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

NATIONAL REPORT LUXEMBOURG

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2. NATIONAL REPORTS: CONTENT AND STRUCTURE

2.1. INTRODUCTION

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

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

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

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

2.2. OVERVIEW OF THE STRUCTURE OF THE NATIONAL REPORTS

2.2.1. IMPOSITION OF PROTECTION ORDERS

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

1 a: In Luxembourg, protection orders are regulated in civil and criminal law.

1 b: Protection orders are regulated in generic laws, i.e. in the Criminal Code (Article 409) and in the New Code of Civil Procedure (Articles 1017-1 to 1017-14), and in one specific law of 8 September 2003 on domestic violence, amended by the Law of 30 July 2013, which provides for a particular type of protection order hereafter called “short term barring order”.

1 c: All these laws can be found on the internet, but only in French.¹

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

a. Civil protection orders can only be imposed through proceedings before the President of the District Court (“*Président du tribunal d’arrondissement*”) (Articles 1017-7 and 1017-8 of the New Code of Civil Procedure).

Short term barring orders as regulated by the amended law of 8 September 2003 on domestic violence can only be issued by the Police with the authorization of the Public Prosecution Service if domestic violence have been committed or is about to be committed.

Criminal Protection orders can only be issued in the context of a trial for assault and battery against a person with whom the defendant is living.

b. When it comes to criminal law, protection orders can only be imposed as an additional prohibition which completes the punishment for assault and battery (Article 439 of the Criminal code). Criminal protection orders cannot be imposed as precautionary measures.

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)?

Under civil law, a distinction should be made between general civil law and the so-called administrative police measures provided by the New Code of Civil Procedure. In general civil law, according to the articles 1017-7 and 1017-8 of the New Code of Civil Procedure, only the person with whom the offender lives or have lived can apply for a civil protection order.

¹ Criminal code: http://www.legilux.public.lu/leg/textescoordonnes/codes/code_penal/cp_L2T08.pdf ;

New Code of Civil Procedure:

http://www.legilux.public.lu/leg/textescoordonnes/codes/nouveau_code_procedure_civile/P2_L1_proc_div.pdf

Law of 8 September 2003 on domestic violence:

<http://www.legilux.public.lu/leg/a/archives/2003/0148/a148.pdf>

Law of 30 July 2013 amending the Law of 8 September 2003 on domestic violence:

<http://www.legilux.public.lu/leg/a/archives/2013/0150/a150.pdf>

Concerning the short term barring orders, According to the amended Law of 8 September 2003, the police evicts from the home, with permission of the public prosecution service, the persons against whom there are reasons for supposing that they have committed or that they are about to commit or to commit again against a person with whom he/she is living in a familiar environment, offences against life or physical integrity. In other words, the victims cannot officially apply for a protection order, but they always can alert the police and express their wish that a protection order should be issued, what would generally be at the origin of such protection order.

Only the victims who have already benefited from a protection order on the basis of the amended Law of 3 September 2003 on domestic violence may request the prolongation of the barring order to the civil judge.

Under criminal law, only the Public Prosecution Service can officially request the Court to impose a protection order. Indeed, the victims cannot officially apply for a criminal protection order, but they can express their wish to get one.

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

In civil law, the claimant is the only person involved in applying for a protection order. The civil judge will decide whether or not a protection order should be issued. The defendant can appeal the decision.

Concerning the short term barring orders provided by the specific law on domestic violence, only the police and the public prosecution service are involved in issuing such order, but victims can also call the police and express their wish to get this order.

In criminal law, the Public Prosecution Service can decide to apply or not for a criminal protection order before the criminal Court which will decide on the imposition or not of such order.

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

Civil protection orders should in theory not be issued on an *ex parte* basis. However, civil protection orders can be issued without hearing the offender when he fails to appear before the Court.

The same applies to protection orders under general criminal law.

It should be noted that until 31 August 2013, in accordance with the Law of 8 September 2003 on domestic violence, short term barring orders could be issued without hearing the offender, on the only basis of the existence of indicators of current or future violence and the alleged offender did not have the possibility to lodge an appeal against such decision. We should note that, since the amending Law of 31 July 2013 entered into force on 1st September 2013, even if the short term barring order always may be issued in a first time on an *ex parte basis*, the alleged offender has now the possibility to lodge an appeal against the eviction measure, which appear to be more satisfying regarding the requirements of rights of the defence. However, such appeal shall not have suspensory effect.

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

In Luxembourg, protection orders are only available for certain types of victims and crimes. Indeed, the protection orders are restricted to situations in which violence has occurred or may occur against a person with whom the offender is cohabitating or have cohabited in a family environment ("*dans un cadre familial*") and to situations in which a person is victim of trafficking in human beings.

Protection orders are available both for female victims as for male victims.

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 protection orders under Articles 1017-7 and 1017-8 of the New Code of Civil Procedure can be issued independent from other legal proceedings.

Short term barring orders as provided by the specific law on domestic violence can, they too, be issued independent from other legal proceedings. Their prolongation according to Article 1017-1 of the New Code of Civil Procedure, i.e. protection orders under administrative police measures, can also be issued independent from other future legal proceedings, but they must always be preceded by a short term barring order issued by the Police.

Criminal protection orders under article 409 of the Criminal Code can only be issued in the context of criminal justice proceedings for assault and battery. It may be observed that no criminal protection orders can be issued for example in the context of stalking because in Luxembourg there is no general procedure allowing victims to apply for or to issue a criminal protection order.

It may be noted that all protection orders can be issued independent from divorce proceedings.

5) a. What procedures have to be followed in order to obtain a protection order? (please explain the different steps that need to be taken)

The proceedings to follow in order to obtain a protection order must be initiated by the victim, filing an application before the President of the District Court ("*Président du Tribunal d'arrondissement*"). The President of the District Court must then issue his decision within a period of one month from the date of application.

The procedure for issuing a short term order is explained above (see question 3a).

When it comes to the extension of a short term barring order like provided for in the Articles 1017-1 et seq. of the New Code of Civil Procedure, the victim has to file an application before the President of the District Court ("*Président du Tribunal d'arrondissement*") within fourteen days of the date of the initial short term barring order issued by the Police.

When it comes to criminal protection orders, it is generally the Public Prosecution Service which requests the criminal Court to impose a protection order during the criminal trial.

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

When it comes to civil protection orders, according to Article 1017-9 of the New Code of Civil Procedure, a decision have to be issued within a period of one month from the date of the victim's application.

Short term barring orders issued by the police under the specific law on domestic violence have the shortest processing time. Indeed, the eviction of the aggressor from the home as well as the protection order will be

issued with the authorization of the Public Prosecution Service shortly after the arrival of the police at the scene of domestic violence.

Criminal protection orders are generally issued after six months to one year after the beginning of the criminal proceedings.

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?

Usually, civil protection orders protection orders are issued with immediate effect.

Criminal protection orders take effect only after the expiry of the period within which an appeal can be lodged.

Short term barring orders also have immediate effect, but the offender can appeal the decision according to Article 1 of the amended Law of 8 September 2003, so that the order can be subsequently revoked.

d. Is there a regulation for interim protection that can be given immediately upon request or very quickly? For how long? What steps have to be taken in order to finalize the protection after the interim order?

The short term barring orders as provided for in the amended Law of 8 September 2003 can be imposed immediately by the Police, on the basis of the authorization of the Public Prosecution Service. They last 14 days.

The prolongation of the aforementioned short term barring orders can also be issued very quickly upon request to the President of the District Court. Indeed, according to Article 1017-2 of the New Code of Civil Procedure, the victim can apply for such prolongation until the fourteenth day following the entry into force of the short term barring order. However, it is important to note that if the victim does so, the effect of the short term barring order is not extended until the President of the District Court has rendered a decision on the prolongation (Article 1017-2 of the amended Law of 8 September 2003).

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?

For civil protection orders like provided for in Article 1017-7 and 1017-8 of the New Code of Civil Procedure, it is necessary that the defendant has assaulted the victim, or that there is a real threat of future assault.

Short term orders can only be imposed on persons who live with the victim in a familiar environment, against whom there are reason for supposing that they have committed or that they are about to commit or to commit again, offences against life or physical integrity.

Criminal protection orders under Article 409 of the Criminal Code require the existence of assault and battery against a person with whom the offender is living.

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

Legal representation of the victim in the context of protection orders in civil or criminal matters is permitted by the law but not required by law. Indeed, the law foresees that victims can appear and be heard in person or by counsel.

In civil matters, victims can also choose to be represented by non-lawyers, like listed in the New Code of Civil Procedure. It is important to note that in cases of trafficking of human beings, the list of non-lawyers who may represent the victims is more restrictive.

c. Is free legal representation/advice available?

Applicants with few financial resources can apply for legal aid ("*assistance judiciaire*") according to the Luxembourg Regulation about legal aid.² The legal representation/advice will in such case be free for the victim concerned. However, the Regulation about legal aid provides a number of conditions to be met in order to benefit from the legal aid, such as lack of sufficient resources. If the conditions are not fulfilled, the victims will not benefit from this aid.

Free advices may be obtained from social services dealing with domestic violence ("*Femmes en détresse asbl*", "*Conseil National des Femmes du Luxembourg*", etc).

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)?

The Criminal Code provides that criminal protection orders can prohibit the person against whom it is issued from approaching the victim's residence, from contacting the victim and from approaching the victim within a specified distance (Article 409 of the Criminal code).

The specific amended Law of 8 September 2003 on domestic violence only provides for a home eviction and the prohibition of re-entry into the common home for fourteen days.

The administrative police measure foreseen in the Article 1017-1 of the New Code of Civil Procedure enables the civil judge to extend the ten days prohibition to three months.

Under the protection orders provided by Article 1017-7 of the New Code of Civil Procedure, the same type of protection, i.e. home eviction and prohibition of re-entry into the common home for a maximum of three months can be issued.

In the context of the protection orders foreseen in the Article 1017-8 of the New Code of Civil Procedure, they can consist of the prohibition of contacting the applicant, the prohibition of sending messages to the applicant, the prohibition of approaching the applicant, the prohibition of establishing domicile in the neighborhood of the victim, the prohibition of being in specified places, the prohibition to take specified routes, the prohibition for the offender of approaching the children shelter services, the childcare place, or the school of the victim.

The protection orders related to the crime of trafficking in human beings like foreseen in the Article 1017-13 of the New Code of Civil Procedure can consist of the prohibition of being in specified places, the prohibition of contacting the applicant and the prohibition of possessing or carrying firearms.

² Règlement grand-ducal modifié du 18 septembre 1955 concernant l'assistance judiciaire.

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

There are orders that have the effect of moving /barring a violent/ threatening person from the common family home, as described above.

According to the amended Law of 8 September 2003, the offender can be evicted from the common home for fourteen days. Then, the civil judge can extend the eviction to a maximum of three months.

The maximum duration period of protection orders provided for in Article 1017-7 of the New Code of Civil Procedure is also three months.

The others legal provisions do not provide for any particular duration.

During the barring period, help will in principle be provided to the victims as to the offenders in cases of a short term barring order (amended Law of 8 September 2003). More precisely, the amended law of 8 September 2003 on domestic violence foresees that the Police have to inform a domestic violence victim's service about the eviction measure. According to the Article II (1) of this Law, such services have to try actively to make contact with the victim. At the same time, according to Article II (3) of this Law, the offender have to present him/herself spontaneously within seven day after the short term barring order has been issued to such service. If he/she do not present him/herself spontaneously, the service have then to convoke him/her.

When a short term barring order is issued, the Police give to the victim as to the offender a specific information sheet containing useful contact addresses in case of a problem.

In cases of protection orders issued in the context of trafficking in human beings, help is in principle only provided to the victim (Article 1017-13 of the New Code of Civil Procedure). It should be noted that in the particular case of trafficking of human being no help or assistance is provided to the offender.

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

The most popular type of protection order imposed in practice is the short term barring order (amended Law of 8 September 2003) which consists of the eviction from the home and the prohibition to enter the home again for fourteen consecutive days, and to contact or approach the victim.

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)?

The different types of protection orders can in principle be imposed in combination with each other.

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

The combination most imposed in practice is the combination which automatically derives from short term barring orders, i.e. the eviction from the home and the prohibition to enter the home again for fourteen days and to contact or approach the victim.

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

a-b. There are no formal legal requirements for the formulation of protection orders. In practice, however, judges will determine in the decision what exactly is prohibited. For example, when a judge issues a protection order prohibiting the offender to approach the victim within a certain distance or to take certain routes, he will naturally specify the distance or the routes concerned.

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

Legal limitations to the scope of the above mentioned protection orders derive explicitly from the different laws/articles that provide for protection orders. Indeed, every article precise of what the prohibitions which may be issued can consist. Such precisions have clearly the effect to limitate the scope of the protection orders..

So,criminal protection orders may only consist of the prohibition from approaching the victim's residence, contacting the victim and approaching the victim's.

Protection orders foreseen in the Article 1017-7 of the New Code of Civil Procedure, short-term barring orders foreseen in the specific law on domestic violence, as well as their prolongation under Article 1017-1 of the New Code of Civil Procedure, are for their part restricted in their scope insofar they only apply to the family home.

Civil protection orders under Article 1017-8 of the New Code of Civil Procedure can for their part only consist of the prohibition of contacting the applicant, the prohibition of sending him/her messages, the prohibition of approaching the applicant within a specified distance, the prohibition of establishing domicile in the neighborhood of the victim, the prohibition of being in specified places, the prohibition to take specified routes, the prohibition for the offender to host or see his/her children outside a specialized establishment.

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

Legal authorities have essentially to take into account the fundamental and legitimate interests of the defendant. It is important to note here, that according to the Law of 8 September 2003 on domestic violence, the police, when issuing a short term barring order, do not have to take into account possible real or personal rights of the offender on the place of residence.

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

Like mentioned right above, legal authorities do in practice take into account the fundamental and legitimate interests of the defendant.

- 10) a. How are prohibitions to enter a certain area mostly delineated? For instance, are these areas indicated on a map or are they indicated by naming the surrounding streets? Or do legal authorities use radiuses ("person A is no longer allowed to be within 200 meters of the victim's house")?

It should be noted that in Luxembourg very few protection orders are issued when it comes to other types of orders than short term barring orders. For example in 2012 only four decisions have issued a protection order on the basis of the Articles 1017-7 and 1017-8 of the New Code of Civil Procedure. It is difficult for this reason to determine general trends.

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

The average scope of an order that prohibits someone to enter a certain area depends on the type of protection order. For example, if the protection order consists of the prohibition for the offender to establish his/her domicile in the neighborhood of the claimant (*“interdiction d’établir son domicile dans le meme quartier que la partie demanderesse”*), its scope can extend to multiple streets. If the protection order consists of the prohibition to approach the victim, its extent may be smaller.

We can note that in the opinion of the Public Prosecution Services of Luxembourg on the draft Law amending the Law of 8 September 2003 on domestic violence, it were considered that a prohibition to approach the claimant within a distance of a hundred meters would have disproportionate consequences on the freedom of movement of the offender.³

11) a. Are there any legal limitations to the duration of protection orders? Do the orders always have to be issued for a specified or a determined period? And is there a maximum or minimum duration attached to the orders?

There are legal limitations only to the duration of certain types of protection orders.

Short term barring orders expire after fourteen days (Article 1 (6) of the amended Law of 8 September 2003 on domestic violence), but they can be extended for other three months (Article 1017-1 of the New Code of Civil Procedure).

A maximum duration of three months is also attached to protection orders under Article 1017-7 of the New Code of Civil Procedure.

Even if Article 1017-8 of the New Code of Civil Procedure does not provide any maximum duration, in practice, judges will specify a duration because these orders must not conflict with the fundamental and legitimate interests of the defendant.

None of the civil or criminal protection orders have a minimum duration.

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

When deciding on the duration of a protection order, legal authorities will probably take into account all particular facts of each case, like the urgent need of a housing for the victim in the context of Article 1017-7 of the New Code of Civil Procedure, or the effectiveness of the risk of domestic violence, the seriousness of the violence and obviously the proportionality of the duration with the fundamental and legitimate interests of the defendant. There are no guidelines or protocols concerning the duration of a protection order.

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

There is no information available on the average duration of the different protection orders.

³ Projet de loi portant modification 1. de la loi du 8 septembre 2003 sur la violence domestique ; 2. de la loi du 31 mai 1999 sur la Police et l'Inspection générale de la Police ; 3. du Code pénal ; 4. du Code d'instruction criminelle ; 5. Du Nouveau Code de Procédure Civile, Avis du Parquet du Tribunal de Luxembourg du 20 avril 2012, p. 2.

It can, however, be noted that the duration of short term barring orders is fourteen days

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

Civil protection orders are the only protection orders for which the wishes of the victims are fundamental, insofar the procedure to be followed in order to obtain such orders must be initiated by the victim.

The same applies to the prolongation of short term barring orders.

When it comes to short term barring orders or to criminal protection orders, the wishes of the victims have lesser influence. Indeed, such orders can be imposed without the consent of the victims.

It is not foreseen that victims can request the cessation of protection orders. However, protection orders will automatically be deprived of effect after their duration provided by the judge's decision.

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

In cases where a protection order is not directly requested by the victims, the judge assesses the victim's need for a protection order.

- 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?

For civil protection orders, victims generally specify the type/scope/duration of protection order requested in their applications. However, judges can impose a protection order which is less restrictive or that lasts less than requested in the application.

The influence of victims has less importance when it comes to short term barring orders or criminal protection orders. Indeed, even if the victims always can express their wishes, the Public Prosecution Service or the judge are not bound by the expressed desires.

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

All decisions imposing a protection order can be challenged or appealed by the offender.

- 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?

The offenders can always influence the imposition of protection orders insofar they can defend themselves appealing such decision.

For civil protection orders, the offender can obviously express his/her wishes and make all kind of remarks and comments during the trial.

When it comes to the types of protection orders provided for in Article 1017-8, judges have to pay particular attention to the disadvantageous consequences for the offender. Indeed, this Article clearly provides that the issued orders shall not go against the fundamental and legitimate rights of the offender.

In the context of short term barring orders, the wishes of the offender are not really taken into account when the decision is issued, but he/she can appeal the decision.

For criminal protection orders, according to the criminal procedure the offender can express his/her opinion and wishes towards the order, but the public prosecution service or judges may take them into account or not.

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?

Offenders can influence the type/scope/duration of protection orders in the ways described above (see question 13) b.).

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

It seems that Luxembourg is not concerned by practical impediments to the enforcement of protection orders that could play a role in the decision to impose a protection order. It also seems that legal authorities do not refuse to impose certain protection orders because of possible enforcement difficulties.

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

In civil cases, the claimant can draw the attention of the judge to the fact that previous protection orders have already been issued, what would increase the chances of obtaining a new protection order. Previous protection orders can also be used as an argument to prove the existence of an unlawful behavior of the defendant.

When deciding on the imposition of a short term barring orders, the Public Prosecution Service usually take into account previous protection orders because they strengthen the probability of the existence of (future) violence.

For criminal protection orders, previous orders can also be taken into account insofar the judge's decisions are partly based on their personal opinion ("*intime conviction du juge*"). Previous protection orders will certainly help to convince the judges about the effectiveness of the unlawful behaviour of the defendant. They may also be taken in account for the determination of the severity of the punishment of the defendant.

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

When a civil protection order is issued in a case of domestic violence, children are not automatically included in the protection. The claimant must specifically request the order to include the children.

When it comes to short term barring orders and their prolongation, they extend in practice to the children if they are living in the family home from which the offender has been evicted.

Criminal protection orders do not automatically included children. They also have to explicitly specify that they extend to the children.

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

If the violent partner has visitation rights, the juvenile judge ("*juge de la jeunesse et des tutelles*") should be the only judge competent to organize, in practice, such visitation rights when a protection order has been issued against one of the partners.

It is important to note that the legal situation concerning this point is not very clear at the moment and that a draft Law on this matter is currently pending before the Luxembourg Parliament.

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

No information is available at the time on this matter.

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

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

a-b. Mutual protection orders could in theory be envisaged in civil law, in a context in which both parties apply for a protection order, supporting that the opposite party behaved unlawful.

Even if there is no explicit prohibition of mutual protection orders in criminal law, it is difficult to imagine such mutual protection orders are, could be issued, because in principle only one of the two parties has assaulted the other and no protection order can be issued against the victim.

The same applies to short term barring orders which can only be issued against the victim and not against the offender.

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

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

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

a-c. Protection orders are provided free of charge, whether it comes to short term barring orders or whether it comes to other types of protection orders. Representation by a lawyer is not obligatory. If the parties elect to be represented by a lawyer, a part of the lawyer's fees of the prevailing party is recoverable from his/her adversary at the Judge's discretion.

2.2.2. ENFORCEMENT OF PROTECTION ORDERS

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

19) Where and how are protection orders registered?

Civil protection orders are not registered. However, the claimant receives a copy of the decision.

Short term barring orders are registered by the Police and by the Public Prosecution service to whom a copy of the police report must be sent (Article 1 (5) of the Amended Law of 8 September 2003). Social services are also informed about all short term barring orders issued (Article 2(2) of the amended Law of 8 September 2003).

Criminal protection orders are registered by the Public Prosecution services.

- 20) a. Is the victim always informed of the imposition of a protection order and of the conditions that the offender has to comply with?
b. In what way is the victim informed? Does this happen automatically? By mail or letter?

a-b. When it comes to civil protection orders, the victim is always informed of imposition of the protection order. Indeed, like mentioned above, the victim will receive a copy of the decision issuing such order.

When the Police issues a short term barring order with the authorization of the Public Prosecution Service, the Police will immediately write an official police report ("*procès-verbal*") of which a paper copy will be given to the victim (Article 1 (5) of the amended Law of 8 September 2003 on domestic violence). In addition, the Police give the victim a specific information sheet containing significant information on the eviction measure (see annex 1).

With criminal protection orders, the victim is also informed of the imposition of the order receiving a copy of the decision.

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

No authority is responsible for monitoring the compliance with civil protection orders. Indeed, for such protection orders, it is up to the victim to contact the Police or the Public Prosecution service if he/she establishes a violation of the issued order.

Short term barring orders are monitored by the police, the Public Prosecution Service and the social services (Article 2 (2) of the amended Law of 8 September 2003).

The Public Prosecution Service is also responsible for monitoring the compliance with criminal protection orders.

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

Social services involved in the proceedings can check the compliance with protection orders when they meet the offender. Indeed, according to Article 2 (3) of the amended Law of 8 September 2003, the offender has to present him/herself to a social service dealing with perpetrators of domestic violence within seven days from the date on which a short term barring order have been issued. If the offender does not present him/herself, the social service has to convoke him/her. The social service dealing with perpetrators of domestic violence have also to make a report to the Public Prosecution Service.

The Police can eventually undertake an extra surveillance of the house of the victim. It is up to the discretion of the Police to determine when and how often such extra surveillance should take place. In practice, it will depend on the circumstances of each particular case. More precisely, if the victim expressly asks the Police to undertake such surveillance, or if the Police assess that the risk of violation of the protection order and of future violence is high, the Police will undertake an extra surveillance on a more regular basis.

It should be noted that GPS is not used in the context of protection orders in Luxembourg. Indeed, the electronic monitoring has for now only be tested on few persons in Luxembourg. The draft-law introducing a larger possibility to make use of electronic monitoring systems is actually pending before the Luxembourg Parliament.

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

In practice, the Police or the Public Prosecution Service generally only acts once the violation of a protection order have been reported by a victim.

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

Does not apply.

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

It is generally left up to victims to report violations of protection orders.

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

Monitoring authorities generally become aware of a violation of a protection order through the victim, because in practice pro-active monitoring activities as extra surveillance only represent a marginal part of the monitoring activities.

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

Contact with the offender initiated by the victim should not be considered as a breach of the protection order, because the protection order is not issued against the victim.

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

According to the Luxembourg Law, contact initiated by the victim does not play a role in establishing or proving a protection order violation. However, it would certainly have a significant effect on the punishment of the perpetrator of the violation.

c. What (if any) role does contact initiated by the victim him/herself play in the official reaction to protection order violation? Are the authorities, for instance, less inclined to impose a sanction on the offender if the victim initiated contact him/herself?

For all types of protection orders, contact initiated by the victim can play an important role in the official reaction to violation of the orders. Indeed, the attitude of the victim can be considered as a provocation of the offender which can be constitutive of mitigating circumstances. That's why depending on the particular circumstances in which the contact initiated by the victim happen, the authorities may be less inclined to impose a sanction on the offender, or the sanction can be of lesser importance.

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

The victims have to prove the facts which constitute a violation of the protection order. The facts may be proved by all possible means (testimony, police report establishing the facts...).

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

After violation of a protection order, the victim can contact the Police or file a complaint with the Public Prosecutor who can decide on further criminal proceedings.

Victims can also file a complaint with the investigating judge of the District Court ("*juge d'instruction*") or directly initiate criminal proceedings before the Criminal Court ("*citation directe*").

It is also possible for the victims to contact a lawyer who will initiate further proceedings in his/her name and on his/her behalf.

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

Sanctions are specified in Article 439 of the Criminal Code.

According to Article 439 (2) of this Code, the violation of one of the protection orders provided for in Article 1 of the amended Law of 8 September 2003 or in the Articles 1017-1 or 1017-7 of the New Code of Civil Procedure shall be punished by a prison term of six months to two years and/or by a fine of 251 to 3.000 €.

Article 439 (3) of the Criminal Code further establishes that if the person evicted from the home enters the home despite the protection order with the use of violence, threats, break-ins, escalations, false keys or keys, the maximum fine is increased to 5.000 € and the maximum prison term is increased to five years.

According to Article 439 (4) of the Criminal Code, the one who voluntarily acts in violation of a prohibition to approach the protected person which derived from the eviction measure under Article 1 of the amended Law of 8 September 2003 shall be punished by a prison term of fifteen days to two years and/or by a fine of 251 to 3.000 €.

Finally, according to the Article 439 (5) of the Criminal Code, the violation of the prohibitions or injunctions issued in application of Article 1017-8 of the New Code of Civil Procedure shall be punished by a prison term of fifteen days to two years and/or by a fine of 251 to 3.000 €. It is important to note that the offences provided for in Article 439 (5) of the New Code of Civil Procedure can be pursued only on the basis of a complaint from the victim or from his/her legal representative.

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)?

There are also informal reactions possible to the breach of a protection order, and especially the Police can in certain circumstances warn the offender.

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

The reaction which follows on a protection order violation depends on the circumstances.

Theoretically, if the victim informs the Police of the breach of a protection order, or if the Police itself establish such breach, the Police has to report the violation to the Public Prosecution Service (see Article 12 of the Code of Criminal Procedure).

The Public Prosecution Service then discretionary decides whether to prosecute or not. It should be underlined that in Luxembourg, in case of breach a protection order, the Public Prosecution Service almost automatically orders the immediate arrest of the offender and its hearing before the investigating judge who may place him/her in pretrial detention.

In other words, the normal reaction will result in criminal proceedings in accordance with Article 439 of the Criminal Code.

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

The sanctions are in principle effective and mostly dissuasive. The proportionality criteria may vary from case to case between the alleged perpetrator and the victim.

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

In Luxembourg, reports of protection orders violation are taken very seriously by the Police. However, I cannot affirm that they are always automatically given priority.

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

The violation of any protection order is an offense in itself (see Article 439 of the Criminal Code).

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

See question 25) a.

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

When it comes to the violation of a short term barring order, the police will, in principle, always inform the public prosecution service.

They can also arrest the offender if they establish that a protection order has been violated.

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

The victim can still call in the help of the Police, but the reaction of the Police may vary depending on the circumstances.

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

It should be remembered that there is no "monitoring authority" in the context of civil protection orders. Indeed, the victim has to report the violation to the Police or the Public Prosecution Service in order for the sanction to be issued.

In case of the violation of a short term barring order, the monitoring authorities (i.e., the police and the social services dealing with domestic violence) have to report violations to the Public Prosecution Service.

The Public Prosecution Service cannot issue a sanction but has to report the breach of the order to the Criminal Court which can sanction the offender.

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

Victims are not obliged to report the violation of a protection order. The police and the social services dealing with domestic violence are in principle obliged to report all violations that have come to their knowledge to the Public Prosecution Service. However, it is not possible to guarantee that they always do so.

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

As said above, all violations shall theoretically be reported to the Public Prosecution Service by the Police. In practice, however, the decision whether to inform the Public Prosecution Service or not may depend on the factual circumstances and on the seriousness of the violation. For example, the fact that the victim continuously initiates the contact with the offender may convince the monitoring authorities not to report the violation.

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

As far as I know, the monitoring authorities in Luxembourg do not receive a specific training in how to monitor and enforce protection orders, but domestic violence is part of the basic Police training course, such as part of the continued Police training.

2.2.3. TYPES AND INCIDENCE OF PROTECTION ORDERS

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

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

Empirical information on these matters are available in the successive reports prepared by the Cooperation Committee for professionals involved in work to combat violence ("*Comité de coopération entre les professionnels dans le domaine de la lutte contre la violence*"). These reports are available online but only in French or German.⁴

In 2012, 357 short term barring orders (amended Law of 8 September 2003) have been issued in the Grand-Duchy of Luxembourg on the authorization of the Public Prosecution Services and 80 prolongation of these orders have been pronounced on the basis of Article 1017-1 of the New Code of Civil Procedure.

Only four protection orders have been issued in 2011 on the basis of Articles 1017-7 and/or 1017-8 of the New Code of Civil Procedure.

⁴ Report for the year 2012:

http://www.mega.public.lu/pictures/layout/Rapport_du_comite_violence_2012.pdf

Report for the year 2011:

http://www.mega.public.lu/pictures/photos/2012/05/Rapport_comit_coop_ration_violence_2011.pdf

Report for the year 2010:

http://www.mega.public.lu/publications/1_brochures/2011/rapport_comite_violence/rapport_comite_2010.pdf

Report for the year 2009:

http://www.mega.public.lu/publications/1_brochures/2010/Evaluation_Gewaltschutzgesetz/Evaluation_Gewaltschutzgesetz.pdf

There is no empirical information available on the number of criminal protection orders imposed in Luxembourg.

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

a. Short term barring orders, i.e. eviction from the family home (amended Law of 8 September 2003) are imposed more often. These orders automatically include the prohibition to enter the home again, to contact and to approach the victim.

b. There is no empirical information available on this matter in Luxembourg. Indeed, it should be kept in mind that in Luxembourg there only very few Court decisions are rendered each year in this matter.

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

Civil protection orders foreseen in Article 1017-7 of the New Code of Civil Procedure can only be issued if the offender makes the continued common life unendurable for the person with whom he/she is living or with whom he/she has lived, because of assaulting the victim or threatening him/her to do so, or because the behaviour of the offender seriously prejudices the psychological health of the victim.

Civil protection orders foreseen in Article 1017-8 of the New Code of Civil Procedure can be issued in the same circumstances but only if the behaviour of the offender makes unbearable for the victim any encounter with him/her.

According to the amended Law of 8 September 2003 on domestic violence, short term barring orders can only be imposed in cases in which there are some positive signs/evidences that a person is about to commit or to commit again against a person with whom he/she is living in a familiar environment, offences against life or physical integrity.

Criminal protection orders are issued in cases involving assault and battery against a person with whom the offender is living.

According to statistics compiled by the Luxembourg Police and the Ministry of Equal Opportunities, the vast majority of evictions from the marital home are due to assault or to threat of assault.

- 32) Is there any (empirical) information available on specific victim and offender characteristics?
a. Are protection orders generally imposed against male offenders on behalf of female victims?
b. Which percentage of the restrained already had a prior police record?
c. Which percentage of the restrained already had a previous protection order imposed against him/her?

a. Protection orders of all types are generally imposed against male offenders on behalf of female victims. For example, in 2012 70% of the offenders evicted from their home in 2011 were male offenders.⁵ In consequence, most of the victims were female.

We can also note that in 2011, among the 33 male victims 12 have been assaulted by male offenders.⁶

⁵ Report for the year 2011 of the Cooperation Committee for professionals involved in work to combat violence (see question 29).

b. There is no empirical information available on this matter.

c. The only information we have on this matter are following:

- 195 offenders have been evicted from the marital home twice since 2003,
- 21 offenders have been evicted twice in 2012,
- 40 offenders have been evicted from the marital home three times since 2003,
- 9 offenders have been evicted from the marital home four times since 2003,
- 5 offenders have been evicted from the marital home five times during 2011.

2.2.4. PROTECTION ORDER EFFECTIVENESS

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

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

a-d. There is no empirical information available on these matters in Luxembourg.

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

There is no empirical information available in Luxembourg on factors which significantly influence the effectiveness of protection orders.

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

There is no empirical information available in Luxembourg on the formal and informal reaction of the enforcing authorities to violations.

2.2.5. IMPEDIMENTS TO PROTECTION ORDER LEGISLATION, ENFORCEMENT AND EFFECTIVENESS

- 36) Which impediments are present in your country when it comes to:
-

⁶ Ibid.

a. Problems with protection order legislation

One problem with protection order legislation is the use of undefined or imprecise terms which may lead to difficulties of interpretation like “familiar environment” (“*cadre familial*”), “the applicant must establish his/her urgent need of a housing” (“*la partie demanderesse doit prouver que le domicile satisfait à ses besoins urgents de logement*”), etc.

What’s more, the Luxembourg protection order legislation is very restrictive. Indeed, only certain categories of victim can request the imposition of such order, i.e. cohabitants, ex-cohabitants, victims of trafficking in human beings. In addition, protection orders may only be issued in the context of certain categories of crime, as domestic violence, assault and battery or trafficking in human beings (see above). For this reasons, protection orders cannot be used for example against stalkers who do not fall under one of these categories of people, or in cases of crimes for which the Law do not explicitly provides the possibility to issue such order.

It should also be recalled that the current legislation is not very clear concerning the cases in which the offender has a visitation right (this problem should be resolved soon, see question 16) b.).

b. Problems with protection order imposition/issuing/procedure

There is no empirical information available on this matter, so that no assessment is possible concerning this question.

c. Problems with protection order monitoring

The most important problem with civil protection order monitoring is that such orders are only monitored by the victim.

A problem that concerns all types of protection orders is that the victims often initiate the contact with the offenders against whom the order have been issued.

d. Problems with protection order enforcement

The most important problem in relation with the enforcement of protection orders in Luxembourg is that the victims quite often reconcile with their offenders, creating a kind of vicious circle. This problem may be even more important when children are included in the protection.

e. Problems with protection order effectiveness?

See question 36) d.

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

In my opinion the biggest problem is that protection orders do not constitute a lasting solution to violence.

2.2.6. PROMISING/ GOOD PRACTICES

38) Which factors facilitate the:

a. imposition

A factor that facilitates the imposition of protection order is the specific Law on domestic violence, which permits to impose such order very quickly, without undertaking a procedure in Court.

What's more, the procedures to undertake in order to obtain the imposition of other types of protection orders are simple and speedy.

b. monitoring, and

There is no assessment possible.

c. enforcement of protection orders?

There is no assessment possible.

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

In my opinion, the factor which contribute most to the success of protection orders is the nearly automatic prosecution by the Luxembourg authorities in case in cases of violation.

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

There is no assessment possible.

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

Factors which may improve the situation are:

- explore the possibility of making use of GPS for the monitoring of protection orders;
- extend the cases in which protection orders can be issued (for example in cases of stalking even if there is no familiar context).

2.2.7. FUTURE DEVELOPMENTS

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

At the moment, protection orders are not at the center of the current politics discussions.

However, the attention paid to this matter should increase because of the future transposition of the Directive 2011/99/EU of the European Parliament and the Council of 13 December 2011 on the European Protection Order.

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

The legislation on protection orders have already changed significantly with the adoption of the Law of 30 July 2013 amending the Law of 8 September 2003. No other changes in the nearby future are foreseen with the exception of the draft-law currently pending before the Luxembourg Parliament and concerning the organization of visit rights in the context in which a protection order has been issues.

b. If so, what will change?

See question 43) a.

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

There are no pilots with a new approach to victim protection orders at the moment in Luxembourg.

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

I do not foresee developments in protection order legislation or enforcement in the nearby future with the exception above mentioned (See Question 43) a.).

45) You have probably heard about the introduction of the European Protection Order (EPO). From now on, criminal protection orders issued in one Member State have to be recognized in another Member State. What is your opinion on the EPO? Which problems/possibilities (if any) do you foresee in the implementation of the EPO in your Member State?

The European Protection Order (EPO) is a good thing in principle insofar it provides effective trans-border protection. EPO may be of some practical importance in Luxembourg because of the particular geographic location of the Grand-Duchy.

However, it may be feared that there will be problems associated with the surveillance of the effectiveness of such orders.

GLOSSARY

1. General Legal Terminology:⁷

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.

Procedural Law

⁷ Merriam-Webster's Dictionary of Law ©1996. Merriam-Webster, Incorporated. Published under license with Merriam-Webster, Incorporated.

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.⁸

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

⁸ EU Council framework decision, 15 march 2001. (2001/220/JHA)

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 served 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 violence⁹

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.

⁹ Rec. (2002)5. (VAW) (Committee of Ministers).

Stalking¹⁰

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 persons¹¹, even if they do not show signs of resistance. Rape is considered one form of sexual assault consisting of the sexual penetration with any means, by one person of another person's body without the consent of that other person.

3. Terms related to the protection order

Types/nature of protection orders

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

Injunction

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

Restraining order

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

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.

¹⁰ C. Hageman-White, L. Kelly, & R. Römken (Eds.), *Feasibility study to assess the possibilities, opportunities and needs to standardise national legislation on violence against women, violence against children and sexual orientation violence* (pp. 127-152). Luxembourg: European Commission.

¹¹ Council of Europe Convention on preventing and combating violence against women and domestic violence, art. 36 b.

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.