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

## NATIONAL REPORT LITHUANIA

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## 2. NATIONAL REPORT: LITHUANIA

### 2.1. INTRODUCTION

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

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

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

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

### 2.2. OVERVIEW OF THE STRUCTURE OF THE NATIONAL REPORTS

#### 2.2.1. IMPOSITION OF PROTECTION ORDERS

- 1) We would like to know about the different forms of protection orders in your country
  - a. Identify the laws in which protection orders are regulated. Through which areas of law (criminal, civil, administrative, other) can protection orders be imposed?
  - b. Are protection orders regulated in generic law or in specific laws on forms of (interpersonal) violence (e.g., domestic violence act)?
  - c. Are these laws (or the text on the protection orders) available on the internet in English or in your local language? If so, could you provide us with a link?

1 a-c: In Lithuania, protection orders can be found in civil, administrative and criminal law. These protection orders (hereafter: POs) are mainly regulated in generic laws, i.e. laws that apply to all victims and to all claimants such as the Administrative Law, Civil Code and the Code of Civil Procedure for civil POs and the Criminal Code and the Code of Criminal Procedure for criminal POs. The only exception is the short term barring order. This type of PO is regulated in an act specifically dedicated to countering domestic violence, namely the Law on Protection against Domestic Violence (came into force on 15 December 2011) (*Lietuvos Respublikos apsaugos nuo smurto artimoje aplinkoje įstatymas*). According to Article 2 of this Law, violence is intentional physical, psychological, sexual, economic or other influence on a person by act or omission, whereby the victim suffers physical, material or non-pecuniary damage. The domestic environment consists of persons in present or past matrimonial, partnership, marriage or other close relationships, as well as persons living together and managing the same household.

Criminal Code and Code of Criminal Procedure and Law on Protection against Domestic Violence is available on the internet<sup>1</sup> in English; Civil Code and the Code of Civil Procedure, also as Administrative Code<sup>2</sup>, are available on the internet in Lithuanian.

- 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-b: Civil or administrative procedures: The most usual conditions are prohibitions on approaching or contacting the victim. In Lithuania, a court may impose provisional protection measures pending the court sentence such as ordering one of the spouses to reside in another place, prohibiting one of them from contacting his/her minor children or from visiting certain places, requiring minor children to live with one of the parents or requesting non-interference in the use of certain properties of the other spouse<sup>3</sup>

Civil law: POs can be found in Lithuanian civil (procedural) law. Although these measures have different purposes (e.g., they are used during the divorce procedure), these measures can have a protection order (Civil Code Book 3, Article 3.65). The court, having regard to the interests of the children of the spouses as well as the interests of one of the spouses, may make orders for provisional protection measures pending the outcome of the divorce suit. The court may make the following orders for provisional protection measures: 1) circumstances permitting, order one of the spouses to live separately; 2) determine the residence of the minor children with one of the parents; 3) demand for one of the spouses not to interfere with the use of certain property by the other spouse; 4) issue a maintenance order in favor of the minor children or the other spouse; 5) seize property until its ownership by one of the spouses is determined or in order to enforce maintenance payments; 6) seize the property of one of the spouses, the value of which could be used to compensate for the litigation costs to the other spouse; 7) prohibit one of the spouses from having contact with his or her minor children or appearing in certain places<sup>4</sup>

Criminal law: POs can be found in Lithuanian criminal (procedural) law. In Lithuania, criminal (procedural) law can form the basis of a PO. Although these measures have different purposes (e.g., make sure that the offender can await his or her trial in liberty), these measures can have a protection order as a condition attached to them. These orders can be issued during all stages of the criminal procedure: both pre-trial and post-trial. The remainder of the report will mainly focus on POs that were issued as a condition to a conditional suspension of

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<sup>1</sup> They can be found through the website (Seimas of the Republic of Lithuania, [http://www3.lrs.lt/pls/inter3/dokpaieska.forma\\_e?](http://www3.lrs.lt/pls/inter3/dokpaieska.forma_e?)). For the Civil Code and the Code of Civil Procedure, see ([http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=404614](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=404614)); for the Law on Protection against Domestic Violence see [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=410975](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=410975), 19 August 2013. For the Criminal Code and the Code of Criminal Procedure, see [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_e?p\\_id=366707&p\\_query=&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=366707&p_query=&p_tr2=2)

<sup>2</sup> for the Administrative Code, see [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=453621](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=453621)

<sup>3</sup> EU Monitor, 2010, see <http://www.eumonitor.nl/9353000/1/j9vvik7m1c3gyxp/vih2dglk9zs>, 19 August 2013

<sup>4</sup> [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=384488](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=384488)

pre-trial detention and POs that were issued following a conviction as a condition to a conditional suspension of the sentence. These two measures are most often used to impose a criminal protection order.

Measures imposed **before the trial** justice system provides for the issue of a protection order in cases of gender violence, with a range of measures which confer full protection and can include provisional measures under civil and criminal law, as well as social assistance and protection measures. The most common measure is expulsion from the victim's home. In Lithuania an obligation can be issued during the pre-trial investigation period, either as part of measures for supervising house arrest or as part of a written obligation to remain in a specific place. The alleged offender may be required to live apart from the victim, not to communicate or attempt to communicate with the victim or persons living with the victim, or not to visit specific places of residence.

Measures imposed **following a conviction** (Probation measures) consist of the following: a court can impose a prohibition on approaching the victim when such a measure is necessary to protect the victim's legitimate interests. It can also impose a range of obligations as part of a sentence involving restriction of liberty: the obligation not to change place of residence without prior notification or to be at home at a certain time, or a prohibition on visiting certain places.

Changes to the Criminal Process Law, which came into force in 2004, allows for the removal of suspected abusers from the family home in order to protect victims of violence<sup>5</sup>. Since 27 June 2008, two new types of criminal sanctions have been applicable under the Criminal Code: prohibition to come close to the victim and participation in violent behavioural therapy programs.

Two articles of the Criminal Code may be used to **convict** perpetrators of violence against another person (17 June 2005, para. 33-35). For example, Article 143 of the Criminal Code punishes "any person who threatens to kill a human being or cause serious health impairment" with a maximum prison term of three years (ibid., para. 35)<sup>6</sup>. The other example is Article 140 of the Criminal Code, which stipulates that: a person, who has, by beating or otherwise committing acts of violence, caused physical pain to or slightly injured or made ill a person for a short period of time, shall be punished by public service or restriction of liberty, or arrest, or imprisonment for a period of up to one year. A court can impose a prohibition on approaching the victim when such a measure is necessary to protect the victim's legitimate interests. It can also impose a range of obligations as **part of a sentence** involving restriction of liberty: the obligation not to change place of residence without prior notification or to be at home at a certain time, or a prohibition on visiting certain.

The Law on Protection against Domestic Violence applies to all violence perpetrated in "domestic environment." This notion is explained widely, as including all persons "currently or previously linked by marriage, partnership, affinity or other close relations, also the persons having a common domicile and a common household. In pursuance with Article 6(1) of the Law on Protection against Domestic Violence, a police officer, having recorded a case of domestic violence, is obliged to take immediate measures to protect the abused person and, depending on the circumstances, to initiate an investigation. The person who has suffered domestic violence is no longer required to submit a complaint to begin criminal proceedings to bring the perpetrator to justice. The Law on Protection against Domestic Violence also lays down measures aimed at the perpetrator in order to ensure the protection of the victim of violence: mandating the removal of the

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<sup>5</sup> Baudžiamojo proceso kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas (The Code of Criminal Procedure) [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=453654](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=453654) (in Lithuanian)

<sup>6</sup> Law on Protection against Domestic Violence [http://www.protectionproject.org/wp-content/uploads/2010/09/Lithuania\\_Criminal-Code-TIP\\_2000.pdf](http://www.protectionproject.org/wp-content/uploads/2010/09/Lithuania_Criminal-Code-TIP_2000.pdf)

perpetrator from the home in domestic violence cases, as well as prohibiting approaching the victim, communicating and seeking contact with the victim.

For years, the police have claimed they were helpless to fight domestic violence. Before, they had no legal authorization to do anything without first receiving a written statement from the victim, while the perpetrator would, in a best-case scenario, be taken to spend the night in cell but return home the next morning. The current law allows to evict perpetrators and ban them.

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

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

In Civil law, only the 'victims' can apply for a civil PO.

The Code of Criminal Procedure provides that some crimes (general part of domestic violent crimes is among them) have to be investigated by the court as a private charge or must be reported by the victim to be investigated by the law enforcement institutions

A new Law on Protection against Domestic Violence came into force on 15 December 2011. A very important provision of the Law stated that domestic violence, due to damage caused to society, is attributable to the acts of public importance. This provision made some changes in the investigation procedure of particular criminal acts, making it impossible for the victim withdraw their complain and to stop the procedure (what happens in most cases when DV is investigated under the Criminal Law).

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

Criminal protection orders can be imposed by an investigative judge, by the public prosecutor or by a court (pre-trial) and there is also an autonomous penalty which can restrain the offender to approach the victim (post-trial). Victims cannot apply for a criminal PO, although they can spontaneously express their desire to get one. In cases of domestic violence, the court can furthermore decide to separate the offender from the victim (Art. 132(1) CCP). The Code of Criminal Procedure (CCP) provides that some crimes (general part of domestic violent crimes is among them) have to be investigated by the court as a private charge or must be reported by the victim to be investigated by the law enforcement institutions. Among other procedural constraint measures the Code also provides an obligation to the abuser to live separately from the victim till the court takes decision

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<sup>7</sup> [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=319053&p\\_query=&p\\_tr2=](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=319053&p_query=&p_tr2=) (in Lithuanian).

Civil protection is less well organized: only in the context of a divorce (caused by domestic violence) can civil protection orders be imposed, and they are only valid until final judgment. Infringement of the temporary order results in criminal liability for not complying with a court decision. There are no barring orders available<sup>8</sup>.

In civil law, only the claimant is involved in applying for a PO, the defendant can contest the claim, and the civil judge decides whether the PO will be issued. In criminal law POs are mostly issued by the court. Temporary protective measures (separation of victim and violator is one of these measures) are also provided by the Civil Code of the Republic of Lithuania (Article 3.65) and may be applied while the court is hearing divorce case<sup>9</sup>.

Correction inspections in Lithuania do not provide any services for victims of crime. The focus of attention is a person having committed a crime – rendering assistance to him/her and his/her monitoring. However, correction inspections contribute to warranting the rights of the aggrieved by control of amends of damages imposed on the offender by the court. Moreover, the amount of amends for the damage inflicted by a crime and the number of people having made restitution are among the main criteria for evaluation of the activities of correction inspections<sup>10</sup>

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

Civil POs can be issued without hearing the offender, during the interlocutory trial in absentia. An important requirement is, however, that the summons are served on the defendant correctly, so that (s)he at least had the opportunity to be present.

Criminal POs usually also require prior hearing of the suspect/offender.

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

In Lithuania, POs are generally available for all types of crimes and victims. Only the short term barring order is restricted to situations in which domestic violence has occurred or is likely to occur.

Concerning for whom civil protection orders are available (i.e., the intended protected persons), it could be specified as follows: married persons; divorcing persons; women only; children of the intended protected person; other relatives of the intended protected person; and, other individuals). Civil protection orders are available against an individual perpetrator or potential perpetrator . Family member(s) of the protected person could also make an application,

However, an individual in need of protection while temporarily visiting their State / jurisdiction could not easily obtain a civil protection order in their State / jurisdiction for the duration of the visit<sup>11</sup>.

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<sup>8</sup> Van der Aa (2011). Protection Orders in the European Member States: Where Do We Stand and Where Do We Go from Here? European Journal on Criminal Policy and Research DOI 10.1007/s10610-011-9167-6

<sup>9</sup> [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=334624&p\\_query=&p\\_tr2=](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=334624&p_query=&p_tr2=) (in Lithuanian)

<sup>10</sup> Deveikytė, E. Chapter 18 Lithuania - CEP, the European Organisation for Probation [http://www.cepprobation.org/uploaded\\_files/Lithuania.pdf](http://www.cepprobation.org/uploaded_files/Lithuania.pdf)

<sup>11</sup> [http://www.hcch.net/upload/wop/genaff2013pd04b\\_en.pdf](http://www.hcch.net/upload/wop/genaff2013pd04b_en.pdf)

As to who is able to apply for / initiate the institution of a civil protection order, it could be indicated that police officials could apply or initiate the putting in place of a protection order,

Behaviours or potential behaviours in response to which civil protection orders are put in place, including: domestic and family violence and, other general criminal or harmful behaviour. Protection orders could address situations involving mental, psychological or emotional abuse, financial or economic abuse, and other types of abuse, broadly defined.

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

Criminal POs are always dependent on one of the aforementioned criminal measures. A procedure specifically designed to impose a criminal PO does not exist. Whether the victim wishes to press charges does not make a difference either, at least not for most crimes including DV.

Article 12(1) of the Law on Protection against Domestic Violence provides for criminal liability for acts of violence. Criminal responsibility for violent actions has been specified in the Criminal Code.

Civil and administrative POs can be issued independent from other legal proceedings. In practice, however, it turns out that short term orders (administrative law) often coincide with criminal proceedings, because normally the event triggering the administrative barring order will constitute a crime. Civil POs can be obtained independent from divorce proceedings under the Law on Protection against Domestic Violence.

The Law on Protection against Domestic Violence protection measures replicates the remand measures regulated by the Code of Criminal Procedure, because it is simply to get the same results just by imposing remand measures following Code of Criminal Procedure. In reality, practice shows that one of the protection measures – the obligation for the perpetrator of violence to temporarily move out of the place of residence – is not effective enough, because this measure is temporary. The practice showed that in 2012, the aforementioned measure was imposed only in 14 percent of all cases. New Law also did not provide the possibility to appeal against imposed protection measures, accordingly it means the violation of suspects right to defense. Lawfulness of protection measures is considered through the prism of public interest.

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)

Civil protection orders considered to be of an “interim, temporary or emergency” nature are available in Lithuania. Civil protection orders are of a fixed duration, e.g., that they are of a duration according to judicial / other competent authority’s discretion.

Police officers are responsible for the enforcement of civil protection orders. Bailiffs had this responsibility also. Enforcement officers have liability protection for good faith actions or omissions taken in furtherance of enforcement of civil protection orders. Civil protection orders can be enforced on the simple presentation of the order to an enforcement officer.

According to the Law on Protection against Domestic Violence, (Article 6) Measures Ensuring the Protection of a Victim of Violence are as follows: 1. Upon recording an incidence of domestic violence, a police officer shall immediately take measures to protect a victim of violence and, taking account of the circumstances, initiate a pre-trial investigation and notify the prosecutor if the prosecutors order is necessary to initiate the pre-trial investigation. 2. Procedural actions shall be subject to accelerated proceedings where the circumstances of an incident of domestic violence are clear, and a criminal case concerning the commission of this act must be heard by a district court.



Functions of Police Officers (Article 7 of the Law on Protection against Domestic Violence): (1) On receipt of a notice of an incident of domestic violence and on arrival to the place of the incident or being witnesses to the incident, police officers shall record the fact of occurrence of the incident of domestic violence and initiate pre-trial investigation. A victim of violence shall not file a complaint. (2) Police officers shall organize provision of assistance in accordance with the procedure established in paragraphs 1 and 3 of Article 9 of this Law. (3) Where an obligation is imposed on the perpetrator of violence to temporarily move out of the place of residence, if he resides together with the victim of violence, police offices shall immediately ensure the moving out of the perpetrator of violence. The procedure for evicting the perpetrator of violence shall be laid down by an institution authorised by the Government. (4) Police officers shall notify a specialised assistance centre of an obligation imposed by court on the perpetrator of violence to temporarily move out of the place of residence immediately, and in no case later than the next working day following adoption of the decision. Where, upon imposing on the perpetrator of violence the obligation to move out, a minor is left without care, the police officers shall notify thereof a children's rights protection division. (5) Police officers shall control execution of a court's decision. Control shall be exercised in accordance with the procedure laid down by an institution authorized by the Government.

Civil Code. When it comes to civil POs, the victim has to initiate the aforementioned interlocutory proceedings for obtaining a civil PO, starting with a summons of the defendant. On the day of the trial, the victim has to provide evidence of the unlawful behavior and the defendant can counter this claim. Eventually, the judge decides – usually right after the oral hearing – on whether or not to impose the civil PO. If it was a trial in absentia, the verdict has to be serviced to the defendant.

The procedures for criminal POs vary per type of type of PO. Usually public prosecutors can either immediately impose a criminal PO themselves – after hearing the suspect/offender – or they can request one from the court or (examining) judge if a judicial decision is required. Sometimes the issuing of a criminal PO requires prior advice from one or more organizations (see question 3b).

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

Short term barring orders (under the Law on Protection against Domestic Violence) generally have the shortest processing time. After the police have arrived at the scene of a (domestic violence) crime, they immediately assess the situation (see 5a). The outcome is then forwarded to the court. Procedural actions are subjected to accelerated.

Civil POs are considered not effective and were rarely used. Because of that, the Law on Protection against Domestic Violence was introduced. In case court rules that the person must be removed from his living place, this must be done in the period not longer than 7 days, and when there is an emergency, it could be done immediately (art 768, CPP)<sup>12</sup>

Criminal POs – or rather the criminal measures forming the basis of criminal POs – vary when it comes to their processing time. They can be imposed very quickly (e.g., when a suspect is arrested), but they can also take up (much) more time (e.g., when the suspect is allowed to pass the time before the trial in (unconditional) freedom and the criminal PO is imposed only as a condition to a conditional sentence).

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<sup>12</sup> CPP, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=162435&p\\_query=&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=162435&p_query=&p_tr2=2)

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?

See 5a.

Short term barring orders (under the Law on Protection against Domestic Violence) is the first step in the attempt to solve the problems of domestic violence. Many improvements are urgently needed for its effective implementation. The government should prepare the amendments to the Criminal Code and Criminal Procedure Code which will introduce immediate eviction and a no-contact order in cases of domestic violence when pre-trial investigation starts. Though police are not allowed to issue a warning upon a report of domestic violence, much discretion remains for the officer to decide whether to submit the case to the court.<sup>13</sup>

The civil judges usually declare the civil POs to have immediate effect (art. 384 CCP). Although a service of the verdict is still required, this does not defer the working of the PO.

Most criminal POs can be ruled to have immediate effect.

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 clear time duration for eviction and the no-contact order issued by the court is identified in the Law on Protection against Domestic Violence. There are no provisions on sanctions for perpetrators if the court order is violated or if domestic violence is repeated. The law contains provisions on duties and rights for a victim and perpetrator, and also provisions on deceptive calls about domestic violence. Police have the duty to inform the child protection institutions if a child has witnessed domestic violence. This might prevent a victim's call to police for the fear of losing the child<sup>14</sup>.

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

Civil interlocutory proceedings can only be initiated if the case has a sense of urgency (art. 3.65, CC) but only during the divorce procedure. For civil POs it suffices if the judge considers it plausible that the defendant acted unlawfully against the claimant or that there is a real threat of future unlawful behavior. The judge can in that case impose a PO to prevent future unlawful behavior.

Short term orders can only be imposed on receipt of a notice of an incident of domestic violence by the police and on their arrival to the place of the incident or being witnesses to the incident. The continued presence of this person in the home needs to constitute a 'serious and immediate danger' for the persons left behind. This threat needs are evaluated by police officer.

The exact application criteria for criminal POs differ per type of PO.

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<sup>13</sup> [http://www.stopvaw.org/Expert\\_s\\_Corner.html#Adopting+a+New+Domestic+Violence+Law+in+Lithuania](http://www.stopvaw.org/Expert_s_Corner.html#Adopting+a+New+Domestic+Violence+Law+in+Lithuania)

<sup>14</sup> [http://www.stopvaw.org/expert\\_s\\_corner.html#Commentary+on+the+Draft+Law+on+the+Amendment+to+Article+3.65,+Part+2,+Item+1+of+the+Civil+Code](http://www.stopvaw.org/expert_s_corner.html#Commentary+on+the+Draft+Law+on+the+Amendment+to+Article+3.65,+Part+2,+Item+1+of+the+Civil+Code)

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

Legal representation for the victim is only required by law in civil interlocutory proceedings. When it comes to the short term order or criminal POs, the victim does not have to be represented.

c. Is free legal representation/advice available?

In civil cases, the unsuccessful party must pay the successful party's costs. If the claim was only partly successful, a proportional amount of costs is awarded (Article 93, CCP). Attorneys and their clients can agree the amount of the attorneys' fee, including a fee conditional on the outcome of the case. The law does not prohibit hourly or task-based billing. The court can also limit legal fees awarded to the successful party from the unsuccessful party in the case if the legal fees are found to be excessive. Recent changes in the CCP introduced a right for the court to award litigation expenses depending on the parties' behavior during the proceedings and the cause of those expenses. If a party acted dishonestly in the process or tried to extend the litigation time, it may be forced to compensate all damages to the other party. Recommended amounts for legal fees are defined by the Minister of Justice and courts follow those guidelines. It is often the case that actual legal fees paid by the client are not fully awarded from the other party to the dispute.<sup>15</sup>

In some cases (such as, if a person is someone who is assigned a compulsory participation of a defender under Article 51 of the Penal Code, if she/he is a victim in a case of compensation, if she/he is receiving social payments, or is are severely disabled or incapacitated, 25% and less capacity to work (or a guardian or caretaker of a person who is severely disabled or incapacitated) (Criminal Law, art. 56). Claimants with few financial resources can apply for subsidized legal representation (50 percent), or, but they are still expected to pay an income-related contribution towards the costs. The court fees are also lower for this group of claimants. Free legal advice for all victims is available at "Legal Help Centre", provided by Mykolas Romeris University<sup>16</sup>.

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)?

Under the Law on Protection against Domestic Violence where an obligation is imposed on the perpetrator of violence to temporarily move out of the place of residence, if he resides together with the victim of violence, police offices shall immediately ensure the moving out of the perpetrator of violence. Other protective orders are not implied by this Law.

Criminal law:

POs can be found in Lithuanian criminal (procedural) law. Measures imposed **before the trial** justice system provides for the issue of a protection order in cases of gender violence, with a range of measures which confer full protection and can include provisional measures under civil and criminal law, as well as social assistance and protection measures. The most common measure is expulsion from the victim's home. The alleged offender may be required to live apart from the victim, not to communicate or attempt to communicate with the victim or persons living with the victim, or not to visit specific places of residence. Measures imposed **following a conviction** (Probation measures) consist of the following: a court can impose a prohibition on approaching the victim when such a measure is necessary to protect the victim's legitimate interests. Criminal Process Law, allows for the removal of suspected abusers from the family home in order to protect victims of

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<sup>15</sup> LITIGATION AND ENFORCEMENT IN LITHUANIA: OVERVIEW [HTTP://US.PRACTICALLAW.COM/3-505-8517](http://us.practicallaw.com/3-505-8517)

<sup>16</sup> [http://www.mruni.eu/lt/universitetas/fakultetai/teisės\\_fakultetas/teisines\\_pagalbos\\_centras/apie\\_centra/](http://www.mruni.eu/lt/universitetas/fakultetai/teisės_fakultetas/teisines_pagalbos_centras/apie_centra/)

violence<sup>17</sup>. Also as prohibition to come close to the victim and participation in violent behavioural therapy programs. A court can impose a prohibition on approaching the victim when such a measure is necessary to protect the victim's legitimate interests. It can also impose a range of obligations as **part of a sentence** involving restriction of liberty: the obligation not to change place of residence without prior notification or to be at home at a certain time, or a prohibition on visiting certain.

Under the Lithuanian CPP (Article 72)<sup>1</sup> Prohibition to Approach the Victim are as follows: (1) A court may impose a prohibition to approach the victim where this is necessary with a view to protecting the legitimate interests of the victim. (2) Upon imposition of prohibition to approach the victim, the offender shall be prohibited, until the expiry of a time limit laid down by a court, from communicating and seeking contacts with the victim, visiting the indicated places at which the victim is usually present. (3) Upon imposition of prohibition to approach the victim and where the offender and the victim share the same residential premises, a court shall place the offender under the obligation to reside separately until the expiry of a time limit laid down by the court or until solving of the issue of granting of the right to live in those residential premises to the victim or to the offender.

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

Yes, this is the short term barring order (see above). However, there are no clear time restraints, for how long the offender should be removed.

When police officers arrive at the site and separate the victim from the perpetrator, they must contact one of a number of specialized help centers. There are now 16 of those in the country.

Upon receiving a notification from the police, staff at a help centre get in touch with the victim, provide consultation, and offer psychological and legal assistance. They also put together a customized recovery plan

At the moment, most victims have little idea of what to do once the police leaves. Police favour a loose interpretation of what it means to contact a specialized help centre with the victim's consent. Often, officers wait until victims give their written consent or decide to seek help themselves. Help centers and non-governmental organizations could be of great assistance to law enforcement – they could help victims defend themselves, help enforce a court ruling to evict the perpetrator, prevent repeated assaults so that the police do not have to visit the same household over and over again.

When the police take the perpetrator away from his home, they are obliged to inform him about the nearest motel. However, if he is reluctant to stay in a motel and no relative agree to take him in, the perpetrator is often simply released in a street.

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

The most popular types of protection imposed under civil, criminal and administrative POs are: 1) the no-contact order, 2) the short term barring order which obliges the offender to leave the family home.

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<sup>17</sup> Baudžiamojo proceso kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas (The Code of Criminal Procedure) [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=453654](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=453654) (in Lithuanian)

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

Most types of POs can be imposed in combination with each other. This goes for all areas of law (civil, criminal, and administrative).

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

The most popular combination can be found in the barring order which, by definition, combines an order to leave the family home with a 'no contact' order.

8) a. Are there any formal legal requirements for the formulation of protection orders? In other words, are there certain elements that always need to be included in the decision or does it, for instance, suffice if the restrained person is told 'not to contact' another person?

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

a-b There are no formal legal requirements for the formulation of POs. In practice, however, many judges – especially civil judges specify which behavior is prohibited and which not. The content of 'no contact' orders, for instance varies a lot, with civil POs and POs issued by means of a suspended sentence being most detailed, followed by the conditional suspension of the pre-trial detention and the conditional release from prison.

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

There are practically no legal limitations to the scope of civil and criminal POs. There are only some general restrictions – such as the requirement that the conditions of the PO can only relate to the behavior of the offender.

Short term barring orders are, by nature, restricted in their scope. They only apply to the family home.

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

See question 9-a for the general restrictions.

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

In practice, judges take all sorts of factors into account; most of them related to the proportionality and personal circumstances of the defendant/offender, but mostly related to family home (e.g., whether family live in a certain forbidden area).

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")?

Civil POs (in a case of divorce procedure) and Criminal POs (mostly, under the Law on Protection against Domestic Violence) are indicated by naming the home address of the victim. For more details, see 7-a.

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

The average scope of an order that prohibits someone to enter a certain area is usually limited to the victims home. POs with a more extensive scope are much rarer.

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

Civil POs could be issued for a specified period (specifically, for the period preceding divorce).

Short term barring orders expiration is not defined by the Law on Protection against Domestic Violence. Responding to the domestic violence report, Police can detain offender for 48 hours. After, the offender is released or if criminal investigation is started (under the Criminal Law), offender can be detained in Pre-Trial detention center until the court decision. If the removal order from the victim's home is issued, offender must leave the home immediately.

Criminal POs usually have a legally determined maximum duration. Either this duration is explicitly stated in the legal provision or it is self-evident (e.g., the suspension from pre-trial detention ends when the case is brought to trial). The longer PO can be imposed by means of a Criminal Law (Art. 138, 140, and 145 CPP)<sup>18</sup>.

Article 140. Causing Physical Pain or a Negligible Health Impairment states that (1) A person who, by beating or other violent actions, causes to a person physical pain or a negligible bodily harm or a short-term illness shall be punished by community service or by restriction of liberty or by arrest or by imprisonment for a term of up to one year. (2) A person who commits the act indicated in paragraph 1 of this Article in respect of a young child or by torturing the victim shall be punished by imprisonment for a term of up to two years. (3) A person shall be held liable for an act provided for in paragraph 1 of this Article only subject to a complaint filed by the victim or a statement by his authorized representative or at the prosecutor's request.

Article 138. Non-Severe Health Impairment states that (1) A person who causes bodily harm or an illness to a person resulting in the victim's loss of a small part of his professional or general capacity for work or in a long-lasting illness, but without developing the after-effects indicated in paragraph 1 of Article 135 of this Code shall be punished by a restriction of liberty or by arrest or by imprisonment for a term of up to three years. (2) A person who causes a bodily harm or illness which is not serious to a young child; to a person in a helpless state; to his close relative or family member; to a pregnant woman; to two or more persons; by torturing or in another particularly cruel manner; in a manner endangering other persons' lives; by reason of disorderly conduct (...) shall be punished by imprisonment for a term of up to five years.

Article 145. Threatening to Murder or Cause a Severe Health Impairment to a Person or Terrorization of a Person states that (1) A person who threatens to murder a person or cause a severe health impairment to him, where there is a sufficient basis for believing that the threat may be fulfilled shall be punished by community service or by a fine or by restriction of liberty or by arrest or by imprisonment for a term of up to two year. (2) Any person who terrorizes a person by threatening to blow him up, to set him on fire or to commit another act dangerous to his life, health or property or who systematically intimidates the person by using mental coercion shall be punished by imprisonment for a term of up to four years. (3) A person shall be held liable for the acts provided for in paragraphs 1 and 2 of this Article only subject to a complaint filed by the victim or a statement by his authorized representative or at the prosecutor's request. (4) A legal entity shall also be held liable for the acts provided for in this Article.

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<sup>18</sup> Criminal Code [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=366707](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=366707)

None of the civil or criminal POs have a minimum duration.

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

Factors that possibly play a role in deciding on the duration of a PO are is the seriousness of the offense. For more information, see 11-a.

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

Civil POs are limited to time, preceding the divorce. Duration of criminal POs varies per PO (se 11-a). There is no statistical data available about the average duration of the different protection orders.

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

Victims are most influential when it comes to civil POs because they are the ones requesting such as PO. They can also request the cessation of a civil PO.

With short term barring orders the influence of the victim is much less. Barring orders can even be imposed against the wishes of the victim. In the case for criminal POs victims can request the cessation of these orders, but the legal authorities are not obliged to pay attention to this request.

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

In the case of short term barring orders both parties are heard and the police will then inquire with the victim how (s)he feels about a barring order. With criminal POs it works differently. When the case involves a crime of domestic violence, the case is proceeded under the Criminal Code and offender is released or convicted (see 11-a). The victims can express their wishes for POs spontaneously, however the length of imprisoning is described by Criminal law.

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

As for civil POs, the victims/claimants request a certain type/scope/duration of PO in their summons. Civil judges can deviate from this request, but only in the sense that they can impose a PO that is less extensive/long/etcetera. Here victims are very influential. This is not the case when it comes to administrative or criminal POs. Victims can express their wishes and desires in this regard, but it is up to the judges if and how they incorporate the victim's wishes.

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

In principle, all civil, administrative and many of the criminal POs can be challenged or appealed by the offender. There are some exceptions: the conditional dismissal, the court order for the maintenance of the public order, the conditional suspension of pre-trial arrest, and the conditional leave from prison cannot be challenged, because these provisions can only be imposed if the offender voluntarily cooperates. If (s)he does not cooperate, the offender will be detained in pre-trial detention, the conditional leave will not be granted, etcetera. This is also true for the conditional release from prison and the conditional amnesty. However, offenders can always appeal against the conditions of these provisions in civil interlocutory proceedings.

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

In civil proceedings both parties can express their feelings towards a PO. During trial, the offender can, for instance, call the judge's attention to possible disadvantageous consequences of the requested PO, such as, for instance, the fact that the PO would no longer allow him to visit family or he/she has no other place to live. Civil judges will try to strike a fair balance between protecting the claimant and limiting the negative consequences for the offender as much as possible, so in that sense, the offender could have an influence.

The wishes of the offender are not (really) taken into account when it comes to short term barring orders. Typically, these orders are imposed regardless of the wishes of any of the parties involved and they also entail the same conditions: the offender has to hand in the keys, has to leave the family home, and is forbidden to contact the persons who stay behind. The offender can of course appeal the decision to impose a barring order. The **juridical** aspects of offenders removal from family home is currently widely discussed by lawyers, as the offender is removed from the property that belongs to him/her.

In criminal law, the offender is also allowed to express his/her opinion towards a conviction, and the judge can take this 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?

See question 13-b. In civil law, the claim of the claimant binds the judge, so if the offender wishes to propose a completely different type of PO, (s)he first has to take this up with the claimant. If both parties agree on a completely different PO, the civil trial can be cancelled or the civil judge can confirm this agreement in his/her judgment.

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)?

The Law on Protection against Domestic Violence came into the force at the end of 2011. Before that, PO orders were rarely introduced. At the moment, there is no empirical material available in Lithuania to answer this question. However, from the regional meetings where the implementation of the Law on Protection against Domestic Violence was discussed it is obvious that the implementation of this law has number of obstacles, such as limited resources both in number of police officers and to lack of material resources. Moreover, the system lacks many *law enforcement* documents that could regulate the implementation of PO. Therefore, not all cases are reported to the court or actions taken. If the case goes under the Criminal law, PO are imposed.

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)?

In civil proceedings, the claimant can call the judge's attention to the fact that there have been prior POs. This may increase the likelihood of being awarded another PO.



With short term barring orders, if previous POs show up in the police registration, these can be taken into account.

As for criminal POs: there is no information available on whether this type of information can or is taken into account in ensuing legal proceedings against the same offender. Again, previous antecedents or police records also help determining the punishment, which makes it likely that previous POs (violations) can play a role in this respect.

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

Children are not automatically included in a civil PO. The claimant has to request the order to extend to contact with (mutual) children as well.

Criminal POs do not automatically extend to children. As with civil POs, criminal POs have to explicitly state that they extend to the children as well.

The Law on Protection against Domestic Violence states that a child who witnesses domestic violence is a survivor of domestic violence. Police have the duty to inform the child protection institutions if a child has witnessed domestic violence. The short term barring order automatically extends to the children if they are living in the family home.

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

If the offender has visitation rights, POs that only apply to the partner can take these rights into account – e.g., by formulating the prohibitions so that it does not violate visitation rights or in a way that still allows for contact with the children to some extent.

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

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

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

a) In civil procedures theoretically mutual protection orders are possible. This could happen when both parties act as a claimant: the defendant argues that the claimant has behaved wrongfully against him/her as well (or instead) and requests the civil judge to impose a civil PO onto the initial claimant as well (or instead). If the civil judge considers the counterclaim plausible, both parties can be bound by a PO. Another possibility is that both parties voluntarily agree not to contact each other (settlement). However, I have no statistical data that could prove that they are used.

The short term barring order only applies to the person who is barred from the family home: it is (s)he who is no longer allowed to contact the persons left behind, so officially there is no mutuality in the order.

Criminal POs are never mutual, although there is no explicit prohibition to this extent. In theory, if both parties have committed criminal offenses against one another, it could be possible to impose mutual POs.

b) The rationale behind criminal POs not being mutual is that the criminal investigation and prosecution revolves around the suspect/offender, not the victim. The criminal justice authorities cannot impose criminal POs on victims. Although short term barring orders strictly speaking are not applicable to the victims, they are

advised to refrain from contact themselves. Still, they are not mutual, because the legislator only wanted to restrain the person who formed the biggest threat.

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

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

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

a-c) Criminal POs are provided free of charge. Only civil POs cost money, mostly court fees and costs for legal representation. Usually, the party who loses the civil trial has to pay for the legal costs. However, the civil judge can decide differently and order both parties to pay for their own costs. This happens very often in cases involving family or (ex)partners, regardless of the outcome of the trial. Whether these costs constitute an undue financial burden for the victim and whether (some) victims are hindered in applying for civil POs because of these financial risks is unknown, but that could certainly be the case. Especially the costs for legal representation can be very high. However, the state can provide discount by 50 percent for financially disadvantaged victims.

### 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?

Lithuania utilizes national, regional or local database(s) which registers enforceable civil protection orders for the benefit of law enforcement officials or other authorities. Civil protection orders are (should be) registered in the public register.

National Courts Administration, which is responsible for collection of case statistics, its analysis and evaluation, and supervision of the Judicial Information System (LITEKO), has made some system modifications and created a new category of cases – cases concerning domestic violence. This modification will allow the system to collect data on the judgments in matters of domestic violence. In addition, the Register of Crimes, handled by the Information Technology and Communications Department under the Ministry of Internal Affairs, containing details of criminal offenses and providing information for official statistics on crime in the Republic of Lithuania, was in 2012 supplemented with metadata on domestic violence crimes.

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

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

Civil POs are generally imposed immediately after the oral hearing so the victim/claimant is automatically informed of the PO and its conditions.

Short term barring orders are issued by the court and communicated to the victim

With criminal POs, victims are in principle always informed of the fact that their offender is set free, of the conditions that the offender has to adhere to, and of the organization they have to contact in case of violation of the PO.

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

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

Short term barring orders should be monitored by the police, but mostly violations of the PO are reported by the victims. The police consult victims and agree on the time and frequency of check-ups. However, it often happens, though, that victims themselves take their abusers back, because they share a source of income and have children together.

The law says that the perpetrator cannot live with or approach the victim, but in reality, things are different. Because of the lack of personnel, police are doing only selective check-ups. They also share information on court orders with local inspectors, but they have many functions and do not have the capacity to drive up and check daily.

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

GPS tracking devices or other technology are not used to assist with the enforcement of civil protection orders

Extra surveillance, such as house visits can be used at the discretion of the police. Also, the probation services can ask during their meetings with the offender whether (s)he obeyed the PO, and the social services can do the same when they meet the victim.

However, as the practice shows, POs, especially in case of domestic violence are poorly monitored, and even after victim calls to police telling that she fears fore police not always responds efficiently enough.

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

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

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

GPS is used rarely and only in the most serious criminal cases,

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

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

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

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

It depends on how the PO is formulated. If the PO reads that the offender is not allowed to 'initiate and have contact' with the victim – instead of only 'initiate contact' – contact initiated by the victim could officially also constitute a breach if the offender enters into the conversation. However, I couldn't find this documented in the Criminal Code

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

I am not sure whether contact initiated by the victim would constitute a problem in establishing or proving a PO violation. It does, however, have an effect on the official reaction to PO violations (see 23-c).

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?

With civil POs, contact initiated by the victim could lead to the refusal of protective order.

With short term barring orders if the contact is initiated by the victim him/herself – a problem which is particularly relevant in the case of short term barring orders which can be imposed against the wishes of the victim – the authorities will be less inclined to enforce the PO. At best, both the victim and the offender are reminded of the conditions of the PO and the offender receives a warning.

With criminal POs, contact initiated by the victim can play an important role as well. If the victim clearly wants to provoke the offender, the authorities would issue a warning if the offender reacts.

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

Civil POs: Violations of civil POs are easily established, as civil POs are related to divorce process and could be reported by the family members who seek protection.

Criminal POs: The evidentiary requirements for a violation of a criminal PO are the same as for any other crime the minimum evidentiary requirements have to be met, and the violation has to be 'legally and convincingly proven'.

For Short term barring order under the Law on Protection against Domestic Violence, when the police are called to a scene of domestic violence – regardless of whether the victim called or witnesses – they will assess whether a short term barring order may be required. The judge/court will then decide on whether or not to impose the short term barring order.

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

Civil POs: Once the victim becomes aware of a violation, (s)he has to contact his/her attorney who, in turn, will contact a police.

Short term barring order: The victim and/or other organizations that become aware of the violation of a short term barring order can contact the police and file a report (the latter is not a necessity). The offender can, in turn, be arrested, but this is not necessary either.

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

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

Civil POs: The most prevalent formal reaction to a PO violation is to try to come to a settlement (e.g., the claimant's attorney can warn the offender and persuade him/her to cease violating the order). Claimants can also (in addition to or instead of civil execution) turn to the police. The police are allowed to escort the offender out of the restricted area and order him/her to stay away. It is, however, unclear how the police react in practice.

Short term barring order: The following reactions to a violation of a short term barring order can be displayed by the police: ignore the violation, issue a warning, arrest the offender, bring the offender before a public prosecutor, dismiss the case, bring the offender before the criminal court and have him/her sentenced.

Criminal POs: With criminal POs, the reaction to a violation differs per PO. If the offender violates a conditional dismissal, the public prosecutor can decide to (re)open a prosecution. If a condition to a conditional suspension of pre-trial detention is violated, the public prosecutor can ask for the termination of the suspension. If the condition to a conditional suspension of the sentence is violated, (s)he can ask for the execution of the suspended part of the sentence, etc. Other reactions are: ignore the violation, issue a warning, change the conditions of the PO or ask the judge to change these conditions.

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

Next to formal reactions, it is also possible to give an informal reaction to a PO violation (see 25-a).

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

For civil PO, see 25-a. Which reaction usually follows on a violation of the short term barring order is unknown. In practice, some offenders get away with a warning or even without it. Also, in some these cases often end in a dismissal. The same goes for the violation of criminal POs. Although the public prosecutors indicate that PO violations are usually followed by an official reaction (see 25-a), in practice they also use informal reactions (e.g., warning or change of the conditions). There are no empirical data available on the prevalence of formal and informal reactions to PO violations.

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

There is no empirical evidence on the effectiveness and dissuasiveness of the sanctions/ reactions to PO violations, so it is difficult to answer this question. In my opinion, they at least seem proportionate. Whether they really stop offenders from re-victimizing their victims will also depend on whether these sanctions/reactions are actually enforced in practice.

However, in mass media many cases are reported when the POs were not monitored, victims were not protected and in some cases were killed in front of their children. For example, last February, a woman in Klaipėda District was killed by her spouse who had previously been evicted from home for assaults. The man had been ordered to stay away from the house – but he simply ignored the ruling and came back. The woman, frightened, called 112 and said she was afraid her intoxicated spouse could hurt her. The police, overstretched as always, decided the call was not of prime urgency and by the time officers knocked on the door, the woman was dead.

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

Formally, the reports of PO violations, and especially from victims of domestic violence should be given priority. However, the police officer who receives the call classify the case as priority case or not, and violation of protective orders are not always given the priority.

This is related also to the fact that within six months (from 15 December 2011, when the Law on Protection against Domestic Violence came into effect, until 15 June 2012) the police received 12.970 reports of alleged domestic violence. The establishment of the cases of domestic violence have led to 4335 pre-trial investigations. Most of the investigations were initiated under Article 140 of the Criminal Code (infliction of physical pain or minor health impairment). In its analysis of the available data, the police noted that the domestic violence call-outs have been on decrease, just like the number of pre-trial investigations. In the first month, the police recorded nearly 3.500 call-outs to compare with 1.700 in the sixth month (CAT/C/LTU/3).<sup>19</sup> Such increase in victims seeking for help without increased number of police officers or other resources for police are limiting the possibilities to react effectively.

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

In Lithuania, violation of civil POs is not criminalized. They can only be enforced through civil means of execution. The violation of a short term barring order, however, could be criminalized (see 25-a).

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

See 26-a.

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

In the case of a violation of a short term barring order, the police can arrest the offender, but this is not standard in practice. Empirical evidence even suggests that the police often remain inactive after a violation has occurred.

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

If the victim contacts the police after a civil PO has been violated, the reactions vary. Some policemen are hesitant to interfere in what they see as a civil case, whereas others see the verdict of a civil interlocutory judge as an authorization of their interference. In that case they can exercise their regular competences and, for instance, escort the offender out of the restricted area and/or they can order him/her to stay away. If the violation consisted of a crime, they can also write down a report and (possibly) even arrest the offender.

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<sup>19</sup> Replies by the Republic of Lithuania to the list of issues provided by the committee against Torture (CAT) on the implementation of the un convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Lithuania (CAT/C/LTU/3), the text approved by the Government of the Republic of Lithuania in its sitting of 17 September 2012.

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 'monitoring authority' of civil POs is the claimant his/herself, and (s)he needs to report the violation to an attorney who will, in turn, contact a police.

In case of the violation of a short term barring order or a criminal PO, the monitoring authorities, e.g., the judge, e.g. they have to ask the (examining) judge to sanction the offender.

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

When it comes to the short term barring order and criminal POs, the police and the probation services are in principle obliged to report all violations that have come to their knowledge to the authorities, but in practice they sometimes assume discretionary powers not to report violations, especially probation services.

Victims can freely decide whether or not to report violations.

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

When it comes to the violation of short term barring orders, the police officers take into account factors, such as seriousness of the violation, the intentions of the offender, the evidence, and the attitude of the victim (e.g., did he/she initiate contact him/herself?). Police (sometimes) fail to report a violation (see 26-c).

In the case of criminal POs, the police sometimes also decide not to report a violation. Whether they report to the authorities depends on the available evidence of the violation and the seriousness of the violation.

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

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

### 2.2.3. TYPES AND INCIDENCE OF PROTECTION ORDERS

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

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

There is no empirical information available on these matters.

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?

a-b The most popular ones are the short term barring orders (see question 29), which automatically also include a no-contact order. After that come the 'no contact' orders, followed by the prohibitions to enter an area.

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

Although civil interlocutory proceedings (officially) do not revolve around crimes, but around unlawful behavior, most of these cases do involve (repetitive) assault, (repetitive) threats and stalking, often between (ex)partners.

Short term barring orders are by definition only imposed in cases where domestic violence has occurred or is on the verge of occurring.

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

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?

There is no empirical information available on these matters. As it has been mentioned above the Law on Protection against Domestic Violence came into effect in mid-December 2011. During the first month after adopting the law, the police have filed 3.483 reports about domestic violence cases, opened 1.149 preliminary investigations (including two murder probes). In all, 22.229 cases of suspected domestic violence incidents were reported to the police by 3 April 2013, translating into 10,867 opened investigations. According to the Police Department, in most cases (9.226) violence was perpetrated against women. In 1.096 of the cases, men were the victims and in 836, children. Vast majority of perpetrators were men. “There has always been much violence. Before, however, one needed to write a statement before a preliminary investigation could be opened,” Saulius Skvernelis, general commissioner of the Police Department, tells in an interview to the newspaper “15min”<sup>20</sup>. “By the time officers arrived to the site, the statement would be gone. Under current regulation, the statement is not necessary, hence the numbers. Before, they were skewed and now more accurate.”

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

There is no empirical information available on this matter.

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

There is no empirical information available on this matter.

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<sup>20</sup> <http://www.15min.lt/en/article/in-lithuania/underfunding-stalls-efforts-to-protect-victims-of-domestic-violence-525-324358#ixzz2cdBLMXni>



#### 2.2.4. PROTECTION ORDER EFFECTIVENESS

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

- 33) a. Is there any empirical information available on the effectiveness of protection orders in your country? Do protection orders stop or reduce the unwanted contact? Or do they have another effect (e.g. improve the well-being of the victims, change in the nature of the violence)?
- b. Which percentage of the imposed protection orders are violated?
- c. If protection orders are still violated, are there any changes in the nature of the violence (e.g., violent incidents are less serious)?
- d. Is there any empirical information on the role that victims play in protection order violations (e.g., percentage of cases in which the victims themselves initiated contact)?

a-d There is no empirical information available on these matters. PO under the Criminal law was ineffective, and Law on Protection against Domestic Violence came into force on 15 December 2011.

- 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?

a-c) In all, 22.229 cases of suspected domestic violence incidents were reported to the police from mid-December 2011 by 3 April 2013, translating into 10.867 opened investigations.

#### 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 2011, after long discussions caused by ineffectiveness of POs under Criminal law, the Law on Protection against Domestic Violence was introduced. Now, this forms the basis of a PO related to domestic violence, which is a huge problem in Lithuania.

Furthermore, the system of criminal, but also civil provisions needs to be critically examined on its coherency. At the moment, their application requirements have arbitrary differences. For instance, some of the legal provisions with less procedural safeguards (e.g., civil proceedings, conditional dismissal) are less regulated and

leave more freedom to the authorities than provisions with more procedural safeguards (e.g., suspension of the sentence).

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

A problem with issuing short term barring orders is that this can happen without the consent of the victim. Although this makes sense from a victimological perspective, it could have negative consequences for the subsequent monitoring and enforcement of these POs (see 36-c and d).

A huge problem with criminal POs is that, at the moment, victims are practically never involved in designing the PO. They are, for instance, rarely asked for their wishes in this regard, even though they are the principal beneficiaries of the PO.

A problem that is applicable to civil and criminal POs is that often the scope of the PO is not clearly delineated or defined. With 'no contact' orders, for instance, it is often unclear whether contact initiated by the victim or contact through third parties also falls within the realm of the PO. In addition, 'vague' formulations, such as 'in the direct vicinity' or 'in the surroundings of' can create misunderstandings.

As to the implementation of POs, in the case of domestic violence, the police is short of human resources also as with technical equipment / other material resources.

#### c. Problems with protection order monitoring

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

A problem that is specific for the short term barring order is that many victims are reluctant to report violations to the police. This has to do with the fact that sometimes these orders are imposed against the wishes of the victim.

When it comes to criminal POs, some practitioners complain about the fact that these POs (and their violations) are not always properly registered or communicated to the monitoring authorities, nor to the victims. Proper registration/communication is, however, essential for monitoring and subsequent enforcement of POs.

A problem that is applicable to all types of PO (civil, barring order, criminal) is that pro-active monitoring is practically impossible. The usefulness of extra surveillance and house visits – besides being time-consuming and costly – is questionable. Unless the use of technical devices is allowed (e.g., GPS), the possibilities of monitoring POs are very limited, and the odds of catching an offender in the act of violating a PO are small. GPS, however, is not used for the monitoring of POs.

#### d. Problems with protection order enforcement

When the police are called to a scene of domestic violence – regardless of whether the victim called or witnesses – they will assess whether a short term barring order may be required. The judge/court will then decide on whether or not to impose the short term barring order.

Police officers usually take the abuser to a police station, where he can be kept for up to 48 hours, and carry out a stepped-up investigation. Then a court can order to temporarily evict the perpetrator and restrain him from approaching the victim. The police is in charge of making sure that the order is carried out.

The biggest problem with civil POs is that many policemen are very reluctant to interfere in what they see as a private affair or a matter of civil law. Also, there appear to be evidentiary difficulties when it comes to proving a violation of the PO: often it is a matter of 'his word against hers'. This reduces the effectiveness of a civil PO.

e. Problems with protection order effectiveness?

Many of the above mentioned problems – e.g., lack of monitoring possibilities, problems with registration and communication, police reluctance to act, shortage in human resources (personnel) – could have a bearing on the effectiveness of POs. However, whether these factors actually play a role in PO effectiveness is unclear, since there has never been research conducted in the Lithuania on this topic; moreover, the Law on protection against domestic violence is in implementation for a very short time.

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

In my opinion the biggest problems are: lack of personnel, lack of documents supporting the implementation of the law against Domestic Violence, lack of monitoring possibilities, reluctance on the part of the police and/or the probation services to report and intervene when a violation occurs, lack of victim input (especially with criminal POs), and registration difficulties.

2.2.6. PROMISING/ GOOD PRACTICES

38) Which factors facilitate the:

a. imposition

A factor that facilitates the imposition of POs in the Lithuania is the Law against Domestic Violence, also, that there are many ways of imposing a PO. For instance, in criminal law, a PO can be imposed in all stages of the procedure, thereby avoiding ‘protective gaps’ (at least in theory), i.e. stages of the procedure where the victim cannot be protected by means of a PO.

Another factor is the fact that nowadays, (some) judges pay more attention to the interests of the offender. By avoiding POs that have disproportionately negative consequences for the offender, the odds of him/her complying with the PO increase.

b. monitoring, and

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

c. enforcement of protection orders?

A huge improvement in the enforcement of criminal POs is that recent changes to the legislation enable the provisional enforcement. This enables an immediate reaction to a PO violation, without having to wait for a final judgment (see question 5-a).

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

I would think that the key factors to PO effectiveness are:

- the victim’s consent with POs (so as to avoid contact initiated by the victim);
- preferably also the offender’s consent with the measure;
- a swift, certain and proportionate reaction to PO violations;

- and a more extensive use of technical devices to monitor compliance.

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

Attention to this problem by politicians, mass media, courts, etc.

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

See above

- Pay more attention to informing victims of the PO and its conditions
- Try to strike a balance between the victim's safety and the offender's interests (e.g., try to avoid POs that are disproportionately disadvantageous for the offender)
- Improve PO registration, also when it comes to violations, and avoid imposing another PO once the (criminal) record shows (repetitive) PO violations in the past.
- Include PO monitoring and enforcement in police training
- Explore possibilities of an extended use of technical devices to monitor PO compliance
- Prioritize victim protection and reaction to PO violation
- Conduct (empirical) research on PO effectiveness

### 2.2.7. FUTURE DEVELOPMENTS

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

At the moment, POs are at the centre of renewed attention and confidence in their effectiveness is high. This can be witnessed from the creation of new provisions, like the Law on protection against domestic violence. However, whether POs are effective remains an open question. Research on PO effectiveness is lacking in Lithuania.

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?

Given the changes that were already made recently to PO legislation, I do not anticipate any (drastic) changes in the nearby future even though the system of (criminal) POs could do with a thorough revision and update.

b. If so, what will change?

Not applicable.

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

Not that I am aware of.

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

Not that I am aware of.

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

I do not foresee many problems with the implementation of the EPO in Lithuania.