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

NATIONAL REPORT BULGARIA

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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: Protection orders against domestic violence are regulated in the specific Law on Protection against Domestic Violence of 2005 and the Regulation for its Implementation as part of civil law in a procedure often considered as *sui generis*.¹ They are available online only in Bulgarian.²

¹ Геновева Тишева, ‘Законът за защита срещу домашното насилие – пробив в разделението между публична и частна сфера при защитата на правата на човека в България’ [Genoveva Tisheva, The Law on Protection against Domestic Violence – a Breakthrough in the Division between Public and Private Sphere in the Protection of Human Rights in Bulgaria] (2005) 2 Правна мисъл [Legal Thought] 112

Police go orders are also in place in Bulgaria as part of administrative law. They are regulated in the Law on Ministry of Interior, which is a general law on the structure and powers of police. Its text is available online only in Bulgarian.³

Restraining orders as part of criminal proceedings are regulated in the Criminal Procedure Code. The Code is available online only in Bulgarian.⁴

Interim measures are regulated in the Civil Procedure Code as part of the marriage-related proceedings. The Code is available online only in Bulgarian.⁵

- 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).

Protection orders against domestic violence are based on the Law on Protection against Domestic Violence and are issued by a specific civil law judicial procedure. Police go orders, based upon the Law on the Ministry of Interior, are applicable to any crime or violation of public order, which a person may potentially commit and can take the form of a written notice or oral warning. Restraining orders are regulated in the part on coercive measures to be imposed on the defendant within the framework of criminal proceedings. Interim measures in the civil procedure are part of the proceedings for divorce or dissolution of marriage and are considered one of the few possibilities for protection victims of domestic violence had before the adoption of the specific Law.⁶

² Law on Protection against Domestic Violence (*Закон за защита от домашното насилие*), promulgated State Gazette (SG) 27 of 29 March 2005, latest amendments SG 99 of 17 December 2010 <<http://lex.bg/bg/laws/ldoc/2135501151>> accessed 10 July 2013 and Regulation for the Implementation of the Law on Protection against Domestic Violence (*Правилник за прилагане на Закона за защита от домашното насилие*), adopted by a Decree of the Council of Ministers № 113 of 8 June 2010, in force since 15 June 2010, promulgated SG 45 of 15 June 2010, latest amendments SG 47 of 22 June 2012 <<http://lex.bg/bg/laws/ldoc/2135684122>> accessed 10 July 2013.

³ Law on the Ministry of Interior (*Закон за Министерството на вътрешните работи*), promulgated SG 17 of 24 February 2006, in force since 1 May 2006, latest amendments SG 52 of 14 June 2013 <<http://lex.bg/bg/laws/ldoc/2135516991>>, accessed 10 July 2013

⁴ Criminal Procedure Code (*Наказателно-процесуален кодекс*), promulgated SG 86 of 28 October 2005, in force since 29 April 2006, latest amendments SG 52 of 14 June 2013 <<http://www.lex.bg/bg/laws/ldoc/2135512224>>, accessed 10 July 2013

⁵ Civil Procedure Code (*Граждански процесуален кодекс*), promulgated SG 59 of 20 July 2007, in force since 1 March 2008, latest amendments SG 15 of 15 February 2013 <<http://www.lex.bg/bg/laws/ldoc/2135558368>>, accessed 10 July 2013

⁶ Катина Христова, 'Заповед за незабавна защита или привременни мерки' [Katina Hristova, 'Order for Immediate Protection or Interim Measures'] (2008) 47/7 Научни трудове на Русенския университет [Scholarly Works of the Rousse University] 59 <<http://conf.uni-ruse.bg/bg/docs/cp/7/7-9.pdf>> accessed 11 July 2013

According to scholars, they can be imposed by the first instance, but also by the appellate instance, if the decision on divorce or dissolution is appealed.⁷

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

Restraining orders, as the only type of protection order in criminal proceedings, can be imposed throughout all their stages. Due to, mainly, the lack of sanction for their violation (see question 25a), their imposition by court is extremely rare, even by the largest courts in the country's capital, so most of the conclusions about them are based on theoretical considerations.

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)?

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?)

3 a-b: The proceedings for issuing protection orders against domestic violence can be initiated upon request of the victim himself/herself if over 14 years of age and even if under limited guardianship; the legal guardian of the victim, if under 14 years of age or under full guardianship; a sibling or a relative of the victim in the straight line; the director of the local Social Protection Directorate, when the victim is under 18 years of age, under legal guardianship or has disabilities. The protection order is issued by the regional (lowest) court in the area, where the permanent or current address of the victim is. Police go orders follow a procedure where only the police is essentially involved and decides whether to issue a warning notice/warn orally the potential offender or not. Restraining orders are issued upon motion by the prosecutor with the consent of the victim or upon request of the victim by the first-instance court against the defendant. Interim measures can be ordered upon request of each of the parties by the court.

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

Regarding protection orders against domestic violence, orders for immediate protection (see question 5d) are issued without summoning the parties. Otherwise the offender is a party to the proceedings and is always summoned, therefore having the opportunity to be heard and present evidence. Police go orders by their nature do not involve any action on the part of the potential offender as an element in the procedure for their issuing. Restraining orders and interim measures are imposed in court proceedings, where the alleged offender is a party, so he/she can always be heard and present evidence.

⁷ Hristova (n 7) 60

- 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?

Protection orders against domestic violence are specifically directed towards victims of domestic violence, which is defined as any act of physical, sexual, psychological, emotional or economic violence, or attempt thereof, coercive limitation of personal life, freedom or rights, committed against relatives, persons currently or previously in a familial relation or in co-habitation. Police go orders are applicable to all types of crimes and violations of public order. Restraining orders can be issued as part of criminal proceedings on all types of crimes. Interim measures concern, inter alia, the family home and the care for the children, so by their nature they concern infringements upon one of the spouses or children's personal sphere.

- 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)?

Protection orders against domestic violence do not preclude the offender's civil, criminal or administrative liability. Police go orders are an administrative mechanism for prevention and are independent from any criminal or other proceedings, since the act they concern and aim to prevent is not committed yet. Restraining orders and interim measures are always part of, respectively, criminal or civil proceedings.

- 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)

Regarding protection orders against domestic violence, a written motion should be submitted to the regional court within one month of the commission of the act of domestic violence, containing: the name and address of the petitioner/ the address of the Social Protection Directorate - the petitioner can also state another address, if he/she does not desire to reveal his/her permanent or current one; the name and address, plus other contact details of the offender; data on the familial or other relation between the offender and the victim; description of the domestic violence act; signature. If the victim submits the motion himself/herself, a declaration about the act of domestic violence is attached. On the day of the motion's submission, the court schedules an open hearing not later than within one month. At the open hearing, the court issues a decision and, if the motion is granted, issues a protection order. The decision can be appealed before the district court (see question 13a).

Police go orders can take the form of a written warning notice or an oral warning to a person about whom there is sufficient data or it can be supposed that he/she will commit a crime or a violation of public order. The written notice is drafted in the presence of the person and a witness and, after the person and the witness get acquainted with its content, is signed by the police authority, the person and the witness. If the person refuses to sign the notice, his/her refusal is certified, bearing the signature of the witness. In cases of domestic violence, a copy of the written notice is given to the victim upon request.

Restraining orders are imposed by the first-instance court upon a motion by the prosecutor with the consent of the victim or upon request of the victim and constitute a prohibition for the defendant to approach the victim closely. The court rules upon the motion/request immediately in an open session, hearing the prosecutor, the defendant and the victim. The prohibition is lifted after the case finishes with a judgment, having entered into force, or the proceedings are terminated on another basis. The victim can request from the court a revocation of the prohibition at all times and the court rules, following the same procedure.

Interim measures are imposed upon request of each of the parties in the divorce/marriage dissolution proceedings by the court, before which those proceedings are pending. Interim measures concern alimony, the family home, the use of property, obtained during marriage, the care and support to children. The court rules on the request during the same hearing, where the request is made, unless new evidence has to be collected. In these cases a new hearing is scheduled within two weeks.

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

The nature of police go orders pre-supposes that they are issued on the spot, as soon as police authorities have sufficient data or a supposition that a crime or violation of public order will be committed. There are no official statistics or data about the length of proceedings on issuing the other types of orders.

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?

Regarding protection orders against domestic violence, protection orders are subject to immediate execution and the appeal does not stop their execution either. Police go orders are issued and implemented on the spot. Restraining orders and interim measures, being no subject of appeal, are also effected immediately.

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?

Regarding protection orders against domestic violence, if the motion for issuing such an order contains data on direct, imminent or subsequent danger for the life and limb of the victim, the regional court in a closed hearing without summoning the parties issues an order for immediate protection within 24 hours of receiving the motion. The court schedules an open hearing within one month for issuing a protection order. The order for immediate protection is not subject to appeal and is in force until the court issues a protection order or refuses to do so. Police go orders, restraining orders and interim measures are all interim in their nature and directed towards preventing imminent danger/violation of the law before, respectively, a crime is committed or criminal/civil proceedings are finished.

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?

Regarding protection orders against domestic violence, the special law allows all evidentiary means under the Civil Procedure Code, plus other specific evidence and the declaration about the act of domestic violence, attached to the motion (see question 5a), but postulates that, in case of no other evidence, the court may issue a protection order solely based upon the declaration.⁸ In this relation, practitioners argue that courts often

⁸ The stringent application of this provision is recommended in the CEDAW Committee Concluding Observations on Bulgaria [Committee on the Elimination of Discrimination against Women, 'Concluding observations of the Committee on the Elimination of Discrimination against Women Bulgaria' (Fifty-second session 9-27 July 2012) CEDAW/C/BGR/CO/4-7] par. 26(b), while some national case law examined states that the provision should not be construed too literally.

underestimate psychological and emotional violence, because physical evidence for them is not in place.⁹ For police go orders, police needs to have sufficient data or a supposition that the person will commit a crime or a violation of public order, but those orders are not part of criminal proceedings and the standards of proof, related to sufficient data and grounded assumption in criminal proceedings, are not applicable. For restraining orders and interim measures, the general rules of evidence in criminal and civil proceedings are applicable and the respective provisions in the Criminal and Civil Procedure Codes do not contain explicitly specific conditions for imposing those two types of measures.

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

The law does not require obligatory legal representation or advice to victims, regarding any of the protection orders discussed in this report. In practice, victims are most often represented/advised by attorneys in the proceedings on protection orders against domestic violence and interim measures.

Police go orders do not pre-suppose any role for a legal representative of the potential victim, so they will not be looked at in question 6c.

Victims in criminal proceedings, part of which is the imposition of restraining orders, seek legal representation mostly if they become parties to the court proceedings and are often indigent, which directs them to the system of legal aid (see question 6c).

c. Is free legal representation/advice available?

On a practical level, specialised NGOs offer legal advice and representation, within the limits of their resources and funding, to victims within proceedings for protection orders against domestic violence.

State-provided legal aid in the strict sense is regulated in the specific Law on Legal Aid.¹⁰ Its scope at the stage before proceedings are started (consultation and preparation of documents) has recently been significantly broadened to include explicitly, besides indigent persons and families, children at risk, as well as victims of domestic or sexual violence, or human trafficking, who do not possess sufficient funds, but would like to be defended by an attorney. For the purposes of this report, this would include legal aid for victims prior to proceedings for protection orders against domestic violence. Victims can also obtain legal aid by an act of the pre-trial authority during pre-trial proceedings on crimes, involving domestic, sexual violence or trafficking, where restraining orders may potentially be issued. Indigent affected parties may also qualify for pre-court legal aid for divorce or dissolution of marriage proceedings, where interim measures may be requested.

As for pure procedural representation, it covers all parties to criminal, civil or administrative cases, who do not have means to pay an attorney - which is assessed by the court - but wish to have one and the interests of justice so require. This would potentially cover proceedings for protection orders against domestic violence,

⁹ Milena Kadieva, 'Кратък преглед на основните проблеми при прилагането на Закона за защита от домашно насилие' [Milena Kadieva, 'Short Review of the Main Problems in Implementing the Law on Protection against Domestic Violence'] (Gender Alternatives, September 2012) 2 <http://www.genderalternatives.org/images/LPADV_implementation_Basic_problems_September_2012.pdf> accessed 10 July 2013

¹⁰ Law on Legal Aid (*Закон за правната помощ*), promulgated SG 79 of 4 October 2005, in force since 1 January 2006, latest amendments SG 28 of 19 March 2013 <<http://lex.bg/bg/laws/ldoc/2135511185>>, accessed 10 July 2013.

criminal proceedings at trial stage where restraining orders may be imposed and marriage-related proceedings, where interim measures may be requested. The only category excluded would potentially be victims in criminal proceedings, who have chosen not to become parties to the trial.

Regardless of the stage he/she is appointed at, the attorney, who is to provide legal aid, covers all stages of proceedings and court instances.

- 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)?

Regarding protection orders against domestic violence, with each order the court imposes one or more protection measures, exhaustively listed in the law: obliging the offender to refrain from domestic violence; removing the offender from the common home for the period, determined by the court; prohibition for the offender to approach the victim, his/her residence, place of work, social contacts or recreation under conditions and for a duration, determined by court; temporary determination of the child's residence with the victimised parent or the parent, not having committed the violence, under conditions and for a duration, determined by court, if that does not contradict the child's interests; obliging the offender to attend specialised programmes; directing victims towards rehabilitation programmes.

Police go orders, which are preventive in nature, may nevertheless include, for example, a warning to the potential offender not to follow the potential victim around if following contains an imminent danger for a crime to be committed on the part of the offender against the victim.

Restraining orders, following their aim to prohibit the alleged offender to approach the victim closely, may contain prohibitions to contact, or follow the victim, or approach the victim's residence.

Interim measures, concerning the family home, may include removing one spouse from the home. Measures, concerning children, may include taking the child from one spouse and giving it to the other, placing him/her in a special establishment or giving him/her to relatives for upbringing, plus ordering support payment, when necessary.¹¹

- 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?

Regarding protection orders against domestic violence, one of the measures that can be imposed with them is removing the offender from the common home for a period, determined by the court, which can be from three to eighteen months.

Police go orders by their nature cannot include eviction.

Restraining orders, although sometimes including the alleged offender's staying away from the victim's residence, do not include eviction or barring.

Interim measures concerning the family home may involve removing a (violent) spouse from the family home and may last until the end of divorce/dissolution of marriage proceedings.

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

¹¹ Hristova (n 7) 61

Regarding protection orders against domestic violence, practitioners argue that sometimes courts in their orders do not make any specification, but blankly repeat the law by ‘obliging the offender to refrain from domestic violence’, which contradicts international standards in the area.¹² There is no specific data about the other types of orders.

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)?

Regarding protection orders against domestic violence, protection measures therein can be imposed in combination. They do not preclude the offender’s criminal liability, therefore restraining orders are not precluded either. Police go orders, because of their nature, can be imposed separately from any other proceedings, but also at any point of proceedings, concerning other types of protection orders, when the police has data or a supposition that a crime or public order violation will be committed. Restraining orders and interim measures may be imposed in combination between themselves and with all other orders, discussed in this report, provided that the relevant types of proceedings are going on between the alleged offender and the alleged victim.

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

Proceedings on protection orders against domestic violence often take place in parallel with criminal proceedings on a complaint by the victim against the offender and there is no obstacle for the court to impose restraining orders within their framework.

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?

Regarding protection orders against domestic violence, the law requires that they contain the protection measures that the court has imposed and a warning about the consequence of non-compliance – detention by the police authority, having established the violation and notification to the Prosecutor’s Office. Police go orders in their written form warn the person concerned about the liability, which the law provides for the respective crime or violation of public order. There are no formal legal requirements as to the formulation of restraining orders or interim measures.

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

As noted also by practitioners, a common problem for all protection orders, discussed in the present report, is that most often they blankly repeat the provisions of the respective law without any specification, which makes their enforcement extremely difficult.

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?

No legal limitations are in place to the scope of protection orders, discussed in this report.

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

Not applicable to domestic situation.

¹² Kadieva (n 10) 1

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

No information is available.

- 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: Regarding the situation in Bulgaria, question 10 is only applicable to protection measures against domestic violence and restraining orders.

Regarding protection orders against domestic violence, in imposing protection measures, courts mostly repeat the provisions of the law, without specifically delineating the prohibitions. There are rarer cases where the court rules, for example, that the offender should not come closer than 200 metres to the victim’s residence. Residences as such are sometimes pointed to simply as ‘the victim’s residence’ and sometimes their address is also given.

Regarding restraining orders, since there is no sanction for their violation (see question 25a), they are relatively rarely used by criminal justice authorities and there are differing approaches in the scarce case law examined – some courts blankly repeat the phrasing of the law, while some provide a radius for not approaching the victim and specify that the prohibition also covers the victim’s home.

- 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?

Regarding protection orders against domestic violence, the three protection measures, stipulated by law, which pre-suppose some duration - removing the offender from the common home for the period, determined by the court; prohibition for the offender to approach the victim, his/her residence, place of work, social contacts or recreation under conditions and for a duration, determined by court and temporary determination of the child’s residence with the victimised parent or the parent, not having committed the violence, under conditions and for a duration, determined by court, if that does not contradict the child’s interests – are imposed for a legally determined period of three to eighteen months.

Police go orders are by their nature of indefinite duration.

Restraining orders last until criminal proceedings finish with a sentence, having entered into force, or the proceedings are terminated upon another basis, but the victim can ask the court to quash the order at any time.

Interim measures last until the divorce or dissolution of marriage is decided upon by the court.

- 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 b-c: The questions are only applicable, regarding protection orders against domestic violence. Courts take into account that the protection order imposed should be able to fulfil its purpose within the duration prescribed. In cases of physical violence, they allegedly tend to impose longer protection orders, while

psychological violence leads to shorter orders, sometimes even below the minimum period of three months.¹³ As for duration, practitioners claim that the maximum duration of protection orders practically imposed is one year.¹⁴

- 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?
- 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?
- 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?

12 a-c: Protection orders against domestic violence are issued within the framework of open court proceedings, so victims can always be heard and express their wishes. Even in case of an order for immediate protection, which is issued within closed court proceedings, without summoning the parties, the victim, if he/she is petitioning the court, can submit data on the direct, imminent or subsequent danger for his/her life and limb and thus express his/her wish for such an urgent order.

The law contains no explicit norm or procedure, suggesting a possibility for cessation of protection orders prior to their term.

In all cases, where a protection order is not directly requested by the victims, the victim is *ex officio* constituted as a party to the proceedings, so he/she can always be heard. In addition, a multitude of evidence can be adduced so that the court can assess the victim's need for a protection order and rule accordingly.

The law contains no explicit norm or procedure through which the victim can influence the type, scope or duration of protection orders, it is always up to the court to decide.

Police go orders are by their nature a matter of police discretion, so the only way the victims can indirectly influence their issuance or content is by calling the police and directing their attention to the fact that a crime is likely to be committed.

Restraining orders are decided upon by the court in an open session and the law provides for always hearing the victim. The victim is also given the explicit opportunity to request the cessation of the order from the court, but the court is, theoretically, not bound by this request. Cessation, like imposition, would be ruled in an open session, hearing the prosecutor, the offender and the victim. Even if the restraining order is proposed by the prosecutor, the consent of the victim is always needed and the court would assess the need for such an order *ex officio*. The ultimate decision is always solely within the powers of the court.

¹³ Алианс за защита срещу домашното насилие, 'Проблемни области във взаимодействието между институции и доставчици на социални услуги в процеса на работа по случаи на домашно насилие' [Alliance for Protection against Domestic Violence, 'Problem Areas in the Relation between Institutions and Providers of Social Services under Domestic Violence Cases'] (Animus Association, 2012) 21 <http://www.animusassociation.org/wp-content/uploads/2012/03/Obobshten_doklad.pdf> accessed 10 July 2013

¹⁴ Alliance for Protection against Domestic Violence (n 14) 21

Interim measures are decided upon by the court in an open session, so parties can always be heard. They can be imposed upon request of each of the parties and the court should in principle be bound by the type of scope of measures requested. The measures can be amended by the same court, so the wishes of the affected party can be taken into account in the process of amendment as well. The ultimate decision, however, is always solely within the powers of the court.

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

Regarding protection orders against domestic violence, the decision of the regional court can be appealed by all parties before the district court with 7 days of its service. The district court conducts an open hearing with 14 days and issues a final decision, leaving the lower instance's decision in force, quashing it or amending it, in the latter case issuing a new protection order. There are rarer cases, such as one second instance decision examined, which directs the parties towards cassation appeal, if they so wish, or where the parties decide to approach the cassation instance, but the Supreme Cassation Court routinely finds such appeals inadmissible. Police go orders are not seen by legislation, and case law, as separate administrative acts, generating rights and obligations, so they are not in principle subject of appeal. Court rulings, imposing restraining orders, are final and not subject to appeal. Interim measures are not subject to appeal, but can be amended by the same court.

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: Apart from police go orders, which are a matter of police discretion, all other protection orders discussed in the present report are imposed within court proceedings, so the offender can always be heard. However, offenders cannot influence the type, scope or duration of protection orders and are not involved in deciding on those aspects.

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)?

Regarding protection orders against domestic violence, practitioners note that two of the measures, which protection orders can impose, obliging the offender to attend specialised programmes and directing victims towards rehabilitation programmes, are practically inapplicable due to lack of specialised programmes for offenders and insufficient number of professionals in the field of victims' rehabilitation,¹⁵ or might not be imposed even if programmes are in place.¹⁶

No information is available about the other types of protection orders.

¹⁵ Alliance for Protection against Domestic Violence (n 14) 21

¹⁶ Kadieva (n 10) 2

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)?

Regarding protection orders against domestic violence, the regional court upon request of the petitioner requires ex officio the following data about the offender: criminal record, report on previous protection measures, imposed under the same law, psychiatric record. Practitioners argue that some courts do not motivate their decisions about protection orders, thus not assessing the history of domestic violence between the parties, the risk of future violence and the danger of violence already committed.¹⁷

Police go orders are one-time acts, regarding a crime or violation of public order likely to be committed.

Restraining orders and interim measures are stipulated as acts within specific criminal/civil proceedings, so the concept of a previous order/measure is in principle inapplicable to them, although criminal courts can in principle take into account restraining orders or even protection orders against domestic violence as evidence of increased public danger on the part of the alleged offenders.

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

Regarding protection orders against domestic violence, each act of domestic violence, committed in the presence of a child, is by law considered psychological and emotional violence against the child, therefore in these cases the child is considered a victim *ex lege* and the protection order can be issued with regard to the child as well. Judges, however, argue that many courts do not find it necessary to constitute *ex officio* children as victims/parties to the proceedings, but prefer to notify the director of the local Social Protection Directorate and wait for him/her to petition the court for a protection order, if he/she finds that necessary.¹⁸ Practitioners add that courts often request proof of direct violence against the child.¹⁹ In the opinion of judges, if the motion contains data on direct, imminent or subsequent danger for a child, the court should always issue an order for immediate protection, regardless of whether the motion requests protection for the child.²⁰

By their nature, police go orders include all persons, including affected children.

When a criminal case concerns some form of familial violence, there is no obstacle, in our opinion, for a restraining order to include, apart from the affected spouse, also the children, even if they are not constituted as victims.

¹⁷ Kadieva (n 10) 2

¹⁸ Цветелина Кържева-Тенева и Иван Георгиев, 'Участието на децата в производството за защита от домашно насилие' [Tzvetelina Karjeva-Teneva and Ivan Georgiev, 'The Participation of Children in the Proceedings for Protection against Domestic Violence'] (Social Activities and Practice Institute) 2-3 <<http://www.sapibg.org/attachments/article/1096/%D0%A3%D0%A7%D0%90%D0%A1%D0%A2%D0%98%D0%95%D0%A2%D0%9E%20%D0%9D%D0%90%20%D0%94%D0%95%D0%A6%D0%90%D0%A2%D0%90%20%D0%92%20%D0%9F%D0%A0%D0%9E%D0%98%D0%97%D0%92%D0%9E%D0%94%D0%A1%D0%A2%D0%92%D0%9E%D0%A2%D0%9E%20%D0%97%D0%90%20%D0%97%D0%90%D0%A9%D0%98%D0%A2%D0%90%20%D0%9E%D0%A2%20%D0%94%D0%9E%D0%9C%D0%90%D0%A8%D0%9D%D0%9E%20%D0%9D%D0%90%D0%A1%D0%98%D0%9B%D0%98%D0%95.pdf>> accessed 11 July 2013

¹⁹ Kadieva (n 10) 2

²⁰ Teneva and Georgiev (n 20) 2-3

Interim measures specifically include the care and support for the children as one of the matters, with regard to which such measures can be imposed.

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

The question is only applicable to protection orders against domestic violence and interim measures.

Regarding protection orders against domestic violence, the protection measure of temporary determination of the child's residence with the victimised parent/ the parent, not having committed the violence is not imposed in case of a pending court dispute between parents regarding parental rights, the child's residence or the visitation rights regime. On this basis, according to the case law examined, appellate courts have consistently quashed measures in such cases. Relevant case law examined usually imposes blankly the measure of determination of the child's residence, repeating the phrasing of the law, but other rulings are also found - one first instance decision examined actually stipulates visitation rights of the offending parent, while another, second instance, decision points out that the law provides no option for determining visitation rights.

Interim measures are imposed before parenting issues are decided upon by the court within the framework of divorce/dissolution of marriage, so they usually assign the execution of parental rights to one of the parents and determine visitation rights for the other.

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

No information was found.

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: In our opinion, there is no impediment under Bulgarian law for mutual orders to be issued in three of the hypotheses, discussed in this report:

- if there are mutual petitions for protection orders against domestic violence, if they are merged and ruled upon within the same proceedings; such mergers have been found in examining relevant case-law, although the two petitions in the case examined have both been rejected;
- if two persons are likely to commit crimes against each other, in the case of police go orders;
- if there are criminal proceedings for crimes, which two persons have committed against each other, merged and judged upon within the same proceedings, in the case of restraining orders;

If both parties request interim measures within the framework of the same civil proceedings, their requests would either be opposing each other, regarding the same issues – family residence and children – and the court would give preference to one of the parties, or the court would do some sort of distributive ruling if parties argue about more than one residence or child.

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

Regarding protection orders against domestic violence, when submitting a motion for a protection order, no court fee is due. No court fee is due when appealing the court decision for granting or refusing a protection order either. No charges are due either, regarding police go orders or restraining orders, while costs for interim measures will have to be covered in advance by the party, requesting them.

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

Regarding protection orders against domestic violence, when issuing the protection order, the court assigns the court fee and expenses to the offender. If an order is refused or quashed, court fee and expenses are covered by the petitioner, unless the motion concerns persons under 18 years of age, under legal guardianship or with disabilities. Police go orders do not involve any legal costs. Costs for restraining orders would be assigned under the general rules of the Criminal Procedure Code for assigning costs: generally, the defendant would be assigned the legal costs on the charges he/she is pronounced guilty of and the state will bear the costs, if the defendant is acquitted fully or partially. Costs for interim measures are ultimately assigned in accordance with the rules of the Civil Procedure Code on marriage-related cases – on the guilty or vexatious spouse, or on both spouses, if no guilt or vexatiousness is established or is established on the part of both spouses. If the petition for divorce is rejected, costs are assigned in accordance with general rules on civil proceedings.

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

Given the widespread economic dependence, in which victims of violence are kept, involving low or no income, it may be supposed that costs, where such are involved and eventually assigned to them, can constitute a financial burden for them.

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?

Regarding protection orders against domestic violence, there is no explicit legal norm about a register of such orders, but information about the execution of protection measures imposed is generated and maintained, respectively, by police for the measures they monitor and enforce (see question 21); Social Protection Directorates for measures concerning children and victim rehabilitation programmes; and legal entities, implementing specialised offenders' programmes. That information should be publicly available. In addition, legal entities, implementing victims' and offenders' programmes, should keep a register of the persons, participating in those programmes. Police go orders are registered in police databases. There is no explicit legal norm about a register of restraining orders, or interim measures.

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?

a-b Regarding protection orders against domestic violence, the decision granting or rejecting the motion for an order, and the order itself, are always served on the victim under the rules of service in civil procedure law. Copies of police go orders are given, upon request, only to victims of domestic violence, mostly in person. Court acts, imposing restraining orders or interim measures are served on victims/affected parties under the rules of service in civil procedure/criminal procedure law.

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?

Regarding protection orders against domestic violence, police authorities are tasked by law to oversee the compliance with protection orders, if they impose obliging the offender to refrain from domestic violence, removing the offender from the common home or prohibition for the offender to approach the victim, his/her residence, place of work, social contacts or recreation. In case of a violation, the victim or the person, having established the violation, informs the respective department of the Ministry of Interior. Police authorities check on the signal and in case of non-compliance with the protection measure imposed, take action under the Criminal Procedure Code; if the violation does not constitute a crime, they issue a police go order. Local Social Protection Directorates oversee the execution of protection orders when temporary determination of the child's residence with the victimised parent or the parent, not having committed the violence or directing victims towards rehabilitation programmes is imposed, regarding persons under 18 years of age, under legal guardianship or with disabilities. The monitoring of compliance with police go orders is within the prerogatives of police. Compliance with restraining orders and interim measures is monitored by the respective criminal/civil courts.

- 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: Due to lack of financial and human resources, it is generally up to the victim to report violations, where applicable, and monitoring authorities generally become aware of violations through the victim.

- 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-e: No practical information was found.

- 24) a. Which evidentiary requirements have to be met before a violation of a protection order can be established?
- b. Which procedure(s) has to be followed in order for the protection order to be enforced after a violation?

24 a-b: No information was found.

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

Regarding protection orders against domestic violence, if they impose obliging the offender to refrain from domestic violence, removing the offender from the common home or prohibition for the offender to approach the victim, his/her residence, place of work, social contacts or recreation, the non-compliant offender is detained by the police authority, having established the violation, and a notification is sent to the Prosecutor's

Office. If removal from the common home is imposed and the offender refuses to comply, he/she is removed with the assistance of the police authorities from the area, where the home is located. In the presence of one witness, the offender is invited to vacate the common home, hand over the keys and take his/her personal belongings. If he/she refuses, he/she is removed coercively.

Police go orders are not seen by legislation, and case law, as separate administrative acts, generating rights and obligations, so their violation as such is not considered an administrative violation either, but would practically mean committing the crime or violation the person is warned against, so the offender would bear the liability, linked to committing the respective crime or violation.

The Criminal Procedure Code contains no sanction for violating a restraining order.

Violations of interim measures do not carry sanctions as such.

Due to the specifics above, the answers to the following questions (questions 25b-28), regarding sanctioning of protection orders' violations would focus on protection orders against domestic violence.

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)?

No informal reactions are possible in case of breaching a protection order against domestic violence.

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

According to practitioners, in cases of breach of protection orders against domestic violence, detention is rarely executed due to domestic violence being understood as a 'family matter',²¹ so the police would most probably just perform a check and notify the Prosecutor's Office to possibly open criminal proceedings.

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

In the view of a number of practitioners, reflected, as relevant, in the present report, the sanctions, following the violations of protection orders, especially protection orders against domestic violence, are not effective in terms of gravity and execution. The non-compliance with such orders is indeed criminalised (see question 26), but criminal proceedings are not frequent and the punishments imposed are not serious enough. On the other hand, police does not use their powers effectively enough, considering violations as a 'private' or 'family' matter, especially in smaller towns or villages, where people know each other.

Violations of restraining orders do not even carry a sanction.

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

No practical information was found.

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?

²¹ Kadieva (n 10) 3

Since 2009 non-complying with protection orders against domestic violence has been criminalised as an offence against the administration of justice by the same norm, criminalising the non-compliance with a court decision.

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

Non-complying with protection orders against domestic violence is punishable with deprivation of liberty of up to three years and a fine of up to 5000 BG Leva (2500 Euro).

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

Regarding protection orders against domestic violence, practitioners claim that criminal proceedings are rarely opened and punishments imposed are not serious enough²² while prosecutors mostly order police to perform a check on the signal for the violation and take measures under the Law on the Ministry of Interior.²³

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

In the realm of protection orders against domestic violence, victims can always call in the help of the police, police would in most cases appear on the scene, but may not be sufficiently aware of their powers in case a protection order is violated and the help other institutions and entities may render.

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?

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

27a-c: In case of a violation of a protection order against domestic violence, police handles enforcement and sanctioning in case no criminal proceedings are opened. In case of criminal proceedings, police investigates under the supervision of the Prosecutor's Office.

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

Practitioners generally consider that police do not have sufficient awareness about their powers in, inter alia, enforcement of protection orders against domestic violence.²⁴

2.2.3. TYPES AND INCIDENCE OF PROTECTION ORDERS

²² Alliance for Protection against Domestic Violence (n 14) 22

²³ Kadieva (n 10) 2

²⁴ Kadieva (n 10) 2

*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
- 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?
- 31) For which types of crimes are protection orders generally imposed (IPV, stalking, rape, other)?
- 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 restrainees already had a prior police record?
c. Which percentage of the restrainees already had a previous protection order imposed against him/her?

29-32: No empirical studies have been carried out.

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)?
- 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?

- 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?

33-35: No empirical studies have been carried out.

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

As reflected throughout the present report, regarding protection orders against domestic violence, the 2005 Law on Protection against Domestic Violence is seen as a major step towards specific protection of victims of domestic violence in fair compliance with international standards in the area. Its part on enforcement of orders, further developed in the Regulation for its Implementation, however, lacks sufficient delineation of the functions of police and the Prosecutor's Office and of the correspondence between the Law and the relevant provision of the Criminal Code, criminalising non-compliance. Better correspondence with the Law on the Protection of Children and social legislation in general would also be desirable.

The lack of a sanction for non-complying with a restraining order under the Criminal Procedure Code makes the respective norm unenforceable and thus not an effective tool for protecting victims of violence-related crimes.

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

Regarding protection orders against domestic violence, practitioners point to several problems as regards police as the first authority victims usually contact:²⁵ in some cases police authorities refuse to accept oral or written complaints about domestic violence, directly referring the victims to NGOs or the court; in many cases registration numbers of complaints are not given or are significantly delayed, which hampers the protection order procedure, since complaints to police are important evidence to be attached to the motion in court.

Directors of local Social Protection Directorates, who can petition the court for protection orders, rarely use this opportunity.²⁶ On the other hand, some police departments prepare petitions for protection orders, while they are not among the entities which can submit such petitions – which delays court proceedings.²⁷

Medical certification of traumas sustained is an important element of proving domestic violence sustained during protection order proceedings, but general practitioners, who are specifically empowered by law to issue such certificates, often refuse to do so, while forensic doctors' certificates are expensive and allegedly no

²⁵ Alliance for Protection against Domestic Violence (n 14) 7

²⁶ Alliance for Protection against Domestic Violence (n 14) 8

²⁷ Kadieva (n 10) 3

specialists on duty are in place during weekends and holidays.²⁸ At the same time, certificates by general practitioners are sometimes ignored by court.²⁹

Social workers' reports, prepared as part of protection order proceedings, often contain general information on the families' social situation, not relevant for those specific proceedings, which further hampers victims' protection.³⁰

In court, offenders and victims are often invited by court to reach an agreement, as in an ordinary civil case, which demotivates the victim to seek protection via a protection order.³¹ Sometimes, in procedures for orders for immediate protection, the measure of temporary determination of the child's residence with the victimised parent or the parent, not having committed the violence, is allegedly not imposed due to 'lack of data on direct violence towards the child' although he/she is witness to the violence and therefore a victim. Thus, victims are left with the alternative to stay with the children or take care of their own security.³²

Practitioners argue that many courts require domestic violence to be proven *beyond reasonable doubt*, which is an excessively high standard of proof, placing the burden entirely on the victim.³³

In its 2011 Views concerning a 2008 Communication on a domestic violence case,³⁴ the Committee on the Elimination of Discrimination against Women criticises Bulgarian courts, having ruled on the case in question, for stereotyped, preconceived and thus discriminatory interpretations of domestic violence as, inter alia, a private matter. The Committee recommends that the one-month time limit for petitioning the court for a protection order be removed and the burden of proof be eased in favour of the victim.³⁵ In its Views on another Communication concerning Bulgaria,³⁶ the Committee recommends that the state takes measures to ensure that women victims of domestic violence, in particular migrant women (such as the victim on the case), have effective access to, inter alia, justice, including interpretation or translation of documents and to ensure that, in the determination of custody and visitation rights of children, incidents of violence are taken into account.³⁷

²⁸ Alliance for Protection against Domestic Violence (n 14) 9-10

²⁹ Alliance for Protection against Domestic Violence (n 14) 20

³⁰ Kadieva (n 10) 3

³¹ Alliance for Protection against Domestic Violence (n 14) 20

³² Alliance for Protection against Domestic Violence (n 14) 22

³³ Kadieva (n 10) 1

³⁴ See Annex 1.

³⁵ Committee on the Elimination of Discrimination against Women, 'Views Communication No. 20/2008' (Forty-ninth session 11-29 July 2011) CEDAW/C/49/D/20/2008 paras. 9.12., 9.16, the abolition of the one-month limit also noted in the CEDAW Committee Concluding Observations on Bulgaria (n 9), par. 25-26(b)

³⁶ See Annex 2.

³⁷ Committee on the Elimination of Discrimination against Women 'Communication No. 32/2011 Views adopted by the Committee at its fifty-second session, 9-27 July 2012' (Fifty-second session 9-27 July 2012) CEDAW/C/52/D/32/2011, par. 8.8.

Regarding police go orders, practitioners argue that, in cases of domestic violence, police are not particularly aware of the specifics of domestic violence and the indirect ways to recognise it and, inter alia, of their powers under the Law on the Ministry of Interior in such cases. Thus, no written warning notice is given to offenders under the Law, or they are just warned orally, which deprives victims of a strong piece of evidence in the protection order proceedings. Despite the victim's right to obtain a copy of the warning notice upon request, such copy is rarely provided.³⁸

Regarding interim measures, on a theoretical level scholars argue that they are less effective means of protection against domestic violence since they are addressed at fewer people and protect the interests of victims to a lesser extent.³⁹

c. Problems with protection order monitoring

Regarding protection orders against domestic violence, police is insufficiently aware of its powers and obligations, related to protection order monitoring.

d. Problems with protection order enforcement

Regarding protection orders against domestic violence, according to practitioners, police often refuse assistance to victim in cases of orders for immediate protection, waiting for the original of the order to be sent officially to them or for a copy to be served on the offender. Police is also allegedly uncooperative in cases of relapsing domestic violence.⁴⁰ Practitioners claim that non-compliance rarely leads to serious consequences for the offender (see question 26c). The lack of a national database of registered cases of domestic violence is seen by police authorities as substantially hampering their work in the area.⁴¹

e. Problems with protection order effectiveness?

No specific information was found.

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

Regarding domestic violence, practitioners agree that the underlying problem is the co-ordination of institutions involved⁴² and lack of awareness among authorities about the specifics of domestic violence and the powers of various stakeholders, regarding victims' protection.⁴³ As seen throughout this report, the attitude towards familial violence as an 'intimate' matter where no state intervention is necessary also contributes towards lowering the level of protection for victims.

2.2.6. PROMISING/ GOOD PRACTICES

38) Which factors facilitate the:

³⁸ Kadieva (n 10) 2-3

³⁹ Hristova (n 7) 60

⁴⁰ Alliance for Protection against Domestic Violence (n 14) 14, 23

⁴¹ Alliance for Protection against Domestic Violence (n 14) 24

⁴² Alliance for Protection against Domestic Violence (n 14) 3.

⁴³ Kadieva (n 10)

- a. Imposition
- b. monitoring, and
- c. 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?

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

38-40: No practical information was found.

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

Regarding domestic violence, including protection orders against domestic violence, NGOs practising in the area of protecting and assisting victims of domestic violence, make several recommendations, to which we fully agree:⁴⁴

- Awareness raising and education should be done among all stakeholders, including police and courts, about the specificities of domestic violence and their own powers in protecting its victims;
- Swift communication should be existing among institutions, preceding official correspondence, so that timely co-ordination takes place;
- Directors of local Social Protection Directorates should use their powers to initiate proceedings for issuing protection orders for each case of domestic violence against children, persons under legal guardianship and persons with disabilities;
- When urgent reaction is needed, especially regarding children victimised by domestic violence, the specific law on domestic violence should have priority over other legislation, because it allows for a swift protection procedure, while long-term measures can be devised later;
- Systematic monitoring of the implementation of the specific law on domestic violence should be in place.

2.2.7. FUTURE DEVELOPMENTS

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

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?

⁴⁴ Alliance for Protection against Domestic Violence (n 14) 31 et seq.

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

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

42-44: Protection orders are not currently on the political or legislative agenda and no imminent developments are foreseen in the nearby future.

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?

The EPO is not currently on the practitioners' agenda, so the practical problems of its implementation cannot be foreseen for the time being.

GLOSSARY

1. General Legal Terminology:⁴⁵

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

⁴⁵ Merriam-Webster's Dictionary of Law ©1996. Merriam-Webster, Incorporated. Published under license with Merriam-Webster, Incorporated.

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

Case law

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

Substantive Law

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

Procedural Law

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

Pre-trial detention or remand

The detaining of a suspect in a criminal case before the trial has taken place. Since pre-trial detention occurs while the suspect is still presumed innocent, it is often seen in most jurisdictions an exceptional measure. It serves two main purposes: to protect the public and or the victim's safety (prevent the perpetration of further 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.⁴⁶

Decision

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

Legal representation/counsel

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

Legal aid/advice

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

Probation

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

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

⁴⁶ EU Council framework decision, 15 march 2001. (2001/220/JHA)

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 violence⁴⁷

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.

Stalking⁴⁸

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

Rape/sexual assault

Sexual assault is in this study defined as any sexual act committed against non-consenting persons⁴⁹, 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

⁴⁷ Rec. (2002)5. (VAW) (Committee of Ministers).

⁴⁸ C. Hageman-White, L. Kelly, & R. Römkens (Eds.), Feasibility study to assess the possibilities, opportunities and needs to standardise national legislation on violence against women, violence against children and sexual orientation violence (pp. 127-152). Luxembourg: European Commission.

⁴⁹ Council of Europe Convention on preventing and combating violence against women and domestic violence, art. 36 b.

prevent a future harmful action rather than to compensate for an injury that has already occurred, or to provide relief from harm for which an award of monetary damages is not a satisfactory solution or for which a monetary value is impossible to calculate. A defendant who violates an injunction is normally subject to penalty for contempt.

Restraining order

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

Barring order

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

Police go order

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

(The) scope

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

Radius

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

Practical impediments

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

Pro-active supervision

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