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

## NATIONAL REPORT HUNGARY

By Judit Wirth

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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

#### **HUNGARY:**

#### **Abbreviations used:**

CCP: Code of Criminal Procedure

ROL: Restraining Order Law

CC: Criminal Code

ACP: Act on Child Protection

TPRO: Temporary Preventive Restraining Order

PRO: Preventive Restraining Order

BO: the criminal procedural restraining order defined in the CCP

BR: behavioral rule restraining order defined in the CC

**Hungarian Acts referred to in the text (links available only in Hungarian):**

CCP: Code of Criminal Procedure: Act XIX. of 1998 on the Code of Criminal Procedure Articles 138/A-139 on the Restraining Order [1998. évi XIX. törvény a Büntetőeljárásról]

<http://net.jogtar.hu/jr/gen/getdoc2.cgi?docid=99800019.TV> accessed 1 September 2013

ROL: Act LXXVII of 2009 on restraining applicable in case of violence among relatives (more precisely: on the temporary preventive restraining order and preventive restraining order) [2009. évi LXXII. Törvény a hozzátartozók közötti erőszak miatt alkalmazható távoltartásról]

[http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A0900072.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0900072.TV) accessed 1 September 2013

CC: Act C of 2012 on the Criminal Code [2012. évi C. törvény a Büntető Törvénykönyvről]

[http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A1200100.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1200100.TV) accessed 1 September 2013

Ministry of Justice Order 25/2009 on the Detailed Rules of Decisions on Temporary Restraining Orders [52/2009. (IX. 30.) IRM rendelet az ideiglenes megelőző távoltartó határozat meghozatalának részletes szabályairól]

[http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A0900052.IRM](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0900052.IRM) accessed 1 September 2013

Act CXL of 2004 on the General Rules of Administrative Procedure and Services [2004. évi CXL. Törvény a közigazgatási hatósági eljárás és szolgáltatás általános szabályairól] (Administrative Procedure Act)

[http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A0400140.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0400140.TV) accessed 1 September 2013

Act II. of 2012 on Minor Offences [2012. évi II. törvény a szabálysértésekről, a szabálysértési eljárásról és a szabálysértési nyilvántartási rendszerről]

[http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A1200002.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1200002.TV) accessed 1 September 2013

Act IV. Of 1959 on the Civil Code [1959. évi IV. Törvény a Polgári Törvénykönyvről]

[http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=95900004.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=95900004.TV) accessed 1 September 2013

Act III. of 1952 on the Civil Procedure [1952. évi III. törvény a polgári perrendtartásról]

[http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=95200003.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=95200003.TV) assessed 15 October 2013

ACP: Act XXXI of 1997 on Child Protection [1997. évi XXXI. Törvény a gyermekek védelméről és a gyámügyi igazgatásról]

[http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99700031.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99700031.TV) accessed 1 September 2013

Act CXXXV of 2005 on State Support of Victims of Crime and Damage Alleviation [2005. évi CXXXV. törvény a bűncselekmények áldozatainak segítéséről és az állami kárenyhítésről]

[http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A0500135.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0500135.TV) accessed 1 September 2013

Act CXXXV of 2003 on State Legal Aid [2003. évi LXXX. törvény a jogi segítségnyújtásról]

[http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A0300080.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0300080.TV) accessed 1 September 2013

New Civil Code not yet in effect: Act V of 2013 on the Civil Code [[2013. évi V. Törvény a Polgári Törvénykönyvről](#)]

[http://ptk2013.hu/wp-content/uploads/2013/03/uj\\_ptk\\_szov.html#fn1](http://ptk2013.hu/wp-content/uploads/2013/03/uj_ptk_szov.html#fn1) accessed 1 September 2013

Act 1990. XCIII. on Fees [1990. évi XCIII. törvény az illetékekről]

[http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99000093.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99000093.TV) accessed 1 September 2013

Act XLVII of 2009 on the Criminal Registraton System, on the Registration System of Court Decisions against Hungarian Nationals by the Court of another EU Country, and on the Registration System of Criminal and Biometric Data [2009. évi XLVII. törvény a bűnügyi nyilvántartási rendszerről, az Európai Unió tagállamainak bíróságai által magyar állampolgárokkal szemben hozott ítéletek nyilvántartásáról, valamint a bűnügyi és rendészeti biometrikus adatok nyilvántartásáról]

[http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A0900047.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0900047.TV) accessed 1 September 2013

Government order 276/2006 (XII. 3.) on the Establishment, Tasks and Scope of Authority of the Central Office of Administrative and Electronic Services [276/2006. (XII. 23.) Korm. rendelet a Közigazgatási és Elektronikus Közszolgáltatások Központi Hivatala létrehozásáról, feladatairól és hatásköréről]

[http://www.complex.hu/jr/gen/hjegy\\_doc.cgi?docid=A0600276.KOR](http://www.complex.hu/jr/gen/hjegy_doc.cgi?docid=A0600276.KOR) accessed 1 September 2013

**Some technical terms explained for clarity of usage in Hungarian law:**

Parole (feltételes szabadság): part of the jailtime was served, legal requirements met for conditional release

Probation (próbára bocsátás): If the crime is punishable by less than three years imprisonment, the court may postpone issuing a sentence.

Suspended sentence (felfüggesztett szabadségvesztés): In cases of a sentence of less than two years imprisonment, the court may suspend the execution of the sentence itself.

### 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?

a.-b.

In Hungary, protection orders are found in three laws: Civil law restraining order (ROL): Act LXXVII of 2009<sup>1</sup> on Restraining orders? Applicable in Case of Violence among Relatives (more precisely: on the temporary preventive restraining order [*ideiglenes megelőző távoltartás, Art. 6 (4)*] and preventive restraining order [*megelőző távoltartás, Art. 7 (2)*]), the Act hereinafter referred to as ROL, the different versions of protection within this law as the TPRO (72 hours) and PRO (up to 30 days, including the 72 hours), respectively<sup>2</sup>; This law is considered in the Hungarian legal system as a civil-law instrument. While the background law for the procedural rules of the police procedure (TPRO, 72 hours) is Act CXL of 2004 on the General Rules of Administrative Procedure and Services (Administrative Procedure Act)<sup>3</sup>, the more significant and numerous background rules for the PRO (the court procedure) is Act III. of 1952 on the Civil Procedure<sup>4</sup>. Therefore in the Hungarian legal system the ROL is considered a civil-law measure.

criminal procedural law barring order (BO): Articles 138/A-139 of Act XIX. of 1998 on the Code of Criminal Procedure (hereinafter referred to as CCP)<sup>5</sup> as a coercive measure ([*kényszerintézkedés*], hereinafter referred to as BO, 10-60 days); and

criminal law behaviour rule (BR): see below in 2).

Thus, protection orders can be imposed through civil and criminal law measures.

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<sup>1</sup> Act LXXVII of 2009 on restraining applicable in case of violence among relatives (more precisely: on the temporary preventive restraining order and preventive restraining order): 2009. évi LXXII. Törvény a hozzátartozók közötti erőszak miatt alkalmazható távoltartásról. The Act came into force on 1 October 2009.

<sup>2</sup> The ROL Act in Hungarian: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A0900072.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0900072.TV) accessed 1 September 2013

<sup>3</sup> Act CXL of 2004 on the General Rules of Administrative Procedure and Services [2004. évi CXL. Törvény a közigazgatási hatósági eljárás és szolgáltatás általános szabályairól] (Administrative Procedure Act)

<sup>4</sup> Act III. of 1952 on the Civil Procedure [1952. évi III. törvény a polgári perrendtartásról].

<sup>5</sup> The CCP: Code of Criminal Procedure: Act XIX. of 1998 on the Code of Criminal Procedure Articles 138/A-139 on the Restraining Order: 1998. évi XIX. törvény a Büntetőeljárásról, in Hungarian: <http://net.jogtar.hu/jr/gen/getdoc2.cgi?docid=99800019.TV> accessed 1 September 2013

c. None of these are available in English translations available on the Internet.

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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).

a) The only other way a form of “protection order” can be imposed is within an ongoing criminal procedure, by way of a probation officer (mentioned above as criminal law behaviour rule (BR)). If a probation officer is assigned to the perpetrator (which is not obligatory, see below), the terms of the probation may include a no-contact rule regarding specified persons. These are called behavioral rules that the perpetrator is obliged to observe and the probation officer has the authority to check and supervise the observation of the rules. One of the behavioral rules that can be assigned, is a no-contact order between the perpetrator and “specified persons” (normally: the victim). The relevant law is: Art. 69 (1) a-e) of Act C. of 2012 on the Criminal Code (hereinafter referred to as CC)<sup>6</sup>. This stipulates when a probation officer may be assigned by the court as follows:

- a) for the duration of postponing the prosecution of the case,
- b) for the duration of parole.
- c) for the duration of probation,
- d) besides prescribing retributive work,
- e) for the probation period for suspended sentence, if the successful fulfillment of the above necessitates the supervision of the perpetrator.

Point (2) a)-b) stipulates that perpetrators on parole from life sentences and recidivists on parole or under suspended sentence have to have a probation officer.

If then the perpetrator was assigned a probation officer, one of the possible behavioural rules that may be assigned to the perpetrator is a no-contact rule with specific persons. These rules are issued by the court or, in case the prosecution decided to postpone pressing charges, by the prosecutor (Art. 71. (2) b).)

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

b) Yes. Art. 138/A (2) of the Act XIX. of 1998 on the Code of Criminal Procedure stipulates that a BO can be issued if there is reasonable suspicion that the suspect/defendant committed a crime punishable by imprisonment, his/her detention is not necessary, but, especially based on the nature of the crime and his/her behaviour before and during the procedure and the relationship between the suspect/defendant will, a) through the influencing or the intimidation of the witness [victims are considered witnesses] would make the procedure difficult or impossible, or b) would carry out the crime commenced or attempted, or would carry out another crime against the victim punishable by imprisonment. However, if the condition of starting the criminal

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<sup>6</sup> The CC: Act C of 2012 on the Criminal Code: 2012. évi C. törvény a Büntető Törvénykönyvről, in Hungarian: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A1200100.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1200100.TV) accessed 1 September 2013

procedure is a private motion on the part of the victim (or a legal representative of hers/his), the BO can not be issued before such motion is presented (Art. 138/A. (3)).

This means that if the crimes committed by a perpetrator of domestic violence is a private-motion crime (i.e. There has to be a request specifically stating that the victim wished the perpetrator to be investigated and criminal case opened), the criminal procedure cannot be started before such a motion is put forward. This, in practice, probably has the effect of many cases going uninvestigated, but no thorough research has been conducted to verify the exact extent to which this happens. The new Criminal Code, in effect since 1 July, 2013, has introduced a specific crime called "Relationship Violence" which includes several specific act typically committed by DV perpetrators. This new specific crime lifted the requirement of a private motion on light bodily harm (a typical crime in DV), thus the police are not obliged to start a criminal procedure ex officio in such cases. We do not have enough data as yet to determine if this changes the effectiveness of the law-enforcement response, but on the level of principles, this is a welcome change.

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

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

civil law (ROL): the temporary preventive restraining order (TPRO) can be issued by the police *ex officio*, or can be issued upon the report of the victim, a wide range of his/her relatives (defined in Article 685. § b) of the Civil Code<sup>7</sup>), and/or the signalization of a wide range of institutions and organizations defined in Art. 2 of this law and in Art. 17 (1)-(3) of Act XXXI of 1997 on the Protection of Children and on the Administration of Guardianship (hereinafter referred to as Act on Child Protection, or ACP<sup>8</sup>). For the TPRO all parties entitled to ask for it have to turn to the police. The preventive restraining order (PRO), issued by the court, can be issued upon the *ex officio* referral of the case by the police to the court if a TPRO was issued by the police, or upon the request of the victim or his/her relatives (defined by the above mentioned Civil Code section) directly made at the court.

criminal procedural law (BO): The barring order can be motioned by the prosecutor, the private prosecutor (*magánvádló*), the substitute private prosecutor (*pótmagánvádló*)<sup>9</sup>, the victim, the legal representative of the

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<sup>7</sup> Act IV. of 1959 on the Civil Code: in Hungarian: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=95900004.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=95900004.TV) accessed 1 September 2013

<sup>8</sup> The Act on Child Protection (ACP) [1997. évi XXXI. Törvény a gyermekek védelméről és a gyámügyi igazgatásról] in Hungarian: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99700031.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99700031.TV) accessed 1 September 2013

<sup>9</sup> Article 52 (1) of the Code of Criminal Procedure sets forth that for certain criminal offences the victims is tasked with the prosecution (private prosecutor), while Article 53 (1) regulates the cases when the victims may act as a substitute private prosecutor (rejection of the crime report, termination of the investigation, dropping the charges etc.), in which case the victim's legal representative (lawyer) "takes the



victim with limited or diminished legal capacity, and the legal representative of the minor who lives in a joint household with the defendant. (Art. 138/A (2)).

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?) Civil law (ROL): All organizations specified in the Act on Child Protection as part of the signalization and cooperating system<sup>10</sup> are obligated to report a case to the police within the scope of the ROL. In cases where children are not involved, such **signalization** does not exist, thus it is only the *ex officio* action of the police that is set forth if its conditions are met by the situation. The police is entitled to issue the TPRO, the court is entitled to issue the PRO. The court has to notify the prosecutor of the commencement of the procedure, and the prosecutor may enter the procedure (ROL, Art 13 (5)).<sup>11</sup> Criminal procedural law (BO): The persons defined above in 3.a) are entitled to apply, the court is entitled to issue the BO as a coercive measure (CCP Art. 138/A-139). The prosecutor, who has to be notified of the commencement of the procedure by the court, may support the issuing of the BO by the court or may refrain from voicing an opinion, or may oppose the petition<sup>12</sup>. The prosecutor's action seems to have a direct effect on the procedure. Kapossyné (n 18) found that those cases were most likely to be given merit where the prosecutor joined the petition. Criminal law (BR): (suspension of procedure and various forms of probation/parole, see above): the court or, in case s/he decides to suspend prosecution (CC Art. 71 (2)), the prosecutor may issue a protection "order" as a behavioral rule for the perpetrator.

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

The protection orders can be issued *ex parte*.<sup>13</sup>

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case over" from the prosecutor in as much as s/he represents the charges and presents the evidence available to her/him and the arguments, and puts forward the suggested crime and the suggested penalty.

<sup>10</sup> This encompasses virtually every official and non-official institution, body or organization that can come to contact with cases involving children, from health and educational institutions through service providers to authorities to courts and to NGOs. Individuals are entitled to signal. (Art. 17 (1) of ACP)

<sup>11</sup> As a technical ruling, most courts assigned dealing with ROL cases to the investigative judges working at each court. In other courts (eg Debrecen), it is family-judges who fill the shift required by the short deadlines.

<sup>12</sup> The one study conducted on the implementation of this form of the restraining order in 2009 found the following: "Each prosecutor follows a different practice, sometimes they only act as 'postal service' and do not put forward a

motion, and sometimes they do so by either "joining" the victim's motion or by suggesting its refusal. Exceptionally, the prosecutor sometimes files a separate motion

in addition to the victim's.

" Kapossyné (n 18).

<sup>13</sup> The CCP specifically stipulates that the hearing can be held in the absence of the perpetrator (Art. 272 (4)), the ROL 15. § stipulates that if the procedure was started *ex-officio*, the presence of neither parties is necessary, if it was requested by the victim, the presence of the assailant is not necessary for the decision by the court. The same law, regarding the TPRO issued by the police does not explicitly state that the order can be issued *ex-parte*, but it sets forth that a) the request can be made by the victim or an official body (e.g. child

- 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?Civil law (ROL): The act provides protection to relatives and close relatives<sup>14</sup>, former spouses, former registered – same sex or heterosexual – partners and those being in trusteeship and guardianship relation (Art. 1 (5)). The TPRO and PRO exclude former common law spouses, and current and former intimate partners not living in marriage or common-law marriage.Criminal procedural law (BO): Any type of victim can be protected, strangers (e.g. in harassment) included, against any type of defendant, provided the other criteria for issuing the protection order are met (gravity of the crime, results pursued, etc.).Criminal code behavioral rule (BR): any type of victim can be protected if the legal criteria as described above are met.
- 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 law (ROL): The ROL is not dependent on other procedures; Criminal procedural law (BO): the BO can only be issued if a criminal procedure is ongoing and the perpetrator has been accused (Art. 138/A (1): “The protection order limits the free movement of the *defendant*.” [italics added]); the Criminal Code behavioral rule is strongly linked to the criminal procedure as it can be only issued if the prosecution was suspended by the decision of the prosecutor or if the sentencing or the execution of the imprisonment was suspended or lifted on condition. The BO was conceived as a measure to ensure the criminal procedure, with a view of the victim as witness in the procedure.
- 5) a. What procedures have to be followed in order to obtain a protection order? (please explain the different steps that need to be taken)Civil law (ROL): The TPRO is issued by the police *ex officio* based on the evidence/signs of violence they find at the scene, in which case the victim's consent or request is not required. If it was motioned by the victim (or persons/institutions/organizations entitled to do so), these persons have to substantiate the request/referral. TPRO can be requested from the police in person or in writing. The PRO has to be requested at the court, in person or in writing. The court has to attempt at least one hearing with both parties present. The victim or his/her representative has to

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protection services) at the police, b) the law contains procedures as to the notification of the assailant, therefore we can conclude that his/her presence is not necessary.

<sup>14</sup> Article 685 b) of the Act IV of 1959 on Civil Code [1959. évi IV. Törvény a Polgári Törvénykönyvről]

[http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=95900004.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=95900004.TV) accessed 1 September 2013: *close relatives* are spouses, registered – same sex or heterosexual – partners, lineal relatives, adopted persons, stepchildren, foster children, adoptive parents, stepparents, foster parents, and siblings; *relatives* are common-law spouses, spouses or registered partners of the next of kin, fiancées; lineal relatives, siblings of a spouse or a registered partner; and spouses or registered partners of siblings. Parliament has already passed the New Civil Code (Act V. of 2013) [2013. évi V. Törvény a Polgári Törvénykönyvről] in Hungarian:

[http://ptk2013.hu/wp-content/uploads/2013/03/uj\\_ptk\\_szov.html#fn1](http://ptk2013.hu/wp-content/uploads/2013/03/uj_ptk_szov.html#fn1) accessed 1 September 2013, in effect from March 15, 2014. Section 8:1. § (1) 1 and 2. of this law stipulates that *close relatives* are: the spouse, lineal relatives, adopted persons, stepchildren, foster children, adoptive parents, stepparents, foster parents, and siblings; *relatives are*: close relatives, common-law partners, spouses of lineal relatives, lineal relatives and siblings of spouse, and spouse of sibling. I.e: registered partnerships (created originally as a means to partly legalize same-sex relationships, the option later extended to heterosexual relationships as well), and people engaged will now be excluded from the circle of relatives.

be present at the hearing or provide a grounded justification for staying away, otherwise the case is dismissed (Art. 15). The request has to fulfill some formal requirements: an explicit and formal request for conducting the procedure, the reasons of submitting the request, the brief facts of the case and the antecedents, the name and address of the person requesting the restraining order, and the data being available to identify and contact the batterer (Art. 14 (3) a)-e)). The case is dismissed also if these elements are missing. The legal grounds do not need to be specified.Criminal procedural law (BO): An oral or written request must be submitted by either of the following: the prosecutor, the private prosecutor [*magánvádoló*], the substitute private prosecutor [*pótmagánvádoló*]<sup>15</sup>, the victim, the legal representative of the victim with limited or diminished legal capacity, and the legal representative of the minor who lives in a joint household with the defendant. (Art. 138/A (2)). The investigative judge holds a hearing or decides without a specific hearing within the criminal procedure. If the criminal procedure is dependent on a private motion on the part of the victim or his/her legal representative, the BO cannot be issued before such motion for starting the criminal was put forward (Art. 138/A (3)). If the motion for the BO itself was not put forward by the prosecutor, s/he may refrain from supporting the request (may remain silent).<sup>16</sup>Criminal code behavioral rule (BR): The prosecutor or the court may issue the relevant behavioral rule, the probation officer is entitled (theoretically: compelled) to enforce it.

In all of the above procedures the active participation of the victim (and witnesses, if any) in the form of testimonies, and/or medical records, and/or forensic expert evaluations are, in practice, considered by authorities a necessary pre-requisite to proceed.

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

civil law (ROL): The TPRO has to be issued without delay by the police (immediately on the scene (Art. 7 (1)). In practice the restraining order is sometimes issued shortly after, by the officer authorized by the chief of the relevant police station to issue such order, as not all station-chiefs authorize all officers to issue it. The PRO has to be issued within the period the TPRO is in effect (ie within 72 hours from the issuing of the TPRO).Criminal procedural law (BO): Most cases of IPV would fall under Art. 64/A of the CCP which lists the crimes that entail a speedy (out of the ordinary) procedure. Other sections (setting forth rules hearing *ex parte* (Art. 272 (4)), and announcement of injunctions (Art. 327 (1)) also sets forth special rules for speeding the decision on protection. However, other procedural rules – mainly those requiring actual accusation of the perpetrator by the prosecution and notification rules – act to slow down the process in the same law<sup>17</sup>. Thus, in the majority of the cases investigated the procedure was found to take between 25-30 days, with 10 days found as the shortest.Criminal code behavioral rule (BR): No reliable data could be obtained on the use of this measure, but

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<sup>15</sup> Article 52 (1) of the Code of Criminal Procedure sets forth that for certain criminal offences the victim is tasked with the prosecution (private prosecutor), while Article 53 (1) regulates the cases when the victims may act as a substitute private prosecutor (rejection of the crime report, termination of the investigation, dropping the charges etc.).

<sup>16</sup> The procedural anomalies and difficulties surrounding this procedure and having an adverse effect on the effectiveness of this measure and the actual protection it can provide has been extensively investigated in 2009. See Magdolna Kapossyné Czene, 'Two Years of the Restraining Order in the Practice of Hungarian Courts' in Judit Wirth (ed), *System Failure: Abused Women Trapped in the Legal System* (Gábor Kuszing tr, NANE-PATENT: 2011) 59-73. (in Hungarian in 2009, shortened English version: <http://nokjoga.hu/sites/default/files/filefield/system-failure-2011.pdf>, accessed 27 August 2013).

<sup>17</sup> See Kapossyné (n 18).

there does not seem to be any evidence of it being used in any measurable amount. However, if it were used, it would take effect immediately upon issuance.

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?

No further requirements are set forth.

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?

civil law (ROL): Only based on this law. The so called temporary preventive restraining order (TPRO) [*ideiglenes megelőző távoltartás*] can be issued by the police immediately at the scene. It may last 72 hours. The police are obliged to refer the case to the court. The court may lift the protection or finalize it in the form of a preventive restraining order (PRO) [*megelőző távoltartás*] for up to 30 days, including the duration of the police order. Art. 12 (2) stipulates that the procedure will not be automatically terminated even if neither party is present. Article 15 (3) stipulates that the procedure will be terminated if it was initiated by the request of the battered person and s/he does not attend in a court hearing without giving grounded justification for this omission, or his/her request has not contained the necessary formal elements prescribed by the law. The batterer has to be notified within the shortest possible time (Art. 9 (1)). If his/her address is not known, the decision on TPRO can be picked up by him/her at the police station. If it is not, the notification is considered carried out on the third day after issuance. The decision on PRO by the court is announced at the hearing. If the perpetrator was not present, the court notifies him/her via the police. The police is obliged to carry out the notification.

criminal procedural law (BO): The CCP BO is not a quick procedure, therefore the notification rules – the main reasons that slow it down – are not described here.<sup>18</sup>

criminal law (BR): BR protection could theoretically be quick (e.g. upon the conditional release of the prisoner or upon the prosecutor's decision to suspend charging the defendant), but there is no evidence of its employment by the criminal justice system.

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?

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<sup>18</sup> Both the European Court of Human Rights (see: *Kalucza v. Hungary* App no 57693/10

(EctHR

, 24 April 2012)

, available at [www.coe.int/t/dghl/standardsetting/convention-violence/caselaw/CASE%20OF%20KALUCZA%20v.%20HUNGARY.pdf](http://www.coe.int/t/dghl/standardsetting/convention-violence/caselaw/CASE%20OF%20KALUCZA%20v.%20HUNGARY.pdf) accessed 5 August 2013) and the United Nations Committee on the Elimination of All Forms of Discrimination against Women, *Concluding observations on the combined seventh and eighth periodic reports of Hungary*, adopted by the Committee at its fifty-fourth session (11 February–1 March 2013) CEDAW/C/HUN/CO/7-8, available at: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=CEDAW/C/HUN/CO/7-8&Lang=E> accessed 5 August 2013) noted the length of the procedure as one of the main shortcomings of this measure.

civil law (ROL): The ROL authorises the police to issue a 'temporary preventive restraining order' (*ideiglenes megelőző távoltartás*), if, based on all circumstances of the case, it may be reasonably concluded, that violence between relatives has been committed (Art. 6 (3)). We do not have information that any standardized risk assessment tools are used to determine this 'reasonable conclusion', the anecdotal evidence suggests that it depends on the acting officer or, in the case of the PRO, judge. Violence is determined as a behaviour gravely and imminently endangering the dignity, life, right to sexual autonomy, and physical and mental health of the battered person, or as an omission gravely and imminently endangering the dignity, life, and physical and mental health of another person (Art. 1 (1)). In practice, authorities still tend to require medical records of injuries, visible injuries or other clear signs of violence to actually start the procedure even though this seems counterintuitive. It is likely that this practice stems from the still lingering confusion regarding the supposed interference of crimes only punishable upon private motion (the victim requesting investigation and punishment of the perpetrator), as the police often believe that they are not entitled to issue the TPRO if the victim does not press charges.<sup>19</sup>Criminal procedural law (BO): Art. 138/A (2) of the CCP stipulates that BO can be issued upon reasonable suspicion of the commission of a crime punishable by imprisonment, upon the condition that "the goals of restraining can be achieved" (not specified), if the arrest of the accused/defendant is not necessary but, taking into account especially his/her behavior prior and during the criminal procedure and the relationship between the accused/defendant and the victim, it can be reasonably assumed that if s/he were to remain in the environment of the victim s/he would a) influence or intimidate the victim witness and thus thwart, endanger, or make the investigation (the proving) more difficult, b) would carry out the attempted or prepared crime, or would commit another crime punishable with imprisonment against the victim. In practice it means that this form of restraining order is issued rather rarely, as both the conditions are vague and the procedural rules are countereffective<sup>20</sup>.Criminal law behaviour rule (BR): No specific conditions are given, it is up to the court or the prosecutor to decide if such BR should be applied.

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

No. According to the experience of the legal aid program of NANE and PATENT Associations complainants without proper legal representation are less successful, though.

**c. Is free legal representation/advice available?**

State services: The rules pertaining to free legal advice and representation are set forth in Act CXXXV of 2005 on State Support of Victims of Crime and Damage Alleviation, and in Act LXXX of 2003 on Legal Help, respectively. Legal advice is provided at the victim support offices for free, legal representation (both in criminal and civil procedures) is based on a state-determined fee, which is waived by the state upon certain conditions (monthly income not exceeding the amount of the official minimal old-age pension and/or other social or health related conditions). There are 20 main offices (one in the capital and one in each county) and some further branches in main cities. There is no official statistics as to the number of DV cases these offices service per year. However, two years ago the director of one of the main offices estimated that about 1% of this caseload concerned DV cases.

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<sup>19</sup> This trend is apparent from the calls to the NANE helpline for victims of domestic violence, and the PATENT legal helpline, from the cases of the joint legal advocacy program of the two organizations, and from the cases in the emergency alarm program of NANE Association followed closely (including follow-up calls to the police). Both organizations are non-profit, non-governmental, grassroots NGOs operating helplines and other services to victims of DV.

<sup>20</sup> For a thorough investigation of the procedural rules' effect on implementation see Kapossyné, n 18.

NGO services: there is one NGO (PATENT Association) providing free and professionally sound legal aid to a relatively small number of DV clients. (The number of clients is determined by the funding the NGO can secure for this activity. State funding – in any form – is unavailable for this activity.)

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)?

8) Civil law (ROL): According to the ROL (Art. 8.) both the decision of the police and the court must contain the obligation for the assailant to leave the common dwelling (unless the victim lives there based on a "house-sitting"<sup>21</sup> arrangement and the parties do not have joint child(ren)), the no-contact (direct or indirect) provision regarding the victim and/or named other persons, and the provision that the restrained party's visitation and parental rights regarding the minor child(ren) are suspended. Criminal procedural law (BO): The BO (Art. 138/A. § (1)) stipulates the same types of restrictions except for any provisions about the suspension of visitation and parental rights to which it does not refer at all. Such suspension can be requested by the prosecutor according to several articles of the CCP, under certain conditions (e.g. crime committed against the child).

criminal law (BR): The BR only contains a general regulation on keeping away from the victim of the crime, his/her abode, workplace, place of studies, or place frequented by the victim (CC, Art. 71 (1) b)).

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?

Yes, as detailed above. The TPRO is 72 hours, the PRO is up to 30 days (both in the ROL), the BO is from 10 to 60 days (in the CCP), the length of the BR (in the CC) is not specified.

During the barring period, is help provided to the victims? And to the offender?

No.

Art. 5. (6) of the ROL obliges the police or the court **to inform** the assailant of the name, address and conditions of institutions providing night accommodation in his/her neighborhood. Art. 11. of the ROL obliges the police to provide information to the victim about victim support services, social and legal aid services, organizations and institutions, NGOs, and financial, social and legal aid possibilities. Art. II. 6. e) of 32/2007. (OT 26) Instruction of the Chief of the National Police on Carrying out Tasks Connected to the Management of Domestic Violence and to the Protection of Minors<sup>22</sup> stipulates that the police officer in charge shall "inform the concerned parties of the available assertion possibilities, of the helping and information services and organizations, of the possibility to enlist hospices [sic], mothers home, homeless shelter", but in fact only a very few victims receive this information. The ROL and the Instruction are in some contradiction as to the obligatory signalling by the police.

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<sup>21</sup> This does not exclude the parties to live there together.

<sup>22</sup> Hungary, 32/2007. (OT 26) Instruction of the Chief of the National Police on Carrying out Tasks Connected to the Management of Domestic Violence and to the Protection of Minors [Az Országos Rendőrfőkapitány 32/2007. (OT 26.) ORFK utasítása a családon belüli erőszak kezelésével és a kiskorúak védelmével kapcsolatos rendőri feladatok végrehajtására], available in English at: [www.stopvaw.org/sites/3f6d15f4-c12d-4515-8544-26b7a3a5a41e/uploads/Hungarian Police Instructions on Activities Connected to Domestic Violence](http://www.stopvaw.org/sites/3f6d15f4-c12d-4515-8544-26b7a3a5a41e/uploads/Hungarian_Police_Instructions_on_Activities_Connected_to_Domestic_Violence) accessed 13 August 2013.

Art. 9. (3) of the ROL stipulates that notification of the family-support and/or child-welfare services will be sent upon the request or consent of the victim if there is a minor in the family. According to the Chief of Police Instruction however, members of the signalling system (in case minors are involved) are also supposed to be alerted (I. 2. d)-e), II. 13. b), III. 20, III. 23, IV. 26. c), IV. 34. c)), as well as NGOs (IV. 28.). However, this does not seem to be the general procedure. Offenders are also supposed to be informed of possible programs and support, and the Instruction even names a civil initiative (IV. 26. b))<sup>23</sup>. It is worthwhile to note that while civil initiative mentioned is a human-rights based initiative with a feminist approach, it is a helpline open for 4 hours a week, often not operational because of lack of operators. The initiative is fully based on volunteers, it does not have any funding at all. No other services are available for abusive men (or women), but it is also likely that no other organization (state or civil) has the necessary knowledge on how to deal with perpetrators of IPV.

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

TPRO by the police.

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)?

Not relevant, as they basically all contain the same types of restriction.

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

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9) 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?

The contents of the each type are prescribed in their respective Acts. The ROL (temporary preventive and preventive restraining orders) and the CCP (barring order) contain the above mentioned lists (in the case of TPRO, if the assailant can not be sent away from the apartment, then the statement of this fact). The BO also contains the provision that the court may oblige the defendant to present him/herself at the law-enforcement body that investigates the crime forming the basis of the restraining. Besides this, other technical elements (name, case number, date, etc.) are set forth in numerous articles of the CCP for the BO (some of them depending on the circumstances) and, regarding the ROL, in Art. 72. of the Act on Administrative Procedure<sup>24</sup>. The court orders (whether civil or criminal procedural) also have to contain a reasoned decision. Distance the restrained person is supposed to keep from the victim(s) is not specified, neither is it required to be specified in the decision. Forms of non-contact are not listed specifically, neither are they required to be listed.

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<sup>23</sup> "Stop-Férfierőszak Vonal" (Stop Male Violence Line): <http://stop-ferfieroszak.hu/telefonvonal> accessed 13 August 2013.

<sup>24</sup> Act CXL of 2004 in the General Rules of Administrative Procedure and Services [2004. évi CXL. Törvény a közigazgatási hatósági eljárás és szolgáltatás általános szabályairól, in Hungarian: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A0400140.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0400140.TV) accessed 31 July 2013].

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

There are no overall studies available on this issue. Three short studies have been conducted up to now, one about the BO in 2009<sup>25</sup>, and two about the PRO<sup>26</sup>. Two of these studies (Kaposyné and the Manuscript) find that many of the decisions are not elaborately reasoned.

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

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

a.-b.

Legal limitations are only prescribed in the BO (Art. 138/A (7)), which stipulates that the barring order may not violate the defendants' right to exercise his/her rights of dwelling, working, studying, or visiting his/her place of worship. (The text of the law is somewhat circular: it refers to these rights as the “rights that are affected by Art.138/A (1) b) in relation to the victim”, which in fact is the list of places the defendant can be restrained from returning to or visit during the period of the order. Thus, strictly speaking, we can conclude that *ad absurdum*, the law excludes the defendant from being restrained at all. Both during the legislative process, and in the studies conducted, this issue was discussed extensively. Many objections were raised by legislators based on problems this may cause. Examples included: if the parties work at the same place, the defendant will be prevented from earning a living, or forced to take a leave; if they use the same public transportation the defendant will inadvertently violate the order; if they frequent the same church, the defendant will be stripped of his right to exercise religious freedom, etc. The law apparently reflects these concerns. One of the studies<sup>27</sup> conducted, examining the law from the point of view of judicial usability, also mentions these issues as examples of the lack of statutory precision.

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

There is no hard data on this, but based on the studies conducted (which provide limited but well researched data) and on anecdotal evidence gathered on helplines, the women's rights legal aid program, and from personal interviews, if restraining is granted, these issues do not play any significant role in the judicial practice.

11) 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”)?

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<sup>25</sup> Kaposyné (n 18).

<sup>26</sup> One of these is Ágnes Geréby, 'A hozzátartozók közötti erőszak miatt alkalmazható távtartásról, avagy egy jogszabály „sötét oldala” bírói szemszögből' ['About Restraining Applicable in Cases of Domestic Violence or the “Dark Side” of a Law from the Point of View of the Judge'] (2010) 8. évf. 4. szám Családi jog [Family Law] 6; The other is a Manuscript of an evaluation of cases between October 1 2009 and March 31 2010 of one court available from NANE Association, 2013.

<sup>27</sup> Geréby (n 28).



Not enough data could be obtained to determine this question. Existing data from the studies indicate that the area is rarely delineated with precision.

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

See above.

12) 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?

Yes. The TPRO can be issued for 72 hours at most, within which period the police has to forward the case to the court. The court has to decide about a PRO by extending, lifting or suspending the TPRO within 3 days. If a PRO is issued, it can last up to 30 days, with no option to extend it. The BO can last from a minimum of 10 to a maximum of 60 days. Both the PRO and the BO has to be ordered for a specified period.

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

The court decisions rarely contain information about this, therefore it can not be determined.

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

Again, there are no overall reliable court statistics on this. One of the studies (Manuscript n 23) with a detailed analysis of 35 cases found that out of 17 cases when the court issue a PRO, 16 were for 30 days, and one for 13 days. The general tendency visible from the legal cases also point to this: if courts do issue a preventive restraining order, they tend to do it for the 30 days maximum.

13) 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?

There is not enough information in the court decisions to determine this question. However, the studies imply that courts take the civil law principle of “the applicant is the master of the case” rather seriously in this field: if the applicant request the discontinuation of the procedure, Geréby<sup>28</sup> eg recommends to take this very seriously into account. On the other hand, the research in available in Manuscript<sup>29</sup> evaluating 35 restraining order court procedures at the Debrecen City Court found that in none of the cases did the judge seem to utilize the obligation of mandatory reporting based on recognition of a crime that came to his/her knowledge.

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<sup>28</sup> Geréby (n 28).

<sup>29</sup> Manuscript (n 28)

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?

We have no data to answer this question.

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?

No.

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

Yes, in bot the ROL and the CCP BO, the possibility of appeal is granted.

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?

No systemic information about this can be discerned from the decisions.

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?

Based on the law, no.

15) 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)?

No systematic research is available on this issue. However, based on work together with the police, informal discussions with district police chiefs, the information flowing in through the helpline for abused women and the women's right legal aid program, and many dozens of training courses conducted for police officers, we can conclude the following: the police force faces a very high level of turnover, therefore trained officers rarely stay in the same position for a long time, and DV parols are usually young and inexperienced; there is a shortage of financial resources for the necessary number of patrol cars, effective communication, and sometimes even paper to print the complaints in the necessary number; there are very few police stations that actually enforce the restraining order or take the offender to custody upon violation thereof, which may also partly be the result of shortage of personnel. Police stations also complain about lacking the necessary amount of workforce to send officers on trainings, if any is offered by NGOs on this issue. 'Sending a message to the offender' is very rarely a goal of the police. There appear to be way more cases where they 'send a message' to the victim, and the 'message' is that she will not get effective protection and she better stop calling them.

16) 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)?

They could, but they do not tend to be. Courts are entitled to admit any evidence they see fit, and can decide if it indeed provides extra information. Examples can be found of both taking into account previous violent behaviours, and exclude it as not part of the actual procedure. The former is much less usual than the latter.

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

In the ROL, yes (see above).

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

In the ROL visitation rights are temporarily banned (for the duration of the restraining).

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

There are great problems with custody and especially visitation decisions in the Hungarian courts: courts not taking into account DV in custody/visitation decisions appears to be the most pressing issue at the moment. Therefore, yes, if the two coincide the problems remain. In one case eg when a parent took the child to his own custody in spite of the fact that he was under a restraining order, none of the authorities moved to get the child back to the mother. The child has been kept by the father, a court procedure of custody is still ongoing and the child is likely to be placed with the father on the basis of time passed.

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

They are not mentioned either way in any of the legal regulations therefore theoretically they are not excluded. However, they do not occur.

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

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

Yes, based on Art. 57. r) of Act 1990. XCIII. on Fees<sup>30</sup>. Criminal procedure restraining is also free of charge. However, there is a fee for so called private prosecution procedures (when the victim or his/her legal representative acts a "prosecutor"), a type of procedure pertaining to certain "lesser" crimes, and "light bodily harm" (injuries healing within 8 days) is one of them. If more than one victim press charges about the same event, the fee has to be paid for each of them.<sup>31</sup>

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

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<sup>30</sup> Act 1990. XCIII. on Fees [1990. évi XCIII. Törvény az illetékekről]

[http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99000093.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99000093.TV) accessed 29 July 2013.

<sup>31</sup> Art. 54. 1)-2) of Act 1990. XCIII. on Fees

The state.

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

Yes, in the case of private prosecution crimes, one of them being light bodily harm. This is the most common type of injury suffered by victims of DV when they already seek legal help and thus are likely to ask also for a BO, a TPRO or a PRO (even though for the latter two a criminal procedure is not a prerequisite), therefore the fee may be a serious hindrance. The amount is HUF ten thousand (appr. EUR 35, about 7% of the average net wage in Hungary).

20) Where and how are protection orders registered?

Both the BO and the PRO are registered at the Central Office of Administrative and Electronic Services<sup>32</sup> which is the body holding data on perpetrators of minor offences, crimes, and on persons charged based on well-grounded suspicion by a public prosecutor<sup>33</sup> and persons convicted or punished by a criminal coercive measure<sup>34</sup>, such as a BO for example. The police is notified if the court upholds a TPRO, and the probation officer is notified in case of a BO.

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).*

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

civil law (ROL): The ROL only sets forth specific rules for notifying the victim about the TPRO, which is the task of the police<sup>35</sup>. It is silent about informing the victim about the PRO. However, the law to be used on general

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<sup>32</sup> Art. 7 and 8 of Government order 276/2006 (XII. 3.) on the Establishment, Tasks and Scope of Authority of the Central Office of Administrative and Electronic Services [276/2006. (XII. 23.) Korm. rendelet a Közigazgatási és Elektronikus Közszolgáltatások Központi Hivatala létrehozásáról, feladatairól és hatásköréről] in Hungarian: [http://www.complex.hu/jr/gen/hjegy\\_doc.cgi?docid=A0600276.KOR](http://www.complex.hu/jr/gen/hjegy_doc.cgi?docid=A0600276.KOR) accessed 29 July 2013.

<sup>33</sup> Persons charged in a crime motionable only by a private prosecution (basically the victim), even if the prosecutor overtook the charge later, or persons charged by a substitute private prosecutor (see n 17) are not entered into the registry. This is relevant because many of the crimes typically committed against women and in IPV are either private prosecution-crimes or the charges are not upheld by the public prosecutor therefore the victim has to take over the prosecution if s/he can afford it. (Art 6 and 22 of Act XLVII of 2009.)

<sup>34</sup> Art 27 of Act XLVII of 2009.

<sup>35</sup> ROL, Art. 9. (1)

procedural issues pertaining to the ROL is Act CXL of 2004 on the General Rules of Administrative Procedure, which prescribes notification of the client (in this case the victim) or his/her legal representative<sup>36</sup>.

criminal procedural law (BO): In the criminal procedure BO, the court has to send the decision to the victim.<sup>37</sup>

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

The CCP mentions "send" which normally means registered letter.

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

In ROL: the police, in BO based on the CCP the prosecutor (Art. 28. (6)). If there is a probation officer, the prosecutor may delegate the task to him/her (Art. 225.).

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

Any that they have the capacity and/or the technical conditions for. As no GPS or other technical surveillance system is available in Hungary for this, that leaves personal surveillance methods: house visit, requesting the perpetrator to check in with the police or the probation officer, etc.

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

Usually none. The victim usually complains, and some police stations enforce the possible measures which can either be a fee or detention. (In case of BO in a criminal procedure this is based on CCP Art. 139. (2) which stipulates that violation of the order can be punished by pre-trial detention or, 'if that is not necessary', by a procedural fee.; In case of the civil-law protection order, the violation of the TPRO and the PRO can be punished under Act II. of 2012 on Minor Offences, on the Procedure and the Registry of Minor Offences<sup>38</sup> which defines the violation as a minor offence punishable by detention, and it also stipulates that detention for minor offence may be replaced by a fee, and sets the minimum and maximum length of the detention and the minimum and maximum amount of the fee).

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

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

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<sup>36</sup> Articles 29, 40 and 48 on the starting of the procedure, the notification of the legal representative and the decision, respectively

<sup>37</sup> Art. 138/A. (5) of Act XIX. of 1998

<sup>38</sup> The relevant sections are: Art. 168. makes violation of the TPRO and PRO a minor offence, while the placement of the offence in the Code under Chapter XXIII: Minor Offences Punishable by Detention makes the specific offence punishable by detention; Art. 9. (2) defines that the detention may last between 1 to 60 days, Art. 11 defines that the fee may be between HUF 5000 to 300 000.

It is generally left to the victim.

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?

See above.

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

Theoretically no. However, in the BO, if the violation on the part of the restrained person is intentional and if s/he can give a “well-founded reason” for breaching the BO the violation can be excused (and thus is not punished) (Art. 139. (2)). Thus, it depends on the judge if s/he considers an invitation by the victim, for example, a well-founded reason.

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

No data could be obtained on this in the timeframe for the study. (As courts do not collect data on such details of the procedures, and the online anonymous collection of decisions has several flows, research would mean physically collecting and analyzing the texts of decisions on paper in each of the courts, provided permission for research is granted individually by each court's President upon written request. Even so, the few researches reveal that court decisions in this field are vague and most of them lack details to ascertain these questions.)

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 this question could be obtained.

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

The laws do not mention any specifically. Therefore it is up to the police and the judge.

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

No special procedure is set forth. As the violation of the BO is regulated in the CCP itself, and the violation of the ROL (TPRO and PRO) is regulated in the Act on Minor Offences, the respective general procedures apply. Practice has not come up with specific procedural hindrances. The problem seems to be the lack of the very attempt at enforcing at all.

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

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

For the formal sanctions see 26 below.

No informal reactions are set forth. As the police often issue warnings in cases of DV instead of strating a procedure, it can be hypothesised that such warnings may be issued upon violation of a protection order as

well. However, no data has been collected to check this. Anecdotal evidence from the women's legal-aid program and the helpline suggests that this may be the practice of some police stations.

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

No reliable data exists on this question.

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

In my opinion, fee as a method to punish the violation of the PO<sup>39</sup> is not an effective method in Hungary, they, as possible sanctions, should be removed from the law. Detention could be made effective, if it were enforced systematically in a reliable way with two conditions: a) in the case of the BO the possibility for excuse should be removed and b) in the case of both the BO and TPRO/PRO the possible length of the the restraining order should be raised from 60 and 30 days, respectively, to the length of time justified by the case – possibly up to any indeterminate period the stalking, harassing, or any legal procedure between the parties is going on.

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

Not to our knowledge.

27) 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?

Violation of the restraining orders in the ROL (TPRO and PRO) is a minor offence punishable by custody or a fine. (Art. 168. of Act II. of 2012 on Minor offences, on the Procedure and the Registry of Minor Offences). Violation of the BO is regulated in the CCP itself and is punishable by pre-trial detention or a fine (Art. 139. (2)).<sup>40</sup>

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

BO-violation can be punished by pre-trial detention, if the breach was intentional and the perpetrator can not provide a well-founded reason for it. Pre-trial detention can go up to years, based on the court's decisions at given intervals (CCP, Art. 131-132). Detention based on the Act on Minor Offences can last from one to sixty

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<sup>39</sup> As mentioned earlier, one of two possible consequences for the violation of both types of protection order is a fee.

<sup>40</sup> It should be noted that at the same time the Act on Minor Offences was modified to include violation of the ROL restraining order, the abuse of requesting a restraining order was also inserted as a sui generis minor offence to the Act. Police have been known to call the attention of victims to this fact. (Art. 181 of Act II of 2012 on Minor Offences: 'Unfounded Initiation of a PRO')

days. Monetary penalties may range from HUF 5000 to 300 000 for the civil law restraining order (Art. 11 of the Act on Minor Offences) and from HUF 1000 to 200 000, in specifically severe or recurrent cases 500 000 (CCP, Art. 161 (1)), for the criminal procedure restraining order.

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

There is not enough information available in a verifiable form to ascertain this.

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

The victim can always call the police. Police reaction is likely to be different from station to station.

28) 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?

As the breach of the civil law restraining order is a minor offence, the Act on Minor Offences (Act II. of 2012) sets forth the rules: the police can act by taking the perpetrator to detention for up to 72 hours, within which the court has to decide about holding up the so called custody for minor offence. In case of an appeal, this custody can last another 10 days. (Art. 73) . All other (longer) custodies (contained in this law for the civil law restraining, and in the CCP for the criminal procedural law restraining) are decided upon by the court.

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

They have to report to the court if they want to hold the perpetrator longer than 72 hours.

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

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

No.

### 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.*

30) 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 restraining (this became available in 2009): According to police records, the number of TPROs were:



in 2010: 1,463<sup>41</sup>

in 2011: 1,463<sup>42</sup>

in 2012: 1,423<sup>43</sup>

Court records are inconclusive, as the courts only collect data from a court-administrative point of view. Thus, yearly data only contains how many cases arrived, how many were finished, and how many were still in progress in a given period; no conclusion can be reached as to the contents and the results of the decision. Thus, the data for 2010-2012 are<sup>44</sup>:

Year	Cases arrived	Cases closed	Cases pending at the end of the year
2010	TPRO: 448	TPRO: 447	TPRO: 6
	PRO: 1901	PRO: 1907	PRO: 23
2011	TPRO: 272	TPRO: 275	TPRO: 3
	PRO: 2078	PRO: 2070	PRO: 31
2012	TPRO: 251	TPRO: 251	TPRO: 3

<sup>41</sup> Hungary, National Police Headquarters General Directorate of Criminal Affairs, Department of Criminal Affairs, Crime Prevention and Victims Protection Unit (2011) Report on the implementation of police tasks in relation to temporary preventive restraining orders applicable in cases of violence between relatives, for the period between 1 January 2010 and 31 December 2010, April 2011, No. 8728/20/2011 Gen. Annex 1 (*Országos Rendőr-főkapitányság Bűnügyi Főigazgatóság Bűnügyi Főosztály Bűnmegelőzési és Áldozatvédelmi Osztály. Jelentés a hozzátartozók közötti erőszak miatt alkalmazható ideiglenes megelőző távoltartás rendőrségi feladatainak végrehajtásáról 2010. január 01-től 2010 december 31-ig*).

<sup>42</sup> Hungary, National Police Headquarters General Directorate of Criminal Affairs, Department of Criminal Affairs, Crime Prevention and Victims Protection Unit (2012) Report on the implementation of police tasks in relation to temporary preventive restraining orders applicable in cases of violence between relatives, for the period between 1 January 2011 and 31 December 2011, May 2012, No. 12194/ /2012 Gen. Annex 1 (*Országos Rendőr-főkapitányság Bűnügyi Főigazgatóság Bűnügyi Főosztály Bűnmegelőzési és Áldozatvédelmi Osztály. Jelentés a hozzátartozók közötti erőszak miatt alkalmazható ideiglenes megelőző távoltartás rendőrségi feladatainak végrehajtásáról 2011. január 01-től 2011 december 31-ig*).

<sup>43</sup> Hungary, National Police Headquarters General Directorate of Criminal Affairs, Department of Criminal Affairs, Crime Prevention and Victims Protection Unit (2013) Report on the implementation of police tasks in relation to temporary preventive restraining orders applicable in cases of violence between relatives, for the period between 1 January 2012 and 31 December 2012, April 2013, No. 29000/14377- /2013 Gen. Annex 1. (*Országos Rendőr-főkapitányság Bűnügyi Főigazgatóság Bűnügyi Főosztály Bűnmegelőzési és Áldozatvédelmi Osztály. Jelentés a hozzátartozók közötti erőszak miatt alkalmazható ideiglenes megelőző távoltartás rendőrségi feladatainak végrehajtásáról 2012. január 01-től 2012 december 31-ig*).

<sup>44</sup> Source: Motion No 30.022-21/2013.OBH of the President of the National Office of the Judiciary for the modification of Act LXXII on restraining orders applicable in cases of violence among relatives, May 9, 2013 [30.022-21/2013.OBH Az Országos Bírósági Hivatal elnökének előterjesztése a Hozzátartozók közötti erőszak miatt alkalmazható távoltartásról szóló 2009. évi LXXII. törvény módosítására. 2013. május 9. [http://www.birosag.hu/sites/default/files/tavoltartas\\_jogalkotasi\\_javaslat\\_2009\\_evi\\_lxxii\\_tv.pdf](http://www.birosag.hu/sites/default/files/tavoltartas_jogalkotasi_javaslat_2009_evi_lxxii_tv.pdf) accessed 29 July 2013.

	PRO: 2166	PRO: 2150	PRO: 47
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The National Office of the Judiciary document notes that the number of temporary preventive restraining orders issued by the police declined, while the number of preventive restraining orders issued by courts increased in the period studied. However, the above table does not give an indication of the outcome of the cases.

Criminal procedural restraining (this became available in 2006): Court records about the CCP BO are not conclusive, as the courts only collect data from a court-administrative point of view. Thus, yearly data only contains how many cases arrived, how many were finished, and how many were still in progress in a given period; no conclusion can be reached as to the results of the decision. Even these data are not published in a simple accessible form. A review<sup>45</sup> in 2010 of cases between 2007-2009 the found the following:

Year	Total number of court decisions	Granting BO with motion of the prosecutor	Granting BO requested by other than prosecutor (e.g. the victim)	Total No. of requests granted	No. of denying BO with motion of the prosecutor	No. of denying BO started upon request other than the prosecutor	Total number of denying requests
2007	114	49	28	77	8	27	35
2008	157	66	45	111	5	41	46
2009	243	101	7	108	63	68	131

The above data confirms the findings of dr. Magdolna Kapossyné Czene<sup>46</sup>: when the prosecutor supports the case, courts tend to be more willing to grant the CCP BO. However, the data for 2009 is alarming: the courts declined far more requests than they granted.

This alarming trend is confirmed by Geréby<sup>47</sup> who, evaluating 112 court PRO decisions finds that 61% of these were referred to the court by the police (ie a TPRO was previously issued by the police) and 39% were directly requested by the victim from the court. Out of the police-referred cases, the court upheld the restraining by issuing a PRO in 63%, out of the victim-initiated cases in only 20%. While the percentage of cases declined is

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<sup>45</sup> Ágnes Galajda, Presentation at Human Rights Conference, Ministry of Foreign Affairs, November 10, 2010.

<sup>46</sup> Kapossyné (n 18).

<sup>47</sup> Geréby (n 28).

very high in both forms, it is clear that the court found victims' requests much less credible without the backing up of the authority of the police.

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

No data on this can be obtained.

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

Not relevant, as all of them contain the same type of restrictions, and they can not be combined.

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

Again, no overall research is available on this. Cases from the women's legal aid, the helpline and studies investigating selections (a given court, or a given region) imply that restraining orders are issued mostly in cases of more serious crimes – when at all. Such crimes are: grave bodily harm (eg breaking a bone) or an attempt thereof, more serious sexual crimes (eg rape), and violation of private property. According to one study<sup>48</sup>, in cases when TPRO was issued, a crime was invariably committed. 'Most often it was light or grave bodily harm, an attempt of the latter, or violation of private property. Investigation interviews revealed that these event were recurrent also before the issuing of the TPRO in question.' Women's rights organizations recurrently call attention to the fact that the legal institution of restraining orders was not set in place for law enforcement to avoid taking the perpetrator to custody, but the trend seems to be exactly that. Even in cases where legal conditions for custody are clearly met, authorities often utilize restraining instead. The wording (the very name) of ROL makes it clear that the commission or the well-founded suspicion of commission of a crime is not necessary for the TPRO to be handed down. This is not reflected in practice.

33) Is there any (empirical) information available on specific victim and offender characteristics?

- a. Are protection orders generally imposed against male offenders on behalf of female victims?
- b. Which percentage of the restrainees already had a prior police record?
- c. Which percentage of the restrainees already had a previous protection order imposed against him/her?

No data on these questions could be obtained. It is apparent that men are handed down restraining orders more often than women. The same study mentioned above<sup>49</sup> which analyzed the crimes committed, apparently drawing on the "provability" aspect as a basis for issuing a restraining order, confirms this, although reiterating a stereotype as an explanation: 'Data confirms without doubt what professionals have been writing for many years: that perpetrators of DV events that *became visible* are characteristically men. This can be explained by the fact that while women solve their conflict mostly by psychological violence, men solve them by physical act, and showing their physical strength.'

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<sup>48</sup> János Bíró (Budapest Police Headquarters), 'Investigating domestic violence, especially investigating at the site' ['A családon belüli erőszak bűncselekményének vizsgálata, kiemelt figyelemmel a helyszíni szemle tartására'] (2011) *Periodika* XII. Kötet 133, 141 <http://pecshor.hu/periodika/tizenketto.htm>; <http://pecshor.hu/periodika/XII/biroj.pdf> accessed 5 August 2013).

<sup>49</sup> n 42 145, italics added



#### 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.*

- 34) 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)?

No study have been conducted on any of these questions.

- 35) Is there any empirical information available on factors which significantly influence the effectiveness of protection orders, either in a positive or a negative way?

No study have been conducted on any of these questions.

- 36) 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?

No study have been conducted on any of these questions.

#### 2.2.5. IMPEDIMENTS TO PROTECTION ORDER LEGISLATION, ENFORCEMENT AND EFFECTIVENESS

- 37) Which impediments are present in your country when it comes to:
- a. Problems with protection order legislation

Civil law restraining order, main problems:

- both TPRO and PRO are very short and neither can be extended
- it leaves some typical groups of victims unprotected (it excludes former common law spouses, current and former intimate partners not living in together and partners of ex-partners of batterers; all typical targets of IPV)
- it excludes minors and persons with limited capability from the circle of perpetrators<sup>50</sup>
- does not provide clear guidelines as to the exact content and parameters of the restraining (leaving to the judge the definition of "direct or indirect contact")

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<sup>50</sup> Geréby (n 28).

- does not require the authorities to check for, and confiscate weapons in possession of the perpetrator
- it provides for mediation between the parties prescribable by the 'family protection coordination body'
- the law keeps referring to violence as 'conflict between the parties'.

Criminal procedural restraining order, main problems:

- a criminal procedure has to be in process
- basically only the victim or the prosecutor can request it
- it is very short and not extendable
- procedural problems making implementation difficult, speedy implementation impossible, abound (notification rules, accusation of perpetrator as a condition, etc), resulting in an average of almost a month for reaching a decision<sup>51</sup>
- does not require the authorities to check for, and confiscate weapons in possession of the perpetrator
- relies on the person originally motioning (the victim or the prosecutor) when deciding on modifying or lifting the restraining (i.e. asks the victim's opinion in a situation where the victim's being in danger is well known)
- does not provide clear guidelines as to the exact content and parameters of the restraining (leaving to the judge the definition of "direct or indirect contact")
- gives the perpetrator the opportunity to excuse his/her breach of the order
- if the crime based on which the victim requests the restraining order is a private-motion crime, and there was no private-motion (i.e. there will be no criminal case) it can not be granted
- does not exclude custody and visitation rights for persons under the barring order.

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

- the police do not get universal, obligatory and recurrent training on how to apply the law, police often simply are not familiar with the ROL, therefore set arbitrary restrictions on the law itself (usually based on their better familiarity with the criminal procedural BO where they only have to know that they can not issue it, and have not many tasks related to it)
- judges do not get universal, obligatory and recurrent training on how to recognize and respond to IPV
- police station chiefs have discretion over who they authorize to issue restraining orders – if the patrolling officer getting to the site does not have such authorization, granting restraining will be delayed
- police often still do not believe they have a right to impose a restraining order if they can not establish that a crime was committed
- courts are reluctant to grant restraining orders (even more than the police)
- BO has procedural rules that impede a speedy decision
- police tend to use restraining in cases where taking the perpetrator to custody should be the procedure because of the gravity of the crime (this is likely the result of pressure from higher up in the law enforcement and the judiciary steps, as prosecutors are not very eager charging DV perpetrators and courts are not very eager to keep them in pre-trial detention; thus, there appears to be a chain of prejudications originating from the top).

#### c. Problems with protection order monitoring

- no monitoring procedure is in place
- no generally accessible record on restrained persons is available

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<sup>51</sup> Kapossyné (n 18).

d. Problems with protection order enforcement

- no clear enforcement rules are in place

e. Problems with protection order effectiveness

Based on the above, the effectiveness of the BO is highly questionable, the effectiveness of the orders regulated in the ROL is mostly low because of its length, and the lack of enforcement and monitoring measures.

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

The lack of political will to make it work and the lack of a massive public pressure to hold authorities accountable.

2.2.6. PROMISING/ GOOD PRACTICES

39) Which factors facilitate the:

a. Imposition

- legal aid to victims
- monitoring by civil organizations
- training to police and courts
- women's rights NGO cooperation with police and courts
- amendments to the laws

b. monitoring, and

- amendments to the laws
- legal aid to victims
- training to the police
- women's rights NGO cooperation with the victim and the police
- monitoring devices would also facilitate it

c. enforcement of protection orders?

- training to public bodies involved
- monitoring by NGOs and victims
- changes to the laws would also facilitate it

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

Presently the following:

- when the police officer or the judge assigned to the case are well-intentioned
- when a women's rights NGO is involved
- when the victim collects evidence and is pro-active in pressing her case

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

Nothing in the practice. The only promising sign is that in every profession related to the issue the conclusion has been reached and started to be voiced that the laws should be amended. Interest in training courses on the part of the police or courts also constitute promising practice, but this is rare and random. The training offered to police officers by the police is less rare, but it is not deep and is full of contradictory messages – it can hardly be said to be based on a human rights approach.

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

All of the shortcomings – from legislation to implementation to monitoring to training – mentioned above should be remedied. Women's rights NGOs have recurrently handed in proposals with concrete detailed and comprehensive recommendations to legislators<sup>52</sup> and to practitioners<sup>53</sup> over the past 10 years.

### 2.2.7. FUTURE DEVELOPMENTS

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

Not presently.

44) 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?

No bills are proposed currently, and it is not expected in the near future. (Hungary just passed an amendment to the Criminal Code regulating DV as a sui generis crime. It came into effect on July 1, 2013; it is not likely they want to touch the issue again soon.)

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<sup>52</sup> See for example 'Model legislation for the restraining order' in Judit Wirth (ed), *System Failure: Abused Women Trapped in the Legal System* (2009) NANE-PATENT 147 <http://nokjoga.hu/sites/default/files/filefield/2008-nane-patent-tavoltarto-javaslat-melleklettel-szept-vegleges.pdf> accessed 15 July 2013.

<sup>53</sup> These were published in the form of protocols and training manuals and are freely available though the Internet.



b. If so, what will change?

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

Not with protection orders per se. A mobile alarm gadget provided to high risk victims is being piloted in cooperation with the Budapest Police headquarters, with 3 Budapest districts participating. Some of the cases in this pilot program involve restraining orders, but the existence of a restraining order is not a condition for the victim to get into the program.

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

It would depend on whether pressure can be exerted on legislators and/or the police/courts by NGOs. At the moment plans have not been made for a campaign.

46) 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?

It is still early to predict the problems (as the transposition date is January 11, 2015). However, the following may clearly pose a danger of rendering the EPO ineffective in Hungary:

- The rule that allows for discontinuation in case the EPO issued is longer than the maximum length of protection in the executing state will reduce efficiency if the current Hungarian rules (with a maximum of 60 days in case of the BO and a maximum of 30 days in case of the PRO) remain in place.
- The enforcement of even local protection orders is problematic. If the competent authority to carry out and monitor the EPO will be the police, the current enforcement and monitoring measures will clearly have to be strengthened.
- Hungary usually delays the transposition of directives to the last moment and beyond; and usually does not pre-prepare transposition with measures necessary for effective implementation.
- In general I see a possibility of clash between the EPO and child custody and visitation rights procedures based on the Hague Convention. Practice will show to what extent these two will be contradictory, and which of them will prevail.

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Improvements since 2005, the year the CEDAW Committee found against Hungary in the A.T. v. Hungary case

On a legislative level, several changes occurred since 2005: the amendment to the Code of Criminal Procedure to include the barring order took place in 2006, the law on the two versions of civil law protection orders (TPRO and PRO) was passed in 2009, an amendment on stalking to the Criminal Code was introduced in 1 January, 2008, the specific crime on 'Relationship Violence' was introduced into the new Criminal Code which took effect in 1 July, 2013. In my opinion none of these measures are sufficient, as they all display a lack of genuine commitment in the part of the legislator to create effective laws (apparent from gaps and errors that have all been predicted by women's rights NGOs to cause problems in implementation, or exclude important groups of

victims, or exclude important types of violence – all of which predictions were later validated by practice yet did not lead to modifications of the bills, or a speedy modifications of the passed laws), and none were a direct result of the A.T. Vs Hungary case. (The victim in that case has never received any compensation or any form of state support before, during, or after the CEDAW procedure.) However, the general and specific comments of the CEDAW Committee on the Hungarian Country reports in this period did have an effect, as also the intensive waves of lobbying efforts on the part of civil society and specifically women's right NGOs, and any wave of international (especially EU, but also CoE) attention to domestic violence. I consider these measures as improvements in the sense of first steps.

Other measures, such as for example training for law-enforcement or the judiciary, or broadening of services for victims, or financial support for NGOs providing services for victims (especially women's rights NGOs) has either stagnated or declined.

## GLOSSARY

### 1. General Legal Terminology:<sup>54</sup>

#### **Crime**

An act usually deemed socially harmful or dangerous and specifically defined, prohibited, and punishable under criminal law.

#### **Instantaneous crime**

An “instantaneous” crime is one which is fully consummated or completed in and by a single act (such as arson or murder) as distinguished from one which involves a series or repetition of acts.

#### **Continuous crime**

A “continuous crime”, or a “course of conduct crime”, is a crime consisting of a continuous series of acts, which endures after the period of consummation

#### **Civil law**

Law that applies to private rights especially as opposed to the law that applies to criminal matters. Protection orders that are imposed as part of civil proceedings are referred to in this study as ‘civil protection orders’.

#### **Criminal law**

Branch of public law that deals with crimes and their prosecution. **Substantive criminal law defines crimes, and procedural criminal law sets down criminal procedure. In criminal law the protection order is a public matter. A criminal protection order can be imposed by a judge or prosecutor.**

#### **Administrative law**

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

#### **Case law**

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

#### **Substantive Law**

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

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<sup>54</sup> Merriam-Webster's Dictionary of Law ©1996. Merriam-Webster, Incorporated. Published under license with Merriam-Webster, Incorporated.

## **Procedural Law**

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

## **Pre-trial detention or remand**

The detaining of a suspect in a criminal case before the trial has taken place. Since pre-trial detention occurs while the suspect is still presumed innocent, it is often seen in most jurisdictions an exceptional measure. It serves two main purposes: to protect the public and or the victim's safety (prevent the perpetration of further crimes or violent situations) or to protect the conduct of the proceedings (prevent the suspect from fleeing or compromising evidence). The pre-trial detention can be prolonged by a judge.

## **Adult person**

An individual who is above the age fixed by law at which he or she would be charged as an adult for a criminal act and to whom no special rules apply in relation to the criminal proceedings.

## **Report**

Detailed account or statement of facts, potentially constitutive of a charge of misconduct against someone, made normally before the police or other social services such as health centres, hospitals, courts, etc.

## **Legal provisions**

Legal provisions are sections/articles within (codes of) criminal, administrative, civil, or other law that can form the basis of a protection order. Take, for instance, the 'no contact' order as a condition to a conditional release from prison. In this example, the 'no contact' order is the protection order, whereas the conditional release from prison is the legal provision upon which the protection order is based.

## **Formal complaint**

It refers to the initial pleading that starts a lawsuit and that sets forth the allegations made against the defendant. It can proceed from a victim, police officer or other person, yet it sets forth a criminal violation and serves as the charging instrument by which charges are filed and judicial proceedings commenced against a defendant in a court.

## **Complainant**

It refers to the party (as a plaintiff or petitioner) who makes the complaint in a legal action or proceeding.

## **Victim**

A natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, directly caused by acts or omissions that are in violation of the criminal law of a state.<sup>55</sup>

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<sup>55</sup> EU Council framework decision, 15 march 2001. (2001/220/JHA)

**Decision**

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

**Legal representation/counsel**

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

**Legal aid/advice**

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

**Probation**

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

**Sanction**

Punitive or coercive measure or action that results from failure to comply with a law, rule, or order. The sanction of a crime refers to the actual punishment, usually expressed as a fine or jail term.

**Notification**

Notification refers to the communication of a fact, claim, demand, proceeding, or verdict. The requirements of when, how, and what notice must be given to a person are often prescribed by a statute, rule, or contract. The notice can, for instance, be published in a public medium (as a newspaper) or it can be serviced on the defendant/suspect in person.

*2. Forms of violence***Intimate partner violence (IPV)**

Intimate partner violence refers to physical, sexual, psychological, and economic violence or threats against a person by a current or former intimate partner, irrespective of the sex of the partner. It can take place regardless of whether there is, or has been, a shared residence.

## **Domestic violence<sup>56</sup>**

Violence occurring in the family or domestic unit, including, *inter alia*, physical and mental aggression, emotional and psychological abuse, rape and sexual abuse, incest, rape between spouses, regular or occasional partners and cohabitants.

## **Stalking<sup>57</sup>**

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

## **Rape/sexual assault**

Sexual assault is in this study defined as any sexual act committed against non-consenting persons<sup>58</sup>, even if they do not show signs of resistance. Rape is considered one form of sexual assault consisting of the sexual penetration with any means, by one person of another person's body without the consent of that other person.

### *3. Terms related to the protection order*

#### **Types/nature of protection orders**

Protection orders refer, in the context of this research, to those orders specifically issued for the protection of a particular party from violence and to prevent violence from (re-)occurring. The type/nature of the order refers to the different measures that can be included in order. These measures could require, for example, the eviction of the aggressor from the home, the prohibition to return, the prohibition to approach or contact the victim, etc. or a combination of these measures.

#### **Injunction**

A remedy in the form of a court order compelling a party to do or refrain from doing a specified act. An injunction is available as a remedy for harm for which there is no adequate remedy at law. Thus it is used to prevent a future harmful action rather than to compensate for an injury that has already occurred, or to provide relief from harm for which an award of monetary damages is not a satisfactory solution or for which a monetary value is impossible to calculate. A defendant who violates an injunction is normally subject to penalty for contempt.

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<sup>56</sup> Rec. (2002)5. (VAW) (Committee of Ministers).

<sup>57</sup> C. Hageman-White, L. Kelly, & R. Römkens (Eds.), *Feasibility study to assess the possibilities, opportunities and needs to standardise national legislation on violence against women, violence against children and sexual orientation violence* (pp. 127-152). Luxembourg: European Commission.

<sup>58</sup> Council of Europe Convention on preventing and combating violence against women and domestic violence, art. 36 b.

**Restraining order**

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

**Barring order**

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

**Police go order**

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

**(The) scope**

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

**Radius**

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

**Practical impediments**

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

**Pro-active supervision**

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