
Revenge or Coercive Pornography – A New Criminalization of Gender-Based Violence in Contemporary Criminal Legislation

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Abstract

Based on international documents, as well as the views of legal theory, criminal liability and punishability for a new incrimination within the framework of gender-based violence against women or girls have been established in European criminal legislation in recent years. This offense is referred to as “revenge or coercive pornography.” It is an incrimination directed against an individual’s personal freedom (privacy), that is, against his or her sexual freedom. With the increasingly widespread use of modern computer and information technologies, cases of their misuse have emerged in various ways, resulting in violations of sexual dignity, personal freedom, and the privacy of another person or multiple persons. Accordingly, certain criminal legislations in our region already recognize this incrimination, including those of Bosnia and Herzegovina, Montenegro, Croatia, and North Macedonia. In the Republic of Serbia, the introduction of a similar incrimination is expected under the title “Misuse of a recording, photograph, portrait, audio recording, or written material with sexually explicit content.” These materials may have been created with the consent of the injured party, but are subsequently made available to other persons without authorization. Based on international standards and comparative legal solutions, this paper analyzes the content, characteristics, constitutive elements, and forms of manifestation of this incrimination, as well as the possibility of its introduction into the legal system of the Republic of Serbia.

Keywords: sexual freedom, sexually explicit content, computer systems, misuse, criminal offense, sanction

Introduction

In contemporary social conditions, in which computer and information technology, as well as systems for the transmission of images or sound, are becoming an inevitable and integral part of people’s lives and work, increasingly widespread and diverse forms of their misuse are emerging. In this way, human freedoms and rights are violated or endangered (particularly the right to privacy and human dignity), as well as the sexual integrity of another person or multiple persons, especially women and girls. The use of new forms of technology intensifies the resulting consequences due to the speed of dissemination and the accessibility of harmful content to a large number of people. These consequences are particularly severe in the sphere of violations of an individual’s sexual integrity. Therefore, on the basis of relevant international standards, contemporary criminal legislation has established a system of new incriminations that manifest gender-based violence, that is, violence against women and girls (Dragojlović & Đorđević, 2025; Bjelajac, 2022). One of these new incriminations is the offense which, in the law of the Republic of Serbia, according to the Draft Amendments to the Criminal Code of 2025, is titled “Misuse of a recording, photograph, portrait, audio recording, or written material with sexually explicit content” (Article 145a). When the draft legislative text is adopted (which is expected during 2026), this criminal offense will protect the freedom and dignity of the human personality, particularly in the sexual sphere. This offense manifests itself in several specific forms, which are undertaken in relation to: a) a video or other recording, b) a

photograph, c) a portrait, d) an audio recording, or e) another written material with sexually explicit content (which is why this incrimination is referred to in legal theory as “revenge or coercive pornography”). The subject of this paper is the analysis of the new criminal offense “Misuse of a recording, photograph, portrait, audio recording, or written material with sexually explicit content” (Article 145a of the Draft Amendments to the Criminal Code of the Republic of Serbia of 2025) as a form of gender-based violence in the digital environment. The aim of the paper is to determine the criminal law significance and justification for introducing this new incrimination into the legislative system of the Republic of Serbia, as well as to examine its harmonization with the solutions adopted in the countries of the region that prescribe this criminal offense.

International Standards of the New Incrimination

The specific criminal offense that legal theory refers to as “revenge or coercive pornography” does not yet exist in the criminal law system of the Republic of Serbia. The foundation for the criminalization of this form of sexual exploitation of women, or children, within the framework of gender-based violence is provided by Directive (EU) 2024/1385 of the European Parliament and of the Council on combating violence against women and domestic violence from May 2024. Since the Republic of Serbia is in the process of accession to the European Union, it is expected that in the coming period it will fully adopt its international standards in the field of substantive criminal law. According to the text of the European Directive, a criminal offense of sexual exploitation includes an offense titled “Sharing intimate or manipulated material without consent” (Article 5). The content of this incrimination consists of several alternatively prescribed intentional acts, including the following (Milojević, 2025, pp. 391–408):

a) making images, video recordings, or similar materials depicting sexually explicit activities or the intimate parts of another person available to the public through information and communication technologies without that person’s consent, where such conduct is likely to cause serious harm to that person,

b) creating, manipulating, or altering images, video recordings, or similar materials so that it appears that another person is involved in sexually explicit activities, and subsequently making them available to the public through information and communication technologies without that person’s consent, where such conduct is likely to cause serious harm to that person, and

c) threatening (by announcement, oral or written communication, or symbolic indication to another person) to undertake any of the above-mentioned acts in order to compel another person to perform or accept a certain act, or to refrain from it (omit it).

In relation to this incrimination, it should be noted that one of the objectives pursued by the adopted Directive is the harmonization of the definitions of criminal offenses (and the penalties for their perpetrators), particularly with regard to offenses that manifest certain forms of online violence, especially where such violence is inseparably linked to the use of information and communication technologies (through modern computer systems). These are situations in which modern computer and information technologies are used with the aim of causing significantly more severe consequences of the committed criminal offense, thereby substantially altering the characteristics of numerous criminal offenses.

The terms “making available to the public” and “publicly accessible” (as elements of the constituent features of this criminal offense) should be interpreted as referring to potential dissemination to multiple persons, across a wider area, or over a longer period of time. These terms should also be interpreted and applied taking into account the relevant circumstances, including the technology used to make such material available to an individually indeterminate number of people. Furthermore, in order to establish only minimum rules for the most serious forms of online violence, the relevant criminal offenses defined in this Directive are limited to conduct that is likely to cause the victim serious harmful consequences or serious psychological harm, or conduct that is likely to cause the victim serious fear for their own safety or the safety of close (primarily dependent) persons.

In any case, when assessing the likelihood (possibility) that the prescribed conduct of the perpetrator will cause serious consequences, particular objective circumstances of the specific case, as well as the subjective circumstances of the perpetrator, should be taken into account; these issues, as matters of fact, are determined by the competent court. In this decision-making process, particular consideration is given to the possibility of simple, rapid, and widespread distribution of the “material,” as well as the “intimate nature of the act,” such as making images, video recordings, or similar material depicting sexually explicit acts or the intimate parts of another person available to the public through information and communication technologies without their consent, which can be extremely harmful to victims.

The Concept of the “New” Incrimination in the Law of the Republic of Serbia

The Draft Law on Amendments and Supplements to the Criminal Code of the Republic of Serbia from November 2025 (Article 24) provides for the introduction of a new incrimination in Chapter Fourteen titled “Criminal Offenses against the Freedoms and Rights of Man and Citizen,” immediately following the existing criminal offense titled “Unauthorized Publication and Presentation of Another’s Writing, Portrait, or Recording” (Article 145). According to the text of the Draft Law on Amendments and Supplements to the Criminal Code, the new criminal offense would be titled “Misuse of a Recording, Photograph, Portrait, Audio Recording, or Written Material with Sexually Explicit Content” (Article 145a). The protected legal interest is the freedom and dignity of the human personality, particularly in the sexual sphere, while the object of the attack is alternatively defined as: a) a video or other recording, b) a photograph, c) a portrait, d) an audio recording, or e) another written material with sexually explicit content.

There are three forms of manifestation of the basic form of the offense, depending on the type of conduct undertaken (Milojević, 2025, pp. 391–408).

The first form of the basic offense (paragraph 1) is committed by a person who makes available to a third party a video or other recording, photograph, portrait, audio recording, or written material with sexually explicit content, without the consent of the person to whom the material relates, that is, without the consent of the person depicted in the recording, photograph, or portrait, or whose voice is recorded in the audio recording. This offense is characterized by: a) the object of the attack, b) the act of commission – enabling another person to become aware of the content, either by acquiring possession or control of the object of the attack, or by becoming aware of its content, and c) the manner of commission - unlawfully, that is, without consent (explicit or implicit), without the consent of the person to whom the object of the attack relates.

The second form of the basic offense (paragraph 2) is committed by a perpetrator who undertakes a two-act conduct in a specific manner: a) by using a computer system or b) in another way. It is interesting that the law (Article 113), when providing the meaning of certain terms, does not define the term “computer system,” although it defines other related terms such as: a) computer data (item 17), b) computer network (item 18), c) computer program (item 19), or d) computer virus (item 20). This offense consists of creating (producing) a new (previously non-existent) or altering (modifying) an existing video or other recording, photograph, portrait, audio recording, or written material with sexually explicit content, and subsequently using or making available to a third party such previously created or falsified recording, photograph, portrait, audio recording, or written material as if it were authentic (Bjelajac & Filipović, 2021, pp. 16–32).

Finally, the third form of the basic offense (paragraph 3) is committed by a person who threatens (announces or indicates) to another person that he or she will make available to a third party their video or other recording, photograph, portrait, audio recording, or written material with sexually explicit content (Kovačević Lepojević & Lepojević, 2019, pp. 89–108). In the context of the financial dimension of human trafficking, the issue of anonymous money flows and the concealment of the origin of funds takes on particular significance. (Bjelajac & Bajac, 2022).

The perpetrator of the basic offense may be any person. With regard to culpability, intent on the part of the perpetrator is required. For the basic offense, regardless of the form in which it is manifested, a sentence of imprisonment ranging from three months to three years is prescribed. In addition to the penalty, the perpetrator is mandatorily subject to the security measure of confiscation of objects: a) the objects of the offense - video or other recordings, photographs, portraits, audio recordings, and written materials, and b) the means used for committing the offense - special devices by which the criminal offense was carried out. This criminal offense is envisaged to appear in three more serious, qualified forms of manifestation (Janković & Putnik, 2025; Dragojlović, 2025).

The first aggravated form of the offense (paragraph 4) is characterized by the means (or manner) of carrying out the act of commission. This offense exists if the conduct prescribed for the basic form of the offense is carried out through (via or with the assistance of) information and communication technologies, or in another manner, as a result of which a video or other recording, photograph, portrait, audio recording, or written material with sexually explicit content becomes available to a larger number of persons (who are not individually predetermined), indicating the possibility that the consequences of the offense may occur on a larger scale or across a wider area. For this offense, a sentence of imprisonment ranging from six months to five years is prescribed.

The second aggravated form of the offense (paragraph 5) is qualified by the characteristic of the passive subject or victim. The victim is a child - a person under fourteen years of age (Article 113, item 8), and the perpetrator must be aware of the personal characteristic (age) of the victim at the time of undertaking the act of commission. For this offense, a sentence of imprisonment ranging from one to eight years is prescribed.

The third aggravated form of the criminal offense (Article 145a, paragraph 6) is characterized by the personal status of the perpetrator - that is, a person with a special personal capacity (*delicta propria*). Specifically, this offense is committed by an official person acting in the performance of official duties who undertakes any of the several alternatively prescribed acts, for which different penalties are prescribed: a) for committing the basic offense - imprisonment from six months to five years, b) for committing the

offense through information and communication technologies or in a similar manner - imprisonment from one to eight years, and c) for committing the offense against a child - imprisonment from two to ten years.

The following persons may appear as perpetrators of this offense (Article 113, item 3): 1) a person performing official duties in a state authority, 2) an elected, appointed, or designated person in a state authority or a body of local self-government, or a person who permanently or temporarily performs official duties or functions in such bodies, 3) a public notary, public enforcement officer, or arbitrator, as well as a person in an institution, enterprise, or other entity entrusted with the exercise of public authority who decides on the rights, obligations, or interests of natural or legal persons or on matters of public interest, 4) a person who is de facto entrusted with the performance of certain official duties or tasks, and 5) a military person.

Legislation of the Countries of the Southeast European Region

The new incrimination of “revenge or coercive pornography,” under more or less identical titles and with similar legislative systematics, content, constitutive elements, and forms of manifestation, is currently recognized in several legal systems in the region of Southeast Europe that emerged after the dissolution of the SFR Yugoslavia. These include the legislations of: a) Bosnia and Herzegovina, b) Montenegro, c) Croatia, and d) North Macedonia.

Bosnia and Herzegovina

The Criminal Code of the Federation of Bosnia and Herzegovina (CC FBiH), in Chapter Seventeen titled “Criminal Offenses against the Freedom and Rights of Man and Citizen,” provides for the criminal offense “Misuse of a Recording with Sexually Explicit Content” (Article 189a). The same criminal offense is also recognized by the Criminal Code of the Brčko District of Bosnia and Herzegovina (CC BD BiH), in Chapter Seventeen titled “Criminal Offenses against the Freedom and Rights of Man and Citizen,” under the title “Misuse of a Recording with Sexually Pornographic Content” (Article 186a). Similarly, the Criminal Code of the Republic of Srpska, in Chapter Fourteen titled “Criminal Offenses against Sexual Integrity,” prescribes this incrimination under the title “Misuse of a Photograph and Video Recording with Sexually Explicit Content” (Article 170a).

The protected legal interests are: a) privacy (personal intimate secrecy) and b) the (sexual) dignity of another person, while the object of the attack consists of recordings (photographs) with sexually explicit content (or sexually pornographic content) which: a) relate to another person, b) were recorded with the consent of that person, and c) were recorded for the personal use of the recorded person. The basic offense appears in two forms of manifestation. These are (Novaković & Stanković, 2024, pp. 66–69):

1) misuse of a recording with sexually explicit (pornographic) content, which consists of the following elements: a) the consequence - violation (infringement) of the privacy of another person, b) the act of commission - making a recording with sexually explicit (pornographic) content available to a third person, c) the act of commission is undertaken in relation to a recording with sexually explicit (pornographic) content that was made with the consent of the recorded person (the victim) for his or her own personal use, and d) the act of commission is carried out in a specific manner - through the misuse (exploitation) of the relationship of trust between the perpetrator and the recorded person, that is, without the consent of the recorded person; and

2) falsification of a recording with sexually explicit (pornographic) content, which includes: a) the consequence of the offense - violation of the privacy of another (recorded) person, b) the act of commission undertaken in relation to a recording of another person with sexually explicit (pornographic) content, and c) with regard to the prescribed acts within the act of commission, this constitutes a two-act criminal offense consisting of two acts that follow one another, are carried out in continuity, and together form a single act of commission. These acts are: the creation (making or producing a new recording) or alteration of an existing recording with sexually explicit (pornographic) content - carried out in a specific manner by using a computer system (or information and communication technology - Criminal Code of the Brčko District of Bosnia and Herzegovina) or in another way - followed by the subsequent use of such a created recording (photograph) as if it were genuine or authentic.

The consequence of the offense appears as a violation of the protected legal interest - a violation (infringement) of the privacy of another person. The perpetrator of the offense may be any person, while with regard to culpability, intent on the part of the perpetrator is required, encompassing awareness of the nature of the object of the attack and its unauthorized, unlawful misuse (exploitation).

For the basic offense, a sentence of imprisonment of up to three years is prescribed, or up to two years (Criminal Code of the Republic of Srpska). In addition to the penalty, the perpetrator is mandatorily subject to the security measure of confiscation of objects: a) recordings (including photographs) and b) special devices (equipment or means) used for committing the criminal offense.

The aggravated form of the criminal offense (paragraph 3) exists if the act of commission of the basic offense is carried out in a specific manner: a) according to the Criminal Code of the Federation of Bosnia and Herzegovina - through a computer system or network; according to the Criminal Code of the Brčko District of Bosnia and Herzegovina - through information and communication technology; or according to the Criminal Code of the Republic of Srpska – through a computer system or computer network; or b) in another way, as a result of which the recording becomes available to a larger number of persons.

For this offense, different penalties are prescribed depending on the law that regulates it: a) imprisonment from six months to five years (Criminal Code of the Federation of Bosnia and Herzegovina), b) imprisonment of up to three years (Criminal Code of the Brčko District of Bosnia and Herzegovina), or c) imprisonment from one to three years (Criminal Code of the Republic of Srpska).

Montenegro

The Criminal Code of Montenegro, in Chapter Fifteen titled “Criminal Offenses against the Freedoms and Rights of Man and Citizen,” provides for the criminal offense titled “Misuse of Another Person’s Recording, Photograph, Portrait, Audio Recording, or Written Material with Sexually Explicit Content” (Article 175a). This offense has two objects. These are: a) the protected legal interest - the freedom and dignity of the human personality, and b) the object of the attack - video or other recordings, photographs, portraits, audio recordings, and other written materials with sexually explicit content.

Depending on the type, nature, significance, or character of the conduct undertaken within the act of commission, the law distinguishes three forms of manifestation of the basic offense (Vukićević, 2024, pp. 109–127).

The first form of the basic offense (paragraph 1) consists of making available to a third person a video or other recording, photograph, portrait, audio recording, or written material with sexually explicit content. For the existence of the offense, it is necessary that this act of enabling a third person or multiple persons to become aware of such materials is undertaken in a specific unlawful manner - without the (explicit or implicit) consent of the person to whom the written material relates, or without the consent of the person depicted in the recording, photograph, or portrait, or whose voice is recorded in the audio recording.

The second form of the basic offense (paragraph 2) consists of undertaking several alternatively prescribed acts in relation to the object of the attack - a video or other recording, photograph, portrait, audio recording, or written material with sexually explicit content - such as: 1) falsification: a) in a specific manner - by using a computer system. A computer system (Article 142, item 19) is considered to be any device or group of interconnected or related devices, one or more of which, depending on the program, performs automatic data processing, or in another way; and b) through specific acts consisting of: creating (producing or making) a new (previously non-existent) or altering (modifying or adapting) an existing video or other recording, photograph, portrait, audio recording, or written material with sexually explicit content; 2) the use of such newly created or altered recording, photograph, portrait, audio recording, or written material; or 3) making such a recording, photograph, portrait, audio recording, or written material available to a third person as if it were authentic (genuine).

The third form of the basic offense (paragraph 3) consists of threatening (announcing or indicating) to another person that his or her video or other recording, photograph, portrait, audio recording, or written material with sexually explicit content will be made available to some (any) third person, regardless of whether such a threat is actually carried out in the specific case or not.

The perpetrator of the offense may be any person. The subjective element of the offense consists of intent as the form of culpability of the perpetrator. It must include the perpetrator's awareness and knowledge of the nature of the object of the attack. For this offense, a sentence of imprisonment of up to two years is prescribed. In addition to the penalty, the perpetrator is mandatorily subject to the security measure of confiscation of objects (paragraph 7): a) the objects of the offense - video or other recordings, photographs, portraits, audio recordings, and written materials, and b) the means used for committing the offense - special devices by which the criminal offense was carried out.

The criminal offense "Misuse of Another Person's Recording, Photograph, Portrait, Audio Recording, or Written Material with Sexually Explicit Content" (Article 175a) also appears in three aggravated, qualified forms of manifestation.

The first aggravated form of the offense (paragraph 4) represents an offense qualified by the manner or means of commission. This offense, for which a sentence of imprisonment of up to three years is prescribed, exists if the act of commission of the basic offense is carried out: a) through information and communication technologies, or b) in another manner as a result of which the video or other recording, photograph, portrait, audio recording, or written material with sexually explicit content becomes available to a larger number of persons.

The second aggravated form of the offense (paragraph 5) is qualified by the characteristic of the injured party. This offense exists if the act of commission is committed against a child.

Finally, the third aggravated form of the offense (paragraph 6) exists if any of the previously described forms of manifestation is committed by an official person in the performance of official duties.

For this offense, different penalties are prescribed depending on which criminal offense was committed by the official person in the performance of official duties: a) for the basic offense - imprisonment from three months to four years, b) for the first aggravated form of the offense - imprisonment from three months to five years, and c) for the second aggravated form of the offense – imprisonment from two to ten years.

For criminal policy reasons, the Criminal Code provides the possibility of non-punishment for the criminal offense “Misuse of Another Person’s Recording, Photograph, Portrait, Audio Recording, or Written Material with Sexually Explicit Content” (Article 175a). According to the statutory provision (Article 176a) titled “Exclusion of the Existence of Criminal Offenses from Articles 172 to 176 of this Code,” it is explicitly prescribed that the perpetrator of the criminal offenses referred to in Articles 172 to 176 of this Code shall not be punished if, after undertaking the act of commission, he or she prevents or discloses a criminal offense for which a sentence of imprisonment of five years or a more severe penalty may be imposed by law. The statutory provision (Article 142, item 33) explains that the expression “shall not be punished” means that in such a case no criminal offense exists. In other words, it may be concluded that in the case of so-called “active repentance,” there exists a special ground for the exclusion of a criminal offense (an objective ground excluding the unlawfulness of the act). Namely, when the perpetrator, by undertaking the conduct prescribed by law as the act of commission, fulfills one of the exhaustively listed criminal offenses against the freedoms and rights of man and citizen (the so-called “catalogue” of criminal offenses), the criminal offense does not exist if the following cumulative conditions are met: 1) if the offense in question is a criminal offense for which a sentence of imprisonment of at least five years or a more severe penalty is prescribed, and 2) if the perpetrator subsequently, through further conduct (an active, positive act), either: a) prevents the criminal offense, or b) discloses (reports to the competent state authorities of criminal justice - the police, the public prosecutor’s office, or the court) the criminal offense.

Croatia

The Criminal Code of Croatia, in Chapter Fourteen titled “Criminal Offenses against Privacy,” provides for the incrimination titled “Misuse of a Recording with Sexually Explicit Content” (Article 144a). The protected legal interest of the offense is the privacy of another person, particularly in the sexual sphere, while the object of the attack is a recording with sexually explicit content of another person that was created with that person’s consent for personal use. This criminal offense consists of making available (enabling access) to a third person a recording of another person with sexually explicit content that was recorded with that person’s consent for personal use, thereby violating that person’s privacy through the misuse of a relationship of trust and without the consent of the recorded person.

In addition to the protected legal interest and the object of the attack, the criminal offense under Article 144a of the Criminal Code of Croatia also consists of the following constitutive elements: a) the act of commission consists of assisting, facilitating, or enabling – in the form of making certain material available to a third person, b) the act of commission is undertaken in relation to a recording of another person with sexually explicit content that was recorded with that person’s consent for his or her personal use, c) the act of commission is undertaken without authorization (unlawfully) - without the oral or written, explicit or implicit consent of the recorded person (the injured party), and through the misuse of the relationship of trust between the perpetrator and the injured party, and d) the consequence of the offense manifests as a violation of the privacy of the injured party.

For the basic offense, a sentence of imprisonment of up to one year is prescribed. In addition to the penalty, the perpetrator is mandatorily subject to the security measure of confiscation of objects (paragraph 5) – recordings and special (computer) devices by which this offense was committed.

A special form of the offense (paragraph 2), for which a sentence of imprisonment of up to one year is also prescribed, constitutes a two-act criminal offense characterized by two necessarily connected acts that complement each other and only in their entirety, in continuity, result in this incrimination. These are (Vukićević, 2024, pp. 109–127): 1) the creation (making or producing) of a new recording or the alteration (modification or editing) of an existing recording with sexually explicit content in two ways: a) by using a computer system, or b) in another manner; and 2) the use of a recording with sexually explicit content of another person, either by the person who undertook the previous activity or by a third person (based on prior agreement). A computer system (Article 87, item 18), according to the explicit wording of the law, represents any device or group of interconnected or connected devices, one or more of which automatically processes data on the basis of a program, as well as computer data stored in it, processed, loaded, or transmitted for the purpose of its operation, use, protection, and maintenance. The consequence of the offense is likewise manifested as a violation of the privacy of the person appearing in the recording.

The aggravated form of the criminal offense (paragraph 3) is committed by a person who undertakes one of the above-mentioned acts within the act of commission: a) in a specific manner – through a computer system or network, or b) in another manner as a result of which the recording becomes available to a larger number of persons, thereby multiplying the consequences caused by the offense. For this offense, a sentence of imprisonment of up to three years is prescribed.

Criminal prosecution of the perpetrator of the offense (in either the basic or aggravated form of manifestation) (paragraph 4) is initiated upon the motion of the injured party.

North Macedonia

At the beginning of January 2026 (12 January), the Law on Amendments and Supplements to the Criminal Code was adopted in North Macedonia. By this law (Article 6), in Chapter Fifteen titled “Criminal Offenses against the Freedoms and Rights of Man and Citizen,” a new incrimination titled “Misuse of Another Person’s Video, Photograph, Audio Recording, or File with Sexually Explicit Content” (Article 152a) was introduced after the criminal offense in Article 152 titled “Unauthorized Recording.” The protected legal interest of the offense is the personal freedom and personal dignity of another person, which are of a specific nature in the sphere of sexual life. On the other hand, the object of the attack may be: a) a video or other recording, b) a photograph, c) an audio recording, or d) a file, which relate to another person (and not to the perpetrator himself or herself) and which contain sexually explicit content.

The basic form of the criminal offense (Article 152a, paragraphs 1–3), depending on the type of conduct within the act of commission, appears in several forms of manifestation (Vukićević, 2024, pp. 109–127).

The first form of this offense (paragraph 1) consists of making available to another person (enabling or facilitating their access to) a video or other recording, photograph, audio recording, or file with sexually explicit content, but without the consent of the person to whom such content or file relates, that is, without the consent of the person depicted in the video or photograph or whose voice is recorded in the audio recording. For the existence of this offense, it is important that the act of commission is

undertaken: a) without authorization, unlawfully, without the explicit or implicit, oral or written consent of another person, and b) by assisting or creating the conditions or prerequisites for another person, any person, to become acquainted with the content or to obtain possession of a certain object in the sense of the object of the attack.

The second form of the basic offense (paragraph 2) may be committed by a person who, in a specific manner - through (by using or misusing) a computer system or in another way - undertakes any of several alternatively prescribed acts in relation to a video or other recording, photograph, audio recording, or file of another person with sexually explicit content, such as: 1) falsification of the object of the attack in the form of: a) creating (producing, making, or generating) a new, previously non-existent object, or b) modifying (altering, editing, or adapting) an existing object; 2) the use of the object of the attack - its use in any manner and for any purpose (motive); and 3) making it available to another unauthorized person to whom the specific object of the attack does not relate. This may be done through any act of enabling or facilitating another person, any person, to obtain possession of such an object or to become acquainted with its content without actually possessing it.

A computer system (Article 122, item 26) refers to any device or set of interconnected devices, one or more of which performs automatic data processing according to specific programs.

Finally, the third form of the basic offense (paragraph 3) consists of threatening another person that his or her video or other recording, photograph, audio recording, or file (document) with sexually explicit content will be made available to a third person. The act of commission of this offense consists of a threat. This is the announcement of a certain action that represents a “harm” to another person. It consists of indicating (or communicating orally, symbolically, or in writing), either directly or indirectly, to another person that an “unpleasant” fact concerning them will be revealed or published in the form of certain sexually explicit content. For such a threat to be legally relevant in the context of this incrimination, it must meet certain conditions. Specifically, the threat must be: a) serious, b) real, c) possible, and d) unavoidable.

The perpetrator of the offense may be any person, while the subjective element of the offense consists of the perpetrator’s intent, which includes awareness of the nature of the object of the attack. For this offense, regardless of the form of manifestation, a sentence of imprisonment ranging from one to five years is prescribed. In addition to the penalty, the perpetrator is mandatorily subject to the security measure of confiscation of objects (paragraph 7): a) video recordings or other recordings, photographs, audio recordings, and written materials with sexually explicit content (the objects of the offense), and b) special devices by which the criminal offense was committed (the means of committing the offense).

This criminal offense has three aggravated, qualified forms of manifestation. The first aggravated form of the offense (paragraph 4) is qualified by the means (manner) of carrying out the act of commission of the basic offense – in a way that makes a video or other recording, photograph, audio recording, or document with sexually explicit content available so that a larger number of persons can become acquainted with its content. For this offense, a sentence of imprisonment ranging from one to eight years is prescribed.

The second aggravated form of the offense (paragraph 5), for which a sentence of imprisonment ranging from three to ten years is prescribed, exists in the case of committing the offense in the presence

of a child. In this way, the child becomes aware of material with explicit sexual content, which may negatively affect the child's psychological development.

The third aggravated form of the offense (paragraph 6) is characterized by the personal status of the perpetrator. Namely, this offense may be committed only by a specific person - an official acting in the performance of official duties who undertakes any of the above-mentioned acts within the act of commission. Depending on the type, nature, or character of the conduct undertaken by the official, different penalties are prescribed: a) imprisonment from one to ten years - for the basic offense, b) imprisonment from three to ten years - for the first aggravated form of the offense, and c) imprisonment of at least four years - for committing the offense in the presence of a child.

Conclusion

Based on the international standards of the European Union, primarily Directive (EU) 2024/1385 of the European Parliament and of the Council on combating violence against women and domestic violence (2024), a new incrimination has recently been introduced in a number of contemporary criminal legislations, which in legal theory is referred to as "revenge or coercive pornography." This represents a specific form of manifestation of gender-based violence against women, or girls. This incrimination is currently recognized in a limited number of legislations, including those of Bosnia and Herzegovina, Montenegro, Croatia, and North Macedonia. At present, this incrimination is not recognized in the legislation of Serbia, but it can be expected that it will be introduced in a future legislative reform with a dual object: a) the protected legal interest - privacy, freedom, and the dignity of the human personality in the sexual sphere, and b) the object of the attack - video or other recordings, photographs, portraits, audio recordings, and other written materials with sexually explicit content (which is why this incrimination is referred to in legal theory as "revenge or coercive pornography").

This new criminal offense is recognized in the regional legislations under different titles, systematized within different groups of criminal offenses, but with the same or similar content: 1) misuse of a recording with sexually explicit content (Bosnia and Herzegovina) as an offense against the freedom and rights of man and citizen (or misuse of a photograph and video recording with sexually explicit content in the Republic of Srpska as an offense against sexual integrity), 2) misuse of another person's recording, photograph, portrait, audio recording, or written material with sexually explicit content (Montenegro) as an offense against the freedoms and rights of man and citizen, 3) misuse of a recording with sexually explicit content (Croatia) as an offense against privacy, and 4) misuse of another person's video, photograph, audio recording, or file with sexually explicit content (North Macedonia) as an offense against the freedoms and rights of man and citizen.

In a similar manner, the content of this new incrimination in the law of the Republic of Serbia is envisaged by the Draft Amendments to the Criminal Code from the end of 2025 under the title "Misuse of a Recording, Photograph, Portrait, Audio Recording, or Written Material with Sexually Explicit Content" (Article 145a). According to the proposed legislative solution, this offense, depending on the type of conduct undertaken, may appear as: a) unauthorized making available to a third person a video or other recording, photograph, portrait, audio recording, or written material with sexually explicit content, without the consent of the person to whom the material relates, that is, without the consent of the person depicted in the recording, photograph, or portrait or whose voice is recorded in the audio recording, b) the creation of a

new or the alteration of an existing video or other recording, photograph, portrait, audio recording, or written material with sexually explicit content in a specific manner - by using a computer system or in another way - so that it may subsequently be used or made available to a third person as authentic, or c) a threat that another person's video or other recording, photograph, portrait, audio recording, or written material with sexually explicit content will be made available to others.

In this way, through a system of criminal sanctions, the criminal law protection of sexual freedom and sexual integrity of women, including minors, from all forms of misuse of modern computer and information technologies or systems would be raised to a significantly higher level in the Republic of Serbia as well.

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Osvetnička ili ucenjivačka pornografija – nova inkriminacija rodno zasnovanog nasilja u savremenom krivičnom zakonodavstvu

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Sažetak

Na temelju međunarodnih dokumenata, kao i shvatanja pravne teorije u evropskom krivičnom zakonodavstvu je poslednjih godina uspostavljena krivična odgovornost i kažnjivost za novu inkriminaciju u okviru rodno zasnovanog nasilja nad ženama ili devojčicama. Ono se naziva “osvetnička ili ucenjivačka pornografija”. Radi se o inkriminaciji koja je usmerena protiv lične slobode (privatnosti) čoveka, odnosno protiv njegove polne slobode. Sa sve širom upotrebom savremene računarske, kompjuterske, informatičke tehnologije, javljaju se slučajevi njihove zloupotrebe na različite načine usled čega se vređa polno dostojanstvo, lična sloboda, odnosno privatnost drugog ili drugih lica. Tako ovu inkriminaciju danas poznaju određena krivična zakonodavstva iz našeg regiona: Bosne i Hercegovine, Crne Gore, Hrvatske i Severne Makedonije. U Republici Srbiji se očekuje na sličan način uvođenje ove inkriminacije pod nazivom: “Zloupotreba snimka, fotografije, portreta, audio zapisa ili spisa sa seksualno eksplicitnim sadržajem”, koji su istina sačinjeni uz pristanak oštećenog lica, ali se potom neovlašćeno čine dostupnim drugim licima. U radu se na temelju međunarodnih standarda, odnosno uporednopravnih rešenja analiziraju sadržina, karakteristike, elementi bića, te oblici ispoljavanja ove inkriminacije sa mogućnošću njenog uvođenja u pravni sistem Republike Srbije.

Ključne reči: polna sloboda, seksualno eksplicitni sadržaj, računarski sistemi, zloupotreba, krivično delo, sankcija