was committed, and especially his relationship with the victim of the crime, as well as any other circumstances which refer to the personality of the perpetrator. Particularly aggravating circumstances should be if a family member, a person living together with the victim or a person who abused his authority and trust committed a criminal offense against a former or current spouse or partner, parents, children or other family members living in the same household; if related criminal offences are committed repeatedly during a certain period of time; if the criminal offense was committed against a child or in the presence of a child; if the criminal offense was committed in cooperation between two or more persons; if a criminal offense was preceded or followed by extreme violence; if weapons were used; if the perpetrator has been previously convicted for criminal offenses of a similar nature.”</i></p>

⁸⁴ Relevant international standards: the Istanbul Convention; the Council of Europe study: Administrative data collection on domestic violence in Council of Europe member States, Study EG-VEW-DC(2008).

⁸⁵ Relevant international standards: the Istanbul Convention, the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse; GREVIO General Recommendation No. 1 on the digital dimension of violence against women.

Name of the law	Add a new provision	Change the existing provision
		<p>To amend Article 112 (28) to read as follows:</p> <p><i>“(28) The following are considered family members: spouses, their children, spouses’ ancestors in direct bloodline, common-law partners and their children, adoptive parents and adopted children, foster parents and foster child. Family members are also considered brothers and sisters, their spouses and children, former spouses and their children and parents of former spouses, as well as persons who have a child together or are about to have a child, even though they have never lived in the same family household.”</i></p> <p>To amend Article 114 to read as follows:</p> <p>A serious murder Article 114 (1) The following shall be punished with imprisonment for s term of at least ten years or life imprisonment:</p> <ol style="list-style-type: none">1) Whoever takes the life of another person in a cruel or insidious manner;2) Whoever takes the life of another person through reckless and violent behavior;3) Whoever commits a gender-motivated deprivation of a woman of life, based on misogyny, discrimination and disrespect for the woman’s life and bodily integrity (femicide);4) Whoever takes the life of another person and at the same time intentionally endangers the life of someone else;5) Whoever takes another’s life while committing the crime of robbery or armed theft;6) Whoever takes another’s life out of self-interest, for the purpose of committing or concealing another criminal act, out of wanton revenge, or out of other base motives;7) Whoever takes the life of an official or military person on official duty;8) Whoever takes the life of a judge, public prosecutor, deputy public prosecutor or police officer in connection with the performance of official duties;9) Whoever takes the life of a person performing tasks of public importance in connection with the tasks performed by that person;10) Whoever takes the life of a child or a pregnant woman;11) Whoever takes the life of a member of his family whom he previously abused;12) Whoever deliberately takes the life of several people, and it is not a premeditated murder, killing a child during childbirth or taking life out of compassion. <p>(2) Whoever acquires or prepares means for the commission of the criminal offense referred to in paragraph 1 of this Article or removes obstacles to its execution or agrees with others, plans or organizes its execution or undertakes another action that creates</p>

Name of the law	Add a new provision	Change the existing provision
		<p>the conditions for its immediate execution, shall be punished by imprisonment from one to five years.”</p> <p>Amend Article 128 to read as follows:</p> <p>Violation of equality Article 128 (1) <i>Whoever because of national or ethnic background, race or religion or because of the absence of such affiliation or because of differences in political or other beliefs, sex, disability, sexual orientation, gender identity, language, education, social status, social origin, property status or any other status of a personal nature, denies or restricts the rights of a person and a citizen established by the Constitution, laws or other regulations or general acts or ratified international treaties or gives him privileges or benefits based on this difference, shall be punished by imprisonment for a term of up to three years.</i> (2) Anyone who commits an offense by using digital and/or information and communication technology shall be sentenced to imprisonment for a term of up to three years. (3) <i>If the act referred to in paragraphs 1 and 2 of this article is committed by an officer while performing his duties, he shall be punished by imprisonment for a term between three months and five years.”</i></p> <p>Amend Article 138 (1) to read as follows:</p> <p>Endangering safety Article 138 (1) Whoever endangers the safety of a person by threatening to attack the life or body of that person or a person closely associated with, regardless of whether the offence was committed in real space or by using digital and/or information and communication technologies, shall be punished by a fine or imprisonment for a term of up to one year.”</p> <p>Amend Article 138a, paragraphs 1 and 2 to read as follows:</p> <p>Stalking Article 138a (1) Whoever during a certain period of time in real space or using digital and/or information and communication technologies persistently: 1) follows another person without authorization or undertakes other actions with the aim of physically approaching that person against his/her will; 2) against the will of another person tries to establish contact with him or her directly, through a third party or through digital and/or information and communication technologies and/or social networks;</p>

Name of the law	Add a new provision	Change the existing provision
		<p>Amend Article 142, paragraph 1 to read as follows:</p> <p>Violation of privacy of letters and other mail Article 142 (1) <i>Whoever opens another person's letter, telegram or any other closed mail or shipment without authorization, or otherwise violates their confidentiality, or who without authorization retains, conceals, destroys or hands over another person's letter, telegram or other mail, or who violates the confidentiality of electronic mail or other means of telecommunication or gives to another person photographs, recordings or videos that show intimate parts of another person's body or another person in an intimate relationship, shall be punished by a fine or imprisonment for a term of up to two years.”</i></p> <p>Amend Article 170, paragraph 2 to read as follows:</p> <p>Insult Article 170 (2) <i>If the offence referred to in paragraph 1 of this Article was committed through the press, radio, television or similar means, digital and/or information and communication technologies and/or social networks or at a public gathering, the perpetrator shall be fined from eighty to two hundred and forty daily amounts or one hundred and fifty thousand to four hundred and fifty thousand dinars.”</i></p> <p>Amend Article 185, paragraphs 1 and 2 to read as follows:</p> <p>“Showing, procuring and possessing pornographic material and exploiting a minor for pornography Article 185 (1) Whoever sells, shows or displays, or by publicly displaying or using digital and/or information and communication technologies and/or social networks or otherwise makes available to a minor texts, images, audio-visual or other objects with pornographic content or shows him a pornographic performance, shall be punished by a fine or imprisonment for a term of up to six months. (2) Whoever uses a minor for the production of images, digital records, audio-visual or other items with pornographic content or for a pornographic performance, shall be punished by imprisonment for a term between six months and five years.”</p> <p>Amend Article 182a, paragraph 3 to read as follows:</p> <p>Sexual harassment Article 182a (3) Sexual harassment is any verbal, non-verbal or physical behavior that aims or represents a violation of the dignity of a person in the sphere of sexual life,</p>

Name of the law	Add a new provision	Change the existing provision
Family Law ("Official Gazette of the Republic of Serbia", Nos. 18/2005, 72/2011 – another law and 6/2015 ⁸⁶)		and that causes fear or creates a hostile, humiliating or offensive environment, regardless of whether the offence is perpetrated in the real world or using digital and/or information and communication technologies and/or social networks. "
		Amend Article 119, paragraph 1 to read as follows:
		Instigating to commit suicide and aiding to commit suicide Article 119 (1) Whoever, in direct contact or by using digital and/or information and communication technologies and/or social networks , induces another to commit suicide or aids him to commit suicide, and suicide is committed or attempted, shall be punished by imprisonment for a term between six months and five years.
		Amend Article 178, paragraph 1 to read as follows: Rape Article 178 (1) Whoever has an intercourse or commits an act equivalent to it with a person without his/her consent or induces another person to attempt sexual acts with a third person without his/her consent, shall be punished by imprisonment for a term between five and twelve years. "
		Amend Article 289, paragraph 1 to read as follows: Records and documentation on domestic violence Article 289 (1) The court is obliged to deliver the judgment in the dispute for protection against domestic violence immediately to the parties in the dispute and/or their representatives ; to the guardianship authority in whose territory the family member against whom the violence was committed resides temporarily or permanently, as well as to the guardianship authority in whose territory the family member on whom the protection measure is imposed resides temporarily or permanently; to the competent police department in whose territory the family member against whom the violence was committed resides temporarily or permanently and to the competent public prosecutor's office in whose territory the family member against whom the violence was committed resides temporarily or permanently. "

⁸⁶ CEDAW, the Istanbul Convention.

Name of the law	Add a new provision	Change the existing provision
Law on Personal Data Protection ("Official Gazette of the Republic of Serbia", No. 87/2018)		Amend Article 4, paragraph 1 to read as follows: 1) "personal data" is any data relating to an individual who is identified or identifiable, directly or indirectly, in particular on the basis of an identity marker, such as name and identification number, location data, identifiers in electronic communication networks or one or more characteristics of his physical, physiological, genetic, mental, economic, cultural and social identity, as well as a photograph, digital or video recording of the person that reveals intimate parts of the body of that person;
Law on Prevention of Harassment in the Workplace ("Official Gazette of the Republic of Serbia", No. 36/2010)		Amend Article 6, paragraph 1 to read as follows: "Abuse, in terms of this law, is any active or passive behavior in real space or using digital and/or information and communication technologies and/or social networks towards an employee or a group of employees of the employer that is repeated, and which aims at or represents damage to dignity, reputation, personal and professional integrity, health, position of the employee and which causes fear or creates a hostile, humiliating or offensive environment, worsens the working conditions or leads to the isolation of the employee or induces him to terminate employment or cancel his employment contract or another contract on his own initiative."

1. Constitution of Kosovo

Equality⁸⁷ and non-discrimination⁸⁸ are the basic principles of the Constitution. Freedom of expression is guaranteed by the Constitution. Article 40 provides that freedom of expression means the right to express oneself, to disseminate and receive information, opinions and other messages without impediment. Yet, the same Article provides that freedom of expression can be limited by law when it is necessary to prevent encouragement or provocation of violence and hostility on grounds of race, nationality, ethnicity or religion.

Freedom of media and pluralism is explicitly addressed in Article 42 of the Constitution as guaranteed rights, whilst censorship is permitted only in cases when it is necessary to prevent encouragement or provocation of violence and hostility on grounds of race, nationality, ethnicity or religion. The right to correct untrue, incomplete and inaccurate information is acknowledged by the same article.

Freedom of association as a form of freedom of expression is established by Article 44 of the Constitution. It includes the right of everyone to establish an organization without obtaining any permission and freedom over the membership and participation in the activities of an organization. There are limitations or restrictions that can be applied for organisations or activities that infringe on the constitutional order, violate human rights and freedoms or encourage racial, national, ethnic or religious hatred which may be prohibited by a decision of a competent court.

Article 22 of the Constitution provides for direct applicability of a number of international human rights conventions, including for priority of such provisions over national laws where there is a conflict.⁸⁹ This includes: (1) Universal Declaration of Human Rights (**UDHR**); (2) European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols (**ECHR**); (3) International Covenant on Civil and Political Rights and its Protocols (**ICCPR**); (4) Council of Europe Framework Convention for the Protection of National Minorities; (5) Convention on the Elimination of All Forms of Racial Discrimination; (6) Convention on the Elimination of All Forms of Discrimination Against Women (**CEDAW**); (7) Convention on the Rights of the Child; (8) Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment; and (9) Council of Europe Convention on preventing and combating violence against women and domestic violence (**Istanbul Convention**)⁹⁰. In addition, Article 53 of the Constitution provides that human rights and fundamental freedoms guaranteed by the Constitution shall be consistently with the court decisions of the European Court of Human Rights. In this regard the protections set out in the ICCPR, ICERD, ECHR and the jurisprudence of ECtHR are important and relevant to Kosovo national legal system, even if Kosovo is not a member of the United Nations, a signatory of those conventions or a member of the Council of Europe.

⁸⁷ Article 3 (Equality before the Law) and Article 7 (Values references equality), of the Constitution of Kosovo.

⁸⁸ Article 24 of the Constitution of Kosovo.

⁸⁹ Ibid, Article 22.

⁹⁰ Amendment of the Constitution of the Republic of Kosovo No. 07-V-058 25 September 2020, Amendment No. 26.

2. Anti-Discrimination Legislation and Gender Equality

The Law on Protection from Discrimination⁹¹ provides protection for the following protected characteristics: nationality, or relation to any community, social origin, race, ethnicity, colour, birth, origin, sex, gender, gender identity, sexual orientation, language, citizenship, religion and religious belief, political affiliation, political or other opinion, social or personal status, age, family or marital status, pregnancy, maternity, wealth, health status, disability and genetic inheritance⁹².

It applies to all acts or omissions, of all state institutions, natural and legal persons, public and private sector, who violate, violated or may violate the rights of any person or natural and legal entities in all areas of life⁹³. Types of unequal treatment are specified as direct and indirect discrimination, discrimination based on perception, multiple discrimination, harassment, incitement of discrimination, victimisation, segregation, discrimination based on association, and failure of a reasonable adaptation/accommodation for persons with disabilities⁹⁴.

The Law on Gender Equality⁹⁵ protects and promotes equality between genders as a basic value of a democratic society⁹⁶. It applies to men, women and persons who have a protected characteristic of gender identity or sex determination, and guarantees equal opportunity and treatment in public and private spheres of social life⁹⁷. the Law on Gender Equality recognises gender-based violence as a form of discrimination that “seriously inhibits women’s and men’s ability to enjoy rights and freedoms on a basisof equality”.⁹⁸

Protection of human rights and equality is ensured by the Ombudsperson Institution⁹⁹. The basic role and competencies of the institution are defined by the Constitution, while these is further specified by the Law on Ombudsperson¹⁰⁰. The Ombudsperson Institution is mandated to serve as an equality body for promoting, monitoring and supporting equal treatment without discrimination on grounds protected by the Law on Gender Equality and the Law on Protection from Discrimination¹⁰¹.

⁹¹ Law No 05/L-021 on Protection from Discrimination.

⁹² Ibid, Article 1.

⁹³ Ibid, Article 2(1), Ibid.

⁹⁴ Ibid, Article 4(1).

⁹⁵ Law No. 05/L-020 on Gender Equality.

⁹⁶ Ibid, Article 1(1)

⁹⁷ Ibid Article 2(1).

⁹⁸ Ibid, Article 4 (1).

⁹⁹ Constitution of the Republic of Kosovo, Article 133.

¹⁰⁰ Law No. 05/L -019 on Ombudsperson..

¹⁰¹ Ibid, Article 1(2).

3. Legislation on freedom of expression, hate speech and hate crime and media regulatory and self-regulatory bodies

The Civil Law against Defamation and Insult¹⁰² establishes civil liability for defamation and insult while ensuring the principles of freedom of expression, providing for effective compensation for victims and acknowledging the role of the media in a democratic process.

Kosovo's criminal law sanctions the use of language to incite hatred. The Criminal Code covering the period up to 14 April 2019¹⁰³ through Article 147 provides that anyone inciting and spreading hatred, discord or intolerance between national, racial, religious, ethnic or other such groups living in the Republic of Kosovo, in a manner which was likely to disturb public order can be fined or imprisoned up to 5 years. The gravity of punishment for such a crime increased in instances when the offence was:

- systematic and committed by a person in a position of authority (imprisonment from 1 - 8 years);
- committed by the means of coercion jeopardizing safety, exposing national, racial, ethnic or religious symbols to derision, damaging the belongings of another person, or desecrating monuments (imprisonment of 1 - 8 years); and
- systematic, caused by taking advantage of the position of authority or caused disorder, violence or other grave consequences (imprisonment of 2 - 10 years).

The Criminal Code outlined aggravating circumstances to be considered by the courts. They included ethnicity or national origin, nationality, language, religious beliefs or lack of religious beliefs, colour, gender, sexual orientation, or the affinity with persons with the aforementioned characteristics¹⁰⁴. The same aggravating circumstances are included in relation to destruction or damage of property¹⁰⁵.

The amended Kosovo Criminal Code (April 2019)¹⁰⁶ provides greater protection with regards to hate speech and hate crimes. Article 141 on incitement of discord and intolerance has included sexual orientation and gender identity as explicit grounds of protection while indicating other personal characteristics as a possibility or other unspecified grounds. The level of punishment for such crimes has remained the same as in the previous Criminal Code - up to 5 years of imprisonment. The punishment depending on the gravity of crimes under this article remains the same as in the previous Criminal Code.

Similar aggravating circumstances to the previous Criminal Code, with an addition of gender identity have been outlined in a number of articles corresponding to various crimes such as aggravated murder¹⁰⁷, assault¹⁰⁸, light bodily injury¹⁰⁹, grievous bodily injury¹¹⁰, destruction or damage of property¹¹¹.

¹⁰² Law No. 02/L-65 against Defamation and Insult.

¹⁰³ Law No. 04/L-082 Criminal Code of the Republic of Kosovo.

¹⁰⁴ Article 74 (2), Criminal Code of Kosovo.

¹⁰⁵ Ibid, Article 333(4).

¹⁰⁶ Law No. 06/L-074.

¹⁰⁷ Criminal Code of Kosovo, Law No. 06/L-074, Article 173 (1.10).

¹⁰⁸ Ibid, Article 184 (3).

¹⁰⁹ Ibid, Article 185 (3).

¹¹⁰ Ibid, Article 186 (4).

¹¹¹ Ibid, Article 321 (4).

The violation of equal status of citizens and residents has also been criminalised by the current Criminal Code¹¹². Denial or restriction of the rights provided by the Constitution or ratified international agreements is punished up to 3 years of imprisonment. Limitation of the freedom of expression for an ethnic, religious or linguistic community and denial of the use of anyone's language and script are punished by imprisonment up to 1 year. The gravity of punishment is increased when the crimes are committed by someone in an official capacity abusing their authority.

The Constitution also makes provision for the Independent Media Commission as a mechanism to regulate the range of broadcasting frequencies, issue licences to public and private broadcasters, establish and implement broadcasting policies¹¹³. The Law on the Independent Media Commission¹¹⁴ details the functions and responsibilities of this independent body to regulate the rights, obligations and responsibilities of natural and legal persons that provide audio and audio-visual media services.

The Independent Media Commission (**IMC**) is an independent body for regulation, management, and oversight of the broadcasting frequency spectrum¹¹⁵. It issues and renews licences for all the audio-visual media services by granting rights to use the frequencies in the broadcasting frequency spectrum and imposes sanctions for the breach of terms and conditions of the licence. The IMC Code of Ethics is applicable to all its members or those granted with a licence. Article 5 of the Code of Ethics for Media Service Providers in Kosovo specifically prohibits incitement of hatred including prohibiting the use of a number of protected characteristics including sexual orientation to denigrate, mock or ridicule.¹¹⁶ The IMC's broadcasting strategy is subject to approval by the government. The IMC carries out periodic monitoring of tv stations and radio stations to check whether the latter are complying with their obligations. It also deals with complaints from citizens regarding the conduct of media outlets whether on television or radio that are regulated by the IMC.

The Kosovo Press Council (**KPC**) is a self-regulatory body for print and online media in Kosovo. It is a self-regulatory body based on membership and can only regulate those members who sign up to it. It can receive and deal with complaints from members of the public against those entities which are members. Its decisions on complaints received by a third party are based on its Code of Ethics, which was lastly updated in December 2019. The KPC Board that is entitled to decide on complaints is composed by the representatives of the media members.

4. Legislation on Gender-Base violence

While Kosovo has taken a progressive path in adopting a number of acts aiming at prevention and protection of domestic violence victims, however, the inclusion of a broader concept of gender-based violence in the adopted legislation and policies is lacking. The relevant applicable legislation involves:

a. Criminal legislation

- i. Criminal Code (06/L-074), 2019;¹¹⁷
- ii. Criminal Procedure Code (04/L-123).¹¹⁸

b. Strategy and policy guidance

- i. Kosovo Program for Gender Equality 2020-2024

¹¹² Ibid, Article 190.

¹¹³ Constitution of the Republic of Kosovo, Article 141.

¹¹⁴ Law No. 04/L-044 on the Independent Media Commission.

¹¹⁵ Ibid, Article 3.

¹¹⁶ Available at 1476189555.8908.pdf (kpm-ks.org).

¹¹⁷ Criminal Code (06/L-074) available at: <https://gzk.rksgov.net/ActsByCategoryInst.aspx?Index=3&InstID=1&CatID=5>.

¹¹⁸ Criminal Procedure Code (04/L-123) available at: <https://gzk.rksgov.net/ActsByCategoryInst.aspx?Index=3&InstID=1&CatID=5>.

a. Criminal Legislation

The criminal provisions of the Istanbul Convention are generally gender-neutral, as the gender of the victim or perpetrator should, in principle, not be a constitutive element of a crime. This is not intended to prevent states from introducing gender-specific provisions,¹¹⁹ and there are exceptions.

In Kosovo, an understanding of the gendered effects of violence related to crime is somewhat identifiable. The Draft Kosovo Criminal Procedure Code (KCPC) seeks to introduce “due consideration” for “the injured party or victim who is a victim of ... human trafficking, gender-based violence, violence in a domestic relationship, sexual violence, exploitation or discrimination and victim[s] who have suffered considerable harm due to the severity of the criminal offense”.¹²⁰ No definition of gender is included in the draft KCPC.

The Criminal Code (CC) primarily understands the gendered aspects of violence only within the domestic setting. It defines a “vulnerable victim” as: “a victim of a crime who is ... a pregnant woman, ... or a person whose relationship to and dependence on the offender make them particularly vulnerable to repeat victimisation, intimidation or retaliation”.¹²¹ “Vulnerable victims” are addressed specifically in several crimes relevant to gender-based violence,¹²² but any crime that is committed against a victim who is “particularly vulnerable” is to be treated as aggravated during sentencing.¹²³ The Supreme Court Sentencing Guidelines explain that the greatest consideration in sentencing where these provisions apply is the level of vulnerability of the victim and the extent to which the perpetrator perceived that vulnerability.¹²⁴ In relation to domestic violence, the Guidelines state that “a prolonged period of mental and physical abuse will increase the defencelessness of the victim and the likelihood of a finding of significant aggravation.”¹²⁵ The Guidelines are generally informed on issues of domestic violence, though an understanding of gender-based violence is notably absent.

Other crimes are aggravated where the perpetrator shares a domestic relationship with the victim,¹²⁶ and again there is a general aggravating factor with the same principle.¹²⁷ The definition of “gender” within the CC has not yet been harmonised with the wider definition of gender given by the Istanbul Convention; it currently contains the ambiguous definition used in the Rome Statute (“Gender - refers to the two sexes, male and female, within the context of society”).¹²⁸ Regardless, several crimes are aggravated if committed on the grounds of gender,¹²⁹ and there is a generally applicable aggravating factor with the same principle.¹³⁰

The CC adequately provides protection from **forced marriage**. Forcing a person to enter into marriage, or entering a marriage knowing that the other person was compelled, is punishable by imprisonment.¹³¹ The penalty increases if the offence is committed against a child (under age 18);¹³² by a parent; and/or if an element of material benefit exists. The CC also punishes any official who knowingly permits unlawful marriage. Civil law has a crucial role in addressing forced marriage. The Kosovo Family Law provides that a marriage is not valid when established “under coercion, threat or by mistake or any other lack of free will” and shall be annulled if the “spouse” has provided consent under fear, violence, or serious threat.¹³³

Although the CC does not use the term “stalking”, the offence of “harassment” captures the same behaviour.¹³⁴ Harassment in the CC is “a pattern of repeated and unwanted attention or communication with the intent to harass, intimidate, injure, damage property or kill another person or his or her children, family, relatives or pets” or placing a person under surveillance with the same intent. The penalty increases if the crime is committed against a former or current domestic partner or family member. A further aggravating circumstance is where a weapon, instrument, or other object is used.

The CC now contains a new offence on **sexual harassment**.¹³⁵ It protects all persons from sexual harassment, but attends specifically to those who are “vulnerable” due to age, illness, disability, addiction, pregnancy, or severe physical or mental disability, but not based on gender. There is a penalty increase if the perpetrator is in a position of authority over the victim or if a weapon, instrument, or object is used.

Kosovo law also contains protection against sexual harassment outside of the criminal sphere, by prohibiting sexual harassment under the Law on Gender Equality and the Law on Protection from Discrimination.¹³⁶ Nevertheless, including these prohibitions is positive because the scope of these laws is very broad, encompassing a wide range of aspects of public and private life, including but not limited to employment, education, access to social protection, social amenities, fair and equal treatment in court proceedings, and access to public places.

The CC contains the offences of rape and of sexual assault, which broadly correspond with the definition of sexual violence embodied in the Istanbul Convention.¹³⁷ The definition of rape is subjecting another person to a sexual act without that person’s consent.¹³⁸ Sexual assault is where a person touches another for a sexual purpose or induces a person to touch them or another person for a sexual purpose, without consent.¹³⁹ The CC contains a wide range of aggravating circumstances. One is unique to rape: if the act is accompanied by a threat “to reveal a fact that would seriously harm the honour or reputation of such person or of a person closely connected”. Punishments for both rape and sexual assault are increased if there is a threat of violence, imminent danger, exploitation, use of weapon, torture, bodily injury, intoxication, awareness of a victim’s vulnerabilities, or domestic relationship with the victim.

Under the CC, “consent” means voluntary agreement of a person over age 16 to engage in a sexual act.¹⁴⁰ It can also mean voluntary agreement between two persons over the age of 14 where the difference in their ages does not exceed two years. A defence exists under the CC where a person mistakenly believes that a victim is over the age of 16 for “justifiable reasons”.¹⁴¹ In such circumstances, a person may not be criminally liable for engaging in a consensual sexual act with a person below the age of consent. The negligence of the accused is insufficient to satisfy this defence, meaning that the perpetrator should be convicted if they ought to have been aware that the victim was under the age of consent or if they acted recklessly.

The CC defines some non-exhaustive circumstances where no consent is obtained. These are: where the victim expresses by words or conduct that they do not want to engage in a sexual act; where consent is expressed by someone other than the victim; where consent was obtained through deception, fear or intimidation; or where someone is not capable of agreeing to a sexual act because of diminished mental or physical capacity or intoxication.

¹¹⁹ Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence”, Istanbul, 11.V.2011, p. 153.

¹²⁰ Draft Criminal Procedure Code no. 06/L-151, Article 63. Para 1.4.

¹²¹ Code No. 06/L-074 Criminal Code of the Republic of Kosovo, Article 113.

¹²² See in particular: Light bodily injury (Article 185), grievous bodily injury (Article 186), female genital mutilation (Article 180), assault (Article 184), kidnapping (Article 191), and unlawful deprivation of liberty (Article 193).

¹²³ Article 70, para 2.

¹²⁴ Supreme Court of Kosovo, Sentencing Guidelines, First Edition, 2018, p. 79.

¹²⁵ Ibid.

¹²⁶ See in particular: rape (Article 227), sexual assault (Article 229), degradation of sexual integrity (Article 230), and slavery, slavery-like conditions and forced labour (Article 163).

¹²⁷ Criminal Code, Article 70, para 2.14.

¹²⁸ Ibid, Article 143, para 1.10.

¹²⁹ See for example: aggravated murder (Article 173), assault (Article 184), and grievous bodily injury (Article 186).

¹³⁰ Criminal Code, Article 70, para 2.12.

¹³¹ Ibid, Article 239.

¹³² Ibid, Article 113, para 22.

¹³³ Nr. 2004/32, Articles 18 and 63 respectively.

¹³⁴ Ibid, Article 182.

¹³⁵ Ibid, Article 183.

¹³⁶ Law No. 05/L-021 on the protection from Discrimination, Article 4, para 1.3.

¹³⁷ The offence of Degradation of Sexual Integrity (Article 230) broadly follows the same structure of these offences, albeit with different penalties. This offence is where a person is induced to expose the private parts of their body, to masturbate or to commit another act that degrades their sexual integrity, without their consent.

¹³⁸ Criminal Code, Article 227. Article 225.4 defines “sexual act”.

¹³⁹ Ibid, Article 229.

¹⁴⁰ Ibid, Articles 225 para 1 – 225 para 2.

¹⁴¹ Ibid, Articles 25 and 226.

b. Strategy and Policy guidance

The Kosovo Program for Gender Equality 2020-2024¹⁴², which contains a broader understanding of gender-based violence. The Program is intended to address several structural inequalities affecting women and girls, considering all strategic documents affecting the gender equality agenda, including the National Strategy for Prevention of Domestic Violence (NSPDV), while not duplicating relevant strategies.

First, it draws attention to women being disproportionately affected by gender-based violence. In relation to domestic violence, the Program discusses delays in issuing and enforcing protection orders and inadequate sentencing of perpetrators, even in cases of recidivist violence. The Program also discusses trafficking in human beings, the challenges of identifying and treating cases of sexual harassment, the prevalence of early marriages in minority and rural communities, and inadequate information on conflict-related gender-based violence.

The Program also discusses low reporting of sexual violence and insufficient information on violence in the name of “honour”. Structural inequalities are addressed, such as women’s access to the labour market. The Program draws attention to limited gender-disaggregated data on gender-based violence, lower protection for women in the northern part of Kosovo, and a lack of follow-up mechanisms to monitor gender-based violence cases. In terms of objectives, the Program does not explicitly address several forms of gender-based violence not covered by the present or future NSPDV. Relevant targets in the Program include the percentage of domestic violence cases handled by the judiciary; a review of the implementation of sanctions for perpetrators of gender-based violence, including adequate punishment for cases of trafficking in human beings; improving the evaluation of applications by the Commission for Verification for survivors of sexual violence perpetrated during the war within the mandated legal timeframe; integrating gender-based violence data into the Health Information System; and monitoring the percentage of girls and women who have experienced physical and psychological violence.

In terms of activities, the Program includes designating judges and prosecutors specialised in dealing with family cases, domestic violence, sexual violence during the war, property and inheritance issues; training judges, prosecutors, and police officers with regard to newly adopted definitions in the Criminal Code of Kosovo, emphasising domestic violence and sexual harassment; improving data regarding victims and perpetrators of domestic violence; raising awareness on women’s rights, including fighting domestic violence, gender stereotypes, and patriarchy; preparing a situational analysis to understand better the situation of girls and women detained in the correctional system, including their access to reproductive health services; providing information and training to girls and women in correctional systems and in prisons regarding their rights, including to rehabilitation and reintegration; and strengthening the capacity of the governmental commission reviewing applications from survivors of sexual violence during the war and of organisations licensed to increase women’s access to justice. Thus, while acknowledged in the Program, the broader understanding of gender-based violence has yet to be reflected fully in a comprehensive approach to addressing all forms of gender-based violence, as foreseen in the Istanbul Convention.

¹⁴² Gender Equality Agency, Kosovo Program for Gender Equality 2020-2024, available at: <https://abgj.rks-gov.net/assets/cms/uploads/files/Programi%20i%20Kosov%C3%ABs%20p%C3%ABr%20Barazi%20Gjinore%202020-2024%20-%20ANGLISHT.pdf>

5. Legislation on Protection from Domestic Violence

Since 2010 and onwards, Kosovo has taken a progressive path in adopting a number of acts aiming at prevention and protection of domestic violence victims, however, the prosecution of the violence in the domestic relationships did not take place until a later stage. The relevant applicable primary and secondary legislation involves:

c. Civil primary and secondary legislation

- i. Law (03/L-182) on Protection Against Domestic Violence, 2010;¹⁴³
- ii. Administrative Instruction (12/2012) for determining the place and way of psychosocial treatment of perpetrators of domestic violence, 2012;¹⁴⁴
- iii. Administrative Instruction (02/2013) on the method of treatment to perpetrators of domestic violence with imposed mandatory medical treatment from alcoholism and addiction to psychotropic substances, 2013.¹⁴⁵

d. Criminal primary and secondary legislation

- i. Criminal Code (06/L-074), 2019;¹⁴⁶
- ii. Guidance on the Legal Qualification and Treatment of Domestic Violence Cases according to the Criminal Code, Supreme Court of Kosovo, 2020;¹⁴⁷
- iii. Criminal Procedure Code (04/L-123).¹⁴⁸

e. Strategy, policy guidance, and minimum standard procedures documents

- i. National Strategy and Action Plan on protection from Domestic Violence, 2016;¹⁴⁹
- ii. Government of Kosovo, Agency for Gender Equality, Standard Operating Procedures on Protection against Domestic Violence, 2013.¹⁵⁰

c. Civil primary and secondary legislation on domestic violence

Law on Protection from Domestic Violence - In 2010, the Law (03/L-182) on Protection against Domestic Violence (LPDV) was enacted with an aim to prevent all forms of violence occurred in domestic relationship including vulnerable groups such as children, elders and disabled persons who might be domestic violence

¹⁴³ Law (03/L-182) on Protection against Domestic Violence, available at: <https://gzk.rksgov.net/ActDetail.aspx?ActID=2691>.
¹⁴⁴ Administrative Instruction (02/2013) on the method of treatment to perpetrators of domestic violence with imposed mandatory medical treatment from alcoholism and addiction to psychotropic substances, available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10039>.
¹⁴⁵ Administrative Instruction (02/2013) on the method of treatment to perpetrators of domestic violence with imposed mandatory medical treatment from alcoholism and addiction to psychotropic substances, available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2691>.
¹⁴⁶ Criminal Code (06/L-074) available at: <https://gzk.rksgov.net/ActsByCategoryInst.aspx?Index=3&InstID=1&CatID=5>.
¹⁴⁷ Guidance on the Legal Qualification and Treatment of Domestic Violence Cases according to the Criminal Code, Supreme Court of Kosovo, available at: <https://gzk.rksgov.net/ActsByCategoryInst.aspx?Index=3&InstID=1&CatID=5>.
¹⁴⁸ Criminal Procedure Code (04/L-123) available at: <https://gzk.rksgov.net/ActsByCategoryInst.aspx?Index=3&InstID=1&CatID=5>.
¹⁴⁹ National Strategy and Action Plan on protection from Domestic Violence 2016-2020, available at: <https://md.rksgov.net/desk/inc/media/52BA49FC-80C2-4172-A2F7-9E83D078F3E7.pdf>.
¹⁵⁰ Government of Kosovo, Agency for Gender Equality, Standard Operating Procedures on Protection against Domestic Violence, available at: <https://abgj.rksgov.net/assets/cms/uploads/files/Publikimet%20ABGJ/Procedurat%20Standarte%20t%C3%AB%20Veprimit%20p%C3%ABr%20Mbrojtje%20nga%20Dhuna%20n%C3%AB%20Familje.pdf>.

victims.¹⁵¹ Despite providing the appropriate legal measures to prevent domestic violence, the LPDV also aims to treat domestic violence perpetrators and mitigate the outcomes.¹⁵² The LPDV provides for the domestic violence offence to be litigated only in the civil proceedings and serves mainly to issue protection orders. Currently, the Assembly of Kosovo Committee on Human Rights, Gender Equality, Missing Persons and Petitions is revising the LPDV to align with EU Acquis and Istanbul Convention requirements.

Under the LPDV, domestic violence is defined in very detailed form as one or more intentional acts or omissions when committed by a person against another person with whom he or she is or has been in a domestic relationship, but not limited to: (i) use of physical force or psychological pressure exercised towards another member of the family; (ii) any other action of a family member, which may inflict or threaten to inflict physical pain or psychological suffering; (iii) causing the feeling of fear, personal dangerousness or threat of dignity; (iv) physical assault regardless of consequences; (v) insult, offence, calling by offensive names and other forms of violent intimidation; (vi) repetitive behaviour with the aim of derogating the other person; (vii) non-consensual sexual acts and sexual illtreatment; (viii) unlawfully limiting the freedom of movement of the other person; (ix) property damage or destruction or threatening to do this; (x) causing the other person to fear for his or her physical, emotional or economic wellbeing; (xi) forcibly entering removing from a common residence or other person's residence; (xii) kidnapping. LPDV provides for domestic violence victims to acquire protection orders against domestic violence acts caused by perpetrators. The protection orders are submitted within the jurisdiction of the victims' residence.¹⁵³ Depending on the risks which potentially may be posed by the perpetrator, the domestic violence victims apply for three kind protection orders in the civil court, which are as follows: 1. Protection Order (PO); 2. Emergency Protection Order (EPO) and; 3. Temporary Emergency Protection Orders (TEPO). The differences between these orders depend on the factors under whose authority they are issued, the timeframe, and what kind of measures are sought.

Administrative Instruction for determining the place and way of psychosocial treatment of perpetrators of domestic violence is an LPDV secondary legislation that regulates and determines the place and manner of implementation of psychosocial treatment on a DV perpetrator as prevention of repetition or recidivism.¹⁵⁴ The main goal of psychosocial treatment is to prevent domestic violence perpetrators' from further violent behaviour and also gaining self-control to prevent replication of similar violent situations against domestic violence victims.¹⁵⁵ Psychosocial treatment is offered by the way of counselling perpetrators, identifying the origin of violent behaviour, and increasing the responsibility of the perpetrators violence for his violent behaviour.¹⁵⁶ The court imposed mandatory measures of psychosocial rehabilitation are issued for a period of six (6) months and the domestic violence perpetrator is bound to undergo such treatment.¹⁵⁷ The psychosocial treatment of domestic violence perpetrators is performed in health facilities, social institutions, and NGOs who are specialized in psychosocial treatment.¹⁵⁸ However, perpetrators who have a prior history or have been psychiatrically diagnosed with mental health issues are treated at mental health institutions under their professional rules.¹⁵⁹ The way and plan of psychosocial treatment of domestic violence perpetrator are shared in writing with the domestic violence victim, family member, and guardians, and if the domestic violence victims agree, they can be involved and cooperate during the treatment process.¹⁶⁰

The termination of the psychosocial treatment occurs when: (i) when the treatment has reached the purpose; (ii) when the perpetrator does not follow the treatment or when the treatment does not provide the intended results and such information are provided to the competent court; (iii) has passed the 6 months period; (iv) the court decides to terminate the treatment; and (v) the domestic violence perpetrator dies.¹⁶¹ The registration, evidence, and reporting including the overseeing of the implementation of protective measures for psychosocial treatment are determined and performed by the competent court.¹⁶²

Administrative Instruction (on the method of treatment to perpetrators of domestic violence with imposed mandatory medical treatment from alcoholism and addiction to psychotropic substances - is an LPDV secondary legislation that regulates the mandatory medical treatment of domestic violence perpetrators who are addicted to alcohol and psychotropic substances.¹⁶³ The purpose of this mandatory measure is to treat the domestic violence perpetrators from such addiction rehabilitate and raise awareness to take responsibility and control over their conduct and actions, including the resocialization and reintegration to live a responsible life.¹⁶⁴

These mandatory measures are imposed by the competent court in cases where the domestic violence perpetrator acted violently in a domestic relationship under the influence of alcohol and psychotropic substances, and such measures can take up to two (2) years.¹⁶⁵ Such treatment is performed at the healthcare institutions such as: (i) primary healthcare-Main Family Medicine Centres; (ii) Secondary healthcare- Regional hospitals psychiatric sections and Mental health centres; (iii) Tertiary healthcare-University Clinic Centre of Kosovo-Institute of Forensic Psychiatry; and (iv) other institutions who are licensed to perform these kinds of treatments.¹⁶⁶ The implementation of these mandatory treatment measures is performed by the Kosovo Police.¹⁶⁷

d. Criminal primary and secondary legislation on domestic violence

Until 2019, the domestic violence was considered as civil offence, and as such, no criminal sanctions were sought under the LPDV, unless the perpetrator violated the protection orders. Through the new Criminal Code (06/L-074) enacted in 2019, for the first time the domestic violence including other forms of violence against women were recognized as criminal offences in compliance with the Istanbul Convention requirements and recommendations.

The Criminal Code (CC) defines domestic violence as a physical, psychological, or economic violence act or mistreatment with the intent to violate the dignity of another person within a domestic relationship that is punished by a fine and imprisonment of up to three (3) years.¹⁶⁸ When any other criminal offence act is committed within a domestic relationship, it is considered an aggravating circumstance.¹⁶⁹ Furthermore, in cases where a family member uses physical, psychological, sexual , or economic violence, or any act or mistreatment against another member of his/her family is punished by a fine and imprisonment of up to three (3) years.¹⁷⁰

The CC defines the term domestic relationship as the relationship between those who are engaged or were engaged or are married or were married or are in an extramarital union or were in an extra marital union or are cohabiting in a common household or were co-habiting in a common household; and those who use a common house and who are related by blood, marriage, adoption, in-law or are in a guardian relationship, including parents, grandparents, children, grandchildren, siblings, aunts, uncles, nieces, nephews, cousins; or who are the parents of a common child.¹⁷¹

The term domestic relationship in the CC has been aligned with the LPDV and is limited to the common household living arrangements, excluding other categories of victims who do not live with their partners or intimate partners in the common household or who are out of marriage relationship, thus, limiting the scope of application of the law only to those living together. However, the Istanbul Convention extends the domestic and family relationship further, by making common household irrelevant with respect to qualifying the domestic or family relationship.

¹⁵¹ Law (03/L-182) on Protection against Domestic Violence, Article 1.

¹⁵² Ibid, Article 2.

¹⁵³ Ibid, Article 3, para 1.

¹⁵⁴ Administrative Instruction (12/2012) for determining the place and way of psychosocial treatment of perpetrators of domestic violence, Article 1.

¹⁵⁵ Ibid, Article 2.

¹⁵⁶ Ibid.

¹⁵⁷ Ibid, Article 3 and 6.

¹⁵⁸ Ibid, Article 4, para 1.

¹⁵⁹ Ibid, Article 4, para 1 and Article 6.

¹⁶⁰ Ibid, Article 8.

¹⁶¹ Ibid, Article 9.

¹⁶² Ibid, Article s10 and 11.

¹⁶³ Administrative Instruction (02/2013) on the method of treatment to perpetrators of domestic violence with imposed mandatory medical treatment from alcoholism and addiction to psychotropic substances, Article 1.

¹⁶⁴ Ibid.

¹⁶⁵ Ibid, Article 5, para 1.

¹⁶⁶ Ibid, Article 5, para 2.

¹⁶⁷ Ibid, Article 6.

¹⁶⁸ Criminal Code (06/L-074), Article 248, para 1.

¹⁶⁹ Ibid, 248, para 2.

¹⁷⁰ Ibid, 248, para 3.

¹⁷¹ Ibid, Article 25.

The CC relevant criminal offences which can be categorized under the definition of domestic violence, are those where the commission of an offence against a person with whom the perpetrator is in a domestic relationship such as a family relationship or a family member, where in such situation the domestic relationship is used as an aggravated circumstance, such in cases of:

- i. Slavery, slavery-like conditions and forced labour – aggravated circumstance is considered if the offence is committed against a person with whom the perpetrator has a domestic relationship, the perpetrator shall be punished by imprisonment of three (3) to 10 years;¹⁷²
- ii. Aggravated murder – aggravated circumstance is considered if the perpetrator deprives a family member of his or her life, and is punished with imprisonment of not less than ten (10) years or of lifelong imprisonment;¹⁷³
- iii. Harassment – aggravated circumstance is considered if the offence is committed by a perpetrator against a former or current domestic partner or a former or current family member and is punished by imprisonment of six (6) months to five (5) years.¹⁷⁴
- iv. Rape – aggravated circumstance is considered if the offence is committed by a perpetrator who is the parent, adoptive parent, foster parent, stepparent, grandparent, uncle, aunt, or sibling of the person or shares a domestic relationship with the victim and is punished by imprisonment of five (5) to fifteen (15) years;¹⁷⁵
- v. Sexual Assault – aggravated circumstance is considered if the offence is committed by a perpetrator who is the parent, adoptive parent, foster parent, stepparent, grandparent, uncle, aunt, or sibling of the person or shares a domestic relationship with the victim and is punished by imprisonment of three (3) to ten (10) years;¹⁷⁶ and
- vi. Degradation of sexual integrity - aggravated circumstance is considered if the offence is committed by a perpetrator who is the parent, adoptive parent, foster parent, stepparent, grandparent, uncle, aunt, or sibling of the person or shares a domestic relationship with the victim and is punished by imprisonment of one (1) to ten (10) years.¹⁷⁷

Comparing to other CC criminal offences, such as those who include the elements of vulnerable victim definition, the aforementioned offences circumstances are clearer because it requires the existence of the elements of domestic relationship such as family relationship or family member between the victim and perpetrator, thus such element by default qualifies the offence and provides for heavier sanctions.¹⁷⁸

Neither CC nor the LPDV does not provide a definition of physical violence. The CC does not provide for physical violence as a specific offence but rather it is part of the elements forming the domestic violence criminal offence. As noted above, the domestic violence contains the physical violence as an element forming the domestic violence as a criminal offence which provides for *“whoever commits **physical violence**, [...] with the intent to violate the dignity of another person within a domestic relationship shall be punished by fine and imprisonment of up to three (3) years.”* [Emphasis added].¹⁷⁹ Furthermore, any act including other criminal offences containing the element of physical violence if it is *“[...] committed within a domestic relationship is considered aggravated circumstances.”* In addition, family members who exert **physical violence** [...] against another member of his/her family, shall be punished by a fine and imprisonment of up to three (3) years. [Emphasis added]. The Istanbul Convention recommends the criminalization of an offence of the intentional conduct of committing acts of physical violence against another person regardless of the circumstance in which it occurs.¹⁸⁰ This

¹⁷² Ibid, Article 163, para 3.

¹⁷³ Ibid, Article 173, para 1.3.

¹⁷⁴ Ibid, Article 182, para 2.

¹⁷⁵ Ibid, Article 227, para 4.9.

¹⁷⁶ Ibid, Article 229, para 3.9.

¹⁷⁷ Ibid, Article 230, para 3.9.

¹⁷⁸ Supreme Court of Kosovo, Guidance for Legal Qualification of Domestic Violence related articles in the Criminal Code of Kosovo, adopted 11 June 2020, p. 6.

¹⁷⁹ Criminal Code, Article 248, para 1.

means that physical violence term refers to a bodily injury suffered by the victim as a result of immediate and unlawful use of physical force, including violence resulting in the death of the victim.¹⁸¹ For example, the CC provides as an aggravated circumstances murder of the child or a family member including a pregnant woman, that is sanctioned with imprisonment from 10 years up to lifelong imprisonment.¹⁸²

Some of the CC criminal offences which include physical violence as an element and which can be committed within domestic relationships or against the vulnerable victim are the light and grievous bodily injuries, and assault.¹⁸³

The definition of the vulnerable group under the current CC has been extended to also include the cases of domestic violence on certain vulnerable groups. The CC defines the vulnerable victim as “a victim of a crime who is a child, a physically or mentally handicapped person, a person suffering from diminished capacity, a pregnant woman, the elderly or a person whose relationship to and dependence on the offender make them particularly vulnerable to repeat victimisation, intimidation or retaliation”.¹⁸⁴

After the CC entered into force, the legal practitioners such as judges, prosecutors, and lawyers have had dilemmas and uncertainties related to the legal qualification and treatment of the domestic violence cases. In this regard, the Supreme Court of Kosovo has issued a guidance on the legal qualification and treatment of the domestic violence cases as per CC, and their interpretation dilemmas under the following principles:

- As the main principle, the qualification of the domestic violence criminal offense in all those cases when the elements of the basic offense are fulfilled should be done according to the relevant article (s) and paragraph(s) and not at the same time be related to article 248 of the CC.¹⁸⁵
- In all cases where the elements of other criminal offences have not been met, because of the degree of applied violence or in cases of lack of evidence, in such cases the qualification of the criminal offence must be applied according to Article 248.¹⁸⁶
- In cases of violation of the protection orders, it is decided with two provisions, always as long as the violation of that order is accompanied by the commission of another related criminal offense.¹⁸⁷

The current Criminal Procedure (No.04/L-123) Code (CPC) was enacted in 2012 and therefore does not contain specific provisions related to the domestic violence victims. The CPC is currently being changed to align its provision with the EU Acquis including international human rights instruments and the best standards, such as the Istanbul Convention requirements and ECtHR jurisprudence.

However, in order for the CPC to align with Istanbul Convention obligations, the CPC needs to change to include certain measures such as:

- Prohibition of mandatory participation in any alternative dispute resolution processes such as negotiation, mediation, arbitration including the conciliation in relation to the DV cases.¹⁸⁸ The CPC must include new provisions to not allow domestic violence cases be mediated. This is also foreseen under the Law on Mediation providing that domestic violence offences shall not be referred to mediation.¹⁸⁹ In addition, the Code of Conduct of Mediators requires termination of mediation procedures where a case contains elements of domestic violence and instruct parties to follow their case in front of the court in accordance with applicable law.¹⁹⁰
- That fines imposed on the perpetrator to pay must not indirectly affect the financial situations of the victims, considering that in many circumstances the perpetrators are the sole breadwinners in the

¹⁸⁰ Istanbul Convention.

¹⁸¹ Explanatory Report on Istanbul Convention, paragraph 188.

¹⁸² Criminal Code, Article 173, para 1.

¹⁸³ Ibid, Articles 184, 185 and 186.

¹⁸⁴ Supreme Court of Kosovo, Guidance for Legal Qualification of Domestic Violence related articles in the Criminal Code of Kosovo, p. 5.

¹⁸⁵ Ibid, p.1.

¹⁸⁶ Ibid, p.2.

¹⁸⁷ Ibid.

¹⁸⁸ Istanbul Convention, Article 48, para 1.

¹⁸⁹ Law (No.06/L-009) on Mediation, Article 2, para 3.

¹⁹⁰ Conduct of Mediators in Kosovo (Moj-No.12/2019), Article 7, para 8.

- family and such measures may present an indirect punishment on the victim.¹⁹¹
- The investigation, prosecution and judicial proceedings must be carried out without undue delay whilst the victims' rights are respected at all stages of criminal proceedings.¹⁹² Although the LPDV foresees that domestic violence cases are treated with priority and provides a timeline for protection orders¹⁹³, it is recommended to seek whether the CPC needs to be amended to set timelines for treatment of domestic violence and related offences to avoid aggravating any harm to the victims during the investigation and judicial proceedings.¹⁹⁴
- To have an effective investigation, for an immediate response, prevention, and protection of domestic violence victims.¹⁹⁵ The police will be responsible to enter the place where the person is at risk to prevent further damage and/or murder, treatment and advising the victims in a proper manner.¹⁹⁶ In this regard, the CPC has to be reviewed within the remit of the Istanbul Convention provisions to seek whether further changes need to be reflected to ensure effective investigation performed by the law enforcement agencies.
- The relevant authorities, not limited to police, to effectively assess and develop a plan to manage the safety risks of victims on a case-by-case basis, in accordance with their standard operating procedures and in coordination and cooperation with each other.¹⁹⁷ It is an obligation when performing risk assessment, at all stages of the investigations and application of protective measures, to consider reliable information on the possession of firearms (legally or illegally) by perpetrators, in order to avoid further lethal risks and guarantee safety to victims.¹⁹⁸ In this regard, the CPC relevant search and seizure articles have to be reviewed in conjunction with the LPDV and Law on Police provisions on this aspect in order to align with Article 51 of the Convention.

6. Technology Facilitated Crime

Several emerging forms of gender-based violence are instigated or facilitated by information and communications technology (ICT). These include online harassment, stalking, bullying, and sexual abuse.¹⁹⁹ One form of sexual abuse is "revenge porn", which refers to the dissemination of sexually explicit images or videos without the consent of the pictured person and for no legitimate purpose (e.g., within a criminal trial). While often an ex-partner who obtained the material consensually, perpetrators are not always ex-partners and the motive is not always revenge. Women and girls seem disproportionately affected.

The Istanbul Convention does not address "revenge porn", and ongoing debate surrounds the correct legal response to the issue. Some have argued that existing remedies may be adequate. However, patchwork non-specific civil law or existing criminal law is often unable to capture the harms of the behaviour, partially due to the slow nature of the law to respond to new technologies.²⁰⁰

Several emerging forms of gender-based violence are instigated or facilitated by information and communications technology (ICT). These include online harassment, stalking, bullying, and sexual

The CC does not address Cyber Harassment, however, harassment has been defined as a criminal offence under Article 182, and it stipulates that *"Whoever engages in a pattern of repeated and unwanted attention or communication with the intent to harass, intimidate, injure, damage property or kill another person or his or her children, family, relatives or pets or whoever places another under surveillance with the intent to harass, intimidate, injure, damage property or kill another person or his or her children, family, relatives or pets; and in the course thereof, places that person in reasonable fear of death, grievous bodily injury, serious damage to property or substantial emotional distress shall be punished by a fine or imprisonment up to three (3) years"*.²⁰¹ Even though cyber harassment is not specifically defined as a criminal offence, under the criminal offence of harassment is as an aggravated circumstance if harassment is committed through the following means of communication: sending text messages or e-mails.²⁰²

The CC addresses Pornographic materials of persons under the age of sixteen²⁰³, however it does not address other forms of cyber violence against women and girls, including, but not limited to, cyber stalking, non-consensual pornography (or 'revenge porn'), gender-based slurs, 'slut-shaming', unsolicited pornography and electronically enabled trafficking.

Similarly, the e Law on Prevention and Fight of the Cybercrime addresses child pornography through computer systems²⁰⁴, but does not address any of the forms of cyber violence against women and girls. However, the law defines cyber-crime, computer system, computer data, service provider and computer program. Hence, there is the legal assumption that there are guarantees for the protection of citizens against criminal offences that are connected themselves to any of these terms.²⁰⁵

Kosovo citizens must rely on civil and administrative remedies for removal of material online.

With regards to civil remedies, the law on obligational relationships provides the right for a person to request the court or any other relevant authority to order that action that infringes the inviolability of the human person, personal and family life or any other personal right be ceased, that such action be prevented or that the consequences of such action be eliminated.²⁰⁶ The court or other relevant authority may order that the infringer cease such action, with failure to do so resulting in the mandatory payment of a monetary sum to the person affected, levied in total or per time unit.²⁰⁷

However, this remedy appears to be very limited and at the discretion of the court or authority to which the request is submitted. Additionally, this option is costly and time consuming as the person has to undertake lengthy court procedures.

Considering the limited remedies available, Kosovo should consider adopting a targeted criminal provision in the CC and/or measures within the Law on Prevention and Fight of the Cybercrime.

¹⁹¹ Istanbul Convention, Article 48, para 2; Explanatory Report on Istanbul Convention, para 253.

¹⁹² Istanbul Convention, Article 49.

¹⁹³ Law on Protection of Domestic Violence Article 3 para 5, 21 and 23.

¹⁹⁴ Explanatory Report on Istanbul Convention, paragraph 256.

¹⁹⁵ Istanbul Convention, Article 50.

¹⁹⁶ Explanatory Report on Istanbul Convention, para 257 and 258.

¹⁹⁷ Istanbul Convention, Article 51 paragraph 1; Explanatory Report on Istanbul Convention, paragraph 260.

¹⁹⁸ Istanbul Convention, Article 51 paragraph 2; Explanatory Report on Istanbul Convention, paragraph 263.

¹⁹⁹ Council of the European Union Conclusions, "Preventing and combating all forms of violence against women and girls, including female genital mutilation", Justice and Home Affairs Council Meeting, Luxembourg, 5-6 June 2014, p. 2

²⁰⁰ Ryan, D., "European remedial coherence in the regulation of non-consensual disclosures of sexual images", Computer Law and

²⁰¹ Ibid, Article 182.

²⁰² Ibid, Article 182, para 4.

²⁰³ Ibid, Article 231.

²⁰⁴ Law No.03/L – 166 on Prevention and fight of the cyber crime, article 16.

²⁰⁵ Ibid, Article 3.

²⁰⁶ Law No.04/L-077 on the Obligational Relationships, Article 139, para 1.

²⁰⁷ Ibid, Article 139, para 2.

7. Recommendations for the adoption or amendment of legislation

From the analysis above, the following recommendations derive for the adoption or amendment of legislation:

Name of the law/by-law	Adopt	Change/amend	Relevant international standards
Criminal Code of Kosovo, Law No. 06/L-074.	The term domestic relationship in the CC is limited to the common household living arrangements, excluding other categories of victims who do not live with their partners or intimate partners in the common household or who are out of marriage relationship, thus, limiting the scope of application of the law only to those living together.	The offences shall apply irrespective of the nature of the relationship between victim and perpetrator.	Article 43 of the Istanbul Convention.
	Article 248 (1) It does not provide a definition of physical violence as a specific offence but rather it is part of the elements forming the domestic violence criminal offence.	There needs to be an offence for criminalization of the intentional conduct of committing acts of physical violence against another person regardless of the circumstance in which it occurs.	Article 35 of the Istanbul Convention
	Lack of the criminal offence of “stalking”.	There needs to be a criminal offence of “stalking”	Article 34 of the Istanbul Convention
	Article 143. 1 (10) The definition of “gender” within the CC has not yet been harmonised with the wider definition of gender given by the Istanbul Convention (Gender - refers to the two sexes, male and female, within the context of society”).	The definition of gender “gender” shall mean the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men.	Article 3 (c) of the Istanbul Convention
	The CC is only focused on domestic violence and does not include gender-based violence as a broader concept.	Particular attention needs to be paid to women victims of gender-based violence. Gender-specific provisions need to be introduced.	Article 2 (2) of the Istanbul Convention.
	Absence of defining information and communication technologies, computer system, computer data, computer program, data provider and data traffic.	There needs to be a guarantee for the protection of citizens against criminal offences that are connected themselves to any of these terms.	Cybercrime Conention

Name of the law/by-law	Adopt	Change/amend	Relevant international standards
Law (03/L-182) on Protection against Domestic Violence	Violence committed through modern technologies is not prescribed as a criminal offence, with the exception of child pornography and harassment.	There needs to be a definition of the violence committed through modern technologies.	Cybercrime Convention.
	The cc does not address other forms of cyber violence against women and girls, including, but not limited to, cyber stalking, non-consensual pornography (or ‘revenge porn’), gender-based slurs, ‘slut-shaming’, unsolicited pornography and electronically enabled trafficking.	There need to be provisions that criminalize various forms of cyber violence against women and girls.	There are no agreed definitions or standard set for these forms of cyber violence at International, CoE or EU level.
	Article 182 - Cyber harassment is not specifically defined as a criminal offence, under the criminal offence of harassment is as an aggravated circumstance if harassment is committed through the following means of communication: sending text messages or e-mails.	There needs to be a specific provision on cyber harassment against women and girls.	There are no agreed definitions or standard set for these forms of cyber violence at International, CoE or EU level.
	Article 1.1 (2) The term domestic relationship in the CC is limited to the common household living arrangements, excluding other categories of victims who do not live with their partners or intimate partners in the common household or who are out of marriage relationship, thus, limiting the scope of application of the law only to those living together.	The offences shall apply irrespective of the nature of the relationship between victim and perpetrator.	Article 43 of the Istanbul Convention
	It does not provide a definition of physical violence as a specific offence but rather it is part of the elements forming the domestic violence criminal offence.	There needs to be an offence for criminalization of the intentional conduct of committing acts of physical violence against another person regardless of the circumstance in which it occurs.	Article 35 of the Istanbul Convention
	The LPDV provides for the domestic violence offence to be litigated only in the civil proceedings and serves mainly to issue protection orders.	The LPDV needs to be aligned with EU Acquis, Istanbul Convention and CC. Criminal sanctions need to be applied in cases of violence and civil remedies need to be available in cases of damages compensation.	EU Acquis and Istanbul Convention requirements (Articles 36, 37, 38 and 39 of this Convention)
	The LPDV is only focused on domestic violence and does not include gender-based violence as a broader concept.	Particular attention needs to be paid to women victims of gender-based violence. Gender-specific provisions need to be introduced.	Article 2 (2) of the Istanbul Convention.

Name of the law/by-law	Adopt	Change/amend	Relevant international standards
Criminal Procedure Code	No definition of gender is included.	The definition of gender “gender” shall mean the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men.	Article 3 (c) of the Istanbul Convention
	The CPC is only focused on domestic violence and does not include gender-based violence as a broader concept.	Particular attention needs to be paid to women victims of gender-based violence. Gender-specific provisions need to be introduced.	Article 2 (2) of the Istanbul Convention.
	Lack of prohibition of mandatory participation in any alternative dispute resolution processes such as negotiation, mediation, arbitration including the conciliation in relation to the domestic violence cases.	The CPC must include new provisions to not allow domestic violence cases be mediated.	
	That fines imposed on the perpetrator indirectly effect the victim.	That fines imposed on the perpetrator to pay must not indirectly affect the financial situations of the victims, considering that in many circumstances the perpetrators are the sole breadwinners in the family and such measures may present an indirect punishment on the victim.	Article 48 para 2 of the Istanbul Convention.
	Lack of set timelines for the investigation, prosecution and judicial proceedings in cases of domestic violence.	CPC needs to be amended to set timelines for treatment of domestic violence and related offences to avoid aggravating any harm to the victims during the investigation and judicial proceedings	Explanatory Report on Istanbul Convention, para 256.
	Lack adequate response on prevention and protection of domestic violence victims.	The CPC has to be reviewed within the remit of the Istanbul Convention provisions to seek whether further changes need to be reflected to ensure effective investigation performed by the law enforcement agencies	Istanbul Convention, Article 50.

Name of the law/by-law	Adopt	Change/amend	Relevant international standards
Law No.03/L –166 on Prevention and fight of the cyber crime	Lack of obligation to consider reliable information on the possession of firearms (legally or illegally) by perpetrators, in order to avoid further lethal risks and guarantee safety to victims.	CPC relevant search and seizure articles have to be reviewed in conjunction with the LPDV and Law on Police provisions on this aspect in order to align with Article 51 of the Convention.	Article 51 of the Istanbul Convention
	Does not address other forms of cyber violence against women and girls.		There are no agreed definitions or standard set for these forms of cyber violence at International, CoE or EU level.



