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

NATIONAL REPORT GERMANY

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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 can be found in German civil, administrative and criminal law. The protection orders (hereafter: POs) are mainly regulated in generic laws: such as the German Civil Code (BGB = Bürgerliches Gesetzbuch), the Code of Civil Procedure (Zivilprozessordnung = ZPO) and the code of family court and voluntary jurisdiction (FamFG = Gesetz über das Verfahren in Familiensachen und in Angelegenheiten der freiwilligen Gerichtsbarkeit) for civil POs. Criminal POs are regulated in the Criminal Code (StGB = Strafgesetzbuch) and the Code of Criminal Procedure (StPO = Strafprozessordnung). Administrative law is represented by the 16 federal states Police Laws.*

*The only exception is the Protection against Violence Act (GewSchG = Gewaltschutzgesetz) of 11.12.2001, which belongs to civil law. It is specifically dedicated to counter domestic violence and stalking by several POs (see 7.).*

All these laws are available on the internet,<sup>1</sup> but not all in English.

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- 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?

2a-b:

Civil law: The most important way of imposing protection orders is the Protection against Violence Act (GewSchG) in combination with the code of family court and voluntary jurisdiction (FamFG), which enables the Family court to impose various POs in an accelerated procedure (interim injunction) within 1 to 3 days (§§ 1,2 GewSchG, 49-57 FamFG). If children are victims, legal basis for such a court injunction is §§ 1366 BGB, 49-57 FamFG.

This procedure is officially an interim procedure, but in practice it is very seldom followed up by substantial proceedings. The outcome of the interim proceedings is usually final.

Administrative law: Within administrative law, POs can be imposed by virtue of the police acts of the 16 federal states, which do not differ essentially. The POs are either a (temporary) barring order or custody of the police for 1 day, which can be extended up to 2 weeks with the consent of a judge.

Criminal law: In the German Criminal Code POs can be imposed as conditions to a suspended prison sentence and as conditions to an early release from prison (probation directions §§ 56 c II, 57 III StGB). The POs are instructions which relate to his or her residence and contact interdiction with the victim. They can also be

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<sup>1</sup> BGB: <http://www.gesetze-im-internet.de/bgb/> ; English [http://www.gesetze-im-internet.de/englisch\\_bgb/index.html](http://www.gesetze-im-internet.de/englisch_bgb/index.html) FamFG: <http://www.gesetze-im-internet.de/famfg/> - not in English

StGB: <http://www.gesetze-im-internet.de/stgb/index.html>, English [http://www.gesetze-im-internet.de/englisch\\_stgb/index.html](http://www.gesetze-im-internet.de/englisch_stgb/index.html)

StPO: <http://www.gesetze-im-internet.de/stpo/index.html>, Englisch [http://www.gesetze-im-internet.de/englisch\\_stpo/index.html](http://www.gesetze-im-internet.de/englisch_stpo/index.html)

Gewaltschutzgesetz: <http://www.gesetze-im-internet.de/gewschg/> - not in English

Police Law, for instance Bayern: PAG: <http://www.gesetze-bayern.de/jportal/portal/page/bsbayprod.psml?showdoccase=1&doc.id=jlr-PolAufgGBY1990rahmen&doc.part=X&doc.origin=bs&st=lr> – not in English

Nordrhein-Westfalen: PoIG NRW: [https://recht.nrw.de/lmi/owa/br\\_bes\\_text?anw\\_nr=2&gld\\_nr=2&ugl\\_nr=205&bes\\_id=5173&aufgehoben=N&menu=1](https://recht.nrw.de/lmi/owa/br_bes_text?anw_nr=2&gld_nr=2&ugl_nr=205&bes_id=5173&aufgehoben=N&menu=1) - not in English

*imposed as security measures after having served an entire prison sentence or after preventive detention (supervision of conduct order, § 68 b StGB, in cases of high dangerousness without limitation in time § 68 c II StGB).*

*In the Code of Criminal Procedure POs can be issued as conditions to a conditional suspension of pre-trial detention (Suspension of Execution - § 116 StPO) and as conditions to a suspended trial (Provisional Dispensing with Court Action, § 153 a StPO).*

*In all cases of suspension POs can be combined with voluntary offender therapy to reduce future aggressivity.*

*A special statutory offense concerns "Stalking" (§ 238 StGB), which can be punished by prison up to 3 years or by fine, often in combination with probation and POs.*

- 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?)

*In civil law, only the victims/complainants can apply for a civil PO. The defendant can contest the claim, and the civil judge decides whether the PO will be issued.*

*In administrative law short term barring orders according to police law can be requested by the victims, but what usually happens is that when the police is called to a scene of domestic violence – regardless of whether the victim applies for it – the police officers will assess the risk of further violence and decide autonomously whether a short term barring order or police arrest may be required.*

*Criminal POs are also independent of the victim's claim. The victim can spontaneously inform the police/probation officer/judge of his/her desires in this respect, but victims can not officially apply for it. In case of suspending a pre-trial detention, a suspended sentence or an early release from prison, the judge/court decides to impose probation directions. In case of Provisional Dispensing with Court Action (§ 153 a StPO) the PPS propose POs (and perhaps therapy for the offender), but the judge and the offender have to agree with it.*

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

*Civil POs can be issued without hearing the offender during the interim injunction. If he contradicts, he must be heard and the judge has to make a new decision under consideration of the defendant's arguments. If the judge has substantial doubts in the complaint, he also orders oral proceedings.*

*Administrative orders are usually imposed after hearing both parties. But if the offender is absent, he will be informed afterwards.*

*Criminal POs always require prior hearing of the suspect/offender (Art. 6 EMRK, Art. 103 I GG [German Constitution]). Therapeutic criminal POs even require the offender's explicit consent that (s)he is willing to obey the PO. Probation (parole) officers are often (but not obligatory) consulted for their advice.*

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

*POs are generally available for female and male victims of domestic violence, intimate partner violence and stalking, but not for victims of other crimes.*

- 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)?

*Civil and administrative POs can be issued independently from other legal proceedings.*

*Civil POs can be obtained independently from divorce proceedings. In case of divorce proceedings there are special rules for the matrimonial home (§ 1361 BGB).*

*Criminal POs are always dependent from criminal proceedings. A procedure specifically designed to impose a criminal PO does not exist. The victim's wish to press charges does not make a difference either, at least not for most crimes including IPV. Usually, the public prosecutor/judge can prosecute regardless of the wishes of the victims. Some crimes, however, are only subject to prosecution on complaint (Antragsdelikte), e.g., stalking, bodily harm, insult. If the victim does not do this, criminal prosecution is barred and criminal POs cannot be imposed.*

- 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 civil POs, the victim has to initiate the interlocutory proceedings (seldom directly the main action) for obtaining a civil PO. The claimant has to take action directly at the court without summons of the defendant. In his/her complaint the victim has to provide evidence of the unlawful behaviour by a statutory declaration and, if possible, a medical certificate. Usually the judge decides without oral hearing on whether or not to impose the civil PO. Only in doubtful cases the judge needs an oral hearing.*

*After decision the verdict has to be officially serviced to the defendant.*

*If the defendant contradicts, he must be heard and the judge has to make a new decision under consideration of the defendant's arguments.*

*For administrative law the procedure for issuing a PO is explained above (question 3 a, b).*

*The procedure for criminal POs is explained above (question 3 a, b, c)*

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

*Civil POs are imposed in interlocutory proceedings usually in 1 - 5 days without hearing the victim and the offender, in case of oral proceedings 1-2 weeks. The actual trial takes up approximately 30-60 minutes. In both cases they take up less time than normal civil proceedings.*

*In administrative law barring orders are imposed immediately after the police have arrived at the scene of a (domestic violence) crime, they immediately fill out the schedule for a barring order or (seldom) for police arrest. This needs about 30-60 minutes.*

*Criminal POs depend on the criminal measures forming the basis of criminal POs. They can be imposed very quickly (e.g., when the offender gets a suspension of a pre-trial detention) within 1 day up to some months. If they are imposed with a suspended prison sentence, it may be 3-6 months to the trial. The combination with early release from prison is decided usually after two thirds of the prison sentence.*

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 usually declare the civil POs to have immediate effect (§ 53 II FamFG). Although the notification of the verdict is still required, this does not defer the effect of the PO.*

*Administrative police barring orders also have immediate effect (§ 80 II 1 VwGO = Code of Administrative Law), but the offender can appeal the decision. Due to the short time of the barring order (usually 10 days) and the complicated procedure, this happens very rarely.*

*Criminal POs do not come into effect until there is a final judgment.*

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?

*The short term barring order can be imposed immediately and civil POs (usually for 6 months with optional prolongation) can be imposed short after complaint (see 5 b and c). If the victim demands civil POs within the time of the barring order, there is no lapse of time without protection.*

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 regularly assume this urgency. For civil POs it's sufficient if the judge considers it plausible that the defendant acted unlawfully against the claimant or that there is a real threat of future unlawful behaviour. He only needs a statutory declaration of the victim.*

*Administrative barring orders can be imposed on all persons, when it is necessary for danger prevention (e.g. PAG Bayern Art. 16). The offender does not have to live in the same address as the victim. The continued presence or the entrance of this person to the victim's home needs to constitute a danger for the persons left behind. This threat has to be proven during the police operation by the police at their own discretion.*

*The application criteria for criminal POs differs amongst the types of POs. Typically the criminal PO requires the danger of a crime being committed against a person. Therapeutic POs require the offender to explicitly state that (s)he will obey the PO, while other PO's don't. If the risk of recidivism is too high, some POs can no longer be imposed, because that would be irresponsible.*

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

*Legal representation for the victim is not required by law, but in civil interlocutory proceedings about 50-55%<sup>2</sup> of the victims make demand on lawyer's advice. When it comes to police barring orders or criminal POs, the victim does not have to be represented.*

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<sup>2</sup> Rupp, 2005, S. 306. (Rupp, Marina: Rechtstatsächliche Untersuchung zum Gewaltschutzgesetz. Im Auftrag des Bundesministeriums der Justiz, Bundesanzeiger 10.August 2005)

c. Is free legal representation/advice available?

In civil cases, claimants with few financial resources can apply for legal aid financed by the state, but they are still expected to pay an income-related contribution towards the costs. Independent of income every victim can demand legal advice for his complaint directly at the court's office, where a public servant helps to fill in a form (about 40-45 %).<sup>3</sup>

In administrative law free legal advice is not available for victims, because the police acts *ex officio*.

In criminal cases, victims of sexual assault and violence felonies can receive legal advice free of charge, regardless of their income. Furthermore, victims of antipersonnel misdemeanor (e.g. robbery, blackmail, bodily harm, dangerous assault, deprivation of liberty, insult, burglary in living rooms) with a low income and/or few financial resources can also apply for legal representation/advice under the conditions of civil cases.

- 7) a. What types of protection can be provided 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)?

In civil law the following POs are regulated exemplarily by law (§§ 1 I 2 Nr. 2, 2 I GewSchG) and usually the judges do not use other POs:

1. Barring order (the offender has to leave the home and stay away from the home of the victim).
2. The offender is prohibited to enter a certain area in the environment of the victim's home.
3. The offender has to stay away from other places, where the victim usually is staying.
4. The offender is forbidden to contact the victim by telecommunication means.
5. The offender has to omit meetings with the victim and to depart a certain distance if it happens by chance.
6. The offender has to leave the home to the victim.

Administrative POs are (temporary) barring orders (7-14 days) and custody of the police for 1 day, with the consent of a judge it can be extended up to 2 weeks. If the offender offers resistance, the police are allowed to apply force.

Within criminal law, the types of POs are not absolutely restricted either, but the main types are regulated in the Criminal Code and the Criminal Procedure Code (see question 2). The POs are instructions which relate to the offender's residence and contact interdiction with the victim. All POs can be combined with voluntary offender therapy to reduce future aggressiveness.

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

Yes, this is the administrative barring order (see above). The offender can be removed for 7-14 days by the police, and this can be prolonged to a maximum of 28 days. During the barring period, help is provided to both the victim (e.g. police operation if demanded, court's help for injunction to get a civil PO) and the offender (e.g. probation services, voluntary alcohol or drug therapy). By the civil PO the violent can be barred for normally 6 months and this can be prolonged for further 6 months. The criminal PO takes as long as probation time.

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<sup>3</sup> Rupp, 2005, S. 306.



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

*The most popular types of protection (imposed under civil, criminal or administrative POs) are: 1) barring order which obliges the offender to leave the family home and to stay away, 2) the no-contact order, 3) the order that prohibits an offender to enter a certain area.*

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)?

*All types of POs, which are provided in the particular area of law (civil, criminal, and administrative), can be imposed in combination with each other.*

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

*In civil cases, the vast majority of the cases contain a combination of all 6 POs (see question 7 a).*

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

*In general most criminal cases only contain a single 'no contact' order.*

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

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

*There are no formal legal requirements for the formulation of POs. In practice, however, many judges – especially civil judges – make up rather elaborate PO decisions to specify which behaviour is prohibited and which is not. Most of the administrative and criminal POs entail not more than a barring order and that the prisoner is 'not allowed to contact the victim'.*

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. In civil POs usually the offender is prohibited of approaching 100 meters surrounding the victim's home.*

*There are only some general restrictions such as proportionality and the requirement that the conditions of the PO can only relate to the behaviour of the offender.*

*Barring orders are, by nature, restricted in their scope. They only apply to the family home.*

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

*The constitutional limitations are proportionality, which means suitability for the special situation, necessity and adequacy.*

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 offender (e.g. whether family/friends live in a cer-*

tain forbidden area or the offender is working there). Very extensive POs – encompassing entire villages or cities – are therefore not imposed.

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)?

Civil POs only use radiuses, normally 100 meters to the victim’s house.

Criminal POs however are only indicated by the victim or other persons and not related to a map or the use of a radius.

Administrative POs also use the radius-limitation to the victim’s house (100-200 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?

For civil POs there is only one maximum legal limitation: 6 months (in case of prolongation by the judge: 12 months) for the complete abandonment of the home to the victim, if the home is not wholly owned by the victim (§ 2 II GewSchG). In practice however civil POs are generally issued for a determined period of 6 months, and than they are prolonged as long as necessary.

Administrative barring orders expire after 7-14 days depending on the law in the 16 federal states. A prolongation is impossible, but after new violence the police can issue a new one.

Criminal POs have a legally determined minimum and maximum duration, when they are combined with probation (period of probation 2-5 years).

The longest PO can be imposed by means of a supervision of conduct order, if there is a serious risk of recidivism causing one or more persons to be in physical danger (§ 68 c II StGB: for an unlimited period).

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

Factors that legal authorities take into account when deciding on the duration of a PO are: the seriousness of threat and violence and, on the one hand, the inclusion of children and on the other hand the effectiveness (how long is the protection required?) and the proportionality (is the duration in proportion with the offense?) of the order.

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 one year. Administrative short term barring orders last an average of 10 days. The duration of criminal POs varies per PO: The average duration of a conditional sentence and of a conditional release is 3 year, the average duration of a supervision of conduct order is 5 years and the average duration of a conditional suspension of pre-trial is around 6 months.

- 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. They are the ones requesting a PO. They can also request the cessation of a civil PO. But in the imposition, the gathering of evidence and the arrangement of the PO the judge has discretionary power.*

*In administrative law concerning barring orders the influence of the victim is much less. Barring orders can even be imposed against the wishes of the victim.*

*The same goes for criminal POs. Victims can request the cessation of these orders, but the legal authorities are not obliged to pay attention to this request.*

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

*In the case of short term barring orders both parties are heard and the police will then inquire with the victim what (s)he thinks about a barring order. With criminal POs the victims can always express their wishes spontaneously. When the case involves a crime of domestic violence, they usually enquire about the victim's desire for a PO but there is no legal obligation for this.*

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

*As for civil POs, the victims/claimants request a certain type/scope/duration of PO in their summons. Civil judges can deviate from this request, but only in the sense that they can impose a PO that is less extensive/long/etc.*

*When it comes to administrative or criminal POs, victims can express their wishes and desires in this regard, but it is up to the police or the judges if and how they incorporate the victims' wishes.*

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

*In principle, all civil, administrative and criminal POs can be challenged or appealed by the offender, but against administrative and criminal POs this happens very rarely and against civil POs only in 3 %.<sup>4</sup> However, offenders can always appeal against the conditions of these provisions in civil interlocutory proceedings.*

*Criminal POs usually are accepted, because they are the conditions for freedom. But sometimes, if the offender is compliant, probation period is shortened by the court including the criminal POs.*

- 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?

*In civil proceedings the offender can, for instance, call the judge's attention to possible disadvantageous consequences of the requested PO, such as the fact that the PO would no longer allow him to visit friends or to*

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<sup>4</sup> Rupp, 2005, S. 183.

go to 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.

The wishes of the offender are not (really) taken into account when it comes to administrative barring orders. Typically these orders are imposed regardless of the wishes of any of the parties involved and they also entail the same conditions: the offender has to leave the family home for 7-14 days, and is forbidden to contact the persons who still live there. The offender can appeal the decision to impose a barring order, but usually the administrative court doesn't come to a decision in such a short time.

In criminal law the offender is also allowed to express his/her opinion towards a PO, and the public prosecutor or judge can take this into account. But the no-contact order normally has higher priority. To some criminal POs like alcohol withdrawal treatment or anti-aggressive therapy, the offender has to agree with. As for other POs, if the offender disagrees with them (s)he can appeal and try to reverse the PO or to change the conditions of the PO.

- 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)?

Lack of available resources in certain areas to ensure the enforcement of POs usually does not play any role in the decision to impose a PO. POs have a high priority for the police and the courts. They trust in the enforcement of POs and alternatively in the effect of 'sending a message' to the offender.

- 15) Can previous protection orders be taken into account in other ensuing legal proceedings against the same perpetrator (e.g. as evidence of a pattern of violence)?

In civil proceedings the judge usually gets the previous protection orders of the same court in the last 3 years and the police barring orders with a short report of the offender's previous POs or violence crimes. The claimant can also call the judge's attention to the fact that there have been prior POs. This increases the likelihood of being awarded another PO.

With administrative barring orders one of the factors that is taken into account when deciding on the imposition of a PO is whether there have been any antecedents (based on police registration) of violence. If previous POs show up in the police registration, these can be taken into account.

For criminal POs previous antecedents or police records also help determining the punishment, which makes it likely that previous POs (violations) can play a role in the decision.

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

Children are not automatically included in a civil PO. The claimant has to request to extend the order for children in a separate civil procedure (§§ 1366 BGB, 151 FamFG).

The administrative barring order automatically extends to the children if they are living in the family home.

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

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

*If the offender has visitation rights, POs that only apply to the partner can take these rights into account by formulating the prohibitions so that they do not violate visitation rights or in a way that still allows for contact with the children to some extent (e.g. delivery of the children by another person, visiting under supervision of another person [mostly youth welfare service]) and only rarely by suspension of the visiting rights.*

*If the PO also extends to the children, it can suspend visitation rights for a certain time or stop them totally as well as the custody rights (§ 1666 BGB).*

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

*Yes, that is one of the main problems of POs. If there is any chance to appease the conflict, judges try to make an arrangement instead of a decision in spite of losing the criminal protection (§ 4 GewSchG) if there is no judicial decree.*

*In criminal procedure offenders often lose their visitation rights for the critical time.*

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

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

*a) In civil procedures mutual protection orders are allowed, but very rarely practiced. This can happen when both parties act as a claimant: The defendant argues that the claimant has behaved wrongfully against him/her as well (or instead) and requests the civil judge to impose a civil PO onto the initial claimant as well (or instead). If the civil judge considers the counterclaim plausible, both parties can be bound by a PO. Another possibility is that both parties voluntarily agree to not contact each other.*

*The administrative barring order only applies to the person who is barred from the family home: it is (s)he who is no longer allowed to contact the persons left behind, so officially there is no mutuality in the order. But when the victim contacts the offender him/herself, a violation of the barring order by the offender will no longer be enforced and the victim may be liable for incitement.*

*Criminal POs are normally not mutual, although there is no explicit prohibition to this extent. In theory, if both parties have committed criminal offenses against one another, it could be possible to impose mutual POs, but this occurs very rarely.*

*b) Mutual POs are not forbidden, but the rationale behind seldom imposing mutual POs is that the criminal investigation and prosecution revolves around the offender not the victim. The criminal justice authorities cannot impose criminal POs on victims. Although administrative barring orders are not applicable to the victims, they are advised to refrain from contact themselves. The legislator only wanted to restrain the person who formed the biggest threat.*

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

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

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

*18 a-c) Administrative barring orders and criminal POs are provided free of charge. Only civil POs cost money, mostly court fees and costs for legal representation, if the claimant does not demand legal advice directly at the court's office. Claimants with few financial resources can apply for legal aid financed by the state, but they*

are still expected to pay an income-related contribution towards the costs. Finally, the party who loses the civil trial has to pay for the legal costs, and that's regularly the offender.

Therefore it is unlikely that these costs constitute an undue financial burden for the victim and that victims are hindered in applying for civil POs because of these unknown financial risks.

### 2.2.2. ENFORCEMENT OF PROTECTION ORDERS

#### 19) Where and how are protection orders registered?

Civil POs are registered in the local court registration and not at a central place for the whole country. In addition the claimant, the police and the youth welfare office (when children are concerned) receive a copy of the verdict.

Administrative barring orders are registered in the digital system of the police. They register barring orders in the same way as they register other conspicuities. The victim, the civil court and the youth welfare office (when children are concerned) receive a copy of the barring order.

Criminal POs are generally registered in the nationwide electronic registration system of the central registry for sentences (BZR = Bundeszentralregister) under the controllership of the Federal Public Prosecutor General (GBA = Generalbundesanwalt). Furthermore the court sends the information to the police and the probation services.

#### 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 is automatically informed. Civil POs are generally imposed immediately after the imposition of a protection order and of the conditions that the offender has to comply with.

Administrative barring orders are communicated to the victims by the police in action through written information and in person. Usually the police report is also sent to the civil court in order to accelerate the interim injunction.

Also the criminal POs in connection with a temporary leave from prison, an early release of prison or a supervision order are communicated to the victim who has asked for this, and they are registered in the digital file of the prisoner and the central registry for sentences (BZR). Victims are informed by the office for execution of sentences (part of prosecutor office), if they have demanded this.

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

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

Administrative barring orders are monitored by the police, but usually the victim has to announce a violation.

The monitoring compliance with criminal POs is first up to the victim, but officially it is the responsibility of the parole officer or the office for supervision of conduct orders, in practice supported by the police.

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

*GPS can only be used for one criminal PO, the supervision of conduct order (§ 68 b I Nr. 12 StGB, see question 2 a-b), if the court for execution of sentences has imposed it.*

*Extra surveillance, such as house visits can be used at the discretion of the police. Also, the probation services can ask during their meetings with the offender whether (s)he obeyed the PO.*

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

*Generally POs are not actively monitored with the help of GPS (GPS is only used by supervision of conduct order (see question a)), extra surveillance or house visits. The police have a more reactive approach instead: they wait for the victim to report violations.*

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

*If GPS is imposed (see question 22 a-b), it is used without pause during the whole time of criminal PO (2-5 years), but it is possible to finish the GPS order earlier at the discretion of the court.*

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

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

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

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

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

*The contact with the offender initiated by the victim is not considered as a breach to the PO.*

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

*Contact initiated by the victim is a great problem (often an impediment) in establishing or proving a PO 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?

*With civil POs contact initiated by the victim normally leads to the refusal of the incremental administrative fine (which is a sort of fine for violating the PO) or criminal punishment, excluded contacts to regulate the visitation rights of the offender.*

*With administrative barring orders, if the contact is initiated by the victim him/herself – a problem which is particularly relevant in the case of short term barring orders which can be imposed against the wishes of the victim – the authorities will be less inclined to enforce the PO or they will stop it.*

With criminal POs, contact initiated by the victim is normally without consequences or the court will abolish the PO. For cases of domestic violence this can be different if children are involved. Contact initiated by the victim is a violation of criminal PO, if it has to assure the safety of children.

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

To establish violations of civil POs it is necessary, that the claimant or his/her attorney tells the civil interlocutory judge, that and how in detail the PO was violated. The judge usually hears the offender and the victim. If the violation is not 'plausible', the judge proceeds to take evidence (e.g. witnesses, SMS, E-mails, medical inspection)

For administrative POs the evidentiary requirements are more relaxed. The police has to decide without delay on the base of the victim's or other present witnesses' information and/or his own perception, if there is a danger for a person or not.

Criminal POs: The evidentiary requirements for a criminal PO are the same as for any other crime. The normal evidentiary requirements have to be met (witnesses, documents, SMS, E-mails, medical inspection) and the violation has to be 'legally and convincingly proven' according to the rules of criminal procedure.

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

Civil POs: Once the victim becomes aware of a violation, (s)he has to contact his/her attorney or directly the office of the civil court. The interlocutory judge usually hears the offender and the victim. After positive evidence he imposes a certain amount of administrative fine, which was announced in the judicial decree to the offender. He or the victim also inform the public prosecutor about the violation to initiate a criminal procedure by reason of violation of the civil PO (§ 4 GewSchG).

Short term barring order: The victim and/or other organizations that become aware of the violation of a short term barring order can inform the police. The offender can in turn be arrested for 10-20 days, but this is not necessary. The police can also warn him or impose a new barring order.

Criminal POs: Violations of criminal POs have to be communicated by the victim to the parole officer, the office for supervision of conduct orders or directly to the public prosecutor.

As soon as the public prosecutor is informed (s)he will decide on further (prosecutorial) steps at the court for execution of sentences (e.g. revocation of probation or release, additional orders, admonition).

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

Civil POs: The prevalent formal reaction to a PO violation is to have an administrative fine, which was announced in the judicial decree to the offender. Another possibility is punishment by the criminal court (fine or prison up to 1 year, usually on probation when it happens uniquely). Continuous stalking can be punished with fine or prison up to 3 years, in severe cases with danger for health and life with a prison sentence from 1-5 years (§ 238 StGB).

Short term barring order: The following reactions to a violation of a short term barring order can be displayed by the police: dismiss the case, ignore the violation, issue a warning, arrest the offender for 7-14 days, in severe cases report to the public prosecutor to bring the offender to criminal court and have him/her sentenced referred to § 238 StGB.



Criminal POs: With criminal POs the reaction to a violation differs per PO. If the offender violates a conditional dismissal, the public prosecutor can decide to (re)open a prosecution. If a condition to a conditional suspension of pre-trial detention is violated, the public prosecutor can ask the judge for the termination of the suspension. If the condition to a conditional suspension of the sentence is violated, (s)he can ask for the execution of the suspended part of the sentence, etc. Other reactions are: ignore the violation, ask the judge to issue a warning or to change the conditions of the PO. When a condition to a temporary leave from prison is violated, the leave can be revoked, future requests for leave can be refused, the offender can be reprimanded and/or internal sanctions can be imposed.

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)?

It is also possible to give an informal reaction to a PO violation, because prosecutor, judge and prison director have a wide discretion on how to react (see question 25 a).

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

The most prevalent reaction to a civil PO is to have an administrative fine, which was announced in the judicial decree to the offender. A violation of the short term barring order usually leads to the issuing of a warning. A severe violation of criminal POs usually is followed by an official reaction (see question 25 a), easy violations are followed by informal reactions (e.g. warning or change of the conditions). The usual reaction to a violation during temporary leave is to withdraw it and to have the violation play a role in decisions on future requests for leave.

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

In my opinion, the sanctions/reactions to PO violations are proportionate and in more than 90 % also effective and dissuasive. Normally they stop offenders from re-victimizing their victims. Exceptions mainly happen when offenders have mental disorders.

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

Emergency calls have high priority for the police, the prosecutors and the judges.

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

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

The violation of civil POs is criminalized according to § 4 GewSchG (fine or prison up to 1 year).

The violation of an administrative barring order cannot be punished.

The violation of a criminal PO normally is not criminalized except continuous stalking takes place according to § 238 StGB (see question 25 a: fine or prison up to 3 years, 3 months to 5 years, 1 to 10 years).

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

The reaction of the police to a violation of a civil PO is to make a report to the civil judge and the public prosecutor.

In case of a violation of an administrative barring order, the police will normally issue a warning. In severe cases they will arrest the offender (7-14 days).

The reaction to a violation of criminal POs is to report it to the public prosecutor, the court for execution of sentences or the prison director.

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 as long as it is no stalking according to § 238 StGB. Normally the police see the verdict of a civil interlocutory judge as an authorization of their interference. In that case they can exercise their regular competences (e.g. Art. 2 BayPAG) and for instance escort the offender out of the restricted area or they can order him/her to stay away or they can arrest him/her (Art. 16, 17 BayPAG).

If the violation consisted of a crime (e.g. stalking), they can also write down a report and – in severe cases – via the public prosecutor - ask the judge to issue pre-trial custody (§§ 112, 112 a I Nr. 1 StPO).

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

The 'monitoring authority' of civil POs is the claimant him/herself, and (s)he needs to report the violation to an attorney or directly to the civil judge to impose an administrative fine. (S)he can also inform the police or the prosecutor to accuse the offender of the violation of civil PO (§ 4 GewSchG).

In case of the violation of an administrative barring order the police is capable to react alone (see question 26 c).

In case of a criminal PO, the monitoring authorities (i.e. the police, the probation services and the supervision of conduct) also have to report violations to another authority, namely to the public prosecutor or the court for executing of sentences. When an offender violates the conditions during a temporary leave from prison, the police will have to report this to the prison director who will issue a sanction.

GPs is used for monitoring only in criminal POs in cases of supervision of conduct after a long-term prison or preventive detention (extended term of imprisonment). The central supervisory authority (in Bad Vilbel, Hessen) informs the local police, probation officer and authority for supervision of conduct, when a breach of imposed rules happens.

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

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

Victims can freely decide whether or not to report violations.

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

When it comes to the violation of short term barring orders, the police normally issue a warning, in severe or repeating cases hand out arrest (7-14 day). They take into account factors such as seriousness of the violation, the intentions of the offender, the evidence and the attitude of the victim (e.g. did he/she initiate contact him/herself?).

*In case of criminal POs, the police sometimes also decide not to report a violation to the prosecutor – despite the fact that they have no official discretionary power for that. Whether they report to the prosecutor, the court or the prison depends on the available evidence of the violation and the seriousness of the violation. Some policemen also take into account whether the victim initiated contact him/herself. Persons working for the probation services sometimes do not report violations of criminal POs depending on the seriousness of the violation, the reaction of the victim and the chance of mediation between victim and offender.*

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

*Specialized police, prosecutors, judges and probation officers receive a – sometimes short - specific training in this regard.*

### 2.2.3 TYPES AND INCIDENCE OF PROTECTION ORDERS

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

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

*Civil law: In Germany we have no empirical information on the number of civil POs, because there is no systematic registration. In a sample of 234 victims of domestic violence short after the commencement of the new act (GewaltSchG, 1.1.2002) between November 2003 and July 2004 reported 56 %, that they have required for a civil PO.<sup>5</sup>*

*Short term barring orders: no information on the number of POs. In a sample of 2.216 documents of civil PO-procedures about 68 % kept records of prior police activities, 50 % of barring orders, at an average of 12 days.<sup>6</sup>*

*Criminal law: no information on criminal POs.*

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

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

*30 a-b) Civil POs: The most popular is a combination of barring order, no-contact, prohibitions to enter an area, not to contact the victim by telecommunication (see question 7 a. Nr. 1-5).*

*The most imposed administrative POs are the short term barring orders which automatically also include a no-contact order; no other combinations.*

*Criminal POs: Usually only no contact order.*

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

*Civil POs: Stalking (often between [ex]partners), IPV, sexual assault, sexual abuse of children, bodily harm, coercion, threat and (attempted) homicide.*

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<sup>5</sup> Rupp, 2005, 224, 305.

<sup>6</sup> Rupp, 2005, 306.

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

Criminal POs are also generally issued in cases involving (attempted) homicide, sexual assault, sexual abuse of children, bodily harm, stalking, coercion, threat and – to a lesser extent – robbery and burglary.

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?

POs (civil and administrative) are generally imposed against male offenders on behalf of female (or children) victims. More than 90% of the POs are imposed against a male offender.<sup>7</sup> The protectee, on the other hand, is more often female (e.g., 85.88 % of the civil POs aimed to protect a female).<sup>8</sup> The only exception to this rule is the conditional release from prison, where the number of male and female protectees is more or less equal. For criminal POs there is no information in Germany.

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

The answer to this question is only available for a sample of 255 civil POs in Bielefeld: 27,84 % had a prior criminal conviction, 25,49 % had none, 46,67 % unknown.<sup>9</sup>

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

No information in Germany.

#### 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)?

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<sup>7</sup> Rupp, 2005, 304 (92 %); Mönig 2012, 25: 90,46 %.

<sup>8</sup> Mönig 2012, 25: male victims 14,12 %. (Mönig, Ulrike: Häusliche Gewalt und Strafverfolgung. Eine Justizaktenanalyse. Nomos Verlag 2012).

<sup>9</sup> Mönig, 2012, 71.

33 a-d) There is no reliable empirical information available on these matters, just some small indications.

In a (not randomized) sample of 230 victims 56,1 % reported, that the violence was stopped by a claim for a civil PO.<sup>10</sup> But it is unknown whether the violence incidents were less serious as a consequence of the complaint.

In a partial sample of 74 victims, who have got a civil PO, 47 (63,5 %) reported violations of the civil POs.<sup>11</sup> A civil judge in Munich with long experience in civil POs told me, that the situation has improved in the last 8 years, due to a better cooperation between police, prosecutors and judges; she made a guess, that not more than 10 % of civil POs come back because of violation.

16 % of the victims with civil POs conceded that they had made concessions to the offender.<sup>12</sup>

After complaint of an offence violence was stopped for 61 % of the victims, if the offender was convicted, if not, it was stopped only for 33,7 %.<sup>13</sup>

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?

Influences in a negative way:

In an enquiry on 61 helpdesks and emergency calls for women, 70 % appointed the visitation rights of the violent partner as the main problem of POs.<sup>14</sup>

Another problem is ambivalent behavior of the victims (e.g. further contacts to the offender, withdrawal of the complaint).<sup>15</sup>

Further problems: Alcoholism of the offender, migration background of the offender and/or the victim, violence experiences of the victims in childhood, actual separation and divorce situation.<sup>16</sup>

Influences in a positive way:

Knowledge about rights and helpdesks, between 20 and 50 year old victims, higher educational achievement.<sup>17</sup>

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<sup>10</sup> Rupp, 2005, 248.

<sup>11</sup> Rupp, 2005, 250.

<sup>12</sup> Rupp, 2005, 250.

<sup>13</sup> Rupp, 2005, 249

<sup>14</sup> bff 2012, 3. (<https://www.frauen-gegen-gewalt.de/nachricht/items/id-10-jahre-gewaltschutzgesetz-bff-veroeffentlicht-kongressdokumentation.html>).

<sup>15</sup> bff 2012, 8; Rupp 2005,305 f.; Mönig 2012, 157.

<sup>16</sup>BMFSJ

2012,

Kurzfassung

S.26-44.

<http://www.bmfsfj.de/BMFSFJ/Service/Publikationen/publikationen,did=120792.html>

<sup>17</sup> BMFSJ 2012, Kurzfassung S. 45.

35) Is there any empirical information available on the formal and informal reaction of the enforcing authorities to violations?

- a. How often (what percentage) do violations lead to a formal reaction?
- b. How often (what percentage) do violations lead to an informal reaction?
- c. How often (what percentage) do violations lead to no reaction?

35 a-c) Information is available only about all police activities concerning domestic violence in Bielefeld in the first half-year of 2008.<sup>18</sup> The sample contains 340 victims (292 women, 48 men). Only 210 (61,76 %) pressed criminal charges against the offender, 40 (11,76 %) cancelled the charge and 86 (25,29 %) did not make a criminal complaint. This retention of the victims leads to a reduction of formal reactions.

a) In the Bielefeld sample of 346 victims<sup>19</sup> only 51 (14,74 %) led to a formal conviction.

b) In the Bielefeld sample 90 (26,01 %) led to an informal reaction.

c) In the Bielefeld sample 205 (59,25 %) led to no reaction.

#### 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

The main problem until 2007 was the lack of a special penal regulation for “stalking”, especially for women, who were not able to achieve a civil PO. This has been solved since 1.1.2007 by § 238 StGB, which enabled the police to better react on domestic violence in cases of ambivalent behavior of the victim and criminal justice to impose criminal POs. A problem is still the high requirements for punishment, because § 238 StGB requires beyond different stalking activities a serious disturbance of the victim’s lifestyle (e.g. change of domicile, restriction of leisure activities). There are several activities in law policy to reduce this impairment by settling with “ability for a serious disturbance of victim’s lifestyle”.<sup>20</sup>

Other legislation problems are unknown.

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

Although the procedural costs for a civil PO have to be payed by the offender if he is condemned, and although free legal advice is available (see question 6 b, c), some victims do not find the way to civil protection (see question 33). Perhaps this could be improved by giving out written information through the police at their first activities.

A problem with criminal POs is that victims are rarely involved in designing the PO even though they have to be informed about it when they have requested for this.

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<sup>18</sup> Mönig 2012, 83: 4 (1,18 % unknown).

<sup>19</sup> Mönig 2012, 101,103 (calculation and percentage quotation by me)

<sup>20</sup> Schöch, Zielkonflikte beim Stalking-Tatbestand, Neue Zeitschrift für Strafrecht (NStZ) 2013, 221-223.

### c. Problems with protection order monitoring

*Civil POs are only monitored by the victim. Usually they are registered at the police stations, but often they are not even aware of the existence of a civil PO.*

*A problem that is specific for the short term barring order is that many victims are reluctant to report violations to the police. This has to do with the fact that sometimes these orders are imposed against the wishes of the victim. In these cases victims are also more prone to initiate contact themselves, which complicates matters even further.*

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

*A problem that is applicable to all types of PO (civil, barring order, criminal) is that pro-active monitoring is practically impossible. The usefulness of extra surveillance and house visits – besides being time-consuming and costly – is questionable. The use of technical devices (e.g. GPS) is only allowed for a few high risk (released) prisoners, the possibilities of monitoring POs are very limited, and the odds of catching an offender in the act of violating a PO are small. As a result, the monitoring authorities are practically entirely dependent on the input of the victim and they take on a reactive approach to PO monitoring.*

### d. Problems with protection order enforcement

*A problem with civil POs is that many policemen are very reluctant to interfere in what they see as a private affair or a matter of civil law. Also evidentiary difficulties emerge when it comes to proving a violation of the PO: often it is a matter of 'his word against hers'.*

### e. Problems with protection order effectiveness?

*Many offenders do not have sufficient financial means to pay the administrative fine upon violation of the PO (see question 25 a). But the possibility to punish the violation according to § 4 GewSchG or § 238 StGB seems to ensure the effectiveness of a civil PO (see question 25 a).*

*Administrative and criminal POs are normally effective, unless the offender is extremely violent or mentally ill. Then the victim needs a place of refuge (e.g. refuge for battered women).*

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

- *POs in concurrence with visiting rights of the offender;*
- *Difficulties with the service of a judgment to an offender after barring orders or orders to leave the home of the victim;*
- *No central registration of POs (for police, prosecutors, judges and probation officers).*
- *In some regions lack of refuge for battered women;*
- *Seldom: abuse of POs by a "victim" in cases of actual separation and divorce situations, because it is easier to get the home by PO than in divorce procedure (§ 1361 BGB).*

## 2.2.6 PROMISING/GOOD PRACTICES

38) Which factors facilitate the:

### a. imposition

- *Participation of legal practitioners on both sides;*
- *participation of youth welfare office when children and visitation rights are concerned;*
- *avoiding POs that have disproportionately negative consequences for the offender;*
- *combination of criminal POs with therapeutic orders via diversion (e.g. § 153 a StPO) or probation directions (§ 56 c StGB).*

### b. monitoring

- *Using of standard formulations for 'no contact' orders in civil, administrative and criminal POs to guarantee that POs are properly delineated and possible misunderstandings are avoided;*
- *Central registration of POs and their violation (for police, prosecutors, judges and probation officers);*
- *Organized cooperation between the central agencies (police, prosecutor, judge and probation services, etc.).*
- *Specialized police officers and prosecutors (for domestic violence, women and children).*

### c. enforcement of protection orders

- *Time coordination of administrative (short time) barring order and civil PO (6 months or more).*
- *Repeated advice to the victim not to contact the offender and to refer violations of POs.*
- *Specialized police officers and prosecutors (for domestic violence, women and children)*
- *Absolute attendance of youth welfare and probation officers to report violations of POs to the prosecutor and the judge.*

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

(See Question 38) a-c) and

- *the victim's absolute willingness not to contact the offender and to refer violations of POs*
- *a consequent and proportionate reaction to PO violations*
- *Combination of POs with voluntary offender therapy to reduce future aggressivity*



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

*Promising practices are consequent strategies in imposition, monitoring and enforcement of protection orders (see question 38 and 39) as well as coordination, integration and information about existing POs, which exist only in some regions.*

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

- *Development of more short-time-substitute domiciles for threatened women and children directly after violence or separation, because aggressivity in this time is sometimes very high.*
- *more information about POs for women with immigration background, because they are often completely helpless*
- *Combination of POs with voluntary offender therapy to reduce future aggressivity or alcohol therapy, because many battered women (and children) would like to continue partnership if violence is finished*
- *Mediation attempt by the civil judge with victim and offender and their advocates, because this is sometimes the last chance for a peaceful solution (in combination with voluntary offender therapy).<sup>21</sup>*

*Further factors may be*

- *Better information of victims about the POs and their conditions in public institutions and media.*
- *Central registration of POs and violations.*
- *Empirical implementation and evaluation research on POs.*
- *Special therapy offers for offenders of domestic violence.*
- *Special training for police, prosecutors, probation officers and judges.*

### 2.2.7. FUTURE DEVELOPMENTS

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

*The public and political interest for this issue is rather high in the last 10-15 years. There is much empathy in the whole society for battered women and children and victims of sexual abuse. An additional push for legislation is caused by the DIRECTIVE 2012/29/EU OF THE EUROPEAN PARLIAMENT AND THE COUNCIL of 25 October 2012 “establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.”<sup>22</sup> According to Art. 22 Nr. 3 “victims whose relationship to and dependence on the offender make them particularly vulnerable” belong to the victims with “specific protection needs”. Especially “victims of ... gender-based violence, violence in a close relationship, sexual violence ... shall be duly considered.”*

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<sup>21</sup> Beulke/Theerkorn, Gewalt im sozialen Nahraum – Beratungsaufgabe als (ein) Ausweg? Bericht über das Passauer Modell. Neue Zeitschrift für Strafrecht (NStZ) 1995, 474-481.

<sup>22</sup> Official Journal of the European Union, 14.11.2012, L 315/57-73.

43) a. Will the legislation/practice on protection orders change in the nearby future? Are here, for instance, any bills proposing changes to the current practice?

*After the last two victim protection laws (2. Opferrechtsreformgesetz vom 29.7.2009 [2. OpferRRG] among others with extension of information rights about criminal and civil POs and Gesetz zur Stärkung der Rechte von Opfern sexuellen Missbrauchs vom 26.6.2013 [STORMG] among others with further extension of information rights for victims about criminal POs) many legal politicians saw "the end of flagstaff" relating to victim rights. But the DIRECTIVE 2012/29EU has opened a new perspective. Ministers of Justice in Berlin and the federal states have established a task group to clarify the needs of further reforms.*

b. If so, what will change?

*Perhaps with reference to the DIRECTIVE 2012/29EU:*

- *the participation of victims in the arrangement of criminal POs,*
- *more rights to interpretation and translation for victims who do not understand the German language,*
- *support from victim support services,*
- *rights to avoid contact between victim and offender during criminal investigations and proceedings,*
- *interviews carried out by or through professional trained people (usually by the same person and a person of the same sex as the victim),*
- *more communication technology in criminal proceedings to avoid personal contact between victim and offender,*
- *training of practitioners, cooperation and coordination of services.*

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?

*(See question 43 b). Also Germany will have to implement the EPO (see question 45).*

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 European Protection Order of 13. December 2011 has to be implemented in German law until 11 January 2015.<sup>23</sup> I do not foresee many problems with the implementation of the EPO in Germany. The POs which are requested in Art. 5 EPO for international mutual recognition, are already realized in German civil, administrative and criminal POs. Therefore foreign POs can probably relatively easily be replaced or at least approximated by a German PO.*

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<sup>23</sup> Official Journal of the European Union 21.12.2011, L 338/12-18 Art. 21.

## APPENDIX

*Summary of the research design, methods and most important outcomes*

**Rupp, Marina: Rechtstatsächliche Untersuchung zum Gewaltschutzgesetz. Im Auftrag des Bundesministeriums der Justiz, Bundesanzeiger 10.August 2005, ISSN 0720-6100, 334 Seiten.**

Empirical implementation study of Protection against Violence Act (GewSchG = Gewaltschutzgesetz of 11.12.2001):

- Analysis of records on 2.216 procedures for civil POs in 7 federal states
- Interviews with 216 victims of domestic violence and stalking to their experiences with the Protection against Violence Act (1.11.2003-15.7.2004 – not randomized)
- Interviews with 89 experts to their experiences with the Protection against Violence Act in 7 federal states (judges, judicial officers, advocates, helpdesks, youth welfare offices, refuges for battered women, police, prosecutors).

To the most important outcomes see questions 32a, b; 33 a-d, 34.

**Mönig, Ulrike: Häusliche Gewalt und Strafverfolgung. Eine Justizaktenanalyse. Nomos Verlag 2012, ISBN 978-3-8487-0042-4, 169 Seiten.**

Empirical implementation study of Protection against Violence Act (GewSchG = Gewaltschutzgesetz of 11.12.2001)

Analysis of records on 346 criminal proceedings of domestic violence in Bielefeld, starting with the information of the police until the end of the criminal procedure.

To the most important outcomes see questions 29, 32a, 33, 35 a-c.