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

NATIONAL REPORT ITALY
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2. NATIONAL REPORTS: CONTENT AND STRUCTURE

2.1. INTRODUCTION

In the national reports we would like you to give a brief overview of which legislation/laws are relevant for victim protection purposes. Questions such as: ‘Can you provide the key provisions which enable the imposition of protective orders?’, ‘What are the procedures by which these protection orders are imposed?’, ‘How can protection orders be enforced?’ and ‘Are there any recent reforms in protection order legislation?’

Next to the above questions – which all refer to the law in the books – we are also interested in how the law is implemented in practice. It is of vital importance to see how the laws work out in practice and if there are any impediments to their effective implementation. You are also asked to comment on the workings of protection orders in practice.

In many Member States protection orders can be obtained through multiple areas of law, so not only through criminal law, but also via a civil (summary) procedure, through administrative law or other areas of law. If this is the case in your Member State, please distinguish these areas of law when you answer the questions below.

What follows is the structure which the national legal reports should take with further guidance for each section. In case you are not able to answer a certain question, please state this specifically and include the reason why the question cannot be answered (e.g., ‘no information available’ or ‘not applicable to domestic situation’).

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

1 a-c: In Italy, protection orders can be found in civil, administrative and criminal law. These protection orders (hereafter: POs) in the criminal sector are regulated some for all victims some specifically for victims of domestic violence and stalking. In some criminal POs they apply to all victims. However there is a specific use of the form in the Criminal Procedure Code (CPC) identified as a Restraining Order, which is for the abuser to leave the house, so the Restraining Order is specific for domestic violence cases (art. 282 bis CPC) introduced with the law nr. 154/2001 and another provision for stalking cases introduced in 2009 (art. 282 ter CC). In Civil law, there is a specific reference for victims of domestic violence (lex. 154/2001, art. 342 ter Civil Code) which is specifically for cases of intimate violence. In administrative law also, there is a preventive form of PO called *ammonimento*, a form of barring order that 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 (art. 8, lex 38/2009). This law is used and referred for stalking cases where the victim can ask the police to make use of such preventive measure. The scope is to prohibit the stalker to get close to the victim, where she lives or works or studies and to have any contact with the victim and behave with respect of the law. There is also a recent law (lex nr. 119/2013) that introduced a police go order which 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, and allow the police to send the abuser out of the house as long as the public prosecutor has provided his or her approval. All these laws are available on the internet,¹ but not in English.

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

2a-b:

Civil law: Civil law has only one possibility to impose a PO, namely via interlocutory proceedings (art. 342 ter Civil Code).² This procedure is officially an interim procedure, but in practice it is never followed up by substantial proceedings. In other words, the outcome of the interim proceedings is usually final. The civil PO can be seen as an injunction order. The substantive legal basis for such an order is a tort (*ordine di protezione*) in combination with a court order, it does not exclude the normal civil procedure. The interested party asks for the PO and the Civil Judge can decide also in absence of the other party, as long as there are enough elements to take decisions.

Administrative law: Within administrative law, POs can be imposed based on the request of the victim who does not want to start a criminal procedure, however needs some protection. These provisions (*ammonimento*) are for use only in cases of stalking (art. 11, lex 38/2009), and since October 2013, lex 119, also for cases of injuries and threats (art. 282 c.c. and 612 c.c.), regardless of whether the victim has put forward a complaint.

Criminal law: The most complex system of POs can be found in the Italian criminal (procedural) law. In Italy, there are no less than seven legal measures within criminal (procedural) law which can form the basis of a PO, meaning measures that are adopted, among other reason, to prevent the offender from committing the same crime again, which is often what takes place in cases of stalking and domestic violence where the use of these restraining orders, more generally referred to as caution measures, is of high relevance for high risk of recidivism cases. Although these measures have different purposes (e.g., make sure that the offender can await his or her trial in liberty), these measures can specifically have a protection order attached to them. These orders can be issued before the trial during the so called investigation stage (which is up to 12 months for these crimes). Since a thorough discussion of all the seven measures would be impossible, the remainder of the report will mainly focus on these specific POs issued with the intention of limiting the freedom of the alleged offender by preventing him to get closed to the house of the victim, or to get out from the house altogether if

¹ They can be found through the website www.altalex.it or directly from the site www.camera.it or from <http://www.pariopportunita.gov.it/index.php/normativa-nazionale/223-violenza-contro-le-donne->

² In theory, a civil PO can be obtained in substantive proceedings as well, but in practice this will rarely happen.

they were still living together (282 bis & 282 ter CPC). These two measures are most often used to impose a criminal protection order.

Since the issuing of the new law on gender based violence, 119/2013, there is a new pre-caution measure that is issued by the police when intervening in a case of severe injuries, stalking, sexual violence among intimates or former intimates or in any case among people who have or had some form of intimate relationship. The police intervene by either arresting the perpetrator (and this was already in place) or else in the above mentioned cases, by removing him from the house (after the public prosecutor has authorized them to do so). This measure is important compared to the 'classical' Criminal POs because it is executed and issues immediately when the police intervene and is extended to those cases which are considered precursors of more severe violence or even of homicide (femicide), as for the art. 384 bis CPC.³

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)?

In civil law, only the 'victims' – in civil cases called the claimants/plaintiff – can apply for a civil PO, directly or with the support of the lawyer.

Short term barring orders (*ammonimento*) under administrative law can be requested for by the victims (art. 8, lex 38/2009), but since the lex. 119/2013 for crime of injury or severe threats in the context of domestic violence, what should happen is that when the police are called to a scene of domestic violence – regardless of whether the victim called or witnesses – or when someone informs the police about such a situation, they (officially the *Questore* the head of the police in that city, district) will assess (though without an official risk assessment instrument) whether a barring order may be required.

With regard to the 'police go order', the same applies, and in such case the violent person is given a notice by the police as a warning, in order to stop a violent event or prevent it from happening. The public prosecutor will then decide on whether or not to impose the short term 'police go order' (10 days).

For criminal POs, these can be applied only if and when a criminal proceeding has started and before the start of any trial. They have the scope of prevention of recidivism, not of punishment: of protection of the victim, by restraining the freedom of the alleged offender. Once the criminal case has been initiated, either as a consequence of the report of the victim (for cases of stalking committed against an adult victim, in cases of injuries, threats and any behaviors constituting domestic violence) or automatically as in the case of maltreatment (art. 572 c.c.) which is started with no further delay as soon as the crime is known to the police/authorities.

Once the legal authorities (i.e. the public prosecutor) are informed about the alleged crime, a procedure starts (*iscrizione registro degli indagati*) and the investigation stage (*indagini preliminari*). It is during this period (up to 12 months) that the public prosecutors, on the base of what art. 274 CPC can ask the judge for the application of a (criminal) POs, depending on the crime: if the offender and the victim are still living together (domestic violence) then the so called *ordine di allontanamento dalla casa familiare* (art. 282 bis CPC) which

³ The crimes for which this pre-caution measure can be used are 282 bis comma 6, (570,571,582, 600 bis e ss., 609 bis e ss. 612 comma 2 c.c.)

obliges the alleged offender to leave the house and not go back, and the Judge can also impose a maintenance cheque for the family; else if is the case of intimate stalking the most appropriate PO is *divieto di avvicinamento* (art. 282 ter CPC) where there is a limitation of freedom of the alleged offender because he cannot get closed to the victim, to where she lives, where she usually goes (for work, study, etc.).

Once the measure is finished, the victim has to be informed about the end of the measure, which implies the alleged offender has virtually no restrictions anymore. And in fact it can constitute a high risk time. Till very recently, before the new law was introduced, the victim was not informed about the termination of the measure, and did not know about the decision of releasing the offender. This provision of informing the victim was recently introduced thanks to the 119/2013 law.

An important role is played during this stage, for the role played by those who have to take such decisions. The public prosecutor could and should make use of an appropriate risk assessment of recidivism approach for the best risk management strategy. In Italy, a structured use of risk assessment method or instrument has not been inserted in the law yet; the most currently used one is the SARA method (Baldry, 2006, 2011; Kropp & Hart & 2000⁴) however this is not formally introduced in the legislation, so it is left to the individual public prosecutor, and eventually, the decision, to the judge to whom the public prosecutor has put forward the request of the PO.

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?)

In civil law, only the claimant is involved in applying for a PO, the defendant can contest the claim, and the civil judge decides whether the PO will be issued.

In administrative law (a form of short term barring orders, that does not have the same judicial limitation of freedom effect) only the police (*Questore*) are involved either independently or based on request of the victim in issuing a PO (*ammonimento*).

In criminal law POs are issued by the judge/court based on request of the public prosecutor (PP; art. 274 CCP). Victims cannot apply for a criminal PO, although they can spontaneously express their desire to get one, i.e. need to be protected and risk of recidivism, directly to the PP or via a legal part civil representative. It is the PP who applies for a criminal PO to the judge/court. This takes place prior to the trial, as a caution measure, in case of danger of escalation of violence or of reoffending.

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

Civil POs (art. 342 bis CC) are requested by the victim; in emergency and urgent cases, the civil judge has up to max 15 days to make a decision also without hearing the other party (*in audita altera parte*, art. 736-bis CPC). During the hearing when the judge issues the PO, he/she gives up to 8 days for the other party to put forward a rejection, based on own information the victim wants to provide. At the hearing the offender has to be notified and received a summons indicating time and day and reason.

Administrative orders are imposed only after the victim is heard and the police have done the needed investigation. The offender, however, has then 30 days to provide enough elements to nullify the elements brought forward from the victim, based on which the police have issued and the PO, after hearing both parties,

⁴ Baldry A. C. (2006, 2011). *Dai maltrattamenti all'omicidio. La valutazione del rischio di recidiva*. Franco Angeli, Milano. Kropp, P. R., & Hart, S. D. (2000). The Spousal Assault Risk Assessment (SARA) Guide: Reliability and validity in adult male offenders. *Law and Human Behavior*, 24, 101-118.

and criminal POs usually also require prior hearing of the suspect/offender. In some police districts (*Questure*) the alleged offender is informed about the request of the victim and before starting the procedure, the PO waits if the offender has elements to bring forward to prove that no stalking has taken place (art. 8 lex 38/2009) or injuries (lex 119/13). In administrative PO, the offender is informed that if he violates the PO measure the case will turn from administrative to criminal. The offender is informed via an oral communication and there is a written copy of this communication that is then handed to the victim (*verbale di ammonimento*). For Criminal POs the request is done in absentia by the PP to the judge, but the day in which the PO is issued, the offender needs to be present and state he understands it.

- 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?

In Italy, POs are available for specific types of crimes (stalking, injuries, domestic violence, sexual violence).

- 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)?

Criminal POs are always dependent on one of the aforementioned criminal measures. A procedure specifically designed to impose a criminal PO does not exist. Whether the victim wishes to press charges does not make a difference; they are issued when there is a risk of recidivism, then what varies is whether the criminal case it has been activated due to the willingness of the victim (in the case of stalking or injuries, so called *reati a querela di parte*) or is automatically prosecuted (*reati procedibili d'ufficio*). Therefore, the PPS can prosecute regardless of the wishes of the victims, but some crimes, as mentioned, are only subject to prosecution on complaint, e.g., stalking. If the victim does not do this, criminal prosecution is barred and criminal POs cannot be imposed.

Civil POs can be obtained independent from divorce proceedings. Administrative POs are the antecedent of a criminal proceedings so they are in fact meant to be used instead of a criminal proceeding. If the *ammonimento* - the administrative barring order – is breached then this will turn the case to a criminal proceeding and a criminal PO might then be issued.

- 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)

When it comes to civil POs, the victim has to initiate the aforementioned interlocutory proceedings for obtaining a civil PO, directly or via a lawyer (art. 342 bis CC), also *in audita altera parte*. The judge has 15 days to make a decision and fix a day for the hearing where also the abusive partner will be present. The victim has already provided evidence of the unlawful behavior before and the defendant can counter this claim within 8 days. After this period of time, the judge decides on whether or not to impose the civil PO. If it was a trial *in absentia*, the verdict has to be serviced to the defendant.

The procedure for issuing a short term order administrative measure (*ammonimento*) is a procedure done in front of the police, and is described above (administrative law; question 3c).

The procedures for criminal POs vary per type of type of PO. There are two: '*ordine di allontanamento*, art. 282 bis CPC) and *divieto di avvicinamento* (art. 282 ter CPC); the first one is usually for cases where the couple is still together and lives together, since it implies that the offender leaves the house. The second is usually used for intimate stalking cases, since it orders the offender not to get close to the victim, her house, work, places she usually goes to, nor have any contact with her and that is issued within the first 6 month (up to the first year)

from when the case is put in front of the prosecutor office. These orders are usually pre-trial and the PPO can apply for one to the judge at any moment where there is a risk (among other elements) of recidivism, of commission of further crime, infringing the safety of the victim. However, theoretically they can also be issued during the trial or after the sentence.

With regard to the pre-caution measures 'go-police order' this is done immediately when the police intervene in the emergency when the crime is taking place or has just taken place.

The public prosecutors during an investigation can request this order from the so called GIP (*giudice per le indagini preliminari*).

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

Civil POs are often praised for the short processing time of cases. Since they are imposed in interlocutory proceedings, they take up less time than normal civil proceedings. In 2001 the new 154/2001 law was introduced on purpose, to avoid that the victim had to take the criminal path, and that he was protected also (only) via the civil path, regardless of a concurrent or subsequent criminal proceeding that might still take place or run parallel. The judge, from the date of the request, has 15 days to make a decision. The actual hearing depends on the case and the amount of information brought forward.

Short term barring orders (administrative law) generally have the shortest processing time. After the police arrived at the scene of a (domestic violence) crime, they can immediately once the police thinks there is a risk (though have no official risk assessment instrument yet to use). The outcome is then forwarded to the assistant prosecutor who immediately decides on issuing a barring order.

With regard to the *ammonimento*, once the victim has put forward the request, the police have up to two weeks to hear other parties, including the stalker or the abuser, and then decide whether not to impose a warning, close the case, or else issue the measure, which is communicated orally to the offender and motivated purely administrative one.

Criminal POs – or rather the criminal measures forming the basis of criminal POs – vary when it comes to their processing time. They can be imposed very quickly (e.g., when a suspect is arrested and brought before an examining magistrate and if the public prosecutor is well trained and aware enough to request such order to the judge immediately, and there is a series of risk factors that makes it a 'high risk case of recidivism'), though there is no a recommended time. They can also take up (much) more time, and can be requested and issued also during the trial and after the sentence, if there is no evidence of risk or such risk is underestimated.

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?

The civil judge, once the decision is taken, notifies it to the offender (342 bis c.c.) and also might prescribe some specific further actions (a payment check, where not to go, not to get closed to the victim, refer to a mediation family center). These further actions are immediately into effect once the judge decides to issue the POs civil measure.

Short term orders barring-orders also have immediate effect, though the judge has up to 48hours to provide the final decision (confirm the request made by the police once they enter into the apartment, or wherever they had to do the intervention).

Criminal POs come into effect once the judge has decided, based on the request of the public prosecutor. Most criminal POs can be ruled to have immediate effect. This is left up to the judge.

The administrative measures are notified to the offender immediately once the police has made a decision.

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?

The short term barring order can be imposed immediately by the police (384 bis CP) but has to be validated by the prosecutor office within 48 hours. Although it comes into effect immediately, it has a limited duration (10 days). Civil POs also can be imposed rather quickly once they are requested (within 15 days). For the steps that need to be taken to finalize the (civil) protection after the interim order, see 5a-c.

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?

Civil POs exist and have a meaning due to the emergency issues; it's their rationale. For the applicant in order to have such an order there has to be a prejudice, a risk on the safety and the well being of the person requiring it, since their physical and psychological life is, in some respect, at risk, not simply because a partner is fed up with the other (sic). For civil POs it suffices if the judge considers it plausible that the defendant acted unlawfully against the claimant or that there is a real threat of future unlawful behavior. The judge can in that case impose a PO to prevent future unlawful behavior.

Short term barring orders can only be imposed on (adult) persons who live at the same address as the victim or who reside there on a more than incidental basis (art. 384 bis CC., short term Barring Orders). The continued presence of this person in the home needs to constitute a 'serious and immediate danger' for the persons left behind. This threat is evaluated directly by the police who intervenes but should be established with the help of a risk assessment instrument, as it is done in other EU countries.

For the administrative 'ammonimento' we need to establish that there is stalking taking place and that the victims need to be protected. In practice, though this is not explicitly mentioned in text of law, there must be a series of objective elements for the victim to show (witnesses, proofs of mails, text messages, unwanted gifts) or in the case of injuries, the report of a doctor or of an emergency room. Theoretically the victim statement is enough, however practically it is not.

Again, the exact application criteria for criminal POs differ per type of PO. Often, criminal POs require (a suspicion of) a serious crime, but some POs can be imposed in less serious cases as well. The requirement is that the maximum number of years of sentence foreseen by the type of crime is 4 years (and this holds true for stalking, maltreatment, i.e. domestic violence, serious threats, severe injuries). Since there are slightly different forms of POs and these vary according to the living condition of the victim and the offender (i.e. if they are living together or not), the decision overall is based on the level of risk of recidivism or harm to the victim, meaning it is based on several risk factors such mainly prior criminal records. The decision cannot be made based on the personality of the offender since this is explicitly a condition that cannot be taken into consideration for assessing risk and decision of POs (art. 220 CC).

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

Legal representation for the victim is an option in all proceedings. When it comes to the short term barring order or criminal POs, the victim does not have to be represented either, and the same is true for the administrative legal *ammonimento* it is not needed.

c. Is free legal representation/advice available?

In civil cases as well as in criminal ones, claimants with few financial resources can apply for subsidized legal representation. In civil proceeding the judge can order the assailant to provide a maintenance check to the victim. Since the introduction of the law 119/2013 all the victims of domestic violence, sexual violence and stalking have free legal assistance regardless of their income in criminal proceeding.

Furthermore all women victims of violence can contact one of the services or a Non Governmental Organisation (NGOs) existing on the territory for legal, social, and psychological support free from charge, though these are not equally distributed in the country.⁵

- 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)?

This varies of whether the PO is administrative, civil or penal.

With administrative law (*ammonimento*), there is no a specific indication what the offender can do or not. He is invited by the police to behave according to the rules, to the laws. In the context of criminal measures (art. 282 bis & ter), some types of POs can be imposed, mostly 'no contact' orders and prohibitions to enter a certain area, no communication. This has to do with the fact that a PO can seriously infringe on a human right (of freedom) and therefore can only be imposed on the basis of a legal provision that is sufficiently clear and predictable. With regard to the administrative 'pre-caution' measure (384 bis CPC) adopted by the police, with the authorization of the public prosecutor office, the person is sent out of the house with order not to come back for up to 15 days. The types of protection available under a short term barring order are exhaustive: the barred person is not allowed to enter the family home therefore for 15 days and to contact the persons who stayed behind.

- 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?

Yes, in fact all the POs, criminal and civil foresee for people living together, a barring order implies getting out of the house for up to 1 year. The judge can also prescribe to the offender to pay the victim an amount of money for sustaining her and the family. In addition, it is foreseen also to send the offender to a service for treatment, and the victims to a service for women victims of violence. During the barring period, therefore help can be provided to both the victim (e.g., social services) and the offender (e.g., health service, where available). For the short term barring order this is not set clear, what the offender is supposed to do during the order.

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

The most popular types of protection imposed under civil, criminal and administrative POs are: 1) the no-contact order, 2) the order that prohibits an offender to enter a certain street/area, and 3) the civil and criminal barring order which obliges the offender to leave the family home.⁶ There is also the possibility that the person is detained at home arrested, but this is possible only if the house where the offender is staying is far from the house of the victim.

⁵ See www.direcontrolaviolenza.it .

⁶ Baldry, A.C. (2013). *Dai maltrattamenti all'omicidio. La valutazione del rischio di recidiva*. Angeli, F., Parodi, M.C. (2009). *Lo stalking e la tutela penale*. Firenze, Giuffrè

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)?

Most types of POs can be imposed in combination with each other. This goes for all areas of law (civil, criminal), but the administrative *ammonimento* is not possible with a criminal proceeding for the same crime. First we have an administrative route, that if it does not work (i.e. the offender violates the measure) then there is a start of a criminal procedure

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

The most popular cases can be found in the criminal restraining order where the offender is sent out from the house and ordered not to come back. This is the so called 'no contact' order. This can be for up to one year and the same applies for another restraining order (282 ter CPC) that forbids the offender from getting any closed to the victim. These are seen as prescriptions that the judge includes in the criminal procedure, added one to the other. The restraining order is that the alleged offenders needs to leave the house and is also told he cannot get closed to the house, communicate with the victim, pay a check to the victim; the vast majority of the cases contain this combination. If the order (282 ter CCP) is for stalking cases (in general but most often in the cases of the former partners that constitute the most frequent cases) then the offender is ordered not to get closed to the victim. There can be a combination of a civil and criminal case, though civil cases (342 bis CC see table below) are not as frequent as the criminal PO. Combinations are found very often in criminal case files, but most criminal cases only contain the criminal 'no contact' order

- 8) a. 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?
b. How does this work in practice? How elaborate are these protection order decisions in general?

The criminal protection orders according to the art. 274 CPC in general can be asked to the judge by the public prosecutor when: a) there is a risk that an alleged offender infringes the elements, grounds that exist against him; b) there is a risk that the alleged offender escapes, c) there is a risk of recidivism of the same type of crime. POs can only be applied for those crimes that have as a maximum of sentence 4 years (so this is foreseen for stalking and domestic violence). Criminal judges, when they prescribe the measure, need to indicate in the most detailed way as possible where the offender can go. This is especially true in those cases where the offender lives or works close to the victim, so it is not possible simply to indicate that the offender has to stay at a certain distance from the victim. Since 2013 (lex 119, art. 282-quarter) there has been an addition for the art. 282bis and ter CPC indicating that the ROs are less restrictive if the offender has undergone successfully a treatment program. The administrative POs measure of the art. 8 lex 38/2009 is the most flexible one since there is not a limitation of freedom as such so any imposition limiting his freedom, but the stalker is told that he has to keep a behavior that conforms to the law.

- 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?

There are practically no legal limitations to the scope of civil and criminal POs. There are only some general restrictions – such as proportionality, the requirement that the conditions of the PO can only relate to the behavior of the offender, and the stipulation that the conditions cannot infringe on the freedom of religion or beliefs, or someone's political freedom. In addition, some attention is paid to where the offender lives and works, so that he can go on working, or practicing and religious or other forms of expression that he is still entitled to do. There is no indication as to what to write; this however does not mean that in fact the judge can specify in what the order in fact consists. What in fact happens, when the PO is too loose, is that the offender justifies his presence next to the victims' house or her work, or the school and so forth by saying that he had to

be there due to his work, or to visit someone. In this regard, more detailed orders, though more lengthy and strict, on the other hand helps and protects the victim more.

Short term barring orders are (pre-caution measure, 384*bis* CPC), by nature, restricted in their scope. They only apply to the family home, and this means that the offender is told he has to leave the house. It is the Criminal POs (nr 282*bis* CPC), that is for offenders still living at home, that orders to leave the house, but also specifies/orders not to go back and stay away

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

See question 9a for the general restrictions.

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

In practice, many judges/public prosecutors will take all sorts of factors into account, most of them related to the proportionality and personal circumstances of the defendant/offender (e.g., whether family/friends live in a certain forbidden area). Very extensive POs – encompassing entire villages or cities – are therefore seldom imposed; these are other measures all together (*obbligo o divieto di dimora*, art. 283 CPC) that imply that the person has to live in another district, city or village, but these are not frequently used in cases of domestic violence and stalking, and are not so frequently used especially if the offender lives and works in that given city/village.

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”)?

Nor Civil POs nor Criminal POs are (practically) indicated on a map and the use of radiuses is much more frequent. Since the commencement of the law 119/2013, the electronic bracelet was introduced, that could be used to determine where the offender resides, but has only started recently, so we do not know its effect.

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

The average scope of an order that prohibits someone to enter a certain area is usually limited to one or more streets linked to the house of the victim or her parents and the place where she works/studies. POs with a more extensive scope are much rarer (see point 9).

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?

Civil POs, originally could be issued for 6 months, renewable for another same time period. Now is up to one year (lex 119/2013) and it can be renewed, if the party makes a specific motivated request to the judge, and it can be renewed strictly for the needed time, though it is not specified for how long ⁷

Criminal POs usually have a legally determined maximum duration. Either this duration is explicitly stated in the legal provision (the maximum duration for the ‘punishment order’ (*misura cautelare*) is set at one year) or it is

⁷ www.altalex.it

self-evident (e.g., the suspension from pre-trial detention ends when the case is brought to trial).⁸ The longest PO can be imposed up to when there is the High Court decision, even up to 4 years. None of the civil or criminal POs have a minimum duration, could last a few weeks.

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

This is very discretionary. Factors that possibly play a role in deciding on the duration of a PO are type of offence that took place, its seriousness of the offence and risk of recidivism, though this is not done with structured instruments.

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

Civil POs, originally could be issued for 6 months, removable. Now is up to one year (lex 119/2013) and it can be renewed, if the party makes a specific motivated request to the judge, and it can be renewed strictly for the needed time, though the law does not specify how long.⁹

For criminal POs, these usually last one year. They end once the sentence is provided, and this can take up to 4 years, but the POs that are considered not needed will last less.

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?

Victims are most influential when it comes to civil POs. After the civil PO expires, they can ask for a renewal. If there are reasons to admit the PO needs to be renewed, it will be renewed/.

For administrative *ammonimento*, also, it is issued based on the request and the willingness of the victim, though the decision at the end is of the police.

With short term barring orders the influence of the victim is much less. Barring orders can even be imposed against the wishes of the victim. The same goes for criminal POs. Victims can request the cessation of these orders, but the legal authorities are not obliged to pay attention to this request, in theory, if they consider the risk high. The rationale here is that victims might underestimate the risk. The problem occurs if the victim herself infringes the order and for example stays in contact with the offender and sees him or talks to him. It is for this reason, that it is essential that these victims are followed and sustained and helped by dedicated service for victims.

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?

In the case of the administrative *ammonimento* both parties are heard, after the victim requests for such measure. However the decision is taken by the police only if the victim requires; though with the 119/2013 law, for the crime of threats and of injuries and stalking the request/indication for need of an administrative barring order can also be made by other people.

With criminal POs, the request is done by the public prosecutor and is based on the crime committed and the risk of recidivism. The victim declaration, the fear she has, the evidence of risk factors and her vulnerability factors should and could be taken into account, though there is no formal assessment of these factors¹⁰.

⁹ www.altalex.it

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?

As for civil POs, the victims/claimants request a certain the PO in their summons; however the duration and how this takes form is left to the civil judges. In administrative POs, the victim puts forward the request but the decision is of the police. The same for the criminal POs: the victim or her lawyer can bring forward new elements for pressing the issuing of the POs or its extension.

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

In principle, all civil and administrative POs can be challenged or appealed by the offender, by bringing elements that support his view. With regard to criminal restraining, the offender cannot appeal before the decision. Afterwards, via the so called *Tribunale del riesame* the person can ask for a change of such measure to a less severe and restricting one.

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?

In civil proceedings both parties can express their feelings towards a PO. During trial, the offender can, for instance, call the judge's attention to possible disadvantageous consequences of the requested PO, such as, for instance, the fact that the PO would no longer allow him to visit family, friends or work. In this regard any needs that can be taken into account, are considered.

The same applies for the administrative *ammonimento* where the offender can object, and this could have an effect if in fact he manages to show that there is no ground for such POs, and the actions claimed behind it.

The wishes of the offender are not (really) taken into account when it comes to short term barring orders, since its decision is in fact given when there is evidence and risk. Typically, these orders are imposed regardless of the wishes of any of the parties involved and they also entail the same conditions.

In criminal law, if the offender disagrees with the POs (s)he can always appeal and try to reverse the PO or to change the conditions of the PO but after this has been issued.

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?

See question 13b), but not really.

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 is no empirical material available in Italy to answer this question. Anecdotal evidence suggests that public prosecutors and judges can have a different approach, and this is true especially in peripheral areas of the country, i.e. not in main ci

¹⁰ See Baldry, A. C. & Winkel, F.F. (2008). Risk Assessment of domestic violence. Nova Publisher.

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)?

Yes, definitely. Certain measures are based also on prior measures and the behavior attached to it (e.g. violation of such measures). If an offender has received in the past a POs for the same victim or a different one, this is an element to assess a higher risk of recidivism, though, as mentioned, currently, there is no official risk assessment measures/instruments used.

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

Children are not automatically included in a civil PO. However there are special provisions (art. 333 C.C and 336 C.C) issued by the Court of Minor that are in charge of the protection of children at risk that prescribe that the dangerous parent leaves the house and the decision about custody is taken. As for the short term barring order: this order automatically extends to the children if they are living in the family home. Criminal POs do not automatically extend to children. As with civil POs, criminal POs have to explicitly state that they extend to the children as well.

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

If the offender has visitation rights, POs that only apply to one parent can take these rights into account – e.g., by formulating the prohibitions so that it does not violate visitation rights or in a way that still allows for contact with the children to some extent.¹¹ If the PO also extends to the children, it can supersede visitation rights. It is important, in this regard, that the decision and the provision is brought forward by the Court of juvenile when it takes decision with regard to minors protection and restriction of access of one or both parents. This is what might happen in cases of domestic violence where also children were involved (e.g. psychological violence as witness, exposed, not only as directly abused).

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

Anecdotal evidence, suggests that in practice there are indeed problems with custody/visitation decisions by the courts and PO decisions. This visitation can be particularly problematic in cases where there is a high risk situation, and the visitation can be an occasion of further threats and violence.

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?

a) Civil, administrative and Criminal POs are never mutual, although there is no explicit prohibition to this extent. In theory, if both parties have started a procedure and there are grounds for, it could be possible to impose mutual POs, but anecdotal information shows that this never occurs.

¹¹ An example would be a father who is no longer allowed to contact his ex-wife, but still has visitation rights. When this is the case, the PO can, for instance, instruct the father to end all direct contact with his ex-wife. If he needs to contact his ex-wife for business related to the children this contact has to pass through her attorney, and the actual visitation has to be arranged with the help of a third party so as to avoid direct contact with his ex-partner.

b) The rationale behind criminal POs not being mutual is that the criminal investigation and prosecution revolves around the suspect/offender, not the victim. The criminal justice authorities cannot impose criminal POs on victims. Although strictly speaking short term barring orders are not applicable to the victims, they are advised to refrain from contacting the offender themselves. Still, they are not mutual, because the legislator only wanted to restrain the person who formed the biggest threat.

- 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)?

18 a-c) Administrative barring orders and criminal POs are provided free of charge. Only civil POs cost money, if one part is making the request via a lawyer, i.e. costs for legal representation. Usually, the party who loses the civil trial has to pay for the legal costs. However, the civil judge can decide differently and order both parties to pay for their own costs.

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?

Civil POs are not registered, yet the claimant receives a copy of the verdict.

There is now a system, at the Minister of Justice, where civil POs are registered and can be found, divided according to the different local district. Short term barring orders are registered in the digital systems of each of the separate partners involved in the barring order (police, SDI, *Sistema di Indagine*). Now, since the new law, they register short term barring orders in the same way as they register other police information. Criminal POs are not centrally registered, so it is not possible to have a national data on where they are given. The information is locally registered at each single Court District.

- 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?

Civil POs are generally imposed immediately after the oral hearing so the victim/claimant is automatically informed of the PO and its conditions. The Civil dispositions are also in place with the request of the victim so it is evident that she knows there is such imposition. The same applies for the administrative measures. With the criminal POs, now with the new law 119/2013 the victims has to be informed about the measure been ordered and any changes to the POs, i.e. if this ends or is changed into another measure.

- 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?

With civil POs, it is the claimant who is responsible for monitoring compliance with the PO. As soon as (s)he establishes a violation, (s)he can contact the police and/or an attorney.

Short term barring orders are monitored by the police, but the probation services and social services have a signaling function as well.

Although monitoring compliance with criminal POs is officially the responsibility of the PPS, in practice, this is mainly delegated to the police and the probation services, and is up to the victim to inform the police if there is a violation.

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

Strictly speaking GPS, that has been introduced for criminal cases also related to domestic violence and stalking only recently, could be used, though they have only been applied so far in cases where the offender has been ordered as a pre-trial measure, such as a home arrest. The GPS is connected to the police, so it is responsibility of the police its use and respect of such measure.

Extra surveillance, such as house visits can be used at the discretion of the police. Also, the probation services can ask during their meetings with the offender whether (s)he obeyed the PO, and the services for victims who can indirectly check via victim whether she is actually safe, though they are not obliged to do so.

There has been an experiment with the Vodafone Foundation of the so called 'Mobile Angel' an electronic AWARE alarm system. The victim could push the alarm button once the offender violates the order, or in any case of risk which will immediately alert the police, via the service for victims. Although strictly speaking, the Mobile Angel was not meant as a device to check compliance with criminal or administrative POs – its primary aim was to prevent (re)victimization – and although the alarm system cannot be imposed as part of a criminal procedure, the quick reaction of the police may increase the odds of catching the offender red-handed (*in flagrante*). This project was supposed to become national, based on an agreement between the Foundation and the Police.

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

Generally POs are not actively monitored with the help of GPS, extra surveillance or house visits. The police have a more reactive approach instead: they wait for the victim to report violations.

Possibly, some districts have a more proactive approach when it comes to monitoring the short term barring order or the administrative *ammonimento* since there is a more direct relationship with the victim.

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

GPS is used rarely and only in the most serious cases, since it is seen as a drastic measure.

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

It is generally left to the victim to report violations (see 22b).

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?

Consequently, monitoring authorities generally become aware of violations through the victim, not pro-active monitoring activities (see 22b).

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

Practically nothing happens, though is not advisable and most of all the victim puts herself at a high risk situation and indirectly infringes her credibility of being at risk.

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

No, see 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?

Technically, the contact with the offender does not have preclusion on the POs; however, this could affect the authorities in being less inclined to enforce the PO. The rationale is that the victim might not be so worried or scared if she contacts the offender. However, when this happens, the psychological dimension of the victim should be kept in mind, especially in cases where the offender is the former husband or cohabitant where several entrapments might go on in the life of the victim. In addition, she might be scared and afraid and hopes that by talking to the offender she is able to calm him down.

For the administrative PO *ammonimento*, if the police learns that the victim is having contact with the offender, on her initiative, this could influence their decision to issue such an order.

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

Civil POs, short term barring order and criminal POs: These are considered self-evident. There is not a specific indication of what constitutes a violation, or a procedure but this is quite self-evident. The police are informed and the public prosecutor (for Criminal POs) has to establish a more severe restriction. Violation of a criminal PO, according to art. 276 Code of Criminal procedure implies that a more severe measure is issued. Some discretion takes place, since a violation does not always lead to arrest or to the aggravation of the measure. There is no specific indication of what constitutes a violation for such order, though this simply means not conforming to its requirement.

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

Civil POs: Once the victim becomes aware of a violation, (s)he has to contact his/her attorney who, in turn, will contact the judge. This constitute a violation of the law according to the article 650 of the criminal code that quotes that whoever does not conform to a decision of the legal authorities commits a crime, in addition to the crime committed, is arrested for up to 3 month or a fine of 206 euros.

Short term barring order: The victim and/or other organizations that become aware of the violation of a short term barring order can contact the police and then is the police hear of the violation, they have to report this to the PPS, which decides on further (prosecutorial) steps.

Criminal POs: Violations of criminal POs have to be communicated to the police and/or PPS. As soon as the public prosecutor is informed (s)he will decide on further (prosecutorial) steps.

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

See 24. b

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)?

Next to formal reactions, it is also possible to give an informal reaction to a PO violation (see 24b).

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

The most prevalent reaction to a civil PO is to have the incremental penalty payment collected by the bailiff. Which reaction usually follows on a violation of the short term barring order is unknown. Even though many districts have agreed to always arrest the offender, it seems that in practice, some offenders get away with a warning. Also, in some districts these cases often end in a dismissal. The same goes for the violation of criminal POs. Although the public prosecutors indicate that PO violations are usually followed by an official reaction (see 25a), it often depends on who the PP is and how severe he/she values the violation.

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

There is no empirical evidence on the effectiveness and dissuasiveness of the sanctions/reactions to PO violations, so it is difficult to answer this question. In my opinion, the offender is not really aware of the consequences and the risk, so I think is not effective.

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

Not in everyday cases. If the victim has direct contact with a given police station, an officer or even a public prosecutor, this could be the case. Otherwise it is very discretionary.

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?

In the Italy, violation of civil POs, as well as violation of any disposition of the legal authorities constitute a crime, art. 650 of the criminal code (see above). In addition, if by violating the order he/she had committed a crime then this is taken into account independently.

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

Violation of disposition of authorities is equal to 3 months of arrest or a fine of 206 euros.

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

In case of a violation of a short term barring order, civil and criminal POs, the police will, in principle, always report this to the public prosecution service, since this violation is a crime per se. They can also arrest the offender, and this is now compulsory in cases of severe injuries and domestic violence. Anecdotal evidence however suggests that the police often remain inactive after a violation has occurred. This is why there is a lot of emphasis on training of police.

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

The victim always has to call the police when any PO is violated since violating an order or the court is considered a crime (art. 650 c.p.); the reactions vary. It used to be discretionary the arrest on behalf of the police, but since the introduction of the new law (119/2013) for cases of domestic violence and severe injuries the police has the obligation of conduct the arrest.

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?

There is not something as such as 'monitoring authority', so for civil POs is the claimant his/herself, and (s)he needs to report the violation to an attorney who will, in turn, contact the civil judge.

In case of the violation of a short term barring order or a criminal PO, the monitoring authorities (i.e., the police) also have to report violations to another authority, namely the PPS. The PPS, in turn, are authorized to sanction some PO violations themselves (e.g., in case of conditional dismissal the PPS can decide to prosecute for that violation), but most of the time they have to ask the (examining) judge to sanction the offender.

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

When it comes to the short term barring order and criminal POs, the police and the probation services are in principle obliged to report all violations that have come to their knowledge to the PPS, but in practice they sometimes have discretionary powers not to report violations, especially probation services. The law now eliminates this discretion, and it should be prosecuted automatically.

Victims can freely decide whether or not to report violations. Usually it depends on how serious the violation has been and if the victim is scared and perceives the violation as a risk for her. The decision to prosecute, however, is independent from that.

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

When it comes to the violation of short term barring orders or administrative *ammonimento*, if the victim herself does not press charges, or minimizes the violation, then it is less likely that actions will be taken.

In the case of criminal POs, sometimes the police also decide not to report a violation to the PPS – despite the fact that they have no official discretionary power thereto. On the contrary, for cases of domestic violence and serious injuries, this discretion does exist. For other crimes, whether the police report to the PPS depends on the available evidence of the violation and the seriousness of the violation.

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

To the best of my knowledge, the monitoring authorities do not receive a specific training in this regard.

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

Civil law: Since 2008 the General Directorate of Statistics of the Ministry of Justice gathers this information. The Civil POs started in 2001, but to gather information from there, these needed to be gathered directly from each court district. In 2012, 659 orders had been administered (ex art. 342 Civil Procedural Code), in 2011 619 cases, in 2010 646, in 2009 644 cases, and in 2008, 539. These data are provided by the Minister of Justice, statistical Office.

Short term barring orders: These are not collected in a centralized way, so each district needs to be contacted to have numbers. With regard to the administrative *ammonimento* data are gathered by the Statistic office of the Criminal Police. Since the law 38/2009 (February) there have been 5321 cases (1027 in 2009 – from the 23.02.2009; 1267 in 2010, 1078 in 2011 and 1080 in 2012).¹²

Criminal law: Criminal (procedural) law has over 7 ways of imposing a PO, though we consider actual POs for cases of domestic violence and stalking and injuries as the two main ones. There is no a systematic way to research these measures in a systematic way. Data have been gathered for specific purposes by the National Service for Victims (DiRe) in 2009¹³.

- 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?

30 a-b) When referring to domestic violence, stalking and injuries the measures that are most frequently used are barring orders (see question 29), which automatically also includes a no-contact order, followed by the prohibitions to enter an area. But the criteria are the type of crime reported. With regard to the administrative measures, these are always consist the same form/characteristics.

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

Most protection orders are explicitly issued for domestic violence, stalking, injuries. Although civil interlocutory proceedings (officially) do not revolve around crimes, but around unlawful behavior, most of these cases do involve (repetitive) assault, (repetitive) threats and stalking, often between (ex)partners.

Short term barring orders (ex art. 384 bis c.c) are by definition only imposed in cases where domestic violence or severe injuries have occurred or are on the verge of occurring.

Criminal POs are also generally issued in cases involving assault, threat, stalking and – to a lesser extent – often between (ex-)partners.

¹² Source: Direzione Centrale della Polizia Criminale – CED – SDI. Elaborazione: Direzione Centrale Anticrimine della Polizia di Stato – Servizio Centrale Operativo – Divisione Analisi.

¹³ www.diredonneinrete.it

32) Is there any (empirical) information available on specific victim and offender characteristics?

a. Are protection orders generally imposed against male offenders on behalf of female victims?

POs (civil, criminal, and administrative) are generally imposed against male offenders on behalf of female (or multiple) victims, though there is no indication of whether these have to involve only males or females. More than 80% of the POs are imposed against a male offender. The protectee, on the other hand, is more often female (e.g., 82.7% of the civil POs aimed to protect a female)¹⁴.

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

There is no systematic research in this area. There is only a recent study conducted by the Department of Psychology of the Second University of Naples, but this study is in the process of being published, therefore the data are not available yet and is in press¹⁵.

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

See 32b).

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)?

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

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

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)?

33 a-d) There is no empirical information available on these matters. See 32b).

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?

34) There is no empirical information available on this matter.

¹⁴ Source: Direzione Centrale della Polizia Criminale – CED – SDI. Elaborazione: Direzione Centrale Anticrimine della Polizia di Stato – Servizio Centrale Operativo – Divisione Analisi.

¹⁵ Baldry, A. C. & Giacomantonio, C. (2014, in press). Efficacy of administrative restrictive measure in cases of stalking. *European Journal of Criminology*.

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?

35 a-c) There is no empirical information available on these matters.

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

Over the past few years, many legal measures have been created that can form the basis of a PO – especially within criminal law in Italy. All these measures have been put into place to provide viable instruments for the protection of victims of domestic violence, stalking (when it became a crime in 2009) and to adhere to the European standards. Also they have been put into place after the increase of awareness of the relationship between these crimes, their recurrence and femicide, therefore the importance of stopping such behaviors has been emphasized. The civil POs are not used as much as they could/should be used, especially in some areas of the country. There are Civil courts that use them quite regularly and others that don't, regardless of the number of cases in that given region/province.

The measures are still being used and adopted without a systematic procedure; therefore there is still a great discretion of use and adoption between different POs. This is because some judges consider them at the border of anti-constitutionality because decisions are often made by hearing only one party. Also in the criminal sector, for cases of DV and stalking or injuries, there is still some reluctance when the perpetrator doesn't have any prior (criminal) records. The problem here is also not having a structured shared risk assessment method.

With the short term barring order, issued for cases of injuries and domestic violence, the law was only introduced very recently, so it is not possible to draw some considerations. The law does not indicate the margins, terms for issuing such order in a very strict way.

- b. Problems with protection order imposition/issuing/procedure

Lack of objective procedures in which cases might be effective. The victim is not always involved in the process, therefore is not aware of the implications of the order and a system of monitoring the issuing and implementation of such orders, i.e. if they work or not.

A problem that is applicable to civil and criminal POs is that often the scope of the PO is not clearly delineated or defined. With 'no contact' orders, for instance, it is often unclear whether contact initiated by the victim or contact through third parties also falls within the realm of the PO. Also, with prohibitions to enter a certain area, the use of radiuses is complicated. How can you measure this? In addition, 'vague' formulations, such as 'in the direct vicinity' or 'in the surroundings of' can create misunderstandings.

- c. Problems with protection order monitoring

Civil POs are only monitored by the victim, nobody else. In fact, civil POs are not even registered with the police stations, so they are not even aware of the existence of a civil PO.

A problem that is specific for the short term barring order is that many victims are reluctant to report violations to the police because they are afraid of retaliation of the offender or things getting worst. The same takes place for criminal POs even in more serious cases and higher risk.

When it comes to criminal POs, some practitioners complain about the fact that these POs (and their violations) are not always properly registered or communicated to the monitoring authorities, nor to the victims and even when such violation take place, no real actions are set up.

A problem that is applicable to all types of PO (civil, barring order, criminal) is that pro-active monitoring is practically impossible. The monitoring of the efficacy of the measure is entirely dependent on the input of the victim and they take on a reactive approach to PO monitoring (they wait for the victim to report). The usefulness of extra surveillance and house visits – besides being time-consuming and costly – almost never takes place, as such, with out an explicit intervention on behalf of the victim. Unless the use of technical devices is allowed (e.g., GPS), the possibilities of monitoring POs are very limited, and the odds of catching an offender in the act of violating a PO are small. GPS, however, is only used very rarely.

d. Problems with protection order enforcement

The biggest problem with civil POs is that they are hardly known by many policeperson, and their rationale is not fully understood. It is often via the victim services or individual lawyers that actions are taken to request these provisions.

With regard to the other sectors, here measures are also put forward and enforced often based on the capacity and training of the police, since some discretion is in some cases still present, and not all policepersons receive the adequate training.

e. Problems with protection order effectiveness?

Many of the above mentioned problems – e.g., lack of monitoring possibilities, problems with registration and communication, police reluctance to act – could have a bearing on the effectiveness of POs. However, whether these factors actually play a role in PO effectiveness is unclear, since there has never been research conducted in Italy on this topic.

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

In my opinion the biggest problems are: lack of monitoring possibilities, reluctance on the part of the police and/or the probation services to report and intervene when a violation occurs, unless for cases where there is evidently a high risk of recidivism or clearly a case of recurrent violence and the victim explicitly collaborates and provides support and evidence. Protection orders are not in the Italian culture as such, because their ratio is that of prevention (and protection) of the victim, but our system is very much offender oriented. In addition there is still too much discretion on to whom these measures should be issued. The legal and social culture to contrast, combat and prevent violence against women is quite recent, and also professionals are still full of preconceived ideas about the implementation of laws. Some provisions of POs are still quite recent to actually estimate its impact and how they can be effective measures to contrast the phenomena. When the victim, often due to her fear, seems not willing to collaborate, this becomes more problematic, because it is often perceived as a low risk situation or even a way for the woman to get away for some advantages on her behalf.

2.2.6. PROMISING/ GOOD PRACTICES

38) Which factors facilitate the:

a. imposition

With the very recent law, and some guidelines and best practice being circulated among different court districts about what works and how, it renders police and public prosecutors and the judges more aware of the measure and they are more prone to use it, also because now for some POs (e.g. short term barring order) the police has no more discretion and they have to intervene.

In criminal law, though, the POs could in theory be issued at all stages, in fact, the ratio behind POs is being a preventive measure, so adopting them at the earliest stage as possible, once the crime is known, is best.

This is quite evident in cases of administrative law and the provision of the *ammonimento* which is a measure that allows in fact, if respected, to stay outside the criminal procedure and in fact prevent the stalking or the violence to take place again.

b. monitoring, and

Monitoring of POs is still rather non-existing in Italy, and in fact consists of the victim letting the authorities know about the effect and efficacy of the measure.

The first monitoring on the efficacy of the administrative measure is on its way and is with a representative sample of all the cases who started a administrative procedure for stalking¹⁶.

A factor that could facilitate the monitoring of criminal POs is, furthermore, the use of electronic devices, such as GPS.

c. enforcement of protection orders?

A huge improvement in the enforcement of criminal POs is that recent changes to the legislation increase the responsibility of those in charge of issuing such measures. The responsibility of their enforcement is on the behalf of the public prosecutor, judge and the police. With civil POs this is still not clear.

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

The key factors to PO effectiveness are:

- The victims consent with POs (so as to avoid contact initiated by the victim caused by increased sense of fear of retaliation and revictimisation);
- Training of police and magistrate on the need of use of the measure;
- A clear understanding and credible actions taken as a result of PO violations via a reliable monitoring process;
- A more extensive use of technical devices to monitor compliance;
- Clear and set up monitoring research for the assessment of efficacy of such measures.

¹⁶ Baldry, A. C. & Giacomantonio, C. (2014, in press). Efficacy of administrative restrictive measure in cases of stalking. *European Journal of Criminology*.

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

I think it is promising that some practitioners indicate that they pay more attention to victim safety nowadays and that POs are viable and an effective path in line with the Decision Framework on the position of victims in the criminal justice. They are more aware of what the law foresees with regard to POs and that these have multiple advantages since the offender is given ad hoc measures. This is thanks to the long work done by NGOs, which have listened to the needs of victims these past 20 years and see what actually works in the protecting victims from recidivism.

It would be of use to have a shared method of risk-assessment in Italy which could be of use for different practitioners (police, social workers, lawyers, judges, public prosecutors) so they have a shared understanding of timing and ways to protect victims.

All these practices are promising because they may have an impact on the effectiveness of POs.

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

Factors which may improve the situation are:

- Use standard formulations to delineate POs such as 'no contact' orders: this means more clearly indicating with prescription what is implied in the POs (where the offender can or cannot go; what happens when the offender violates);
- Use maps to delineate POs that prohibit a person to enter a certain area instead of radiuses;
- Have the victim play a more active role in PO imposition and design in all stages of the criminal procedure (e.g., through PPS guidelines);
- Make victim protection (e.g., through POs) a standard consideration in all prosecutorial decisions;
- Pay more attention to informing victims of the PO and its conditions and whether the PO is removed;
- Try to strike a balance between the victims safety and the offenders interests (e.g., try to avoid POs that are disproportionately disadvantageous for the offender);
- Improve a system of all types of PO registration, also when it comes to violations, and avoid imposing another PO once the (criminal) record shows (repetitive) PO violations in the past (increases the risk of recidivism);
- Include PO monitoring and enforcement in police and PPS training;
- Explore possibilities of an extended use of technical devices to monitor PO compliance (if not possible through GPS, then perhaps AWARE);
- Prioritize victim protection and reaction to PO violation;
- Conduct (empirical) research on PO effectiveness;
- Have systematic review/research on the effectiveness of such measures.

2.2.7. FUTURE DEVELOPMENTS

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

At the moment, POs are at the centre of renewed attention and confidence in their effectiveness is high. Increase training to those who have to enter them into force. This can be witnessed from the creation of new provisions, like the short term barring order, and the restriction of freedom measure extended to serious injury (art. 584 Criminal Code), but also from the recent thorough revision of previously established POs (example, by informing victims about their application). However, whether POs are effective is still not known. This remains an open question since research on PO effectiveness is lacking in Italy.

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?

These have been put into place recently with the laws 38/2009, 94/2013, 119/2013.

b. If so, what will change?

This has already changed; it is explained in the whole report.

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

Locally there are several dispositions that are effective procedures to handle POs and victim safety in general. In Italy still more than 100 women are killed annually, and in most cases (80%) they were victims of stalking or domestic violence before so this implies that victim protection is still a problem that deserves attention¹⁷. POs ratio and implementation should focus on victims and not (only) on the offender.

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

Introduce measures for systematic risk assessment for the decision of implementation of all forms of POs to reduce to a minimum the discretion of use of such measures. In addition, training should be addressed to different professionals (police officers, lawyers, public prosecutors and judges) so to uniform not only understanding of what POs are and where and how can be used.

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 do not foresee many problems with the implementation of the EPO in Italy in theory, but given that the national ones are not only used by the magistrate system, or used with a lot of discretion, it is important that the concepts are shared and the procedure is understood and the profession is informed. I think its implementation is important.

I am not sure there will be many cases where it will be actually needed and used, but its rationale is certainly very important.

¹⁷ Baldry A. C. & Ferraro, E. (2010). Uomini che Uccidono. Centro Scientifico editore, Torino.

GLOSSARY

1. General Legal Terminology:¹⁸

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.

¹⁸ Merriam-Webster's Dictionary of Law ©1996. Merriam-Webster, Incorporated. Published under license with Merriam-Webster, Incorporated.

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 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.¹⁹

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

¹⁹ EU Council framework decision, 15 march 2001. (2001/220/JHA)

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.

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 served 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 violence²⁰

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.

²⁰ Rec. (2002)5. (VAW) (Committee of Ministers).

Stalking²¹

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 persons²², 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 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.

²¹ 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.

²² Council of Europe Convention on preventing and combating violence against women and domestic violence, art. 36 b.

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.