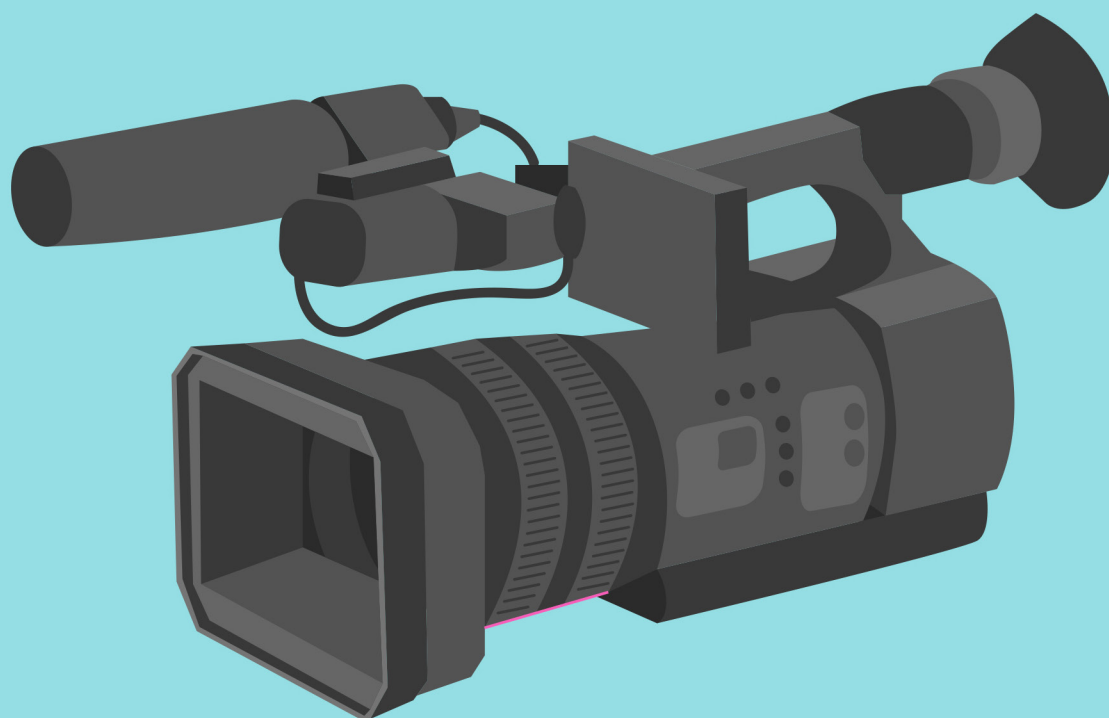


PROCEDURAL RIGHTS OBSERVED BY THE CAMERA – AUDIOVISUAL RECORDING OF INTERROGATIONS IN THE EU

(PROCAM)

COUNTRY REPORT - CROATIA



Procedural rights observed by the camera – audiovisual recording of interrogations in the EU

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Country report for Croatia

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1. Introduction

1.1. About the project; research aim and methodology

This country report is based on a research carried out in Hungary in the framework of an empirical research project conducted in five European Union (EU) countries. This international project “Procedural rights observed by the camera – Audiovisual recording of interrogations in the EU (ProCam)”, supported by the European Commission, aims at mapping the link between audiovisual recording of interrogations and the enforcement of the rights of defendants, with special regard to the rights of vulnerable defendants and the rights enshrined in Directive 2013/48/EU on access to a lawyer¹ (hereinafter: Access to a Lawyer Directive), along with an EU-wide identification of good practice of recording interrogations of vulnerable persons and understanding concerns about audiovisual recording of interrogations.

The research in the respective countries was conducted by local project partners, with the coordination of the Hungarian Helsinki Committee. The project partners are the following:

- Hungarian Helsinki Committee (Hungary),
- Associazione Antigone (Italy),
- Fair Trials (France),
- Human Rights House Zagreb (Croatia),
- Liga Lidskych Prav (Czech Republic).

The project included an analysis of the legal framework and the statistical data, and an empirical research. Results are summarized in the present country report.

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Analysis of the legal framework and the available statistical data

As a first step, researchers analysed the applicable national legal rules with respect to the audiovisual recording of interrogations and of testimonies given at court hearings, along with the available statistical data pertaining to the practice of audiovisual recording. Results were summarized in desk reviews, with the overall purpose to provide, on the basis of the information available, a critical account of the criminal procedure with respect to the focus of the research, and to provide a contextual framework for interpreting the data gathered through the empirical research.

Empirical research

In addition to analysing legal provisions in member states, we wished to assess compliance with the respective EU Directive on the basis of strong empirical evidence. As part of the empirical research, we conducted semi-structured interviews with participants of criminal procedures, i.e., with representatives of investigation authorities, prosecutors, judges, defense counsels

1 Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty

and defendants. The willingness of authorities and other stakeholders to cooperate with the researchers varied country by country, , similarly to the availability of relevant statistics. Some national research teams encountered a lack of cooperation at political and administrative (governmental and ministerial) levels. In Croatia that was not the case. In Croatia, permission to conduct interviews with defendants was not provided due to their unwillingness to share their experiences. In Croatia, 13 interviews were conducted with the following criminal justice stakeholders: 2 police officers, 1 judge, 3 prosecutors and 4 defense counsels. To protect the identity of the persons interviewed, codes in the form of letters with a corresponding number were used. Hence, the letter A stands for attorneys, letter SA state attorney, letter J judge, letter P professors, PO police officers while # refers to the number of the respondent. More information on the research conducted in the participating countries is provided in the individual country reports.

The EU Directives require Member States to transmit the text of measures adopted to implement the Directives to the European Commission, and require the Commission to submit reports to the European Parliament and to the Council assessing the extent to which Member States have taken the necessary measures in order to comply with the Directives. This project, in common with similar research previously conducted, demonstrates that even if legislative and other measures are adopted to give effect to the Directives, , it does not follow that the Directives are fully complied with in practice. Even if the provisions of the Directives are faithfully reflected in national legislation and regulations, effective implementation is reliant on a range of other factors, including financial and other resources, detailed regulation of processes and procedures, and the professional cultures of criminal justice officials and lawyers. Therefore, the best way of obtaining reliable and comparable data on the practical implementation of the Directives, and on the ways in which they are experienced by criminal justice actors, is by fieldwork-based research. A failure by certain government representatives, officials and institutions to facilitate, and to co-operate with, such research will mean that the European Commission, and ultimately the EU itself, will not have an adequate basis for assessing either compliance with, or the effectiveness of, its policies and legislation in this field. Moreover, it will mean that Member States will forgo the opportunity to effectively regulate and improve their criminal justice systems and processes, having particular regard to procedural rights and, ultimately fair trial. This is true for both the EU Directive which is in the focus of this research, and for the other Directives adopted under the EU procedural rights roadmap.

1.2. Brief description of the national criminal justice system and criminal procedure in Croatia

Croatia is organized on the principle of separation of powers, so that legislative authority is exercised by the Croatian Parliament, executive authority by the Croatian Government and judicial authority by the courts in Croatia. The task of the courts is to protect the legal order of Croatia as established by the Constitution, laws and international treaties, and ensure uniform application of the law and equality of persons before the law. The criminal justice system comprises the Supreme Court, county courts, Municipal courts and the High Criminal Court (the establishment of the High Court has been postponed until 1 January 2020). Municipal courts are courts with first instance jurisdiction and are authorized to rule on cases of criminal offences punishable by imprisonment not exceeding 12 years.

County courts adjudicate in first instance criminal cases when the maximum legal penalty of imprisonment exceeds 12 years or in the criminal offences listed by the law (genocide, terrorism, rape, manslaughter, kidnapping, etc.). They carry out investigations and procedures of extradition of foreigners, and enforce foreign judgements and adjudicate in second instances in cases of appeals against the judgements of municipal courts.

The Supreme Court of the Republic of Croatia as the court of last instance conducts appellate proceedings on appeals against first instance judgements of county courts, decides in third

instances on appeals against judgements rendered in second instances, decides on so-called extraordinary judicial remedies, and performs other tasks as prescribed by law. Judges must be independent and autonomous and enjoy immunity in accordance with the law.

The State Attorney's Office is an autonomous, independent judicial body authorized and obliged to proceed against perpetrators of criminal offences and other punishable offences, to undertake legal actions to protect the property of the Republic of Croatia, and apply legal remedies to protect the Constitution and the law. The legal profession in Croatia is autonomous and independent. The Croatian Bar Association ("Hrvatska odvjetnička komora") represents attorneys-at-law as part of the legal profession in the Republic of Croatia. All attorneys must be members of the Bar Association.² Criminal law in Croatia, in a broad sense, includes substantive criminal law, criminal procedural law and criminal enforcement law.

Substantive criminal law prescribes which kinds of conduct constitute a criminal offence and are therefore punishable, as well as the conditions under which it may be applied to perpetrators. In other words, it is the law contained in the "Kazneni zakon" or Criminal Code (hereinafter: the CC).³ The CC is divided into two parts, the general and special part. The general part of the CC contains provisions applicable to all criminal offences. These provisions regulate the general preconditions of culpability and criminal sanctions. The special part of the CC contains descriptions of specific offences and applicable punishments, including criminal offences and punishable offences in other laws.

Criminal procedural law prescribes a set of legally regulated activities that are executed by the authorities and other persons as determined by the law whenever there is suspicion that a criminal act has been committed. Criminal procedural law is contained in the Criminal Procedure Act (hereinafter: CPA)⁴

A special law dealing with juvenile offenders is the Juvenile Courts Act – "Zakon o sudovima za mladež" (OG 84/11, 143/12, 148/13, 56/15, hereinafter: the JCA)⁵. This law specifies the following: sanctions for minors, prison for juvenile offenders, security measures, organizational provisions matters concerning juvenile courts, provisions on procedures concerning juvenile offenders, execution of sanctions, application of the law concerning young adults, and protection of children and minors under criminal law (when they are victims of criminal offences).

1.2.2. Criminal procedure in Croatia

Criminal proceedings in Croatia are initiated by the State Attorney as the authorized prosecutor for criminal offences subject to public prosecution, and private plaintiffs for criminal offences subject to privately brought charges, including the injured party as plaintiff. The injured party may replace the State Attorney if the State Attorney establishes that there are no grounds to pursue criminal proceedings.

Criminal procedure in Croatia can be divided into the pre-trial and trial phases.

Pre-trial phase

The pre-trial phase consists of two sub-phases: inquiries and the investigation. Inquiries ("izvidi kaznenih djela") are considered to be an informal stage of pre-trial proceedings and the investigation as a formal stage. Inquiries are led by the state attorney or the police at the order of and

2 Information on the Croatian Bar Association is available on: <http://www.hok-cba.hr/en/legal-profession-croatia>

3 Criminal Code (OG 125/11, 144/12, 56/15, 61/15, 101/17)

4 Criminal Procedure Act (OG 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13, 152/14, 70/17)

5 Juvenile Courts Act (OG 84/11, 143/12, 148/13, 56/15)

under the supervision of the state attorney. During inquiries when there seem to exist grounds for suspicion that a prosecutable criminal offence has been committed, police authorities are bound to take necessary measures in discovering the perpetrator, preventing the perpetrator or accomplice from fleeing or going into hiding, discovering and securing traces of the offence and objects of evidentiary value, as well as gathering all information which could be useful for successfully conducting criminal proceedings. Police are obliged to inform the State Attorney of the undertaken investigations.

At this stage of the proceedings, police may conduct informational conversations with citizens, but citizens may not be questioned as witnesses or expert witnesses. This collected information represents an "official note" and does not have probative force. "The explanation for such reasoning is that the police act before the commencement of criminal proceedings, and for undertaking those actions and measures, there are no prescribed strict legal forms. Because of that, these actions are only informal."⁶

A novelty in Croatian legislation is that police may summon a suspect for questioning, and in that case, it is mandatory that the interrogation be audiovisually recorded while adhering to all of the suspect's other procedural rights. Only this type of interrogation has probative force at a later stage of the proceedings.

On the other hand, the goal of an investigation ("istraga") is to collect evidence and information necessary in making a decision as to whether to file an indictment or to discontinue the criminal procedure. The investigation is led by the State Attorney. The Police Investigator may be ordered by the State Attorney to conduct evidentiary actions. The investigation commences with a public prosecutor's decree when reasonable suspicion exists that the person has committed a criminal offence. "The investigation represents a formal phase of the pre-trial procedure in which the public prosecutor collects evidence in a formally prescribed manner so that the results of investigation can be used as evidence before the court."⁷

The difference between the informal phase of police inquiries and formal investigation is accompanied also by different definitions of the suspect and defendant. A suspect is a person against whom there are grounds of suspicion of having committed a criminal offense and against which the police or the public prosecutor take actions to clarify this suspicion. During police inquiries, this person is known as the suspect. On the other hand, during the formal phase of investigation, the suspect becomes the defendant. By law, the defendant is the person against whom the investigation is conducted, the person against whom a private charge is preferred, and the person against whom a penalty order was issued in a judgement.⁸

The defendant must be questioned before ending an investigation or filing an indictment. Questioning may be conducted only by the State Attorney or the Police investigator if ordered to do so by the State Attorney. For criminal offences under the jurisdiction of the County Courts, the interrogation of a defendant may not be entrusted to the Police investigator.⁹ The investigation of the defendant must be recorded with an audiovisual device and only such evidence has probative force in the further course of proceedings.

6 Ante Novokmet, Zoran Vinković: "POLICE INTERROGATION OF THE SUSPECT IN CROATIA AFTER THE IMPLEMENTATION OF THE DIRECTIVE 2013/48/EU – STATE OF PLAY AND OPEN QUESTIONS ", p. 433.

7 Ante Novokmet, Zoran Vinković: "POLICE INTERROGATION OF THE SUSPECT IN CROATIA AFTER THE IMPLEMENTATION OF THE DIRECTIVE 2013/48/EU – STATE OF PLAY AND OPEN QUESTIONS ", p. 433.

8 Ante Novokmet, Zoran Vinković: "POLICE INTERROGATION OF THE SUSPECT IN CROATIA AFTER THE IMPLEMENTATION OF THE DIRECTIVE 2013/48/EU – STATE OF PLAY AND OPEN QUESTIONS ", pp. 435-436.

9 CPA, Article 219(3)

Trial Phase

The trial phase is divided into sub-phases: indictment, hearings, procedure following an appeal, the judgment and execution of the judgment. An indictment is an indicting act from the State Attorney or subordinate prosecutor. The indictment is submitted to the court. Immediately upon receiving the indictment, the president of the panel determines whether the indictment is properly drawn up after which it is served without delay to the defendant. The defendant is entitled to submit an objection against an indictment within eight days from the day it is served. If the objection is rejected or not submitted, an indictment becomes official.

The trial is the part of the criminal procedure that takes place before the court. Trials are held in open court. If necessary, the public may be excluded. Hearings are conducted orally – in cross-examination and direct examination. A defendant may be pronounced guilty or not guilty only by a judgement. There are 3 types of judgments: a judgment rejecting the charge, judgement of acquittal and judgment of conviction. Pronouncement of the judgment consists of reading the judgment and a brief statement of reasons for the judgment.

An appeal is the only ordinary remedy against a judgment. The judgment is final after which it may no longer be challenged by an appeal. Extraordinary judicial remedies may be issued only against a judgment that has become final. The CPA specifies the following extraordinary judicial remedies:

- Reopening of criminal proceedings
- Extraordinary mitigation of punishment
- Request for the protection of legality – request for extraordinary review of the final judgment and revision.

2. Legal framework of audiovisual recordings

2.1. Obligation to audiovisually record interrogations in criminal procedures

The enactment of the Act on Amendments to the CPA of 27 July 2017 (OG 70/17) gave effect to the Access to a Lawyer Directive. To align national legislation with the EU acquis, national criminal procedural law has introduced a number of changes, inter alia, relating to mandatory interrogation of suspects in police stations using audiovisual devices and the defense attorney's right to participate in such interrogations. If police fail to make an audiovisual recording of an interrogation, the suspect's statement and evidence based on the statement may not be used in proceedings. Accordingly, prescribing mandatory audiovisual recording of the suspect at a police station allows the defense attorney to actively participate in the interrogation of defendants, while adhering to the suspect's procedural rights and preventing contestation of the regularity of the interrogation by the defendant at a later date. Since audiovisual footage provides a faithful record of the manner in which the investigation is conducted, providing legally prescribed warnings concerning the suspect's rights guarantees legitimate conduct by competent authorities.

The first Croatian Criminal Procedure Act was passed after Croatia gained its independence in 1997 (hereinafter: CPA/97). The aim of its adoption was to align criminal legislation with the new constitutional order and international obligations. Given that many of the issues remained open under the mentioned law, reform of the Croatian criminal procedure was commenced.

The Criminal Procedure Act¹⁰ was passed in 2008 (hereinafter CPA/08) as the main source of

10 Croatia, Criminal Procedure Act (OG 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13, 152/14, 70/17);

law governing prosecution and procedural rules. Since its adoption and prior to the last amendments entering into force on 27 July 2017, the Act on Amendments to the Criminal Procedure Act (OG 70/17) was amended seven times. The latest changes are the result of aligning domestic criminal legislation with the *acquis communautaire*, namely: 1) Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, 2) Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty; 3) Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, and 4) Directive 2014/62/EU of the European Parliament and of the Council of 15 May 2014 on the protection of the euro and other currencies against counterfeiting by criminal law, and replacing Council Framework Decision 2000/383/JHA.

By transposing the Access to a Lawyer Directive into Croatian criminal law, a series of changes have been implemented primarily dealing with the role of the police in the pre-trial procedure and the strengthening of the suspect's position by introducing the mandatory recording of the interrogation of suspects at police stations using audiovisual devices. Moreover, the definition of a suspect was altered so that it now fully corresponds to the definition of a suspect in the Directive.¹¹

Prior to amendments to the CPA (OG 70/17), Croatia was one of the few countries in the European Union where police investigations of suspects did not have any probative force.¹² An Amendment of the CPA (CPA/08) adopted a mixed definition of the suspect in a formal sense (designating someone as a suspect requires the filing of a criminal report as a formal act of a competent body) and material sense (a suspect is a person against whom inquiries or urgent investigative actions are carried out), while the term in the Access to a Lawyer Directive defines the term only in a material sense and does not require a formal act of the competent body for designating someone as a suspect."¹³ Police were only permitted to conduct information-gathering conversations with citizens, including suspects. However, the information that the police collected during the informal questioning could not have been used as evidence in criminal proceedings since it was collected in an informal manner. "Nevertheless, the actual scope of the informal interviews conducted with the suspect was of utmost importance. The police often directed their further inquiries, and occasionally, the findings that arose during the informal talks with the suspect were used for the later collecting of evidence by the public prosecutor in the investigation as a formal stage of pre-trial proceedings."¹⁴ In situations where police conducted informal conversations with suspects, the suspects were not warned of their rights to defense, since such an action was considered informal, i.e., not prescribed by the law.

According to CPA/97, police conducted information-gathering conversations with citizens (including suspects), which did not have any probative force. However, CPA/97 provided an

11 CPA, Article 202(2): "The suspect is a person against whom there are grounds to suspecting that they have committed a criminal offense and against whom the police or State Attorney's Office takes action to clarify such suspicions."

12 Supreme Court of Republic of Croatia, The Judicial Academy of Croatia, Digest- Novelties in criminal proceedings- 2017, Opatija, pp. 11-12. May 2017.g., page 77; Retrieved from: <http://pak.hr/cke/ostalo%206/Opatija%202017.pdf>

13 The Ministry of Justice, Final Proposal of the Amendments to the Criminal Procedure Code (CPA/08), page 46.

14 Novokmet A., Vinković, Z., 2018, "Police interrogation of suspects after implementation of Directive 2013/48/EU - state of play and open questions", p. 429, Available at: <https://hrcak.srce.hr/ojs/index.php/eclic/article/view/7120/4611>

exception for written minutes of police questioning if a suspect took a defense attorney (in the first period, only the person arrested or subjected to the searching of their residence, and later on for each other suspect).¹⁵ Evidence collected in this way may become evidence in criminal proceedings. The aim of this exception was to safeguard the legality of police interrogations of suspects and the credibility of suspect statements. This exception led to numerous shortcomings in practice, which was ultimately noticed in several cases in the judiciary of the ECtHR.¹⁶ Croatia was convicted of violating the right to a defense attorney under Art. 6 of the European Convention on Human Rights which will be elaborated further in the report, under Subchapters 4.2. and 5.2.

The CPA/08 introduced an investigation led and ordered by the State Attorney's Office. Once CPA/08 came into force, police were not allowed to gather information from suspects to be used as evidence later on (unless in exceptional circumstances) and which was something CPA/97 had allowed. In other words, CPA/08 has returned police questioning into the realm of information-gathering conversations that are not strictly regulated by procedural rules and which retain only cognitive significance.¹⁷ Previously, the suspect had the right to a defense attorney only if arrested,¹⁸ but the detainee was then formally questioned by a state attorney. The first interrogation of a defendant was carried out solely by the State Attorney's Office or the investigator at the request of the State Attorney's Office, where record with an audiovisual device was mandatory.

Amendments to CPA 70/17 resulted in the abandonment of traditional informal questioning of suspects and prescribing formal police interrogation of suspects with the obligation for the police to inform suspects of their defense rights before carrying out a formal interrogation.¹⁹ However, this investigative action by police should differ from mandatory evidentiary action authorized solely by the State Attorney's Office or by its appointed investigator, given that the law prescribes that the defendant must be questioned before an indictment by the State Attorney's Office, except for trials in absentia.²⁰

2.2. Scope of the obligation to audiovisually record interrogations

The obligation to record interrogations using audiovisual devices (which de facto relates only to pre-trial proceedings) applies in cases when a suspect is interrogated by police, a defendant is interrogated by the State Attorney, the examination of a child that has not yet reached 14 years of age in the role of a witness at a probationary hearing, in the investigation phase when a defendant confronts another defendant, or a witness if the witness's statement does not agree with important facts (except when the witness is a child), and confrontation²¹ between a witness and another witness or defendant if their statements do not match in important details.

15 CPA/97. Article 177(5)

16 Burić, Z. Dr., sc. Karas, Z. sc., 2017, "A Contribution to a Discussion of Doubts Concerning the New Definition of Suspect and the Act of Interrogating Subjects", p. 450.

17 Novelties in criminal procedure, Opatija 11-12 May 2017, page 77; Retrieved from: <http://pak.hr/cke/ostalo%206/Opatija%202017.pdf>

17 CPA, Article 108

19 Ante Novokmet A., Vinković, 2018, "Police interrogation of the suspect after implementation of the Directive 2013/48/EU – State of play and open questions", p. 420., available at: <https://hrcak.srce.hr/ojs/index.php/eclic/article/view/7120/4611>.

20 CPA, Article 341(4)

21 CPA, Article 278: In the investigative phase, the defendant may ultimately face a witness (unless the witness is a child) or other defendant if the defendant's statements disagree on important facts. The confrontation in the interrogation process must be recorded with an audiovisual device, with confrontation conducted by the investigating judge. If the confrontation is not recorded, the record may not be used as evidence. Furthermore, the witness may have to face another witness or another defendant if the witness's statements disagree on important facts. The confrontation in the interrogation process must be recorded using an audiovisual device. If the confrontation is not recorded, the record may not be used as evidence.

In cases where the suspect or defendant is a minor under 18 years of age, the juvenile examination must be recorded by an audiovisual device. Juvenile examination must be conducted only by the State Attorney's Office.

Additionally, the CPA gives discretionary powers to authorities conducting investigative activities which in other cases are not explicitly covered by the law, authorities may at any time decide to record each action using an audio or audiovisual device.²²

Furthermore, there is an option for authorities to carry out an investigative action and an audiovisual recording at the request of individuals. This possibility is explicitly provided for victims of a crime against sexual freedom or the crime of human trafficking, domestic violence victims and victims for which special protection measures have been established.²³ However, the CPA does not prescribe the manner, form and addressee of such a request. In practice, such requests from the victim may be submitted when conducting an individual assessment. If the aforementioned person submits a request for an audiovisual recording, the authorities (judge or investigative judge) do not have to pass a decision on the request. The person will be informed in a summons for trial sent by an investigating judge or the proceeding judge depending on which authority is conducting the examination.

Discretionary audiovisual recording covers examination of witnesses through a court interpreter,²⁴ examination of minors 14 years of age and younger but under 18 years of age and questioned as witnesses at evidentiary hearings,²⁵ the elderly, the sick, persons with disabilities who are not able to respond to a court summons,²⁶ victims of domestic and sexual violence, human trafficking victims, victims for which special protection measures have been established,²⁷ so called witnesses in danger²⁸ and by performing a recognition actions.²⁹

Based on the above-mentioned cases, it becomes obvious that the discretionary possibility of conducting interrogations using an audiovisual device generally involves vulnerable groups of witnesses or certain categories of criminal offenses.

22 CPA, Article 87(2)

23 CPA, Article 292(4)

24 Croatia, Article 290 of the CPA: "(1) If interrogation of the witness is carried out through an interpreter or if the witness is deaf or mute, the interrogation shall be performed as prescribed in Article 280 of this Act. (2) Interrogation performed with an interpreter may be recorded with an audiovisual recording device. The record is attached to the written minutes."

25 CPA, Article 292(2)

26 CPA, Article 292(3)

27 CPA, Article 292

28 CPA, Article 294(1): "If it is likely that by giving a testimony or by answering any individual question, a witness might expose himself or any other person close to himself to a serious danger to life, health, physical integrity, freedom or property of considerable volume (witness in danger), the witness is entitled to refuse to disclose information referred to in Article 288, Paragraph 2 of CPA, to refuse to answer to individual questions or to refuse to testify at all until witness protection measures have been provided. "

CPA, Article 297: "If the special manner of examination and participation of a witness in proceedings refers not only to non-disclosure of information as referred to in Article 288, Paragraph 2 of this Act, but also to concealing the witness's appearance, the examination shall be carried using audiovisual devices. The audiovisual devices shall be operated by a trained person. The appearance and the voice of the witness shall be altered during the examination. In the course of the examination, the witness shall be situated in a room separated from the room in which the investigating judge and other persons attending the examination are situated. The examination will be conducted in accordance with Article 292, Paragraph 3 of this Act.

29 Croatia, Article 301, Paragraphs 1 and 5 of the CPA: "Recognition is the action directly associated with identifying a person, objects, space, sound, motion or other characteristics observed by a defendant or witness, and which is determined by comparison with another person, object, space, sound, motion or other feature. Cases that can serve to clarify matters will be shown to the defendant, and if necessary, to regular witnesses and expert witnesses.

Table 1. The authorities covered

	Police officers	Judicial authorities	Other law enforcement agencies (district attorneys)
Mandatory audiovisual	interrogation of a suspect;	<ul style="list-style-type: none"> examination of a child that has not yet reached fourteen years of age in the role of a witness at a probationary hearing by the investigative judge; in the investigation phase when a defendant confronts another defendant, or a witness if the witness's statement does not agree with important facts (except when the witness is a child) by the investigative judge or State Attorney; confrontation between a witness and another witness or defendant if their statements do not agree with important facts by the investigative judge or State Attorney, 	interrogation of a defendant by State Attorney; interrogation of minors conducted by state attorneys for juveniles
Possible audio		<ul style="list-style-type: none"> trial hearings 	examination of a witness and victim by the State Attorney
Possible audiovisual		<ul style="list-style-type: none"> examination of minors 14 years of age and younger but have not yet reached 18 years of age and questioned as witnesses at evidentiary hearings by investigative judge; the elderly, the sick, persons with disabilities who are not able to respond to a court summons by investigative judge or presiding judge victims of domestic and sexual violence, human trafficking victims, victims for which special protection measures have been established conducted by investigating judge or the judge; witnesses in immediate danger; recognition actions 	

Table 2: The interrogated person covered

	Suspects (i.e. before being charged with an offence)	Accused persons (i.e. charged with an offence)	Witnesses	Vulnerable persons, irrespective of their status	Minors	Victims	Any other person (please specify)
Mandatory audio							
Mandatory audiovisual	x	x			x	x (child that has not reached 14 years old)	
Possible audio							
Possible audiovisual		x	x	x	x	x	

2.3. Location and settings of the interrogations

The police are required to record the first interrogation of the suspect in the police station equipped with the audiovisual device. The State Attorney or on his order the investigator will ordinarily conduct the first investigation of the defendant in the State Attorney's Office or – in those cases when the State Attorney's Office does not have the conditions for audiovisual recording, or there is no expert for handling the devices, – in the jurisdictional police department or at the higher state attorney's office.³⁰

If the defendant is unable to appear due to illness or other unavoidable impediment, the interrogation may take where the defendant can be transported to the court or other location where the evidentiary action is conducted or the interrogation of the defendant may simply be postponed.³¹

When it is necessary to examine the victims as mentioned in Article 292 of the CPA, the interrogation is conducted by the investigative judge at the evidentiary hearing in courtrooms specially equipped for audiovisual recordings. Although the CPA prescribes that these persons can only be re-examined in exceptional circumstances, the presiding judge (after the indictment has been confirmed) may order the re-examination if eliminating contradictions in a testimony or an interrogation regarding certain new circumstances seems to be necessary. In those cases, the examination will take place at the court equipped with an audiovisual device.

Only in exceptional circumstances may witnesses, who are unable to respond to a court summons due to health or disability, be examined in their residences or any other area where they reside.³² This is also the case for children in the role of witnesses to criminal offenses³³ and who may be interrogated in their residences or any other specially equipped areas instead of the court premises.³⁴ If the defendant is unable to appear due to illness or other unavoidable impediment, the defendant may be interrogated at the place of sojourn.³⁵

An audiovisual recording of a suspect and defendant in pre-trial proceedings (in the police station and State Attorney's Office) is performed using two cameras and microphones which are part of the recording system. The cameras and microphone are positioned in the interrogation room where one camera records a wide angle of the entire room and the other captures a close-up of the person being examined. The microphone is positioned so that it enables recording the voices of all participants involved in the interrogation of the defendant.³⁶ At the first interrogation of the defendant or other investigatory actions carried out in the State Attorney's Office, at least one audiovisual recording device is provided in each State Attorney's Office consisting of the main device (equipped with a monitor), at least three DVD recorders, two cameras and an external microphone.³⁷

30 Article 69(1) of The Act on the State's Attorney office

31 Article 272(3), of CPA

32 Article 292(3) of the CPA

33 Article 292(2) of the CPA

34 Article 115 (3), of the JCA

35 Article 272 (3), of the CPA

36 Article 6 of the Ordinance on Recording of Investigatory or Other Actions in Pre-Trial and Criminal Proceedings

At the first interrogation of the defendant or other investigatory actions conducted at the State Attorney's Office, at least one audiovisual recording device is to be provided in each State Attorney's Office consisting of the main device (equipped with a monitor), at least three DVD recorders, two cameras and an external microphone (Article 313 of the Rules of Procedure of the State Attorney's Office).

37 Article 313 in conjunction with Article 309, Paragraph 5 of the Rules of Procedure of the State Attorney's Office

2.4. Rules on audiovisual recording

Once the suspect is settled in and an explanation is provided as to the reason the person has been called in, a police official asks the suspect whether he or she have received a written instruction of their rights. If the suspect has not received a written instruction of their rights, the instruction will be handed to the suspect. The suspect is then warned that the questioning will be recorded.

The recording starts at the order of the police officer conducting the interrogation.³⁸ The recording device is handled by a trained person.³⁹ The recording must contain a read notice of the suspect's rights (reasons for suspicion, right to having a defense attorney, right to a court interpreter, right to refuse to provide any statements or answer questions and the right to leave the police premises at any time, except in the case of detention), the suspect's statement as to understanding their rights and the suspect's statement as to exercising the right to a defense attorney, including a caution that the interrogation is being recorded and that the recorded testimony can be used as evidence in ongoing proceedings.⁴⁰ If the suspect explicitly refuses to have a defense attorney, a police officer is obliged to inform the suspect in an understandable way as to the importance of the right to a defense attorney and the consequences of waiving such a right. If then the suspect still refuses to have a defense attorney present, the police may continue with the questioning, except in instances when the suspect must have a defense attorney present as prescribed by law. If the suspect states as to wanting to have a defense attorney, the interrogation will cease until the defense attorney has arrived. The interrogation may be paused for up to three hours. If the suspect does not exercise the right to a defense attorney or the chosen defense attorney may not represent the suspect, the suspect will be allowed to choose a defense attorney from the list of attorneys provided by the Croatian Bar Association.⁴¹

Written minutes are taken during the audiovisual recording, which are explained in detail in Subchapter 2.7.

Although police have the obligation to inform suspects of these rights and provide cautions prior to commencing recording, the police officer will repeat the above cautions in front of the camera to ensure the suspect's rights are respected. If police fail to act in the manner described above, the suspect's statement and the evidence based on the statement may not be used as evidence in the criminal proceedings.⁴²

The interrogation of a suspect may be interrupted when the suspect is counselled by the defense attorney, or for other reasons, or if the interrogation is postponed, or in case of interruptions in the functioning of the audiovisual recording system, and in the event of force majeure.⁴³ Any interruption of interrogation of the suspect is noted on the recording and in the written minutes of the course of interrogation by stating the exact time (date, hour, minute) and reason for the interruption as well as the time when the recording was resumed.⁴⁴

After finishing the interrogation, the police officer who handles the recording gives the order to stop the recording and announces that the recording has finished, after which the person trained to operate the device stops the recording.⁴⁵

38 Article 12(1) of Ordinance on the recording of investigatory or other actions in the pretrial and criminal proceedings

39 Article 275(2) of CPA

40 Article 208a(6), of CPA

41 Article 208a(3-5), Paragraph 3-5 of CPA

42 Article 208a(8), of CPA

42 Article 9(2), of the Ordinance on Recording of Investigatory or Other Actions in Pre-Trial and Criminal Proceedings

44 Article 12(1), of 1 of the Ordinance on Recording of Investigatory or Other Actions in Pre-Trial and Criminal Proceedings

At the request of the interrogated person, the video is reproduced immediately, and corrections or explanations for that person are recorded.⁴⁶

The audiovisual recording of the defendant begins, ends and is performed in the manner described for recording interrogation of a suspect. The record must contain all the contents of the suspect's interrogation by the police. Examination of the defendant is a mandatory evidentiary action carried out by the State Attorney's Office or by the investigator at the State Attorney's Office.⁴⁷ The interrogation of a defendant must be recorded with an audiovisual device and operated by a trained professional.⁴⁸

2.5. Availability of audiovisual recordings for the person affected

Given that state bodies conducting an investigative action of interrogation use an audiovisual device, they are obliged to provide parties with a copy of the recording immediately after completion of the recording.⁴⁹ Given that the provisions on questioning the suspect are subordinate to the provisions on questioning of the defendant, the conclusion is that three records⁵⁰ of interrogations of the suspect are to be made, one of which is sealed and submitted for safeguarding to the investigating judge. The sealed envelope is signed by the person who conducted the examination, the suspect, the trained operator, the defendant and the defense attorney, if one exists. The second record is immediately handed over to the suspect, whereas the third record is handed over to the State Attorney's Office by the police officer who conducted the interrogation.⁵¹ The parties are not obliged to pay for a copy of the recording. However, if the case file, for some reason is inspected subsequently, the costs of a recording of the file are charged to the person upon whose request the recording is made, except when it is carried out upon the request of the ex officio defense attorney, in which case the expenses are covered by the body conducting the proceedings.⁵² According to the Ordinance on Recording of Investigatory or Other Actions in the Pre-Trial and Criminal Proceedings, the audiovisual recording of the interrogation of the defendant or witnesses is carried out on a non-erasable storage medium.⁵³ The recording is kept for as long as the criminal file is kept.⁵⁴

2.6. Consequences of failing to make an audiovisual record

In situations where the police conducted an "informally talk" with the suspect during the transfer to a police station and where the suspect confesses to committing a criminal offence, such a confession does not have an impact on the course of the criminal proceedings if during a subsequently recorded formal examination the suspect remains silent. Such statements may not be used as evidence as they are not legally obtained. Furthermore, if the police fail to provide information in the letter of rights during a formal interrogation, or warnings or a recording of the suspect's statement that he or she has received and understood the letter of rights, information obtained at the interrogation may not be used as evidence.⁵⁵

45 Article 14(1), of the Ordinance on Recording of Investigatory or Other Actions in Pre-Trial and Criminal Proceedings

46 Article 87(4) of CPA

47 For criminal offenses under the jurisdiction of the County Courts, the interrogation of defendants may not be entrusted to the investigator (Article 219(3) of CPA)

48 Article 275(2), of CPA

49 Article 410(5) of CPA

50 Article 275(6), of CPA

51 Article 275(6), in conjunction with Article 14(1) and (2), of Ordinance on Recording of Investigatory or Other Actions in Pre-Trial and Criminal Proceedings

52 Article 145(5) of the CPA

53 Article 5(1) of the Ordinance on Recording of Investigatory or Other Actions in Pre-Trial and Criminal Proceedings

54 Article 87(7) of the CPA

2.7. Recording by other means

Written minutes are taken during the audiovisual recording. The written minutes must contain the following information:

- The name of the state body before which the investigatory action is conducted,
- The place where the action is conducted place, the day and hour when the action was started and completed, names and surnames of the persons present and the capacity in which they are acting, an indication of the criminal case for which the action is conducted,⁵⁶
- The suspect's personal data,⁵⁷
- Recording specification⁵⁸ such as information that interrogation is being recorded, who is handling the recording device and the recording device used, a brief content of obtained testimonies and statements when prescribed by law, whether the recording is reproduced, and where the recording is kept if not included in the case files.
- Instructions on the suspect's or defendant's rights, a warning that the person has the right to a defense attorney, the person's statement on exercising their right to a defense attorney, and a warning that the interrogation is being recorded and that the recorded testimony may be used as evidence in proceedings,⁵⁹
- Beginning, interrupting and ending of an interrogation, and
- Other circumstances that are of significance to the interrogation such as entering and leaving the room for consultation, reasons for interruptions and so on.⁶⁰

Both the record and written minutes may be used as evidence in criminal proceedings before the courts.⁶¹ The judge or the state attorney may order a partial or full transcription of the audiovisual recording. The transcript will be reviewed and verified by the person who ordered the transcription and the person who made the transcript. The written minutes will be attached to the case file and may not serve as evidence in the course of the proceeding.⁶²

2.8. Interrogation of vulnerable persons

The CPA does not define the term "vulnerable persons", but the term does refer to a vulnerable group of witnesses (minors, the elderly, the sick, persons with disabilities, victims of domestic and sexual violence, human trafficking victims, victims for which special protection measures have been determined) and for whom the CPA provides a special approach to interrogating.

In accordance with the provisions of the JCA, the questioning of juveniles is the first evidentiary action carried out by a state attorney for juveniles⁶³ and audiovisual recording of the event is mandatory.⁶⁴ The juvenile defendant has to have a defense attorney until the final outcome of the proceedings. If the juvenile does not have a defense attorney and/or if the questioning of the juvenile is not recorded with an audiovisual device, written minutes of the course of the

55 Novokmet, A., Vinković, Z., 2018, "Police interrogation of the suspect after implementation of the Directive 2013/48/EU – State of play and open questions" p. 432, available at: <https://hrcak.srce.hr/ojs/index.php/eclic/article/view/7120/4611>

56 Article 83(1) of the CPA

57 Article 272(1) of the CPA

58 Article 87(5) of the CPA

59 Article 275(3) of the CPA and Article 13 of the Ordinance on Recording of Investigatory or Other Actions in Pre-Trial and Criminal Proceedings

60 Article 272(4) of the CPA

61 Article 208a(7) of the CPA

62 Article 87(6) of the CPA

63 Except in cases of an urgent evidentiary actions and when juveniles are examined by a juvenile investigation judge at the order of the State Attorney's Office for juveniles (Article 63 of the JCA)

64 Article 76 of the JCA

interrogation may not be used as evidence in criminal proceedings.⁶⁵ The state body conducting the questioning shall treat the juvenile in a manner consistent with the juvenile's psychological maturity and personal characteristics, so that undertaking criminal proceedings does not harm the development of the juvenile's personality.⁶⁶

Since the JCA does not determine the rules of the interrogation of juvenile defendants using an audiovisual device, the subordinate provisions of the CPA on this matter, from beginning to end of the interrogation are applied.

Regarding the interrogation of vulnerable witnesses, examination of minors under the age of 14 years are conducted by the investigating judge without the presence of an actual judge and parties in the room where the minor is located, using an audiovisual device operated by a trained assistant in the room. The interrogation is carried out with the assistance of a psychologist, a pedagogist or other trained expert, and a parent or guardian is present unless it is against the interests of the child. The parties may pose questions to the minor with approval of the judge and solely through a trained assistant. The interrogation will be recorded with an audiovisual recording device, and the recording will be sealed and attached to the file. The minor may only be re-examined in the same way in exceptional circumstances.⁶⁷

Witnesses who are unable to respond to a court summons due to health or disability, victims of domestic and sexual violence, human trafficking victims, victims for which special protection measures have been established may be examined using audiovisual devices operated by a trained assistant. If this requires a witness, the examination will be conducted so that the parties (defendant, defense attorney, State Attorney) may pose questions without being present in the room with the witness. The interrogation will be recorded using an audiovisual device and, if necessary, the recording will be sealed and attached to the case file.⁶⁸

Criminal cases committed against children by adults are regulated by the Juvenile Court Act which, in relation to the Criminal Procedure Act is covered by the *lex specialis* principle due to the specificity of the proceedings (urgency in proceedings, the treatment of state attorneys for juveniles and juvenile judges, manner of examining a child, the appointment of an attorney, support from expert associates in the extrajudicial profession), all with a view to respecting the rights of the child in all phases of the proceedings. The specificity of the proceedings is also reflected in the manner of examining a child victim of criminal offense whose examination is prescribed by the relevant provisions of the JCA⁶⁹ and of the CPA.⁷⁰

If one of the enumerated offenses referred to in the JCA⁷¹ is committed against a child, the state attorney for juveniles will recommend to the investigation judge the conducting of an eviden-

65 54 of the JCA

66 Article 53(2) of the JCA

67 Croatia, Article 292 paragraph 1 of CPA

68 Croatia, Article 292 paragraph 2-4 of CPA

69 Article 115 of the JCA

70 Article 292(1) and (2) of the CPA. State Attorney Report (2017). p. 112, available at: <http://www.dorh.hr/dorh07062018>

71 Article 113(3) of the JCA; From the Criminal Code (Official Gazette 110/97, 27/98, 50/00, 129/00, 51/01, 111/03, 190/03, 105/04, 84/05, 71/06, 110/07, 152/08 and 57/11) - criminal offenses against sexual freedom and sexual maturity (Chapter XIV), criminal offenses against marriage, family and youth (Article 96), unlawful seizure of liberty (Article 124), abduction (Article 125), abuse of service, or public authority (Article 127), human trafficking and slavery (Article 175), international prostitution (Article 178), transmission of sexually transmitted diseases (Article 239), violent behavior (Article 331); 2). From the Criminal Code - criminal offenses against life and body (Chapter X), criminal offenses against sexual freedom (Chapter XVI), criminal offenses of sexual abuse and exploitation of children (Chapter XVII), criminal offenses against marriage, family and children (Article 105), human trafficking (Article 106), unlawful confiscation of liberty (Article 136), abduction (Article 104), torture and other cruel, inhuman or degrading treatment or punishment (Article 104), spreading and transmitting infectious diseases (Article 180).

tiary hearing where the child will be questioned using an audiovisual device. In such cases, the questioning of a minor will be conducted in a court, or in the house of the minor, or in some other suitable area, if necessary. In case of an injured child acting as a witness who was not yet reached 16 years of age, the questioning of the child will be carried out in accordance with the provisions of the CPA⁷² (i.e., in a room without the presence of the party and judge, the minor will be questioned by a trained expert – psychologist or pedagogist, where the judge may pose questions to the child but solely through a trained expert). This kind of interrogation may be attended by a trusted person. The recording of the child’s examination is to be always played at the hearing. In criminal offenses against sexual freedom and criminal offenses involving sexual abuse and exploitation of children, the recording will always be transcribed. The transcript of the record is signed by the person who compiled the transcript as well as by the trained expert who conducted the recording.

2.9. Audio recording

According to CPA/17, “the Presiding Judge may determine that a hearing or individual parts of it (statements from defendants,⁷⁴ witnesses, expert witnesses and important party statements) are recorded by an audio or audiovisual device.” Audio recording of the hearing in a criminal proceeding begins with a recording decision taken by the judge after the opening session and is continued until the end of the hearing.⁷⁵

In cases when a particular hearing or some of part of it is recorded, the file constitutes an audio recording and written minutes of the course of the hearing. In such cases, the written minutes does not contain the statements of the accused, the witness or the expert witness.⁷⁶ That being said, written minutes basically contain everything contained in written minutes from an audio-visual recording of an interrogation of a suspect. Prior to amendments to CPA/17, the presiding judge was required to enter all important statements of the parties into the written minutes, something that is no longer in effect. However, the presiding judge at the request of the parties or ex officio may order important statements be entered word by word into the written minutes if the judge deems it important.⁷⁷

Audio recordings are to be transcribed within 5 business days by the court clerk who was present during the hearing or by a person which the president of the court appoints. The transcript must be a true reflection of the recording. The transcript is reviewed and verified by the president of the council and enclosed in the record of the hearing. The parties have the right to review the transcript and make comments.⁷⁸

Audio recordings of a hearing in criminal proceedings are done using an audio recorder and at least four microphones across at least four channels. The microphones are distributed in the courtroom which enables simultaneous recording of all participants of the hearing.⁷⁹ In cases where criminal proceedings are being recorded with an audio device, the recording is paused during deliberation and voting, including in cases of interferences in operation of the sound recording system, in cases of postponing or discontinuation of the hearing, while reproducing the record of the previous hearing, and in case of force majeure. In the event of discontinuing

72 Article 292(1) of the CPA

73 Article 115 of the JCA

74 CPA/17, Article 409(2)

75 Articles 6 and 7 of the Ordinance on Audio Recording of Hearings in Criminal Proceedings

76 Article 411(6) of the CPA

77 Article 409(4) of the CPA

78 Article 409(2) of the CPA in conjunction with Article 12 of the Ordinance on Audio Recording of Hearings in Criminal Proceedings

79 Article 5 of the Ordinance on Audio Recording of Hearings in Criminal Proceedings

the hearing, the recording is interrupted, and this is noted in the written minutes of the hearing while indicating the exact time (date, hour, minute) and the reasons for the interruption as well as the time of resuming the recording. In the event that the hearing is postponed, the recording will be interrupted and upon continuation of the recording the judge will re-iterate the subject of the hearing and determine who will be present at the continuation of the hearing. The interruption of recording due to a postponed hearing is also noted in the record of the hearing.⁸⁰

3. Statistical information

Given the fact that it is the duty of the police and state attorney to record interrogations of suspects and defendants using audiovisual devices, as well as option for authorities to carry out investigatory action based on audiovisual recordings at the request of individuals, freedom of information requests have been submitted to the Ministry of the Interior, the State Attorney's Office and the Ministry of Justice in the Republic of Croatia. Therefore, the data requested refers to the number of such actions undertaken in the period from 2013 to 2018, the number of applications submitted for examination, the number of available rooms undertaking such activities, number of devices and costs for introducing audiovisual equipment, maintenance and management, as well as costs of creating and accessing recordings.

3.1. Statistical data from the Ministry of Interior ⁸¹

When seeking information from the Ministry of Interior (hereinafter: MOI) on the total number of interrogations in the years 2013-2017, divided by the years and categories of persons interrogated, their response has been that the MOI does not keep records of the numbers of interrogations. Keeping in mind that mandatory audiovisual recordings of the interrogation of suspects by police had entered into force along with amendments to the CPA (OG 70/17) which itself entered into force on 27 July 2017, except for certain legal provisions, i.e., Articles 208 and 208.a which entered into force on 1 December 2018, the MOI still does not have data on the number of audiovisually recorded interrogations. Moreover, the MOI has stated they do not keep statistical information on the number of requests for obtaining copies of audiovisual recordings, because a record is immediately handed over to the suspect, and the police do not have such records, nor the total costs of introducing audiovisual equipment, operating and maintaining audiovisual recordings, costs of training operators and other expenditures for equipment, procurement and maintenance of the devices - since the costs mentioned are not itemized separately. The MOI has also stated that they do not keep statistical information of the number of persons identified as vulnerable.

However, the MOI has returned statistical data for particular police departments on the number of rooms which are suitable for audiovisual recording of interrogations, on the number of audiovisual recording devices by police departments and on the costs of the recording.

On the territory of the Republic of Croatia, there are a total of 110 rooms suitable for conducting audiovisual recordings which are equipped with a total of 226 audiovisual devices (see detailed answers on the allocation of rooms and equipment in Annex, Table 1):

The average cost of making a recording of a single interrogation is HRK 10.20, which is equivalent to EUR 1.33.

⁸⁰ Article 7 of the Ordinance on Audio Recording of Hearings in Criminal Proceedings

⁸¹ Response from the MOI, CLASS: 008-01/18-01/96, REFNO: 511-01-11-18-5 of 23 August 2018 ⁷³ Article 115 of the JCA

3.2. Statistical data from the State Attorney's Office⁸²

The State Attorney's Office has provided information on the number of interrogations in the period from 2013 till 2018. However, the data does not include information from the Office for the Suppression of Corruption and Organized Crime (hereinafter: USKOK) from 2013 till 2015 and includes only data from 2016 and 2017. The State Attorney's Office has conducted a total of 23,265 interrogations of defendants in 2013, 21,599 interrogations in 2014, 20,880 interrogations in 2015, 21,419 interrogations in 2016 and 21,079 interrogations in 2017. (For a more detailed overview of interrogations conducted by the State Attorney's Office and police, see Annex, Table 2.)

The State Attorney's Office Report for 2017 points out that there is an insufficient number of recording rooms and recording equipment (without which it is not legally possible to conduct inquiries of suspects) and which are takes place in outdated conditions. The report points out that during 2017, there were several technical problems with equipment used to record evidence. Repairs in these cases lasted a long time at a significant cost. The State Attorney's Office remarks that the recording equipment will need to be soon replaced with new devices.⁸³

3.3. Statistical information from the Ministry of Justice⁸⁴

According to data from the Ministry of Justice, courts in the Republic of Croatia have a total of 27 sets of audiovisual equipment allocated at 18 courts, 14 of which are county courts and 4 are municipal courts.⁸⁵

For detailed information on judicial bodies that have sets of audiovisual equipment and the number of sets see Annex, Table 3.

Audiovisual systems were provided as a UNICEF donation for the courts in Croatia as part of the project for judicial and criminal bodies - Policom. This project financed a total of 18 courts and 8 criminal bodies to the amount of HRK 1,497,502.45 (incl. VAT). Regarding maintenance and operating costs, the audiovisual systems are covered by warranties under the Policom project, whereas the system donated by UNICEF is not covered by warranty, but maintenance is carried out on the basis of purchase orders. Maintenance costs are paid by each court separately. For detailed information on the cost of procuring and installing the equipment based on the Policom Project see Annex, Table 4.

As far as audio equipment is concerned, the Republic of Croatia has a total of 89 sets of audio equipment available at 18 courts of which 15 are county courts, 2 permanent offices of county courts and a municipal court. These devices were funded under IPA TAIB 2010 "Strengthening Judicial Justice in the Republic of Croatia" aimed at procuring audio systems for recording court hearings and witness testimonies. (For the detailed number of audio devices available at courts in Croatia, see Annex, Table 5.a) The costs of introducing audio equipment were funded under the IPA TAIB 2010 project, with the value of procurement amounting to EUR 585,307.38.

Given that the Ministry of Justice⁸⁶ has submitted a request to all county and municipal courts

82 Response from the State Attorney's Office of 10 August 2018, No: PPI-DO-34/2018-2

83 State Attorney's Annual Report for 2017, p. 15, 19, 145 and 237: Available at: <http://www.dorh.hr/dorh07062018>

84 Response from the Ministry of Justice of 10 August 2018, No: 008-02/18-01/110, Ref.no: 514-09-01-18-28

85 According to the statistical report from the Ministry of Justice, the number of judicial bodies in the Republic of Croatia is 116, of which there are 77 courts and 39 branches of the State Attorney's Office. Available at: https://pravosudje.gov.hr/UserDocImages/dokumenti/Pravo%20na%20pristup%20informacijama/Izvje%C5%A1%C4%87a/Statisti%C4%8Dko_izvjesce_2017.PDF

86 CLASS: 008-02/18-01/110, No.: 514-09-01-18-02

including the Supreme Court of Croatia, we have received relevant information on the total number of interrogations, which is shown in Annex, Table 7. It should be noted that the obtained data does not have statistical significance, since not all courts collected and provided statistical data on the number of interrogations in the period 2013–2017, as allocated by years and categories of interrogated persons using audio or audiovisual devices. There are 15 county courts and 22 municipal courts in Croatia. In all, we have received data from 12 county courts (Bjelovar, Vukovar, Dubrovnik, Pula, Slavonski Brod, Velika Gorica, Zadar, Rijeka, Sisak, Varaždin, Šibenik i Zagreb) and 18 municipal courts (Čakovec, Dubrovnik, Karlovac, Požega, Pula, Šibenik, Virovitica, Rijeka, Velika Gorica, Zlatar, Novi Zagreb, Varaždin, Koprivnica, Sisak, Osijek, Gospić, Slavonski Brod and Zagreb). Concerning the courts from which we gained data from, we can state that by each court, there were 381 interrogations on an average audiovisually recorded in the examined period. Requests for audiovisual recording were very rare: on average there were 1.4 requests for an audiovisual recording in the period between 2013–2018. The average number of rooms used for audiovisual interrogations was 1.6 (ranging between 0 and 3). The ratio of rooms used for audiovisual recording of interrogations varies greatly: in a particular court, 100% of the rooms are used for audiovisual recordings (usually small courts where there are only a few rooms used for interrogations) and there is one particular court – the Municipal Criminal Court in Zagreb – where only 3 out of 42 rooms are available for audiovisual recordings, but these 3 rooms for audiovisual recordings represent is the largest number available at any single court anywhere in the country.

4. Practice

4.1. Research methodology

Thirteen interviews were conducted with various stakeholders participating in investigations of suspects and other participants in criminal proceedings. Interviews were conducted with four attorneys, one juvenile county court judge, three deputies of the county state attorney, two higher ranked police officers, two professors from the Police Academy and a professor from a law faculty.

Experiences from interviewed stakeholders mostly cover the period after legislation was changed but some of them have shared their experiences prior to legislative changes in order to better comprehend the importance of transposing Directive 2012/29/EU.

4.2. Experiences about the legal practice

All of the respondents argue that the Republic of Croatia has a sufficient legal framework to respect the procedural rights of suspects and defendants which is a direct result of transposing Directives on defense rights in the early stage of the criminal proceedings into the national legislation.

The practice of audiovisually recording interrogations before the police and state attorney seems to be a standard practice and fully respected given that the form and manner of examination is prescribed by law in detail. Although they also noted that this was not the case prior to the amendments. As stated earlier, Croatia was convicted of violating Art. 3 in several cases before the ECtHR because of ill-treatment of suspects by the police.⁸⁷

87 Judgments against Croatia, e.g.: Mader v. Croatia (Application No.: 56185/07); Tadić v. Croatia (Application no. 10633/15), Štitić v. Croatia (Applicatio no.: 16883/15).

In practice, the interrogation of a suspect or defendant usually lasts from 10 minutes to an hour. The respondents reinforce that the information is provided before an interrogation as described in the law. Police ask the suspects whether they have received written instructions concerning their rights.⁸⁸ A letter of rights must be handed to the suspect prior to an arrest. If this is not possible due to a cognitive incapacity of the arrested person, alcohol intoxication or other reasons, police officers will in a comprehensive manner explain the reasons for the arrest, the right to having a defense attorney, right to refuse to provide any statement or answer any questions, and the right to inform family members about the arrest. If the suspect has not received a written letter of rights, it will be handed to him or her. Once the defendant is settled in the room for the interrogation, he or she is then informed as to the reason for being called in. The suspect is then warned that the interrogation will be recorded.

The main problems to providing information on a suspect's rights occur during the police interrogation. Suspects who are not arrested nor are the subject of an investigative action, as well as those persons involved in criminal procedures for whom the police have grounds for suspicion during the process of gathering information, are usually not informed about their rights. On the other hand, state attorneys provide information to suspects concerning their rights.⁸⁹

Recording starts at the order of a police officer or state attorney conducting the interrogation, usually with the words: "Turn on the camera, the recording has started". The record contains all procedural warnings and statements from the suspect. Considering that only such records have probative force, the practice shows that police officers and State Attorney's Office inform suspects of their rights. Although the police have the obligation to hand over the Letter of Rights to suspects, these same suspects are subsequently asked whether they have received the Letter of Rights and then the police officer repeats once again on camera the procedural rights and warnings. Suspects are asked whether they understand these rights. If they indicate any difficulties in comprehending, the police will inform them of their rights in an understandable way. All of this must be recorded on camera. After the warnings are given to the suspects, the police investigator or State Attorney's Office informs the suspects that they may present their defense by providing an uninterrupted statement. Afterwards, the suspects are asked if they are willing to answer questions.

As mentioned, interrogation may be paused for consultation with the defense attorney or for some other reason. The law does not prescribe whether the state body conducting questioning should pause the recording or continue. The interruption must be mentioned in the written minutes and on camera stating the exact time (date, hour, minute) and the reason for the interruption, as well as the time of resuming the recording.

All respondents confirmed that in practice, defendants are allowed to consult with their defense attorneys, in which case the recording is interrupted, and the interruption noted on record. Some interviewees stated that the reasons for pausing is mentioned on record before the recording is actually paused. In that case, the defendant and defense attorney are allowed to leave the room. After the defendant and the defense attorney return to the interrogation room, the recording continues. In some cases, the recording is not paused, and the scene where the defendant and defense attorney leave the interrogation room for consultation is seen on footage. However, in

88 Written letter of rights is always provided to the suspects together with the search warrant, call to attend first interrogation, decree on the investigation, invitation to the probationary hearing, decision on investigative prison, decision on recognition and expert analysis, as well as during delivery of notification of conducting an investigative action.

89 Dr. sc. Karas, E.I., Dr. sc. Burić, Z., Dr. sc. Bonačić, M., 2016, "Prava obrane u različitim stadijima hrvatskog kaznenog postupka: rezultati istraživanja prakse", p. 541-542. ("The right of defense in different stages of the Croatian Criminal Procedure: Results of Practical Studies")

some cases, the defendant and defense attorney do not leave the room but consult each other while the recording is still running. Upon completing the interrogation, the state body conducting the interrogation finishes the interrogation by saying on camera that the interrogation is over. The most common expression is "Please turn off the cameras, the interrogation is over."

At the end of the interrogation, the suspect is required to sign the written minutes. A copy of the written minutes and a copy of the recording is immediately handed to the defendant or the defense attorney. A second copy is sealed and submitted to the investigating judge, while a final copy is retained by the state body that conducted the interrogation. If a police investigator conducted the interrogation, sometimes a fourth copy is made and kept by the police. The respondents confirmed that a copy of the recording is free of charge. In practice, the defense attorney takes a copy of the record intended for the defendant. All interviewees stated that the written minutes do not contain the entire defense, but only indicate whether the defendant remained silent, was actively presenting a defense, or was actively presenting a defense but refused to answer questions.

Although there is a legal possibility that a court or a state attorney may order a transcript of the entire or part of an interrogation, in practice this option has not been sufficiently exploited. The reason is that making a transcript is too time consuming. However, practice has shown, that the absence of a transcript of questioning of the suspect (before a state attorney or investigator) may later delay further proceedings (when there are short deadlines for a state attorney to decide on requesting detention, often the state attorney has no time to review the entire examination of the defendant which may take several hours; or when the court or state attorney needs to present part of the defendant's statement that differs from the one given at a hearing, and so on).⁹⁰

One of the state attorneys stated that they are able to make very detailed transcripts of interrogations of defendants and these are only for internal use to assist in conducting hearings and present the defendant's testimony, however these transcripts are not part of the criminal case file.

Based on the experience of defense attorneys, police officers and public prosecutors, defendants are usually interrogated on police premises or premises of the State Attorney's Office, since technical conditions must be safeguarded when making a recording. It is a prevalent opinion among state attorneys that they have never personally conducted an interrogation in any place other than their offices, however their colleagues have conducted interrogations on other premises, for instance, at hospitals, using portable audiovisual devices borrowed from the police. Although, one of them stated that she has not had a case where an interrogation was conducted elsewhere, except on the premises of the State Attorney's Office, and in the case of an illness, the State Attorney's Office will postpone the interrogation until the health of the accused person stabilizes.

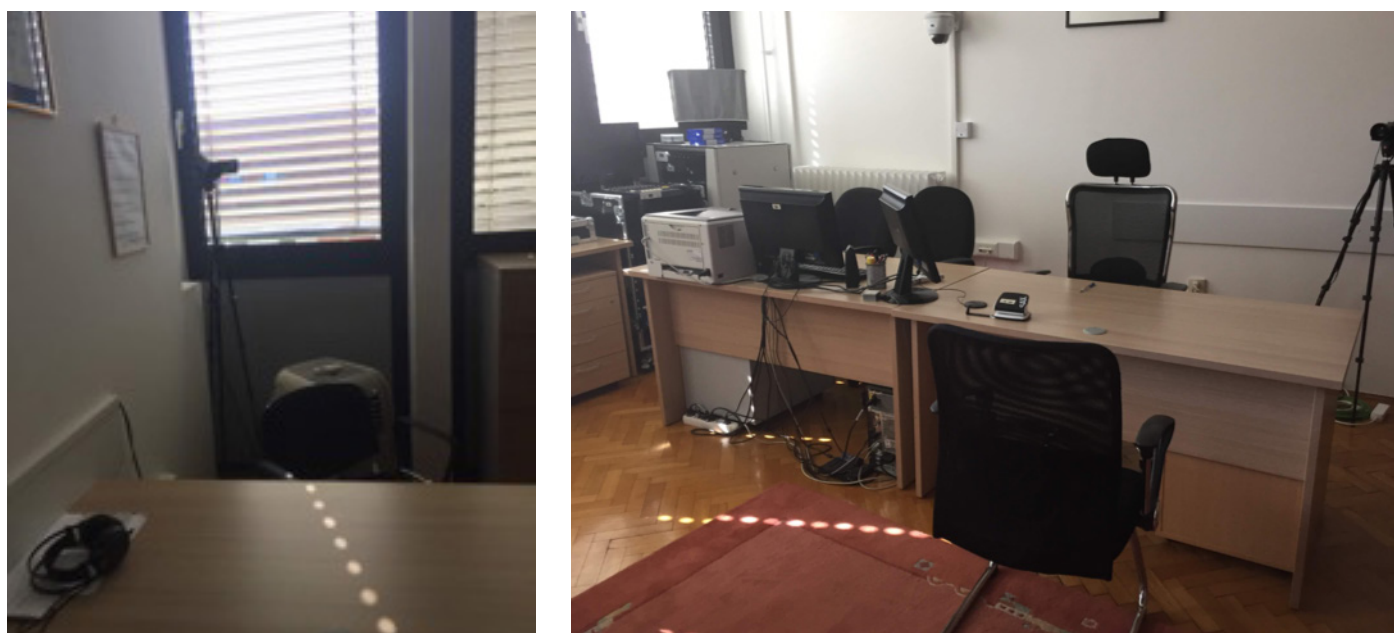
The interviewees state that one camera provides a close-up of the defendant and the defense attorney if one is sitting next to the defendant. The second camera appears on the recording in the bottom corner and covers the entire room and covers the back or side profile of the person conducting the interrogation, including the defendant, defense attorney and judicial police officers, if present.

Furthermore, all interviewees agree that the quality of recordings are generally very good. There is an opinion among state attorneys that prior to commencing an interrogation, the trained

⁹⁰ Supreme Court of Republic of Croatia, The Judicial Academy of Croatia, Digest- Novelties in criminal proceedings- 2017, Opatija, pp. 11-12. May 2017.g., Retrieved from: <http://pak.hr/cke/ostalo%206/Opatija%202017.pdf>

operator conducts a test interrogation to check the quality of recording and sound, while other state attorneys and defense attorneys claim that immediately upon completion of the recording, all three recordings and sound are checked to see if they are technically correct. They rarely faced any problem with the recording, only a few cases of technically invalid recordings are mentioned by one of them. The first time it happened was when the defendant spoke too loudly into the microphone, resulting in poor quality and inaudible audio recording. However, the technicians managed to clean up the recording. The second case was when one of the cameras was not turned on. For this reason, the small recording in the bottom corner covering the entire room was not visible. Nevertheless, the court did not question the recording and accepted it as legitimate evidence.

One of the defense attorneys stated that the quality of the recordings is generally good, but it once happened that his defendant was interrogated for a few hours. When they finished interrogating the defendant, they wanted to check whether the recording was good, but realized nothing was recorded. They had to wait for technicians to come from another location and the entire procedure was repeated once again.



Picture 1- front side of the room for audiovisual recording ⁹¹

An academic paper reflecting the different practices in interpreting the power of evidence during the interrogation of the suspect in police station states the following: "In practice, there are no significant difficulties in police work and the relationship between police and state attorneys. The differences in treatment concerns the court proceedings." ⁹² According to the explicit provision of the CPA, the state attorney has the obligation to interrogate the defendant before filing an indictment. Amendments to the CPA that came into force allowed the police to interrogate suspects in the earliest stages of proceedings. Given that a police interrogation has probative force, the state attorney took the stance that repeat the interrogation before filing the indictment is deemed unnecessary. However, the practice shows different interpretations of preconditions for filing an indictment. Several courts have not accepted indictments filed without prior interrogation by the state attorney. Hence, the conclusion is that the above

⁹¹ More photos of rooms equipped for audiovisual recordings. Available at: <http://www.dorh.hr/Default.aspx-?g=15&sec=18>

⁹² Novokmet, A., Vinković, Z., 2018, "Police interrogation of the suspect after implementation of the Directive 2013/48/EU - State of play and open questions", pp. 440-441, Available at: <https://hrcak.srce.hr/ojs/index.php/eclic/article/view/7120/4611>

jurisprudence of different courts in Croatia results in legal uncertainties. Based on an academic analysis of this situation, possible solutions may be in the new amendments to the CPA or in a final interpretation of current provisions of the CPA by the Supreme Court. Keeping in mind that the Croatian criminal justice system is still adjusting to the requirements of the EU criminal law system, unifying practice on the interpretation of the power of evidence during the interrogation of the suspect in police station it is to be accepted in the future.⁹³

4.3. Practices in making audio recordings

Regarding audio recording of hearings in court or other investigatory actions, almost all interrogators said that they have no experience in audio recordings using audio devices even though the devices are at their disposal. Only one state attorney stated that audio devices are used in some pre-trial proceedings to record the testimonies of witnesses. In such cases, all of these witnesses are warned prior to providing a testimony that they will be recorded using an audio device. The testimony of these witnesses is usually not transcribed but is included in the case file. In practice so far, there have been no objections by witnesses to such interrogations.

According to an academic study on the issue, “despite relatively good regulation of the audio recordings of hearings, the vast majority of judges express their discontent in dictating in minutes. However, they do not use the given option despite technical possibilities of making recordings.”⁹⁴ In practice, during court hearings a court clerk prepares the written minutes as directed by the judge as to what is to be entered in written minutes. The purpose of written minutes is to record important statements provided by persons involved in the case. However, practice has shown that minutes often do not contain some parts of statements or they contain mis-paraphrased statements resulting in frequent objections to written minutes. This certainly places more importance on audio recordings, which has also been pointed out by some of our respondents.

On 28 May 2014, the Croatian Justice Minister and Supreme Court President decided to implement the IPA 2010 project titled “Improving Effectiveness of the Justice System in the Republic of Croatia”. The aim of the project was to establish the system of audio recording of the hearings, education on the use of the system, and to make audio records of court proceedings “for new cases and covering durations of three hours a week per judge”. By the end of a hearing, the parties involved receive a written record of the discussion, while the transcript and audio recording are provided within three days. The project was implemented in four county courts and one municipal court in Croatia, with financial support amounting to EUR 585,307.38 provided by the European Union. Technical equipment was installed in 89 courtrooms in a total of 16 courts and 2 permanent court services.

Judges who participated in the pilot project evaluated their experiences positively, as they no longer are required to analyze written minutes of statements from the accused or witnesses. This approach resulted in shortening the duration of court hearings, and which in turn led to legislative changes in the amended Criminal Procedure Act.⁹⁵

93 Novokmet, A., Vinković, Z., 2018, “Police interrogation of the suspect after implementation of the Directive 2013/48/EU – State of play and open questions”, pp: 438-441, Available at: <https://hrcak.srce.hr/ojs/index.php/eclic/article/view/7120/4611>

94 Supreme Court of Republic of Croatia, The Judicial Academy of Croatia, Digest- Novelties in criminal proceedings- 2017, Opatija, pp. 11-12. May 2017.g., p. 82, Available at: <http://pak.hr/cke/ostalo%206/Opatija%202017.pdf>

95 Supreme Court of Republic of Croatia, The Judicial Academy of Croatia, Digest- Novelties in criminal proceedings- 2017, Opatija, pp. 11-12. May 2017.g., p. 83-84. Available at: <http://pak.hr/cke/ostalo%206/Opatija%202017.pdf>

5. Attitudes of relevant stakeholders

5.1. General attitudes towards audiovisual and audio recording

All of our interviewees emphasized that Croatia has a proper legal framework that respects the procedural rights of suspects and defendants. The obligation to record a defendant's interrogation in pre-trial proceedings is particularly positive from the point of protecting interrogators, as it prevents potential accusations by defendants of ill-treatment in obtaining a confession or other violations of certain procedural rights – which had happened before changes to legislation. The interrogators stated that in pre-trial proceedings, where recording of the interrogations is mandatory, such actions are always carried out in adherence to all procedural rules – and recordings are a guarantee of that. Based on the experience of a state attorney, the introduction of mandatory interrogation using an audiovisual device has eliminated any possibility of defendants alleging a violation of their rights. For the last seven years, since the new regulation has been in effect, there has not been a single case where a defendant has complained or pointed out a violation of his or her rights. Although prior to the introduction of mandatory recording, it often happened that when defendants confessed to perpetrating a criminal offense in the pre-trial phase, later on in the proceedings they stated that police officers had coerced their confession.

Interrogators highlighted transparency as a particularly positive aspect of audiovisual recordings, meaning that the entire testimony is recorded, the method and manner of asking questions is recorded, and that recordings show that suspects are informed of their rights.

The Judicial Academy publishes the Digest in which Supreme Court representatives emphasized that the introduction of recording police questioning of suspects was not due to mistrust of the lawful work of police, but to secure evidence and also to verify alleged complaints that police did not provide the necessary warnings or failed to legally conduct interviews of suspects.⁹⁶ Another academic paper highlights that this abolished many years of ill-practice that the same person during pre-trial proceedings had significantly weakened rights of defense by the police acting against that person, and benefiting from the procedural rights of the defense during the investigation conducted by the public prosecutor.⁹⁷

SA3 cites that one of the positive aspects of the interrogation using an audiovisual device is that there is no time wasted on keeping written minutes. Also, the statement in the minutes may be tailored to appear more appealing or perhaps not written exactly in the way the defendants expressed themselves. The record now makes everything evident, as the physiognomy of defendants also becomes apparent, the way they express themselves, whether they are crying, their emotional expressions, etc.

All interrogators said that the quality of recordings is generally good and that there were only a few situations exposing technical problems, contradicting statements in the report by the State Attorney's Office for 2017, as discussed under 3.2.⁹⁸

Regarding transcripts of recording, the interviewees also stated that transcripts are very useful supporting tools for facilitating and expediting work on case files. The State Attorney's report

96 Supreme Court of Republic of Croatia, The Judicial Academy of Croatia, Digest- Novelties in criminal proceedings- 2017, Opatija, pp. 11-12. May 2017.g., p. 78, Available at: <http://pak.hr/cke/ostalo%206/Opatija%202017.pdf>

97 Novokmet A., Vinković, Z., 2018, "Police interrogation of the suspect after implementation of the Directive 2013/48/EU – State of play and open questions", p. 430, Available at: <https://hrcak.srce.hr/ojs/index.php/eclic/article/view/7120/4611>

98 State Attorney Annul Report for 2017.p. 15, 19, 145 and 237. Available at: <http://www.dorh.hr/dorh07062018>

reinforces the same opinion on the issue, while emphasizing that making a transcript does to a certain extent place a burden on the state body that is assigned the task of making transcripts and that the final outcome is considered indispensable.⁹⁹ As mentioned earlier, all interrogators said that they have no experience in audio recordings using audio devices, even though the devices are available for use. Hence, despite relatively good regulations for recording hearings, a large majority of our interviewees have expressed dissatisfaction with the obligation to dictate minutes, judges do not utilize that opportunity even though courts have technical possibilities to make recordings.

5.2. Case Studies

CASE STUDY NO. 1

State attorney no. 2 considers audiovisual interrogations useful as it no longer leaves any doubt as to whether all cautions have been given to defendants, as was the case in some instances that defendants had not received all the necessary cautions. Now there is no more doubt because everything is recorded.

In support of this, a particular case from court practice is also mentioned. It involves a criminal offense for a murder. In the first phase of the criminal investigation, there was no material evidence connecting certain persons as suspects. However, data and information were collected in information-gathering conversations with citizens, from the information state attorneys had on movement of persons through GPS referencing, video surveillance at gas stations, and which provided reasonable suspicion that the respective persons committed the mentioned criminal offense. When the state attorneys invited the (two) suspects, one of them decided to file a defense statement, i.e., admitting perpetration of the offense whereas the other person exercised their right to remain silent in answering questions. When the criminal offense was recognized, the interrogation was recorded with an audiovisual device, the defense attorney was present and the defendant was familiar with all of his rights, including the fact that the testimony recording may be used later as proof in proceedings. The suspect gave a detailed and complete testimony acknowledging the criminal offense from preparation to perpetration of the criminal offense and subsequent actions. The defendant later in the proceedings remarked that there was no material evidence indicating that they had committed a criminal offense, the suspect intended to challenge the prosecutor's case by citing circumstances in which he was incapacitated in giving testimony due to an abstinence crisis, that the suspect was not given all cautions, and that the state attorney used deception during the interrogation. Due to allegations that the defendant's procedural rights had been violated and that his statement should be regarded as inadmissible evidence, the defendant referred to the Constitutional Court and the Supreme Court of the Republic of Croatia, but both courts found that the testimony was legitimate proof.

Precisely due to the fact that the interrogation was recorded, it was clear that all cautions were given to the defendant as well as notifying as to the manner in which the state attorney would ask questions, i.e., it was determined that the state attorney had not used deception. Additionally, it was apparent from the record that the defendant also consulted with his defense attorney, allowing the courts to eliminate all objections regarding illegality of the record.

⁹⁹ Supreme Court of Republic of Croatia, The Judicial Academy of Croatia, Digest- Novelties in criminal proceedings- 2017, Opatija, pp. 11-12. May 2017.g., p. 79, Available at: <http://pak.hr/cke/ostalo%206/Opatija%202017.pdf>

Judgment Mader v. Croatia, 21 June 2011, no. 56185/07, EtCHR¹⁰⁰

EtCHR declared that there had been a violation of the substantive aspect of Article 3 of the Convention in that the applicant had been subjected to inhuman treatment during his stay at the Zagreb Police Department from 1 to 4 June 2004, including a violation of the procedural aspect of Article 3 of the Convention in that no investigation into the applicant's allegations of ill-treatment had been done and that a violation of Article 6 (1) and (3) of the Convention had occurred on account of insufficient legal assistance afforded to the applicant during police questioning.

In this case, the suspect at the moment upon arriving at the Zagreb Police Department, was taken to an interview room and kept there for two days and nineteen hours. Throughout that time, he had been forced to sit on a chair without sleep, food or treatment for his medical condition. During questioning, the police officers had continually slapped him in the face, hit him on the head with a heavy notebook and once, when he had fallen onto the floor, kicked him all over his body, causing him injuries including a permanent injury to the coccyx. The suspect was questioned without the presence of a lawyer and later, the verdict was decisively based on the confession given to the police. The suspect argued that the police officers made a record of the questioning, the content of which was untrue, according to the applicant, and was not read aloud to him. They stated that he had confessed to the murder. The applicant was forced to sign the written minutes of his alleged questioning. A lawyer, called by the police, arrived after the questioning and signed the record of the applicant's questioning, which had already been prepared, without talking to the applicant and without reading it.

The Court stated that police kept no record of the time when the applicant was being interviewed by the police officers or when the applicant was allowed to sleep and when he was given food or drink. The lawyer had also claimed that such practice was standard in police procedures and that he encountered about two hundred of these cases each year. Prior to transposition of the Directive, the usual practice by police was to invite defense attorneys at the end of interrogation, and in cases of deprivation of liberty the time and place and other important events related to deprivation of liberty and interrogation were not recorded. Due to such practices, the ECtHR has obliged Croatia to safeguard the rights to effective legal representation to suspects in police stations. However, these rights were granted to suspects who were arrested and interrogated by the state attorney or police investigator as ordered by the state attorney. The right to legal representation was not granted to suspects in the process of police gathering information i.e., to suspects who had been released. Transposition of the Directive granted the right to legal representation to all suspects of criminal offences.

5.3. The importance of audiovisual recordings in enforcing of procedural rights

All interviewed stakeholders emphasized the same consequences of a failure to record interrogations as prescribed by law. Such footage represents unlawful evidence. Since police conduct audiovisual questioning in police stations, it should be noted that police probably talk to suspects prior to "formal examinations" (for example, when arrested and brought to the police station or during a search with the suspect present). In all these cases, if the defendant was to acknowledge perpetration of a criminal offense or where had concealed the means of perpe-

¹⁰⁰ Case of Mader v. Croatia, Application No. 56185/07, final Octobre 21, 2011. Available at: [https://hudoc.echr.coe.int/eng#{"fulltext":\["mader"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-105293"\]}](https://hudoc.echr.coe.int/eng#{)

trating the criminal offense, such evidence represents unlawful evidence by applying the fruits of the poisonous tree doctrine. Such evidence should be removed from case files. "That is why it would be useful to take and record a suspect's explicit statement about whether the he or she had already talked to the police in order to overcome possible objections (especially when the suspect does not have a defense attorney present)".¹⁰¹

A police representative stated this would not be the case if the suspect began talking and if no one had asked the suspect anything, i.e., volunteered information. For instance, if a suspect acknowledged where he or she had hidden some evidence, it would be lawfully found evidence. It is important for the police not to initiate or ask questions regarding the actual criminal offence. Furthermore, in cases where the police find grounds for suspicion in that a person had participated in commissioning or committed a criminal offence during the information-gathering statements from the public, the police shall cease to gather information and in such cases the person will be examined as a suspect. Otherwise, the evidence obtained from collecting such information is deemed unlawful evidence.

Statements obtained from a self-declaration, spontaneous declaration, declaration in a non-formal conversation, statements of offenders during a criminal act, statements obtained using undercover police statements, as well as during the exercising of formal police powers cannot be identified as formal police interrogation in accordance with Art. 208 of CPA. The legislation does not provide a definition of interrogation to determine the defining elements of an interrogation. For example, if a person enters the police station and states "I have committed a murder" while not being formally interrogated, such a statement cannot be considered as an official statement. The police in this case act in the role of observer which cannot be considered as commencing a police interrogation.

Since legislation has not determined the defining contents of an interrogation, there is clearly a need for such a definition in order to avoid different court practices. Importantly, different forms of verbal communication not initiated by police activity should be distinguished, and obtained statements should have a probative force as in comparative law.¹⁰²

6. Possibilities of extending audiovisual recording of interrogations and analyzing factors facilitating and hindering the process

A further area where new practices need to be developed, as noted by the interviewees, is the need to create transcripts of records. Though it is obvious that transcripts speed up proceedings, it also means employing additional staff which presents a financial burden for the state.

According to obtained statistics, it is clear that not all courts, police stations and branches of the State Attorney's Office have equipment for audiovisual recordings – which might result in unlawful practices. Additionally, the State Attorney's Report found existing equipment to be insufficient and in a deteriorated condition. In 2017 State Attorney's Report, the suggestion is to ensure additional technical devices as well as regular tuning of existing equipment.¹⁰³

¹⁰¹ Supreme Court of Republic of Croatia, The Judicial Academy of Croatia, Digest- Novelties in criminal proceedings- 2017, Opatija, pp. 11-12. May 2017.g., p. 81, Available at: <http://pak.hr/cke/ostalo%206/Opatija%202017.pdf>

¹⁰² Burić, Z. Dr., sc. Karas, Z. sc., 2017, "A Contribution To The Discussion Of Doubts Concerning The New Definition Of Suspect And The Act Of Interrogating The Subject" p.479.

¹⁰³ State Attorney Report for 2017, Retrieved from: <http://www.dorh.hr/dorh07062018>

Regarding audio recordings of hearings, as mentioned earlier, almost all interrogators have said they have no experience in using audio devices at hearings even though such devices are available. Despite relatively good regulation and technical possibilities of audio recordings of hearings, courts do not utilize this opportunity. The importance of making audio recordings of hearings is justifiable because very often the minutes do not reflect at the main hearing all that has happened. A lot of times statements in minutes are redressed to be more appealing or were not completely entered in the minutes in the way said by the defendant.

Some interviewees are advocating expanding audiovisual recordings to also cover misdemeanor cases. It is to be noted that Croatia recognizes two main forms of unlawful conduct; criminal acts ("kazneno djelo") and misdemeanors ("prekršaj"). Misdemeanor refers to a less severe violation of the social values and carries with it lighter sanctions, when compared to criminal offences.¹⁰⁴ Given that the misdemeanor procedure is subordinate to the Criminal Procedure Act (especially in relation to domestic violence proceedings) audiovisual recordings should be made in the above cases, which in practice is not the case.

The same situation applies to victims. According to the Paragraph (9) of the Directive 2012/29/EU, the crime is a wrong committed against society, as well as a violation of the individual rights of victims. Keeping in mind that the concept of victim refers to any individual suffering damage, including physical, mental or emotional, or economic loss, this definition may be applied *mutatis mutandi* to victims of specific misdemeanors, who have suffered specific material, physical or mental damage.

Article 1 of the Ordinance of Implementation of the Individual Assessment of Victims specifies that the Ordinance refers to victims of crime, but does not include victims of misdemeanors, while the protections standards stemming from the Directive in national jurisdiction apply equally to criminal and misdemeanor proceedings. The complete neglect of misdemeanor victims is not aligned with the European legislation tendencies to equalize the victims of crimes and those of misdemeanors.¹⁰⁵ It should also be remembered that many cases of domestic violence, for example, have been dealt with in misdemeanor proceedings.

Defense attorneys who we interviewed raised serious concerns against the failure to recognize misdemeanor victims, i.e., domestic violence victims. In misdemeanor proceedings, victims are excluded from individual victim assessments, meaning they are excluded from special protection measures (special manner of questioning, use of communication technologies to avoid visual contact with the offender, and so on).

¹⁰⁴ Prof. dr. sc. Damir Aviani, *Misdemeanor Law*, Third revised edition, Split, 2013, p.8, Available on: https://www.pravst.unist.hr/dokumenti/dokpdf_prekrhajno_pravo_2013.pdf

¹⁰⁵ The 2017 Ombudsperson Report, Available on: <http://ombudsman.hr/hr/izvjesca-2017/izvjesce-pp-2017/send/82-izvjesca-2017/1126-izvjesce-pucke-pravobraniteljice-za-2017-godinu>

7. Recommendations

It is to be concluded that Croatia with last Amendments to CPA/17 made a significant step forward in the Europeanization processes of Croatian criminal procedural law. The transposition of the said Directive significantly reformed the traditional informal concept of police questioning of the suspects in pretrial proceedings including abandonment of formal concept of the suspect and accepting the concept of the suspect with a substantive meaning.

All interviewees emphasized that Croatia has a good legal framework that respects the procedural rights of suspects and defendants, now even from the earliest stages of criminal proceedings. The practice of audiovisual recording of interrogations before the police and State Attorney seems to be a standard practice and fully respected given that the form and manner of examination is prescribed by law in detail. However, there is no unified standpoint on the interpretation of the power of evidence during the interrogation of the suspect in police station. Having in mind that Croatian criminal justice system is still in process of adjusting to the requirements of the EU criminal law, future developments are expected vis-à-vis harmonization of court practice.

Taking into account the requirements of the Access to a Lawyer Directive and what we described in the preceding chapters, we put forth the following recommendations.

- The obligation to make transcripts of video recorded interrogations.
- Mandatory audio recordings of court hearings.
- Ensure additional technical devices as well as regular tuning of existing equipment to avoid unlawful practices do to the lack of proper equipment.
- An extension of obligation to audiovisual recordings to cover misdemeanor cases related to domestic violence.
- Include misdemeanor victims in individual assessments, i.e., increasing the capacity and quality of support services provided by national practitioners, improve the understanding of victim rights for misdemeanor victims.

Annex

Table 1. Rooms suitable for conducting audiovisual recordings and their equipment in the territory of the Republic of Croatia

Police Departments	Number of rooms	Number of audio-video devices
Zagreb County	12	22
Split-Dalmatia County	9	20
Primorje-Gorski Kotar County	8	13
Osijek-Baranja County	6	11
Istra County	5	13
Vukovar-Srijem County	4	11
Šibenik-Knin County	4	10
Dubrovnik-Neretva County	10	15
Zadar County	13	17
Karlovac County	7	9
Sisak-Moslavina County	3	13
Bjelovar-Bilogora County	6	9
Varaždin County	6	9
Krapina-Zagorje County	2	8
Brod-Posavina County	3	9
Koprivnica-Križevci County	2	8
Lika-Senj County	5	10
Virovitica-Podravina County	1	6
Požega-Slavonia County	1	5
Međimurje County	3	8

Table 2. Interrogations conducted by the State Attorney's Office and the police

State Attorney's Office		2013	2014	2015	2016	2017	TOTAL
ORDERS TO THE POLICE	First interrogation	7757	5400	5738	6797	7248	32940
	Witness examination (not AV recorded)	6697	4505	5292	6309	7489	30292
	TOTAL	14454	9905	11030	13106	14737	63232
ACTIONS BY THE STATE ATTORNEY'S OFFICE	First interrogation	15508	16199	15142	14622	13831	75302
	Witness examination (not AV recorded)	20856	19245	17452	17889	17111	92553
	TOTAL	36364	35444	32594	32511	30942	167855
OVERALL	First i nterrogation	23265	21599	20880	21419	21079	108242
	Witness examination (not AV recorded)	27553	23750	22744	24198	24600	122845
	TOTAL	50818	45349	43624	45617	45679	231087

Table 3. The total number of audiovisual devices available to the courts in the Republic of Croatia

Judicial body	Audiovisual system from UNICEF DONATION, re-cording of minors	Audiovisual device by judicial and criminal bodies-Policom
Municipal Civil Court in Zagreb		1 set
Municipal Criminal Court in Zagreb	1 set	1 set
Municipal Court in Novi Zagreb		1 set
Municipal Court in Split	1 set	1 set
County Court in Bjelovar	1 set	1 set
County Court in Dubrovnik		1 set
County Court in Osijek	1 set	1 set
County Court in Pula		1 set
County Court in Rijeka	1 set	1 set
County Court in Sisak	1 set	1 set
County Court in Slavonski Brod		1 set
County Court in Split	1 set	1 set
County Court in Šibenik		1 set
County Court in Varaždin	1 set	1 set
County Court in Velika Gorica		1 set
County Court in Vukovar		1 set
County Court in Zadar		1 set
County Court in Zagreb	1 set	1 set

Table 4. Costs of audiovisual devices

Division of costs	Quantity	Price (excl. VAT)
Costs of devices and installation	19 sets	HRK 836,232.56 = approx. 111,497.67 EUR*
Server license	1 set	HRK 18,383.15 = approx. 2,451.08 EUR
Implementation	1 set	HRK 343,386.25 = 45,784.83 EUR
Total (excl. VAT)		HRK 1,198,001.96 = 159,733.58 EUR
Total (incl. VAT)		HRK 1,497,502.45 = 199,666.99 EUR

* 1 HRK = 1.75 EUR

Table 5. Number of audio devices available at courts in Croatia

Judicial bodies	IPATAIB 2010 “Strengthening Judicial Justice in the Republic of Croatia” procurement of audio system for recording court hearings and witness testimonies.
Municipal Civil Court in Zagreb	27 sets
County Court in Bjelovar	2 sets
County Court in Dubrovnik	1 set
County Court in Karlovac	2 sets
County Court in Karlovac, Permanent attendance in Gospić	1 set
County Court in Osijek	3 sets
County Court in Pula	2 sets
County Court in Rijeka	5 sets
County Court in Sisak	2 sets
County Court in Slavonski Brod	2 sets
County Court in Slavonski Brod, Permanent Attendance in Požega	1 set
County Court in Split	10 sets
County Court in Šibenik	1 set
County Court in Varaždin	4 sets
County Court in Velika Gorica	2 sets
County Court in Vukovar	2 sets
County Court in Zadar	3 sets
County Court in Zagreb	19 sets

Table 6. Total number of interrogations, number of rooms used for audiovisual and audio recorded interrogations as well as requests for audiovisual and audio recording in the period 2013-2018; (“-” indicating that information was not received, whereas “0” refers to the number of interrogations and rooms suitable for audiovisual recording)

Total number of interrogations in the period 2013-2018							
Judicial bodies	Interrogations at courts	Interrogation audiovisually recorded (investigative judges)	Requests for audiovisual recording	Rooms used for interrogations	Rooms used for audiovisual interrogations	Rooms used for audio recording of hearings	Interrogations recorded on audio
Municipal Criminal Court in Zagreb		-	-	42	3	-	-
County Court in Zagreb					1		
Criminal Section of First Instance	-	1712	-	-	-	-	-
Criminal Section of Second Instance	-	5	-	-	-	-	-
Prison Sentence Enforcement Center	631	-	-	3	-	-	-
Investigative Judge Section	10681	1637	-	-	-	-	-
Municipal Court in Čakovec	-	17	-	-	1	-	-
County Court in Bjelovar	1460	177	2	4	2	0	0
County Court in Vukovar	-	-	-	3	2	1	-
County Court in Dubrovnik	-	57	-	-	1	-	-
Municipal Court in Dubrovnik	-		-	6	2	-	-
Municipal Court in Karlovac	5758	19	7	1	1	0	0

Municipal Court in Požega	-	-	-	2	1	-	-
County Court in Pula	-	-	-	-	1	-	-
Municipal Court in Pula	-	-	-	-			
Municipal Court in Šibenik	-	-	-	-	0	0	0
Municipal Court in Slavonski Brod	-	-	-	-	-	-	-
Municipal Court in Virovitica	-	-	-	-	2	-	-
Municipal Court in Rijeka	-	-	-	-	0	0	0
Municipal Court in Velika Gorica	-	-	-	6	1	0	0
County Court in Velika Gorica	-	-	-	-	-	-	-
Municipal Court in Zlatar	-	-	-	6	2	2	-
Municipal Court in Novi Zagreb	-	15	0	2	2	-	-
County Court in Zadar	-	-	-	7	3	5	-
County Court in Rijeka	-	90	-	-	2	-	0
County Court in Sisak	1787	431	-	7	1	1	-
County Court in Varaždin	-	668	-	-	4	-	0
Municipal Court in Varaždin	-	17	-	5			
County Court in Šibenik	2882	69	0	2	2	0	0

Municipal Court in Koprivnica	-	21	1	2	2	0	0
Municipal Court in Sisak	1244	0	0	6	1	1	0
Municipal Court in Osijek	-	-	-	-	-	-	-
Municipal court in Gospić	-	-	0	-	0	-	-
Municipal court in Slavonski Brod	-	-	-	-	-	-	-

