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

NATIONAL REPORT LATVIA

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CONTENTS

National report Latvia.....	1
2. National reports: content and structure	3
2.1. Introduction	3
2.2. Overview of the structure of the national reports	3
2.2.1. <i>Imposition of protection orders</i>	3
2.2.2. <i>Enforcement of protection orders</i>	15
2.2.3. <i>Types and incidence of protection orders</i>	20
2.2.4. <i>Protection order effectiveness</i>	22
2.2.5. <i>Impediments to protection order legislation, enforcement and effectiveness</i>	23
2.2.6. <i>Promising/ good practices</i>	26
2.2.7. <i>Future developments</i>	27
Glossary	32

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: In Latvia protection orders (hereafter: POs) are regulated only in the area of criminal law and till now there is no regulation of Pos in other areas of law (such as civil or administrative).

Pos are implemented in the Criminal Procedure Law, mainly article 253 (accepted on 21.04.2005, in force from 01.10.2005).

1 b: POs are regulated only in generic laws (i.e. laws that apply to all victims and are not specified for domestic violence or intimate partner violence cases).

1 c: Criminal Procedure Law (hereafter: CPLaw) of the Republic of Latvia is available on the internet: in Latvian (official translation) - <http://likumi.lv/doc.php?id=107820>;

in English (not official translation, but text on Pos is correct) - <http://www.vvc.gov.lv/advantagecms/LV/tulkojumi/dokumenti.html?folder=%2fdocs%2fLRTA%2fLikumi%2f¤tPage=2>

- 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?

2 a: According to Criminal Law in addition to a basic punishment, the *additional punishment - probationary supervision* - may be adjudged (by court or prosecutor). In that case State Probation Service Law and The Sentence Execution Code of Latvia regulate that State Probation Service shall prepare probation surveillance plan for each convicted person and in this plan there may be included prohibition to contact with prescribed persons and prohibition to approach prescribed objects, places and locations. Probationary supervision is done after person is released from prison or the verdict of guilty made by court (or prosecutor in special criminal process) comes into force.

This regulation is adapted by parliament and is in force now, but its implementation is suspended (starting only from 01.01.2015). Right now *additional punishment - probationary supervision* is implemented only for persons who have been convicted for specific sex crimes, and probation supervision for this group of convicted persons is applied from 1 October 2011.

According to Criminal Law imposing suspended sentence, additional punishments, *except* for probationary supervision, may be imposed (so it means that there won't be probation surveillance plan which could include prohibition to contact with prescribed persons and prohibition to approach prescribed places and locations).

According to Criminal Law in case if a person is conditionally released from the execution of a punishment of the deprivation of liberty prior to its completion (prior to final term set by judge), the probationary supervision must be started (which can include prohibition to approach to persons or places).

In Latvia, POs are not regulated as a condition to a suspended trial or as a condition to a suspension from pre-trial detention.

2 b: In Latvia pre-trial criminal process is divided in such stages:

1) initiating the criminal process (*A reason for initiating criminal proceedings is the submission of information indicating the committing of a possible criminal offence to a law enforcement agency, or the acquisition of such information at an institution responsible for the progress of criminal proceedings*);

2) investigation (a person directing the proceedings shall perform the procedural actions provided for in this Law up to the moment when the person who is to be held criminally liable is ascertained, and sufficient evidence has been gathered for the transfer of criminal proceedings to a public prosecutor for the commencement of criminal prosecution);

If investigation was successful (there are clear factual circumstances of the criminal offence and the grounds for assumption that a criminal offence which is investigated *is likely to have been committed by the certain person*), a person directing the criminal proceedings (mainly police) takes decision on recognition a person as a suspect. Consequently starting only from this moment (when the decision on recognition a person as a suspect has been made by police) POs can be imposed. (Problems about implementation of this strict regulation is included in question 36b)

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)?

The victim (who has been officially recognized as a victim by a decision in criminal process) has a right to request a person directing the criminal process to make a decision of imposing PO. This right to apply for PO is not directly written in law, but generic regulation is that victim has a right to make a requests in favour of protection of its interests.

The decision to adapt the PO is made by a person directing the criminal process – investigator, prosecutor or judge (depending on stage of the criminal process).

According to CPLaw (article 241 (1), (2)) a security measure (one of which is PO - prohibition to approach a specific person or location) shall be applied as a procedural security measure to a suspect or an accused *if there are grounds for believing that the relevant person will continue criminal activities, or hinder pre-trial criminal proceedings or court or avoid such proceedings and court or there could be the resistance of a person to the reaching of the aim of criminal proceedings in concrete proceedings.*

Imposing the PO to suspected person is directly connected with these conditions (and the fact itself that the act of violence has been committed against victim is not enough).

Taking the decision of imposing the PO is subordinated to person directing the criminal process and its view of necessity to impose the PO in the case.

As mentioned in judicial literature [I MUST CLARIFY THE REFERENCE], the aim of PO is to protect victim (from further victimization, threats from suspected person, etc.), but on other hand the written rules of law are so formal that the importance of protection of victim sometimes falls aside and it seems that the main objective of PO is further proceeding of criminal process. Only the general idea of “successful proceeding of criminal process” includes subsidiary aspect that victim should feel safe and shouldn’t be influenced by perpetrator.

- 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?)

POs are issued by the person directing the criminal process. Depending on the stage of the criminal process the person directing the criminal case can be an investigator (police), the public prosecutor (when police submits the case to prosecutor for commencement of criminal prosecution), the judge (court) from the moment when prosecutor has made a decision on transferring of a criminal case to a court for court proceeding (trial stage).

Also State Probation Service can make probationary supervision which would include decisions of prohibition to contact with prescribed persons and prohibition to approach prescribed objects, places and locations.

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

POs can be issued without hearing the offender on an *ex parte* basis.

However in selecting a security measure (so also PO), a person directing the proceedings shall take into account the nature and harmfulness of a criminal offence, the character of the suspect or accused, his or her family situation, health and other conditions. A person directing the proceedings shall choose a security measure that infringes upon the basic rights of a person as little as possible, and is proportionate. (CPLaw article 244 (1), (2)).

The offender has to be informed about this *written* decision. In commencing the application of a PO, the person who imposes such PO shall inform the person to whom the PO is imposed regarding the taken decision, as well as explain the essence, content and procedures for appeal of the PO, and the consequences of not complying with the PO (CPLaw article 246 (1)).

Although the institutions are free to make its decisions regarding POs it could be possible that in some situations in practice institutions could involve or hear the opinion of the person to whom the PO is imposed.

The only exception is probation surveillance plan because the convicted person must be involved in preparing this document.

- 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?

POs are available for all types of crimes and victims.

Probationary supervision by probation service may be adjudged only for specific crimes mentioned in Criminal Law.

- 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)?

No, POs are always dependent on the existing criminal case. If the criminal case is closed the POs must be canceled immediately and POs lose power.

(If the committed crime is serious the person directing the criminal process should continue the case till prosecution, but some crimes, however, are only subject to prosecution on the basis of complaint received and upheld by victim. If the victim does not wish to press charges in this case further, chances of continuation of criminal prosecution are very limited).

Probationary supervision is also possible only in connection with proceeding of criminal case.

As mentioned before, there is no other POs regulation except in criminal case and that's why divorce proceedings aren't subject to PO regulation.

- 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)

POs are issued by the person directing the criminal process, using its discretionary power and considering facts of the case. However in practice this PO (prohibition for approaching a specific person or location) isn't the most popular among other criminal procedural security measures.¹ So victim can express its will to person

¹ such as notification of the change of the place of residence; reporting to the police authority at a specific time, prohibition from a specific employment, prohibition from departing from the state, residence in a specific place; personal guarantee; bail; placement under police supervision; house arrest; arrest

directing the criminal process that the PO (prohibition for approaching a specific person or location) would be adapted in this case to protect itself.

Besides according to practice in decision imposing PO should be written places and persons to which suspected person is prohibited to approach. Most likely person directing the process couldn't specify these places and names of persons without explicit information provided by victim (i.e., place of its work, summer house, institutions of education of children, addresses of the above mentioned places, etc.).

If the criminal case is already in stage of trial, it's possible for victim express its need about PO in oral hearing of trial (or submitting the written request in court).

The practice regarding probation service surveillance plan is not known yet because implementation of this regulation is suspended, but anyway victims will have rights according to general law to ask State Probation Service to impose the prohibition of approach if it's necessary.

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

The CPLaw doesn't set time limit for making such decision.

This decision should be in written so it takes time to formulate legal grounds, etc. It also depends on work schedule of person directing the process and the case (but according to my legal practice these decisions aren't adopted very quickly and I don't see that persons directing the process would understand the priority and urgent need of these decisions).

Besides decisions of procedural security measures can be all over changed during the investigation of criminal process.²

The convicted person must arrive in State probation service not later than *5 days* after the convicted person is released from prison or the final decision in criminal case has come in power. Immediately after appearing the officer of the State probation service may prescribe bans for the convicted person and these bans are in force till the final surveillance plan is prepared (Sentence Execution Code).

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?

Yes, the PO comes into effect as soon as the decision is made according to CPLaw Article 322. (1) (all procedural decisions shall enter into effect immediately after the taking).

The suspected person should be informed about this decision and also can appeal it, but it doesn't defer the working of the PO.

Obligations of probation surveillance plan or bans are in force immediately after such decision is made, but there could be legal problems if the convicted person refuses to cooperate with Probation Service and doesn't

² (CPLaw Article 249 (1)) "Modification or Revocation of a Procedural Security Measure" - if, during the term of the application of a procedural security measure, the grounds for the application of such measure disappear or change, the provisions for the application of such measure, or the behavior of the person, change, or if other circumstances are ascertained that determine the selection of the security measure, a person directing the proceedings shall take a decision on modification or revocation of such procedural security measure).

appear for signing the probation surveillance plan. If the convicted person doesn't appear in Probation Service the documents must be sent to him (her) by post.

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?

No, there isn't such regulation.

Only if the case is very serious and the person directing the process works very progressively maybe it would be possible to gain the PO (prohibition of approaching) very quickly, but this is my assumption which could be more theoretical than practical.

In stage of probation the surveillance plan can be changed, but the exact time limit of changing it may depend on officer who works with this case.

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?

The only formal requirements are: initiated criminal case; the suspected person is defined (by official decision) and there are formal conditions (mentioned in answer 3a - specific facts of case, the suspected could continue criminal activities, hinder, avoid or resist to the reaching of the aim criminal proceeding).

More likely PO will be imposed if there are suspicious or already occurred facts of violence or threats from suspected person to victim (suspected acted unlawfully against the victim or that there is a real threat of future unlawful behavior so there is a need to prevent future unlawful behavior, there could exist danger for the victim or its family or property, risk of recidivism or trying to influence the victim to recall its claim). These facts would better justify and constitute legal ground for the imposition of a PO. (It must be mentioned that PO won't be imposed automatically or obligatory also in specific cases of DV, IPV or cases of sexual violence).

Obligations of probation surveillance plan imposed on convicted person depends on officer of Probation Service who must assess cause of committed crime, risk of committing crime in future, materials of criminal case, information available in public registers regarding convicted person and possibilities of convicted person to obey to prescribed bans.

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

Legal representation for the victim is not obligatory required by law in criminal process.

But the victim is allowed to be represented by other person.

Exception is if the victim is minor and in that case the victim shall be represented (by a mother, father, or guardian or other relative (in special conditions) or a representative of an authority or non-governmental organization protecting the rights of children).

Victim is not directly connected with probation surveillance, but it's allowed for victim to contact with probation service officer if necessary.

c. Is free legal representation/advice available?

According to CPLaw (article 104 (5)(6)) *in exceptional cases* the person directing the proceedings shall take a decision on retaining of the representative – advocate of a victim – *for poor or low-income person if it is otherwise not possible to ensure the protection of the rights and interests of the person in criminal proceedings.*

Also if the rights and protection of the interests of a minor are encumbered or otherwise not ensured a person directing the proceedings shall take a decision on retaining of an advocate as the representative of a minor victim.

State Ensured Legal Aid Law and other regulation settle explicit procedure.

Poor or low-income person's status is assigned by decision of social agency (institution of local municipality), and in practice it means that person is really very poor and has fulfilled other legal requirements (doesn't have properties, duration of low-income period is for several months, etc.).

It's evident that the cases when legal representation or advice is provided for victim without charge and is funded from the state budget are very occasional, occur rare and apply only for special groups of persons.

Sometimes free legal aid is provided by NGOs, but it depends on available funding of NGO, the place of residence of victim and ether unpredictable circumstances.

- 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)?

According to CPLaw (Article 253):

Prohibition from approaching a specific person is a restriction from being located closer than the distance referred to in a decision from the relevant person, from having physical or visual contact with such person, and using means of communication, or techniques for transferring information, in order to make contact with such person.

A prohibition from approaching a specific location is a restriction from visiting the relevant location, or being located closer than the distance referred to in the decision.

Approaching a specific person or location shall not be recognized as a violation of the prohibition if such approaching takes place within the framework of criminal proceedings, fulfilling the instructions of a person directing the proceedings.

During probation surveillance there can be imposed ban of approaching specified persons and ban of approaching specified objects, places or institutions.

- 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?

No, there isn't an order that has the effect of moving/barring a violent (or threatening) person from the common or family home (eviction order).

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

Precise information is not available. If the PO is imposed it can include prohibition from approaching a victim and also prohibition of being located in places which are directly connected to victim's daily life. It seems that in Latvia these 2 prohibitions are considered together and usually are not separated.

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

Yes, these to prohibitions can be included in one PO or in probation surveillance plan.

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

Precise information is not available, but it seems that the most popular combination is no contact-order together with a prohibition from approaching a specific location.

- 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?

CPLaw (article 245) states that a procedural security measure [this term includes PO] is applied with a motivated written decision that indicates: the person to whom the security measure is to be applied; grounds for the application of the procedural security measure; the type of security measure; the institution or person to whom the execution of the decision has been assigned; the procedures for the appeal of the decision; the criminal offence in connection with the committing of which the security measure is applied.

Every decision must also contain judicial requisites (date of adoption of decision, responsible institution which adopts the decision, signature).

Considering the nature of PO there also should be noted the name of person to which the offender is not allowed to approach and / or the places which offender can't visit (these rules are not directly written in law, but must be read under the condition "the type of security measure").

The person directing the criminal process is allowed to include in the decision other information and directions which would help to implement the decision in practice and also would make clear the decision to other persons.

In probation surveillance plan there must be included information about aim of probation, activities, which must be done to achieve aims of probation and their term, duties of probation officer. Client of probation must be instructed about rules included in this plan; client signs it and receives the copy.

No information about practice regarding probation surveillance plan as this regulation is not implemented yet.

- 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?

In practice conditions of POs are not defined very extended and broad. As it is criminal process and the person is not found guilty by final decision the principle of proportionality and human rights should be considered (for example, as states CPLaw (article 244 (1)) a person directing the proceedings shall choose a procedural security measure that infringes upon the basic rights of a suspected person as little as possible, and is proportionate).

CPLaw (article 262 (2)) sets rule that the decision on imposing PO may be appealed if a person to whom a security measure has been applied may justify that the provisions of such security measure cannot be fulfilled. As a result very broad prohibitions included in PO can lead to appeal of this PO and person directing criminal process perhaps wouldn't like to risk.

Probation surveillance plan also must be proportionate. The probation officer must consider if it's really practically possible to comply with the rules of plan for convicted person considering the facts of the case.

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

Proportionality, human rights, personal circumstances of the defendant/offender and facts of the case. In practice the person directing criminal process would also consider aspects of common children and common family residence (of victim and suspected person).

- 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")?

The law doesn't specify this question so it's left up to consideration of official who makes decision.

Maps aren't used to delineate the area. Usually the area is indicated by naming exact places or addresses where person is not allowed to be or the distance (for example 100 m).

As recognizes State police, it's important to describe precisely the prohibited area, person or distance to avoid from possible judicial disputes and interpretations regarding breach of PO.

In connection with probation surveillance plans the law requires to delineate **exact distance** to prohibited places.

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

Precise information is not available.

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

The person directing the criminal process is allowed not to mention the exact date of expire of PO, but according to CPLaw (article 389) from the moment when a person is defined suspected all security measures (so also PO) must suspended within the following term:

regarding a criminal violation – within six months;

regarding a less serious crime – within nine months;

regarding a serious crime – within twelve months;

regarding a particularly serious crime – within twenty two months;

In criminal proceedings regarding a serious or particularly serious crime, the investigating judge may extend these terms by six more months, but not more than by three months in one extension, if the person directing the proceedings has not allowed for a delay, or the faster completion of the proceedings has not been possible due to the particular complexity of such proceedings.

Summary – the length of PO in pre-trial period depends on the seriousness of crime (stated in Criminal Law and according to the legal qualification of the offence).

There are no legal terms for PO which are imposed while the case is in court for trial.

Probation surveillance can be for term from one to three years.

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

Duration of PO is ruled by the law and that's why the person directing the process usually doesn't set the time limit of PO in decision and the time limit of law is directly applicable.

Probation surveillance term is adjudicated by judge (or prosecutor) who examines the criminal case. There is general rule that the punishment must be proportionate to the crime committed and to the facts of the criminal case. Probation surveillance term can be shortened or canceled under special conditions if the Probation Service authority makes such request to court.

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

It's not possible to answer this question because duration of PO depends on the legal qualification of the offence committed.

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 have rights to submit the request (application) to competent law enforcement agency, but the final decision is made by competent authority.

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?

Decision is made by competent authority, but taking in consideration the nature of PO, I believe that in practice most often victims would ask to impose PO to suspected person than legal authorities would react proactively themselves.

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?

Victims have rights to submit the application expressing their judicial will, but the final decision is made by competent authority.

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

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?

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?

During pre-trial proceedings, a decision of prohibition from approaching a specific person or location taken by a person directing the proceedings may be appealed, but **only**, if a person to whom a security measure has been applied **may justify** that the provisions of such security measure **cannot be fulfilled**. A complaint may be

submitted to an investigating judge within seven days after receipt of a copy of the decision on application of the security measure.

An investigating judge shall examine a complaint by way of written procedure within three working days. If necessary, the judge shall request materials of case, explanations of a person directing the proceedings or the submitter of the complaint.

An investigating judge may, with a decision, reject a complaint or assign a person directing the proceedings to modify an applied security measure or the provisions within three working days.

A copy of a decision taken by an investigating judge shall be sent to a person directing the proceedings, the person to whom the relevant security measure has been applied. This decision shall not be subject to appeal.

As mentioned in judicial literature, the legal framework of possibility to appeal this decision is very narrow. **I WILL CLARIFY THE REFERENCE.**

In criminal proceeding in main oral hearing both parties would have chance to express their point of view about PO and so the judge would strike a fair balance considering all circumstances of case and evidences.

Disproportionate and disadvantageous consequences for the offender should have been taken into account on the grounds of generic norms that all legal decisions must be fair, reasonable and proportionate, legally justified and take into account person's human rights.

Rules of probation surveillance plan may not be appealed.

- 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)?

In Latvia, law enforcement institutions don't consider that they would have obligation to actively enforce protection orders.

There is formal legal norm that suspected person must obey the sanctions imposed by PO and suspected is informed about its obligation. If the suspected person doesn't obey (and the law enforcement agencies receive complaints from victim), the PO can be changed to more serious PO (for example, arrest). So PO is written document which should be enforced by suspected person and not directly and actively by state institutions.

- 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)?

Previous PO according to legal system can be taken into account only as additional evidence or supporting legal ground (to prove necessity, repetitive crime, etc.), but historical background and records between victim and suspected can't be the only reason for imposing PO.

But in practice it may work if the victim reveals such information to law enforcement agencies, and I'm not sure if law enforcement agencies would actively search such prior data of other criminal cases.

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 PO, however it may be done and in that case 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?

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

From legal perspective it's difficult question because these two rights (to be protected - for victim and visitation rights with children - to violent partner) are in conflict with each other and person directing the criminal process must solve this collision.

According to practice and following the Protection of the Rights of the Child Law if child is witness of violence (and especially violence to person who is in close relation to child) it causes emotional violence to child and in that case it's possible easier include child directly in PO (protecting child together with non-violent partner).

(In practice sometimes it would be worth to start another case in Orphan's Court because this institution has rights operatively separate child from parent if it's in the best interests of child. This would mean to initiate another administrative case which maybe could help victim to solve this collision between visitation rights and PO and would give a chance to implement PO fully because visitation rights of violent parent would have been already deprived by decision of Orphan's Court).

Also Civil Procedure Law and Civil Law settle additional special legal norms, for example, in case of dispute between parties, the procedures by which access rights of parent to child may be utilised shall be determined by a court. Access rights of parent in relation to a child may be restricted or it may be specified that it is allowed to meet with the child only in the presence of third persons or at a specific place insofar as this conforms to the interests of the child. A court may temporarily revoke access rights if the access is harmful to the interests of the child and the harm cannot be otherwise prevented.

In civil claim upon the request of a claimant the civil court may take a decision which temporarily, until the final decision is accepted, specifies the procedures for child care, the procedures for exercising access rights, prohibition to taking the child out of the State.

These legal norms sometimes in practice help to protect victim partner of perpetrator partner (if violent partner uses common child as pretext to stay in contact and continue to control the victim-partner) and to solve this unclear legal situation although these legal methods could not be considered PO or analogous in the context of the project).

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?

As POs are issued in criminal sphere POs are never mutual, because according to theory in criminal case victim can't be victimized repeatedly and the criminal sanctions and measures are allowed to be used only against guilty person.

- 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) As POs are issued in criminal sphere POs are provided free of charge. The state is responsible for providing resources for conducting criminal case and executing the punishment.

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?

POs are registered in Punishment register (hold by Ministry of Interior Information Centre). Punishment register is information system of state which contains criminal records. Law enforcement agencies can request information from Punishment register, but it is provided in 15 days, not digitally online so it's not useful for direct implementation and control of POs.

This register contains information about kind of security measure (so also PO), date of imposing, canceling or changing of PO, institution which imposed PO.

- 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?

CPLaw doesn't contain the provision that protected person must be informed about PO, but the person directing the process is allowed to inform victim about its rights.

However there is general provision that if the person directing the process makes decision on the basis of the application of the person, this person shall be familiarized with the decision made. Usually police and prosecutor writes written reply and sends by post answers to requests of victims (however it's possible that victim and law enforcement agencies communicate by phone).

Victim would be informed automatically about PO if it is included in decision of court.

Victim can request answer from Probation Service on the basis of general provisions and institution should reply.

- 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?

In Latvia institutions don't consider that they would have obligation to try to actively enforce POs.

Police declare that control is difficult for all security measures which are not deprivation of liberty.

There is formal legal norm that suspected person must obey the sanctions imposed by PO and suspected is informed about its obligation. If the suspected person doesn't obey (and the law enforcement agencies receive complaints from victim), the PO can be changed to more serious PO (for example, arrest).

Consequently PO is written document which should be enforced by suspected person and not directly and actively by state institutions although they can help victim. It appears that it's the victim who monitors compliance with the PO and as soon as (s)he establishes a violation, (s)he can contact the police and/or an prosecutor or inform the judge.

Probation surveillance (which is not yet implemented in Latvia) contains more scrutinized regulation that probation service has duty to monitor if and how correctly convicted person obeys to rules of prohibitions.

- 22) a. Which activities can the monitoring authorities undertake to check the compliance with protection orders? (e.g., GPS, extra surveillance, house visits, etcetera)
b. Which of these activities do they generally undertake in practice?

Usually police can react to call of victim and patrol car can arrive in place of accident. Police (prosecutor) can afterwards check complaints of victim about breach of PO and evaluate the evidences presented by victim. Police (prosecutor) can invite person who has violated PO to office for examining the complaint of victim and make a warning. Police (prosecutor) don't use special technical devices, such as GPS or alarm buttons, to monitor the compliance with PO (in usual cases they don't have such).

As probation surveillance is not yet implemented in Latvia it's not possible to describe the real actions of probation service and how actively and by which means in practice Probation Service would check the convicted persons.

But according to law during probation surveillance the officer has competence to invite to talk convicted person and try to motivate him(her) to act legally and not to infringe rules. If the officer personally detects that client of probation is in place which is prohibited for him(her) or contacts with prohibited persons, officer may write an act. The client of probation is obliged to write explanations (answer to act) and as the result the officer may warn the client about legal consequences of breaking rules. If the client of probation continues illegal actions, the officer may request the court to change applied punishment - probation surveillance to arrest.

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

Police don't use special technical devices, such as GPS or alarm buttons, to monitor the compliance with PO (in usual cases they don't have such).

- 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.

- 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?

Monitoring authorities (if there such exist at all) generally become aware of violations through the victim, not pro-active monitoring activities.

- 23) a. Is contact with the offender initiated by the victim considered a breach to the protection order?
- b. What (if any) role does contact initiated by the victim him/herself play in establishing or proving a protection order violation?
- 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?

POs are issued in criminal sphere and thus POs affect (oblige) only suspected person and not victims. Victim has benefit rights deriving from PO, but no duties.

If victim would initiate contact with suspected person, most likely it would be more difficult for victim to complain about the breach of PO. It would be also important to clarify facts of the case (for example, if victim only sends message which contains important information regarding common children or victim follows suspected person in his(her) working place without any reason). Person directing the criminal process could also consider if it's necessary to change (dismiss) accepted PO.

As explains police there are cases when victim initiate contacts with suspected person who is kept off from victim by PO, but it's difficult to predict traditional reaction of law enforcement agencies because there is not sufficient practice or legal guidelines.

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

General rules of evidences included in CPLaw apply also for proving violations of PO, although of course it can difficult in practice to prove facts related to personal life (which generally are in cases of DV or IPV). According to law evidence is any information regarding facts which is fixed in a specific procedural form in order to justify the existence of conditions needed to be proved (such as testimony, electronic evidence).

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

The force of PO is not stopped because of violation of PO. Imposed PO maintains its force all the time, also after it has been violated.

If the victim becomes aware of a violation, (s)he has to inform person directing the process (most efficiently would be also in written form) and if possible point at all possible evidences. It would be also useful to call police immediately and the police could come to place of accident, escort the person out of prohibited area and the call and the evidences would be registered and collected. If there have been consequences (bodily injuries or damaged property) it's necessary to fix these facts. The victim could express its will to officer to intensify control of existing PO or to strengthen the prohibitions applied till this moment to suspected person. The victim could try to deal with the person directing the process about next steps taken and possibilities of victim to be protected for real.

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

If a person violates the provision of an applied security measure or fails to fulfill his (her) procedural duties, the person directing the proceedings is entitled to select and apply another more restricting security measure. It means that person directing the criminal process can substitute PO with other security measure.

For example, in practice there was a case when suspected person violated rules of applied PO regularly and severely and court made a decision of canceling PO (prohibition to approach) to pre-trial arrest.

During probation surveillance the officer has competence to invite to talk convicted person and try to motivate him(her) to act legally and not to breach the rules. If the officer detects that client of probation is in place which is prohibited for him(her) or contacts with prohibited persons, officer may write an act. The client of probation is obliged to write his(her) explanations (answer to act) and as the result the officer may warn the client about legal consequences of breaking rules.

The second warning in two months period may be issued only to these probation clients who generally acts in good faith and obeys rules. Otherwise Probation Service has duty to apply to court for substituting probation surveillance to arrest. If a person who has punishment - probationary supervision violates provisions of probation without justified reason, a court, following the receipt of a submission from the Probation Service, may substitute the additional unserved punishment term, counting two probationary supervision days as one day of deprivation of liberty.

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)?

According to legal system the state institutions are not really allowed to act informally especially in criminal sphere in which PO are applied, but meanwhile person directing criminal process and probation officers have conversations with suspected (convicted) person and that's why it's possible also to motivate, warn and try to influence the behavior of suspected (convicted) person.

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

There are no empirical data available on the prevalence of formal and informal reactions to PO violations, but that could depend on conditions of the case and the officer who work with case.

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

In my opinion, no.

If the rules of PO are violated openly speaking the only method which would guarantee further the security of victim is substitution PO with pre-trial arrest. But, as pre-trial arrest is very serious method which makes severe impact of life and human rights of suspected person, there must be rather extreme grounds for the court to make such decision.

(According to CPLaw - arrest may be applied only if concrete information, acquired in criminal proceedings, regarding facts causes justified suspicions that a person has committed a criminal offence regarding which the law provides for a punishment of deprivation of liberty, and the application of another security measure may not ensure that the person will not commit another criminal offence, will not hinder or will not avoid the pre-trial criminal proceedings, court, or the execution of a judgment. Arrest may also be applied to a person being held on suspicion of, or accused of, the committing of an especially serious crime and other conditions fulfills).

As declares State police if the suspected person understands the consequences of violation of the rules of PO and this person is not willing that consequences emerge, the person would obey rules. But of course opposite, if the person is very aggressive, inconsistent or just indifferent to consequences (how it occurs often in DV or IPV cases), the suspected person may easy to decide to break the rules and there are no real methods how to influence the suspected by force of judicial state power.

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

As far as I know, no. There is not such legal provision and there are different methods of division of received emergency calls (for example, person can call to local municipal police or to state emergency service which would transfer the call according to competence and territory).

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?

Violation of POs itself is not criminalized because POs are considered only as additional decision for successful criminal process (or the execution of punishment in case of probation surveillance).

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

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

No sanctions because it is not an offence.

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

Yes, victim can complain about violation of PO as described in question 24b and 25a.

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?

The person directing the criminal process can substitute PO (prohibition to approach) to more severe security measure. However the only really effective more severe security measure is arrest. In pre-trial criminal proceeding arrest is implemented only by a decision of investigating judge who decides on the application of arrest by examining a proposal of a person directing the proceedings, hearing the views of the relevant person, as well as examining case materials and assessing the reasons and grounds for placing under arrest. (There are protection measures which can be issued by police or prosecutor and there are protection measures which may be issued only on the basis of the decision made by court.)

If the client of probation breaks the rules of probation surveillance plan the probation service first, act themselves, talking to client, writing an act and issuing the warning. If the violation continues (is done 2 or 3 times in two months period) the Probation Service has obligation to apply in court for substituting probation surveillance to arrest (provision - if person who has been determined probationary supervision violates provisions of probation without a justified reason, a court, following the receipt of a submission from the Probation Service, may substitute the additional unserved punishment term, counting two probationary supervision days as one day of deprivation of liberty).

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

Police, prosecutors and judges have wide discretionary power to decide on protection measures applicable in the case and also about changing them to more severe.

Regarding probation service if the violation continues (is done 2 or 3 times in two months period) the Probation Service has obligation to apply for substituting probation surveillance to arrest.

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

The police and prosecutors are not very interested and willing to request the court to impose pre-trial arrest because there are strict legal and factual conditions (mentioned in question 25d).

Regulation of probation surveillance has not yet been implemented in Latvia.

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

To my knowledge, the monitoring authorities in general do not receive a specific training in this regard (maybe some of them, in some special trainings or as a part of other general course in university, but it would be more casuistic practice than wide spread).

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

Number of imposed PO – prohibition to approach person or place (includes all cases, not only related to DV or IPV)³

Articles of Criminal law	2008	2009	2010	2011	2012
116.Art. – <i>murder</i>	0	1	0	1	3
117.Art. - murder committed in aggravating circumstances	1	0	0	1	0
118.Art. - murder committed in especially aggravating circumstances	-	-	-	-	0
125.Art.- intentional serious bodily injury	1	3	1	2	4
126.Art. - intentional moderate bodily injury	5	6	2	2	4
130.Art. - intentional slight bodily injury	7	4	4	6	8
132.Art. - threatening to commit murder or to inflict serious bodily injury	16	6	12	16	6

³ Official homepage of political planning documents of Cabinet of Ministers, <http://polsis.mk.gov.lv/view.do?id=2754>

159.Art. – rape	-	-	-	-	2
160.Art.- forcible sexual assault	-	-	-	-	5
162.Art. - leading to depravity	-	-	-	-	7
174.Art. - cruelty towards and violence against a minor	8	10	8	11	4
Together	38	30	27	39	43

It's possible to select data on imposed PO exactly by courts from Information System of Courts.

General prosecutor's office replied that in two year period (01.01.2010 – 31.12.2012) this institutions knows 9 cases when PO was imposed, but these cases also includes the situation when PO was imposed for protecting also witnesses or co-offenders, not only victims.

The official report of the Republic of Latvia about implementation of *United Nations Organization International Covenant on Civil and Political Rights* stated that 12 POs – prohibition to approach person or place imposed in term of 01.01-2006 – 30.06.2008 in pre trial proceeding was appealed in court, and 11 POs were left in force. ⁴

- 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?

THERE ARE NO OFFICIALY STATISTICAL DATA AVAILABLE.

I REQUESTED THESE DATA FROM STATE POLICE AND GENERAL PROSECUTOR'S OFFICE, BUT THESE INSTITUTION WROTE AN ANSWERS THAT THEY DON'T HAVE SUCH STATISTICS AND THEY ADVISED ME TO TRY TO REQUEST SUCH INFORMATION FROM OTHER INSTITUTION – INFORMATION CENTRE (MINISTRY OF INTERIOR). I MADE SUCH A REQUEST, BUT INFORMATION CENTRE HAVEN'T STILL REPLIED TO ME (I SHOULD PAY FOR SPECIAL PROCESSING THE DATA AND FULFILL OTHER LEGAL REQUIRMENTS).

I'M VERY, VERY SORRY, BUT IT'S NOT EASY TO GET THESE DATA AND I WILL TRY TO DO MY BEST IN FUTURE AND GET THESE DATA, BUT RIGHT NOW I'M'NOT ABLE TO ANSWER THESE QUESTIONS. I THINK THAT I WILL GET THESE DATA (AT LEAST SOME) AND WRITE THEM IN FINAL VERSION OF REPORT.

I don't have exact statistical data, but it seems that according to law no contact order and prohibitions to enter an area are implied together and these two measures are not separated from each other. (No eviction orders in Latvia.)

⁴ http://www.mfa.gov.lv/data/MK-Parstavis/lr_zinojums_ano_1966g_pankta_izpildelr_2004-2008.pdf, page 142.

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

See chart for question 29. (No prohibition of stalking in Latvia.)

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?

I continue to request info.

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

I continue to request info.

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

I continue to request info.

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)?

33 a: There is no empirical information available on these matters. However according to information provided by State police, the opinion about PO effectiveness differs among the inspectors - some of them consider that POs are effective, but some of them consider opposite. Of course there are cases when POs works as they were intended, and they reduce the unwanted contact, but its difficult to estimate real effectiveness of POs (its difficult to calculate the subjective behavior of perpetrator if the PO wouldn't be imposed – would it be more active, aggressive or etc.).

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

It's difficult to estimate exact numbers because many of such cases may be left unreported by victims or reported, but not registered by law enforcement agencies.

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

It's difficult to calculate such aspects because behavior of perpetrator can change due to other conditions also not connected with PO. It's rather predictable that many perpetrators may become angrier because of resistance of victim and especially for reporting to police, but influence on the nature of violence would be subjective evaluation.

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

There is no empirical information available on this matter.

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

There is no empirical information available on this matter.

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?

I continue to request info, but it seems that 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

In Latvia till now there isn't special regulation for DV or IPV victims and general regulation is applied, but it's obvious that these offences that derive from personal relationships and family ties (common children, place of residence) won't be solved with general norms.

There is not actually any special help for DV victims provided by law and victims must suffer continuous violent acts also with terrible consequences.

There isn't legal method for operative eviction from home of violent partner and the victim must run away from home leaving children and personal belongings with violent partner.

Also stalking is not criminalized as offence in Criminal law (neither in other legal acts), but of course there are a lot of stalking cases in practice and it's very difficult to fight judicially with these matters.

There is urgent need for specific regulation against DV and imposing civil protection orders.

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

First of all the PO is related only to existing criminal process.

Secondly PO can be imposed only starting from the moment when the decision on recognition of a person as a suspect has been made, but not in stage of initiating the criminal process. In practice this regulation causes a lot of problems because implementation of POs depends on formal procedural stage of criminal process.

For example in domestic violence case if victim informs police about bodily injuries caused by violent partner which was for sure committed by his(her) partner and the victim indicates the perpetrator concretely, at the beginning of criminal process and also some time after (that could be rather long – about two or three months while the results of forensic medical examination are received, etc.) the violent partner has only the status of witness. Consequently the PO cannot be adapted for the witness. Only after some progress in the

investigation has been achieved and the violent person was recognized suspected person the PO can be adapted. As a result victim doesn't have any protection for quite a long time (and violent partner is motivated to demand victim to withdraw the claim or continues violent behavior).

There isn't exact time schedule for examining the victim's claim for imposing PO, and victim is dependent on activity and speed of work of person directing the criminal process and can't rely on any protection.

There can appear difficulties to impose PO even in cases of serious crime committed if there are no further threats of continuing violence or illegal behavior.

In my legal practice PO were imposed only in cases of very serious crimes committed against victim and victims suffered serious consequences, but from perspectives of victim it's not necessary to wait till serious consequences appear and the protection should be provided in advance.

The statistics shows that there are only rare cases when PO is imposed (sometimes it seems that imposed PO is like miracle (exception from bad practice for sure). The main purpose of PO is criminal proceeding and the accent is not put on protection of victims.

c. Problems with protection order monitoring

There isn't PO monitoring. Everything is entirely dependent on the input of victim and only a reactive approach is done by institutions.

d. Problems with protection order enforcement

There isn't precise framework for enforcement of PO. Actually enforcement of PO is formally by written legal provision obliged to the suspected person, but there aren't other real compulsory mechanisms dictated by state or institutions.

For example in practice there was a case when victim who was protected by PO went to her countryside house and suspected person also arrived there, thus violating the rules of PO. Victim called to police for protection, but policemen from local countryside office replied that they don't have duty to control this PO and advised victim to call to police office which had imposed this PO, notwithstanding that the responsible police office was very far away (some 200 km) and couldn't really help victim.

There isn't real effective punishment for breaking the rules of PO as a result suspected person is not interested to obey PO.

The persons directing the process are in state of uncertainty and risk to exceed the limits of their rights and authority if the victim and violent person has common children or common place of residence because there are no legal regulation to these collisions of rights and interests.

The social stereotypes also can play a role – law enforcement agencies consider it private affair or a matter of civil law.

Also there appear evidentiary difficulties when it comes to proving a violation of the PO or the ground for imposing PO: often it is a matter of 'his word against hers'.

PO regulation is in force only since 2006. For legal mechanism it is not very long time and sometimes it causes doubts whether this regulation is really "acclimatized" (accommodated) in legal system of state at all.

e. Problems with protection order effectiveness?

Many of the above mentioned serious problems lead to natural conclusion that POs in current situation could not be called effective, especially comparing with regulation in other EU countries.

As it is was stated in political planning document “Final Report of Implementation of Program Reducing Domestic Violence 2008-2011” very small numbers of imposed PO reveals that, although there are methods how to secure rights of victim and these POs are very important especially in cases of DV, in practice this method is used very rare.⁵

In political planning document “State Basic Position on Protection of Children Against Crimes and Prevention of Children Crimes 2013-2019” it was recognized [citation] still often happens that if the child suffers from DV the child must be placed in special care institution. This shows the problem which is not still solved that in cases of DV the victim must leave its place of residence, but the perpetrator continues to live in this place of residence without any challenges. As mentioned before these situations are typical because prohibition to approach which is the most effective remedy available right now is not implemented wide enough.⁶

European Institute for Gender Equality (EIGE) in its Review of the Implementation of the Beijing Platform for Action in the EU Member States: Violence against Women – Victim Support (2012) found out that [citation] **with the exception of Latvia**, all the (other 26) EU Member States and Croatia have introduced legal protection orders that are either explicitly designed for cases of DVAW or have been modified to permit their being issued against an intimate partner or ex-partner.⁷

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

In my opinion the biggest problem is that regulation is not specified for DV, IPV victims because general regulation normally is not applicable in these situations. Prohibition of stalking; granted immediate eviction of violent partner of common place of residence, immediate prohibition of approaching and contacting would be essential to provide adequate help to victims, but there are no legal methods which even could be tried to use (not even talking about effectiveness).

Maybe new regulation of probation surveillance would improve the situation, but the suspended term of its implementation (two years after adopting the law) is too long (the argument is that probation services should get ready to implement this new regulation and that requires special prepare).

⁵ Official homepage of Political planning documents of Cabinet of Ministers (Executive power)

<http://polsis.mk.gov.lv/view.do?id=2754>

⁶ Official homepage of Cabinet of Ministers,
<http://mk.gov.lv/lv/mk/tap/?pid=40273658&mode=mk&date=2013-08-20>, p 34.

⁷ <http://eige.europa.eu/content/document/violence-against-women-victim-support-report>,

2.2.6. PROMISING/ GOOD PRACTICES

- 38) Which factors facilitate the:
- imposition
 - monitoring, and
 - enforcement of protection orders?

The POs are so ineffective right now that there are no factors that facilitate the imposition, monitoring and enforcement of POs.

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

The POs are so ineffective right now that there are no factors that facilitate the imposition, monitoring, and enforcement of protection orders.

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

I consider that only so call “new political initiatives” which would include drafting and accepting completely new model of POs and also in civil sphere not only criminal could facilitate the POs in general. Currently applicable general regulation in CPLaw (and probation surveillance provisions in future) is almost nothing in casual DV or stalking cases.

It is promising that such regulation is drafted and proposed to Parliament (see next section). Only from time when this new regulation would be implemented POs would start to be living method for protection of victims.

It would be necessary to pay more attention to victim safety nowadays in general in level of state because till now it’s not really realized need.

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

We look forward in future for new provisions in general in all aspects of POs because the rules which are in force now are not enough and can cover only very small amount of violence cases. Latvia in level of state needs to pay more attention for prioritizing victims’ protection in general, recognize consequences caused by IPV to victims and whole society and stop this inaction of state. It’s not worth to analyze some of possible recommendations if there is no regulation (and consequently no implementation) at all.

Also factor which may improve the situation would be providing more and obligatory conduct courses changing patterns of violent partner (to fight with cause, not only consequences).

In criminal cases it would be necessary to change the regulation that if the DV victim clearly reveals the perpetrator, the perpetrator wouldn’t have status of witness for long time, but PO could be imposed immediately.

2.2.7. FUTURE DEVELOPMENTS

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

Lately there have been prepared quite many political planning documents in text of which problem of violence in whole society and also in family and against children is seriously recognized and criticized (for example, State Basic Position for Family Politics, adopted by Cabinet of Ministers on 18 of February 2011 by decision No 65⁸; Action Plan for Implementing State Basic Position for Family Politics, adopted by Cabinet of Ministers on 7 December 12 by decision No 584⁹, State Basic Position on Protection of Children Against Crimes and Prevention of Children Crimes 2013-2019, adopted by Cabinet of Ministers on 21 August 21 by decision No 392¹⁰). These documents acknowledge terrible impact of violence on victims and also whole welfare of all society, analyse statistics (which obviously shows high numbers of violence cases) and also try to find solution for this problem.

Political planning documents usually are composed before preparing the new law and that's why it is good sign that legal situation in the institute of victim protection from violence could considerably improve in nearest future.

It seems that Latvia has realized that it's necessary to improve protection of DV and IPV victims, and the new approach – the more compassionate view to the problems of victims has started also in amendments of law (see next question).

There is also accepted another very important political planning document “**Conception on Preventive Compulsory Methods**” (adopted by Cabinet of Ministers on the 4 July 2013 by decision No 232)¹¹ which founds new system of applying preventive compulsory methods (also such as prohibition to approach specific person (or group of persons) or place).

The idea is that these preventive compulsory methods would be applied by special commission (which would consist of different specialists from different institutions (local municipality, police, social services, etc.) and these methods could be imposed for every person if there are suspicious of dangerous attitude towards other person (so not only to family members).

Conception on Preventive Compulsory Methods sets that the new law (and subordinated regulation) should be written till 2015, and it should be in force in 2017. (The term is so late due to financial burdens which would cause this regulation).

These methods seem to be effective, but I won't provide more detailed information because the facts could change (it's not granted that the law will correspond to political planning document).

Protection measures for victims are at the center of attention and this can be witnessed from the creation of new political planning documents and also law amendments.

There is theory that now legal provisions are not effective and the law is meant to act only in case of already (in past) committed offence (and then the criminal or administrative case can be started). But there is

⁸ Official law database, <http://likumi.lv/doc.php?id=226107&search=on>

⁹ Official law database, <http://likumi.lv/doc.php?id=253301&search=on>

¹⁰ Official law database, <http://likumi.lv/doc.php?id=259219&search=on>

¹¹ Official law database, <http://likumi.lv/doc.php?id=257276&search=on>

lack and urgent need to have also preventive measures because the state should not wait till the rights are violated. If there are clear signs that the person is orientated to violence the state is entitled to apply protective measures in advance (even in cases if it's not possible to prove if the rights will be violated in future at all). The precondition to apply protective measure should not be connected with the guilt of person (which was the leading legal theory of state till now).¹²

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?

The Cabinet of Ministers (executive power) has drafted amendments in Civil Procedure Law.¹³ The main conceptual idea of these amendments is to improve protection of victims (basically victims who suffer due to personal relationship with the perpetrator).

These prepared amendments (drafted by the Ministry of Justice and working group of experts) have been sent to Parliament of Latvia for acceptance (according to constitutional system of state amendments of law may be accepted only by Parliament).

It's not possible to predict exact time when the Parliament will pass this draft law as law and from which term the law will be enforced (but the executive power suggests the date 01.01.2014). There is unofficial information that the politicians support this regulation.

This regulation will strengthen the state and judicial support for DV and IPV victims if these amendments will be adapted (in prepared edition).

b. If so, what will change?

I'll describe potential regulation (but Parliament can change it in lawmaking process):

In Civil Procedure Law new chapter "Securing the personal (private) rights" is included. According to it the court can apply protective security measures if the victim (itself or with the help of police) submits claim that the personal (private) rights of victim is or could be in danger or already are infringed or claimant has received threats.

Personal (private) rights are considered rights to life, liberty, health, protection of private life, personal and sexual immunity and inviolability of home and correspondence.

Securing the personal (private) rights are allowed in cases of divorce, demands of maintenance, division of common property, personal infringements, custody rights of children.

Claim for securing personal rights can be submitted in every stage of procedure - before or after the main claim is submitted in court or while the main case is pending.

Methods of securing the personal (private) rights are:

- 1) prohibition for person to approach (to contact or to organize meeting with help of others) with other person;

¹² Miežane E, „Par preventīvu piespiedu līdzekļu ieviešanu Latvijas tiesību sistēmā” (2011) „Jurista Vārds” No. 38 (685).

¹³ Official homepage of the Parliament of Latvia, [http://titania.saeima.lv/LIVS11/SaeimaLIVS11.nsf/webAll?SearchView&Query=\(\[Title\]=*grozījumi+civilprocesa+likumā*\)&SearchMax=0&SearchOrder=4](http://titania.saeima.lv/LIVS11/SaeimaLIVS11.nsf/webAll?SearchView&Query=([Title]=*grozījumi+civilprocesa+likumā*)&SearchMax=0&SearchOrder=4)

- 2) prohibition to approach place of residence (common house of spouses or partners);
- 3) duty to leave the common place of residence of partners and prohibition to return and to stay in it;
- 4) prohibition to use personal data of victim;
- 5) other methods set by judge in means to protect the person from other person.

It's allowed to apply also some of the above mentioned methods.

Duty to leave the common place of residence of partners and prohibition to return and to stay in it or visit it can be imposed even if the person who is obliged to leave the place is the owner of the immovable property. The person who must leave has rights to take its personal belongings.

In decision the court can rule on distance which person can't contravene. And there may be prescribed other prohibited places for defendant (can be prescribed exactly which place or the characteristics of the prohibited place).

Prohibition for person to approach (to contact or to organize meeting with help of others) with other person means that defendant can't make any physical or visual contact with claimant, to approach or to be closer than in a specified distance, it's not allowed to use direct contacts or any technical devices or any other way of passing information (also with help of others organizing meetings). The decision may include other persons which are connected or dependent on claimant.

If the case involves rights of child the claim may be submitted also by prosecutor and custody court (and not only the police or the claimant as in other situation).

The procedural rules of submitting the claim - the claimant must write the formal legal requirements and also ground for securing the personal (private) rights – what the defendant has done wrong or the rights of claimant that could be infringed in future or that there are threats or exist suspicions about illegal actions of defendant against claimant, proofs, and the methods required by victim that the court should use to protect him(her).

If the main claim hasn't been submitted to court and the victim at first uses the rights to secure its personal (private) rights, the court may set the term for submitting the main claim. This term can't exceed one year, but if the defendant is evicted from its place of residence, the term is no longer than 30 days.

Submitting the claim in court will be for free for victims.

If the police has taken decision which prohibits the defendant to approach the victim or about eviction of defendant from its place of residence, the claim for securing the claimants personal (private) rights may be submitted to court by police if the claimant has expressed such will. In that case police helps victim to find proofs.

The court must examine this claim not later than next working day after receiving it (without notifying the claimant and defendant about examining the claim) if there are enough evidences or the case is very serious (victim is at great risk). The term could be prolonged to 20 days if the additional evidences are required.

As claim for securing the personal (private) rights is connected with main civil case, the decision of imposing methods of securing the personal (private) rights are in force till the final decision of court in main civil case becomes in force. This term can be prolonged for one year, but if the defendant is evicted from its place of residence, the term can be no longer than 30 days.

If the main civil case is closed the decision of imposing methods of securing the personal (private) rights also lose its force.

The court (in decision of imposing methods of securing the personal (private) rights) warns the defendant that the police will control the implementation of this decision and in case the defendant will violate this decision the defendant will be liable according to Criminal law. (Amendments in Criminal Law are – if the defendant violates this decision of court he can be punished with such punishments – short term deprivation of liberty, compulsory work (for benefit of society), and fine).

The court can change and cancel the methods of securing the personal (private) rights if any of party makes such request.

The decision of court which imposes methods of securing the personal (private) rights is in force from the moment the court has made such decision and must be implemented immediately. The court must send the decision to local department of police (guiding from address of claimant). The decision can be announced to parties or sent by post.

If the defendant proves that the claim for securing the personal (private) rights against him submitted by victim was on purpose false and mendacious the defendant can raise claim against victim for recovery of material damages.

According to future amendments in **Law on Police** (linked with above mentioned amendments in Civil Procedure Law):

The police will have a competence to control the decision of court on imposing methods of securing the personal (private) rights.

The law will also provide that the police has duty to prevent threats if the person who is in the place of residence or close to it can harm to life, liberty or health of the other person who permanently resides in this place until the court solves the claim for securing the personal (private) rights.

The police will have a competence immediately issue the decision of prohibition for person to approach to victim, duty to leave the common place of residence of partners and prohibition to return and to stay in it.

Police in its decision of separation (isolation) include 1.facts of the case, 2.duties and prohibitions imposed on suspected person, 3.signature of the suspected person (or note that person refuses to sign it), 4.rights to appeal this decision.

This decision becomes in force and can be implemented immediately. It can be issued for term – 7 days. Submitting the appeal of this decision doesn't suspend its implementation. The police can also help victim to submit the claim in court for starting the case for securing the personal (private) rights.

Each time when person violates the rules of decision of separation (isolation) police can fine the guilty person. More detailed rules on these issues would be regulated by regulations adapted by executive power (Cabinet of Ministers).

The police will have access to Information system of court about decisions of securing the personal rights.

There is additional regulation if victim is child. In that case the claim in court may be submitted also by Orphan's Court according to Protection of the Rights of the Child Law. The police must involve Orphan's Court if the case concerns the interests of child, and etc.

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

I am not aware of such.

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

It would be very useful if amendments described in question 43 would be adapted and would gain force as soon as possible and the implementation of these provision would at least start. Most likely at the beginning there could be some difficulties with implementation of these new provisions (and openly speaking completely new approach for Latvia's law system), but for sure during the time the practice would develop.

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 estimate EPO regulation as very valuable because movement of persons in EU increases and the cases with international (EU member states) elements are becoming more and of course it is necessary to guarantee protection for victims EUwide.

It must be noted that Latvia has drafted its first regulation on civil protection remedies for victims simultaneous with EPO regulation. There has been expressed thesis that due to EPO provisions also Latvia's legislator became more assertive and confident to work out special national regulation for protection of victims (it would be discriminatory to protect other EU citizens in Latvia if we don't protect ours).

Execution power has created working group consisting of representative from many institutions (judges, ministries, etc.) who must write draft law till 01.12.2013 for implementation of EPO in Latvia.

Now I won't dare to predict the course of implementation of the EPO in Latvia (sometimes Latvia implements obliged regulation of EU very excellent).

GLOSSARY

1. General Legal Terminology:¹⁴

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.

¹⁴ 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 as 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.¹⁵

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

¹⁵ 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 serviced on the defendant/suspect in person.

2. Forms of violence

Intimate partner violence (IPV)

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

Domestic violence¹⁶

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.

¹⁶ Rec. (2002)5. (VAW) (Committee of Ministers).

Stalking¹⁷

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 persons¹⁸, 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.

¹⁷ 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.

¹⁸ 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.