Women's Support and Information Center

There is a way out of violence!

Shadow report

For GREVIO about Estonia implementing Istanbul Convention

Submitted by:

Women's Support and Information Centre NPO
For the Violence-free Family Network

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There is a way out of violence!

Current report is created by NGO-s, working directly with women survivors of violence. Key issues are listed.

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September, 2021

Table of Content

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Introduction and General information

This report is generated and compiled with the input of non-governmental organizations of Estonia.

Estonia ratified the Istanbul Convention (IC) in July 2017, the IC entered into force on 1 February 2018. In 2017, legal amendments were made to the Penal Code and to the Victim Support Act. In 2017, the explanatory memorandum to the draft of the Amendments of the Penal Code and Aliens Act did not address psychological or economic violence and the Victim's Directive 2012/29/EU was not mentioned. The criminal law has not been updated to account for gender-based violence. The Article on rape in the Penal Code has remained the same despite the CEDAW committee recommendation from 2016. In 2021, a new version of the Victim Support Act is in the drafting process.

Our organizations are concerned regarding the funding of prevention services and support services for gender-based violence and violence against women (VAW). Furthermore, we expect that strategies and action plans would clearly identify steps to take regarding violence against women. Gender segregated data collection regarding criminal justice and other processes should be systematic and continuous. Awareness raising for the wider public and training of professionals should also be undertaken systematically, and national minimum training standards should be set. There is underreporting and non-reporting due to several reasons (low awareness, fear, shame, victimization in criminal proceedings, suggested settlement procedures by law enforcement agencies). Actions should be taken to address each of these aspects. We are also concerned with existing procedures regarding child custody cases and the lack of safeguarding in domestic violence cases. An additional concern are the mild sanctions that are typically imposed, meaning that perpetrators are often not held accountable for their crimes.

There are many cases where women and their children do not get the help they are supposed to get by the State. Although, there are several legal documents referring to social media, data protection and information services, they are not unified in a signal document that regulates cyber violence. This is quite troubling, as online violence is a serious and growing issue that should be addressed.

Article 7 – Comprehensive and coordinated policies

In Estonia there is no mechanism to ensure that VAW is tackled comprehensively in all levels of government and State bodies that need to respond. Although there have been several Violence Prevention Agreements (see Art.10) that stipulate the need to tackle the problem, cooperation does not practically function.

Since 2018 MARAC (multi-agency risk assessment conference) network meetings are held in each county. That has brought specialists together but only for specific high-risk cases. Outside these meetings there is communication between service providers but this is not consistent and is not always in place. As seen in later chapters, victims get stuck "within the system". Cooperation is often based on personal links and when this link is missing, the system stops working. To establish actual coordinated reaction in all areas of the State, no matter where victims are seeking help, wider cooperation has to be in place, involving NGOs.

Recommendations

- The state, in close cooperation with the NGO-s, should seek to discover the optimal way to provide quality support to survivors, no matter what county/area they live;
- Cooperation protocols should be implemented at the institutional level, to ensure that all needs of victims are met. Continuous communication between stakeholders reviewing cases, finding and fix deficiencies of these protocols have to be in place.

Article 8 – Financial Resources

There are funds allocated to NGO-s to provide basic services for women and children in all counties in Estonia. In total there are 17 women's support centers that also work as shelters for survivors in need. Annual funding amounts were agreed in 2018 but have not increased for most of the centres since then. The total lump sum has steadily increased due to crisis counselling in 2019 (EUR 182 000). The state support to the women's support service was EUR 786 000 in 2018 and EUR 1,05 million in 2019, the latter amount staying the same for 2020-2021. In the same time, The cost per survivor who used women's support service was EUR 366 in 2018 and EUR 483 in 2019 (Kink at al., 2020; Laas, 2021).

Services that are supported by state funds includes: housing, 24/7 phone lines and crisis counselling, social counselling and support and basic condiments. There are not sufficient funds to provide longer term psychological support or specialized legal support. There is free legal advice that can be applied for, but this is limited to a few hours and lawyers are not specialized to understand and advocate from the perspective of violence and coercive control, therefore such representation in court could be not helpful but re-victimizing.

There is a huge gap between estimated costs of violence and spending on prevention and victim support. The European Institute for Gender Equality (EIGE, 2021: 12) study estimates the costs of violence as the cost of GBV for women 861 MEUR and IPV women 451 MEUR in Estonia.

Two studies have been carried out regarding the cost of violence against women, estimating the cost of intimate partner violence against women to the Estonian society Kallaste et al., 2015). The first time in Estonia, Pettai et al. (2016)

A 2016 study (Pettai et al., 2016) tried to calculate the costs of domestic violence (including physical abuse, homicides/femicides, and rape) to the Estonian society and found that it is 116,5 MEUR a year. The cost was calculated using international methodologies, prevalence study data and registry-based databases. This number is most likely lower than actual costs because it excluded certain forms of violence against women. In 2015, (Kallaste et al. 2015) estimated the cost of working and health related issues connected to the one rape case at about 100 000 EUR and the total cost 5,6 MEUR per year, out of which near half of the cost is related to the consequences for the victim. Even if we take the low estimate of the costs of violence against women as 116+ MEUR for Estonian society, the amount of funding for violence prevention and victim support services is inadequate.

Recommendations

- implementation of support victims need, with adequate funding based on short- and long-term goals of improvement the health of population;
- Municipalities' need to build their capacity for providing service by investing more to prevention and dealing with consequences of VAW;
- Training state officials in public procurement (law), socially responsible public procurement (SRPP) and in gender responsible public procurement (GRPP).

Article 10 – Coordinating body

The coordinating body for the implementation of the IC is the Ministry of Justice. The Ministry of Justice has coordinated the preparation of a new Violence Prevention Agreement (VPA) for 2021-2025. The VPA will focus on preventing and tackling violence on the state level and sets out fourteen directions of action for violence prevention. However, the prevention of violence against women is never clearly focused upon. In response, the Ministry of Social Affairs proposed that the draft Agreement should be supplemented. The coordination and oversight of the services is the Department of Violence Prevention and Victim's Support Services within the Social Insurance Board (SKA). SKA develops and coordinates different victim support service schemes.

Recommendation

- violence against women should be clearly emphasized in the violence prevention strategy and action plans
- periodic public awareness campaigns to introduce the issue of VAW should be funded and carried out

Article 11 – Data collection and Research

Collecting detailed data on different forms of gender-based violence (GBV) is an obligation under the IC. Fulfilling this obligation presumes that different forms of GBV are identified and incorporated into the law. There is no data available for unrecognized, unnamed, and unspoken forms of GBV.

Data on victim support services is collected by SKA, health data is collected by the National Institute for Health Development (TAI), and an annual crime report is prepared by the Ministry of Justice. This leads to weaknesses in the data and lack of common understanding.

In Estonia, the Ministry of Justice is a key player in crime data collection, analysis, and reporting. Legislative initiatives and law amendments are dependent on political will and commitment to international human rights' standards. There should be considered a need for gender segregated data and wider access to more detailed statistical data. According to Article 210(5) of the Code of Criminal Procedure (CCP) the minister responsible for the area - Minister of Justice) may issue regulations for the organization of the activities of the e-File system. It is useful to analyze the Statute of e-File system and other related regulations from data collection and content's harmonization perspectives.

Administrative data collections by police and justice services are cost-efficient sources on recorded and prosecuted cases of GBV. They inform the policymakers whether measures to protect women and to punish perpetrators are working or not. However, differences in definitions and recording can hinder efforts to obtain reliable and comparable data.

Recommendation:

- To set up a working group to agree on definitions of different forms of GBV – physical, sexual, psychological and economic;
- To revise classification of crime for statistical purposes, to pay special attention to data needs in the field of GBV;
- Gender segregated, systematic and adequate statistical data collection (to fulfill Directive 2012/29 para 64 requirement)
- Harmonizing administrative data collection on GBV nationally and at EU level is key, providing a reliable picture of the scope of the issue;
- To analyze the databases of the e-File system regarding data availability and information capacity. Based upon this analysis, amendments should made to the e-File System Statute or new regulations should be drafted in light of existing information gaps and challenges in crime reporting.

Article 15 – Training professionals

There is some training available, but this is quite fragmented, not systematic and there are low levels of knowledge regarding trauma-informed approaches to service provision across multiple disciplines. There is no specialized training on gender, gender-based violence, violence against women, or domestic violence in secondary education curricula. Such as social studies, schools of children support service officials, legal studies, police academy etc.

Recommendation

- authorities should ensure systematic and mandatory initial and in-service training on all forms of violence for social service providers, members of the judiciary and law enforcement agencies.

Article 31 – Custody, visitation rights and safety

Mandatory alternative dispute resolution processes, including mediation and conciliation, are prohibited by the IC, but conciliation is still strongly encouraged by Estonian legal law enforcement officials even in cases of VAW. Domestic violence is usually not taken into consideration in custody proceedings. At the same time, there is a strong opposing voice by women's organizations, victim support specialists and advocates of human rights who call programmes to increase the knowledge of child protection specialists, social workers, lawyers and judges on the specificity of violent relationships.

The safety of women and children is not guaranteed by state bodies. Custody disputes are often part of continuous coercive control by abusers and last for years. This possibility is often dismissed by state authorities, from child support services to civil courts. When deciding custody rights, civil courts do not consider previous abuse, even if it was documented by a criminal court.

Violation of court-arranged custody rights by abusers are not punished by the enforcement agencies. There are numerous cases where abusers continue manipulation through custody arrangements and complaints by women are not registered by police, neither enforced by any authority as none of them "are mandated by the state to solve the problem".
One such case was taken to ECHR[1] where the state and mother made a settlement and agreed to continue to solve the issue within Estonia. Currently, the case is not resolved, and the mother has not met or talked to the child for over 3 years. Children's support services suggested recently that she should "forget this child". This an extreme, but by no means infrequent occurrence in the custody system.

Recommendations:

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1 https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%2211761/20%22%5D,%22sort%22:%5B%22kpdate%20Descending%22%5D,%22documentcollectionid2%22:%5B%22JUDGMENTS%22,%22DECISIONS%22%5D,%22itemid%22:%5B%22001-211256%22%5D%7D

- Courts should take into account all previous abuse that has happened and is documented when hearing custody disputes. Also, when abuse continues, this should be taken into account for future disputes between the parents;
- when violation of court-arranged custody rights happen, action must be taken by the state to correct the violation.
- to invite clinical psychologists/psychiatrists who have knowledge on different forms of abuse, to give an expert opinion during hearings about non-visible abuse

Article 33 – Psychological violence

According to the crime statistics, physical violence is the most prevalent form of domestic violence. But this is because there are no articles on psychological abuse in the Penal Code. According to the annual report on crime in Estonia, 3987 cases classified as domestic violence were registered in 2020, making up 15% of all crime. Domestic violence constitutes half of all crimes of violence and 84% of domestic violence cases were classified as cases of physical abuse and 11% were threat cases (Tamm, 2021)

Some lawyers have suggested that in the case of psychological abuse there is possible to apply Article 121 of the Penal Code, where the Article on physical abuse states that 'causing damage to the health of another person …' (continues with physical abuse and pain), they argue that mental health could be applied. Unfortunately, it is not often used. Coercive control is not recognized in court, but is a serious issue (according to psychotherapists and support staff of the women's shelters). Intimidating and isolating a partner is often the case, but impossible to address as an abuse. The intentional conduct of seriously impairing a person's psychological integrity through coercion or threats is not applicable in Estonian courts today.

During the abusive situation and after women and children escape, psychological violence continues, sometimes for years, but is not addressed in Estonia.

In Estonia, cyberbullying as bullying online with the help of technologies, and cyberstalking as a repetitious activity with the use of technology to threaten, have appeared in court proceedings, but there is little understanding about cyberviolence, and a separate article is needed.

Recommendations:

- to introduce and implement articles into legislation that address coercive control and continuous psychological violence
- to criminalize cyber violence in the penal code

Article 35 – Physical violence

On 1 January 2015, amendments to Article 121 of the Penal Code on physical abuse entered into force, enabling aggravating circumstances. Namely, if physical abuse which causes pain

was committed in a close relationship or relationship of subordination or committed repeatedly, the crime can be punished by a pecuniary punishment or up to five years' imprisonment. On 9 March 2020, a judgment No. 1-19-3377 of the Supreme Court of Estonia highlighted that 'an ex-partner' should be defined case by case, and the mere existence of common children and common property is not sufficient to refer to a close relationship between the victim and the accused.

There was set a target that a share of criminal cases regarding physical abuse in domestic violence cases (Article 121(2)(2) of the Penal Code) reaching a final procedural decision within one week will increase, but actually the share has declined from 8 % in 2019 (125 cases out of total 1578 cases) to 4 % in 2020 (86 cases out of total 1971 cases) (Uku & Nahkur-Tammiksaar, 2021).

Recommendation

- to revise Article 121(2) from the perspective of intimate partner violence (to make a difference between depending and subordination by family member and other persons, like coach, boss etc) and to analyze and explore a definition of ex-partner

Article 36 – Sexual violence, including rape

There are public debates held and advocacy by feminists to try to get articles on rape in the Penal Code changed to a consent approach. There is expected that a definition of rape, it should be sufficient that the act was committed against their will and that the violence or helplessness would be an aggravating circumstance in the future, rather than mandatory criteria.

In 2016, the CEDAW Committee recommended Estonia to amend the Penal Code to define rape as any non-consensual sexual act irrespective of pain, physical abuse and/or damage to health and threat, to specifically criminalize sexual harassment and to add economic and psychological violence to the definition of domestic violence (CEDAW, 2016: 19b).

The Penal Code distinguishes between rape (Article 141), an act of sexual nature against will (article 141.1) and compelling a person to engage in sexual intercourse or other act of a sexual nature (article 143), which often leads prosecutors to pursue the lesser offence with a lower penalty rate when qualifying sexual assault cases (ETN, 2020).

Viik (2021) states (based on crime survey data) that in Estonia 99.5% of rape cases remain unregistered, the proceedings are terminated or end with acquittal. Norstat (2021) survey data show that 0.75% of respondents were raped in the last 12 months, attempted rape was reported by 1.25% and forced to engage in sexual activities in which the person did not want to participate or could not refuse, 2% of the respondents. When quantitatively extrapolating the present data to number of people this means that 7 400 were raped, 12 300 experienced attempted rape and 19 700 were engaged in sexual activity against their will in 2020 (Viik, 2021).

According to the law, offenders are better protected in criminal proceedings. If judgements are not disclosed, then the victim's story and cross-examination could be followed. Victims are at the heart of the trial. What they said, what they did, what they did not do, what they have done in the past, whether their story is credible, whether they have a reason to lie, whether someone has affected them, whether their injuries are due to violence and whether they are still helpless. The accused, the other party, remains invisible. It is not possible to read from the court decisions what the accused has done in the past, whether his story is credible or whether he has been caused to lie. The logic of law and justice is followed. An accused of a crime does not have to prove his innocence. The accused does not have to testify against himself. All doubts about his guilt are interpreted in his favor. The guilt must be proved by the prosecutor's office, and, in the absence of other sources, the victim should explain. The victim is interviewed several times and her credibility is always questioned.

The law also requires that elements of force and active resistance must be present. Article 141(1) of the Penal Code on sexual intercourse with a person against his or her will by using force or taking advantage of a situation in which, the person is not capable of initiating resistance or comprehending the situation is punishable by one to six years' imprisonment. Judgment No. 1-19-10157/71 of 19 February 2021 of the Criminal Chamber of Supreme Court reiterated the position expressed in previous practice (for example decision No. 1-16-6452/340) that the composition of rape pursuant to Article 141(2)1) of the Penal Code presupposes both involuntary sexual intercourse and use of violence or incapacity for understanding. Violence as an element of the *corpus delicti* must be a means of subjugating the victim to the will of the perpetrator, i.e. there must be a finalistic link between the violence as an act of coercion and sexual intercourse as a sexual act. The Supreme Court judgment No. 3-1-1-48-11 from 2011 provides that in order to convict a person for rape, it is not sufficient to prove a state of victim's helplessness but it is necessary to show what this state of helplessness was and incapacity expressed and that the perpetrator deliberately used this situation to achieve his or her purpose.

An example of this can be seen in case No. 1-18-1247, where the rights of the victim were violated during the court proceeding followed. Description of interpretation of interviewing the 8-years old girl and the girl with mental illness, also the gathering and assessment of evidence is an example of victimization and revictimization. The Supreme Court Judgment No. 1-18-1247 from 15 February 2019 recalls that the case law has clarified that an inability to understand presupposes a mental illness or impairment of consciousness of the victim, which significantly inhibits the person's perception and ability to assess the situation. The judgment states that the victim's mental retardation alone does not yet give rise to a presumption of helplessness, as this does not in any case preclude her or his understanding of the activity of the sexual nature. Furthermore, it is not possible to equate mental retardation with helplessness. Otherwise, sexual intercourse with a person with mental retardation should always be considered as a rape and Article 141(1) of the Penal Code should be applied.

Recommendations

- change the definition of rape to be "any non-consensual sexual act irrespective of pain, physical abuse and/or damage to health and threat": rape is a sex without consent;
- merge Articles 141 and 143;

- protect people with mental health disorders against sexual abuse;
- have an interview protocol for interviewing minors and people with special needs.

Article 40 – Sexual harassment

Research demonstrates that a significant amount of harassment is gendered. A FRA (2021) report based on 2019 data shows that one in three women (33%) experienced harassment in the past 12 months and almost half (48%) in the 5 years before the survey (FRA, 2021). And yet, only 5% of women report incidents of harassment to the police. On 6 July 2017, Article 153.1 of the Penal Code entered into force. The legal definition in the Penal Code is narrower than the IC's. Article 153.1 of the Penal Code stipulates that sexual harassment is an intentional physical act of sexual nature against the will of another person committed against him or her with degrading objectives or consequences. Sexual harassment is considered a misdemeanor. Extra-judicial proceedings in these cases should be conducted by the Police and Border Guard Board. Sexual harassment is punishable by a fine of up to 1200 EUR or detention for a term of up to thirty days.

The misdemeanor investigation procedure does not always involve the victim, a complainant could have a status of 'witness' only. The position of 'victim' in this procedure does not exist. The involvement of the witness during the investigation procedure is limited, he/she has no right to examine the files of the investigation and has no right to appeal the decision. 'The witness' does not know what information the offender presents. Offenders collect opinions from friends who speak nice words about them, who maybe have a sense of humor, not accepted by 'the snowflakes generation'.

In spring 2018, in one case, police charged the perpetrator 96 EUR. There was sexual misconduct of the "healer" during visits or even in the park during consultation. When the case was discussed in media, more victims reported about sexual harassment by the healer. Only one complaint was filed with the police. Many problems occurred: poor understanding of sexual harassment and gender power disparities; inability to recognize sexual harassment as a crime; poor legal definition of sexual harassment in the Penal Code; police was/is not trained for investigating sexual harassment cases; support to gender stereotypes and evidence of strong old boys' network; first cases were so 'mildly' charged by police - low faith in justice and remedy in these cases lead to underreporting.

There were two cases debated in the media in 2018-2021. The University Library director and Estonia Opera director cases. The library director was fired, and the Supreme Court ruled that this was lawful procedure by the employer. The Prosecutor's Office started a criminal procedure against the director, where the Circuit Court decided that there was a sexual relationship based on consent, the Supreme Court did not

The director of the Opera Theatre was accused of sexual harassment and inappropriate sexual behavior by several women in June 2020. He left the position in August 2020, just before the meeting dedicated to this scandal and in-house investigation report results. The police investigated the case from 29 June 2020 and found the former director guilty of a

misdemeanor and issued a fine of EUR 400 on 21 October 2020. Police had an opportunity to see the report by the independent legal expert, the in-house report was destroyed by the new director in November 2020. The former director challenged the decision and denied committing the alleged acts. There were five court hearings of people invited by the director, and he hired two top lawyers. On 17 February 2021, the Harju County Court found no case of sexual harassment. The County Court had no access to the independent expert report, which was destroyed before the court case. A key claimant was blamed that her postings in the Facebook were full of joy and she does not have signs of being 'humiliated' or did not behave as the victim. Specifically, the County Court did not find that the director's actions were against the will of the victim nor that his conduct had resulted in degrading the victim's human dignity

There is an article on sexual harassment in the Gender Equality Act, but this article is not used, the Act is not implemented for tackling and elimination of sexual harassment. Article 1(2)(2) of the Gender Equality Act prohibits discrimination on the grounds of sex in the private and public sectors. Sex discrimination includes harassment and sexual harassment. Direct discrimination based on sex is defined in Article 3(3) of the Gender Equality Act. Direct discrimination based on sex occurs where one person is treated less favorably on grounds of sex than another is, has been or would be treated in a comparable situation. Article 3(1)(6) of the Gender Equality Act refers to gender-based harassment as unwanted conduct or activity related to the sex of a person that occurs with the purpose or effect of violating the dignity of a person and of creating a disturbing, intimidating, hostile, degrading, humiliating or offensive environment. Poor wording of sexual harassment in the Penal Code was justified with the existing article in civil law. There is still the widespread opinion in Estonia that sexual harassment is not a criminal offence.

Recommendation

- To rephrase Article 153.1 of the Penal Code considering definition of the IC;
- Sexual harassment is a crime and a human rights violation;
- If sexual harassment will be 'a misdemeanor' and investigated by police, the Code of Criminal Procedure should be applied, because Code of Misdemeanor Procedure does not have 'a victim' and 'a witness' does not have access to the File/e-File
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Article 45 – Sanctions and measures

Court proceedings and court decisions regarding perpetrators are discussed. Specialists working with victims have brought up the issue of offenders receiving only mild punishments, also strong manipulation towards victims in the courtroom. In domestic violence cases, the most common punishment is probation or probation with subjection of the offender to supervision of conduct. Often, alternative procedures and settlement procedures are used (conciliation proceedings). Prosecutors tend to suggest reconciling the victim with the perpetrator before going to the courtroom before the judge, to ensure some punishment. Court does not always take other forms than direct physical abuse into account when reviewing the case. In court room settings, victims are usually facing perpetrators and are left

open to additional coercive control and manipulations/non-verbal threats by them. Victim blaming can occur in court.

In 2019, in physical abuse cases in close relationship and/or in cases of subordination (Article 121(2)(2) and 121(2)(3) of the Penal Code) investigated by the Prosecutor's Office, 341 were solved through the settlement procedure, 70 through the alternative procedure and only 41 passed through the general procedure (Väling, 2020).

In 2019, there was even the case of a femicide, where judge allowed the settlement procedure and to qualify the incidents of health damage which caused a death (Article 118(1)(7) of the Penal Code, punishable by up to twelve years' imprisonment) to the killing another person through negligence (Article 117(1) of the Penal Code, punishable by up to three years' imprisonment). Judgment of the Harju County Court No 1-19-3342 sentenced the perpetrator to eight months in prison and to two years and four months as a probation period. An adequate legal and psychological support was not provided to the mother of the deceased victim, she was awarded compensation EUR 2756 to be paid by the accused.

An analysis of case law on physical abuse (Article 121 of the Penal Code) shows that compensation for non-pecuniary damage is rare, In cases of compensation this is low and inconsistent. In the case law, regarding severity of health damage, it is possible to distinguish between causing serious, moderate and minor injuries, as well as the possible decrease of the quality of life. In the period of 1 June 2018 to 31 May 2020 the county court fully or partially satisfied 49 claims for compensation for non-pecuniary damage in 43 criminal cases in which the accused was found guilty or the criminal proceedings were terminated. For all types of proceedings, the highest compensation awarded was EUR 2000 (in three cases) and the lowest was EUR 50 (in two cases). The average compensation was EUR 588 and the median was EUR 500 euros. Sedman (2020) analysis found that there are examples in case law where the court has unreasonably failed to award compensation for non-pecuniary damage, for example in a situation where the victim has suffered damage to health. It is also clear from the case-law that the courts have not considered it possible to compensate for non-pecuniary damage solely for physical abuse which causes pain. Nor does the case-law recognize a victim's right to get compensation for non-pecuniary damage merely because her or his children witnessed the act of violence.

In the case of femicide, two children lost their mother in April 2018. The killer was a father of children, convicted for 14 years in jail. According to the Penal Code this was manslaughter in a torturous manner. Custody rights were given to the killed woman's mother. In this case No. 1-18-6430 the Viru County Court decided to compensate for non-pecuniary damage for grandmother and children EUR 30000, which was the lowest compensation to one victim (10000), the decision of the Circuit Court from February 2020 agreed with the lower court decision, but reduced a prison sentence from 18 to 14 years.

Supervision of convicted abusers of DV is poorly or not at all carried out. Efficiency of social programs to be passed by the ex-convict obliged by the court is neither further observed nor results analysed. During recent years probation is rare; this could be dependent on the Supreme Court decision in 2016. The Supreme Court has found that upon application of post-

sentence behavioural control (probation), it is not possible to oblige a convicted person to seek residence (RKKKm, 3-1-1-45-16, p 7).

Article 73(1) of the Penal Code stipulates that if a court, taking into consideration the circumstances relating to the commission of a criminal offence and the personality of the offender, finds that service of the imprisonment imposed for a specified term or payment of the amount of the pecuniary punishment by the offender is unreasonable, the court may order suspension of the sentence on probation in full or in part. During supervision of conduct, an offender is required to comply with several supervisory requirements. One of the requirements is living in a permanent place of residence determined by the court. In recent years the probation is not decided because offenders state that they do not have a permanent place to live and the court does not decide it, according to the Penal Code the court has this right.

Recommendation

- to apply effective, proportionate, and dissuasive sanctions, taking into account offences' seriousness;
- to ensure safety (and always feeling of safety) of victims, also at the time when the perpetrator is released from the prison.

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