
MAPPING THE LEGISLATION AND ASSESSING THE IMPACT OF PROTECTION ORDERS IN THE EUROPEAN MEMBER STATES (POEMS)

NATIONAL REPORT AUSTRIA¹

By Rosa Logar

Contact: rosa.logar@interventionsstelle-wien.at

Edited final report 08 Jan 2014

¹ Use of terms: Since about 97% of the victims of IPV and about 90% of the victims of DV are female and in almost all of this cases the perpetrators are male partners or family members, we speak about victims in the female form and perpetrators in the male form, but include the other gender as well; the term “victim” and “survivor” as well as “aggressor”, “perpetrator” and “offender” are used interchangeable and not in the criminal law sense

CONTENT

1. GENERAL OVERVIEW OF THE ASSIGNMENT FOR THE NATIONAL EXPERTS (NOT INCLUDED)

1.1. MAIN OBJECTIVE

1.2. DEFINITION OF PROTECTION ORDER

1.3. TASKS AND DELIVERY DEADLINES

1.4. REFERENCE PERIOD FOR THE STUDY

1.5. TEMPLATE, LANGUAGE AND SIZE

2. NATIONAL REPORTS: CONTENT AND STRUCTURE

2.1. INTRODUCTION

2.2. OVERVIEW OF THE STRUCTURE OF THE NATIONAL REPORTS

2.2.1. IMPOSITION OF PROTECTION ORDERS

2.2.2. ENFORCEMENT OF PROTECTION ORDERS

2.2.3. TYPES AND INCIDENCE OF PROTECTION ORDERS

2.2.4. PROTECTION ORDER EFFECTIVENESS

2.2.5. IMPEDIMENTS TO PROTECTION ORDER LEGISLATION, ENFORCEMENT AND EFFECTIVENESS

2.2.6. PROMISING/GOOD PRACTICES

2.2.7. FUTURE DEVELOPMENTS

APPENDIX 1: COMPILATION OF RELEVANT GERMAN LAWS.

ANNEX: GLOSSARY

2. NATIONAL REPORTS: CONTENT AND STRUCTURE

2.1. INTRODUCTION

2.2. OVERVIEW OF THE STRUCTURE OF THE NATIONAL REPORTS

2.2.1. IMPOSITION OF PROTECTION ORDERS

1) *We would like to know about the different forms of protection orders in your country.*

a. Identify the laws in which protection orders are regulated. Through which areas of law (criminal, civil, administrative, and other) can protection orders be imposed?

In Austria, as a means to better protect victims of violence against women and domestic violence, the Domestic Violence Act was adopted in 1996 and came into force in May 1997. Three core measures were introduced:

1. An emergency barring order issued by the police (EBO) (based in the Security Police Act, §38a);
2. The establishment of Intervention Centers in all provinces to provide immediate and pro-active support to all victims/survivors;
3. Victims can request a civil law Protection order (PO) to protect them after the police barring order expires or independently from an EBO (for instance victims who do not seek help from the police but turn to the civil court for an PO) (§382b, e and g EO-Exekutionsordnung).

These law reforms did not happen by themselves, they were introduced because women's organizations and survivors had increasingly criticized that the laws in Austria were not effective in protecting women survivors of violence and their children. The Act from 1997 was reformed several times and measures were improved, with the latest improvement in July 2013. ²

Protective measures in criminal law

Besides these the police emergency barring order and the civil law protection orders, protective measures can also be imposed within the criminal justice system. Historically protective orders in the criminal justice system have been used very little in the area of prevention of violence against women and domestic violence. Preventive measures were concentrated in the area of police and civil law; the reason for this is, that the criminal justice system was (and to a degree still is) reluctant to changes in the area of the prevention of

² The regulations for the EBO and the PO are not compiled in one law, but can be found in different laws. The Domestic Violence Act 1997 was published in: Bundesgesetz zum Schutz vor Gewalt in der Familie – GeSchG, Bundesgesetzblatt 759, Jahrgang 1996, Ausgegeben am 30. Dezember 1996. The provisions have been amended and supplemented several times; major additional provisions came into force in 2009 (the so called Second Violence Act). The last amendment came into force in September 2013.

Source for the EBP and the PO:

EBO by the police: Security Police Act (Sicherheitpolizeigesetz), Article 38a

PO Civil law: Civil Procedural Law/Execution Law (Exekutionsordnung): Articles 382 b, e and g

violence against women and domestic violence. As the preventive potentials of the criminal justice system are becoming more clear, the Intervention Centre in Vienna has started a project together with the probation service where recidivists who are in pre-trial detention will be released before their trial if they do not pose a high risk, on the condition that they will accept a probation officer and a no contact order regarding their victim.

b. Are protection orders regulated in generic law or in specific laws on forms of (interpersonal) violence (e.g., domestic violence act)?

1. Police emergency barring orders (EBO)

Police emergency barring orders are regulated in the Security Police Act in §38a (generic);

2. Civil law protection orders (PO)

Civil law protection order (in the form of a temporary injunction), based in the Exekutionsordnung (EO – Civil law enforcement procedure) (§382b, e and g);

3. Criminal law protection orders (PO)

These are mainly based in the Criminal Code (Strafgesetzbuch-StGB) and the Criminal procedure law (Strafprozessordnung-StPO); they are general and do not mention any specific measures for the prevention of violence against women, but, as stated above, can be applied for this purpose.

c. Are these laws (or the text on the protection orders) available on the internet in English or in your local language? If so, could you provide us with a link?

They are not available in English, unfortunately. You can find them in German on the internet, but not in one text but in different laws and articles. (See for a compilation of relevant German laws appendix I).

2) a. Within the different areas of law (criminal, civil, administrative, other), you can also have different legal provisions through which protection orders can be imposed (e.g., a condition to a suspended trial, a condition to a suspended sentence, a condition to a conditional release from prison or as a condition to a suspension from pre-trial detention). Which different ways of imposing protection orders can be distinguished in the different areas of law? (please, be as exhaustive as possible).

1. Police Emergency barring order (EBO)

As stated, the police have the power and obligation to issue an EBO to protect people from immediate danger in their home (home and surrounding) and – if minors (under 14) are endangered, at the school/child care facility. The duration of the EBO is 2 weeks.

2. Civil court PO

As stated, civil courts (family law departments) can issue protection orders upon request. There are three kinds of protective orders in civil law (§382b, e and g EO)³:

- The order to leave the house of the victim and not to return
- The order not attend certain places or not to contact the victim
- The order not to stalk a person

³ Civil Procedure Law/Execution law: Articles 382 b, 2 and g

The Civil law PO procedure is an interim injunction; in practice it is rarely followed up by substantial proceedings and becomes a final decision.

The police EBO and the civil law PO are tuned to each other closely. The aim is, that initial ex-officio issued and short-term protection order by the police is followed by a civil court order on request of the victim (or in cases of minors on request of the child protection authorities) in an unbroken chain so that no gap occurs in protection. This is reached by the automatic prolongation of the police EBO from 2 weeks to 4 weeks upon an application for a civil law PO. The courts have no legal obligation to decide upon the request for a PO within these 4 weeks, but in practice they do. If they would take more time, the aggressor would be able to get the keys for the house from them (which the police have to send to the court) and thus literally open the door for the aggressor to go back home. This seems to be a well-functioning “deterrent” for judges.

Of course victims can also apply for a civil court PO without a police intervention or without a police EBO having been issued. In these cases the experience of women’s shelters and other women’s support services and Intervention Centres is that court decisions take longer.

Contrary to the well-coordinated measures of police EBOs and civil court POs there is no coordination of these measures with criminal justice measures (yet). Not formally through legal provisions or regulations and not informally through protocols of cooperation. This is, as stated in other parts of the research, still the “missing link” in the Austrian Intervention system to prevent violence against women and domestic violence, and it is a dangerous one (see reference to the CEDAW cases).⁴

3. Criminal law

In criminal law there are several possibilities to impose protective measures, but as stated, they are hardly used to prevent violence against women and domestic violence. They are also not created for the purpose of protecting victims but have a completely different purpose; giving offenders or accused persons an alternative (if they “behave well”), for instance to await a trial in freedom instead of being detained or to get a suspended or partly suspended sentence instead of a prison term. Thus such measures are actually rehabilitation measures for offenders, but they could also be used for the protection of victims, provided that victim support organisations and the criminal justice system work together closely to guarantee that such measures do not jeopardize the safety of victims.

The underuse of the potential of criminal protective measures is seen as a serious gap in protection by experts from women’s organisations and Intervention Centres and these experts are trying to change the situation in order to use the potential of the criminal law for prevention; this would be especially important in cases of repeated and severe violence, for which the police and the civil court protective measures are not adequate because they are relatively “soft” measures and have proven not to be effective in cases of more severe and repeated violence (see CEDAW cases and *Yilderim v Austria* 2005).⁵ Moreover, the civil court order also has the disadvantage that it requires the victim to take action and apply for protection; thus the state would not fulfil its ‘due diligence’ obligation to actively protect victims from (further) violence when they know about an immediate danger. If a criminal offence has been committed already, it would be adequate to use protective

⁴ Logar (2009): CEDAW as an Instrument to Combat Violence Against Women: Two Examples from Austria, paper presented on occasion of the expert meeting on The Relevance for Legal Practice of the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW): Current Issues and Perspectives for Action; 5 March 2009, Bern

⁵ United Nations/CEDAW Committee (2007a): Views of the CEDAW Committee under Article 7, Para 3, of the Optional Protocol to the CEDAW Convention (thirty-ninth session), Communication No. 5 /2005, CEDAW/C/39/D/5/2005; United Nations/CEDAW Committee (2007b): Views of the CEDAW Committee under Article 7, Para 3, of the Optional Protocol to the CEDAW Convention (thirty-ninth session), Communication No. 6/2005, CEDAW/C/39/D/6/2005

measures in the criminal law instead of referring the victim to the civil court for protection, especially if victims are intending to leave a violent partner, which, as it is well known, is a dangerous time and the majority of femicides and attempted femicides are committed by male partners if women take steps to separate.

The institutions of the Austrian criminal justice system tend to delegate their obligation to protect (due diligence) to the civil court as a “more lenient” measure, this is problematic for various reasons:

- It poses the burden (including also the risk of costs) for protection on the victim;
- It does not fulfil the duty of the state to protect (due diligence) since the victim might decide not to apply, because it fears retaliation for instance or decide to withdraw an application for an order for protection
- It might put the victim in more danger because the victim is taking legal steps against the aggressor;
- Civil POs do not provide the same kind of protection in case of a breach of the order that criminal justice measures would – in Austria the sanction (since September 2013) is an administrative offence fine. In criminal court the sanction for a violation of the order can be that the aggressor is put in pre-trial detention again, or that a suspended sentence is withdrawn and the perpetrator has to serve the rest of prison term. Thus the sanctions in the criminal justice system are more drastic which makes it more likely perpetrators will not violate a protective order and as a consequence the victim will be protected more effectively. This is, as stated, especially important in cases of violence that has already inflicted injuries and in cases of repeated and severe violence.

To summarize: If a victim has experienced and reported a crime, the criminal justice system should automatically be responsible for investigating which protective measures might be necessary and take action to actively protect victims (due diligence) instead of “playing the ball back to the victim”. This requires, of course, a much more active and quick response by the criminal justice system (i.e. special courts and fast tracks), which does not exist at the moment in Austria.

How and at what stages could protective measures that could be imposed in the criminal justice system protect victims and prevent (further) violence? As stated, the criminal procedure law does not contain any explicit measure to prevent violence against women and domestic violence, but the principle possibility of preventive measures which gives the authorities the possibility to create and impose specific protective measures.

As stated, protective measures (PM) can be imposed at different stages of the criminal procedure. The four main areas are:

1. PM as a condition for release from pre-trial detention. In this case the court can order an offender for instance not to contact the victim, to comply with a police EBO or a civil court PO, to accept guidance by a probation officer and other measures (Strafprozessordnung-Criminal procedural law);⁶
The victim has to be informed about the release from pre-trial detention and about protective measures⁷
2. PM as a condition to a suspended trial in the framework of diversion? (out of court settlement) (measures i.e. probation time with non-contact order as a condition that prosecution will be suspended; if the condition is not fulfilled, the case will be prosecuted⁸ ;
3. PM as a condition to a suspended sentence;
4. PM as condition to a conditional release from prison

⁶ Strafprozessordnung (Criminal Procedural Law): §173 (5) (Article 173, para 5)

⁷ Strafprozessordnung (Criminal Procedural Law): §177 (5) (Article 177, para 5)

⁸ Strafprozessordnung (Criminal Procedural Law): §193 (3) (Article 193, para 3)

(Both measures are based in the §50 and 51 Strafgesetzbuch-StGB, Criminal Code)

Protective measures are usually imposed for a probation time (often 2 years) or until the end of a suspended sentence or prison term or until the trial.

Possible protective measures are:

- The order to refrain from any form of violence against the victim;
- The order not to go (back) to the home of the victim or the surrounding;
- The order not to attend the workplace, school, kinder garden or any other place where the victim resides;
- The order not to contact the victim ;
- The order to attend an anti-violence training;
- The order to attend a substance abuse program;
- The order to regularly see a probation officer and others;

One or more protective measures can be imposed at the same time and for a certain time.

b. When it comes to criminal law: can protection orders be imposed in all stages of the criminal procedure?

Yes, see above:

'If protection orders can be imposed through multiple areas of law, please make a distinction between these areas of law in answering the following questions. In other words, make sure that the following questions are filled in separately for each category of protection order. For instance, if a protection order can be imposed in both criminal and civil law, make sure that you answer for both areas of law which persons can apply for a protection order (question 3).'

3) a. Who can apply for such an order (victims/complainants or only the police/the public prosecution service)?

1. Police EBO

This is a measure to protect victims who are in a situation of immediate danger to their live, health or freedom (note: this does not mean severe danger, any risk of harm qualifies). The EBO is a measure that can only be imposed by the police. No other person or institution can "apply" for a police EBO. The victim's consent is not necessary and the perpetrators obviously neither.

From the perspective of women's support services the regulation that the victims are not asked in an acute situation of violence if they want the aggressor to be banned from the home, is sensible. It would put too much pressure on the victim to have to make such a decision and it could put her in danger of retaliation by the aggressor, who would very likely see it as "her fault" that he has to leave the house. It is a clear message of society to show the "red card" to the aggressor by the police – who plays unfair, has to go. (In sports the person that attacks is also never asking for a sanction!)

The question of appeal is a different one – here it would be important that the victim can appeal if no protection order is issued by the police and the victim thinks the police did not fulfill their obligation to protect her. At the present, only the perpetrator has the right to appeal.

Not to involve the victim in the decision about the police EBO, can mean that there are victims who do not want the EBO. Still it is justified, because it is a temporary measure (2 weeks). It would be problematic to impose a non-contact order on the victim against her will for a longer time, for two reasons: first it would bear the danger of disempowering the victim; as a consequence the victim might lose trust in the justice system and

withdraw from procedures. Second such a regulation might be a violation of the victim's right to privacy/family (article 8 of the European Human Rights Convention)⁹.

Thus the state should **not**, not even in criminal procedures, impose longer-term protective orders that hinder the victim to have contact with the partner, **without the consent of the victim**, because this would violate the right of the victim (and the offender!) to privacy. The state has to come up with other measures to stop the violent behavior such as anti-violence training or, if the perpetrator is very dangerous, detention.

Moreover, if a perpetrator is very dangerous a protective order not to contact the victim is not an adequate measure of protection in the first place. In such cases it would be necessary to detain the offender, as stated.

To come back to the police EBO:

Austria has a two track approach and with two different legal regimes – first the victim is protected by the police for two weeks “ex-officio”; within this time every victim receives pro-active and cost-free support by the regional Intervention Center (every victim is contacted actively and offered help); every survivor is offered crises support in the acute situation of violence (danger assessment, safety planning) and has the right to receive information, including information about the civil court PO, and active support to be able to make an informed decision and take steps to access legal protection. If the victim decides to apply for a PO, it also gets active support by the people from the Intervention Center who write the application with her if she wishes that. As stated, it is important for the empowerment of the victim and for her right to privacy, that she can decide if she wants to take further action or not and that she experiences that as a right that is respected. Women's survivors of violence are often denied this right and they are pressured from all sides, not only from the perpetrator, to do one or the other thing – to stay with the partner or to leave. Institutions often put pressure on victims to separate, which is not only not legitimate but can also bring victims in more dangerous situations if the state does not provide effective protection measures.

If violence has already reached a level that constitutes a crime, the police also have to lay charges (Austria has mandatory prosecution in all areas of violent crimes, also with minor bodily harm). Additionally the state has to act to prevent further crime (due diligence principle), which happens first through the police EBO but after the 2 weeks further measures of the criminal justice system should follow, especially in cases of severe and repeated violence. In such cases, as stated, the criminal justice system should not – as it is unfortunately often the case in practice – expect the victim to apply for a protection order, but – independently from the actions taken by the victim to protect herself, use criminal justice measures for the protection of the victim, for instance in form of a PO as a condition for the release from pre-trial detention (only if this provides enough safety to the victim!). This is, as explained, a much stronger measure than a civil court PO and more adequate to a severe form of violence. However, as explained before, POs that restrict the contact of the victim to the perpetrator should only be imposed with the victim's consent, if the victim is a family member of the offender.

2. Civil law PO

The persons able to apply for a civil law PO are: the victim itself, a (non-violent) parent as a guardian for a minor and the child protection authority (Youth Welfare Office-YWO) in cases of violence against minors as a means to guarantee the child the right to stay in its own home. No other persons/institutions can apply or initiate a civil law PO. This has proven to be a good solution in Austria.

⁹ Regarding the right of the victim to privacy see also European Public Law (2012): Domestic Violence and the ECJ: Joined Cases C-483/09 and C-1/10 Magatte Gueye and Valentin Salmeron Sanchez, 10 European Public Law 645-654

Children and protection from violence Unfortunately the YWO does not use the application very often; they expect the mother to apply. This has been repeatedly criticized by Intervention Centers since it would take the burden off the mother, who is often a victim herself.

If the mother does not want a separation from the father and the situation is too dangerous for the children, the YWO could still try to win the mothers support for this measure. Only in an emergency situation or if the mother cannot be motivated give her consent, should a child be taken out of its own home.

3. Criminal law protective measures

Criminal law protective measures can only be issued by the criminal justice authorities (the prosecutor or judge). At the moment victims are hardly involved, as explained, although the criminal procedure law foresees that victims are at least informed about measures. The law should also foresee that the criminal justice system has to cooperate with Intervention Centers and other women's support services, which are supporting the victims, if they wish that.

It has been a progress that with the law reform 2006 of the Criminal procedure law for the first time a section on victims and victim's rights was introduced¹⁰, summarizing victim's rights and introducing new rights such as the right to bring in evidence or the right to free psycho-social and legal support in legal proceedings. However, most of the rights are "soft rights" in the sense that victims have no means to enforce them and their denial of the right has no influence on the procedure. Thus victim's rights need to be strengthened and the right of the victim to be heard and informed when it comes to protective measures in the criminal justice procedure should be integrated into the law.

b. Which organizations or authorities are involved in applying for and issuing protection orders? (Do, for instance, probation services play a role in the issuing of criminal protection orders?)

1. Police barring order

Organizations or other authorities than the police can merely play an informal role by reporting violence and suggesting a police EBO to be issued.

2. Civil court PO

The court can only react on formal applications (only the persons/institutions described in 3a) can apply); it cannot act on information suggestions.

3. Criminal court protective measures

There are no organizations formally involved issuing criminal court protective measures and an application is not possible (see also answer to 3a). Informal organizations, for instance women's support services or probation, can suggest imposing certain measures, but this is not binding.

c. Can protection orders be issued on an ex parte basis (without hearing the offender)?

1. Police EBO

It is part of investigating the immediate risk that the police will hear the aggressor. If he is not present they have to search for him. Also the police need to inform the aggressor personally of the EBO in order to be able to issue it. Sometimes the aggressor goes into hiding which poses a problem for issuing the EBO. This can pose a danger to the victim and this is a weak point in the Austrian EBO which should be improved.

¹⁰ Strafprozessordnung (Criminal Procedural Law) (2006): 4. Hauptstück Opfer und ihre Rechte § 66 – 73 (4th Main Part – Victims and their rights Article 66 – 73)

2. Civil court PO

Yes. The PO has the form of an interim injunction and the judge can issue it without hearing the aggressor. However, since the principle of hearing all parties is very important in the justice system, judges want to make sure that aggressors have the opportunity to be heard. But if they do not appear the court can take the decision in absence of the offender.

3. Criminal court protective measures

No, in the criminal procedure a protective order cannot be issued without involving the offender. Since orders in the criminal justice system serve to ease measures for the offender (no detention, suspended sentence,) the offender has to show the will to comply; if he does not, the harsher sanctions are applied.

- 4) *a. Are protection orders available for all types of victims or crimes, or only for a certain subset of victims or crimes (e.g., only victims of domestic violence, stalking, female victims)? In other words, can all victims receive protection?*

1. Police EBO

All persons have the right to be protected if there is an immediate danger to life, health or freedom to them. If the offender merely destroys property this would not qualify for an EBO, unless there are other circumstances that point to a danger for the person as well (for instance if the aggressor throws furniture and might hit the victim). Migrant and minority ethnic victims are protected as well, even if they are undocumented, because it is the obligation of the state to protect every person in danger living on their territory;

2. Civil court PO

The civil court PO protects every person in danger as well. That was not always the case. In the beginning the Austrian law was restricted to relatives, then to people who live together or had lived together. This proved to be too restrictive; victims needed for instance to prove that there had been a relationship in order to be entitled to protection. And women who had never lived together with the partner/boyfriend were also free to be harassed at their home; equally victims of stalking could not be protected. This proved to be problematic and not justifiable. Every person has the right to live free from violence, why should certain groups be excluded? The Austrian experts during the years of the PO in place became increasingly aware that the law was discriminatory and had to be changed. This happened with the law reform 2009¹¹ – since then the law says that every victim is protected in her/his home and living. The law does not mention any more that the perpetrator is, because this caused the discrimination. Rather than to protect a certain form of relationship (family, marriage, cohabitation,...) the law now protects individuals which is finally in accordance with the human rights framework. It is also in accordance with article 2 of the Istanbul Convention which prohibits discrimination on any ground in applying the provisions of the Convention.¹²

3. Criminal law protective measures

Since the criminal law protective measures do not depend on the victim this question does not apply.

¹¹ Zivilgerichtliches Verfahren/Exekutionsordnung (EO) (Civil procedural law/Enforcement Law) (2009): § 382b und e (Protection from violence in the home and the public sphere)

¹² Council of Europe (2011): Convention on preventing and combating violence against women and domestic violence, Istanbul

b. Can protection orders be issued independent from other legal proceedings (e.g., independent from criminal proceedings if the victim does not wish to press charges or independent from divorce proceedings)?

1. Police EBO

Yes, as explained above the EBO can be issued independent from criminal proceedings if there has been no violent crime yet, but if a person is at risk of suffering harm;

2. Civil court PO

Can be issued without a violent crime as well, because psychological violence that is not a crime yet, qualifies as well (defined as: a behavior of the aggressor that considerably affects the health of the victim);

3. Criminal law protective measures

These can obviously only be imposed when a violent crime has been reported. As stated Austria has mandatory prosecution, so any violent crime has to be prosecuted by the authorities, even in cases of light bodily injuries; no initiative or consent of the victim is needed.

5) a. What procedures have to be followed in order to obtain a protection order? (please explain the different steps that need to be taken)

1. Police EBO

As explained no steps have to be taken by the victim, the police is responsible for issuing the order (this is done by the patrol police officer on the spot). The police have to investigate the situation and the risk. The goals of the investigation are, to find out 1) if a person has been injured and needs medical help; 2) if there is an immediate danger to life, health or freedom of a person, in which case an EBO has to be issued; and c) if a crime has been committed, in which case they have to report the crime and do further investigations (what, how, by whom, where, why, ...) and evidence gathering (seizure of weapons involved and other evidence,...).

In their investigation issuing an EBO the police have to follow the items on the documentation form which contains risk factors and information about:

- Who called the police and why;
- The event;
- Possible injuries;
- Possible signs of a fight or crime in the house;
- Interview with the “endangerer” (as the aggressor is called in the Austrian law);
- Interview with the “endangered person(s)”;
- Psychological state of endangerer and endangered person(s);
- Children and if they are affected by DV and how;
- Threats;
- Death threats;
- Use of weapons in the act;
- Possession of weapons, especially fire arms (legal or illegal possession);
- Previous interventions on domestic violence;
- Previous reports of crimes or convictions;

The last three items are checked via police radio and at the police station.

The police have to interview the endangered person and the endangerer separately. The interview is done by one police officer (if there is a female police officer the interview should be led by her since victims have the

right to be interviewed by female officers), while the other one is securing the colleague (safety is very important in such interventions since police has been attacked by perpetrators of violence against women and domestic violence). The standard of one police officer leading the interview and the other one securing is important for safety reasons, but also to make sure that the police officers (interventions are always done by minimum of two officers) are objective after hearing the two stories (which often are not the same) and as a consequence would not be able to identify the problem properly and to protect victims.

If after the investigation the police officer comes to the conclusion that there are facts which point to an immediate danger of life, health or freedom of a person, they have to issue an EBO (no discretion).

The steps that have to be taken are:

With the aggressor:

- Information about the measure (type of prohibition, area of protection, time of duration, consequence for breach of the order);
- Request to hand over all the keys to the house (garage etc.) to the police;
- Information that he is allowed to take his personal belongings for two weeks and waiting until he/she packed them;
- Asking him for an address where to deliver a court order to (if he/she is not able to come up with an address the police asks to inform them about an address within two days);
- Information about agencies where he can get support concerning emergency housing and help.

With the victim:

- Information about the measure (type of prohibition, area of protection, time of duration, consequence for breach of the order);
- Information about the prolongation of the EBO by an application at the court;
- Information about the help that will be offered by the Intervention Center and about other support services.

After the intervention the police are leaving the house with the aggressor and advise him once more not to go back.

At the police station they write the report and send it to the local Intervention Center and, if children are involved, also to the local Youth Welfare Office (the child protection authority).

2. Civil court PO¹³

The application for a PO has to be made at the district civil court where the victim lives; the family court is competent in cases of domestic violence (it has proven to be very important that the same judge is also responsible for child custody and contact; the history of violence is already known to her/him and cannot go unnoticed). In cases of stalking a general civil court department is the competent authority issuing with POs.

As stated the PO has the form of an interim injunction and requires a fast procedure. If a police EBO is in place, the court has to inform the police about the application for a PO and with this the police EBO is automatically prolonged from two to four weeks. The police have to send the report about the EBO intervention and the complaint (if there has been violence) to the court immediately, and also have to deliver the keys of the aggressor to the court (this has proven to be very important as well to “help” judges to take the decision in the four weeks in which the EBO is in place.

¹³ In the civil procedure, the person applying for a court decision is named “applicant” and the person which it concerns is called “respondent”; in this text the author uses the terms “victims” or “survivors” and “aggressor” or “perpetrator”.

With the application the victim has to provide evidence (photos, medical reports, police EBO report, report from a victim service or therapist, testimony for a victim, testimony of witnesses,...).

As stated, the judge does not have to hear the aggressor, but usually she/he will give the aggressor the possibility. The victim is also heard, but, according to the rights of victims, the judge has to avoid a joined hearing and has to hear the victim separately.

The court decision has to be delivered to both parties in order to come into effect. If the aggressor has not given an address to the police, the decision comes into force by being published at court. Such small technical measures have proven to be very important, to avoid that aggressors can boycott the PO coming into force and thus hinder the immediate effect of it.

The PO is enforced by the police if the victim applied for it. This is very important to secure swift implementation.

Support by the Intervention Centers: The application of a PO is rather complicated and it is necessary to apply for all measures separately. Victims can often not afford a lawyer and even if they would get legal aid the procedure to apply for legal aid would take too long and the PO would not be applied and delivered on time. This was one of the reasons why Intervention Centers were established in all nine provinces of Austria, to support victims in their access to justice. Victims are notified by the police about the EBO within 24 hours and actively contact victims and offer support. This support has proven to be the core measure to make the EBO and PO effective.

3. Criminal court protective measures

Judges (or in the case of out of court settlements prosecutors) can oblige a perpetrator to comply with certain protective measures. This is usually done in a written form. The weakness of the system is at the moment, that victim's and women's support services are hardly involved in these procedures and victims often do not even know such orders exist and thus do not feel protected. (The one exception in the criminal justice system where victims have to be heard is the victim-offender mediation, in which the victim also has to agree to the measure and has to be involved; however, this is not a protective measure)

b. Could you give an indication of the length of the proceedings?

1. Police EBO

As stated the patrol police officer is issuing the EBO immediately after the investigation. So it takes, depending on the case, about 1-2 hours (estimation by the Intervention centre Vienna, which is receiving 4000 reports by the police per year).

If the aggressor is not present it takes longer to find him and to issue the EBO.

2. Civil court PO

If the PO follows a police EBO, the civil court issues the PO very fast and almost always within the 4 weeks timeframe of EBO and PO. There is no statistical data on the length of the proceedings, but the experience of the Vienna Intervention Centre shows that there is hardly ever a gap in protection and most of the applications are approved.

Women's shelters experts report, that the issuing of a civil court PO takes much longer, if there has been no previous police EBO (3-5 weeks or more).

Thus there is a serious gap in the Austrian emergency protective measures; victims who turn to the court first are discriminated against and receive less swift protection.

3. Criminal court protective measures

The main problem with the criminal court in relation to protective measures is that procedures are usually quite long.

- The quickest form of a protective order that can be issued is as a condition for pre-trial detention. Detention is usually ordered immediately (if reasons for detention apply) and then the judge has – upon the request of the prosecutor – to decide if a release from pre-trial detention would be justifiable and under which conditions. But, as stated in practice, protective measures are unfortunately hardly ever used and perpetrators are – if they are detained at all – often released without any protective orders. According to victim's rights, victims have to be informed about the release of a perpetrator from pre-trial detention or from imprisonment, including any conditions for the release.
- Protective measures within Out of court settlements can take an estimated 2-3 months or longer after the crime happened, before they are imposed. The report from the police to the prosecutor usually takes some weeks, and it takes some more weeks before the decision is taken and enforced by the prosecutor. Thus the protective measures come very late, often too late to protect the victim and it is not rare in cases of VAW and DV that the aggressor re-offends before the previous case is even dealt with. Austria would need much faster procedures in the CJS.
- Another problem with preventive measures in the framework of out of court settlement¹⁴ is that there are four measures prosecutors can apply and only one contains the possibility for protective orders: 1) a fine; 2) community work; 3) to order probation time with certain orders, such as protective orders (1-2 years); 4) Victim-Offender-Mediation. However, in most cases prosecutors do not use probation time with orders, but rather Victim-Offender-Mediation, which women's support services do not see as appropriate in cases of VAW and DV.
- Protective measures in the context of suspended sentences take on average 3-4 months from the report of the police to the trial at which a PO can be ordered with a suspended sentence. Early release from prison term can be ordered after 2/3rd of the sentence and can contain protective measures as a condition.

In neither of the areas there is statistical data available on how long the procedures really take.

c. Does the protection order come into effect as soon as the decision on a protection order is made or are there any additional requirements before the orders really come into effect (e.g., in civil proceedings the notification/service of the verdict to the defendant)? In other words, is the victim immediately protected or can there be a lapse of time before the actual protection begins?

1. Police EB

Yes, immediate effect (unless the aggressor cannot be found immediately);

2. Civil court PO

Yes, if there is a previous police EBO – see the procedure described in 5a); if there is no EBO the issuing of the PO takes much longer and it is assumed that the rate of approval is lower (no statistics are available);

3. Criminal court protective measures

The victim has no agency and no control over it, so it is not functioning (yet) as immediate protective measures of victims.

¹⁴ Crimes can be dealt with in out of court settlements (Diversion, Criminal Procedure Law, Section/Hauptstück 4) and the crimes up to 5 years of maximal penalty, if the guilt is not heavy and the deed did not cause the death of the persons; diversion means that the case is dismissed if the conditions are fulfilled; if they are not, prosecution is continued.

d. Is there a regulation for interim protection that can be given immediately upon request or very quickly? For how long? What steps have to be taken in order to finalize the protection after the interim order?

Yes, as described above. The Civil law PO procedure is an interim injunction; in practice it is rarely followed up by substantial proceedings and becomes a final decision. See also answer to 5a).

6) a. What are the application requirements in order to (successfully) apply for a protection order? In other words, under what conditions will a protection order be imposed?

1. Police EBO

The police EBO is issued if there are facts that point to an immediate danger for life, health or freedom of a person; a factor for the danger is that there has been previous violence, but it is not a condition; thus EBOs can also be issued as preventive measures to prevent a crime. It does not matter, if the victim has any property or tenant rights on the apartment/house where she lives; the criteria is only, that it is obvious for the police that the victim lives there. It is also not necessary that the victim lives there permanently. An example: the mother-in-law from Poland visits a family for three weeks; the son-in-law hits her; in this case the son-in-law will be expelled from the home. The home can also be a place where the family resides temporarily, for instance a hotel room or a camping site. Or a women's shelter where the women and the children sought refuge. It is, as stated before, also not necessary that the aggressor lives in the home of the victim; the police EBO also applies in cases of couples not living together or in cases of stalking by strangers. Further it is not necessary that the crime happened in the home. If a husband i.e. hits his wife on the street, the police have – after investigating the immediate danger – to issue an EBO for the home of the victim.

2. Civil court PO

Civil court POs can be applied for in cases of:

- Physical violence
- Threats or
- Behavior that considerably infringes the health of a person (psychological violence).

With the PO the victim has to claim that it has an urgent housing need. If for instance the victim would have an apartment herself, the aggressor could claim that she moves there and the court would have to decide if that is reasonable.

3. Criminal law protective measures

Question does not apply.

b. Is legal representation/advice of victims required by law or in practice?

1. Police EBO

No.

2. Civil Court PO

No. Intervention Centers support victims in applying and can also represent the victim in court, but this is not legally needed; in the appeal procedure legal representation is required.

3. Criminal court preventive measures

No.

However, all victims of violent crime have the right to free psychosocial and legal support in criminal proceedings, including representation by a lawyer.¹⁵

c. Is free legal representation/advice available?

1. Police EBO

Not needed legally, but Intervention Centre provides it for free.

2. Civil Court PO

Yes, Intervention Centre provides it for free.

3. Criminal court preventive measures

See answer to 6b). However, when it comes to preventive measures in criminal proceedings the involvement of victims does hardly exist, as stated.

7) a. What types of protection can be provided for in the orders (e.g., 'no contact' orders, orders prohibiting someone to enter a certain area, orders prohibiting someone to follow another person around, etcetera)?

1. Police EBO

The emergency barring order covers different areas where victims are protected.

A barring order can consist of three parts:

- An order to immediately vacate the home of the victim;
- An order not to come (back) to the home of the victim or the surroundings of the home;
- An order not to approach the school or kindergarten or another child care facility if children are the endangered persons within the vicinity of 50 meters (new since September 2013).

The third order only applies if children (under 14) are in immediate danger. A general no-contact order or the order not to come to certain places such as the workplace of the victim is still missing in Austria.

2. Civil Court PO

There are three kinds of protective orders in civil law:

- The order to leave the house of the victim and not to return (§382b EO);
- The order not to attend certain places or not to contact the victim (§382e EO);
- And the order not to stalk a person (§382g EO).

3. Criminal court preventive measures

All kinds of no-contact and no-go orders can be imposed; it is up to the prosecutor or judge.

b. Is there an order that has the effect of moving/barring a violent (or threatening) person from the common or family home (eviction or barring order)? For how long can the violent/threatening person be barred? During the barring period, is help provided to the victims? And to the offender?

1. Police EBO

The police can bar an aggressor from the home for 2 weeks and if the victim applies for a civil court PO, the

¹⁵ Strafprozessordnung (Criminal Procedural Law) (2006): 4. Hauptstück Opfer und ihre Rechte § 66 – 73 (4th Main Part – Victims and their rights Article 66 – 73)

police EBO is prolonged to 4 weeks. Support is provided to all victims where an EBO is issued, by the regional Intervention Centers (see information before). The offender has the right to receive information; the police provide a leaflet with information where to get help.

2. Civil Court PO

Yes, see answer to 7a. The order for the aggressor to leave the house can be issued for up to 6 months and can be prolonged if the victim files a divorce within this time or starts a legal procedure about the allocation of the house. In cases of protection at other places, no-contact or non-stalking orders the duration can be up to 1 year and can be prolonged if further protection is needed.¹⁶ Support is provided to all victims where an EBO is issued, by the regional Intervention Centers (see information before).

3. Criminal court preventive measures

Yes, as stated in the answer to 7a, different kinds of no-contact and no-go orders can be imposed by a prosecutor or judge as a condition. There is no timeframe for the duration of such an order, usually it is combined with probation time.

c. Which of these types of protection are imposed most often in practice?

The orders to leave the house and not to return are most often imposed.

d. Can the different types of protection orders also be imposed in combination with each other (e.g., a no contact order and a prohibition to enter a street)?

Yes. The criminal court PO can follow the police EBO and both can be issued parallel to criminal court protective measures, if a crime has been committed already. This is important, since the criminal court measures are much stronger. As stated before, police EBO and civil PO are not adequate measures for severe and repeated violence. The first one is too short and too "soft", the second one is too "soft" and it requires the victim to take action. The two Austrian CEDAW cases have shown that police EBO and civil court OP do not provide effective protection if the perpetrator for instance threatened to kill the victim.¹⁷ PO in criminal proceedings, especially orders imposed as a condition to pre-trial detention, are much stronger since the breach of the order can have the consequence of detention, whereas the breach of the police EBO or the civil court PO has only the consequence of a fine.

e. If so, which combinations are most often imposed in general?

The order to leave the home of the victim and not to come back and no-contact order (this is the experience of the Viennese Intervention Centre, there are no statistical data available).

¹⁶ Zivilgerichtliches Verfahren/Exekutionsordnung (EO) (Civil procedural law/Enforcement Law) (2009): § 382b,e und g (Protection from violence in the home, the public sphere and protection from stalking)

¹⁷ United Nations/CEDAW Committee (2007a): Views of the CEDAW Committee under Article 7, Para 3, of the Optional Protocol to the CEDAW Convention (thirty-ninth session), Communication No. 5 /2005, CEDAW/C/39/D/5/2005; United Nations/CEDAW Committee (2007b): Views of the CEDAW Committee under Article 7, Para 3, of the Optional Protocol to the CEDAW Convention (thirty-ninth session), Communication No. 6/2005, CEDAW/C/39/D/6/2005

- 8) *Are there any formal legal requirements for the formulation of protection orders? In other words, are there certain elements that always need to be included in the decision or does it, for instance, suffice if the restrained person is told 'not to contact' another person? How does this work in practice? How elaborate are these protection order decisions in general?*

There are no formal legal requirements with civil POs. Intervention centers try to apply for very precise areas so that no problems can arise – for instance street so and so until street so and so and combine this no-go order with a no-contact order.

In the police barring order the aggressor has to be informed about the address and the surrounding that he is prohibited to go to.

- 9) *a. Are there any legal limitations to the scope of these protection orders – e.g., only a couple of streets – or are the legal authorities free to decide the scope of protection orders any way they see fit?*

1. Police EBO

Only the house and the surroundings (has to be defined by the police, scope is rather narrow).

2. Civil court PO

This depends on the application of the victim but if the scope is too wide – for instance a whole district of a city – the court will probably not grant it. There is no empirical data available on POs, these are assumptions based on experience.

- b. If there are limitations, which factors do the legal authorities have to take into account when deciding on the scope of protection orders?*

The police law says that the area in which a person is protected has to be defined according to the needs for an effective preventive protection.¹⁸

- c. Which factors do they take into account in practice?*

Since no research has been done, it is not possible to answer this question.

- 10) *a. How are prohibitions to enter a certain area mostly delineated? For instance, are these areas indicated on a map or are they indicated by naming the surrounding streets? Or do legal authorities use radiuses ("person A is no longer allowed to be within 200 meters of the victim's house")?*

1. Police EBO

Indicated by naming the surrounding streets. In one regulation (protection of children at schools, child care facilities) a radius is used (50 meter).

2. Civil court PO

In the application for a Civil court PO the applicant/victim has to indicate the area for which she/he seeks

¹⁸ Sicherheitspolizeigesetz SPG (Police Security Act): § 38a SPG Betretungsverbot und Wegweisung zum Schutz vor Gewalt (Article 38a Prohibition to enter and expulsion order for the protection from violence)

protection – this should be as precise as possible to facilitate enforcement; this can be done by indicating an area on a map or name the street blocks.

b. What is the average scope of an order that prohibits someone to enter a certain area (one street, multiple streets, a village)?

An estimation; Streets around the home of the victim; there are no empirical data available.

11) a. Are there any legal limitations to the duration of protection orders? Do the orders always have to be issued for a specified or a determined period? And is there a maximum or minimum duration attached to the orders?

1. Police EBO

Always 2 weeks and a prolongation to 4 weeks (no discretion of police officers regarding the length; as said, this would be too much responsibility and it would be unclear and most difficult on which criteria to base the length).

2. Civil Court PO

The maximum length to ban the aggressor from the common home is 6 months in the beginning. If legal steps for divorce or separation are taken, the PO can be applied for until the end of the procedure or can be prolonged if a divorce is filed within the 6 months. If the barring does not concern the (common) home, the victim can apply for a PO up to 1 year. This can also be prolonged if needed. The court decides about the length, which can also be shorter than the victim has requested; in this case the victim can appeal if it does not agree with a shorter time. Most judges provide the PO for the maximum time but not all; if judges reject the victims request and for instance only grants a month of protection, this can pose a risk for the victim, because the aggressor has access to the victim again after a short time.

3. Criminal court preventive measures

They can be issued for a certain time (the prosecutor/judge decides); in the first phase (pre-trial detention) it is until the trial; in Out Of Court settlements and in the case of suspended sentences or prison time it is often until the end of probation time, which is also the maximum length.

b. Which factors do legal authorities generally take into account when deciding on the duration of a protection order?

Since there no research has been done, it is difficult to answer this question. As stated in 11a), the majority of the judges grant the maximum time if the victim has applied for that, but not all. There is a tendency to keep the duration shorter if the victim is a child, because of visitation rights; this is concerning and against the principle that perpetrator's rights cannot supersede victim's human rights to life and to physical and mental integrity.¹⁹ (see Austrian CEDAW cases).

¹⁹ . United Nations/CEDAW Committee (2007a): Views of the CEDAW Committee under Article 7, Para 3, of the Optional Protocol to the CEDAW Convention (thirty-ninth session), Communication No. 5 /2005, CEDAW/C/39/D/5/2005; United Nations/CEDAW Committee (2007b): Views of the CEDAW Committee under Article 7, Para 3, of the Optional Protocol to the CEDAW Convention (thirty-ninth session), Communication No. 6/2005, CEDAW/C/39/D/6/2005

c. What is the average duration of the different protection orders (half a year, one year, two years)?

1. Police EBO

As stated the EBO is always 2 weeks; the EBO has to be checked by a legal authority within 48 hours and it can be lifted if the authority thinks the conditions are not given for an EBO. However, most of the EBOs (over 95% according to the experience of the Intervention Centre) are confirmed.

2. Civil court OP

No information is available. The same goes for preventive measures in criminal proceedings.

12) a. To what extent (if any) do the wishes of the victims influence the imposition of protection orders? Can victims, for instance, request the cessation of protection orders?

1. Police EBO

As stated the police EBO is issued by the police without asking the victim if she wants the perpetrator to be expelled; this would be too much burden on the victim in the situation of immediate danger.

2. Civil court PO

Here the wish of the victim is the requirement for granting an order and the victim has to apply for it. The victim can also withdraw the application or apply for cessation. This enables the victim to take decision about her needs for protection after the acute phase, in which protection was provided by the state independent of the wish of the victim; this is important since it is problematic as argued previously, to impose a no contact order on the victim for a longer time; a no contact order should only be issued temporarily and at the request or with the consent of the victim. If children are the victims, the Youth Welfare Office (the child protection authority) can apply for protection. Unfortunately this happens rarely, as stated, although it would be important to take the burden for the procedure against the aggressor away from the mother/non-violent parent, especially if the mother is a victim herself.

3. Preventive measures in criminal proceedings

As explained before, victims are mostly not involved in decisions about protective measures in criminal proceedings. The criminal procedure law contains general articles saying that all authorities involved need to give attention to the rights and interests of victims in criminal proceedings and inform her ²⁰ (§10 and §206 para 1 and 2 Criminal procedure law) but this paragraph is more of an appeal than a right and can hardly be enforced. Victim's rights in criminal procedures had been improved, however they are still weak and need to be strengthened.

b. In cases where a protection order is not directly requested by the victims, is there always an assessment of the victims' need for a protection order or do victims have to bring this up themselves?

1. Police EBO

The investigation of the police includes an assessment of the victim's situation and need for protection.

²⁰ Strafprozessordnung (Criminal Procedural Law) (2006): §10 und §206 (1, 2) (Articles 10 and 206 para 1 and 2)

2. Civil court PO

The victim has to apply for the PO and also has to formulate the needs for protection; this is complicated and therefore it is very important that every victim has the right to be actively supported by the Intervention Center that writes the application with them upon their wish.

3. Protective measures in criminal proceedings

As stated it is often not even possible for the victim to bring up the needs for protection because she is not involved. Intervention Centers are starting to change these practices by actively contacting the criminal justice authorities and suggesting certain measures, but they are not bound by it. The only clear formulated right of the victim in the area of protection is that she has the right to be informed about the release of the perpetrator from pre-trial detention or from prison.

c. Can victims influence the type/scope/duration of protection orders? Are they, for instance, involved in deciding on the type of protection order or the scope of protection orders?

I think this question has been sufficiently answered in the previous sections. If not, please do not hesitate to contact me and I will repeat the information here.

13) a. Can offenders formally challenge/appeal the imposition of protection orders?

1. Police EBO

The offender has the right to appeal but this does not cease the EBO of being in effect. Victims have no right to appeal.

2. Civil court PO

Here it is the same, the aggressor can appeal but the PO stays in force. Only if the appeal is successful the PO is abolished. Every applicant has the right to appeal as well.

3. Protective measures in criminal proceedings

If the offender is not willing to fulfill the conditions, the stronger measures (detention, prosecution, unsuspended sentence, prison until the end of the sentence) will be applied. A measure that needs the formal consent of the offender is an order to treatment. Victims have no right to appeal.

b. To what extent (if any) do the wishes of the offender influence the imposition of protection orders? Are, for instance, (disproportionate) disadvantageous consequences for the offender taken into account?

1. Police EBO

The aggressor is heard but his wishes are not taken into account. Proportionality is a general principle in the Police Security Act, not something that has to be especially applied in the case of an EBO. As stated, property or tenant rights of the aggressor do not have to be taken into account; the main aim of the EBO is to guarantee victims to stay in their home.

2. Civil court PO

In the civil PO the law foresees that the housing needs of the aggressor can be taken into account, but also here the principle is that the victim should have the right to stay in the home (see answer to 6a). When deciding about the area of protection, the court is considering the claims of the aggressor but not necessarily taking them into account.

3. Protective measures in criminal proceedings

No, if the offender is not willing to comply, stronger measures will be applied (see answer to 13a).

c. Can offenders influence the type/scope/duration of protection orders? Are they, for instance, involved in deciding on the type of protection order or the scope of protection orders?

1. Police EBO

Aggressors are heard but have no decision making power.

2. Civil court PO

Partly, by bringing in their claims and rights, however as stated in the previous answer, rights of victims to protection should always have priority.

3. Protective measures in criminal proceedings

No.

14) To what extent (if any), do practical impediments (such as shortage of police personnel, lack of available resources in certain (rural) areas) to the enforcement of protection orders play a role in the decision to impose a protection order? Do legal authorities, for instance, refuse to impose certain protection orders, because they know their enforcement in practice is problematic or do they impose these protection orders anyway (e.g., for reasons of 'sending a message' to the offender)?

There are no empirical studies available to answer these questions. The experience of Intervention Centers is, that leadership has an influence. Districts in which the leading position changes often show a change in the number of EBOs issued (in- or decrease).

15) Can previous protection orders be taken into account in other ensuing legal proceedings against the same perpetrator (e.g., as evidence of a pattern of violence)?

1. Police EBO

Yes, previous EBOs are regarded as a risk factor.

2. Civil court PO

Yes, the victim has to bring it up as evidence.

3. Protective measures in criminal proceedings

With the CS it is not always clear how much information about previous EBOs and POs is taken into account. It depends on how thoroughly the prosecutors are investigating and how much information they ask the police to provide. It is a criticism on the criminal justice system that they do not always show enough interest in investigating this kind of information.

16) a. When a protection order is issued in a case of domestic violence, are the children automatically included in the protection?

1. Police EBO

Not automatically. The situation of the children has to be investigated and if there are factors pointing to an immediate risk, an EBO has to be issued for the children as well. To witness violence can also be regarded a risk factor.

2. Civil court PO

Children are not automatically included; the non-violent parent (or the Youth Welfare Office) has to apply for a PO for the child. There can be several applicants, i.e. the mother and the two children.

3. Protective measures in criminal proceedings

Yes, if the children are the victims; if the mother is the victim the children who witness violence would not be included.

b. How is the order granted/implemented if the violent partner has visitation rights?

1. Police EBO

During the temporary EBO visitation rights cannot be exercised if children are endangered.

2. Civil court PO

As stated, visitation rights should not supersede the rights of children to be protected from all forms of violence (see also UN Child Convention). If a perpetrator thinks he needs to have visitation rights he has to apply for it. Since it is the same judge deciding on the PO, the violence will usually be taken into account. However, it is a concerning development that fathers rights have gained priority, even against the principle that the protection from violence has to have priority. Aggressors are often granted supervised visitation rights, even without the consent of the child, and this is very problematic. Aggressors should only be granted visitation rights a) after a cooling-off period of several months and b) after successfully attending an anti-violence order and c) not against the will of the child.

3. Protective measures in criminal proceedings

The same applies as in point 2.

c. Are there any problems with protection orders and custody/visitation decisions by the courts?

Yes, there are, see the answer to question 16b). Unfortunately father's rights are sometimes given priority over the protection of children; violent fathers are given visitation rights quickly, and they are rarely obliged to deal with their problem and to prove that they changed. Jointed custody, which is the standard, now in Austria, is hardly withdrawn ex-officio, even if the father was violent and it is up to the mother who is a victim herself, to apply for the withdrawal of custody rights. This leads to the situation that violent fathers often have easy access to children and that violence is exercised also against the children.

17) a. Are so-called 'mutual protection orders' (i.e., protection orders that restrain both the victim and the offender) allowed in your country?

b. If not, in which cases are mutual protection orders prohibited and what is the rationale behind this prohibition?

1. Police EBO

The law does not say anything about that, but it would surely not make sense if the police would vacate both from the house; to my knowledge such a case never happened in Austria

2. Civil court PO

Same thing here, the law does not mention that possibility; theoretically it would be possible that both would apply for and PO but then the court would have to decide who the primary aggressor is and who is the victim and needs protection. The court cannot impose any orders on the victim, nor can the aggressor apply for such orders. The court can also not order that the victim is obliged to do something (i.e. not contacting the

aggressor, getting help). This would disempower the victim and would suggest that the victim is in some way responsible for the violence, which would be problematic and the wrong message.

3. Protective measures in criminal proceedings

This question does not apply here. Protective orders can only be imposed on the offender, never on the victim (which should be an important principle in the law in general when it comes to the prevention of violence).

18) a. Are protection orders provided free of charge?

b. If not, who has to pay for the legal costs/court fees?

c. Can these costs/fees constitute an undue financial burden for the victim (and bar him/her from applying for a protection order)?

1. Police EBO

Yes.

2. Civil court PO

The application is cost free. This has just been change this year, before there were court fees; victims with a low income could apply for remittal of the costs, but again this was a burden on the victim; it is important that applying for a PO is cost-free for all victims. However, if the victims loses the case she has to bear the costs; thus it is not without cost risk; this is also a reason why the state authorities cannot regard civil law POs as measure to fulfill their duty to protect victims in an situation of immediate danger (due diligence); first, as stated, it is the victim who has to take action and second, the victim bears the costs (i.e. the costs for the lawyer of the other party,...) if she loses the case. The fear of costs can prevent victims from applying for a PO.

3. Preventive measures in criminal proceedings

There are no costs for the victims, but also hardly any involvement, as stated.

2.2.2. ENFORCEMENT OF PROTECTION ORDERS

If protection orders can be imposed through multiple areas of law, please make a distinction between these areas of law in answering the following questions. For instance, if a protection order can be imposed in both criminal and civil law, make sure that you answer for both areas of law where and how protection orders are registered (question 1).

19) Where and how are protection orders registered?

1. Police EBO

Police EBOs are registered in the police documentation system. The Police have to notify the regional Intervention Center about every PO and the regional POs also get registered by the Intervention Centers.

2. Civil court PO

There is no central registration system of the POs yet. If the PO decision entrusts the police with implementing the PO, this is registered in the police files.

3. Preventive measures in criminal proceedings

There is no central registration system and the police are not always informed about criminal justice protective orders.

Comments on these answers:

Austria does not have a central system to registers police EBOs and POs that could be accessed by different agencies. The reasons are the administration of such a registration system, but more importantly the obstacles to maintain such a system because of data protection regulations. While it might be important to be able to access information quicker, especially also within agencies (where one department often does not know what the other is doing), one has also to be careful about gathering and exchanging data. Data exchange has to be handled carefully and rights balanced (the right to protection from violence and the right to protection of data), not only with regard to the perpetrator but also with regard to the victim. We should be led by the following questions: if I become a victim of violence, which agency/institution would I want to know about it and which not? Which agencies would I trust to exchange information? What could be negative consequences for me?

The question of registering and exchanging data on violence against women and domestic violence is a complex one and good solutions have to be found to guarantee rights.

20) a. Is the victim always informed of the imposition of a protection order and of the conditions that the offender has to comply with?

b. In what way is the victim informed? Does this happen automatically? By mail or letter?

1. Police EBO

Yes, the victim is informed about the EBO and the conditions; the information takes place orally by the police officer issuing the order and by a leaflet the victim gets.

2. Civil court PO

Yes, the victim is informed by the written court decision.

3. Preventive measures in criminal proceedings

As stated, victims are hardly ever informed about protective orders. The only area where there is a legal obligation to inform the victim is when the offender is released from detention of prison. In this case the court has to inform the victim either directly or through the police; this usually happens in writing.

21) Who is or which authorities are responsible for monitoring the compliance with protection orders? In other words, who checks whether these orders are violated or not?

1. Police EBO

The police are responsible for monitoring compliance with the EBO; the law says that the police have to go to the home of the victim and monitor compliance at least once during the first three days; depending on the case, the police also conduct further monitoring measures such as sending a patrol car regularly to the victim's house and contacting the victim about her safety.

2. Civil court PO

Civil law does not foresee any monitoring of the PO. It is up to the victim to report non-compliance and request measures to ensure compliance. Comment: this is another reason why the civil court PO alone would not fulfill the due diligence standard of active protection in situations of immediate danger; the combination of the police EBO and the civil court PO is needed.

3. Preventive measures in criminal proceedings

If there is a probation officer assigned to the case, preventive orders would be monitored, otherwise not.

22) a. Which activities can the monitoring authorities undertake to check the compliance with protection orders? (e.g., GPS, extra surveillance, house visits, etcetera)

b. Which of these activities do they generally undertake in practice?

See answers to question 21.

c. If protection orders can be monitored with the help of technical devices (e.g., GPS), how often is this used in practice?

Electronic monitoring of EBOs and POs does not exist in Austria (yet). We only have electronically monitored house arrest as an alternative form of prison.

d. Are protection orders actively monitored or is it generally left up to the victim to report violations?

See answers to question 21.

e. How do the monitoring authorities generally become aware of a violation of a protection order: through the victim or through pro-active monitoring activities?

Usually through the victim or the Intervention Center. The Intervention Center notifies the authorities about breaches of orders with the consent on behalf of the victim. In cases of immediate danger, for instance if the aggressor is at the door and wants to get in, the Intervention Center would notify the police immediately without asking for the victim's consent. (immediate danger for the victim or the children is the exception from the rule of confidentiality).

23) a. Is contact with the offender initiated by the victim considered a breach to the protection order?

1. Police EBO

First: the Austrian police EBOs do not contain a general no-contact order (yet). This can be part of the civil court PO but not of the police EBO.

Second: the EBO is an order binding the aggressor, not the victim. Thus the victim does not have any restrictions in her freedom to act (which as stated before, is an important principle of empowerment). But of course victims support services such as women's shelters and Intervention Centers would advise victims not to contact the partner during the time of the EBO or the PO; but, as stated it is not forbidden and there might be reasons why it is necessary (for instance to talk about something concerning the children or discuss an urgent family matter). In the beginning there was a discussion on if victims could be fined for letting the aggressor into the house; the question here is: what would be the deed that justifies that? In Austria that could only be an "incitement to an offence" and it is clear that it is a bit of a "constructed offence" and it is hard to prove that a victim lets the aggressor in to incite him to an offence. It is rather the dynamic of partner and domestic violence that lead victims to do that, and often it is plain fear or a coincidence – for instance the aggressor slipped in when the children come home from school. Thus the Austrian authorities more or less stopped to press charges against victims for "incitement to an offence".

2. Civil court PO

In the frame of a civil PO the victim also has no restrictions in her freedom to act and she has the right to contact the aggressor. But, as explained, this might not always be advisable but sometimes necessary. At any rate, the victim is not forbidden to contact the offender, this only the case the other way around. Regarding the

civil court PO, an aggressor could apply for lifting the order if the victim for instance allows him to live in the house again. In such case the court would have to prove the circumstances.

3. Preventive measures in criminal proceedings

No, it is not a breach in this area either.

See also answers to question 17a and b regarding the question if POs should also affect victims.

b. What (if any) role does contact initiated by the victim him/herself play in establishing or proving a protection order violation?

See answers to 23a).

c. What (if any) role does contact initiated by the victim him/herself play in the official reaction to protection order violation? Are the authorities, for instance, less inclined to impose a sanction on the offender if the victim initiated contact him/herself?

1. Police EBO

In principle, as stated, the obligation to comply with the EBO, always lies with the aggressor, even if the victim i.e. lets him back into the house. He just has to stay out. The authorities are not supposed to be less inclined to impose a sanction, but in practice they might, because the tendency to blame the victim or make them responsible could not fully be abolished yet in Austria.

2. Civil court PO

See answer to 23b).

3. Preventive measures in criminal proceedings

The same here – they are supposed to make the offender accountable, and only him. But the offender might blame the victim and if the authorities do not clearly reject that, they might be less inclined to impose a sanction.

24) a. Which evidentiary requirements have to be met before a violation of a protection order can be established?

1. Police EBO

Usually the police are called to the house or the school or kindergarten of the child and if they meet the offender there, this is clear evidence. If the offender has left, they still have to press charges for violating the order. If the offender denies that he has violated the order, further evidence (for instance witnesses) is needed.

2. Civil court PO

It works similar as for the EBO. Since September 2013 the violation of a civil PO is an administrative offence (just like the police EBO violation) and can be reported by the police (before victims had to go through a lengthy procedure of enforcement).²¹

²¹ Bundesgesetzblatt für die Republik Österreich (2013): Bundesgesetz, mit dem das Sicherheitspolizeigesetz geändert wird und Verstöße gegen bestimmte einstweilige Verfügungen zum Schutz vor Gewalt und zum Schutz vor Eingriffen in die Privatsphäre zu Verwaltungsübertretungen erklärt werden (SPG-Novelle 2013) die 152. Bundesgesetz: SPG-Novelle 2013, Ausgegeben am 31. Juli 2013

3. Preventive measures in criminal proceedings

The same thing as with the police EBO; the sanction however is different.

b. Which procedure(s) has to be followed in order for the protection order to be enforced after a violation?

1. Police EBO

The police enforced the EBO immediately by expelling the perpetrator again, pressing charges; in case the perpetrator violates the order again, they can also arrest him.

2. Civil court PO

If the police are tasked with enforcement of the PO, it is the same procedure, they expel, charge the perpetrator and can arrest him in case of further violation.

3. Preventive measures in criminal proceedings

There are different procedures here, but usually the consequence of the violation of an order is that the measure is revoked and the perpetrator is for instance is detained again, if the protective order was a condition for the release for pre-trial detention. If the measure was a condition for Out Of Court settlement, the consequence is that prosecution is continued and in the case of a suspended sentence that the rest of the sentence has to be served in prison. Before these consequences are enforced, the court will issue a warning and demand to comply with the order before revoking the conditional measures.

25) a. What are possible reactions/sanctions if a protection order is violated?

1. Police EBO

The offender is expelled again, charges are pressed and the offender gets an administrative fine (up to € 500, - per violation) and in case of repeat violation he can be arrested.

2. Civil court PO

As explained, the violation of the civil PO is an administrative criminal offence since September 2013; it is enforced by the police in the same way as the EBO; besides there is still the "old" enforcement procedure which proved not to be adequate: the victim had to apply for enforcement (with a different court) and request a fine and it would take weeks of month before a decision would be taken.²² The administrative criminal offence sanction works much quicker, which is important in cases of violence against women and domestic violence.

Preventive measures in criminal proceedings: see 24b).

²² Bundesgesetzblatt für die Republik Österreich (2013): Bundesgesetz, mit dem das Sicherheitspolizeigesetz geändert wird und Verstöße gegen bestimmte einstweilige Verfügungen zum Schutz vor Gewalt und zum Schutz vor Eingriffen in die Privatsphäre zu Verwaltungsübertretungen erklärt werden (SPG-Novelle 2013) die 152. Bundesgesetz: SPG-Novelle 2013, Ausgegeben am 31. Juli 2013

b. Are there only formal reactions/sanctions available, or are there also informal reactions possible to the breach of a protection order (e.g., a change of the conditions, a warning)?

1. Police EBO

No informal reactions, sanctions are set immediately.

2. Civil court PO

This is the same as for the EBO.

3. Preventive measures in criminal proceedings

Warnings and changes of a condition are possible, depending on the prosecutor/judge and the regulations.

c. Which (official or unofficial) reaction usually follows on a protection order violation?

1. Police EBO

Administrative fine

2. Civil court PO

This is not known yet, since the regulation that the violation of a civil law PO is an administrative criminal offence is new (since September 2013).²³

3. Preventive measures in criminal proceedings

This is not known since these measures are enforced very rarely in cases of violence against women and domestic violence.

d. In your opinion, are the sanctions/reactions to protection order violations 'effective, proportionate and dissuasive'?

1. Police EBO

The sanctions are effective with the majority of the perpetrators; about 10% of the EBOs are violated and sanctioned²⁴ (it is not known how many are violated without being charged); However, about 8% of the perpetrators exercise violence repeatedly (three or more police expulsions²⁵) and might be regarded as being too dangerous to be deterred by a relatively "soft" measure such as an EBO. These are cases in which often repeated and severe violence has taken place and it needs stronger criminal justice measures to stop the violence (detention, prison term, preventive measures within the criminal justice system).

2. Civil court PO

The procedure for enforcement clearly lacks something and was supplemented by criminalizing the violation of the PO.

²³ Ibd.

²⁴ Wiener Interventionsstelle gegen Gewalt in der Familie (2011): Tätigkeitsbericht 2010, Statistik S. 57) (Annual report of the Domestic Violence Intervention Center 2010, Statistic, p. 57)

²⁵ Wiener Interventionsstelle gegen Gewalt in der Familie (2013): Tätigkeitsbericht 2012, Statistik S. 41) (Annual report of the Domestic Violence Intervention Center 2012, Statistic, p. 41)

3. Preventive measures in criminal proceedings

As stated, little experience exists in this area but I assume that consequences are sometimes too soft and too slow if preventive measures are not abided and this poses a danger to victims and implies the risk of re-offending.

e. Are reports of PO violations, such as emergency calls by the victims, automatically given priority (e.g., with the police)?

1. Police EBO

Yes, there is a marking of such cases.

2. Civil court PO

The victim calls the police for enforcement; the civil court would not be able to react immediately and to provide protection.

3. Preventive measures in criminal proceedings

This is unknown.

26) a. Is the violation of civil, administrative or other protection orders criminalized? In other words, is the violation of any protection order an offense in itself?

1. Police EBO

The violation is an administrative criminal offence.

2. Civil court PO

The violation is also an administrative criminal offence.

3. Preventive measures in criminal proceedings

This does not apply.

b. If so, what is the range of sanctions (minimum and maximum penalty) attached to a violation?

1. Police EBO

There is a fine of max € 500, -- per violation or arrest in cases of repetition

2. Civil court PO

There is a court fine (sum depending on the court decision); if sanctioned as an administrative criminal offence: a fine of max € 500, -- per violation or arrest in cases of repetition of the breach of the order.

3. Preventive measures in criminal proceedings

This does not apply.

c. If so, how do the police generally react to a violation of a civil, administrative or other protection order?

1. Police EBO

The violation of the police EBO is an administrative criminal offence and the police presses charges against the offender. If he violates the order repeatedly, he can also be arrested.

2. Civil court PO

Since 2009, the violation of a Civil court PO is also an administrative criminal offence and the police presses charges against the offender. If he violates the order repeatedly, he can also be arrested.

3. Preventive measures in criminal proceedings

If the police know that a criminal protective order exists, they have to notify the criminal court.

d. If not, can the victim still call in the help of the police and how do the police react?

See answer 26) d.

27) a. Is the monitoring authority capable of issuing a sanction following the breach of the order or does the authority have to report the violation to another authority in order for the sanction to be issued?

1. Police EBO

The police can issue a sanction.

2. Civil court PO

The police can issue sanctions – the violation of the civil PO is an administrative criminal offence.

3. Preventive measures in criminal proceedings

If the police know about the preventive measures, they have to inform the prosecutor or the judge in case of a breach of the order.

b. If so, are they obliged to report all violations or do they have a discretionary power not to report violations?

1. Police EBO

The police have to denounce all violations.

2. Civil court PO

The police have to inform the court of all violations.

3. Preventive measures in criminal proceedings

The police have to report any violation to the prosecutor/judge.

c. If so, how is this discretionary power used in practice?

2. Police EBO

There is no discretionary power.

2. Civil court PO

If the violation of the civil court PO is dealt with in the civil court (enforcement procedure) it is to the discretion of the court to decide upon the application of the victim; it can lower the fee that the victim is claiming as a sanction, i.e.

3. Preventive measures in criminal proceedings

Prosecutors and judges can issue warnings before they retract measures and continue with more severe criminal law measures. See also the answers in previous questions.

28) Do monitoring authorities receive training in how to monitor and enforce protection orders?

1. Police EBO

The police receive training on all aspects of interventions in the area of violence against women and domestic violence in their basis training and in the form of continuing education.

Courts: judges and prosecutors receive some training on domestic violence in their training to become a judge (*RichteramtsanwärterInnen*); judges and prosecutors are also obliged to do an internship in some social institution outside of the judicial institutions; the duration of the internship is two weeks and can be done in a Women's shelter or Intervention Center.

2.2.3. TYPES AND INCIDENCE OF PROTECTION ORDERS

*This section inquires after the presence of (empirical) studies into the **nature and incidence** of protection orders in your country. If such studies have been conducted, please refer to these studies and give a brief (English) summary of the research design, methods and most important outcomes of the studies in an appendix.*

29) Is there any (empirical) information available on the number of protection orders imposed on a yearly basis in your country? How often are protection orders imposed on a yearly basis? Please distinguish per area of law

1. Police EBO

Until 2012 the Ministry of Interior published yearly statistics on the number of police EBO; In 2012 no reliable statistics could be published because the system of data collection was changed to an electronic system which caused great problems. Annual data on police EBOs are published by the Intervention Centers in all 9 provinces of Austria, which, as stated, receive all reports on police EBOs. According to the statistics of the Intervention Centers, 8.063 EBOs were issued by the police in 2012. The Austrian EBO indicator (number of police EBOs per 10.000 inhabitants) is 9.5. In Vienna the number of EBOs is highest, the indicator is 18.7 (almost double the average number of EBOs in the whole country).²⁶

2. Civil court PO

Unfortunately the Ministry of Justice so far has never issued an annual statistic of civil court POs. This is a great problem because it is not possible to evaluate the measure without data. Women's NGOs have criticized this repeatedly since years and the Intervention Center in Vienna has established a working-group Gender-Stat; one of the aims of the working group is to get the Ministry of Justice to generate and publish annual and reliable statistics on the civil court PO.

3. Preventive measures in criminal proceedings

No statistics or evidence from research is available on preventive measures in criminal proceedings. Also these statistics are highly needed and should be urgently gathered regularly and published on an annual basis.

²⁶ Wiener Interventionsstelle gegen Gewalt in der Familie (2013): Tätigkeitsbericht 2012, Statistik S. 53f) (Annual report of the Domestic Violence Intervention Center 2012, Statistic, p.53f)

30) a. Which types of protection orders (no contact, prohibitions to enter an area, eviction from the family home, other) are imposed most often?

b. Which combinations of protection orders are most often imposed?

I assume that police EBOs are imposed most often, followed by criminal court POs.

31) For which types of crimes are protection orders generally imposed (IPV, stalking, rape, other)?

1. Police EBO

The criteria is an immediate danger to life, health and freedom of a person; relationship or kinship is not relevant, thus all persons are covered; there does not have to be a relationship to the aggressor and he does not have to live or have lived in the home of the victim (also see previous information). The EBO also protects victims of stalking.

2. Civil court PO

The Civil law protection order also protects all victims, including victims of stalking.

3. Preventive measures in criminal proceedings:

In principle all victims can be protected by measures.

32) a. Is there any (empirical) information available on specific victim and offender characteristics? Are protection orders generally imposed against male offenders on behalf of female victims?

1. Police EBO

Few data available, mainly from the Intervention Centers. In about 90% of the cases the aggressors are male, mostly husbands, cohabiting partners and ex-partners.

2. Civil court PO

No data available.

3. Preventive measures in criminal proceedings

No data available.

b. Which percentage of the restrainedes already had a prior police record?

c. Which percentage of the restrainedes already had a previous protection order imposed against him/her?

1. Police EBO

According to the statistic 2012 of the Intervention Centre Vienna, in about 22% of the cases in 2012 had a previous police EBO or other police record²⁷.

2. Civil court PO

No data available.

3. Preventive measures in criminal proceedings

No data available.

²⁷ http://www.interventionsstelle-wien.at/images/doku/statistik_tb_2012_web.pdf

2.2.4. PROTECTION ORDER EFFECTIVENESS

*This section inquires after the presence of (empirical) studies into protection order **effectiveness** and the reaction to the violation of protection orders. If any such studies have been conducted in your country, please refer to these studies and give a brief (English) summary of the research design, methods and most important outcomes of the studies in an appendix.*

33) a. Is there any empirical information available on the effectiveness of protection orders in your country? Do protection orders stop or reduce the unwanted contact? Or do they have another effect (e.g. improve the well-being of the victims, change in the nature of the violence)?

There is little information available; the best statistics exists in the area of police EBOs, although also these are not satisfying (most do for instance, not fulfill the minimum standards for data collection that the Istanbul Convention recommends: data segregated in: gender and age of victim an perpetrator, relationship from perpetrator to victim, type of violence, location). Austria does not have much research on the subject as well and the last evaluation research was carried out more than 10 years ago.²⁸ The existing research shows, that EBOs stop and reduce violence for some time, but further measures (criminal sanctions, anti-violence training,...) are necessary to reach sustainable changes. Victims continue to suffer violence, including the children witnessing violence, if there are no longer-term interventions. As stated before, experience has also shown that police EBOs and civil law POs are not adequate measures if the perpetrator is dangerous and has committed repeat violence; in such cases it is necessary to detain the perpetrator and to apply the stronger criminal justice measures. It can be very dangerous, if the criminal justice system uses EBOs and POs as “more lenient measures” to detention, which is unfortunately still the case in Austria, although human rights jurisprudence has stated clearly that “the perpetrators rights cannot supersede the right of the victim women’s human rights to life and physical and mental integrity.”²⁹

b. Which percentage of the imposed protection orders are violated?

1. Police EBO

About 10% of the EBOs are violated and sanctioned, according to the police;³⁰ it is not known how many violations there are that did not become known to the police.

2. Civil law OP

No information available.

3. Preventive measures in criminal law

No information available.

²⁸ Dearing, Albin / Haller, Birgitt: Das österreichische Gewaltschutzgesetz, Wien 2000; Haller, Birgitt, Mitarbeit von Liegl, Barbara / Auer, Katrin (2002): Folgestudie zur Evaluierung des Bundesgesetzes zum Schutz gegen Gewalt in der Familie, Studie im Auftrag des Innenministeriums, Institut für Konfliktforschung, Wien

²⁹ United Nations/CEDAW Committee (2007): Views of the CEDAW Committee under Article 7, Para 3, of the Optional Protocol to the CEDAW Convention (thirty-ninth session), Communication No. 5 /2005, CEDAW/C/39/D/5/2005, Para 12.1.5

³⁰ Wiener Interventionsstelle gegen Gewalt in der Familie (2011): Tätigkeitsbericht 2010, Statistik

S. 57) (Annual report of the Domestic Violence Intervention Center 2010, Statistik, p. 57)

c. If protection orders are still violated, are there any changes in the nature of the violence (e.g., violent incidents are less serious)?

There is no information available to answer this question.

d. Is there any empirical information on the role that victims play in protection order violations (e.g., percentage of cases in which the victims themselves initiated contact)?

There is no information available to answer this question.

34) Is there any empirical information available on factors which significantly influence the effectiveness of protection orders, either in a positive or a negative way?

There is no information available to answer this question.

35) Is there any empirical information available on the formal and informal reaction of the enforcing authorities to violations?

a. How often (what percentage) do violations lead to a formal reaction?

b. How often (what percentage) do violations lead to an informal reaction?

c. How often (what percentage) do violations lead to no reaction?

1. Police EBO

As stated, about 10% of the EBOs are sanctioned for violation. Information on violations in other areas is not available.

2.2.5. IMPEDIMENTS TO PROTECTION ORDER LEGISLATION, ENFORCEMENT AND EFFECTIVENESS

36) Which impediments are present in your country when it comes to:

a. Problems with protection order legislation

1. Police EBO

The police EBOs protect victims in their home and surroundings and, if children (under 14a) are the victims, at child care facilities and schools; victims cannot get protection through the EBO at the workplace or other places or a non-contact order (this is possible within the civil court OP, but not within the first two weeks of the EBO). Recommendation: police EBOs should also cover other places the victim is attending regularly and a no-contact order.

2. Civil court PO

Judges should have no (or less) discretion regarding the length of the PO; the duration now is up to 6 months if there is a common house and up to 1 year in public places and in the case of stalking; but the judge can decide that the PO will only be for one month; even if this happens rarely, it is still a big problem for victims if it is the case and it should be changed. Recommendation: judges should not have discretion when it comes to the length of POs or there should be a minimum length that should not be shorter than half of the maximum length.

b. Problems with protection order imposition/issuing/procedure

1. Police EBO

One problem with the EBO is that the victim has no possibility to appeal if the police do not issue an EBO. Another problem is that gaps in protection occur if aggressors flee and cannot be found; the EBO can only be issued if the aggressor is informed; the police would have to grant victims personal protection in such cases, which they hardly do.

2. Civil law OP

A major problem is, that court decisions tend to take long if there is no previous police EBO; this is the experience from support services; since there is no statistics about the civil POs it cannot be said if this is a general problem, but my assumption is that this is the case.

3. Preventive measures in criminal law

The two biggest problems in this area are 1) that criminal law protective orders are hardly imposed in the area of violence against women and domestic violence and 2) victims needs and interest are rarely taken into account.

c. Problems with protection order monitoring

1. Police EBO

The monitoring of the EBO could be improved; the police should be more pro-active in monitoring so that the initiative to report is not left to the victim; electronic monitoring should be discussed.

2. Civil law OP

Civil POs were quite "toothless" measures if perpetrators did not comply, because the procedure to sanction breaches was lengthily and ineffective; since September 2013 the breach of a PO is an administrative criminal offence and it remains to be seen if this will improve protection. ³¹

3. Preventive measures in criminal law

It is most important, that the breach of protective orders have immediate and strict consequences; warnings are not enough when it comes to violence.

d. Problems with protection order enforcement

See previous answers.

³¹ Bundesgesetzblatt für die Republik Österreich (2013): Bundesgesetz, mit dem das Sicherheitspolizeigesetz geändert wird und Verstöße gegen bestimmte einstweilige Verfügungen zum Schutz vor Gewalt und zum Schutz vor Eingriffen in die Privatsphäre zu Verwaltungsübertretungen erklärt werden (SPG-Novelle 2013) die 152. Bundesgesetz: SPG-Novelle 2013, Ausgegeben am 31. Juli 2013

e. Problems with protection order effectiveness?

Problem A

Police EBO, Civil law OP: Both, the police EBO and the civil law PO are not effective when it comes to dangerous perpetrators who commit repeated or severe violence. In these cases criminal justice measures such as detention have to be used in the acute phases followed by preventive measures in the criminal justice system, if the danger decreased. Recommendation: in cases of dangerous perpetrators which commit repeat or severe violence, EBOs and POs should not be used as the primary preventive means because they are not effective; criminal justice measures are needed in such cases to protect victims from violence and to stop perpetrators.

Problem B

Another problem is that EBOs and POs have a short-term effect in most cases, but not a long-term effect. Victims need middle and long-term support in order to be able to get out of a violent relationship, a process that takes time and often several attempts. Thus the financial means for Intervention Centers, women's shelters and women's support center have to be increased considerably in the next years in order to make it possible for them to provide support to victims over a longer time and not only, as it is the case now, only for a short time. Recommendation: financial resources have to be raised significantly in order to provide middle -and long-term support to all women survivors of violence and other victims.

Problem C

Although it is known, that children witnessing violence are victims as well, they still do not receive adequate support; the Intervention Centers do not have resources to support all children witnessing violence, as it would be needed in order to break the cycle of violence and to prevent that violence is passed on from one generation to the other. Recommendation: financial resources have to be raised significantly in order to provide adequate support to all children witnessing domestic violence.

Problem D

Work with perpetrators is still in its infancy in Austria, like in many countries in Europe. The Intervention Center Vienna runs a victim-protection oriented perpetrator program together with the Man's Centre since 1999. This is an integrated program including an anti-violence training as well as a support program for survivors and it is run in partnership by both agencies. It is the only program of its kind in Austria and it is still very small, reaching only about 1% of the perpetrators who receive an EBO.³² The reason is, that at the stage of police interventions aggressors cannot be obliged to attend an anti-violence training. This can be only done in the context of a criminal sanction. Since the attrition rate is still high in Austria, not many cases of violence against women end with a conviction and only rarely are perpetrator mandated to attend an anti-violence training. This represents another serious gap in the Austrian Intervention system, since sanctions and help are necessary to change violent behavior. Recommendation: end impunity for violence against women and domestic violence, provide sanctions and help to perpetrators; increase the number of anti-violence trainings which give priority to the safety of women and work in partnership with women's support services.

³² Logar, Rosa (2010): Täterbezogene Interventionen zur Prävention von häuslicher Gewalt an Frauen und ihren Kindern, in: Wiener Interventionsstelle gegen Gewalt in der Familie: Tätigkeitbericht 2009, Wien, S. 25- 32

37) In your opinion, what is/are the biggest problem(s) when it comes to protection orders?

In general challenges are:

- Protective orders can only be effective if victims are provided with pro-active, comprehensive, empowering, short- and long term support;
- A big challenge is to prevent (further) violence; administrative or civil protection orders are not the right means for every form of violence, they are a relatively “soft” measure and not effective in cases of severe or repeated violence; different instruments with different competences are needed for that:
 - An emergency barring order which is enforced immediately in cases of immediate danger and also preventive (before a crime happened) for a limited time (recommendation: 2 – 4 weeks)
 - A civil law protection order for victims who do not want to turn to the police or for victims who want further protection after the police EBO.
 - For criminal offences and repeated and severe violence: detention and the use of protective orders in the criminal justice system; sanctions of all acts of violence, thorough evidence gathering by the police, mandatory prosecution.
- Active and thorough monitoring and enforcement is paramount, as well as swift sanctions if protective orders are violated.
- Empowerment of the victim: Balance the right to protection with the right to privacy/family; victims have the right to life with the perpetrator and the right to live free from violence; longer-term non-contact orders should only be issued with the victims consent; other measures than non-contact orders have to be applied if victims decide to want to live together with the partner (such as the order to attend an anti-violence training).
- All victims of violence need to have the right to protection, including undocumented women; the police should not be allowed to treat undocumented women as criminals; they must be treated as victims of crime and must be able to claim their rights, including compensation; thus undocumented migrant women victims of violence need the right to an humanitarian visa to stay in the country; victims of violence should not be expelled, especially not before justice is done in sanctioning the violence and provide compensation to the victims.
- To provide social and economic rights through emergency measures to women victims of violence, including housing, in order to provide an alternative to the violent relationship and give survivors the possibility to live and independent live.
- All children should have the right to protection through POs, as well as the right to pro-active short -and long-term support, including children who witness violence; visitation rights shall never supersede the right of children to protection. POs for children should be given absolute priority, including of course priority over visitation rights of the aggressor.

2.2.6. PROMISING/ GOOD PRACTICES

38) Which factors facilitate the:

- a. imposition*
- b. monitoring,*
- c. And enforcement of protection orders?*

1. Police EBO

The police EBO is imposed often in cases of violence against women and domestic violence (indicator: 9.5 EBOs per 10.000 inhabitants).³³

Reasons for effectiveness:

- Clear regulations;
- Task is given to the police which are available 24/7 in every region and is the core agency to protect victims and prevent crime;
- Conditions are clear: police has to carry out an investigation to establish possible factors for immediate risk for life, health or freedom of a person (using a form); if there are risk factors the police have to issue an EBO (no discretion);
- Any risk of harm is relevant, it does not have to be high risk (low threshold is important since the EBO is a relatively “soft” measure in the area of violence prevention);
- Property rights are not taken into account because the right to life, health and freedom of the victims must supersede the rights of the perpetrator;
- Task is given to patrol police officers, which guarantees that the measures is implemented swiftly (EBOs are issued on the spot);
- The duration is always 2 weeks, the burden is not on the individual police officer to decide how long the measure should be;
- The protection is enforced immediately – no gap in protection;
- EBO protects the victim pro-active in a case of immediate danger (due diligence), the victim does not have to request for protection;
- The EBO is temporary, first the victim is protected ex officio, then agency is given back to the victim, which is important for her empowerment;
- It is not a condition that a violent crime has been committed already (preventive)
- Perpetrator has the right to information and the right to appeal;
- All victims and persons in danger are protected (no kinship or relationship needed)
- All victims receive pro-active and cost-free support (Intervention Centers); Intervention Centers are notified by the police and offer pro-active support;
- Practical details that increase effectiveness (take the keys for the house from the aggressor, oblige him to provide the police with an address so that the court can issue an PO without creating a gap in protection,).

2. Civil court PO

- Police EBO and civil court PO are closely tuned to each other and follow each other without gaps in protection;
- All victims are protected, regardless of kinship or relationship;
- Victims can apply, this is important to give agency to them and to empower them;
- Apart from the victim only the Youth Welfare Office can apply in cases children are endangered;
- Protection needs to be comprehensive: protection in the house, the surrounding, workplace, school, kinder garden and no-contact order;
- Property rights should not supersede the rights of victims to protection;
- Swift enforcement is important, enforcement by the police is good practice because they are the core agency responsible for the protection of citizens and they are available area-wide and 24/7.
- Strict monitoring and fast sanctions in cases of breach of the order facilitate compliance with the protective measures;

³³ Wiener Interventionsstelle gegen Gewalt in der Familie (2013): Tätigkeitsbericht 2012, Statistik S. 54) (Annual report of the Domestic Violence Intervention Center 2012, Statistic, p.54)

- All victims receive pro-active and cost-free support (Intervention Centers).

Protection orders should not only exist in one area of law, but in all relevant areas, to provide comprehensive and effective measures for protection of victims.

39) Which factors increase the effectiveness of protection orders? In your opinion, which factor(s) contribute most to the success of protection orders?

See answers to question 38 a-c.

40) What would you consider promising practices in your country when it comes to protection orders? Why?

See answers to questions 38 a-c.

41) Do you have any recommendations to improve protection order legislation, imposition, supervision, enforcement and effectiveness?

Recommendations (non exhaustive):

- Police EBOs should also cover other places than the home (i.e. the workplace of the victim and other places), and include a general no-contact order.
- Judges should not have discretion when it come to the length of Pos or there should be a minimum length which should not be shorter than half of the maximum length
- Swift issuing of civil court POs also without a previous police EBO
- Both, the police EBO and the civil law PO are not effective when it comes to dangerous perpetrators who commit repeat or severe violence. In these cases criminal justice measures such as detention have to be used in the acute phases followed by preventive measures in the criminal justice system, if the danger has gotten less.
- Strengthen the rights of women in criminal proceedings and secure their right to be informed, heard and involved when it comes to the issuing, enforcement and monitoring of protective measures
- Financial resources have to be raised significantly in order to provide middle- and long-term support to all women survivors of violence and other victims.
- Financial resources have also to be raised significantly in order to provide adequate support to all children witnessing domestic violence.
- End impunity for violence against women and domestic violence, provide sanctions and help to perpetrators; increase the number of anti-violence trainings which give priority to the safety of women and work in partnership with women's support services.

2.2.7. FUTURE DEVELOPMENTS

42) Do protection orders feature at the moment in current discussions (in politics) on the protection of victims?

Yes, the police EBO and the civil law PO have just been improved (the new regulations came into force in September 2013)³⁴ and the breach of the civil law PO has become an administrative criminal offence. However, there is more to do. Austria had national elections at the end of September 2013 and women's organizations will approach the new government about additional improvements as soon as it is formed. The previous government, minister of women, had already started the initiative to set up an inter-ministerial working group and to approve a National Action Plan on the Prevention of Violence against Women.

*43) a. Will the legislation/practice on protection orders change in the nearby future? Are there, for instance, any bills proposing changes to the current practice?
b. If so, what will change?*

See answer to question 42.

c. Are there at the moment any pilots in your country with a new approach to victim protection orders.

Not directly connected to POs, but there are new initiatives concerning the better protection of victims in high risk situations. The Intervention Center in Vienna has started a model of Multi-Agency-Case-Conferencing in cases of victims in high risk situations and there is the plan to extend the model to other regions of Austria.

44) Which (if any) developments in protection order legislation or enforcement do you foresee in the nearby future?

See answer to question 42 and recommendations; since we do not know which government we will have, it is difficult to foresee any developments.

45) You have probably heard about the introduction of the European Protection Order (EPO). From now on, criminal protection orders issued in one Member State have to be recognized in another Member State. What is your opinion on the EPO? Which problems/possibilities (if any) do you foresee in the implementation of the EPO in your Member State?

I think that the European Protection Orders are a very important initiative which might, in the longer-run, lead to a harmonization in EU legislation and to an EU directive on violence against women.

There are more and more trans-national cases of victims seeking protection in different countries and – also perpetrators are mobile – aggressors following and harassing victims. Thus the EPO is highly needed. Problems will most likely arrive from the different standards of protective measures existing in EU member states. This can be solved in the long run by an European directive on all forms of violence against women.

³⁴ Bundesgesetzblatt für die Republik Österreich (2013): Bundesgesetz, mit dem das Sicherheitspolizeigesetz geändert wird und Verstöße gegen bestimmte einstweilige Verfügungen zum Schutz vor Gewalt und zum Schutz vor Eingriffen in die Privatsphäre zu Verwaltungsübertretungen erklärt werden (SPG-Novelle 2013) die 152. Bundesgesetz: SPG-Novelle 2013, Ausgegeben am 31. Juli 2013

APPENDIX I

Compilation of relevant German laws to protect victims from violence in Austria

Source: Jusline

1. Police emergency barring order (EBO)

Law: Sicherheitspolizeigesetz SPG (Police Security Act)

§ 38a SPG Betretungsverbot und Wegweisung zum Schutz vor Gewalt (Prohibition to enter and expulsion order for the protection from violence)

[http://www.jusline.at/38a. Betretungsverbot und Wegweisung zum Schutz vor Gewalt SPG.html](http://www.jusline.at/38a_Betretungsverbot_und_Wegweisung_zum_Schutz_vor_Gewalt_SPG.html)

2. Civil law protection orders (PO)

Law: Zivilprozessrecht (Civil procedural law) - Exekutionsordnung (EO) (Enforcement Law)

§ 382b EO Schutz vor Gewalt in Wohnungen (Protection from violence in the home)

<http://www.jusline.at/index.php?cpid=ba688068a8c8a95352ed951ddb88783e&lawid=62&paid=382b&mvpa=469>

§ 382c EO Verfahren und Anordnung (Procedure and ruling)

<http://www.jusline.at/index.php?cpid=ba688068a8c8a95352ed951ddb88783e&lawid=62&paid=382c&mvpa=470>

§ 382d EO Vollzug (Execution)

<http://www.jusline.at/index.php?cpid=ba688068a8c8a95352ed951ddb88783e&lawid=62&paid=382d&mvpa=471>

§ 382e EO Allgemeiner Schutz vor Gewalt (General protection from violence)

<http://www.jusline.at/index.php?cpid=ba688068a8c8a95352ed951ddb88783e&lawid=62&paid=382e&mvpa=472>

§ 382g EO Schutz vor Eingriffen in die Privatsphäre (Protection from encroachments of the private sphere – Protection order against stalking)

<http://www.jusline.at/index.php?cpid=ba688068a8c8a95352ed951ddb88783e&lawid=62&paid=382g&mvpa=474>

3. Criminal law protection orders (PO)

Law: Strafgesetzbuch (Criminal Code)

§ 50 Erteilung von Weisungen und Anordnung von Bewährungshilfe (Criminal court orders and probation)

[http://www.jusline.at/50 Erteilung von Weisungen und Anordnung der Bewährungshilfe StGB.html](http://www.jusline.at/50_Erteilung_von_Weisungen_und_Anordnung_der_Bewahrungshilfe_StGB.html)

§ 51 Weisungen (Criminal Court Order)

http://www.jusline.at/51_Weisungen_StGB.html

Law: Criminal Procedure Law (Criminal Procedural Law)

§ 173, para 5 (Protective order as alternative to pre-trial detention)

[http://www.jusline.at/173. Zulaessigkeit StPO.html](http://www.jusline.at/173_Zulaessigkeit_StPO.html)

§ 177 para 5 (Information of the Victim about the release of the perpetrator from detention)

<http://www.jusline.at/index.php?cpid=ba688068a8c8a95352ed951ddb88783e&lawid=14&paid=177&mvpa=190>

4. Rights of Victims in the Criminal Procedure Law including psycho-social support and representation in court

Law: Strafprozessordnung (Criminal Procedure Law)

4e Hauptstück - Opfer und ihre Rechte (4th Main Part – Victims and their Rights)

§ 65 Definitionen (Definitions)

<http://www.jusline.at/65. Definitionen StPO.htm>

§ 66 Opferrechte (Victims Rights)

<http://www.jusline.at/index.php?cpid=ba688068a8c8a95352ed951ddb88783e&lawid=14&paid=66&mvpa=70>

§ 67 Privatbeteiligung (Participation of the victim)

<http://www.jusline.at/index.php?cpid=ba688068a8c8a95352ed951ddb88783e&lawid=14&paid=67&mvpa=71>

§ 68 Akteneinsicht (Access to the file)

<http://www.jusline.at/index.php?cpid=ba688068a8c8a95352ed951ddb88783e&lawid=14&paid=68&mvpa=72>

§ 69 Privatrechtliche Ansprüche (Claims)

<http://www.jusline.at/index.php?cpid=ba688068a8c8a95352ed951ddb88783e&lawid=14&paid=69&mvpa=73>

§ 70 Recht auf Information (Right to information)

<http://www.jusline.at/index.php?cpid=ba688068a8c8a95352ed951ddb88783e&lawid=14&paid=70&mvpa=74>

§ 73 Vertreter (Legal representative)

<http://www.jusline.at/index.php?cpid=ba688068a8c8a95352ed951ddb88783e&lawid=14&paid=73&mvpa=77>

GLOSSARY

1. General Legal Terminology:³⁵

Crime

An act usually deemed socially harmful or dangerous and specifically defined, prohibited, and punishable under criminal law.

Instantaneous crime

An “instantaneous” crime is one which is fully consummated or completed in and by a single act (such as arson or murder) as distinguished from one which involves a series or repetition of acts.

Continuous crime

A “continuous crime”, or a “course of conduct crime”, is a crime consisting of a continuous series of acts, which endures after the period of consummation

Civil law

Law that applies to private rights especially as opposed to the law that applies to criminal matters. Protection orders that are imposed as part of civil proceedings are referred to in this study as ‘civil protection orders’.

Criminal law

Branch of public law that deals with crimes and their prosecution. Substantive criminal law defines crimes, and procedural criminal law sets down criminal procedure. In criminal law the protection order is a public matter. A criminal protection order can be imposed by a judge or prosecutor.

Administrative law

Law dealing with the establishment, duties, and powers of and available remedies against authorized agencies in the executive branch of the government. Some Member States view intimate partner violence (also) as a breach of the public order.

Case law

In the context of this research case law refers to the entire collection of published legal decisions of the courts regardless of whether in the particular member state law can be established by judicial decisions or only by legislative acts, such as statutory law.

Substantive Law

Law that creates or defines rights, duties, obligations, and causes of action that can be enforced by law.

Procedural Law

Law that prescribes the procedures and methods for enforcing rights and duties and for obtaining redress and that is distinguished from law that creates, defines, or regulates rights. It determines the rules of legal process such as the rules of evidence and of procedure in enforcing a legal right or obligation.

Pre-trial detention or remand

The detaining of a suspect in a criminal case before the trial has taken place. Since pre-trial detention occurs while the suspect is still presumed innocent, it is often seen in most jurisdictions an exceptional measure. It serves two main purposes: to protect the public and or the victim’s safety (prevent the perpetration of further

³⁵ Merriam-Webster's Dictionary of Law ©1996. Merriam-Webster, Incorporated. Published under license with Merriam-Webster, Incorporated.

crimes or violent situations) or to protect the conduct of the proceedings (prevent the suspect from fleeing or compromising evidence). The pre-trial detention can be prolonged by a judge.

Adult person

An individual who is above the age fixed by law at which he or she would be charged as an adult for a criminal act and to whom no special rules apply in relation to the criminal proceedings.

Report

Detailed account or statement of facts, potentially constitutive of a charge of misconduct against someone, made normally before the police or other social services such as health centres, hospitals, courts, etc.

Legal provisions

Legal provisions are sections/articles within (codes of) criminal, administrative, civil, or other law that can form the basis of a protection order. Take, for instance, the 'no contact' order as a condition to a conditional release from prison. In this example, the 'no contact' order is the protection order, whereas the conditional release from prison is the legal provision upon which the protection order is based.

Formal complaint

It refers to the initial pleading that starts a lawsuit and that sets forth the allegations made against the defendant. It can proceed from a victim, police officer or other person, yet it sets forth a criminal violation and serves as the charging instrument by which charges are filed and judicial proceedings commenced against a defendant in a court.

Complainant

It refers to the party (as a plaintiff or petitioner) who makes the complaint in a legal action or proceeding.

Victim

A natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, directly caused by acts or omissions that are in violation of the criminal law of a state.³⁶

Decision

It refers to an authoritative determination (as a decree or judgment) made after consideration of facts or law. While being an authoritative determination of a disputed issue, it does not have to be a final determination closing the case. Some (interlocutory) decisions may be appealed. With regards to a protection order, a decision can be made by a judge, prosecutor, magistrate, or any other administrative officer or public servant.

Legal representation/counsel

By legal counsel or representation we refer to a professional of the law who gives legal advice and pleads the cause of another before a court or tribunal.

Legal aid/advice

By legal aid we refer to the provision of information or advice in relation to the rights, without actually representing the person in the legal procedures.

Probation

The suspension of all or part of a sentence and its replacement by freedom subject to specific conditions (and the supervision of a probation officer). If the suspected/accused/convicted person fails to follow the conditions the sentence will be imposed. The purpose of this is to stimulate good behaviour. This condition may, for instance, include a 'no contact' order or a street ban.

36 EU Council framework decision, 15 march 2001. (2001/220/JHA)

Sanction

Punitive or coercive measure or action that results from failure to comply with a law, rule, or order. The sanction of a crime refers to the actual punishment, usually expressed as a fine or jail term.

Notification

Notification refers to the communication of a fact, claim, demand, proceeding, or verdict. The requirements of when, how, and what notice must be given to a person are often prescribed by a statute, rule, or contract. The notice can, for instance, be published in a public medium (as a newspaper) or it can be serviced on the defendant/suspect in person.

*2. Forms of violence***Intimate partner violence (IPV)**

Intimate partner violence refers to physical, sexual, psychological, and economic violence or threats against a person by a current or former intimate partner, irrespective of the sex of the partner. It can take place regardless of whether there is, or has been, a shared residence.

Domestic violence³⁷

Violence occurring in the family or domestic unit, including, *inter alia*, physical and mental aggression, emotional and psychological abuse, rape and sexual abuse, incest, rape between spouses, regular or occasional partners and cohabitants.

Stalking³⁸

Stalking refers to a pattern of repeated and unwanted attention – a course of conduct - in the form of direct, indirect or virtual attention, communication or contact, causing anxiety or fear in the targeted person. More severe forms of stalking consist of persistent and continued pursuit and harassment in a way that is likely to impair the victim's life. It is often, but not always, associated with IPV, especially post-separation.

Rape/sexual assault

Sexual assault is in this study defined as any sexual act committed against non-consenting persons³⁹, even if they do not show signs of resistance. Rape is considered one form of sexual assault consisting of the sexual penetration with any means, by one person of another person's body without the consent of that other person.

*3. Terms related to the protection order***Types/nature of protection orders**

Protection orders refer, in the context of this research, to those orders specifically issued for the protection of a particular party from violence and to prevent violence from (re-)occurring. The type/nature of the order refers to the different measures that can be included in order. These measures could require, for example, the

³⁷ Rec. (2002)5. (VAW) (Committee of Ministers).

³⁸ C. Hageman-White, L. Kelly, & R. Römkens (Eds.), Feasibility study to assess the possibilities, opportunities and needs to standardise national legislation on violence against women, violence against children and sexual orientation violence (pp. 127-152). Luxembourg: European Commission.

³⁹ Council of Europe Convention on preventing and combating violence against women and domestic violence, art. 36 b.

eviction of the aggressor from the home, the prohibition to return, the prohibition to approach or contact the victim, etc. or a combination of these measures.

Injunction

A remedy in the form of a court order compelling a party to do or refrain from doing a specified act. An injunction is available as a remedy for harm for which there is no adequate remedy at law. Thus it is used to prevent a future harmful action rather than to compensate for an injury that has already occurred, or to provide relief from harm for which an award of monetary damages is not a satisfactory solution or for which a monetary value is impossible to calculate. A defendant who violates an injunction is normally subject to penalty for contempt.

Restraining order

An order of a specified duration normally issued after a hearing attended by all parties that is intended to protect one individual from violence, abuse, harassment, or stalking by another esp. by prohibiting or restricting access or proximity to the protected party. Temporary restraining orders can be issued for brief duration, ex parte, to protect the plaintiff's rights from immediate and irreparable injury by preserving a situation or preventing an act until a hearing for a preliminary injunction can be held.

Barring order

A barring order requires the respondent to leave the family home and stay away from the family home of the applicant/victim and/or dependent children. It may also include terms prohibiting the respondent from using or threatening to use violence or to contact the victim.

Police go order

A police go order is not a judicial order but a notice given by the police to a person as a warning, in order to stop a violent event or prevent it from happening.

(The) scope

The scope of the order details the exact limits of the protection order and its conditions. For instance, how many streets are included in a protection order that prohibits the offender from entering a certain area? And which persons is (s)he no longer allowed to contact?

Radius

The area, usually measured in meters, surrounding the home (or other defined location) which the aggressor must not approach.

Practical impediments

|Practical impediments refer to all the circumstance which may impair the implementation of a protection order, such as shortage of police personnel. Thus, regardless of the imposition of the order, in practice, the protection that the order should offer turns out to be limited or even completely hindered.

Pro-active supervision

Pro-active supervision means in this study that the police personnel work to monitor and enforce the order by controlling that the aggressor complies with it. Police should actively verify the absence of any breach by the aggressor (or the victim). In the event of a violation of the protection order, the police should report this to the authorities handling the case.