

THE EUROPEAN AND NATIONAL LEGAL FRAMEWORKS FOR COMBATING THE DIGITAL DIMENSION OF GENDER-BASED VIOLENCE

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The development of technology and the Internet has made virtual space a place for the exchange of various information and data. In addition to benefits it provides to users, there are unwanted side effects, including digital violence. The main problem is the establishment of a legal framework for the fight against digital violence directed against individuals or groups, because there are no temporal or geographical boundaries in virtual space, which makes it difficult to define national jurisdictions, as well as a great number of types of this violence. The subject of the research in this paper is the prevention of gender-based digital violence due to the importance and impact it has on society, and also the fact that violence which begins as digital one often culminates in physical violence and leads to serious injuries or death of persons affected by it. Successful combating this type of violence requires the cooperation of various actors in order to show that violence against women and girls is not acceptable. The Council of Europe and the bodies of the European Union simultaneously fight against digital violence in Europe by adopting various documents that are mandatory for member states. The Republic of Serbia harmonises its legislation with European acts. The method of content analysis and historical method have been used in writing this paper, and the objective has been to answer the following question: which international documents prohibit digital violence and what mechanisms are available to state authorities to fight against it. It has been concluded that it is necessary to ensure the implementation of adopted documents and the cooperation of state authorities and bodies with compa-

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nies that are the owners of the platforms and applications used for conducting violence, as well as the constant improvement of the services and officers who fight against this type of violence.

Key words: strategic documents, comparison, security and defence, regional security, strategic commitments

Introduction

Technological advancement has made it possible to link and share important information and personal data, freedom of speech and association, as well as raising awareness of human rights violation (Kastels, 2018:11). At the same time, an additional basis has been set for gender-based violence against women and girls with little or no responsibility of perpetrators, who are former emotional partners, acquaintances or anonymous individuals (Harris, 2020:321). According to definition, violence is the use of force or the threat that force will be used against a person or property in order to achieve a goal, which may result in death, injury, destruction of property, poverty or psychological consequences (OSCE, 2021:31). Restrictions introduced during the COVID-19 pandemic have contributed to the increase in digital violence, which has various forms and types. Violence can be physical, sexual, psychological/emotional, economic and digital. It is possible to perform several types of different violent behaviour with the same action. The fact that some violence is committed online or using technology is what defines the concept of digital violence (Priručnik za prevenciju rodno zasnovanog nasilja, 2015:11). According to a place of conduct or an object against which it is carried out, violence is classified as: self-harm, sports/public/street violence, peer violence, family/partnership violence, cyber/media and minority violence. All forms of violence against women committed in the digital sphere have a negative psychological impact on the victim of violence, so they can be categorised as psychological violence with the use of technology.

Digital violence is any type of violence committed by digital technology. It is a new phenomenon that is constantly increasing. The perpetrators' motive is to harass, injure or humiliate the other person, which is why different actions are undertaken, but they all have in common that they deepen gender inequality. Violence against women online, and with the assistance of technology, occurs on different platforms and various tools, such as social networks, private messaging applications, e-mail, dating applications, forums, media comment sections, video games or platforms for video conferences, etc., and they all have in common that they are publicly available (Van der Wilk, 2021:28). Violence is often visible to general public, since sharing such content is unrestricted, thereby constantly re-victimising victims (Recommendation CM/Rec, 2018, par 2.3.4). Due to frequent complaints, some Internet providers and owners of applications and platforms, such

as Facebook, have adopted measures to suppress certain forms of digital violence, such as hate speech, by appointing an independent commission to investigate users complaints. Without the cooperation of companies that own Internet platforms, it is not possible to successfully suppress any form of digital violence, because they often fall under several different jurisdictions, and include the responsibility of intermediaries and perpetrators (Harris, Vitis, 2020:326). Gender-based violence committed in the digital sphere against women and girls violates a wide range of human rights protected by international and European standards, and can be particularly harmful for those women and girls who are exposed to cross forms of discrimination (racial, ethnic, religious or sexual minority). Attacks are particularly dangerous because they have a serious impact on the well-being and human rights of a person, and also the effect of further spreading hate speech and limiting access to democratic debate when related to female views on certain topics online, such as feminism, gender equality, sexual abuse or specific aspects of women rights, such as sexual and reproductive health. This leads to self-censorship of women and girls and limiting their interaction online, or completely eliminating them from social networks (Vulić, Čabarkapa, 2020:92).

Violence on the Internet is used to prevent a favourable environment for the work of women in society. Due to the role they have in society, certain groups, such as celebrities, politicians, journalists, environmental and other activists and women human rights defenders, may be more exposed to such violence and campaigns to slander their personality or work (Vasiljević et al, 2018:168). The digital dimension of violence against female journalists, as well as other independent researchers, affects the successful performance of their role as public guardians in democratic societies because they are under constant threats through digital means, which is why the OSCE started a special project in 2015 focused on the security of journalists on the Internet. There are human rights standards for providing security and combating gender-based violence, but what lacks is their implementation. One of the tasks of this paper is to emphasise the responsibility of users, and also of society as a whole, for the suppression of gender-based violence.

The European legal framework for combating digital violence

The fight against gender-based digital violence in Europe takes place simultaneously, under the auspices of the Council of Europe and within the European Union. There are four main directions for the fight against digital gender-based violence: prevention, protection of victims, prosecution of perpetrators and coordination of policies of state authorities. Since virtual space is not subject to a classic division of territory into national jurisdictions, the cooperation of states in the fight against digital violence is necessary, and also the joint struggle of various actors within state (ITU & UN Women, 2015:2). Therefore, the Council of Europe has initiated a series of activities, which resulted in the

adoption of two key conventions and the general recommendation on digital violence against women. The first and most relevant international legally binding treaty dealing with crime and evidence gathering in cyberspace is the 2001 Council of Europe Convention on Cybercrime (Budapest Convention), open to accession by any country willing to implement its provisions and join the international cooperation in relation to cybercrime. The Convention includes two protocols. The First Additional Protocol is from 2002 and is related to the incrimination of acts of a racist and xenophobic character committed using computer systems, motivated threats and insults, gross minimization and approval or justification of genocide or crimes against humanity. The Second Additional Protocol to the Budapest Convention, adopted in 2021, aims to ensure more effective cooperation between judicial authorities and the collection of electronic evidence. The importance of the decision from the Second Protocol is indicated by the fact that the European Commission, in accordance with Article 16, 82(1), 218(5) and (6) of the Treaty on the Functioning of the EU, has adopted a decision authorising, in the interest of the smooth functioning of the Union, the members to sign and ratify the Second Additional Protocol to the Budapest Convention.

The 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) requires member states to make and implement comprehensive and coordinated policies at all levels of government and by all relevant institutions, including government agencies, NGOs, national, regional and local parliaments and authorities and to acknowledge the existence of digital violence. It has been updated by other relevant instruments, such as the Lanzarote Convention and the Resolution of the European Parliament with recommendations on the fight against gender-based violence. The Istanbul Convention, in Article 3, defines violence against women as any gender-motivated act of violence that results in or will result in physical, sexual, psychological or economic harm or suffering of women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether this happens in public or private life.

General recommendation no. 1 on the digital dimension of violence against women (*GREVIO*), was adopted on October 20, 2021. The independent professional body of 15 members called the Group of Experts on Action against Violence against Women and Domestic Violence, who have expertise in the field of human rights, gender equality, violence against women and domestic violence, or in the provision of assistance and protection to victims was established in order to implement the recommendation. *GREVIO* undertakes visits and evaluation, monitoring the effective implementation of the Istanbul Convention in member states and prepares reports on this. The first report for Serbia was released in November 2019.

The Recommendation of the Committee of Ministers on preventing and combating sexism *CM/Rec(2019)1* and the accompanying Guidelines for preventing and combating sexism emphasise the measures for implementation, which were adopted in 2019. The document mentions that the Internet is a useful tool for the exchange of ideas and information, and also for the spread of sexist, offensive and violent content, so member states should implement legislative measures that define and incriminate

incidents of sexist hate speech, applicable to all media and reporting procedures, reporting and sanctioning. It is recommended that member state governments take measures to prevent and combat sexism and its manifestations in the public and private sphere and encourage relevant stakeholders to implement appropriate laws, policies and programmes and monitor progress in the implementation of measures. States should inform the Council of Europe about the implemented measures and the achieved progress and ensure that the Recommendation and its appendix are translated and distributed to authorities and other parties.

There are other documents that indirectly prohibit digital violence, and the most important one is the Council of Europe Strategy on Internet Governance 2016–2019, which calls on members to protect, especially women and children, from abuses on the Internet, including sexism and cyber violence. This is also discussed in several resolutions of the Parliamentary Assembly.

The European Union has not acceded to the Council of Europe Conventions directly, but through the ratification by its members, because the activities of the European Union and the Council of Europe complement each other. Although the European Union has adopted documents dealing with the problems of digital violence, no EU legislation deals with the problem of gender-based digital violence in a comprehensive way. Therefore, in 2021, the European Parliament sent the Resolution (2021/2035 INL) with recommendations to the Commission to identify gender-based violence as a new criminal act, in accordance with Article 83(1), third subparagraph of the Treaty on the Functioning of the European Union, especially if the violence has the digital dimension. The position of the European Parliament is that gender-based violence, both online and offline, accompanied by a lack of access to appropriate protection, is a serious manifestation of gender-based discrimination and is a violation of the Charter of Fundamental Rights of the European Union (Combating gender-based violence: Cyber violence, 2021:19). That proposal is the legal basis for the adoption of a directive aimed at preventing and combating all forms of gender-based violence. The proposal of a directive of the European Commission and the European Council to combat violence against women and domestic violence was drafted on March 8, 2022 and is currently in the regular procedure for adoption. It defines the criminalisation of certain types of digital violence by introducing new criminal acts or expanding the current ones, in order to regulate some forms of harmful behaviour committed online or using technology in some member states, and it also proposes more rigorous sanctions for these crimes, and greater support to victims. The main task of this directive would be to harmonise the European law with the current international standards in the field of rights and freedoms, i.e. protection from violence.

As a result from all the above, the firm determination to prevent and sanction gender-based digital violence arises. However, what is missing are precise measures and actions by member states. Due to omissions and the absence of procedures that enable the protection of victims and the prevention of the spread of violence, some persons exposed to violence have turned to the European Court of Human Rights. The task of the European Court of Human Rights is to set a minimum

level of protection. In its decisions, this Court deals with the issue of digital violence and the fight against it indirectly, by analysing other rights guaranteed by the European Convention on Human Rights and Fundamental Freedoms, such as the right to life, the right to prohibit torture and inhumane treatment, the right to privacy, the inviolability of family life and home, the right to freedom of expression and the prohibition of discrimination (*Volodina v. Russia 1*). The greatest number of decisions of the European Court in relation to cyber violence are related to the right to freedom of expression and hate speech against minorities (political opponents, religious groups, sexual minorities, etc.), but there are also some decisions that include the issue of gender-based digital violence. Having in mind the decisions it has made in this field, the European Court of Human Rights has provided important notes on the obligations of member states to protect women from digital manifestations of violence, and also the obligations of companies that own portals or platforms used for doing some type of violence (*Delfi v. Estonia*). The judgments by the European Court of Human Rights in these cases are important because they impose obligations on states to take affirmative measures to protect the rights of individuals, even when it means invading their privacy (*Airey v. Ireland*), especially when it comes to vulnerable groups (*Bevacqua and S v. Bulgaria*). Gender-based violence is prohibited regardless of whether it is carried out in physical or virtual space and is an illegal activity according to international standards. When gender-based digital violence is committed between partners or ex-partners, it is the state obligation to respond to the victim's report of suffering some form of violence in a timely manner and to consider the accusations impartially and with necessary seriousness (*Buturuga v. Romania*), especially if the reports are repeated (*Kontrova v. Slovakia*). Most often, the abuser violates the victim's privacy by using their passwords and social media profiles to post content that is offensive or otherwise objectionable. Actions by state authorities after reporting by the victim have to be timely and sufficient to end acts of violence (*Volodina v. Russia 2, Para. 57*). In cases of digital violence that has the gender dimension, it is necessary to initiate criminal proceedings and act by competent state authorities with the emphasis they put on other criminal acts, regardless of traditional values valid in such a society (*Opuz v. Turkey*). On the other hand, proceedings involving private lawsuits by injured parties is a burden for victims, thus it is necessary to amend the national legislation so that these acts are prosecuted *ex officio* (*Volodina v. Russia*).

The rights guaranteed to all persons located in the territory of member state in which the European Convention is implemented are vested without restriction and to the extent that vesting those rights does not limit the rights of other persons. In this sense, there is the right to freedom of expression as long as that expression does not entail hate speech. When the line between the peaceful vesting of some rights and endangering the rights of third parties is crossed, it is everyone's duty to sanction such violation according to the capacities available to different entities. This means that the owners of portals, platforms or electronic media have the obligation to remove all content that poses a threat to someone's safety, health or life, and also

contains hate speech or incitement to any form of violence. This is extremely important because, as pointed out in the case of *NIT S.R.L. v. Moldova*, "communications play a great role and have the responsibility in creating personal attitudes" (Para. 97). At the same time, state authorities have the right and obligation to demand from owners of the Internet space the implementation of this obligation with the right to impose appropriate sanctions if the disputed contents are not removed or are not removed promptly (*Delfi v. Estonia*).

The national legislation of the Republic of Serbia

The Constitution of the Republic of Serbia prohibits discrimination, guarantees gender equality and the protection of human and minority rights and the protection of physical and psychological integrity. The freedom of thought and expression is the course of civilization that includes the right to have a personal opinion, share and receive information, views and ideas without the influence of state authority or third parties. There are limits meaning prohibition of abuse of such a right (fake news, hatred spread). Various international agreements have been signed and accepted, which guarantee the freedom to be vested with various rights and the prohibition of any violence against women. In addition to other countries, Serbia has ratified the Istanbul and Budapest Convention, while both Additional Protocols to the Budapest Convention have been signed, which has set the framework for the adoption of national laws. These documents require signatory states to establish authorities and procedures that will provide electronic evidence for the needs of specific criminal investigations, for every criminal offense whose evidence is in electronic form, as well as to effectively facilitate international police cooperation and mutual legal assistance in criminal investigations or proceedings for such criminal acts. Therefore, special teams dealing with high-tech crime in the police and prosecutor's office have been established. The adoption of the Law on Gender Equality has set rules that prohibit digital violence with the gender dimension. However, the criminal legislation has not yet been amended to fully define the criminal acts related to digital violence. Those shortcomings in the explicit regulation can be overcome by a broader interpretation of the current norms because the Criminal Code of Serbia recognises the criminal offense against the security of computer data, the criminal offense of sexual harassment, the criminal offense of endangering security and the criminal offense of publishing and displaying someone else's file, portrait or video that can be used individually for some of the acts of gender-based digital violence. However, there is a problem of uneven jurisprudence. The prosecution of the perpetrators of these criminal offenses is still undertaken by a private lawsuit, and not *ex officio*, which contributes to a great number of victims giving up prosecution and represents a violation of the recommendations of the European Court of Human Rights. The prosecution and punishment are negatively affected by the duration of court proceedings. The Higher Public Prosecutor's Office - Special Department for High-Tech Crime also uses the possibility of the principle of opportunity, from Article 283 of the Criminal Code, which stipulates that a criminal charge can be dismissed if the suspect

performs an action within a given period, such as paying some amount of money for humanitarian purposes. Therefore, the statistics of convictions for all forms of violence is very low, which is also influenced by the lack of information on ways to report abusers, as well as shortcomings in the collection of evidence (Perović, 2018:161). Furthermore, there is a lack of measures to protect victims in the evidentiary procedure, thus avoiding secondary victimization (Cvetičanin Knežević, 2019:15). The insight into the practice of the Higher Public Prosecutor's Office and the Court of Appeal in Belgrade shows that proceedings for digital violence in the form of reports for endangering security, persecution, racial and other discrimination have been conducted. For the criminal offense of endangering security, reports have been submitted for attacks on celebrities, journalists, women and activists. For endangering the safety of women, 9 final judgments have been passed, but only once there has been a prison sentence, while the rest have been fines or suspended sentences (Sloboda izražavanja u digitalnom prostoru Srbije: 24-25). For the criminal acts of persecution, out of 18 legally concluded proceedings, four have been conducted due to gender-based digital violence, and in one of them the measure of confiscation of a mobile phone as a means of committing a criminal offense has been imposed (Sloboda izražavanja u digitalnom prostoru Srbije: 27).

As a part of the obligations undertaken as a candidate country for membership in the European Union, the Republic of Serbia has the obligation to fully harmonise its legislation with the law of the Union. Pursuant to Article 68 of the Convention, at the beginning of 2018, GREVIO began an assessment of the situation in the Republic of Serbia. The report, which was published on January 22, 2020, outlines the progress made by the country since the Istanbul Convention came into force, with the adoption of the Law on the Prevention of Domestic Violence, which has greatly improved intervention in individual cases and provided law enforcement agencies, prosecutor's office and social services with tools for victim protection. Since the Istanbul Convention came into force, a special effort has been made to criminalise various forms of violence against women by introducing specific criminal acts. However, activities aimed at suppressing other forms of violence that do not fall under the category of domestic violence have not been included. The adoption of the Law on Gender Equality has enabled some of the recommendations from the Report to be fulfilled, such as the harmonisation of main terms and definitions with those from the Convention, and also the development of methodology for collecting and processing data on all forms of violence covered by the Istanbul Convention, which facilitates the work of judicial authorities in the fight against violence. Nevertheless, state policies, measures and services have to be of a comprehensive character and implemented in a coordinated manner, with the allocation of appropriate state resources (Jewkes, Dartnall, 2019). Moreover, it is necessary to improve the services that render services to female victims of violence in terms of counselling or support. In order to systematically deal with this issue, the Government has adopted the Strategy for preventing and combating gender-based violence against women and domestic violence in the period 2021–2025.

In order to provide a higher level of awareness, sensitization and capacity building in relation to all forms of violence against women and children, the Government of the Republic of Serbia and the Office for IT and eGovernment have established a national platform for the prevention of violence in Serbia and a national contact centre for child safety on the Internet, which are important steps in the field of prevention.

Conclusion

Innovations and technical development are used for various forms of digital illicit behaviour, including gender-based violence (Giugni, 2021:77). The digital dimension of gender-based violence has a serious impact on the lives of women and girls, including their safety, physical and mental health, livelihood, family ties, dignity and reputation. Digital violence is the result of long-standing problems of gender inequality and discrimination against women. The lack of comprehensive and accurate data collection in this field leads to fragmented and incomplete information (Agencija evropske unije, 2014:14), and also to a fragmented approach to problem solving. The collected data show that the scope of digital violence against women and girls is increasing, while at the same time there is a high rate of impunity due to insufficient reporting, conducting proceedings based on private lawsuits or ignorance and lack of technical resources for collecting evidence related to digital violence.

The Constitution and laws of the Republic of Serbia prohibit any form of violence against women, including digital violence. However, the current laws have to be harmonised in order to solve the problem more fully. In addition, education of state employees and media campaign are necessary to change the awareness and understanding of the entire society. With continuous training, law enforcement officers achieve better results in the investigation of digital violence (European Institute for Gender Equality, 2017:7). National human rights structures, such as equality bodies, ombudsman institutions and human rights NGOs, also have an important role in the fight against online violence against women, especially when their mandate allows them to study cases of online hate speech. The role of national bodies is also important in raising awareness of this phenomenon. The continuous education of the young generation contributes to preventing the spread of violence against women and girls in the physical world or with the help of technology.

Stable financing of training, modernisation and equipping of competent bodies with adequate technological tools necessary for detecting, recording and researching illegal activities in the digital world is a very important segment of the fight. In doing so, it is important to respect the identity of the victim and the confidentiality of data obtained during the investigation. The European and national legal instruments provide opportunities to combat digital violence. The Republic of Serbia has undertaken the first steps in harmonising its legislation with the current standards, but a change in awareness and understanding of the entire society about the disastrous impact of gender-based digital violence on individuals and society as a whole is needed.

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S u m m a r y

The development of technology and the Internet has made virtual space a place for the exchange of various information and data, but it also has unwanted side effects, such as digital violence. Violence is unacceptable, but digital violence, regardless of whether it is directed against individuals or groups, is a special problem, because in virtual space there are no temporal or geographical boundaries defined by national jurisdictions, so successful combating this form of violence requires the cooperation of various actors. The digital dimension of gender-based violence has a serious impact on the lives of women and girls, in terms of their safety, physical and mental health, livelihood, privacy, dignity and reputation, which is the result of centuries-long gender inequality and discrimination against women. The lack of comprehensive and accurate data collection, as well as a systemic approach to solving problems in this field, means that information is fragmented and incomplete, although the collected data show that the extent of digital violence against women and girls is increasing, while at the same time there is a high rate of impunity due to a lack of interest in conducting investigations in such proceedings or ignorance and lack of technical resources for collecting evidence related to digital violence. The fight against violence in the digital world is possible. Law enforcement officers would achieve better results in digital violence investigations with continuous training. National human rights structures, such as equality bodies, ombudsman institutions and national human rights institutions, also have an important role in the fight against online violence against women, especially when their mandate allows them to study cases of online hate speech. The role of such national bodies is also important in terms of raising awareness of this phenomenon and developing standards. Constant education and change of understanding among young generations in order to avoid the spread of violence against women and girls in physical world or with the assistance of technology, is an indispensable segment of such a struggle. In order to monitor technological progress, stable financing of training, modernisation and equipping of competent bodies with adequate technological tools necessary for detecting, recording and investigating illegal activities in the digital world are necessary. In doing so, it is important to respect the identity of the victim and the confidentiality of the data obtained during the investigation. The European and national legal instruments provide opportunities to combat digital violence. The objective of this paper has been to answer the question which international documents prohibit digital violence and what mechanisms are available to state authorities to combat it. The result of the research shows that the work of the European bodies on establishing standards and providing protection to victims of gender-based digital violence has been accelerated, and also that states are left with the opportunity to develop

mechanisms in their internal systems that will best meet the needs of society. The mechanisms of cooperation and exchange of information and provision of mutual legal assistance have been established. The Republic of Serbia has undertaken the first steps to harmonise legislation with the current standards, but a broader interpretation of the current legal rules is necessary, so that they can be implemented to new phenomena.

Key words: digital violence, women, gender equality, EU law, international law

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