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Working Group on the Evaluation of the Organisation of Court Work in Cases of Domestic Violence and Threats to Life or Health of a Person, established by the Council of the Judiciary

SUMMARY OF THE REPORT

The Working group of the Council of the Judiciary on the evaluation of the organisation of court work in cases related to domestic violence and threats to life or health of a person has analysed the practice of court work and inter-institutional cooperation and identified a number of opportunities for improvement.

The tragic consequences of the Jēkabpils case are the result of a set of systemic weaknesses (not only in the judiciary, but more broadly in the work of the police and prosecution, the social support network, etc.), each of which on its own may have a relatively small impact, but when several of these factors are combined, the impact can be more pronounced. Although at the time of preparation of the report, there was no causal link between the actions of any of the judges and the consequences that occurred, this does not mean that the judiciary as a whole does not share responsibility for what happened, i.e. that the state failed to protect the person who asked for its help.

The Working group makes the following main findings and proposals for systemic improvements:

1. PROVIDING INFORMATION NEEDED BY THE COURT IN A CIVIL CASE

The basis for the granting of temporary protection in civil proceedings is the application of the victim of violence, which must be submitted using a form approved by the Cabinet of Ministers. Given that the immediate need for protection of a victim of violence is essential, the clarity and sufficiency of the information contained in the application form is essential. The application form contains a number of shortcomings which may make it difficult for the court to decide on the application. In order to ensure that the Court has as much information as possible on the circumstances which prompted the victim to lodge the application and which may give rise to a protection order, the **application form should be easily reviewed**. This report contains a number of proposals aimed at facilitating the completion of the form by the victim by giving specific indications on the information to be provided and the documents to be attached.

It is necessary **to strengthen the practice of the judge,** at the stage of the decision on the application, **to check the information available in the Court Information System (TIS) relating to the pending application and the persons referred to therein,** as this may provide additional information relevant to the determination of the application, in particular in cases where the application for temporary protection was lodged before filing a claim.

Accordingly, **it should be ensured that the judge in such cases also has a right of access to information contained in the Court Information System (TIS) on cases pending before other judges which may be relevant to the examination of the matter in question**.

The information available in the Court Information System (TIS) can also be used to avoid fragmentation of proceedings in cases where the protected person has brought the main claim before a court after temporary protection has been granted. In this respect**, the practice of attaching the file on the main claim of the protected person to the file on temporary protection against violence lodged before the action was brought should be strengthened**.

The outcome of the obligation imposed on the abuser for rehabilitation purposes - to undergo a course to reduce violence - is of fundamental importance when deciding whether to withdraw temporary measures of protection against violence. Given that the rehabilitation service allows the identification of the extent of the person's behavioral disorder, as well as the violent person's attitude towards the need to change his or her behavior in the long term, **the service provider should be obliged to submit to the court a final report drawn up by the provider of the rehabilitation service,** including information on the client's motivation during the service and the results of the service provided. Given that such information is also necessary for the continuation of appropriate rehabilitation in the framework of social services, the **final report should also be submitted to the social services,** including recommendations for future social rehabilitation measures, in order to promote inter-institutional cooperation.

In order to ensure effective enforcement of court decisions and the immediate rehabilitation of the violent person, the statutory **time limit for starting a course should be reduced from 12 to 6 months**. Moreover, given that the rehabilitation course is the only remedy aimed at changing the violent person's behaviour and does not in itself impose significant restrictions on the person, the **obligation to take the course should be established as an irrevocable remedy in the Civil Procedure Law**.

At the same time, case law should be unified on issues related to the recognition of violence, which are essential for the realisation of the objectives of the protection mechanism under civil procedure. For example, in the case of a justified temporary protection against violence in which the child was present at the time of the violence, the **practice of granting temporary protection also to the child on the court's own initiative should be strengthened**. The inconsistency in the withdrawal of temporary protection against violence at the request of the protected person or at the request of the violent person should also be eliminated. In this respect**, the practice of carrying out a risk assessment of the protected person in all cases should be strengthened** and temporary protection should be lifted only if no risk to the life, health and safety of the protected person can be established.

2. OBTAINING INFORMATION ON VIOLENT PERSONS AND ITS IMPACT ON SENTENCING

The profile of the perpetrators of these offences varies greatly in the case of non-compliance with an order for protection against violence. This is why the information available to the judge/prosecutor on the personality of the accused is of crucial importance. In such situations, the State Probation Service's personal assessment report is of great value and aims to provide comprehensive, objective and factual information about the probation client, including his/her mindset, behaviour, attitudes and the social circumstances contributing to the commission of the offence. It is not common practice to request assessment reports on persons accused of non-compliance with a protection from violence order, although the law provides for such a right for both the prosecutor and the judge. This may be due to the desire to conclude such criminal proceedings in an accelerated procedure. Given the importance of ensuring that the person directing the proceedings has comprehensive information about the violent person, **the practice of requesting an assessment report** on persons accused of non-compliance with the temporary protection against violence **on the initiative of the prosecutor or, failing that, on the initiative of the court, should be developed in cooperation with the public prosecutor's office**. At the same time, solutions should be sought to enable such criminal proceedings to be concluded in an accelerated procedure, for example by providing that an **assessment report may also be requested by the investigating officer** in respect of a suspect, subject to the consent of the supervising prosecutor.

In cases of violence, the risk of recidivism is high, so the state must ensure that the violent person receives a punishment for non-compliance with a protection order that is appropriate to his or her psychological profile, capable of influencing his or her behaviour and changing his or her attitudes and perceptions. Two of the penalties provided for in the law - imprisonment and probation supervision - are currently the most effective. In this respect, the prosecutor and the judge **must take into account that the punishment to be imposed on the violent person must be both proportionate to the offence committed and appropriate to the personality of the perpetrator of the violent behaviour, as well as fulfil the preventive function of the punishment in society as a whole**, by making it clear that violence against another person is not tolerated and that punishment is inevitable.

In cases of repeated failure to comply with a protection against violence order, the parallel proceedings have resulted in a failure on the part of the law enforcement authorities to see the totality of the offences committed by the violent person. Organisational measures should be introduced in both the prosecutor's office and the courts to prevent fragmentation. In the Public Prosecutor's Office, criminal proceedings initiated for offences committed by a single person within a short period of time **should, where possible, be placed under the supervision of a single public prosecutor.** In the courts, **centralised mechanisms** should be introduced for **the prompt identification of parallel criminal proceedings and the merging of cases** pending judicial investigation**.**

Cooperation between law enforcement authorities must in all cases be conducted at a professional level, without *ex parte* negotiations. In all cases, cooperation must be not only fair but also visible.

At the same time, systemic solutions are also essential to bring such criminal proceedings to a conclusion in the shortest possible time. Given that criminal proceedings involving domestic violence or threats of domestic violence currently have a statutory priority for reasonable time, such offences **could be included in the 2024 time standards to be approved by the Judicial Council in order to** monitor the average length of such criminal proceedings before the courts.

3. ESTABLISHING MODELS OF INTER-INSTITUTIONAL COOPERATION INVOLVING THE JUDICIARY

There is a need to **improve the flow of information between state institutions in each region** in order to have a comprehensive overview of the profile of those involved in a family conflict. This would immediately improve the decision-making process and quality. Compliance with data protection requirements must be balanced with the interests of protecting the life and health of individuals. A model of information circulation should be established so that the court has full information on the actions and decisions taken so far by social services and other institutions and their implementation in relation to adults and minors involved in domestic violence during the proceedings.

The current model of inter-institutional cooperation is fragmented and lacks regular discussions between all institutions directly involved in cases of violence (e.g. courts, police, prosecutors, orphan's court, social services). Discussions should seek solutions to overcome this fragmentation, for example by **setting up a cooperation group of these institutions in each region.** Its functions would include monitoring and forecasting cases of domestic violence within the relevant judicial district, as well as drawing up individual action plans for certain complex cases.

The effectiveness of inter-institutional cooperation is also essential when a dispute arising from the right of access between the victim and the abused person is being resolved in parallel or after the application for temporary protection against violence has been granted. Although the legal framework provides for the institution of a contact person for the implementation of contact without the involvement of the parent of the child victim of violence, the understanding of the role and tasks of the contact person in this process varies. This problem can be solved through discussions between the institutions involved, for example by **drawing up guidelines on the work of the contact person**.

The practice of side decision-making as part of an inter-institutional cooperation mechanism should also be strengthened in the courts**.** It is in the judicial process that the situation of ensuring the best interests of children and the interest in preventing situations of violence are most clearly visible. In these cases, the side decision can be used as a tool to point out to the responsible authorities the violation or deficiency

found by the court. At the same time, the side decision can also be used as a tool to identify applications for temporary protection against domestic violence that are made in bad faith.

4. EFFECTIVE USE OF PROCEDURAL INSTRUMENTS FOR THE PROTECTION OF VICTIMS

In practice, the police do not actively (or preventively) monitor court decisions in temporary protection cases because of limited police resources due to staffing constraints. This means that the protection of a person after a court decision depends to a large extent on the active behaviour and ability of the protected person to avoid being threatened again. This situation is unacceptable and the monitoring of court decisions on temporary protection against violence is one of the stages where, even with limited police resources, solutions must be sought for the preventive protection of the victim. For example, by **introducing active control for high- and very high-risk violent persons.** This would contribute to the victim's sense of security and ensure that the violent person in such medium- and high-risk cases is constantly in the sight of the police.

Solutions are also needed to protect the victim more fully in criminal proceedings where proceedings have been brought for non-compliance with a protection order against violence. In this respect, the **person in whose interest a decision on temporary protection against violence has been taken should be recognized as a victim** in criminal proceedings brought for non-compliance with that decision (upon the wish of the person). Attention should be drawn to the obligation of the person conducting the proceedings to explain his or her rights in a clear manner, avoiding situations where the person is not informed of his or her rights, and to explain the possibility of obtaining state-provided legal aid. In addition, **consideration should be given to the possibility of granting the victim the status of a specially protected victim**, which ensures the right to request and receive information on the release of the arrested or convicted person, as well as to request the person directing the proceedings to decide on the involvement and provision of compulsory legal aid.

At the same time, the **normative regulation should be clarified so that the victim of violence could request in criminal proceedings initiated** against the violent person for non-compliance with a decision on protection against violence to **take the measures for the protection of himself, his property, as well as his close relatives**. Moreover, taking into account that in some cases there may also be a threat to a person's life or health which requires, for example, relocation or even a change of identity, **the possibility of including the victims of such an offence among the statutory subjects entitled to special procedural protection should be considered**.

5. THE NECESSITY FOR REGULAR TRAINING

For the effective functioning of the victim protection mechanism, knowledge of the types and manifestations of domestic violence is essential for all those involved. Lack of such knowledge may result both in the failure to recognise violent behaviour during a police call

in a family conflict situation, and in the consideration of an application for temporary protection against violence or a decision to revoke the protection granted by a court, as well as in the choice of the most appropriate penalty in a criminal case.

Recognising violence and being able to professionally assess the behaviour of the victim and the perpetrator and determine the level of risk requires law enforcers to have interdisciplinary knowledge, including in legal psychology and sociology. Although periodic training in these areas has been provided, a **specific interdisciplinary training programme** on the psychology of violence and its manifestations, including the development of methodologies for situation analysis and risk assessment, **should be developed** for judicial and other law enforcement personnel. In order to ensure the quality of the training process and the consolidation of the acquired knowledge, this training programme should also include a final examination.

The Academy of Justice should **provide continuous and regular training for** judges and prosecutors, including investigators, on these issues in order to promote uniform application of legal norms and full protection of victims.

6. IMPROVING CRISIS COMMUNICATION IN THE COURTS

The judiciary must take into account the legitimate interest and information needs of the public in its communication. The purpose of providing information is not only to provide a legally accurate explanation of the decisions taken by the court *post factum*, but also to proactively contribute to the formation of public opinion based on the institution's own assessment of the issue, statement of facts and position.

According to the Judicial Administration, all district (city) courts and regional courts have a designated person in charge of communication. However, there are weaknesses in the management of judicial crisis communication.

In order to improve this, the **Judicial Communication Strategy and Guidelines on Judicial Communication adopted by Decision No 50 of 18 May 2015 should be revised** to include amendments on crisis communication and the preparation of an annual report on judicial communication for consideration by the Judicial Council.

At the same time, the Judicial Academy needs to **include media training for court presidents and their deputies in order to** develop their communication skills even under stressful conditions.