



MONTENEGRO
SUPREME STATE PROSECUTOR'S OFFICE

Tu no. 473/24

Podgorica, October 11, 2024

**INSTRUCTION FOR PROCEEDING OF STATE PROSECUTOR'S OFFICES IN
CASES OF DOMESTIC VIOLENCE**

The Law on the State Prosecutor's Office stipulates that the Supreme State Prosecutor is responsible for performing the tasks of the State Prosecutor's Office and taking measures and actions for the effective and lawful operation of the State Prosecutor's Office.

According to the powers prescribed by Article 131 of the Law on the State Prosecutor's Office, heads of state prosecutor's offices are required to urgently intensify the work in cases of domestic violence under Article 220 of the Criminal Code of Montenegro. Heads and state prosecutors shall act in accordance with this Instruction.

To achieve legality, effectiveness, and uniformity in the proceeding of state prosecutor's offices in cases involving criminal offence of domestic violence under Article 220 of the Criminal Code of Montenegro, and following a detailed analysis of previous practices in such cases – particularly taking into account provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, I hereby issue the Instruction for proceeding of state prosecutor's offices in cases of domestic violence, with the following guidelines:

The Supreme State Prosecutor shall designate a coordinator to monitor the implementation of the Instruction. The coordinator is responsible for coordinating and monitoring the implementation of the Instruction, collaborating with relevant institutions of the Multidisciplinary Team, non-governmental organizations, international organizations, and projects in this area, as well as informing and reporting directly to the Supreme State Prosecutor.

Instructions for heads and spokespersons of state prosecutor's offices

- Data on the cases opened due to domestic violence are statistically presented through a unique form, which is an integral part of this Instruction. The form should include the case reference number, information about the injured party, criminal offence, the time and place of criminal offence, undertaken actions, ordered surveillance measure/detention/protective measure, and prosecutorial and judicial decisions, including the decisions of the misdemeanor court. The head of the state prosecutor's office is responsible for the accuracy of the data contained in the form.
- Heads shall deliver the Supreme State Prosecutor's Office quarterly reports with updated data, ending on the 15th day of the last month of the quarter, for which the report is submitted.
- Heads shall designate a contact person in the prosecutor's office who will be in charge of collecting data, monitoring the case progress, and promptly informing

the head responsible for the accuracy of submitted data. The contact person shall also be responsible for cooperation with the coordinator.

- The head shall provide conditions for ongoing education of contact persons on topics related to standards for handling cases of domestic violence. Contact persons are required to attend at least two training sessions in this area. Additionally, they may suggest topics for their training themselves.
- Heads shall issue binding instructions in writing and undertake other actions in accordance with the law in cases where preliminary investigations/investigations take an unreasonably long time, and in cases where state prosecutors do not take the necessary actions to decide within the deadlines provided by the law.
- Heads shall ensure effective coordination and exchange of information regarding cases of domestic violence within the prosecution office, with the aim of establishing consistent practices and standards in proceedings. They shall also ensure the coordination between the state prosecutor and/or advisors representing the indictment of another state prosecutor, who will actively monitor the court proceedings and provide suggestions to the acting state prosecutor/advisor. Whenever possible, it is necessary to ensure that the same state prosecutor handles the case until its resolution, and that cases are assigned to state prosecutors who have undergone training in this field.
- Heads shall ensure full implementation of the Protocol on proceeding in cases of violence against women and domestic violence.
- Heads shall request a detailed statement from state prosecutors regarding cases where the statute of limitations for prosecution has expired and inform the Supreme State Prosecutor thereof.
- Spokesperson of the state prosecutor's office shall act with caution when informing the public about the incident, in order to ensure the protection of the victim's privacy and integrity, when the victim requests and permits it. Particular care shall be taken when the victim is a child, especially considering the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.

Instructions for state prosecutors

- A case shall be opened for all incidents and complaints while on stand-by duty.
- In case the reported incident is assessed as a misdemeanor, and if grounds for the deprivation of liberty of the reported persons exist, a motion to initiate misdemeanor proceedings shall be submitted in accordance with Article 166, paragraph 2 of the Law on misdemeanors. In the event of a decision to dismiss a criminal complaint, a motion to initiate misdemeanor proceedings shall be submitted if the actions of the reported person contain elements of a misdemeanor, considering the statute of limitations and whether the conditions exist for submitting a request to impose a protective measure before or during the proceedings.
- The victim's hearing shall be conducted urgently, and, if possible, without prior questioning by police officers.

- Obtain information regarding the risk assessment for the victim, previous complaints of violence – including unreported incidents – as well as data on all previously imposed protective measures, submitted complaints, and both criminal and misdemeanor records concerning the suspect.
- Gather information on whether the suspect possesses a weapon, either legally (with a permit) or if there is suspicion of illegal possession. In such cases, request a search warrant of the apartment, other premises, movable property, and the person. If a weapon permit exists, instruct police officers to initiate administrative proceedings for its confiscation.
- Obtain information on whether a child witnessed the violence, especially when making decisions regarding the status of the victim for children who are witnesses to violence.
- If the reported incident involves bodily injury, and determining whether it constitutes a misdemeanor or a criminal offence depends on establishing this fact, it is necessary, if required, to clarify the circumstances through a direct physical examination and/or examination by a medical expert witness before legally qualifying the incident.
- If cases where grounds exist for ordering detention, always propose its imposition. Otherwise, when circumstances under Article 166 of the Criminal Procedure Code are present, propose the imposition of surveillance measures. Additionally, if the conditions prescribed by the Law on protection against domestic violence are met, request the issuance of a protective measure.
- Inform the victim of their right to free legal aid and the option to have a confidential person.
- Casework shall be organized through coordination and cooperation with other organizations and institutions within the framework of the Multidisciplinary team (MDT), in accordance with the Protocol on proceeding in cases of domestic violence.
- If the victim is being heard as a witness during the preliminary investigation, it is mandatory to consider whether there are valid reasons for the suspect not to be present during the hearing, in accordance with Article 262, paragraph 2 of the Criminal Code. In cases where valid reason exists, such as the nature of the committed criminal offence, the age and vulnerability of the victim, the victims' susceptibility to re-victimization, and similar circumstances, the victim should be heard without the presence of the suspect – especially if the suspect has defense attorney- which must be recorded in minutes, in accordance with Article 56 of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.
- If the state prosecutor's office is equipped with premises and technology that allow the victim to be heard in separate rooms from the suspect/accused, this option shall always be used. In serious cases, and when a justified need arises, state prosecutor's offices that do not have the capacity for separate interviews shall utilize the facilities of those that do.

- Children who are victims or witnesses shall be heard with particular care and in accordance with the Law on treatment of minors in criminal proceedings.
- A child who is a witness or victim shall be heard by a juvenile prosecutor (in separate premises equipped with audiovisual recording technology), with the assistance of an expert from the Expert Service and in the presence of a legal representative, unless it is contrary to the interests of the proceedings or the child. As a rule, the hearing shall be conducted with the assistance of an expert from the Expert Service, and this is mandatory for children under the age of 14. The hearing must be preceded by obtaining findings and an opinion from the Expert Service. Exceptionally, when information and evidence cannot be obtained in any other way, the state prosecutor shall order a police officer to collect information from the child, and only to the extent necessary for determining the legal qualification of the incident, while carefully considering whether such information could instead be obtained from another person who has knowledge of the incident.
- Propose to the Court that, during the main hearing, the audiovisual recording of the child's interview and the transcript of the statement be reviewed, or that the minutes containing the child's statement be read aloud (if the child was not interviewed in a special room). Oppose the repeated interview of a child during the main hearing, except in cases of justified reasons.
- In accordance with Article 95 of the Law on treatment of minors in criminal proceedings, propose the appointment of a proxy for the child victim.
- Request that the Center for Social Work undertake measures during the proceedings that arise from the duties and powers of the guardianship body, concerning the protection of the child's rights in the criminal proceedings, as well as timely actions with their competences to safeguard the child's welfare, and provide feedback on the measures taken.
- Inform the victim and/or legal representative of the victim in an appropriate manner about the actions taken following her complaint, including the detention of the suspect, the ordering, duration, and termination of detention, and surveillance measures, suspect's escape, as well as other measures taken for the victim's protection, and any decision that legally concludes the criminal proceedings. These facts shall also be communicated to the police officer for the purpose of updating the risk assessment for the victim.
- Preliminary investigations and investigations shall be conducted without unjustified delay, and all evidence shall be collected effectively and comprehensively in order to fully clarify the criminal matter, in accordance with Article 16, paragraph 1 of the Criminal Procedure Code. Particular attention shall be given in cases where the victim exercises the right under Article 109 of the Criminal Procedure Code, thereby enabling actions in line with Article 55, paragraph 1 of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.
- In cases involving the engagement of an interpreter, considering the circumstances of the case, it is necessary, whenever possible, to appoint an interpreter of the same gender as the victim. Likewise, when engaging a medical

expert witness for physical examination, it is necessary – if possible- to appoint an expert witness of the same gender as the victim.

- During the preliminary investigation/investigation, the state prosecutor shall obtain the victim's statement regarding the property legal claim and propose its resolution within the criminal proceedings to avoid civil proceedings and prevent re-victimization of the victim.
- When gathering information and establishing facts, the state prosecutor is obliged to pay particular attention to whether the violence being investigated is gender-based, i.e., whether the violence was committed due to hatred toward another person based on gender identity, or due to hatred toward another person based on any other characteristic prescribed by Article 42a of the Criminal Code.
- Procedures for postponing criminal prosecutions and concluding plea agreements shall be applied exclusively in cases that justify such actions, and in accordance with the conditions prescribed by the Criminal Procedure Code. This must be done with consideration of Article 48 of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, which prohibits mandatory alternative dispute resolution or sentencing.
- The indictment and/or closing arguments at the main hearing must include reference to the existence of circumstances relevant for the court's assessment under Article 42a, paragraph 1 of the Criminal Code of Montenegro, especially if there are aggravating circumstances as outlined in Article 46 of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. It is also necessary to consider whether circumstances under Article 42a of the Criminal Code of Montenegro exist, and in such cases, emphasize that based on the collected evidence. It can be concluded that the criminal offence was committed out of hatred toward another person due to their gender identity, or other circumstances prescribed by Article 42a, paragraph 2 of the Criminal Code of Montenegro. The same approach should be considered in cases where circumstances under Article 42a, paragraph 3 of the Criminal Code of Montenegro are present.
- In the closing argument, the prosecutor shall propose the type and severity of the criminal sanction, as well as any security measure, particularly taking into account the risk assessment regarding the danger of repeated violence.

To inform the victim of all their rights, a guide containing all information and rights shall be delivered to the victim, and it will be distributed to state prosecutor's offices.

This Instruction shall apply from the date of its adoption, upon which the previous Instruction Tu no. 404/22 of July 21, 2022, ceases to be valid.

SUPREME STATE PROSECUTOR
Milorad Marković
(signed)