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B.a.B.e.

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B.a.B.e.

Budi aktivna, Budi emancipirana

Be active, Be emancipated

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THE LEGAL STATUS OF WOMEN IN CROATIA

A Report on the Activities of

Legaline,

A telephone service providing legal advice to women

Editor's Note: B.a.B.e. is a strategic lobbying and advocacy group located in Zagreb, Croatia, working for the affirmation and implementation of women's human rights. B.a.B.e. believes that the advancement of women is impossible unless and until their equal rights are fully protected.

Since 1994, courts in the Republic of Croatia have limited the right to free legal aid. In 1995, the government eliminated this right altogether. As a result, free legal representation is only available through members of the Bar Association who agree to take a case on a *pro bono* basis. People eligible for *pro bono* work must be "socially underprivileged" as defined by the Bar Association, and produce supporting documentation. Many women who do not meet the definition of "socially underprivileged" are nonetheless unable to afford a lawyer. Often these women do not have the skills necessary to represent their own interests and to protect their rights. In response, B.a.B.e. was established in 1994 and subsequently started *Legaline*, a project to provide free legal advice to women.

I. OBJECTIVES OF THE *LEGALINE* PROJECT

The primary objective of the *Legaline* project is to provide telephone advice to women about their rights and advise as to methods to protect and act on these rights. A second objective is to educate women and provide information on how to represent themselves and obtain further information from relevant sources such as state institutions, women's groups and human rights organizations.

B.a.B.e. also provides lists of women lawyers who are skilled in dealing with women's legal issues. **B.a.B.e.** has contacted all women attorneys in Zagreb and twenty percent of them have agreed, in a case of need, to represent women free of charge or to represent them for a reduced fee. This is an encouraging number, given that there are no women's initiatives within the profession. These attorneys are developing a network of lawyers who are prepared to devote their attention to women's legal and human rights cases. In addition, *Legaline* offers some free legal representation for women who are unable to pay.

A further objective of the *Legaline* project is to review and identify the deficiencies in Croatian laws as they relate to women by examining the telephone calls made to the *Legaline*. On the basis of problems complained of by the callers, the **B.a.B.e.** team can evaluate the limitations of the Croatian legal system and advocate for changes which would protect and promote women's rights.

II. REPORT ON TELEPHONE CALLS TO *LEGALINE*: OCTOBER 1994-JULY 1996

A. VIOLENCE AGAINST WOMEN

Since its initiation, *Legaline* has received approximately 500 phone calls per year. In most cases, women have more than one question. During the first six months of *Legaline's* operation, the majority of the telephone calls from women related to violence, most often by their partner. The violence was generally within the context of a joint household and hidden from the public eye. None of the calls were related to the work place. In almost all cases the violence was over a prolonged period, some as long as fifteen to twenty years. All women reported verbal abuse in the form of insults, cursing, shouting, and threats, which often escalated into physical assaults. In some cases, these assaults inflicted serious bodily harm. Few of the women had ever reported the violence to authorities and many had never told anyone.

When asked why they had not reported the violence to the police, to the courts, to their doctor or social service center, most women indicated that they were afraid. They were afraid that the perpetrator

would become more violent and they feared for their lives. They were also ashamed that they had been victimized. Finally, they did not trust the institutions to deal with the problem. Those that had reported violence to the police were not taken seriously. Officers did not want to intervene because *it was a private matter between spouses*. The police did not want to respond to the complaint *until something happened*.

The police, when they did receive a complaint, often did not inform the relevant bodies. And, when a charge was finally brought, it was brought before the court for minor offenses which fined both the victim and assailant for disturbing the public peace and order.

Women rarely report violence to the District Attorney. The reasons they cite for this are as follows: ineffectiveness of the prolonged and often exhausting judicial proceedings; and, their lack of belief that any positive change will flow from this exercise. Compounding this problem is the apparent lack of understanding of the judicial system regarding the issue of violence against women, both from the perspective of the judges and of the lawyers.

For similar reasons, women rarely report violence to social services. Women do not feel that social service workers are trained to deal with violence against women and they do not have the tools or mechanisms in place to protect women from violence in the home.

If women complain to anyone, it is often to a physician. Under the existing law, a physician must submit a criminal report against the perpetrator. For this reason, women may not disclose how the injuries occurred. However, even when they do, many women indicated that physicians often fail to report the crime. Also, as with the other professionals mentioned above, physicians demonstrate little if any sensitivity to women who suffer from domestic violence.

Finally, many women decline to institute criminal proceedings in the case of domestic violence because of the nature of the assault. It usually takes place in private where there are no witnesses. Women are fearful that they can not prove what happened; it is his word against hers, and she will be made to look a fool or worse. If there are any witnesses, normally they are his friends and they will protect him or simply refuse to testify. Many women, when asked why they did not take the matter to court will respond that their partner has good connections in the legal system and nothing would come of it.

It is clear from above that the legal system consistently fails to protect women from violence. Many forms of violence against women in the home or in public are not treated as criminal acts by the criminal code of the Republic of Croatia. For example, according to the Criminal Code it would be difficult to characterize insulting forms of address,

disdainful behavior towards women, shouting, threats, or curses as violence against women. Furthermore, stalking, telephone harassment, and sexual harassment are not even contemplated as criminal. Forbidding women to leave their homes, communicate with friends or relatives, expression of dissatisfaction by threats or forbidding women to accept employment are not considered to be violence against women under the legislation.

The only crimes defined by the criminal code which can be applied to domestic violence cases are insult, assault and battery. However, the legislation prescribes a civil suit as the appropriate remedy. The costs of a civil suit are borne by the plaintiff and it is almost impossible to imagine how a civil suit could provide any fair or just resolution in the case of domestic violence. A further and aggravating circumstance is the exceptionally long and complex nature of the proceedings. Even in those rare cases where a woman may instigate criminal proceedings against the perpetrator, the time bar often expires prior to the finalization of the case. Added to the procedural problems is the workload of the first degree court and the absence of a separate court to deal with issues of domestic violence. The net result is a systemic failure of the judicial system to effectively address the issue of violence against women.

B. FAMILY LAW

1. Divorce

Divorce is often linked to domestic violence. The process of divorce commences with a reconciliation attempt through a Social Service Centre. The reconciliation attempt is mandatory in all cases except when the parties do not have minor children (either of their own, adopted or when parental rights have been extended) and the parties have agreed to a divorce. If the reconciliation attempt is unsuccessful, the woman would file her divorce action in the court of first instance.

The divorce resolves all questions concerning the dissolution of the marriage and custody issues, including the care and upbringing of the children, access to the children and support payments for the spouse. In deciding to initiate a divorce, women have expressed fear that their spouse may react with violence against them or their children, or simply take the children away. A further difficulty lies in the high cost of the process. The plaintiff must initially pay, with little probability she will ever recover her costs. The divorce process will last on average one to two years.

An abusive spouse often reacts aggressively when confronted with a divorce petition. In many cases, a woman and her children are forced by the husband to leave their apartment. There is no legal mechanism to grant the woman exclusive possession of the matrimonial home pending the

divorce proceedings. Women often encounter great resistance from their spouse which may include threats to the children's safety, threats to take the children away from her, and allegations in court that she is an unfit mother and hence not capable of retaining custody of the children. A common complaint from women whose husbands have access to the children under an agreement with a Social Service Centre is that he either neglects the children or leaves the children with his parents. The other common complaint is that the children are kept longer than is allowed for under the access agreement. Women report that even in court custody disputes which they ultimately win, the women are reduced to a state of despair, panic and helplessness by the process. Added to the trauma of the divorce proceedings, a spouse can create long, unnecessary delays by simply not appearing for the court proceedings. In most cases a divorce cannot be issued without both parties being heard in court.

The Marriage and Family Relations Act provides that social workers should represent the interests of the children in a divorce proceeding. The Social Service Centers provide their opinion regarding which parent should be granted custody and access. Women have complained that Social Service Centers lack the experience and understanding of the issues in relation to domestic violence to provide such opinions. The Centers have proposed access in cases where the father has been violent to her or the children or is suffering from a serious mental illness. In one case, a husband was permitted access in a situation where he had tried to kill both himself and the child.

2. Alimony

a. Child support

When children are involved, the courts issue a decision on alimony in all cases. The decision is made on the basis of the child's needs and the ability of both parents to support the child. Other support obligations and additional earning opportunities are also taken into consideration. The parent who has not been given custody is obligated to pay a fixed percentage of the monthly salary as alimony. If the person concerned does not have a fixed monthly income, the alimony is set to a fixed percentage of the minimum wage in the Republic of Croatia. In order to protect the child's interests, the court is authorized to set an amount higher than the amount requested. Usually, between twenty and thirty per cent of the salary is payable for each child, or seventy to one hundred per cent of the minimum wage. **B.a.B.e.** always recommends that women seek a fixed percentage of the minimum wage because the amount in question can be precisely determined every month. In cases in which a percentage of actual salary is awarded, there have been instances where the parent

simply stops working, rendering the award worthless or cases where a parent takes a private job and reports lower earnings than actually received.

b. Support for a marriage partner

An award can be issued by the court during the divorce proceedings for alimony to be paid for the support of one of the marriage partners. This occurs when the partner seeking such support cannot find employment, is incapable of working, has no income, or has no property which could be a source of income.

Women have often stayed at home to care for children and the household during the course of the marriage. When the marriage breaks down, these women often find themselves working outside the home for the first time in their lives. The employment that is available to them is usually low paying, resulting in less money available to contribute to a pension over a much shorter time. These women have few prospects other than poverty. The system does not recognize and compensate women for the work they had performed in the home by raising the children and maintaining the household.

3. Division of Property

Parallel with the divorce process, or after the divorce has been finalized, there is a regular process for division of joint property. In cases where the parties cannot reach a decision, either party may file a claim with the court for the division of the marital property.

This court process has complex probative proceedings. Namely, the marital property is divided according to the contribution of each of the parties in the attainment of joint property. The joint property of the parties comprises all the property they have attained by work during the marriage.

The process of dividing property can also be started during the marriage. It is often the case that women are forced to leave the family home when divorce proceedings are instituted. The husband may transfer joint property to hide or conceal it. In such cases, the woman can ask the court to issue an injunction banning the transfer of the joint property and/or to ask that her personal chattels be delivered to her. Both of these measures are difficult to enforce due to shortcomings in the executing process. Often, women are not informed of their rights regarding joint property. Likewise, a husband often assures his wife that he is sole owner since the property is in his name and he paid for it with his income. Similarly, the husband usually keeps the automobile, claiming it was his anyway. Many women may not appreciate that the law provides that all property of the marriage is joint property regardless of whose name it is

in. Women are deemed to have contributed to the joint property of the marriage by caring for children and maintaining the household.

A new proposal in the Marriage and Family Relations Act envisions that the joint property of married couples shall be divided equally. It remains unclear whether it will be possible to prove entitlement to a different share.

The claim for division of the marital property is almost always submitted by women because women are generally forced to leave the house upon filing for divorce. The court costs for such suits are very high, and further depend on the value of the joint property. If the woman is dissatisfied with the decision of the first instance, she has to pay an equally high amount for the appeal. Once again, it is difficult to ensure the recoupment of her costs. The legal procedure in question is very complex. Normally she would need the assistance of a lawyer, which causes the costs for such cases to far exceed the paying capabilities of most women.

4. Enforcement

After a long civil procedure, women can end up with a court decision which leaves her powerless: a court orders alimony to be paid, but he refuses to pay; the joint property has been divided, but he remains in sole possession of the property; the court issues an eviction order against him, but he remains on the property; at the end of each proceeding, the defendant has been ordered to refund the costs incurred to the plaintiff, but he pays nothing.

In such cases a process of enforced execution follows, which is set in motion at the request of the plaintiff in civil proceedings. The plaintiff now has a new role - that of a creditor. Yet again, all the costs are borne in advance by the creditor. Later, if the court sees justification, it will decide in her favor and order the debtor to refund costs. If the debtor does not refund the costs incurred, the court may order the debtor to pay the costs of the execution procedure. If the debtor still does not cover the costs, women may institute yet another process of execution. And so on, *ad infinitum*.

Court tariffs in execution procedures are half of those incurred in civil proceedings, but only at first glance. Half of the tariff payable on the original claim is payable for the claim for execution, but the other half must be paid with the issuance of the decision on execution, which is made at the very beginning of the process. In the end, the execution procedure amounts to the same costs as the civil procedure. The debtor in execution procedures has at his disposal almost unlimited opportunities to delay and to evade a legally effective and enforceable court verdict. He can enter objections almost interminably. He can also enter objections

without any proof that he has paid the creditor in full.

As the court in an execution procedure is not authorized to discuss the facts which have arisen after the issuance of the civil judgment, the debtor then has to enter a new civil procedure in order to prove facts.

The debtor has various ways to hide the property which is subject to the execution procedure, and thus outwit the court and the creditor (who knows that this is not the real state of affairs, but is powerless to prove it). Such deceit can also result in discontinuation of the process. In one case, a husband threw his wife out of the house. She brought a suit against him for trespass, was successful in her claim (received judgment in her favor) and he was ordered to hand over the house keys. He did so, but in the meantime placed locks on all doors inside the house, so that she could enter only the passageway. The woman had to bring a new suit and the procedure had to be conducted again from the very beginning.

C. LABOR LAW

The sharp rise in the number of calls connected with labor law commenced after the new Labor Act came into force on January 1, 1996. Because of the privatization process and new regulations in the field of labor law, women have been experiencing less security regarding their jobs and economic situation in general.

There were a number of calls from women employed by private employers, complaining that some of their basic rights were being denied, such as the right to weekly rest days and annual leave for the prescribed length. However, they do not dare to do anything for fear that they will be fired. In some cases, women who are employed by private employers are being paid less than was mutually agreed upon when they took the job in question. Generally, women are registered at the minimum wage, so that the payroll taxes will be minimal. As a result, women will be entitled to only minimum pensions. Further, there is a growing trend for private employers to not register at all, and consequently their workers are left with no rights whatsoever.

A large number of calls relate to the rights arising from pregnancy and maternity leave, particularly in connection with remuneration of salary during this period, and to *Mother Nurturer* rights. Under the new Labor Act, a woman with four or more children has status as *Mother Nurturer* and is entitled to certain benefits such as salary, health and disability protection and recognition of working years *in lieu*. However, while these benefits have been enacted, there is no corresponding budgetary provision setting forth funds to implement these benefits.

Generally, the new Labor Act gives women (and mothers in

particular) ostensibly increased protection and benefits, such as maternity leave until the child is in the third year, *Mother Nurturer* salaries and job protection. In practice, however, these rights fixed by law are difficult to realize. Furthermore, such rights only make it more difficult for women to find employment and achieve economic independence. Employers do not want to employ women who will be absent from work as *Mother Nurturers* with the employer being left responsible for her benefits.

The new Labor Act also gives employers increased authority regarding dismissal of workers. This has intimidated working women and has placed real limits on their ability to object to their employer's labor practices and their ability to grieve any violations of their labor rights, including complaints of sexual harassment in the work place. The Labor Act makes no provision for protection from sexual harassment, coercion and molestation in the work place. There are also no mechanisms built into the Act by which women are ensured equal opportunities in employment and professional promotion, advancement or training.

Labor disputes are treated in the same manner as any other civil procedure, with the exception that there are no court tariffs on cases of this type.

D. COURT COSTS AND TARIFFS

A tariff is payable in all court procedures: civil, extra-judiciary, criminal, administrative, entry into court registers, enforced settlements proceedings, and bankruptcy and liquidation proceedings. Tariffs are payable on almost all applications to the courts, including suits and legal remedies as well as proposals for undertaking some process actions, court settlements and other actions before the courts. Courts will not hear cases for which court tariffs have not been paid, as provided for in the Act on Court Tariffs..

In October, 1995 the new Act on Court Tariffs drastically increased the tariffs. Prior to October, 1995 the lowest court tariff payable amounted to Kunas 300 (app. 90 DEM) and the highest was Kunas 450 (app. 130 DEM). This is in sharp contrast to the new tariffs, in which the lowest tariff is set at Kunas 100 (app. 30 DEM) and the highest at Kunas 10 000 (app. 3.000 DEM).

The Act provides for exemptions from the payment of tariffs for those falling into one of the following categories: the Republic of Croatia and state authorities; persons and bodies acting with public authorization; employee and labor disputes; war invalids; the wives, children and parents of those killed defending Croatia; those missing and taken as prisoners of war; displaced persons and refugees; holders of social assistance

entitlement cards; humanitarian organizations and organizations which are engaged in the protection of the disabled and families of those who died, are missing and/or taken prisoner during the performance of humanitarian activities; and, foreign states if contemplated by international treaties or under a condition of reciprocity. The court may further exempt other parties from the payment of tariffs in cases where the party's income is below a certain level determined on the basis of a certificate issued by the Tax Administration Department of the Ministry of Finance and upon declarations made by the party that neither she nor her spouse own property or a motor vehicle which is less than five years old.

This system of court tariffs places many women in a position in which they are unable to assert their rights before a court. Civil proceedings filed for the determination of the division of marital property are usually filed by women. Thus it is the woman, as plaintiff, who is obliged to pay the tariffs, notwithstanding the fact that she may have been thrown out of her apartment, sometimes without means of support and often with children. As these proceedings usually relate to the division of real property and as the plaintiff claims that she is the joint owner of the real property together with her husband, she is not entitled to an exemption from payment of the court tariff, because she does not fulfill the requirement of the Act that she not be the owner of real property.

Furthermore, in any civil procedure or execution procedure related to property of any considerable value, the court tariff itself normally exceeds the average monthly salary of a citizen of the Republic of Croatia and almost always the monthly income of most Croatian women.

In **B.a.B.e.**'s opinion, the failure to include exemptions for low income women who file divorce and property claims, or for minors who take part in the proceedings, is one of the Act's serious omissions and shortcomings.

The tariffs set for both private claims in criminal proceedings and for court decisions and legal remedies clearly deter women from approaching the courts and severely restrict the access women may have to the judicial system to adjudicate their claims, thereby limiting the right of women to participate meaningfully within a civil and democratic society.

B.a.B.e. encourages readers to visit their web sites for further information. Readers may also contact them regarding current activities and for membership information.