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PREVENTIVE INJUNCTIONS FOR VIOLENCE BETWEEN RELATIVES IN THE LIGHT OF THE CASE LAW – WITH PARTICULAR REFERENCE TO THE EXAMINATION OF THE RELATIONSHIP BETWEEN THE PARTIES IN THE FACT-FINDING PHASE

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Abstract: After a concise summary of the essence of the preventive restraining order in cases of violence between relatives, the paper presents the Hungarian case law on the application of this legal instrument – perhaps focusing on the most difficult issue to decide in these cases: which circumstances and based on which arguments the courts order preventive restraint, and in which circumstances and based on which arguments they choose to reject the application for a preventive restraint order or not to order preventive restraint.

By examining the question of how the courts in proceedings for preventive restraining orders establish the facts and how they determine whether violence between relatives has occurred, the paper will *then focus on* a question not yet addressed in the legal literature, namely *the exploration of the relationship between the parties, taking into account basic principles of family psychology*. It will draw attention to a line of fact-finding and thinking that may help to answer the most difficult questions in these proceedings, especially in cases where the answer is not yet available: Whether or not violence between relatives has occurred and whether or not a preventive restraining order is necessary in a given case, where an allegation is set against a denial.

Keywords: violence between relatives, judicial practice of preventive restraint, examination of the relationship between the parties, family psychology

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A hozzátartozók közötti erőszak miatt alkalmazható megelőző távoltartás az ítélkezési gyakorlat tükrében – különös tekintettel a tényállás feltárá során a felek viszonyának vizsgálatára

Absztrakt: A dolgozat a hozzátartozók közötti erőszak miatt alkalmazható megelőző távoltartás elrendelése lényegének a tömör összefoglalását követően e jogintézmény alkalmazásának magyarországi kúriai ítélkezési gyakorlatát mutatja be – talán az ezekben az ügyekben a legnehezebben eldönthető kérdésre fókuszálva: arra, hogy a bíróságok milyen tényállások mellett, milyen érvek alapján rendelik el a megelőző távoltartást, és milyen tényállások esetén, milyen érvek mellett döntenek a megelőző távoltartás elrendelése iránti kérelem elutasításáról, illetőleg a megelőző távoltartás mellőzéséről.

Ezt követően – azt a kérdést vizsgálva, hogy a bíróságok a megelőző távoltartás elrendelése iránti eljárásokban hogyan tárják föl a tényállást, illetve miből állapítják meg, hogy történt-e hozzátartozók közötti erőszak – egy, a jogirodalomban eddig nem tárgyalt kérdésre, *a felek viszonyának a családpszichológiai alapvetéseket figyelembe vevő feltárására összpontosítva* egy olyan tényállásfeltárási és gondolkodási irányra kívánja felhívni a figyelmet, amely ezekben az eljárásokban különösen olyan esetekben segítheti a legnehezebben megválaszolható kérdés eldöntését: azaz azt, hogy az adott ügyben megvalósult-e a hozzátartozók közötti erőszak és szükséges-e a megelőző távoltartás elrendelése, avagy sem, amikor egy állítás áll szemben egy tagadással.

Kulcsszavak: hozzátartozók közötti erőszak, a megelőző távoltartás ítélkezési gyakorlata, a felek viszonyának vizsgálata, családpszichológia

Vorbeugende Unterlassungsklagen bei Gewalt zwischen Verwandten im Lichte der Rechtsprechung – insbesondere die Prüfung der Beziehung zwischen den Parteien in der Phase der Tatsachenfeststellung

Abstrakt: Nach einer knappen Zusammenfassung des Wesens der vorbeugenden Unterlassungsanordnung in Fällen von Gewalt zwischen Verwandten wird die ungarische Rechtsprechung zur Anwendung dieses Rechtsinstruments vorgestellt, wobei der Schwerpunkt auf der vielleicht schwierigsten Frage liegt, die in diesen Fällen zu entscheiden ist: Unter welchen Umständen und auf der Grundlage welcher Argumente ordnen die Gerichte eine präventive

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Unterlassungsanordnung an, und unter welchen Umständen und auf der Grundlage welcher Argumente entscheiden sie, den Antrag auf eine präventive Unterlassungsanordnung abzulehnen oder keine präventive Unterlassungsanordnung anzuordnen.

Mit der Untersuchung der Frage, wie die Gerichte im Verfahren der vorbeugenden Unterlassungsanordnung den Sachverhalt feststellen und wie sie entscheiden, ob Gewalt zwischen Verwandten vorliegt, soll die Aufmerksamkeit auf eine in der juristischen Literatur bisher nicht behandelte Frage gelenkt werden, die *sich auf die Erforschung des Verhältnisses zwischen den Parteien unter Berücksichtigung familienpsychologischer Grundlagen konzentriert*, und auf eine Erkenntnis- und Denkweise, die helfen kann, die schwierigsten Fragen in diesen Verfahren zu lösen, insbesondere in Fällen, in denen die Antwort noch nicht vorliegt: Ob es zu Gewalt zwischen Verwandten gekommen ist oder nicht und ob in einem bestimmten Fall, in dem eine Behauptung gegen ein Dementi steht, eine vorbeugende einstweilige Verfügung notwendig ist oder nicht.

Schlagworte: Gewalt in der Beziehung, präventive Zwangsmaßnahmen, Analyse der Beziehung zwischen den Parteien, Familienpsychologie

1. The essence of the legal regime of preventive injunctions

The Parliament enacted Act LXXII of 2009 on restraint by remote detention for violence between relatives (hereinafter: Act on Restraining Orders) to protect the fundamental human rights of all people to life, physical integrity, and dignity and to reduce violence between relatives (preamble of Act on Restraining Orders).

Restraining orders are „a last resort, an ultima ratio, an emergency measure outside the scope of criminal law." [Special Opinion of László Kiss, Constitutional Judge, to AB Decision 53/2009 (V. 6.)]

It is not a private punishment, but a preventive and protective measure, and in a sense a temporary measure. (Hajlik, 2022, p. 86 and Diószeginé Szolyák – Pál, 2012, p. 239)

„The legislation, despite being very short in scope, has undergone several amendments over the years, while the difficulties of its practical application have made it the subject of numerous professional publications and an important research topic to this day." (Hajlik, 2022, p. 73; see works listed in the bibliography)

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Besides jurisprudence, it is a legal institution that is also a lively concern for judicial practice (see the case decisions published in the Collection of Court Decisions, partly anonymized, and partly in the internal case repository of the courts, as mentioned in Part 2 of this thesis), and about which there is a continuous tendency to develop law and to interpret it in a way that is consistently oriented towards the purpose of regulation.

For example, in a recent decision, the Curia confirmed that „the purpose of the Act on Restraining Orders is to deal with the phenomenon of domestic violence before a more serious situation, a crime with often unforeseeable consequences, occurs, thus providing effective and adequate legal protection for the victims. Section 1(1)(a) of the Act on Restraining Orders defines what constitutes violence between family members in general terms and also stipulates that it must be both direct and threatening. However, preventive restraint is a severe sanction: it temporarily restricts the abuser's freedom of residence, the right to choose his place of residence, his parental custody, and his right to maintain contact with his child. [Section 5(1) of the Act on Restraining Orders]. Therefore, an act may give rise to the legal consequence of a restraining order if there are reasonable grounds for believing that violence between relatives has been committed, based on all the circumstances of the case, in particular the facts, conduct, and relationship between the applicant and the defendant (or, if the abused is not the same person as the applicant, the abused), and the signs of violence between relatives [Section 16 (1) of the Act on Restraining Orders]; and the application of a severe legal sanction is also subject to the necessary condition that there are reasonable grounds to conclude that the defendant has committed interrelation violence. For a preventive restraining order to be issued, it is not sufficient that abuse is probable, but that there are reasonable grounds to conclude from all the circumstances of the case that the defendant committed the interrelation violence." (Curia Pfv.20.477/2024/5.)

2. The practice of curia judges on preventive injunctions in Hungary

The author of the thesis worked as a court clerk from 2008 to 2012, and since 2012 as a court clerk at the Court of Appeal of the Court of First Instance, where he was and is partly involved in personal rights and damages litigation, where he encountered numerous „family law rooted" violations of personal rights, and partly on secondment to a district court family law judge dealing with family law

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cases, he drawn on his personal practical experience to illustrate the case law on preventive injunctions in his empirical research on the legal instrument under examination in this thesis, and analysed Supreme Court and curia decisions from 2010 to 2024, partly available in the curia database accessible to the courts until 2023 and partly in an anonymised form in the Collection of Court Decisions, which the author intends to provide the most complete picture possible of the most frequent behaviours alleged in applications for preventive restraint and the „circumstances in which they were committed".

In the following, the paper will therefore present the Hungarian curia's judicial practice of preventive restraint, delimited according to the above-mentioned aspects, i.e. focusing on the most frequently occurring conduct alleged in the application for preventive restraint, and examining and interpreting it, with a specific focus on it, the circumstances in which the Supreme Court and the Curia considered preventive restraint to be orderable and the arguments based on which they considered it to be orderable, and the circumstances in which they decided to reject the application for a preventive restraint order or to refrain from ordering preventive restraint.

In the presentation of the case decisions referred to, I have refrained from a more detailed description of the facts, the applications, and the decisions of the first and second instance, and, in a concise summary of the essence of the decision, I have focused specifically on the arguments that justified the imposition of the preventive injunction and the reasons for the rejection of the application. Based on my examination and analysis of these, the following picture emerges in the case law.

2.1. Arguments in support of a preventive injunction

In this concise summary of the case law decisions that I have summarised, I have italicized what I consider to be the keywords, the „gist" of the reasoning behind the decisions, for ease of reference.

Mutual quarrels or the *initiation of* such *quarrels by the applicant do not exempt* the defendant *from the legal consequences* of violent, *offensive behavior*. In this case, the order of preventive injunction is considered lawful. (Supreme Court Pfv.II.20.187/2011/4.)

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The psychological pressures on the spouse – taking personal belongings, splashing water on them, involving the older child in conflicts - go beyond the tension of divorce. *The systematic humiliation of* the spouse *and the violation of his or her intimacy* (looking at his or her underwear) *cannot* be considered *a „normal" conflict between* divorcing *spouses.* (Curia Pfv.II.20.835/2016/4.)

A preventive restraining order is also lawful if the domestic violence by the defendant *has* been *a continuous process.* In its reasoning for its decision on this issue, the Curia explained that the applicant did not apply to the police and then to the court to gain a position in the custody proceedings or his momentary interest, as he had already sought help from a counseling psychologist two years earlier. (Curia Pfv.II.21.587/2012/4.)

In another case, the defendant did not create a continuous, immediate danger situation by the gravity of his actions, but *by their repeated implementation, which created a feeling of* a permanent *threat to* the applicant and the minor children, so the order of preventive restraint against him was considered lawful, because, in determining the duration of the restraint, it must be assessed that the defendant's intention was not to harm the children and that he subordinated everything to maintaining contact with his children. (Curia Pfv.II.21.21.587/2012/4.)

2.2. Grounds for refusing the application for a preventive injunction

A restraining order is not justified if there *is no clear evidence that* the applicant has been physically and mentally abused by his spouse for decades, kept in slavery, regularly raped and otherwise exploited, tortured, and abused. The husband firmly denied any of this, and the applicant had not previously taken any action against her spouse for the acts she alleged, nor had she sought police assistance. (Supreme Court Pfv.II.20.432/2010/5.)

A preventive restraining order should not be granted even if the applicant *has not established that the defendant intended to commit the assault*, and if it *is impossible to establish* which of the actors' actions preceded the other in *chronological order*. The mere fact that the relationship between the parties has deteriorated and that they judge each other's behavior and actions in the light of this, behind which they all suspect a mutually harmful intent, is not sufficient for a preventive restraining order to be issued.

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The order of preventive restraint is not justified even if the assault can be established, but the applicant *did not wish to be restrained*, and *the defendant is under medical treatment,* so the risk of committing violence has ceased by the time the decision is taken. (Curia Pfv.II.20.845/2013/5.)

The order of preventive restraint is not justified if the abused person *has forgiven* the abuser's act and requested that the preventive restraint be waived. (Curia Pfv.II.21.149/2013/5.)

According to the facts of a subsequent case, the defendant had undoubtedly behaved in a reprehensible manner when, as a result of the escalation of the dispute, he smashed the applicant's mobile phone and spat on the applicant several times in front of the children, but the Curia held that *a single act in a conflict situation between divorcing spouses* could not serve as a basis for a preventive restraining order that would severely restrict their freedom and would not be proportionate to the situation, nor was it justified in the interests of the children. (Curia Pfv.II.21.305/2014/5.)

In a case with similar facts, the defendant behaved in a reprehensible manner when he bit the applicant as the dispute escalated, but a one-off act in a situation of conflict between divorcing spouses cannot be the basis for a disproportionate restraining order. *Nor did the police officers who* were called and who took action *find a serious situation that* would have justified the imposition of a temporary preventive restraining order. Furthermore, it cannot be ignored that *the applicant's conduct also contributed to the fight* that the child was held by the defendant, which was not disputed by the applicant, and that he could not have committed a more serious act of aggression. The Curia emphasized that the legal institution of preventive restraint *is not intended to enable either party to* gain *a more advantageous position* in the exercise of parental authority. (Curia Pfv.II.21.926/2014/4.)

The order of preventive restraint is also not justified if *the applicant does not explain* why, following the alleged assault committed on the common property, he did not go to the local health institution and why he did not go to the hospital, which is a considerable distance from his place of residence, where his current partner was the doctor on duty. (Curia Pfv.II.20.929/2015/4.)

Nor is it a basis for a preventive restraining order if the applicant *did not report* the alleged abuse and *provided* the respondent *with next-day contact*, and the parties subsequently had detailed discussions about the time and place of contact with

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the child. According to Curia, it cannot be inferred from the historical data and the existing conflicts between the parties that there is a real and imminent risk that the defendant will engage in threatening and abusive behavior towards the applicant. (Curia Pfv.II.21.179/2015/5.)

The application for a preventive restraining order was rejected when the applicant *did not mention the assault to the police officers he had called* or refer to the act on which his application was based, so the Curia held that the applicant's statement to the police officers only led to the conclusion that the applicant himself did not consider the defendant's conduct immediately after the events as direct and dangerous conduct. (Curia Pfv.II.20.414/2022/5.)

No preventive restraining order may be issued if, *following an act committed in November, the applicant submits* an application for preventive restraining order *only in January of the following year, and if other procedures may be suitable for* assessing the act in question and for *drawing the legal consequences* (denunciation of endangering a minor, initiation of temporary restriction of contact), which the applicant has also initiated. (Curia Pfv.II.20.878/2016/3.)

There is no justification for a preventive restraining order even if *it cannot be established* that *there* is *a causal link between the child's poor mental state and the defendant's conduct* that *would* constitute abusive conduct as defined by law. In addition to physical abuse, endangerment also takes the form of psychological terror, constant threats, humiliation of the human dignity of the abused person, and the violation of his or her right to self-determination. However, the mere *existence of criminal proceedings* - in the absence of other specific additional facts - *does not in* itself *constitute grounds for* ordering restraint. The provisions of the law on restraint for violence between relatives are not intended to deal with conflicts of contact - not excluding, of course, that serious and directly threatening conduct may take place during the contact. (Curia Pfv.II.22.451/2016/4.)

In a subsequent case, the Curia held that *given* the history of the contact between the father and the child, the strained relationship between the parties, and the *ongoing divorce proceedings* between the spouses*, which also concerned the exercise of parental rights over the child,* the applicant could not be considered an innocent abused person to be protected by the legal institution of restraining orders. The *provocative behavior of* the applicant in front of the minor child, which led to *a loud family dispute* between close relatives and was *recorded by* the applicant, does not provide grounds for imposing preventive restraint, which would seriously restrict

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the personal freedom of the respondents, and is not proportionate to it, nor was it justified in the interest of the children.

A preventive restraining order should not be issued if the conflict is the *responsibility of all parties for* its creation and continuation and the applicant cannot be considered an innocent/innocent victim with a valid claim to legal protection based on his/her conduct. The fact that the parties *are equally reciprocal* precludes the imposition of restraining orders against any of the parties. (Curia Pfv.II.21.089/2020/3.)

The Curia also did not consider the use of the *adjective* „prison mobile" on the applicant's car as a basis for a preventive restraining order, firstly because it is not proven and secondly because even if it is used, it does not constitute violence between relatives: *it does not contain* any *threat*, it does not constitute violent conduct that is capable of seriously and directly endangering the dignity and mental health of the applicant and the children. (Curia Pfv.II.21.309/2018/7.)

In the absence of additional elements (tone of voice, *threatening action* that could be construed as physically atrocious, other intimidating behavior), *swearing* (use of obscene words) is not suitable for establishing a situation of grave danger. (Curia Pfv.II.21.053/2021/4.)

In a seriously tense conflict situation between divorcing spouses due to the settlement of parental custody and contact, in the absence of proof or probability of previous aggressive behavior, the *one-off reprehensible behavior of* the defendant does not provide grounds for the imposition of a disproportionate preventive restraining order, which also extends to the children. (Curia Pfv.II.20.214/2019/5.)

2.3. Fact-finding in proceedings for preventive injunctions, in particular about the relationship between the applicant and the defendant

Based on the case decisions referred to in points 2.1 and 2.2 of the essay, it can be stated that the Curia considered assault in the case of a mutual quarrel, regular humiliation, prevention of more serious abuse, continuous abuse and constant feeling of threat as facts justifying the order of preventive restraint. In cases where the abuse was not proven, where it was not likely that the defendant intended to abuse, or where the applicant did not want preventive restraint and the defendant

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was under medical treatment, and where the applicant has excused the abuse, and where the single incident of abuse in a divorce or conflict situation was not considered to conduct giving rise to the imposition of a preventive restraining order. Nor did it consider if the behavior of the applicant for preventive restraint contributed to the altercation, or if the applicant did not explain why, after the alleged assault, he contacted his current partner as a doctor and not the local health care provider. It was also not considered as such if the applicant did not report the assault to his partner and also provided the defendant with next-day contact, if he did not specifically mention the assault to the police officers who called, or if he initiated a preventive restraining order months later. Nor did it consider if the applicant „provoked" the loud family argument if there was „equal reciprocity", or if there was „one-off reprehensible conduct".

My conclusions are also in line with those of Andrea Noémi Tóth, who analyses mainly curia case law, and who states about the established court practice that „in the case of physical atrocity, assault, the »seriously and directly threatening character« can be established, but the justification for the order of restraint may also arise in cases where a situation arises without assault, which creates fear and a feeling of direct threat in the abused. It is not enough to establish the likelihood of such a situation, but a careful examination of the evidence in support of it and a reasoned conclusion on the »serious and immediate threat«is necessary. The »directly« turn requires immediacy from both the applicant and the police or court: the applicant must seek help as soon as possible after the incident and the authority must provide it as soon as possible." (Tóth, 2023, p. 134)

At this point, it may be worth recalling Section 16 (1) of the Act on Restraining Orders, according to which the court shall order preventive restraint if there are reasonable grounds to conclude that violence between relatives has been committed, in particular from the facts presented by the abuser and the abused, from the signs of violence between relatives, from the behavior and *relationship of the abuser and the abused* (emphasis added).

In my opinion, based on the examined case decisions, the conclusion can be drawn that the courts basically and primarily focus on the conduct alleged in the application for a preventive injunction, its „circumstances of commission", and at most make the relationship of the parties the subject of their examination to the extent that they take into account, for example, if the parties are divorcing spouses and their relationship has deteriorated (see Curia Pfv.II.20.846/2012/6.),

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but no more concrete examination and assessment of the relationship of the parties has been made in the decisions I have found and analyzed.

In my view, this is partly due to the peculiarities of the procedure, as in these proceedings there is very often only a „single thread" of an application before the court, which contains the claimant's allegation that he has been physically and/or mentally abused by the defendant. This allegation is rarely supported by any documentary evidence: usually medical reports or other medical documentation of physical injury, or photographic or video recordings, and in the case of psychological abuse, messages, video and audio recordings, and witness statements, and may or may not be supported by a careful search of the history of the case, including the records of any previous proceedings for a restraining order for domestic violence between the parties, because there is also a known case-law according to which the sight-witness report alone is not sufficient for the imposition of a restraining order, since it only proves that the injury occurred, but not how it occurred, and the threatening messages sent earlier and the audio recording of a police telephone conversation recorded after the alleged assault, in which the applicant can clearly be heard screaming in a state of distress, are not sufficient to establish beyond doubt that physical abuse was committed (Curia Pfv.II.20..929/2015/4) - but the court has little else to „hold on to" in the proceedings.

In cases of preventive restraining orders, it is quite common that the abuse alleged in the application is contrasted with its denial. Evidence is also made more difficult by the fact that the law sets short time limits for the proceedings, and there is no legal possibility to postpone the hearing and set a new deadline for the hearing of additional evidence, for example, to hear new witnesses. The court has to make its decision on the merits based on the application, the documents submitted by the parties until the end of the personal hearing, and the data of the personal hearing. (Tiszavölgyi, 2018, p. 31; Lugosi, 2013, p. 694)

In my opinion, the personal interview of the parties is the most important part of the whole procedure, because this is the stage of the procedure where the relationship between the parties can be explored through professional and precise questions, the conflictual situation leading to domestic violence can be understood, and the dysfunctional functioning of the family can be seen, and from these elements of the facts a well-founded conclusion can be drawn as to the perpetration of violence between relatives by the defendant.

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I do not agree with the statement in the legal literature that it is a „waste of time" to hear the parties in person in these cases. (Alföldi, 2011, p. 34) In my view, in proceedings for preventive injunctions, it is not a „waste of time" to hear the parties in person in detail, even in their absence, in the given circumstances (Geréby, 2010, p. 11), because only based on the personal hearing of the parties can the court draw the relationship between the parties and only in this way can the picture become three-dimensional. Related to this is the fact that, in my view, the personal hearing of the parties, in the course of which the relationship between the parties is examined, does not only mean hearing them focusing on the specific abusive conduct that is the basis of the application. In this respect, I agree with Andrea Noémi Tóth, who says that „in a personal hearing, the judge should not only seek to find out what happened, since he can establish that from the documents but should rather explore what the parties think, want and know. The attitude of the judge is also important, as he or she must be open in communication, but also firm and polite. He must become an active, attentive listener and use questioning and listening tactics that lead to effective assistance." (Tóth, 2015, pp. 82-83)

A recent academic paper also highlights that the ability to understand human relationships at a deeper level is essential in these matters. (Hajlik, 2022, p. 89)

In my view, therefore, the relationship between the parties can be explored with this attitude and empathy, as well as with the use of professional questioning techniques that broaden the horizon and sharpen the focus. I argue that professional questioning techniques can be used to understand the psychology of domestic violence and restraint (see Tóth, 2015, pp. 155-176), on the other hand, by incorporating the basic knowledge of family psychology, which will be described in the next part of this thesis, into the thinking about the family as a system and the processes in the family, which should be used in a focused and targeted way in the courts, and which should be used in a so-called „case allocation" approach, bearing in mind specialization as a principle of case allocation. (Hajlik, 2022, p. 89), And to involve judges, court secretaries, and court clerks with a complex knowledge of the family as a system and of domestic violence, and with a special interest in these cases.

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2.4. Critical observations on the case-by-case decisions examined

In essays 2.1. and 2.2. In my personal opinion, as regards the justification of the case law referred to in points 2.2.2 and 2.2.3, the fact that the applicant (the abused) did not previously take action against the defendant (the abuser) or seek help from the police, nor the fact that, in the case of alleged abuse, he did not go to the local health care institution but to a hospital located at a considerable distance from his place of residence, where his current partner was the doctor on duty, does not affect the fact that violence between relatives occurred at the time, in my view, the fact that the applicant does not report the abuse immediately, but a few days later, does not affect the occurrence of violence between relatives. The fact that the applicant provides the defendant with next-day contact between him and their common child does not make the violence not to have occurred. Those circumstances relate at most to the legal consequence, the application of the sanction of preventive restraint, and not to the fact that the violence between the relatives occurred at that time. In my view, that can also be inferred from the purpose of the Act on Restraining Orders, which is to deal with the phenomenon of domestic violence before a more serious situation, often a crime with unforeseeable consequences, occurs, thereby providing effective and adequate legal protection for the victims.

In my view, in preventive injunction proceedings, it would be sufficient for the applicant to establish the likelihood of abuse, and violence between relatives, and not to prove it „unequivocally" (which is often not possible, by the way). To reach a well-founded decision in these cases, I would consider it important that, where there have been previous proceedings for injunctions between relatives and the parties, the court should obtain the documents of the previous injunction proceedings before the parties are heard in person and prepare them thoroughly for the personal hearing of the parties. (Grád, 2024, p. 35)

I would consider it necessary to conduct the personal hearing of the parties in the light of and by the basic principles of family psychology set out below.

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3. Basic family psychological considerations to be taken into account in proceedings for preventive injunctions to establish the facts of the case, including the relationship between the parties

The Act on Restraining Orders already pointed out in 2012 that „about restraint, it is of particular importance to look behind the legal norms governing this legal institution, and not to interpret the concepts used therein as armchair scholars, but not merely as grammatical interpretations, and, above all, not to explain them by themselves and apply them as automatic paragraphs, but to apply them primarily with a view to the purpose of the legal instrument and the legal policy rationale of the regulation, and in fact about the specific characteristics of the family as a living, pulsating system of individual personalities with a heart of its own, in the context of the Act on Restraining Orders the objective meaning of the Act in the light of day." (Diószeginé Szolyák – Pál, 2012, p. 237)

The authors of this article, published in 2012, have a strong professional conviction, based on a long period of experience in the field of law enforcement, that the facts of these cases, in particular the relationship between the parties, can only be established by exploring their family system and the process leading to the abusive behavior alleged in the application, with a basic knowledge of family psychology.

In this part of the thesis, I will consider those aspects of family psychology that I consider essential to be able to explore the facts of the case in proceedings for preventive restraint as accurately as possible, and in particular by the provisions of Article 16 (1) of the Act on Restraining Orders, to the extent necessary for a well-founded decision, and explicitly touching upon the relationship of the parties.

Such a basic assumption in family psychology is that each family is a complex social system of subsystems, each with its characteristics, in which members live according to their intended or assigned roles and the rules they have established for themselves. (Goldenberg, 2008, p. 1) Life in the subsystems of the family is a continuous, spiraling interaction, and is by no means a straight line, at most in the dimension of time. (Goldenberg, 2008, p. 34)

To be able to interpret family events as a process and to understand the relationship between the parties, it is important not to look for linear explanations, or at worst to „construct", when examining and judging family

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events, but to concentrate on the process itself and the interactions, to focus on „what (for example, a couple's conflict), how (observing recurring patterns) and when (when issues of power and control emerge) it [happened], rather than trying to explain why. In other words, we should focus on the processes observed in the couple's relationship rather than the content of their communication". (Goldenberg, 2008, p. 19) Illustrated by an example: in the case of a couple arguing over the allocation of money, we need not dwell on the content of the dispute, but rather observe „how the couple make joint decisions, how power and control are shared in the family, who feels listened to and who does not, how gender roles affect their perspectives and relationship, what emotions poison their cooperation in joint problem solving; the responses to these questions reveal more about the members' relationship with each other than specific [substantive] problems about the allocation of resources". (Goldenberg, 2008, p. 19)

In my opinion, in a preventive restraining order procedure, it is not relevant when and how the specific abusive conduct alleged occurred, which is why it is not the point of the personal hearing to ask the parties new and clarifying and interpretative questions, but rather, for example, to observe from the parties' performance how power and control are shared in the family, how decisions are made, how gender roles influence their attitudes and relationships, or what emotions poison their relationship and coexistence. In addition, the reactions of the parties to each other's presentations, without going into the details of their content, can likewise be highly informative and helpful in making decisions.

It is also essential to be aware, as law enforcers, of the family's interaction patterns and, if there are any, of the common family rituals - if not, this says a lot about a family. Family interaction patterns are the bonding material by which family members strengthen their relationships. For example, who answers whom, when, and in what manner?

Common family rituals are components of functioning family interaction patterns that play a role in ensuring family identity and continuity. (Goldenberg, 2008, p. 11)

The interaction of family members typically follows organized, established patterns based on internal structure. This pattern allows each person to learn what is permissible and expected of him or her and others. These rules, usually unspoken, characterize, regulate, and balance the functioning of the family as a unit. (Goldenberg, 2008, p. 106) For example, a normative rule is that the older

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child looks after the younger child. An implicit rule is, for example, that the father is difficult or unavailable because of his work, and that the mother should be consulted if there is a problem. Some taboos are forbidden to talk about. These might include mother/father drinking, going out at night, and losing a child. All family members also learn the meta-rules of the family, i.e. the rules about rules, which usually take the form of unspoken family guiding principles on how to interpret, enforce, and change the rules. (Goldenberg, 2008, p. 108)

A very important family psychological premise is that there are several „truths" about a given event in every family, not just one. (Goldenberg, 2008, p. 30) There is no absolute truth in the family, only personal constructs formed by each family member. Each family member has their version of „reality". This means that in a family, multiple versions of reality can exist in parallel, built up from each person's belief systems used to interpret the problem. (Goldenberg, 2008, p. 16)

It is also a fundamental fact of family psychology that family life is not linear but circular. (Goldenberg, 2008, p. 26) The fundamental difference between linear and circular causality is that the content is about linear causality and the process is about circular causality. (Goldenberg, 2008, p. 26) According to circular causality theory, problems are not caused by past situations, but by ongoing, interactive, interacting family processes. (Goldenberg, 2008, p. 26) „In the world of philosophy - for example, in the world of Newton - it makes sense to talk about linear causality: A causes B, which affects C, which causes D. In human relations, however, this »billiard ball modek«, which assumes that a force moving in a given direction acts only on objects in its path, is rarely if ever applied. It is therefore pointless to seek the »true« or ultimate cause of any interpersonal event. A does not cause B, and B does not cause A, both cause each other. The explanation lies not in the parts, but in the functioning of the system as a whole - its communication patterns, its complex relationships, and back-and-forth interactions." (Goldenberg, 2008, p. 26)

The complexity of the family system means that „it is not possible to take the system, including the family, apart and understand or manage the processes. In other words, knowing how a child works in school, for example, does not necessarily mean knowing how his or her family works. The way a family copes with the problems of an adolescent drug user does not necessarily tell us how the family will react at a later stage to the news that the younger sibling, who is just eighteen, finds out she is pregnant after she has successfully entered university.

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This complexity is also close to chaos theory, according to which we are not able to predict, anticipate, expect, or control the turning points and changes in our lives, but rather we can manage our functioning and adapt to complex changes in the environment." [Bátky - M. Ribiczey (ed.), 2021, p. 46]

I therefore consider it essential to incorporate the basic principles of family psychology into the thinking of law enforcement to make an informed decision in preventive restraint proceedings, because, in my opinion, these are how the conflictual life situation and the dysfunctional functioning of the family that led to domestic violence can be understood.

Consequently, it can be proposed *de lege ferenda* that in the proceedings for preventive injunctions, to establish the facts of the case, but also the relationship between the parties, which is essential for a well-founded decision, it would be advisable to supplement and expand the detailed personal hearing of the parties with the following relevant aspects: an examination of the duties and roles of the parties in the family, decision-making within the family, the division of labor, money management, how the child(ren) are cared for and brought up, the communication and rules of the family, with particular attention to how and with what means they deal with stress and how and in what way they deal with conflicts within the family. The importance of the latter is, in my opinion, best illustrated by a study quoted by Jenő Ranschburg: when asked whether violence had occurred in their family and whether violence had been used, some of the participants answered no, but when asked how they dealt with their conflicts within the family, these same people considered pushing, pinching, scratching as a way of dealing with conflict - they did not consider these behaviors to be violence. (Ranschburg, 2009, pp. 122-123)

I firmly believe that in these cases it is of paramount importance to ask professional questions, that focus on the relevant aspects and intersections described above, which are professionally competent, knowledgeable, and understanding of the functioning of domestic violence, and which address the family as a system, the family events as a process, and which, in my view, can lead to a more detailed factual finding and a more informed decision that is of real help to the parties.

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4. Concluding thoughts

In my thesis, I presented the essence of the ordering of preventive restraint for violence between relatives and the Hungarian case law on the application of this legal instrument - focusing on the facts and arguments under which courts typically order preventive restraint and the facts and arguments under which they decide to reject the application for preventive restraint or to refrain from ordering preventive restraint.

I explained how courts in these proceedings establish the facts and how they determine whether violence between relatives has occurred.

I then drew attention to an issue not discussed in the legal literature, *a perspective focusing on the exploration of the* facts of the case, including *the relationship between the parties, taking into account basic principles of family psychology*, which, in my opinion, can contribute to the most difficult question to answer in these proceedings (whether or not violence between relatives has occurred and whether or not a preventive restraining order is necessary), especially in cases where there is an allegation against a denial.

I believe that a personal interview of the parties, conducted with a basic knowledge of family psychology, will in any event provide a more detailed factual background to the relationship between the parties, from which more accurate conclusions can be drawn as to the existence of the inter-relative violence alleged in the application, especially in cases where there is only one allegation against a denial. Nevertheless, I also believe that, by applying this fact-finding technique, the procedure for a preventive restraining order could indeed be a warning signal, and could also have a preventive function, because even if the court did not consider the order for a preventive restraining order justified based on the facts established in this way, that is to say, by applying family psychological knowledge, it could still establish it in the operative part of its order, that the defendant has committed interpersonal violence and, in its reasons for its decision, after stating the behavior which has led to interpersonal violence (the inappropriate means chosen to resolve the domestic conflict), could draw the defendant's attention to the fact that he has chosen the wrong means of dealing with and resolving the domestic conflict, which has caused the applicant pain. In my opinion, this prompt conflict resolution and awareness-raising would be very necessary if only to prevent the fragments of unresolved grievances and unaddressed conflicts

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from migrating further and tearing apart the parties and the fabric around them: the family and society.

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