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

## NATIONAL REPORT FRANCE

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## 2. NATIONAL REPORTS: CONTENT AND STRUCTURE

### 2.1. INTRODUCTION/BACKGROUND

Policy against domestic violence in France and more specifically against women is quite recent. Long seen as a private matter domestic violence has been a taboo issue until recently.

It was only in 1994, when the new Criminal Code came into force, that the seriousness of domestic violence was acknowledged through the introduction of an aggravating circumstance that applies in the event that the spouse or partner of the victim uses criminal violence at the time of an incident<sup>1</sup>. Rape within marriage has been recognized in case law since 1990.

There were three National Action Plans (NAP) as a whole, the first one launched in the year 2005 and the second one in 2008. A third one is being implemented right now (2011-2013) under the title « Protection, Prevention, Solidarity ».

These NAPs aim at understanding the issue better and to provide help to victimized women and their children to find accommodation, financial autonomy and to train the professionals to deal with such situations. The actual NAP covers rape and sexual violence, domestic violence, sexual harassment, female genital mutilation and forced marriages. There is a governmental coordinating body responsible for implementing and coordinating the policies regarding violence against women, the national Commission against violence against women. It is an inter-ministerial body with the power to make policy decisions. The independent women's NGO network, FnSF<sup>2</sup>, is a member of the coordinating body. As part of these measures, national legislation has been strengthened up for victims' protection purposes. The Act of the 4th of April 2006 introduces the notion of respect in the marriage obligations and reinforces the prevention and repression of spousal violence, domestic and violence against children minor of age.

The law of 5 March 2007 on the prevention of crime provides for the extension of the socio-judicial surveillance including treatment to perpetrators of violence within the couple or against minors. Finally, the Act of July 9, 2010, adopted unanimously by MPs and senators, allows the eviction of the abuser from home.

In practice, the commitment of the State during the last 6 years has enabled to lift the taboo of domestic violence and to increase the number of domestic violence reports. For instance, in the year 2009, 650,000 women aged 18-75 have reported being victims of sexual abuse and 140 women passed away due to physical assault from part of their spouse/partner or former spouse/ partner (they were 157 in the year 2008 and 170 in the year 2005). The overall cost entailed by domestic violence has been estimated to amount 2.5 billion euros. The State has dedicated 3.6 billion euros in the last action scheme, which is a rise of 30% compared to the previous scheme and confirms that domestic violence has become a national priority.

French law does see domestic violence as a criminal offence and the offence is aggravated if the perpetrator is a spouse or cohabiting partner. Although, legal tools do exist, evidence seems to show that judicial processes are not far-reaching enough and that there is a lack of understanding of their rights and protection procedures from part of the victims. On the side of professionals, whether they be police, public prosecutors, social workers or doctors, they sometimes lack of knowledge of their duties and procedures to provide appropriate support to the victims.

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<sup>1</sup> Criminal Code, art. L222 -13.

<sup>2</sup> Fédération nationale solidarité femmes : <http://www.solidaritefemmes.asso.fr>

## 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 France, Protection Orders were issued for domestic violence only contrarily to some other countries where they can apply to all victims of interpersonal violence.

Protection Orders (PO) in order to counter domestic violence are imposed by Civil Law (art. 515-9 of Civil Code). Articles 515-9 to 515-13 of the Civil Code rule POs. The Civil Code provides that « When the violence within the couple or a former spouse, a former partner under a civil solidarity pact or former partner, endangers the victim, one or more children, the family Court may issue protection order in emergency». The beneficiaries are victims of violence/abuse (spouses, partners, former spouses, former partners as well as children who are in danger because of the violence perpetrated against the victim).

According to Article 515-11 a Protection Order is issued by the Family Court if they consider, on the evidence provided to him and debated, there are reasonable grounds to consider the alleged facts as being real as well as the danger the victim is facing. The judge may then take various measures.

"Reasonable grounds" mean that we do not rely solely on the word of the victim. We need tangible elements, as the intervention of the police or gendarmerie in a dispute between the couple. Every action of which the police and gendarmerie keep records. "(Magistrate, TGI de Bordeaux)

Article 515-12 of the Civil Code states that the family judge can take these decisions for a maximum duration of 4 months but that they can be extended beyond that if during this period a petition for divorce or legal separation was filed; They can also be modified or cancelled at any time after an adversarial hearing before the Family Court judge or court on appeal. If the law states a maximum duration of 4 months, experience shows that most of the time, these POs are extended to 6 months.

The Act of July, 9, 2010 has introduced a new type of protection, that is the PO delivered in emergency by the Family judge without prior claim to be made by the victim. As seen previously, articles 515-9 to 515-13 of the Civil Code govern the PO and the specific procedure for this new device, as specified by the Decree of 29 September 2010, is now listed under Articles 1136-3 to 1136-13 of the Code of Civil Procedure.

All these laws are available on the Internet but in French only. :

[http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=7DEA8C8000E2933CEF1EDD3FBA936992.tpdjo13v\\_1?cidTexte=JORFTEXT000022454032&dateTexte=29990101](http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=7DEA8C8000E2933CEF1EDD3FBA936992.tpdjo13v_1?cidTexte=JORFTEXT000022454032&dateTexte=29990101)

As far as law enforcement in case of a PO is concerned, this is regulated by the Penal code article 227-4-3 of the Penal code (<http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070719>).

- 2) a. Within the different areas of law (criminal, civil, administrative, other), you can also have different legal provisions through which protection orders can be imposed (e.g., a condition to a suspended trial, a condition to a suspended sentence, a condition to a conditional release from prison or as a condition to a suspension from pre-trial detention). Which different ways of imposing protection orders can be distinguished in the different areas of law? (please, be as exhaustive as possible).
- b. When it comes to criminal law: can protection orders be imposed in all stages of the criminal procedure?

2 a-b: In France, women who have been subjected to domestic violence can seek justice either by means of criminal prosecution, which allows the perpetrator to be punished and the victim to be awarded compensation, or through a civil action, which allows the consequences of the breakdown in a couple's relationship to be resolved. As far as POs are specifically concerned, it is only a matter of the Judge of Family affairs who is entitled to deliver them since their aim is to protect the victim and to prevent further violence and not to punish the perpetrator.

The Police/Gendarmerie have the obligation to inform the victim at the time of the preliminary investigation about her right to benefit from a protection order as well as the rights and penalties of the offender.

Within the frame of a criminal prosecution, during the pre-trial stage the examining magistrate can order the suspect not to leave a certain area or to attend a certain place, while in the post-trial stage the courts can order the offender to refrain from contacting the victim as a condition to a suspended sentence.

The non-compliance with measures imposed by the protection order is an offense under Article 227-4-2 of the Penal Code and punishable by two years' imprisonment and a € 15,000 fine.

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

In civil law, only the 'victims' – in civil cases called the claimants/plaintiff – can apply for PO. The beneficiaries can include the children. The violence inflicted can occur during or after marriage/relationship. The Public ministry is also involved and can apply in case of incapacity of the victim to do so.

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

In civil law, only the claimant is involved in applying for a PO, the defendant can contest the claim, and the Family judge decides whether the PO will be issued. However, in case of the incapacity/impossibility of the victim to apply due to her mental or physical disabilities, in case of hospitalization for instance, the French State through the Public ministry can act instead of her. Whatever the situation, the Public ministry shall be a party, that is to say entirely associated with the conduct of the proceedings. It becomes "main part" when referring himself to the Family affairs judge for a PO. In this case it must have previously received the approval of the person in danger and cannot act without her consent.

Thanks to the 2010 Act, the police services as well as the gendarmerie have the obligation to inform the victims of their rights and are to explain to them that they can request a PO from the Family judge (Code of Penal Procedure, art. 53-1, 6° et 75, 6°). They are also to inform the victims about the sanctions that their violent partner/spouse is likely to be submitted to and the penal procedure.

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

Article 515-10 of the Civil Code - Upon receipt of the application for a protection order, the judge summoned by any suitable means for hearing the plaintiff and the defendant and the prosecution.

The hearings of the parties may be separated or take place during the same hearing. After hearing the parties and their lawyers if relevant and having collected the observations of the prosecution, the judge makes an order on the spot. The order is enforceable right but provisionally. For women who are considered as being in a very high risk situation, the high courts of Bobigny and Strasbourg have created a device consisting to provide women victims of violence a telephone to alert the police or the gendarmerie (rural police) by a short circuit to allow for priority interventions.

- 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 France, POs are restricted to domestic violence only and not for general interpersonal violence for instance. Women who have been subjected to domestic violence can seek justice either by means of criminal prosecution, which allows the perpetrator to be punished and the victim to be awarded compensation, or through a civil action, which allows the consequences of the breakdown in a couple's relationship to be resolved.

- 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)?

POs are independent procedures. They can be granted before or after divorce/separation, a claim for penal procedure.

Although the issuance of POs is specifically the business of Civil law, other ministries such as the Justice and Interior Ministries have taken action on this issue. For instance, in September 2004, the *Direction des affaires criminelles et des grâces*, Office for Criminal Affairs and Pardons, of the Justice Ministry published a *Guide de l'action publique*, Criminal Prosecution Guide, on the issue of tackling domestic violence, which gives some examples of good practice for actors involved in handling such cases in the courts. The guide has been distributed to all public prosecutors' offices, is not binding and professionals within the health service and police as well as social services are still largely unaware of its existence.

Protection orders can be issued independent from other legal proceedings. As a matter of fact, as they are intended to protect female victims of violence these can lodge a request before or after the filing of a complaint, the perpetrator has been convicted or not. It is not required to lodge a complaint to apply for a PO. However, many judges ask the victims to lodge a claim before granting a PO.

Since the introduction of the new Criminal Code in 1994, being a spouse or cohabitee is deemed to be an aggravating circumstance in the case of some violent offences. These include acts of torture or barbarism<sup>3</sup>, violence resulting in unintentional death<sup>4</sup>, violence resulting in mutilation or permanent disability<sup>5</sup> and violence leading to *incapacité totale de travail* (ITT)\*, total incapacity for work, for a period of eight days or more<sup>6</sup>. The main benefit of this amendment to the Criminal Code is that domestic violence is now a crime even if it does not result in the granting of ITT. It means that women can lodge a complaint even when there are no physical effects of the violence or they are no longer visible. Thus, once there is domestic violence, it must be considered an offence.

On the other hand, this aggravating circumstance does not apply in the case of murder, the administering of harmful substances, threatening to commit a serious crime (crime) or intermediate offence (*délit*)<sup>7</sup>, rape and

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<sup>3</sup> Criminal Code, article 222-3.

<sup>4</sup> Criminal Code, article 222-8.

<sup>5</sup> Criminal Code, article 222-10.

<sup>6</sup> Criminal Code, articles 222-12 and 222-13.

<sup>7</sup> In France, offences are classified according to the degree of seriousness as *crimes*, *délits* and *contraventions*. A *crime*, the most serious, usually incurs a heavy prison sentence, a *délit* carries a shorter prison sentence, and a *contravention* is punishable by a fine.

other types of sexual assault, false imprisonment (séquestration) and malicious telephone calls.

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)

For obtaining a PO, the following proceedings are to be completed:

The person seeking protection is to lodge a complaint to the judge to Family affairs:

by request handled or sent to Court the Registry;

- a request form (cf.annexe) was released in legal access points to the Departmental Observatory of violence against women. It is given to individuals who request it at the reception of the central civil registry in Court. This form also includes topics on the identity of those involved, a space for the presentation of the factual basis that back up the request as well as the relevant information for protective measures.
- by assignment: in all cases of emergency, the person seeking a protection order may ask the judge to assign a license to the defendant for an early hearing. A bailiff issues the summons.

According to the French law, the victim or her representative has to provide evidence of the violent and unlawful behaviour and the defendant can counter this claim. In case of a trial *in absentia*, the verdict has to be serviced to the defendant.

Assistance of a lawyer is not required but possible:

The person applying for a protection order may request the benefit of legal aid so that fees (legal fees, bailiff fees, interpreter) are supported by the state. This request may be made upon the filing of the petition. Under the protective order sought owing to acts of violence, the benefit of legal aid is extended without residency requirements for foreigners.

Usually public prosecutors can either immediately impose a criminal PO themselves – after hearing the suspect/offender.

The request for help should include the following elements:

- The explanation that supports the request: background and history of violence and the type of measure requested from the judge.
- The elements on which the request is based: i.e. medical certificates, certificates from part or associations or social services, testimonials from relatives/neighbours who have witnessed the facts, complaints or handrails previously filed, correspondence, photographs or any other written documents that help to make the request credible.
- Identity documents and civil status documents when possible.

Local and national organizations can help the victims to gather up all the required documents and to inform the victims about their rights.

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

The measures ordered under the order of protection are limited to four months from the notification of the decision period. They may be extended in case of proceedings for divorce or separation. They can be removed or modified at any moment. Modification of a measure does not imply an extension of its duration. The appeal period is 15 days.

POs are supposed to be handled in a short period of time. However, "The average time between referral to the courts (...) and the decision is much higher than originally envisaged, since it is twenty-six days". This is nonsense for an emergency 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?

The civil judges can declare the civil POs to have immediate effect (mainly for cases that are already known by the Court). After hearing the parties and their lawyers if relevant and having collected the observations of the prosecution, the judge makes an order on the spot. The order is enforceable right but provisionally. Then the claimant is heard later in case he could not be heard straight away. However as mentioned above this is not always the case and the period of time between the referral to the court and the decision is longer (for first time cases mainly). This is explained by the fact that the information provided by the victim does not always show clear evidence or that it is incomplete. Expulsing someone from his home has got consequences on the psychological, social and economical point of view and as a consequence, judges need to make sure that the problem does exist.

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?

Interim and emergency protection can be provided within four hours once the claim is lodged. POs can be up to 6 months and they can be renewed in case of a legal procedure either to incriminate the offender of crime or of a divorce/separation procedure.

Once the person in danger, has got a short time court order for a hearing she can provide the Chamber of Bailiffs with the court documents (request, police statement, medical certificates, etc.). She gets an interview straight away and the writ of summons is issued straight away. Once the writ of summons issued, the Bailiffs hand it in within four hours to the offender. It is formally acknowledged and filed at the Registry of Family Court the next morning and the claimant is handed in a copy before the hearing.

The bailiff will implement a number of measures related to the PO such as the recovery of children, the eviction of the offender, etc.

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

Civil interlocutory proceedings can only be initiated if the case has a sense of urgency, but judges easily assume this urgency. For civil POs it suffices if the judge considers it plausible that the defendant acted unlawfully against the claimant or that there is a real threat of future violent behavior. The judge can in that case impose a PO to prevent future violence.

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

Legal representation for the victim is not compulsory but strongly advised.

c. Is free legal representation/advice available?

Yes, claimants with few financial resources can apply for free legal representation. When possible but they are still expected to pay an income-related contribution towards the costs and for the bailiff.

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)?

Via the Protection Order, the Family court may take the following decisions:

- Ban the offender to enter into relationship with the victim or children (ensuring physical separation and barring contact).
- Prohibiting the offender from holding or carrying a weapon and order its remise.



- For married couples, spouses residing separately and for all couples, married or not, allocation of housing/shelter place<sup>8</sup> or the couple's residence to women victims of violence and the possibility of support costs for this accommodation.
- Decide on the contribution to the costs of marriage for married couples or material support for PACS partners.
- Decide on the modalities of exercise of parental authority (including the prohibition of children leaving the country).
- In case of relocation of the victim, to authorize her to hide her new address and, therefore, to take up administrative residence at the lawyer's who assists or represents or at the Prosecutor's.
- Provisional admission of the victim to legal aid to cover attorney's fees and any costs of bailiff or interpreter.
- Ban on leaving the country for children (below 18 years) and young adult daughters in case of threat of forced marriage.

The issuance of an order of protection entails automatic effects on the residence of the victim. Especially if the person is with no identity document or residence permit, she can get the grant or renewal of a temporary residence permit labeled "private and family life", with no cohabitation constraint, unless her presence is a threat to public order.

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

Yes, in France emergency protection (including possible eviction) is planned; in the court-ordered version of the barring order, the victim must make the decision to ask to have perpetrator removed, whereas the police are able to act on their own assessment of danger, thus taking some of the burden off a victim in crisis.<sup>9</sup>

Eviction orders have been designed to stop violence, offer short-term protection to the victim and give her or him time to think and seek further protection, such as an injunction. They do not easily fall into the categories of civil injunctions or restraining orders in the context of a criminal procedure. Rather, they are somewhere in-between the two. The police enforce the removal.

The penal procedure remains the main response to situations of domestic violence, POs are not meant to replace that process, this is why they are made for a short period of time only (4 months in the texts, up to 6 months in practice).

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

The most popular types of protection imposed are: 1) the no-contact order, 2) the order that prohibits an offender to enter a certain street/area, 3) the short term barring order which obliges the offender to leave the family home, 4) the restrictive order that limits the offenders contact with his children.

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<sup>8</sup> There are 42 shelters in France providing gender specific specialised support to women survivors of violence and their children. These shelters provide a total of 1,160 places. Some other shelters receive women survivors of violence but most of them are not gender specific. This is not sufficient to meet the Council of Europe recommendation of safe accommodation in specialised women's shelters, available in every region, of one family place per 10,000 head of population. The majority of shelters are provided by the "Fédération nationale Solidarité Femmes".

<sup>9</sup> Report of Amnesty International on violence against women in France, 10, 2006.

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)?

There is only one type of PO in France

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

See above

- 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?

There are no formal legal requirements for the formulation of POs and they vary according to the Court and judges. In practice, however, many judges make up rather elaborate PO decisions.

Upon reception of the application for a protection order, the judge summons by any suitable means the plaintiff and the defendant and the prosecution for a hearing (Article 515-10 of the civil code).

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

There are practically no legal limitations to the scope of civil and criminal POs. The measures that can be taken by the judge are:

- Prohibit the defendant to receive and meet some people and to interact with them.

Violation of this requirement constitutes a criminal offense, the order must specify the identity of the persons concerned and address.

- Prohibit the defendant from holding or carrying a weapon and order any weapon to be handed in.
- Rule on the separate residence of the spouses specifying which both continue to reside in the marital home and the how to take care of expenses related to this property. Except in special circumstances, the enjoyment of the property is awarded to the spouse who is not the perpetrator.

In these last two cases, if the expulsion is expressly ordered the defendant tenant or part owner of the property may be removed without any delay.

- Decide on the procedures for the exercise of parental authority when there are children.
- Decide on the contribution to the costs of marriage for married couples.
- Decide on the material aid within the meaning of Article 515-4 of the Civil Code for PACS partners.
- Decide on the contribution to the maintenance and education of children when relevant.
- Allow the plaintiff to conceal his domicile or residence and domicile at the lawyer's who assists or represents or at the prosecutor's of the Court.

Concealing the address of domicile or residence is allowed up to two years. Due to difficulties and violent incidents experienced by former wives/partners once their address disclosed a new law proposal is under way in order to allow them to conceal their location as long as necessary.

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

See above

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

In practice, many judges/public prosecutors will take all sorts of factors into account, most of them related to the proportionality and personal circumstances of the defendant/offender and the place where they work. Also

the judge will pay attention to testimonials and any type of document that contributes to showing evidence of the danger faced by the claimant.

- 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”)?

POs are often indicated with the help of a map and they are indicated by naming the surrounding streets.

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

The average scope of an order that prohibits someone to enter a certain area is usually limited to a perimeter of 400 meters.

- 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?

POs are issued for a maximal period of four months. This period of time can be prolonged in case of a formal request for divorce or separation is lodged within the first four months.

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

Factors that possibly play a role in deciding on the duration of a PO are: the seriousness of the situation that is assessed by the judge in charge of family affairs and if there are previous claims/requests that were lodged by the victim. However, we have no statistical data on this type of information.

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

Civil POs have an average duration of 4 to 6 months. According to the law, they are to be 4 months but in practice, most of them have duration of 6. They can be extended when a divorce or formal separation in case of a relationship that is not within the frame of a marriage are started.

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

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

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

In the case of short term barring orders both parties are heard when possible or their representative. In case of violence that requires the intervention of the police or the gendarmerie and of crime, the police can decide to take action. However the victims can express their opinion, wishes and desires.

- 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?

The victims/claimants can request a certain type/scope/duration of PO in their summons/hearings. Judges can decide differently according to their appreciation of the situation and danger incurred by the victim. The consequences are also weighted in terms of the economical and social challenges the decision could generate for the offender.

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

POs can be challenged or appealed by the offender. The delay for an appeal is 15 days as for any appeal procedure. Violation of orders issued by the Family Court are the subject of creation in Chapter VII of Title II of

Book II of the Penal Code of a new section 2a entitled "Violation of the order made by the judge of family affairs for violence "and includes two sections. By specifically sanctioning the violation of these measures, the legislature intends to ensure the effectiveness of the protection order. The family court may, at any time, at the request of the prosecution or of the parties, or after making any further evaluation of instruction, delete or modify all or part of the measures contained in the order protection, decide new, as well as granting the abuser a temporary exemption to observe certain obligations that have been imposed by the protection order.

Article 227-4-2 provides that in case a person subjected to one or more obligations or prohibitions imposed in a PO made under section 515-9 or 515-13 of the Civil Code does not comply with this or these obligations or prohibitions, this person is punishable by a two years imprisonment and a € 15,000 fine. Article 227-4-3 provides that the fact that a person liable to pay contributions or subsidies under a PO issued in compliance with Article 515-9 of the Civil Code, does not notify his change of address to the creditor within a month of this change is punishable by 6 months imprisonment and a € 7,500 fine.

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

In civil proceedings both parties can express their feelings towards a PO. During trial, the offender can, for instance, call the judge's attention to possible disadvantageous consequences of the requested PO, such as, for instance, the fact that the PO would no longer allow him to visit family, friends or work. Civil judges will try to strike a fair balance between protecting the claimant and limiting the negative consequences for the offender as much as possible, so in that sense, the offender could have an influence. However the offender has to provide evidence that he is not guilty in order to have the PO amended or cancelled.

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?

The decision is made according to the claim and the judge decides from his/her assessment of the situation and danger the victim faces. Both the claim and the hearings from the two parties (claimant and offender) influence the judge's decision. During the hearing, the offender can express his point of view and wishes. He can also appeal if the decision does not suit him within a period of time of 15 days.

14) To what extent (if any), do practical impediments (such as shortage of police personnel, lack of available resources in certain (rural) areas) to the enforcement of protection orders play a role in the decision to impose a protection order? Do legal authorities, for instance, refuse to impose certain protection orders, because they know their enforcement in practice is problematic or do they impose these protection orders anyway (e.g., for reasons of 'sending a message' to the offender)?

There is no empirical material available in France to answer this question. Anecdotal evidence suggests that public prosecutors and judges can have a different approach. The Court culture does show some differences. In France the Court of Bobigny and Strasbourg are most involved and seen as having good practices in the handling of the cases to protect the victims.

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)?

The claimant can call the judge's attention to the fact that there have been prior POs. This may increase the likelihood of being awarded another PO and to strengthen the new measures that are being taken in order to protect the victim such as the obligation for electronic devices for the offender and an alert device for the victim. The fact that previous violent incidents were reported and recorded by the Police or the Gendarmerie or that a claim was previously lodged against the offender for penal procedure can play a role and back up stricter decisions from part of the Judge to protect the victim and keep the offender away from her.

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

POs can apply to the partner only. However, some measures can be taken to protect the children too as stated by art.373-2-9 of the Civil Code: "Where the interests of the child is at stake or when the direct delivery of the

child to the other parent is a danger to the child, the judge makes sure that all the necessary steps are taken to protect her/him. It may be decided that the meeting is organized in a safe external place, or with the assistance of a trusted third party or representative of a qualified corporation."

The Judge can decide on neutral meeting places for the children to be handed in or returned in case visitation right and custody are maintained for the offender or in the case there is a right of visit only but not at the home of the offender. As a matter of fact in case the Judge assesses that the situation is not safe enough for the children to spend the weekend and nights at their father's place, it can be decided to organize meetings in specific structures run by educators and social workers. The "trusted party" can be a grandparent, uncle, aunt, any member of family for instance upon designation of the judge. These places are still underdeveloped however compared to the real needs and they lack of financial resources.

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

If the offender has visitation rights, POs that only apply to the partner can take these rights into account by organizing these visitation rights in neutral places as seen above so that there is only contact with the children, the mediation of the visit or remittance/return of the children being ensured by social workers. If the PO also extends to the children, then, the visitation right can be suspended. "When applied to Articles 375-2, 375-3 and 375-5 of the Civil Code, the court may also order the ban for the child to leave the French territory. The decision sets the duration of this prohibition that shall not exceed two years. The ban on leaving the country is recorded in the file of persons sought by the prosecutor that is held by the frontier police too "

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

Anecdotal evidence and claims by the Union of the Judges show that in practice there are problems with custody/visitation as well as POs orders. As we saw earlier, problems are mainly structural and due to a lack of places to mediate visitation rights and financial provision.

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

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

No relevant in France: this type of PO implies that the two parties (claimant and offender) are responsible for domestic violence and would make them both legally responsible for any PO infringement.

**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)?**

Orders are not provided free of charge in the sense that the claimant has to pay for a tax stamp to start the procedure and this can be one of the elements that prevent the victims to lodge a claim or ask for help to the court in case of socially deprived families. Moreover when the victim does not benefit from free legal advice, court fees and legal representation can result in being to important. However the offender is usually asked to cover for the fees once the verdict is made and the offender's responsibility decided by the Judge. Some victims' organizations help the victim by lending the money.

### 2.2.2. ENFORCEMENT OF PROTECTION ORDERS

*If protection orders can be imposed through multiple areas of law, please make a distinction between these areas of law in answering the following questions. For instance, if a protection order can be imposed in both criminal and civil law, make sure that you answer for both areas of law where and how protection orders are registered (question 1).*

19) Where and how are protection orders registered?

POs are registered at the central Court's secretary and the claimants as well as the offenders receive a notification and copy of the verdict.

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?

The victim/claimant are automatically informed of the PO and its conditions by certified letter or through a bailiff (in case of emergency decision).

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?

It is usually the victim who reports when the PO is not complied with. Then the Police or the Gendarmerie take over to deal with the offender and then the Judge if necessary.

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

The Act of July 9, 2010 includes two sets of provisions expanding the possibility of placing the offender under electronic surveillance and to better protect the victim (Art. 131-36-12-1).

First, the law lowered the threshold at which a perpetrator of domestic violence can be placed under mobile electronic surveillance ("electronic tagging") or under house arrest before sentencing (penalty of five years instead of seven years for other offenses) or in the case of a socio-judicial surveillance measure after the offender has been under a prison sentence (sentence of five years in prison instead of seven years for other offenses).

The Act also provides, on an experimental basis for three years and in determined jurisdictions by the Department of Justice, an electronic protection device in order to alert authorities in case of violation of the obligations imposed on the perpetrator to keep away from the victim (art. 222-14 et 222-18-3). The latter has got a device that enables her to alert the authorities when the offender gets close.

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

POs are actively monitored with the help of mobile electronic devices in specific cases only (see above). The police have a more reactive approach instead: they wait for the victim to report violations. There seems to be some inconsistency in the monitoring of protection orders.

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

See tables below.

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

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

e. How do the monitoring authorities generally become aware of a violation of a protection order: through the victim or through pro-active monitoring activities?

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

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

It depends on how the PO is formulated. If the PO reads that the offender is not allowed to 'initiate and have contact' with the victim – instead of only 'initiate contact' – contact initiated by the victim would officially also constitute a breach if the offender enters into the conversation.

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

No information on this.

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?

No data on that matter could be found

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

Violations of civil POs are easily established. It suffices if the attorney of the claimant tells the judge/authorities that the PO was violated or the victim or her representative organization reports to the police/gendarmerie.

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

Once the victim becomes aware of a violation, (s)he has to contact the police/gendarmerie or his/her attorney who, in turn, will contact the judge. The bailiff will then collect the incremental penalty payment. If the offender disagrees with the enforcement, (s)he can turn to the civil interlocutory judge.

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

Civil POs: The most prevalent formal reaction to a PO violation is to have an attorney/bailiff/the police/gendarmerie record the violation in order to inform the Family affairs judge. A police record is also required. The police are allowed to escort the offender out of the restricted area and order him/her to stay away, which is mainly implemented, for emergency orders. They can also arrest the offender for a period of up to 24 hours before the Judge can take an emergency decision. It is, however, unclear how the police reacts in practice.

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)?

See below

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

The violation of POs falls under the penal law.

Article 227-4-2 The fact that a person subject to one or more obligations or prohibitions imposed in a protection order made under section 515-9 or 515-13 of the Civil Code does not comply with this or these obligations or prohibitions is punishable by two years' imprisonment and a € 15,000 fine.

Article 227-4-3 The fact that a person liable to pay contributions or subsidies under the protection order issued according to Article 515-9 of the Civil Code, does not notify his change of address to the creditor within a period of one month after the change is punishable by six months imprisonment and a fine of € 7,500.

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

Victims have little knowledge of their rights and information needs to be made even more accessible. Temporary accommodation possibilities for victims of domestic violence are insufficient. And doctors are not always responsive when it comes to making assessments of violations that could be used as evidence in court. However we do not have any empirical data on the effectiveness or dissuasive power of the sanctions/reactions of POs violations.

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

There is no evidence but it is supposed to work this way.

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?

Yes it is and it is criminalized (see Article 227-4-2 and Article 227-4-3 stated previously in 23c).

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

Article 227-4-2 The fact that a person subject to one or more obligations or prohibitions imposed in a protection order made under section 515-9 or 515-13 of the Civil Code does not comply with this or these obligations or prohibitions is punishable by two years' imprisonment and a € 15,000 fine.

Article 227-4-3 The fact that a person liable to pay contributions or subsidies under the protection order issued according to Article 515-9 of the Civil Code, does not notify his change of address to the creditor within a period of one month after the change is punishable by six months imprisonment and a fine of € 7,500.

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

In case of a violation of a short term barring order, the police will, in principle, always report this to the public prosecution service. They can also arrest the offender, in fact, this is even the prescribed course of conduct but this is less standard in practice. However there is no scientific evidence or statistical data we could find on the matter.

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

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

27) a. Is the monitoring authority capable of issuing a sanction following the breach of the order or does the authority have to report the violation to another authority in order for the sanction to be issued?

The violation is to be reported to an attorney who will, in turn, contact a bailiff or the victim can directly contact a bailiff or the judge. The victim or the police according to the situation and emergency can make the reports. Then the judge takes the decision to sanction the offender.



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

The police and the probation services are in principle obliged to report all violations that have come to their knowledge to the judge, but in practice they sometimes assume discretionary powers not to report violations. Victims can freely decide whether or not to report violations.

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

No discretionary power. No empirical data.

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

As far as I know, the monitoring authorities do not receive a specific training in this regard. But it is planned to increase training and information on the matter.

### 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 data available at the national level in France. The Ministry of Justice and Freedoms sent a special questionnaire to all TGI (Courts), covering the period from 1 October 2010 to 1 May 2011. 122 responded. It shows that 854 orders were requested and 584 were issued by the TGI.

Solicitation and issuance of protection orders between October 1, 2010 and May 1, 2011 in 122 TGI (courts)<sup>10</sup>

Solicitations	854	100%
Issued POs	584	68.4%

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

b. Which combinations of protection orders are most often imposed?

It appears that some measures are more implemented than others but the figures provided by the Chancellery do not enable us to have an overall overview.

Measures that can be included in POs between October 1, 2010 and May 1, 2011 in 122 TGI (courts)<sup>11</sup>

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<sup>10</sup> Department of Justice and Freedoms. These figures were derived from the responses of 122 high courts (out of 165 surveyed) to a questionnaire from the Chancellery. Assemblée Nationale report n°4169. January 17, 2012. By M. Guy Geoffroy et Mme Danielle Bousquet.

<sup>11</sup> Department of Justice and Freedoms. These figures were derived from the responses of 122 high courts (out of 165 surveyed) to a questionnaire from the Chancellery. Assemblée Nationale report n°4169. January 17, 2012. By M. Guy Geoffroy et Mme Danielle Bousquet.

Type of measure	Number of measures taken
The victim is granted the use of the couple's home (4°)	339
Defining parental authority measures (5°)	395
Ban for the children to leave the French territory	64
Présentation d'une liste de personnes morales qualifiées (dernier alinéa)	52

It appears that the measure most pronounced is that listed in point 1 of Article 515-11, namely the prohibition of contact with certain persons designated by the family court, which is the criminal aspect of the order. The most requested other two measures relate to the granting of the marital home to the victim and the manner of exercise of parental authority.

As meetings in a safe neutral place are contributing to a higher feeling of security 28% of protection orders for the delivery of children decide it to be organized in a meeting mediated place. However, the implementation of these decisions is facing a double in some departments, a double difficulty. There sometimes are not neutral venue or meeting them, in short supply, cannot be accommodated within the time those that are of the order of protection, the people who benefit, because a queue waiting too long. Thus, according to figures from the Ministry of Justice and Freedoms, there are currently 67 in France publicized meeting spaces which must be added 92 family mediation structures that also have a meeting space function. In addition, the family court judges may be reluctant to use these associations, since no authorization procedure exists, unlike, for example, which is intended for organizations working with juvenile court judges (2). A comprehensive framework that provides a licensing regime would benefit from being introduced to facilitate the use of these associations.

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

The only empirical data I found is for women acknowledged as being in a high danger situation for the department of Seine St Denis and who are granted the use of an electronic protection device as part of a pilot experimentation under the form of a mobile phone directly connected to a helpline organization that screens the type of calls and forward them to the relevant authorities when relevant (police). In case of an assessed "great danger" the police can intervene within 10-12 minutes to provide help to the victim. A future evaluation of the effectiveness of the measure is planned to be completed by the *SOS Victimes* 93 organization and the Prosecutor in the near future. In the year 2010 and during the first 9 months of 2011 56 endangered women benefitted from the device.

Type of crimes that originated the imposition of POs in Seine-Saint-Denis

Murder attempt	Rape	Violence and illness >8 days	Death threats	Violence and illness >8 days + other aggravating factor	Violence and illness >8 days + violence on a minor of age	Violence and illness <8 days	Total
3	3	9	20	5	5	11	56

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?

Yes, protection orders are generally imposed against male offenders on behalf of the female victims since only the victim or her representative (in case of incapacity of the victim) can claim for a PO.

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

No available statistics

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

No data available

#### 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)?

There is no empirical information available since the law is rather recent (2010). However various Courts, The *Assemblée Nationale* report, judges and attorneys mention difficulties and challenges.

For instance:

##### 1. Delays to get free legal support and attorney:

These delays vary from one area to the other. In the area of Montpellier for instance, it can take up to 4 months before getting such help. Meanwhile, the victim is expected to pay for all the costs generated by the procedure.

It seems more effective to have the alleged perpetrator called the alleged perpetrator by police rather than relying on the bailiff who does not accept to do the job if not previously officially informed of some funding or a decision of free legal aid.

In an effort to respect the principle of contradiction, the perpetrator and the victim are summoned and heard at the same hearing.

##### 2. Joint hearings:

Holding a joint hearing between the perpetrator and the victim appears to be a problem.

The laid down in Article 515-10 of the Civil Code to hold separate hearings faculty is rarely used.

Some victims prefer not to assert their rights, rather than to face their abuser. In addition, the abuser to convince the victim to withdraw her claim can use the waiting time in the waiting room before the hearing. (Information retrieved from: <http://www.juritravail.com/Actualite/securite-sociale/Id/18943>).

### 3. Body of Evidence:

The Family Court judge issues the protection order, and he/she considers, on the evidence there are reasonable grounds for regarding as the likely commission of the acts of alleged violence and danger to which the victim is exposed. (Civil Code Section 515-11)

But nearly a third of applications for protection orders is subject to rejection in particular because of the difficult burden of proof.

The victim must indeed provide a body of evidence establishing the likely nature of violence suffered and danger. However, it appears that in many cases, the person seeking the order produced no evidence of the alleged facts, merely the report to the police, which has no legal value. Yet the potentially serious consequences of psychological violence on a victim are not likely to be justified in the majority of cases since professionals are reluctant to establish medical reports of the probable existence of psychological violence. Even for doctors who work in emergency units, it is sometimes difficult to assess the psychological impact of the violence suffered. To better evaluate, closer links should be forged with psychiatrists and psychologists and doctors. These elements often lead the judge to dismiss the claimant.

### Problem of training of Justice lawyers / judges:

A report issued by the Government on the implementation of specific training in the prevention and management of violence against women and violence within the couple was presented to Parliament before June 30, 2011. This training is designed for physicians, medical and paramedical personnel, social workers, officers of civil status, the penal officers, judges, lawyers, staff of national education, professionals of sports activities, cultural and recreation staff and police and gendarmerie.

### Delays:

The variation of delays in obtaining protection orders, depending on where it is dealt with, in addition to a lack of family court judges in some jurisdictions and a lack of information shows a lack of strong will to make every effort to obtain an effective decision making.

The guarantee is given that the decision of the judge shall be made within eight days. If necessary, accommodation is provided the same day to prevent him from returning home and an emergency telephone ('phone danger ") can be assigned so that it can prevent the police if 'perpetrator approaches her. Putting away is immediate. All necessary organization we guess to give this rapid response to victims and collaborative work that underlies it, which seems impossible if the bailiffs do not play the game commitments of each are also in a partnership.

It is not a coincidence that the high court of Bobigny handed down a fifth of protection orders issued throughout France. Better training of judges and lawyers involved in coordination with psychiatrists, doctors, police or gendarmerie - where too often the woman is denigrated - as well as local authorities are expected to improve the response.

### **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?**

The biggest problem with civil POs according to the January 17, 2012 report from the French Senate (Assemblée Nationale) is that of implementation too fragmented (depending on the area and the Court) and too slow.

The information provided by the Ministry of Justice, based on responses to a questionnaire completed by 122 high courts (of 165 surveyed) questionnaire covering the period from 1 October 2010 to 31 May 2011, reveal an extremely heterogeneous application throughout the national territory of the provisions relating to the

protection order, which can not be explained by objective differences in "exposure" of the territories to domestic violence.

The law would allow the courts to respond to emergency situations of immediate danger. On the occasion of the parliamentary debates, the envisaged deadline seemed to be between 24 and 48 hours, although this accuracy is provided in the law, taking in consideration that non-compliance with this time the judge was likely to pose a risk to the legality of the order, thus going against the objective.

According to figures provided by the Chancellery, the average time between referral to the family court judge's decision is much higher than originally envisaged, since it is 26 days.

This period varies from one court to another (9 days for the High Court of Bobigny but it was found six months in Ales). This period is, in any case, far beyond what had been expected of the legislature and it is necessary to take emergency protective measures.

The judge should be able to make a decision within 48 hours.

Between October 1, 2010 and May 31, 2011, TGI seized 854 applications that resulted in the imposition of 584 protection orders (which corresponds to a rate of 68.38% agreement).

90 of these 122 TGI made less than five orders of protection. In contrast, 16 have made 10 or more. Large disparities can be observed in areas with yet comparable economic and social characteristics. Thus, within the jurisdiction of the Court of Appeal of Paris, Bobigny TGI made 112 orders of protection, the 48 Evry and Paris 36, while that of Meaux has made only 11, that of Melun 3, the Créteil 2 and those of Fontainebleau and no. In the jurisdiction of the Court of Appeal Metz, Thionville TGI issued 12 orders of protection while that Metz has made none.

Analysis of Protection Orders shows that:

- 339 POs gave the use of the marital home to the victim (58%);
- 395 POs have decided on the modalities of the exercise of parental authority (68%), 28% expect an appeal to a meeting in a public meeting place, 12% to the assistance of a trusted third party and 1% the assistance of a qualified corporation;
- 64 POs (11%) have pronounced a ban on leaving the country for the couple's child (ren);
- No PO has been issued due to a threat of forced marriage;
- 2% of POs have resulted in criminal proceedings for non-compliance of these (or 12 proceedings).

The implementation of decisions of right of visitation for the offender and the organization of meetings between father and children faces difficulties in some areas. There are sometimes no neutral venues so that they can meet and delays are too long. Thus, according to figures from the Ministry of Justice and Freedoms, there are currently 67 in France publicized meeting spaces to which must be added 92 family mediation structures that also have a meeting space function. In addition, the family court judges may be reluctant to use these associations, since no authorization procedure exists. A comprehensive framework that provides a licensing regime would benefit from being introduced to facilitate the use of these associations.

- 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?

There is no empirical information available on these matters yet.

## 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

There are several impediments with protection order legislation:

As for the victims, although four months duration is a maximum period of time for POs and that this duration can be lengthened when a divorce procedure is launched, there is no specific measure for the partners who were not married. As a consequence, non-married couples have no PO possibility beyond this 4 months period of time. This period of time is assessed as being too short and it should be extended to 6 months.

For the supposedly offenders, as the decision can be taken without their previous audience in case of an emergency, it can take time to show evidence they were not offenders. Moreover having them being banned to get near to a set perimeter from the victim's residence can cause problems to get to work for instance. It can also be considered as an issue as far as the freedom of movement is concerned. Moreover, there can be some difficulties between the necessity for the children to see their both parents, the right of the parent to have access to his/her children and the need for protection for the victim. Finally, when not sure about the situation, the judge can decide to report the decision from one month to the other, which can represent a great danger for the victim.

(interview with a family affair judge; website of a lawyer ([avocats.fr/.../violences-au-sein-du-couple--l-ordonnance-de-protection\\_](http://avocats.fr/.../violences-au-sein-du-couple--l-ordonnance-de-protection_))).

Finally, the average delay for a decision to be taken is 20 days, the law says « in the best delays as possible » but this can vary to one place to the other and needs to be improved (<http://www.senat.fr/rap/l12-807/l12-80710.html>).

b. Problems with protection order imposition/issuing/procedure

c. Problems with protection order monitoring

POs appear as a complementary tool or alternative procedure to already existing common law, whether civil or criminal. In some jurisdictions, low delays between hearings before the JAF (Family Affairs Judge) and / or criminal court often encourage the parties to focus on procedures that enable a quick sustainable decision.

POs are at the origin of a number of questions, about both the procedure and their substance. In procedural terms, firstly, the notice of the hearing of the defendant poses problems, as it should be ensured that it was actually contacted within the briefest delays. Certified letters with acknowledgment of receipt referred as the main contact mode, are only a partial response to the emergency requirement. Resorting to bailiffs can also be problematic as seen previously. Judges can find it challenging to assess the seriousness of the situation and « the character of « likelihood of alleged acts of violence and danger to which the victim is exposed" (Article 515-10 of the Civil Code), as these concepts are specific to criminal law.

Numerous magistrates point out that the effectiveness of the device is based at least in part, on the existence of an active collaboration between associations for victims, the local Court and legal officers.

As previously mentioned there is a lack of knowledge and understanding from part of the professionals who are in charge of implementing the device. This lack of knowledge is a serious impediment to its implementation.

d. Problems with protection order enforcement

Some judges are being extremely cautious and reluctant with the decision of enforcing a Protection Order. This is due to some existing abuse cases. For instance, there are situations when some of the supposed victims were not endangered nor victims but used the legal system to get the full use of the lodging and have the partner

evicted and sometimes taking in charge the maintenance of the claimant. This is also the case when the situation involves protagonists from foreign countries in need of a visa. There are cases of claims for domestic violence when the supposed victim was not victimised at all but was using the system to obtain a visa and a resident permit (let's bear in mind that these permits can be obtained for up to ten years periods of time). This kind of abuse can act the other way round: some judges are reluctant to take the decision towards a PO, fearing that the real reason behind the claim is to get a resident permit. This, as a consequence can lead to the situation when a genuinely endangered women gets no protection at all together with the risk of strong retaliation from the incriminated partner.

The lack of judges is also a source of problems with order enforcement.

#### e. Problems with protection order effectiveness?

No existing evaluation at that time – lack of consistency in the means and measures between the jurisdictions. One of the main difficulties is that POs are unevenly implemented due to technical and material difficulties. As we could see earlier, 90 of the 122 courts made less than five orders of protection. In contrast, 16 have made 10 or more. There is a strong need for the training and recruitment of judges to deal with domestic violence and from one jurisdiction to the other, delays can be very different as well as the decisions. It can take long periods of time for the offenders who have infringed the PO to be penalised and the victim to be protected again, the audience being reported from one month to the other, the danger and seriousness of the issue being left to the appreciation of one person only. Moreover some victims from abroad, who have entered the country without visa and as a consequence are in an illegal situation, do not ask for protection for fear of being sent back to their country of origin straight away. This is not the actual procedure but they lack of information.

As far as the protection of the victim herself/himself is concerned it is difficult to comply with the acknowledged necessity to maintain the relationship of the children with the other parent by using third party adults or meeting places and the need to keep the residence secret.

Although the police and the gendarmerie are enabled provisional enforcement of POs in the sense that "the police and gendarmerie units may, ex officio or on request of the judge, apprehend any person under judicial control in the event of non-compliance by this person of his/her obligations (...). " a lack of information, education and training of the police or gendarmerie is a drawback to such enforcement and need to be improved and more widely spread within the country.

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

In my opinion the biggest problems are: The lack of judges and material means to deal with such cases and implement the law. If progress has been achieved on the side of law editing, more needs to be done in terms of financial and staff means. This results in an uneven implementation of the law and little genuine protection according to the geographical area. There is also a lack of monitoring possibilities, reluctance on the part of the police and/or the probation services to report and intervene when a violation occurs due to a lack of training. The lack of victim input, and registration difficulties are also key points. Moreover one of the great issues is for the victims who wish to ask for a PO to be granted, to collect the relevant evidence to be provided for the Judge to make his/her decision. As a matter of fact all the victims are not in a situation where they are able to follow an administrative procedure to show evidence (not used to fill in forms, not acquainted with the laws and regulations; no French (for the women coming from abroad; emotional stress that impedes them from complying with the various steps of the procedure and so on). It seems to me that the financial cost to launch the process could be easily reduced or they could be paid only once the decision has been taken.

## 2.2.6. PROMISING/ GOOD PRACTICES

- 38) Which factors facilitate the:
- a. imposition

As seen previously there is a lack of consistence in the means for implementing POs in France.

The example of Bobigny - although it can still be improved - should be provided for every jurisdiction: the device used in high court of Bobigny makes it possible for a victim to come to court and meet in the same day, an association of help for victims, the legal aid office, a lawyer and family court judge who is on duty at that time. The guarantee is given that the decision of the judge shall be made within eight days. If necessary, accommodation is provided the same day to prevent him from returning home and an emergency telephone can be assigned so that it can prevent the police if 'perpetrator approaches her. Putting away is immediate.

It is not a coincidence that the high court of Bobigny handed down a fifth of protection orders issued throughout France.

- b. monitoring, and

Further collaboration is needed between the courts, police/gendarmerie and social workers. The system lacks of financial resources and there is no consistency in the system due to different means and cultures in the jurisdictions.

- c. enforcement of protection orders?

The police and the gendarmerie are enabled provisional enforcement of POs in the sense that

"the police and gendarmerie units may, ex officio or on request of the judge, apprehend any person under judicial control in the event of non-compliance by this person of his/her obligations (...). ". This gives power to the police or gendarmerie units to arrest for a period up to 24h in case of non-compliance of POs if this person is under a penal procedure<sup>12</sup>.

When POs go together with a penal procedure and the offender under investigation incurs a penalty of at least five years imprisonment, the use of some mobile electronic devices can be possible to restrain the offenders' mobility and control his compliance to the PO. This security measure is for persons indicted for domestic violence but also to threats between spouses, partners or civil partners (art. 222-18-3).

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

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

- The victim's consent with POs (so as to avoid contact initiated by the victim);
- Preferably also the offender's consent with the measure;
- A swift, certain and proportionate reaction to PO violations;
- And a more extensive use of technical devices to monitor compliance.

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

I think it is very positive that some practitioners indicate that they pay more attention to victim safety nowadays and that many organizations try and help the victims and work in collaboration with the judges. I also think that electronic devices are an improvement to reduce violations of POS and to have them more systematically noticed and reported. Short term orders are a very good step as far as I am concerned despite

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<sup>12</sup> <http://www.syndicat-magistrature.org/-Justice-civile-et-sociale-.html> Accessed on August, 13, 2013



the difficulties in delays that were emphasized but that should be part of the very near future steps to be taken to improve the situation.

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

Factors, which may improve the situation, are:

- Make victim protection (e.g., through POs) a standard consideration in all prosecutorial decisions.
- Pay more attention to informing victims of the PO and its conditions
- Try to strike a balance between the victim's safety and the offender's interests (e.g., try to avoid POs that are disproportionately disadvantageous for the offender)
- Include PO training, monitoring and enforcement in police and professionals training
- Prioritize victim protection and reaction to PO violation
- Conduct (empirical) research on PO effectiveness

### 2.2.7. FUTURE DEVELOPMENTS

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

At the moment, POs are at the centre of renewed attention and confidence. This can be witnessed from the creation of new provisions, like the short term barring order, and the restriction of freedom measure but also from the amendments provided by the 2010 law. Research on PO effectiveness is lacking in France but the last law is quite recent and this lack of research can be explained by the need for time to check on the effectiveness of the new measures and by publication delays.

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?

Changes have already been undertaken recently. However various organizations for the defense of the victims, lawyers, attorneys and judges point the delays, the lack of consistent implementation of the law, the necessity to extend the opportunity to conceal one's address in case of danger, the lack of training. Further steps might be taken to improve these aspects within a short future. Training is currently being improved at different levels in terms of prevention (ministry of Education, social workers, lawyers etc.).

b. If so, what will change?

See 43a.

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

Not that I am aware of.

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

It seems that there is a strong mobilization about the matter in France. In the whole of 2008, only

469 applications for evicting the violent partner were sent to the courts on the basis of Article 220-1 of the Civil Code. POs seem to be more implemented (see figures at 27) p.20).

Further steps are foreseen in terms of protection of the victims and for instance in order to improve the delays between the claim and the implementation of the EPO and also concerning the possibility of concealing the victims address/location longer than for two years. Moreover the difficulty when putting a claim is to provide evidence of the danger and violent behaviors. Many victims still lack of information although there were many

improvements in that sense to disseminate information on the steps to be taken to seek for help. Another difficulty seems to cause concern to some judges: there were some abusive claims. That is to say that some victims lodge a claim to have their partner expelled from the home and pretend to have been abused although there is no violence. In the case of short term barring orders, this is problematic since the partner/spouse is expelled straight away, which can cause genuine economical and psychological problems (face to face interview with a Judge). This entails as a consequence that some judges/courts take longer to take their decision or are reluctant to decide on a PO. And last, a more consistent implementation of the law should be enforced since there is a great inconsistency according to the Court and judges and victims are more protected in some places than in others. These last points could be improved by:

1/ Like for some medical cases, decisions should be taken by a commission of several judges (at least two) to facilitate the analysis of the case and try and reduce errors.

2/ Staff recruitment should be more important as well as training which means more financial support too.

Editing a law is not enough, the agents who are in charge of implementing and enforcing it are to be granted more financial support and means.

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 think this is a step forward to the protection of the victims. There might be some needs for cultural and legal adaptations. However, I wonder how many people this type of measure will concern. Each case will have to be examined thoroughly and professionals might need some extra training/information in that matter considering that in France, for instance, one of the critics that can be made concerning these POs is the lack of information/training and of coherence in the implementation of the law.

### Conclusion

The study of recent developments in French law on the treatment of domestic violence involves analysing the attention that the legislature addresses this social problem and understanding she/he has, or more precisely, probing her/his ability to produce standards that will protect citizens victims of gender violence.

In July 2010, when violence against women was declared a national priority, the law supported major advances following the adoption of the "Law on violence specifically against women, violence within couples and the impact of these on children. From then the Family Court could issue "emergency" POs if the violence is carried out within the couple or by a former spouse, a former partner under a Civil Solidarity Pact (PACS) and put in danger one or more children. It also applies to those at risk of forced marriage (Article 515-9 and 515-10). It introduces the new offense of psychological violence, despite much controversy on the subject.

This positive development in the protection of victims needs further improvements as stressed previously. The great mobilization of victims' and humanitarian organizations as well as from professionals make us think that these improvements will be made in the near future. However a stricter monitoring of the effectiveness of the undertaken measures and statistical data are missing although they are indispensable to evaluate the effectiveness of public policies and changes. An impact study would have been interesting to assess the cost to the justice of this measure and financing capacity as may be directed together with the assessment of the positive impact on victims' protection. A new survey on domestic violence in France has just started in France (the last one was dated 2000). It is possible to find some information on the objectives of this survey called "enquête virage" when clicking the following link: [http://www.ined.fr/fichier/t\\_telechargement/55869/telechargement\\_fichier\\_fr\\_plaquette\\_virage\\_inedactu.pdf](http://www.ined.fr/fichier/t_telechargement/55869/telechargement_fichier_fr_plaquette_virage_inedactu.pdf)

POs : Advantages and drawbacks

Advantages	Drawbacks
Greater and quicker protection towards victims of domestic violence	Uneven implementation due to a lack of staff and training. Average delay for a PO to be delivered: 20 days. Should be improved.
Enables to decide on separate residence and expulsion of non-married partners (previously did not exist in common law)	No provision is made once the 4 months period is over for non married couples.
The period of duration of a PO was taken up to 4 months	This is too short (as considered by the victims' organizations and it is being thought of lengthening the period to 6 months.
Offers protection for victims from abroad with no visa or residence permit.	Due to some abuses, some judges are reluctant to order POs which as a consequence, prevents some genuine victims from getting proper protection and endanger them even more seriously due to them being forced to get back to their country of origin and some possible retaliation from part of their partner.
Electronic devices to supervise compliance with the order seem to be a good step	Issues are raised with the right of freedom of movement
	Judges meet difficulties and are preoccupied with the risk of taking the right decision due to previous abuses from partners wishing the use of lodging and financial support without having to carry on a relationship with their partner.