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

NATIONAL REPORT ROMANIA

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2. NATIONAL REPORTS: CONTENT AND STRUCTURE

2.1. INTRODUCTION

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

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

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

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

2.2. OVERVIEW OF THE STRUCTURE OF THE NATIONAL REPORTS

2.2.1. IMPOSITION OF PROTECTION ORDERS

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

1 a-c: In Romania, protection orders can be found in civil and criminal law.

In civil law, protection orders (hereafter: POs) are regulated exclusively in the Law 217/2003 regarding the prevention and combating violence in the family (updated). The PO procedure is a very recent one, adopted on 9 March 2012.

POs in criminal law are prescribed in general provisions of the Criminal Code. The Prohibition to return to family home for a limited time (Art.118¹) is applicable to persons who had been convicted for at least one year in prison for acts of violence against family members.

Law 217/2003 is not available in English.¹ An unofficial English translation of the Criminal Code is available.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?

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).

2 a: In criminal law, there is also the possibility of imposing POs as a condition to a suspended sentence under supervision (Arts.86¹-86⁶ of the Criminal Code). This is a general provision applicable to all criminal offences, under certain conditions.

There are other general provisions applicable to all types of criminal offences when POs may be imposed as safety measures: Obliging to medical treatment (Art.113 of the Criminal Code), Medical hospitalization (Art.114 of the Criminal Code), and Prohibition to enter certain localities (Art.116 of the Criminal Code). The aim is to protect public interests rather than rights of individuals-victims of criminal offences.

As to forced psychiatric hospitalization, an administrative procedure is regulated in the Law 487/2002 on mental health and the protection of persons with mental disorders (updated). The psychiatrist's decision to hospitalize a person against his/her will is reviewed by a medical commission and the court that confirm hospitalization or invalidate it. If necessary, the court may order medical treatment instead of hospitalization.

These general provisions of the Criminal Code and Law 487/2002 on mental health and the protection of persons with mental disorders (updated) will not be dealt with in the remainder of the report.

2 b: POs as a condition to a suspended sentence under supervision may only be imposed with the conviction of the person to imprisonment.

POs such as Obliging to medical treatment (Art.113 of the Criminal Code) and Medical hospitalization (Art.114 of the Criminal Code) may be imposed for a limited time in all stages of criminal procedure, as long as the criminal investigation started against the suspect.

POs such as Prohibition to enter certain localities (Art.116 of the Criminal Code) and Prohibition to return to family home for a limited time (Art.118¹ of the Criminal Code) may only be imposed with the conviction of the person to imprisonment.

¹ Law 217/2003 (updated) <<http://www.mmuncii.ro/pub/imagemanager/images/file/Legislatie/LEGI/L217-2003-R.pdf>> accessed 31 August 2013;

² Criminal Code 1968 (updated) <http://www.google.ro/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&ved=0CDkQFjAD&url=http%3A%2F%2Fwww.secice.nteer.org%2Fdoc%2Fpresent_Criminal_Code.doc&ei=ngXLUaTUAYrPtQaMhIGwBg&usg=AFQjCNGflzyTpCCjI67tGiuykKZbc9Uaiw&bvm=bv.48340889,d.Yms> accessed 31 August 2013;

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

In civil law, the victim herself or through a legal representative can apply for an order. In addition, the prosecutor, the local social protection authority in charge with combating violence in the family, and any social services provider in the field of combating violence in the family (with victim's consent), can apply for such an order. Where the complaint was introduced by an organization or institution, the victim may discontinue proceedings (Art.28 of Law 217/2003).

In criminal law, only the victim can request for such an order.

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

In civil law, the civil court issues POs.

In criminal law, the criminal court issues POs in the same time with the conviction.

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

In civil law, POs may be issued on an *ex parte* basis in cases where there is special urgency; the court can issue the PO in the same day it was applied for.

In criminal law, POs may not be issued on an *ex parte* basis.

- 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 civil law, only victims of violence in the family benefit from POs. Law 217/2003 covers: blood line relatives or relatives by adoption, spouses, ex-spouses, persons that live together and have a relationships similar to those of spouses or those of parents and their children, the guardian or other person that acts like a guardian or has similar rights as a guardian, the legal representative or other person that cares for a person with mental health problem or intellectual disability or a physical impairment, except for professionals relations (Art.5 of Law 217/2003).

In criminal law, only victims of violence in the family where the perpetrator was convicted to at least one year in prison may benefit from POs.

As to the other types of POs described above at point 2.a, their scope is broader; they apply to all victims of criminal offences.

- 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)?

In civil law, POs can be issued independent from other legal proceedings.

In criminal law, POs can only be issued together with a conviction to imprisonment for at least one year for acts of violence against a family member.

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)

In civil law, a request for PO is filed with the local court where the victim lives. There is a special form approved by Law 217/2003 (updated) that should be filled in. The request is tax free. The request is examined *in camera* with the mandatory participation of the prosecutor. The two parties are subpoenaed according to procedures applicable in urgent cases. The victim may receive free legal aid at his/her request. The offender has the right to mandatory free legal aid. In especially urgent cases the court may issue the PO without hearing the conclusions of the two parties. The examination of the case should be done with urgency and the case should be given priority. Only evidence that does not delay the examination of the case is admissible. The judgment is delivered in maximum 24 hours from the last hearing. The reasoning may be delivered in maximum 48 hours later.

In criminal law, the court issues the PO together with the sentence, at the end of the trial in front of the first instance court.

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

In civil law, there is no explicit time-limit for proceedings issuing POs. Art.27.(7) of the Law 217/2013 mentions generally that the examination of the case should be done with urgency and the case should be given priority.

There is no official information indicating the length of proceedings. A research carried out by a coalition of non-governmental organizations during 12 May 2012-28 January 2013 shows the medium length of proceedings is 33.3 days, including 9.7 days from the introduction of the request until the first hearing and an average of 2.9 hearings. There are cases where the judgment is delivered the same day; the longest trial took 118 days.³ This length of proceedings is not in compliance with the general requirement of urgency and priority prescribed by law.

In criminal law, there is no provision regarding the length of proceedings issuing POs. The trial in front of the first instance court may take months or years, depending on the complexity of the case.

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?

In civil law, usually, the PO enters into force after being communicated to the defendant; it is enforceable without additional execution procedures. Where circumstances of the case require immediate entry into force of the PO, the court may decide so, at the victim's request or *ex officio* (Art.29 of the Law 217/2003). During appeal, the court may suspend the execution of the PO, but only after the defendant pays bail.

In criminal law, the PO enters into force immediately, similar to criminal sentence.

³ Asociatia TRANSCENA, *Studiu la nivel național cu privire la implementarea*

ordinului de protecție – Legea 25 din 2012 (2013), pp.12-13

<<http://www.centrulfilia.ro/images/PDF/studiu%20monitorizare%20ordine%20de%20protectie%202013.pdf>> accessed 31 August 2013;

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?

There is no regulation for interim protection in civil law or criminal law.

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?

6 a: In civil law, applicants should fill-in a special form included in the Law 217/2003. They should prove that their life, physical or mental integrity or liberty is endangered through an act of violence of a family member and that the danger may be removed by the enforcement of a PO. There is no study available on how these legal conditions are followed in practice.

In criminal law, PO may only be imposed if the offender is convicted for at least one year in prison for a criminal offence of violence against a family member. Moreover, prosecution has to prove that the presence of the offender in the family home represents a serious danger for family members. There is no study available on how these legal conditions are followed in practice.

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

c. Is free legal representation/advice available?

6 b-c: Art.27.(3) of the Law 217/2003 prescribes that the victim who requires free legal aid may receive it. However, it is not mandatory like in the case of defendant (Art.27.(4)). There is no study available on how these legal provisions are followed in practice.

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)?

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?

7 a-b: In civil law, the following types of protection can be provided for in the orders: temporary eviction of the aggressor from the family home, irrespective whether he is the owner of the place, relocation of the victim (and children) back into the family home, limiting the aggressor's use of the family home so that he does not come in contact with the victim, keeping a minimum distance to the victim, her children or relatives or to victim's residence, workplace or school, forbidding the aggressor to go to certain towns or areas where the victim is periodically traveling to, forbidding all contact in any form with the victim, handing all guns held to the police, establishing child custody or child residence (Art.23). Moreover, if the victim and her children cannot stay in the family home, the aggressor may be ordered to pay for their rent or livelihood expenses. The civil court may complement the protections mentioned above with the obligation of the aggressor to undergo psychological counseling, psychotherapy or recommend control measures or medical treatment, especially aimed at rehab.

The PO may only be in force up to six months, including the eviction order (Art.24). Upon expiry of the PO, the protected person may apply for another protection order if there are indications that without a PO, her/his life, physical or psychical integrity or freedom may be endangered (Art.33).

In criminal law, the PO consists of the prohibition to return to family home for a limited time, not more than two years.

During the barring period help may be provided to the victims and to the offender if specialized services are available in the region where the persons are living. According to the Department of Child Protection within the Ministry of Labor, Family, Social Protection and the Protection of the Elderly, the highest State authority in charge with combating violence in the family, in Romania there are 756 places available in the shelters for adult victims of violence in the family and their children. There are 34 centers for emergency cases, 10 rehabilitation centers for the victims of violence in the family, 36 counseling centers for victims of violence in the family and 2 centers for aggressors.⁴ There is no recent study evaluating the availability of specialized services in the field of domestic violence and the level of addressability.

c. Which of these types of protection (e.g., no contact order) are imposed most often in practice?

7 c: There is no study available on POs. Consequently, we do not have information about the most often type of protection imposed in practice. Moreover, the competent authorities in the field of combating violence in the family informed us that they do not have data on POs issued in 2012 or they do not collect data on POs. The Department of Child Protection declares it does not have data about POs imposed.⁵ The Superior Council of Magistracy, the highest administrative body of the judiciary that collects data regarding court judgments based on a set of indicators, declare that for the year 2012 there was no case of civil law PO registered in their statistics and they do not collect data on criminal POs.⁶ The General Inspectorate of the Romanian Police declares it does not centralize data on POs at the national level; registries with POs under the supervision of the police are kept at the level of each police station.⁷

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)?

7 d: Yes, different types of protection orders can also be imposed in combination with each other.

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

7 e: There is no study available on POs. Consequently, we do not have information about the most often combinations imposed in practice. Moreover, the competent authorities in the field of combating violence in the family informed us that they do not have data on POs issued in 2012 or they do not collect data on POs (see point 7.c above).

⁴ Ministry of Labor, Family, Social Protection and the Protection of the Elderly - Department of Child Protection, Response No.DPC/SPS/mg/7866/17.07.2013 (on file with the national reporter);

⁵ Ministry of Labor, Family, Social Protection and the Protection of the Elderly - Department of Child Protection, Response No.DPC/SPS/mg/7866/17.07.2013 (on file with the national reporter);

⁶ Superior Council of Magistracy, Response No.2/17413/1154 of 16 July 2013 (on file with the national reporter);

⁷ Ministry of Internal Affairs - General Inspectorate of the Romanian Police, Response No.2921238/25.07.2013 (on file with the national reporter);

- 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?

8 a-b: The PO in both civil law and criminal law is part of the court judgment and it is not more elaborate than an ordinary court judgment. There is no special format required by law for the PO, only for the PO request.

- 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?
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?

9 a-c: There are no legal limitations to the scope of POs in both civil law and criminal law. Courts are free to decide the scope of protection in any way they see fit within the types of protection and the time limit prescribed by law. There is no study available on POs. Consequently, we do not have information about which factors courts take into account in practice.

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

10 a-b: Law 217/2003 prescribes two types of protection: prohibition of approaching a minimum distance to the victim, her children, her residence, workplace or school and prohibition to enter certain towns or areas the victim periodically visits. There is no study available on POs. Consequently, we do not have information about the average scope of an order that prohibits entering a certain area.

- 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?
b. Which factors do legal authorities generally take into account when deciding on the duration of a protection order?
c. What is the average duration of the different protection orders (half a year, one year, two years)?

11 a-c: In civil law, POs may be issued for a maximum duration of six months. In criminal law, they may be issued for a maximum of two years. There is no minimum duration attached to POs. There is no study available on POs. Consequently, we do not have information about the factors courts take into account in practice when deciding on the duration of POs or what the average duration of POs is.

- 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?

In both civil law and criminal law victims may not request the cessation of POs once they are issued by the court. Violating a PO is the criminal offence of Violating a court order (Art.32 of the Law 217/2003 and Art.271 of the Criminal Code). The difference between violating civil law PO and criminal law PO is that only in the first case parties' conciliation removes criminal liability.

In civil law, the offender may request the repeal of the PO if he/she can prove that he/she respected the PO, followed psychological treatment or psychotherapy or other form of counseling he was obliged to in the PO, and there are strong indications that he/she no longer represents a danger to the victim of violence or her/his family (Art.34). The police department that supervised the PO is subpoenaed.

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 civil law, where a PO is not directly requested by the victims, they have always the right to discontinue proceedings (Art.28). In criminal law, the POs are only requested by victims.

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?

In civil law, victims usually are the ones that indicate the type, scope and duration of POs in the special form they fill-in when introducing the application for a PO. Nevertheless, the decision is with the judge.

In criminal law, there is only one type of PO available according to the law – Prohibition to return to the family home.

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

In civil law, offenders may appeal the imposition of POs in three days from the first instance court decision was issued if the parties were subpoenaed or in three days from the communication of the decision if the parties were not subpoenaed.

In criminal law, POs are appealed together with the sentence.

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?

13 b-c: Offenders are usually subpoenaed and they benefit from free legal aid. They have the opportunity to present their counter-arguments, including the disadvantageous consequences they will suffer from if the PO is issued, alternative measures etc. Nevertheless, the decision is with the judge. There is no study available on POs to show how offenders' defense is received by judges.

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 principle, the judge should only be concerned about the facts of the case and not the general situation regarding the implementation of POs. However, there is no study available on POs. Consequently, there is no information about the implementation of POs in practice.

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 law, some of the questions in the PO request form indicate that previous violence or POs may be taken into account by the court when issuing a new PO. The questions are whether the victim has introduced previous complaints, requests, and legal actions against the same person, whether the defendant is a party in another criminal or administrative trial, which other violent acts were conducted against the victim, family members, children, other persons or goods.

In criminal law, there is no indication that previous POs are taken into account. Criminal law relates to certain acts that are assessed in isolation.

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

16 a-c: In civil law, one of the types of protection that may be ordered is establishing temporary custody or residence of the children (Art.23.(1).h of the Law 217/2003). Some of the questions in the PO request form indicate special attention is intended to children. However, the questions focus on children as victims or potential victims of violence and not as means for the aggressor to exert violence against the victim. The form asks whether any act of violence took place in the presence of children, whether there is a risk for children, including to be taken without a right by the defendant. In conclusion, children are not automatically included in the PO, only if the applicant requests it and there are indications that they are also in danger.

There is no study available on POs. Consequently, there is no information how the PO is implemented in the context of visitation or custody decisions.

In criminal law, children are not automatically included in the protection. The PO consists in prohibition to return to family home. There is nothing about visiting or contacting children or even contacting the victim regarding children, etc.

- 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 or if mutual protection orders are only accepted in particular cases, in which cases are mutual protection orders prohibited and what is the rationale behind this prohibition?

17 a-b: There is no provision in place regarding 'mutual protection orders'. We are not aware of case law in this regard. Moreover, there is no study available on POs addressing 'mutual protection orders'. The only study available mentions that requests for civil POs introduced by men represent only 6% of the total number of requests introduced in the first 9 months from the adoption of the legislation in the field;⁸ there is no data available whether any of these requests represent requests for mutual POs.

⁸ Asociația TRANSCENA, *Studiu la nivel național cu privire la implementarea*

ordinului de protecție – Legea 25 din 2012 (2013), pp.16-17

<<http://www.centrulfilia.ro/images/PDF/studiu%20monitorizare%20ordine%20de%20protectie%202013.pdf>> accessed 31 August 2013;

- 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: In civil and criminal law, PO procedure is exempted of judicial taxes. Nevertheless, in civil law, the party that loses the trial should pay legal fees of the other party (lawyer fees, expert examination costs, etc.).

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?

In civil law, the PO is communicated to the police departments of the residence of the victim and of the residence of the defendant (Art.31 of Law 217/2003). According to the General Inspectorate of the Romanian Police, each police station registers all POs in a special registry; this information is not centralized at the national level.⁹

Aside from this registration by the police station, in criminal law, POs are registered together with the criminal sentence in the execution registry of the first instance court (where the trial was first examined).

The National strategy for preventing and combating the phenomenon of violence in the family 2013-2017 acknowledged there is no integrated system of registration, reporting and managing cases of violence in the family at the national level.¹⁰ The National strategy mentions the need to adopt regulation to ensure unitary implementation of the existing legislation in the field, including the implementation of POs, an aspect that was also underlined by the General Inspectorate of the Romanian Police in their response sent in relation to this research.¹¹

- 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?

20 a-b: In both civil law and criminal law, the parties receive by post a copy of the court decision that includes 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?

In both civil law and criminal law, police is responsible for monitoring the implementation of POs (Art.31 of the Law 217/2003 and Art.439¹ of the Criminal Procedure Code). Police may enter family home with the permission

⁹ Ministry of Internal Affairs - General Inspectorate of the Romanian Police, Response No.2921238/25.07.2013 (on file with the national reporter);

¹⁰ Government Decision No.1156 of 27 November 2012, Chapter V;

¹¹ Ministry of Internal Affairs - General Inspectorate of the Romanian Police, Response No.2921238/25.07.2013 (on file with the national reporter);

of the victim or other family member in order to implement POs. Police is responsible to report to criminal investigation authorities when POs are breached.

- 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?
- c. If protection orders can be monitored with the help of technical devices (e.g., GPS), how often is this used in practice?
- d. Are protection orders actively monitored or is it generally left up 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?

22 a-e: There are no special regulations publicly available regarding the monitoring of POs. The General Inspectorate of the Romanian Police informed us for this research that they have adopted an internal procedure for the use of police personnel when intervening in cases of violence in the family (called “Procedura privind interventia politiei in cazul conflictelor intrafamiliale” (Procedure on police intervention in the case of conflicts taking place in the family)); however this is an internal document that cannot be made available for the public or for the purposes of this research.¹² Law 217/2003 only mentions house visits as monitoring activity undertaken by police. Without explicit provisions, published in the Official Journal for opposability towards all persons, the authorities cannot undertake additional surveillance measures than the ones prescribed by law. Consequently, aside from house visits, the authorities rely on the victim to report violations.

- 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?

23 a-c: There are no special regulations publicly available regarding the monitoring of POs (see above point 22). There is no study available on the implementation of POs. Therefore, we do not have information about the reaction to PO violation of competent authorities when the victim initiated contact him/herself.

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

Evidentiary requirements necessary for ordinary criminal prosecution apply in the case of POs' violation, too.

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

There are no special procedures in place for the enforcement of POs after a violation of the PO was established. If the offender is found guilty of a PO violation, the sentence cannot be suspended under condition, so the person will serve prison sentence (Art.32 of the Law 217/2003).

¹² Ministry of Internal Affairs - General Inspectorate of the Romanian Police, Response No.2921238/25.07.2013 (on file with the national reporter);

- 25) a. What are possible reactions/sanctions if a protection order is violated?
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)?
c. Which (official or unofficial) reaction usually follows on a protection order violation?
d. In your opinion, are the sanctions/reactions to protection order violations 'effective, proportionate and dissuasive'?
e. Are reports of PO violations, such as emergency calls by the victims, automatically given priority (e.g., with the police)?

25 a-e: When police finds a PO violation, they report to criminal investigation authorities (criminal investigation police and prosecutor's office). A criminal investigation starts if there are indications that a criminal offence was committed. We are not aware of informal reactions possible to a PO breach.

There are no studies available on the PO implementation and the General Inspectorate of the Romanian Police informed us they do not collect data about POs; all official registrations are made at the level of police stations and they are not centralized at the national level.¹³ Consequently we cannot assess if sanctions or reactions to PO violations are effective proportionate and dissuasive.

The General Inspectorate of the Romanian Police informed us they do not give priority to emergency calls by the victims who report POs violations because there is no legal provision establishing such priority in comparison to other complaints.¹⁴

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

26 a-d: The violation of civil POs is criminalized according to Art.32 of the Law 217/2003. The penalty ranges between one month and one year. The court cannot suspend under condition the execution of the penalty.

The violation of criminal law POs is criminalized only under certain circumstances: if the offender is threatening the execution authority (the penalty ranges between six months and three years) or is using violence against the execution authority (the penalty ranges between one year and seven years). Thus, if POs violation is conducted in absence of the execution authority, there is no criminal offence. In such case, the victim can still call in the help of the police because under Art.439¹ of the Criminal Procedure Code, they are responsible to monitor POs' implementation.

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

¹³ Ministry of Internal Affairs - General Inspectorate of the Romanian Police, Response No.2921238/25.07.2013 (on file with the national reporter);

¹⁴ Ministry of Internal Affairs - General Inspectorate of the Romanian Police, Response No.2921238/25.07.2013 (on file with the national reporter);

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

27 a-c: Police, the monitoring authority for both civil and criminal law POs is not capable to issue sanctions following the PO breach. It is mandated to report to criminal investigation authorities all PO violations. The law does not require victim complaint as a condition for reporting. Nevertheless, the lack of victim complaint is often a reason advanced by the police not to report cases further, even in situations where the criminal investigation may start without the victim's complaint.

The existing procedures for police intervention in case of violence in the family are not available to the public according to the General Inspectorate of the Romanian Police (see above point 22).

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

The General Inspectorate of the Romanian Police declared that the police personnel receive practical training at the workplace regarding how to monitor and enforce protection orders. In addition, they mentioned that the continuous training of the police personnel includes aspects related to combating violence in the family.¹⁵ No additional details were provided.

The National Institute for Magistracy, the public institution mandated to ensure the initial and continuous training of the judges and prosecutors declared that they did not organize any training on POs.¹⁶

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 publicly available on the number of protection orders imposed on a yearly basis in Romania neither in civil law, nor in criminal law. The General Inspectorate of the Romanian Police informed us they do not collect data regarding POs, only official registrations at the level of police stations that are not centralized at the national level.¹⁷ The Superior Council of Magistracy reported that in 2012, no civil law POs were reported and they do not collect data about criminal law POs.¹⁸

In March 2013, a coalition of non-governmental organizations published a research on the number of civil PO requests and approvals issued by civil courts during 12 May 2012-28 January 2013 (hereafter 'The NGO research study'). The research was based on the public information available in the online database of the Ministry of Justice. It shows that in nine months after the adoption of the new legislation regarding civil

¹⁵ Ministry of Internal Affairs - General Inspectorate of the Romanian Police, Response No.2921238/25.07.2013 (on file with the national reporter);

¹⁶ Superior Council of Magistracy, Response No.3508 of 23 July 2013 (on file with the national reporter);

¹⁷ Ministry of Internal Affairs - General Inspectorate of the Romanian Police, Response No.2921238/25.07.2013 (on file with the national reporter);

¹⁸ Superior Council of Magistracy, Response No.2/17413/1154 of 16 July 2013 (on file with the national reporter);

protection orders, there were 1009 requests introduced, 406 approvals, 268 rejections, 105 withdraws, 192 cases still pending, 32 cases suspended.¹⁹

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

30 a-b: There is no (empirical) information publicly available on the number or type of protection orders imposed on a yearly basis in Romania neither in civil law, nor in criminal law. See above point 29.

The NGO research study mentioned above describes that the online data basis of the Ministry of Justice does not provide detailed information about the content of all POs in order to make reliable statistics. Nevertheless, the research could draw some conclusions such as: the majority of POs are issued for the maximum period of six months, as to the type of PO, keeping a certain distance from the victim prevails, while the obligation to undergo psychological counseling or other type of treatment is very rare. According to the research, there are many cases when the aggressor is not mandated to leave the family home despite being ordered to keep a certain distance from the victim, a situation which is considered a paradox by the authors of the study.²⁰

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

Both the civil law and the criminal law POs are imposed for acts of violence against a family member. See above points 1 and 2.

There is no (empirical) information publicly available on the number or type of protection orders imposed on a yearly basis in Romania and the types of crimes for which protection orders are generally imposed neither in civil law, nor criminal law. See above point 29.

- 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?
b. Which percentage of the restraineds already had a prior police record?
c. Which percentage of the restraineds already had a previous protection order imposed against him/her?

32 a-c: There is no (empirical) information publicly available on POs and specific victim and offender characteristics neither in civil law, nor criminal law. See above point 29.

The NGO research study mentioned above mentions that 94% of POs requests are introduced by women.²¹ There are no gender disaggregated data available on PO approvals.

¹⁹ Asociația TRANSCENA, *Studiu la nivel național cu privire la implementarea*

ordinului de protecție – Legea 25 din 2012 (2013), pp.14-15
<<http://www.centrulfilia.ro/images/PDF/studiu%20monitorizare%20ordine%20de%20protectie%202013.pdf>> accessed 31 August 2013;

²⁰ Asociația TRANSCENA, *Studiu la nivel național cu privire la implementarea*

ordinului de protecție – Legea 25 din 2012 (2013), p.8
<<http://www.centrulfilia.ro/images/PDF/studiu%20monitorizare%20ordine%20de%20protectie%202013.pdf>> accessed 31 August 2013;

²¹ Asociația TRANSCENA, *Studiu la nivel național cu privire la implementarea*

2.2.4. PROTECTION ORDER EFFECTIVENESS

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

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

33 a-d: There is no empirical information publicly available on POs. See above point 29. Therefore, we cannot assess the effectiveness of POs in civil law, or in criminal law.

- 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?

33 a-d: There is no empirical information publicly available on POs. See above point 29. Therefore, we cannot assess the factors which significantly influence the effectiveness of protection orders in civil law, or in criminal law.

- 35) Is there any empirical information available on the formal and informal reaction of the enforcing authorities to violations?
- a. How often (what percentage) do violations lead to a formal reaction?
- b. How often (what percentage) do violations lead to an informal reaction?
- c. How often (what percentage) do violations lead to no reaction?

35 a-c: There is no empirical information publicly available on POs. See above point 29. Therefore, we cannot assess how often there is a formal or informal reaction of the enforcing authorities to PO violations in civil law, or in criminal law.

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

36 a. In criminal law, there are no effective POs available by law during the criminal investigation, only with the conviction of the person for a criminal offence (except for Obliging to medical treatment and Medical hospitalization, which are limited measures).

In civil law, the scope of POs is limited to cases of violence in the family.

b. Problems with protection order imposition/issuing/procedure

36 b. Civil courts take too long to examine a PO request, despite legal provisions requiring these cases to be examined with urgency. During this time the victim stays unprotected.²²

According to the NGO research mentioned above, only 23% of the cases of civil PO request have been examined in closed hearings as required by law, exposing the victims in public, which infringes their private life and dignity.²³

- c. Problems with protection order monitoring
- d. Problems with protection order enforcement
- e. Problems with protection order effectiveness?

36 c-e. There are not enough data and information available to be able to make an assessment about the problems with protection order monitoring, enforcement and effectiveness. The protection order legislation is a very young law in Romania (adopted in March 2012). As mentioned above, statistical data are not publicly available on POs. There has been published only one research study on civil POs by a group of NGOs, but no other research or report was made public by the public authorities competent in the field of POs.

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

At the moment, in my opinion, the biggest problem when it comes to protection orders is that competent authorities are not trained and made aware of the significance of POs – that they are meant to protect a victim from further imminent violence, why it is important to examine a PO request in the shortest time possible, that the right to property of the aggressor may be temporarily superseded by the right of the victim to be protected against violence, how to make a risk assessment.

2.2.6. PROMISING/ GOOD PRACTICES

38) Which factors facilitate the:

- a. Imposition

38 a. The case is argued well by a lawyer that has knowledge in the field of POs.

- b. monitoring, and

38 b. Police personnel are made aware of their role in the monitoring of POs, have knowledge and carry out risk assessments in every case, and communicate with the victim.

²² Asociația TRANSCENA, *Studiu la nivel național cu privire la implementarea*

ordinului de protecție – Legea 25 din 2012 (2013), pp.12-13
<<http://www.centrulfilia.ro/images/PDF/studiu%20monitorizare%20ordine%20de%20protectie%202013.pdf>> accessed 31 August 2013;

²³ Asociația TRANSCENA, *Studiu la nivel național cu privire la implementarea*

ordinului de protecție – Legea 25 din 2012 (2013), pp.19-20
<<http://www.centrulfilia.ro/images/PDF/studiu%20monitorizare%20ordine%20de%20protectie%202013.pdf>> accessed 31 August 2013;

c. enforcement of protection orders?

38 c. Police uses new technologies in the enforcement of protection orders.

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

Persons that violate POs are promptly prosecuted and serve time in prison as required by law.

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

Nothing to report.

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

The scope of PO legislation should be extended to other forms of violence and other stages of the criminal investigation procedure, not limited to conviction.

The examination of PO requests should be handled with urgency and the hearings should be behind closed doors to ensure victims' privacy.

The authorities should organize training and raising awareness activities for judges, prosecutors and police personnel regarding their role in the field of POs.

2.2.7. FUTURE DEVELOPMENTS

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

There are no current discussions (in politics) about the protection of victims, let alone POs.

43) a. Will the legislation/practice on protection orders change in the nearby future? Are there, for instance, any bills proposing changes to the current practice?
b. If so, what will change?
c. Are there at the moment any pilots in your country with a new approach to victim protection orders.

43 a-c: There is almost one year and a half since the new procedure on civil POs was introduced in national legislation. Civil courts are in the process of establishing the practice in the field of POs. We are not aware of any bills proposing changes to the current practice. The National strategy on prevention and combating violence in the family 2013-2017 plans the adoption of standards, methodologies and unified intervention procedures in the field of violence in the family. It also includes drafting casework guidelines for police officers, prosecutors, and judges and drafting unified risk assessment methodology in the case of the victim of violence in the family.

The General Inspectorate of the Romanian Police informed us that in the next period of time the authorities will participate in working groups aimed to amend the legislation in the field of violence in the family and to

draft guidelines, methodologies and unified intervention procedures regarding violence in the family, including with regards to the implementation of protection orders.²⁴

We are not aware of any pilot on victim protection orders.

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

I cannot foresee any development in protection order legislation or enforcement in the nearby future because the topic of violence in the family, the main area in which POs apply in Romania, is not a priority on the public agenda. In civil law, protection orders had just been introduced a year and a half ago, on 9 March 2012. It took nine years after the adoption of a special law to combat violence in the family to complement it with protection measures for victims of violence in the family. The national agency that was especially created to implement this law was closed down in 2010 due to budgetary cuts, resulting in lack of leadership among public authorities on these issues. The civil society working on combating violence in the family has very little resources and little leverage upon stakeholders.

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 foresee the following problems in the implementation of the EPO in Romania:

- The limited scope of POs in Romanian legislation both in civil law and criminal law (see above points 1 and 2).
- Court proceedings take a long time even in cases when the law states that they should be dealt with urgency, which might delay the recognition of the EPO in Romanian judicial system.
- Inter-institutional communication has shortcomings, which may hinder the prompt transmission of documents in between institutions.
- Central authority/ies designated to assist competent authorities will have to be at the highest level possible in order to have leverage upon the other authorities involved in the implementation of the EPO.
- Police has a very limited capacity and they are not using advanced technologies to monitor the enforcement of POs.

²⁴ Ministry of Internal Affairs - General Inspectorate of the Romanian Police, Response No.2921238/25.07.2013 (on file with the national reporter);

APPENDIX

*Studiu la nivel național cu privire la implementarea ordinului de protecție – Legea 25 din 2012 (Legea 217/2003 republicată pentru prevenirea și combaterea violentei în familie)*²⁵

[National level study on the implementation of the protection order – Law 25 of 2012 (Law 217/2003 on the prevention and combating of violence in the family, republished)]

This is a desk research carried out by a group of non-governmental organizations (Asociația TRANSCENA, Grupul Român pentru Apărarea Drepturilor Omului GRADO, Centrul Parteneriat pentru Egalitate, Asociația FRONT, ASOCIAȚIA ANAIS, ARTEMIS CLUJ, Fundația SENSIBLU, Asociația pentru Libertate și Egalitate de Gen A.L.EG., Centrul FILIA). It aims to find out how many requests of civil law POs had been filed to courts since the adoption of the law and how many of these requests have been filed by women, if they are examined with urgency, as prescribed by law, and if the measures ordered in the POs respect the principle of victim safety.

The data analyzed comes from the national data base with judicial cases filed in court (<http://portal.just.ro>). 12 persons reviewed the cases published in this data base looking at the following information: date of filing the case, date of the first hearing and the following hearings, the decision, if there was an appeal filed or not against the decision, the decision in appeal, if the cases was heard in closed session, the length of procedures, the sex of the applicant, if he/she withdraw the case, the content of the PO, its duration.

The outcomes of this research show that the judicial system in Romania applies the legal provisions regarding the PO and jurisprudence in this field is developing at this time, the great majority of applicants for POs are women, the length of procedures does not respect the principle of celerity prescribed by law and raises the risk of victimization, the dignity of the victims is not respected, a correct and complete information of the population about the POs must be done at the national level through the police station, medical personnel, etc.

²⁵ The study is available at

<http://www.cpe.ro/romana/images/stories//studiu%20monitorizare%20ordin%20protectie%20final.pdf>

(accessed 31.08.2013).

GLOSSARY

1. General Legal Terminology:²⁶

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.

²⁶ Merriam-Webster's Dictionary of Law ©1996. Merriam-Webster, Incorporated. Published under license with Merriam-Webster, Incorporated.

Case law

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

Substantive Law

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

Procedural Law

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

Pre-trial detention or remand

The detaining of a suspect in a criminal case before the trial has taken place. Since pre-trial detention occurs while the suspect is still presumed innocent, it is often seen in most jurisdictions an exceptional measure. It serves two main purposes: to protect the public and or the victim's safety (prevent the perpetration of further 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.²⁷

Decision

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

Legal representation/counsel

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

Legal aid/advice

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

Probation

The suspension of all or part of a sentence and its replacement by freedom subject to specific conditions (and the supervision of a probation officer). If the suspected/accused/convicted person fails to follow the conditions

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

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 violence²⁸

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.

Stalking²⁹

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

²⁸ Rec. (2002)5. (VAW) (Committee of Ministers).

²⁹ C. Hageman-White, L. Kelly, & R. Römken (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.

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 persons³⁰, 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.

³⁰ Council of Europe Convention on preventing and combating violence against women and domestic violence, art. 36 b.

Barring order

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

Police go order

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

(The) scope

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

Radius

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

Practical impediments

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

Pro-active supervision

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