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

NATIONAL REPORT POLAND

By Sławomir Buczma

CONTENTS

National Report Poland 1

2. National reports: content and structure 3

 2.1. Introduction 3

 2.2. Overview of the structure of the national reports 3

 2.2.1. *Imposition of protection orders* 3

 2.2.2. *Enforcement of protection orders* 17

 2.2.3. *Types and incidence of protection orders* 22

 2.2.4. *Protection order effectiveness* 24

 2.2.5. *Impediments to protection order legislation, enforcement and effectiveness* 25

 2.2.6. *Promising/ good practices* 26

 2.2.7. *Future developments* 27

Glossary 30

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?

Protection measures, which are related to the situation of threat or violence, are imposed almost exclusively within criminal proceedings. Irrespective of the stage of criminal proceedings, it might be rendered either as preventive measures (pre-trial and trial proceedings) or measures which accompany the judgement founding the person concerned. The latter are imposed on the perpetrator in accordance with the Criminal Code of 1997 (hereinafter referred to as CC) while sentencing.

Preventive measures may be applied in all stages of criminal proceedings upon the Code of Criminal Procedure of 1997 (hereinafter referred to as CCP).

Such obligations may not be imposed neither in civil nor in administrative proceedings.

However, there is in place an Act on suppression of domestic violence of 2005 (hereinafter referred to as the Domestic Violence Act) specifically dealing with domestic violence. It establishes an administrative procedure aiming at supporting victims of domestic violence irrespective of whether or not crime has been committed. It provides for mechanism laying grounds for actions to be undertaken by interdisciplinary teams (consisting of welfare workers, policemen, probation officers, representatives of communities, etc.) which should analyse if in the specific case domestic violence has occurred and what type of interventions should be carried out. All in all if the perpetrator does not follow intervention measures or there is suspicion (s)he committed a crime, criminal procedure applies. It provides for one protection measure which gives rise to eviction of the perpetrator once

domestic violence has been proved upon a victim's request. The eviction should follow the rules of the civil procedure in accordance with the Code of Civil Procedure of 1964.

b. Are protection orders regulated in generic law or in specific laws on forms of (interpersonal) violence (e.g., domestic violence act)?

As mentioned above, protection measures are set out in the Criminal Code as penal and probation measures and also in the Code of Criminal Procedure as preventive measures.

The Domestic Violence Act is more related to provide victims of domestic violence with support and protection (physical, psychological and financial, etc.) as well as aims at finding a proper solution to avoid repeat acts of violence in the future (treatment of the perpetrator). However, eviction may be imposed pursuant to Article 11a of the 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?

There are not available above-mentioned acts in the official English version.

However, there are available those acts in the Polish versions on the website of the Ministry of Justice¹:

- the Criminal Code - *Kodeks Karny* (hereinafter referred to as CC);
- the Code of Criminal Procedure - *Kodeks postępowania karnego* (hereinafter referred to as CCP);
- the Domestic Violence Act- *Ustawa o przeciwdziałaniu przemocy w rodzinie*;
- the Code of Parental Powers and Custody - *Kodeks Rodzinny i Opiekunczy*.

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?

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).

a. As mentioned above, preventive measures may be imposed on the perpetrator not only in the pre-trial stage but also during the trial. As far as penal and probative measures are concerned they are imposed within the judicial sentence. The way of execution of all those measures may be modified in the progress of their application.

¹ <http://ms.gov.pl/pl/dzialalnosc/przeciwdzialanie-przemocy-w-rodzinie/akty-prawne-i-inne-dokumenty/>

In relation to penal measures the court may, after half of the period for which the penal measures were imposed, consider them executed, if the sentenced person has respected the legal order and he has been subjected to the penal measure for at least one year (Article 84 of CC). However, if the obligation to refrain from staying in particular environments and places, the interdiction of communicating with particular persons, or interdiction of leaving a specified whereabouts without court's permission, adjudicated forever, may be regarded to be fulfilled, if the conduct of the convict after he committed an offence and when serving his prison sentence justifies the assumption that after obligation or interdiction is revoked, he shall not commit another offence against sexual latitude or decency committed against a minor, and obligation or interdiction has been in force for at least 10 years (Article 84a of CC).

Probative measures may only be applied if the execution of the penalty has been suspended or the proceedings have been provisionally discontinued. Their execution shall justify a supposition made by the court that the perpetrator following his /her proper behaviour allowed to avoid execution of penalty or the conduct of criminal process leading to such a punishment.

However, in some cases probative measures may be changed during execution of the judgement when the penalty has been suspended (see 2b).

According to Article 275 paragraph 3 of CCP, if there is a premise for application of preliminary detention against the accused of an offence committed with the use of violence or unlawful threat to the detriment of his next of kin or another person who resides together with the perpetrator, surveillance may be used instead of temporary detention, provided, however, that the accused will vacate the premises occupied together with the injured person within the prescribed time-limit and shall specify the place of his residence.

The eviction imposed upon the Domestic Violence Act is to be imposed by the civil court following a civil procedure.

b. Preventive measures may be applied in all stages of criminal proceedings whereas probation or penal measures only while sentencing.

However, in the executive part of the criminal proceedings following a final judgement, if educational considerations so warrant, the court may, during the probation period, institute, extend or modify the obligations imposed on a person sentenced to a deprivation of liberty with a conditional suspension of its execution, as mentioned in Article 72 § 1 sections 3 to 8, or release him from these obligations (except the obligation specified in Article 72 § 2), and likewise either place the sentenced person under supervision or release him from the aforesaid (Article 74 paragraph 2 of CC).

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

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

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

a. Imposition of protection measures depends on the stage of criminal proceedings. In the pre-trial phase all protection measures are applied by prosecutors except for preliminary detention. In judicial phase of criminal proceedings the court is in charge to change protection measures applied by the prosecutor or impose new ones.

The injured person (victim) may request for a specific protection measure to be applied. However, formally the competent authority is not bound by such a motion. Nevertheless, a judge or a prosecutor has to follow one of

the general rule of the criminal procedure set out in Article 2 paragraph 1 point 3 of the CCP which is an obligation to secure legally protected interests of the injured party, Therefore, if there are reasons justifying imposition on the perpetrator a requested protection measure, a judge or a prosecutor should take into account the victim's wish.

In addition, there are in place specific rules where consent of the injured person is needed to render a final verdict following a proposal send to the court either by the prosecutor or the accused. In the following cases the injured may have an influence on the content of the following judgements:

- the prosecutor includes in the indictment a motion to issue judgement, imposing a penalty of a penal measure with consent of the accused for a misdemeanour subject to a penalty not exceeding 10 years deprivation of liberty, without conducting a trial if circumstances surrounding the commission of the misdemeanour do not raise doubts, and the attitude of the accused indicates that the objectives of the proceedings will be achieved (Article 335 of CCP);
- If the premise is met which justifies a conditional discontinuance of proceedings, the prosecutor may prepare and file to the court with a motion to this effect, instead of an indictment (Article 336 of CCP);
- Until the conclusion of the first examination of all accused persons at the first-instance hearing, the accused who is charged with a misdemeanour may submit a motion for a decision convicting him and sentencing him to a specified penalty or penal measure without evidentiary proceedings (Article 387 of CCP).

Obviously, it is up to the court whether or not to take into account aforementioned motions. However, the decision should follow the consent of the injured person.

b. The public organisations as such are not entitled to file a motion to impose any protection measure. They may, however, inform on the factual situation which should result in putting it under control of a competent authority (usually police).

The probation service has no real power in relation to court's decisions. Nevertheless, if a probation officer has been involved in the criminal proceedings in order to check the living conditions of the perpetrator, the conclusions thereof should be taken into account or checked in some other way (documents, by the police, etc.).

The role of probation service is much more significant in the executive part of the criminal proceedings. The probation officers may namely report to the court on the behaviour of the convicted person and in case of misbehaving or breach of protection measures imposed they may suggest actions to be undertaken in order to change the measure concerned or punishing the offender.

c. As a general rule, protection measures should be imposed in presence of the perpetrator and after a hearing. Only in cases if s(he) waives criminal proceedings, the measures may be applied in his/her absence.

- 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?

The most of protection measures are not specifically related to a certain subset of victims of crime. The general policy is to apply protection measures to all victims in the following cases:

- it is necessary to protect a victim from a perpetrator once a crime has been committed and a perpetrator

seeks to repeat it; or

- it is necessary to protect a victim from a further victimisation once a perpetrator committed a crime with the use of violence or unlawful threat to the detriment of his next of kin or another person who resides together with the perpetrator; or

- the imposition is obligatory by law (mainly regarding victims of domestic violence or victims of sexual abuse, trafficking of human beings, domestic violence, who are under the age of 15).

However, there are also in place protection measures applicable for a specific type of victims, such as victims of domestic violence or victims of crimes of sexual nature (e.g. sexual abuse or rape). They are available as preventive measures to be applied during investigation, trial and to some extent also in the executive part of the criminal proceedings and as penal and probation measures accompanying the penalty.

According to the Polish Criminal Code, there is no differentiation based on gender of victims. Therefore, the same protection measure may be applied in relation to a male and/ or a female victim. Nevertheless, the practice shows that more victims of domestic violence or victims of crimes of sexual nature are women.

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)?

Since the crime has been committed and the criminal proceedings launched all protection measures are applicable under the regime of the criminal law.

Notwithstanding, Article 11a of the Domestic Violence Act will be applied irrespective of the criminal proceedings.

In addition, there are also in force protection measures applicable under parental law. Nevertheless, their aim is not to protect a victim of crime as such but to eliminate misconduct of the custody exercised by one of the parents in relation to a child.

Therefore, following Article 109 paragraph 2 point 3 of the Code of Parental Powers and Custody, the parental powers may be subject to surveillance of a probation officer if imposed by the court if the interests of child have been endangered by one of the parents. For the same ground the court may according to Article 113² paragraph 2 of the Code restrict contacts with a child (to meet a child in a specified place, to contact a child under specific conditions, etc.).

In case the maintenance of contacts with one of the parents may infringe the interests of a child, the court pursuant to Article 113³ of the Code of Parental Powers and Custody may prohibit completely contacts with the child.

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)

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

c. Does the 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?

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?

a. In relation to the most of the protection measures, the Code of Criminal Procedure has to be followed. The police or a prosecutor shall file a motion regarding application of a specific (preventive) protection measures to the prosecutor or to the court (depending on the stage of criminal proceedings).

At the end of trial in general only a prosecutor is entitled to request a specific measure to be covered by a court ruling. However, if a victim is a party to criminal proceedings also s(he) may require specific protection measures (penal or probative) to be applied upon a verdict.

The imposition of eviction upon Article 11a of the Act on Suppression of Domestic Violence follows the rules envisaged in the Code of Civil Procedure.

b. The length of the procedure depends on the type of protection measures to be applied.

If there is a need to provide a victim with an immediate protection the procedure accompanying its imposition is pretty fast. Such a need is usually acknowledged once there is knowledge that a crime has been committed and there is a threat of reoffending. For example, in case of domestic violence if the crime has been reported immediately after its commitment the perpetrator will be arrested for maximum 48 hours.

According to Article 244 paragraph 1a of CCP the police shall be authorised to arrest a suspected person, if there is good reason to suppose that he has committed an offence with the use of violence to the detriment of a person residing together, and if it is feared that such person shall again commit an offence with the use of violence against such person, especially when he has threatened to commit such an offence. The Police shall also arrest a suspected person, if the offence mentioned above has been committed with the use of fire-arms, knife, or other dangerous item, and if it is feared that he shall again commit an offence with the use of violence against the person residing together, especially when he has threatened to commit such an offence (Article 244 paragraph 1b of CCP).

Pursuant to Article 275a of CCP, if, against the accused, who has been detained pursuant to Articles 244 § 1a or 1b there are reasons to apply a preventive measure, the Police shall immediately, not later than within 24 hours as from the moment of detention, submit a motion to the state prosecutor for application of such a preventive measure; the motion shall be reviewed within 48 hours as from the moment of detention of the accused.

If there are reasons for provisionally detention to be applied prosecutor shall file a motion to a court. If not, prosecutor him (her) self shall decide whether or not to apply any of preventive measures (ban on contacts and others– see 7a).

If they have not been carried out during pre-trial stage nor judicial part of the criminal proceedings any protection measures, they still may be imposed as penal or probative measures. However, in such case it is extremely difficult to make any prognosis how long the criminal proceedings as a whole may last. Both penal and probative measures may only be imposed while sentencing.

In relation to eviction based on Article 11a of the Domestic Violence Act, the civil court shall make a decision within 1 month.

c. Preventive measures come into effect as soon as the decision on a protection order has been made although in any case a perpetrator may request the decision to be reviewed.

In case of protection measures posing a part of court's judgement, a verdict must first become final to be directed to its execution. Once the verdict become final it should be executed without undue delay.

However, from practical point of view it would be odd if no preventive measures have been applied during the criminal proceedings but necessity to carry them out occurred only while sentencing.

The eviction imposed upon Article 11a of the Domestic Violence Act may be executed immediately by the bailiff if the court provides for such a possibility.

d. Preventive protection is applied immediate once the offence has been reported and the competent authority has imposed the preventive measure to be executed.

Nonetheless, if no actions have been undertaken after reporting a crime, a victim may avail him/herself of support and protection granted by the NGOs. For example, 'Niebieska Linia' NGO (Blue Line) specialising in supporting and protecting victims of domestic violence is able to provide victims with physical protection including shelters.

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

a. If the conditions are met to impose protection measures the injured person may request their imposition. However, only if legal requirements are met court or prosecutor may or in specified cases have to impose protection measures. Pursuant to Article 41a of Criminal Code the latter occurs in the event of a sentence of imprisonment or conditional suspension of the enforcement of the penalty for a crime against sexual latitude or decency to the detriment of a juvenile. In those cases the court shall impose interdiction of staying in specific environments or places, interdiction of frequenting specific persons, interdiction of approaching specific persons, interdiction of leaving a place of stay without the consent of the court, injunction to leave the place occupied jointly with the injured. In relation to other penalties the court may impose the above mentioned penal measures.

b. Legal representation of victims is not required by law. However, if the victim is vulnerable and is not able to exercise his/her rights, s(he) may be suggested applying for a lawyer to be appointed by the court.

A victim is in each case informed of the right to apply for a legal representative if conditions set out in Article 78 paragraph 1 in conjunction with Article 88 of the CCP are met (the content see in point 6c).

c. Free legal representation is available to victims of crime. Once an injured person has been acknowledged as a victim of crime (which usually happens once criminal proceedings has been launched), s(he) is provided with a letter of rights which includes information under which conditions victim may require an appointment of a legal representative paid by the State.

A victim may demand that the legal representative will be appointed to him/her *ex officio*, if s(he) can duly prove that (s)he is unable to pay the costs without prejudice to his/her and his/her family's necessary support and maintenance (Article 78 paragraph 1 in conjunction with Article 88 of the CCP).

Once being appointed the legal representative is entitled to represent the interests of the victim till the final judgement on guilt of an accused person.

Nevertheless, the court may withdraw an appointment of the legal attorney *ex officio* if it comes to light that

the circumstances leading to the appointment did not exist (Article 78 paragraph 2 in conjunction with Article 88 of the CCP).

In the phase preceding a formal acknowledgement an injured person as a victim of crime s(he) may enjoy legal advice either granted by non-governmental organisations specified in supporting victims of crime or by Bar Associations which provided temporarily for such support.

- 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)?

Protection measures as mentioned above are in general applied in the criminal proceedings following the criminal procedure. Their application play a different role taking into account the phase of criminal proceedings.

1. The following protection measures are available as **preventive measures** during criminal proceedings:

- the accused may be committed to the surveillance of the Police. These obligations may consist in the prohibition of absencing himself from a designated place of residence, in having to report to the agency under the surveillance of which he remains in specified time intervals, and in informing such agency of any intention to leave and the time of return, a prohibition to contact the injured person or other persons, a prohibition of staying in certain places, and also other limitations on the freedom of movement of the accused, necessary to assist the surveillance (Art. 275 paragraph 1 and 2 of the CCP);
- if there is a premise for application of preliminary detention against the accused of an offence committed with the use of violence or unlawful threat to the detriment of his next of kin or another person who resides together with the perpetrator, surveillance may be used instead of temporary detention, provided, however, that the accused will vacate the premises occupied together with the injured person within the prescribed time-limit and shall specify the place of his residence (Art. 275 paragraph 3 of the CCP);
- the accused of an offence with the use of violence to the detriment of a person residing together may be ordered to vacate the dwelling premises occupied together with the injured person, if there is good reason to fear that the accused shall again commit an offence with the use of violence against such person, especially when he has threatened to commit such an offence (Art. 275a paragraph 1 of the CCP).

The breach of one of the above mentioned preventive measures may result in preventive detention to be applied by the court.

2. Imposition of the penalty and accompanying measures while sentencing

2a) penal measures

The following penal measures may be applied in the judgement irrespective of whether the penalty will be directly executed or its execution will be suspended:

- the court may decide on interdiction of staying in specific environments or places, interdiction of frequenting specific persons, interdiction of approaching specific persons, interdiction of leaving a place of stay without the consent of the court, injunction to leave the place occupied jointly with the injured in the event of sentencing for a crime against sexual latitude or decency to the detriment of a juvenile or in the event of sentencing for an intentional crime with the use of violence, including

violence against a person that is close to the perpetrator; a duty or interdiction can be combined with a duty to report to the police or to another designated body in determined intervals (Article 41a paragraph 1 of the CC);

- the court shall impose interdiction of staying in specific environments or places, interdiction of frequenting specific persons, interdiction of approaching specific persons, interdiction of leaving a place of stay without the consent of the court, injunction to leave the place occupied jointly with the injured in the event of a sentence of imprisonment or conditional suspension of the enforcement of the penalty for a crime against sexual latitude or a decency to the detriment of a juvenile; a duty or interdiction can be combined with a duty to report to the police or to another appointed body in determined intervals (Article 41a paragraph 2 of the CC);
- the court may decide on interdiction of staying in specific environments or places, interdiction of frequenting specific persons, interdiction of approaching specific persons, injunction to leave a place of stay without the consent of the court for ever in the event that the perpetrator has been repeatedly sentenced on the conditions specified above.

In the event that the court decides to impose interdiction on approaching specific persons, the court shall indicate the distance from the protected persons that the perpetrator is obliged to maintain.

In each case the breach if the specific protection measure gives rise to criminal responsibility according to Article 244 of the Criminal Code². The breach of penal measures may also result in the execution of the penalty if previously suspended.

2b) probation measures

According to Article 72 paragraph 1 of the CC while suspending the execution of a penalty, the court may obligate the sentenced person to:

- to refrain from frequenting specified community circles or places,
- to refrain from frequenting with the injured or other persons in a specific manner or approaching the injured or other persons,
- to leave a place shared together with injured person,
- to engage in other appropriate conduct in the probation period, if it may prevent the commission of a further offence.

²Article 244 of the Criminal Code is worded as follows: Whoever fails to submit to an interdiction adjudicated by the court to comply with a duty of refraining from staying in specific environments or places, comply with an injunction to leave a place occupied jointly with the injured, submit to an interdiction of frequenting specific persons, interdiction on approaching an injured or interdiction on leaving a place of stay without the consent of the court or failing to submit to the court decision in the manner prescribed in such decision, shall be subject to the penalty of the deprivation of liberty up to 3 years.

In the event that the duty to leave a place shared together with injured person is imposed on the perpetrator of a crime committed with the use of violence or unlawful threat with regard to a person close to the perpetrator, the court shall specify the manner of frequenting the perpetrator with the injured.

If the convicted person in the probation period flagrantly breaches the probation order, the court pursuant to Article 75 paragraph 2 of the CC, may order the execution of the penalty. However, the court pursuant to Article 75 § 1a of the CC shall order the execution of the punishment if the person sentenced for a crime committed with the use of violence or unlawful threat with regard to a person that is close to the perpetrator or to a juvenile living with the perpetrator during the probation period grossly violates law by repeated use of violence or unlawful threat with regard to a person that is close to the perpetrator or to a juvenile living with the perpetrator.

The same protection measures are applicable in case of conditional discontinuation of the criminal proceeding

3. Eviction based on the Domestic Violence Act

There is also one protection measure specified in the Domestic Violence Act (Article 11a) which is subject to the **civil procedure**. It provides for a right to apply by the victim to evict a perpetrator from the commonly joined household. The decision shall to be take upon such a request within 1 month by a civil court.

There are also measures applicable according to the Code of the Parental Powers and Custody. However, they do not have any punitive nature and aim at fixing the conditions on which one of the parents is entitled to contact with a child (if parental powers are to limited). In very serious cases those contacts may be restricted or prohibited.

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?

In relation to preventive measures the practise is to apply protection orders for 3 months. It may be however prolonged for a time needed to fix the case and protect the victim in the progress of the criminal proceedings.

Probation measures are applied from 2 till 5 years and in cases of conditional discontinuation of criminal proceedings up to 2 years.

Penal measures are applicable from 1 to 15 years (in exceptional cases forever).

The barring order (eviction) applied according to civil law has a definite nature.

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

The most popular types of protection imposed under criminal law are:

- the no-contact restraining order;
- the injunction that prohibits an offender to enter a certain place and/or area;
- the barring order which obliges the offender to leave the family home.

Different types of protection orders may be imposed in combination with each other (e.g., a no contact order and a prohibition to approach a victim). It depends on a specific case how many protection measures are to be applied simultaneously. Even a barring order (eviction) may be accompanied with other protection measures (e.g. no contact order) if itself is not sufficient to protect 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?

No, there are no formal requirements how protection measures should be formulated. Nonetheless, the length and the specification how the protection measure should be carried out need to be given. This information is important first of all for the perpetrator to observe conditions imposed but also for law enforcement as well as for probation staff. In case the perpetrator avoided or broke the conditions imposed the court or other competent authority should be informed to decide what kind of measures to be applied.

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

The scope of protection measures have been regulated by the legislator in a very generic way. This gives the competent authority powers to decide what behaviour of the perpetrator should be deemed as unacceptable or banned. Therefore, description of such protection measures as interdiction of staying in specific environments or places, interdiction of frequenting specific persons, interdiction of approaching specific persons should include precise information on the whereabouts (name of a town or its part, village or streets where entrance is prohibited) or specification of distances (e.g. in meters) in order to avoid meeting the victim.

There are not in place any legislative rules how the content of a protection measure should be shaped.

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

See the answer to point 9.

Imposition of a specific protection measure depends on many factors. However, the most important ones are the distance. If the perpetrator lives in another town, village it may be based on mentioning the place to be avoided. If the whereabouts are located in the same town, district, description of the measure should be more precise by giving meters or naming streets or districts to be avoided.

Therefore, both methods mentioned above may be applicable.

- 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?

The duration of protection measures is specified by law irrespective of whether or not they have preventive, probative, or penal nature. The orders have to be issued for a determined period of time. The time limits are as follows:

- penal measures – an interdiction or obligation mentioned above (see point 2) shall be imposed for a period from one year to fifteen years,
- probative measure - from 2 to 5 years - in case of a conditional suspension of the execution of a penalty of deprivation of liberty, or from one year up to 3 years - in case of a conditional suspension of the execution of a fine or a penalty of restriction of liberty.
- preventive measure – not longer than 3 months with a possibility of prolongation for another specified period.

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

To the most important factors determining imposition of protection measures are an assessment of the danger the perpetrator may pose in the future, length of the penalty imposed, degree of guilt, the level of social consequences of the act committed, the preventive and educational objectives which the penalty has to attain, the motivation and the manner of conduct of the perpetrator, the type and degree of transgression against obligations imposed on the perpetrator, the type and dimension of any adverse consequences of the offence, the characteristics and personal conditions of perpetrator, his way of life prior to the commission of the offence and his conduct thereafter.

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

It is difficult to specify an average duration of the different protection orders.

Nevertheless, in general terms probative and penal measures are only imposed in years whereas preventive measures are only imposed in months (in some cases in relation to the preventive arrest in hours).

- 12) a. To what extent (if any) do the wishes of the victims influence the imposition of protection orders? Can victims, for instance, request the cessation of protection orders?
- b. In cases where a protection order is not directly requested by the victims, is there always an assessment of the victims' need for a protection order or do victims have to bring this up themselves?
- c. Can victims influence the type/scope/duration of protection orders? Are they, for instance, involved in deciding on the type of protection order or the scope of protection orders?

Victims are the most influential when it comes to eviction based on the Domestic Violence Act since imposition of this measure is completely dependent on victim's request.

In relation to protection measures applied within the criminal proceedings see answers to point 6a.

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

If protection measures accompany a verdict they may be challenged by an appeal. The accused person is always entitled to lodge an appeal against the judgement as a whole or partially. This includes also right to claim only the court's decision related to criminal or probation measures.

If protection measures have been imposed as preventive measures during the pre-trial or during the judicial stage of criminal proceedings they may be formally challenged by a suspect or accused or their lawyer.

The same relates to eviction based on the Domestic Violence Act.

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

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

The legal base, necessity and the proportionality of the protection measures applied may be contested by the suspects or the accused. A review may consist of arguments related to the type/scope/duration of protection orders.

If the prosecutor's or court's decision applied in the first instance have been deemed unjustified the appeal court may either change the previous decision applying different protection measure (for example a measure of a milder nature), change the conditions of application of the current measure (e.g. shorting the duration or conditions of its applications) or deny application of any protection measure.

In addition, according to Article 253 paragraph 1 and 2 of the CCP a preventive measure shall immediately be revoked or amended if its basis has therefore ceased to exist, or new circumstances arise, which justify the revoking, or its amendment. In the course of criminal proceedings the preventive measure applied by the court may also be revoked or amended to a milder one by the state prosecutors.

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

There are not sufficient researches allowing answering precisely this question. However, there is to be noted that judges and prosecutors are obliged to impose certain types of protection measures in case the danger of the perpetrator is evident. The opportunity principle does not apply in Poland. Following the legality principle if the protection is needed or there is legal obligation to impose a protection measure the competent authorities have to carry out their duties.

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

The previous convictions as well as protection measures applied have to be taken into account. However, there are also other factors determining if in the pending proceedings a new protection measure or protection measures are to be imposed. The most important one is the danger the perpetrator may pose to the victim.

However, according to Article 244 paragraph 1a of the CCP, the police shall be authorised to arrest a suspected person, if there is good reason to suppose that he has committed an offence with the use of violence to the detriment of a person residing together, and if it is feared that such person shall again commit an offence with the use of violence against such person, especially when he has threatened to commit such an offence.

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

Protection order imposed in the criminal proceedings relate only to the person specified in its content. It does not include other persons.

However, there is special procedure in place granting protection to children. According to Article 12a of the Domestic Violence Act, if there is a justifiable concern for safety of life, health regarding a child a representative of social welfare may decide on provisional separation a child from a wrongdoer and placing a child in a step family or in a custodial institution. A social worker shall make this decision upon agreement with assisting policemen, doctor or a nurse. The social worker while making aforementioned decision shall immediately inform the parental court but no later than 24 hours following such separation. The court shall decide within 24 hours following such a notification whether the decision of the social worker was justifiable. In this case the rules set out in the Code of Civil Procedure apply. If the wrongdoer is a parent or a next of kin to a child (s)he is entitled to challenge the decision of the social worker.

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

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

See answer to point 4b. Protection order imposed in the criminal proceedings prevails. As a consequence, the parental court should be informed and special procedure should be commenced which may lead to restriction or prohibition of contacts with a child following the Code of Parental Powers and Custody.

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

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

There are not in place any 'mutual protection orders' which could lead to restrain both the victim and the offender from a specific behaviour. The criminal proceedings provides only for imposition protection measures on the suspected or accused persons but not on victims.

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)?

The protection orders are provided for free regarding victims of crime.

In relation to preventive measures the person subject to them will not be borne by the costs resulting from procedure leading to their imposition. The same relate to their execution.

On the other hand, if protection measures have been imposed as probation or penal ones in the court's judgement, the court decides, if the person convicted shall not be obliged to cover costs resulting from the criminal proceedings.

However, according to Article 624 paragraph 1 of the CCP, the court may exempt the accused, either in whole or in part, from the obligation to reimburse the State Treasury, the court costs if there are good grounds to believe that their payment would be too onerous in view of the family and financial circumstances and the income of the person obligated to pay the same, and if consideration of equity favours such exemption.

Only victim applying for eviction of the perpetrator upon Domestic Violence Act is obliged to pay a symbolic payment (about 10 Euros) in order to cover the cost of the proceedings.

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?

There is not in place any specific register related only to storage data regarding protection measures.

However, there are some methods in pre-trial stage to check if any of protection measures have been or are being applicable in relation to the perpetrator. The register is provided in electronic form; however access is admissible in principle to prosecutors.

If the offender has been convicted and a protection measure imposed, the National Criminal Register will contain information which court, when and what type of a penalty and accompanying measures have imposed on the perpetrator. The National Criminal Register in charge of storage and processing of information on convictions makes those information available to the competent authorities which are courts, prosecution service or police³.

The National Criminal Register collects information sent by the courts following the convictions (a copy of final verdict). The content of a verdict is processed and in electronic form stored in the register.

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?

Not in all cases the victim will be informed. It mainly depends on the status of the victim and his/her presence during the announcement of verdict.

If protection measures have been imposed following the trial only in exceptional circumstances provided for by the law the judgements announced during the open trial may be delivered to the accused (e.g. deprived of liberty). This rule is not applicable to victims.

However, judgements rendered out of trial will be delivered to victims.

The victim will not be informed on preventive measures imposed. Only in the event of provisional detention the victim is informed ex officio if the court decides on revocation or non prolongation of such a measure.

If applicable, the information on the imposition of protection measures is carried out by an official notification from the court.

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?

³See: Law on the National Criminal Register of 24 May 2000 (hereinafter referred to as the NCR Law, Dz. U. of 2012, pos. 654 with further amendments).

In relation to penal and probation measures the probation officer will be in charge of monitoring the observance of protection measures. S/he should first contact the convicted person and inform him/her on the rights and obligation resulting from the judgement encompassing protection measures and legal consequences of the breach of protection measures. The probation officer shall report to the court on the progress of the execution of protection measures. Once those protection measures have been contravened the court should decide on if any legal action needs to be undertaken.

In relation to preventive detention Article 275 paragraph 4 and 5 apply. This means that a person under Police surveillance shall be obligated to report himself to a relevant Police station with the document establishing his identity, to carry out orders aimed at documenting the course of surveillance and provide information necessary for establishment whether he complies with the requirements imposed in the order of the court or the state prosecutor. To obtain such information the accused may be summoned to appear at the prescribed date. In the event whereby a person under surveillance has failed to comply with the requirements set forth in the order, a surveillance agency shall immediately inform about that the court or state prosecutor, who has issued the order.

On the consequences of a breach of protection measures see also point 7a.

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

GPS is carried out only on specific cases in relation to those perpetrators who have been imprisoned for less serious crimes and after a fixed period of time and who agree on being subject to electronic monitoring to be applied instead of serving sentence in prison for the rest of the penalty.

Extra surveillance, such as house visits can be used at the discretion of the police but are the main manner of the activities undertaken by the probation staff . Also, the probation service can ask during their meetings with the offender whether (s)he obeyed the probation orders. The probation officers may also rely on the information provided by the neighbours, the social services, in the work place of an offender and can do the same when they meet the victim.

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

See answer in point 22a.

Since it is addressed only to the limited types of perpetrators meeting the conditions specified in the Act on the execution of deprivation of liberty out of the prison subject to the system of electronic monitoring of 2007 its use in relation to domestic violence is for the time being rather rare.

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

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

In Poland pro-active monitoring prevails. The probation staff is obliged once a fixed time to visit whereabouts the victim or the perpetrator live to check if the conditions of protection measures are met. In the event that preventive measure such as the police surveillance has been imposed the police oblige the alleged perpetrator to be present at the police station within a fixed period of time and/or report on the current behaviour.

However, also the victims' reports may give an impetus to undertake an immediate control on the situation reported.

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

It depends on the content of protection measure. If restraining order based on no contact rule has been imposed the reaction of a culprit himself even initiated by the victim would pose a breach of the order. In limiting cases where there are conflicts caused by the both sides the probation officer would rather advise their clients no to take any actions if the victim initiates contact.

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

It is not clear enough how the contact initiated by the victim could have an impact on the execution or improvement of an applicable protection order. However, I may assume that in some cases it may give rise to less stringent protection measure if this would be a wish of the victim. On the contrary, if this caused a violent reaction of the culprit it might give rise to imposition of more stringent measures or even revocation of the execution of the sentence previously suspended (in probation cases).

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?

See answer to 23b.

A 'law abiding' reaction of the perpetrator may be even not officially recognisable. However, in the event of failing to meet the conditions covered by the protection order it may give rise to various decisions dependant on the type of measure imposed:

- imposition of more stringent protection order (in case of preventive measures);
- execution of the deprivation of liberty if previously suspended (in case of probative measures);
- revocation of conditional release of a convicted person;
- continuation of the case previously discontinued;
- criminal responsibility (in case of the breach of penal measures).

In civil matters since currently only eviction is available, it is basically no other action to be taken. However, if a violation has negative influence on children it may result in a proceedings before the parental court to asses current availability of a perpetrator to enjoy the full rights to be exercised in the meaning of the best interests of a child.

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

The evidentiary requirements for a violation of all kind of protection measures in criminal matters are the same. The minimum evidentiary requirements have to be met are either reports following interventions made by the police, probation officers or other competent authorities which may be in charge of taking care of the family touched by the problem of domestic violence (e.g. social workers) or other sources (medical report following an assault).

The reports handed down by the police or the probation officers may be based on the opinion of the commune representatives, neighbours or a victim him/herself. Also the report send by the victim would pose a sufficient ground for further actions (after verification).

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

The competent authority in charge to supervise an execution of protection measure has to be notified of the violation. Taking into account the variety of protection measures it will be mainly the court although in cases of preventive measure also prosecutors may be in charge.

Following a report on the breach of protection measure those bodies decide if the current one should be turned to the other or/and more stringent actions are to be undertaken.

25) 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)?

See the answers to point 23 a-c.

Legally there are only formal reactions to be undertaken. However, each body competent for monitoring protection measures in case of petty violations may warn the perpetrator about the consequences in case of further illegal actions. This will be only a basis for internal notice to be made that however may be afterwards a ground for an official report to the decisive body.

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

See the answer to point 24a. Unofficial notices may be a reason to order a report from the police or the probation officer. Themselves they do not pose a sufficient evidence for changing previous decisions of the court or of a prosecutor. When they become officially confirmed there is a ground for any legal conduct.

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

The reaction is definitely effective. There is an important responsibility imposed on the monitoring authorities not to inform the decisive body too early but rather to find a proper way to incline the perpetrator to meet the conditions resulting from protection orders. In case there are sufficient grounds to approve findings reported by the monitoring authorities this may give rise to change currently applicable protection measure or to undertake more stringent legal actions. However, all decisions made in this respect may be charged by the perpetrator.

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

The reports of the violation made by the victims have some priority. However, they have to be checked also by other available source of information. This should preserve the perpetrators' rights not to be treated arbitrarily.

26) a. Is the violation of civil, administrative or other protection orders criminalized?

In other words, is the violation of any protection order an offence in itself?

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

See answer to point 7a.

The breach of one of the preventive measures may result in preventive detention to be applied by the court.

In case of the breach of probation measures the court pursuant to Article 75 paragraph 2 of the CC may order the execution of the penalty.

In general, only the breach of penal measures give rise to criminal responsibility according to Article 244 of the CC (failing to meet conditions imposed on the person is subject to the penalty of the deprivation of liberty up to 3 years (minimum penalty may be 1 month of the deprivation of liberty)). It may also result in the execution of penalty previously suspended.

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

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

If a violation itself poses another crime or the penal measures has been violated (which is the sole basis for the criminal responsibility), a new criminal proceedings shall be commenced. If not, the police shall report it and insert such information into a 'Blue card' (the so-called Blue card programme aims to concentrate as much knowledge as possible on the family touched by the problem of domestic violence and adapt a proper mean of support to solve the problem).

According to Article 244 paragraph 1a of CCP the police may also arrest a person, if there is good reason to suppose that he has committed an offence with the use of violence to the detriment of a person residing together, and if it is feared that such person shall again commit an offence with the use of violence against such person, especially when he has threatened to commit such an offence.

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

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

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

The monitoring authorities which are mainly the police (in relation to preventive orders) and the probation officers (in phase of execution of the judgement) are not empowered to issue a sanction following the breach of the order. In each case they realise the breach they have to report to the competent authority. Whereas in the pre-trial stage is it a prosecutor while execution of the judgement it is always a competent court.

The monitoring authorities do not have any discretionary powers and in each case they have to report all violation recognised.

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

The probation officers are subject to training organised by the different entities. The most relevance have trainings organised by the specialised unit of the Ministry of Justice dealing with the policy regarding

suppression of domestic violence. Thus, all newly adopted legal acts related thereto are explained to probation officers.

This unit prepared also formulas for the probation staff in order to unify the procedure throughout Poland leading to requesting execution of deprivation of liberty provisionally suspended or revocation of the conditional release from prison of convicted persons in case of the breach of protection orders or further violation of victims' rights.

The general training includes methods of monitoring and is mainly provided by the National Council of Probation Staff and by the National School for Judiciary and Public Prosecution.

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.

In civil law it is estimated that in 2012 a total of 730 related to barring order have been registered. In reality, however, the exact number of civil protection orders is higher because barring order may not only follow the procedure launched upon the Domestic Violence Act but also be imposed in separation and divorce cases. In the latter it is estimated that eviction of one of the spouse has been ordered in 1908 divorce cases and in 92 separation cases.

The statistics related to protection measures imposed in the criminal proceedings have been divided in terms of the phase of the criminal proceedings⁴.

In the pre-trial stage of the criminal proceedings the following preventive measures (orders) have been imposed according to statistics provided by the General Prosecutor Office:

- 1241 barring orders (eviction from the family home). In 42 cases the courts decided on prolongation of duration of those orders (upon Article 275a paragraph 1 and 4 of CCP).
- 627 barring orders upon Article 275 paragraph 3 of CCP (the police surveillance connected with vacation of premises occupied together with the injured person instead of temporary detention).
- 1412 restraining orders (no contact order).

In the judicial part of the criminal proceedings the following preventive measures (orders) have imposed:

a) preventive measures:

⁴All presented statistics have been taken from the Report on the actions taken within National Programme on Suppression of Domestic Violence in 2012 published on the website of the Ministry of Justice:

http://ms.gov.pl/Data/Files/_public/ppwr/aktualnosci/sprawozdanie-ms-z-kppwr-za-2012-rok.pdf

- 349 barring orders (eviction from the family home);
- 435 barring orders upon Article 275 paragraph 3 of CCP.

b) penal measures

- 330 restraining orders (no contact order);
- 205 restraining orders (interdiction of approaching specific persons);
- 42 injunctions (refraining from doing a specified act as being present in specific places);
- 167 barring orders (eviction from the family home)

c) probation measures

- 1040 restraining orders (no contact order);
- 387 restraining orders (interdiction of approaching specific persons);
- 316 injunctions (refraining from doing a specified act as being present in specific places);
- 536 barring orders (eviction from the family home).

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?

The most frequently applied protection measure is the police surveillance connected with no contact order which has been exercised in 1412 cases (see also answer to point 29). The most popular combination is also a short term barring order in combination with a 'no contact'- order (as a preventive measure).

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

In the civil interlocutory proceedings do not revolve officially around crimes.

Barring orders in the pre-trial stage are by definition only imposed in cases where domestic violence has occurred or is on the verge of occurring.

In judicial phase of the criminal proceedings, protection orders are generally issued in cases involving domestic violence, IPV, assault, threat, stalking.

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?

The statistics show that in 2012 female and juveniles were the majority of victims registered in relation to domestic violence. The following statistics describe the general number and the percentage of all victims registered in 2012:

- female in 12.167 cases (68 %);
- juveniles in 3.458 cases (19 %);
- male in 2.347 cases (14 %).

There are not available relevant statistics regarding gender specification in relation to the general number of orders imposed against male offenders.

- 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?

See the remark above

2.2.4. PROTECTION ORDER EFFECTIVENESS

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

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

There is no empirical information available on these matters. However, protection orders themselves are not the sole method to reduce unwanted behaviour of the wrongdoers. In many cases domestic violence resulted from alcohol or drugs habits of one of the spouses or partners. Therefore, protection measures connected with correction programmes seem to be an efficient tool to reduce violence. Persons deprived of liberty upon conviction related to domestic violence are subject to correction programmes. It is estimated that 95 percent of the beginners manage to finish successfully those programmes. In 2012 the numbers of 533 prisoners addicted to alcohol were covered by those programmes. 5340 are still waiting to start the therapies included into correctness programmes.

In relation to convicted persons who have not been subject to custodial sentences it is more difficult to address correctness programmes to them since the involvement is dependent on their willingness unless the court decides otherwise.

Also, there is still a lot to be done to raise awareness amongst practitioners in respect to effectiveness of this treatment.

- 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 on this matter.

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

There is no empirical information available on this matter.

2.2.5. IMPEDIMENTS TO PROTECTION ORDER LEGISLATION, ENFORCEMENT AND EFFECTIVENESS

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

a. Problems with protection order legislation

The Domestic Violence Act has been not so far amended and it is a matter of time to assess if those amendments were appropriate and how to strengthen application of protection measures. It has been also considered a possibility to extend the number of preventive protection measures to be applicable within criminal proceedings. A new one shall make the perpetrator to stay at home and to be monitored by electronic devices.

Preparing analysis would be considered if adoption of protection measures in other legal disciplines could be feasible. The other way of improvement could be creation of possibilities to impose also short-term protection measures following a court judgement.

b. Problems with protection order imposition/issuing/procedure

The imposition/issuing/procedure of protection measures themselves do not pose a real problem. More concern is related to willingness of perpetrators to meet the conditions of PO and to undergo the accompanying programmes.

c. Problems with protection order monitoring

Broader use of electronic monitoring may be a help to monitor perpetrators more efficiently. The probation staff and the police are generally meeting their objectives.

d. Problems with protection order enforcement

There are no technical or factual impediments related to enforcement of protection measures.

e. Problems with protection order effectiveness?

On the one hand, it has to be constantly checked how effective the already existing protection measures are. Nonetheless, a further work should be done to explore a space for improvements and application of new methods.

On the other hand, the deep analysis should be provided to check the effectiveness of each specific protection measure applied, notably in how many cases the breach occurred and has been reported and to what extent its application influenced the perpetrator's behaviour.

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

According to my perception the biggest problems are:

- lack of monitoring possibilities (in more, if not all cases monitoring should be applicable),
- reluctance of the perpetrators to undergo specialised treatment or correction programmes,

- limited human resources involved in correction programmes,
- reluctance of victims to cooperate with law enforcement and social workers (in particular in small societies),
- complicated procedure regarding registration of the so-called 'Blue Card' which facilitates to assess the problem in the family and existence of domestic violence.

2.2.6. PROMISING/ GOOD PRACTICES

38) Which factors facilitate the:

- Imposition
- monitoring, and
- enforcement of protection orders?

The factor that facilitates the imposition of protection orders in Poland is the fact that there are many ways of imposing of protection orders. In criminal law, a protection measure can be imposed in all stages of the proceedings, thereby avoiding 'protective gaps.

Monitoring of protection measures is facilitated by involvement of the police and probation services. They monitor themselves the perpetrators but in some cases also engage them into the process of monitoring – summoning them, obliging them to report, or/and to explain how they currently live. The same relates to enforcement of protection measures.

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

To my opinion the key factors which may raise effectiveness of protection measures are:

- willingness of the victim to cooperate with competent authorities (some victims expect help but are not prone to consent on eviction of the perpetrator);
- willingness of alleged perpetrators and convicted person to change some of their bad habits;
- timing activities to prevent further transgressions;
- make the victims better informed on their rights, in particular on possibilities to be separated from the perpetrator through measures set out in different legal branches as well as timely provided information on the application and termination of protection measures;
- extended possibilities of monitoring and simplify procedures allowing to monitor current situation at families endangered by domestic violence;
- more human and financial resources to support already existing programmes and campaigns.

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

It is promising that lately adopted programmes and campaigns started to function and their assessment by practitioners seem to be positive. The variety of measures granted to victims increase each year. Few years ago it has started programme aiming at cooperation between the Ministry of Justice and selected NGO's to provide victims with broadened support (economic, legal, psychological, etc.). The Ministry of Justice upon agreement

with the Headquarter of Police and National Council of Probation Staff established a 'Blueline' intervention call-line creating a possibility for victims to find help and support. An awareness campaign addressed to victims called 'week of open doors' gave rise to access to lawyers' legal advices free of charge. Although it is held once a year many victims may receive comprehensive knowledge on their rights.

Those measures are important to grant victims measures to find protection, support and legal advice. This may give rise to change the victims' attitude and provide them with a chance to improve their standing in the proceedings they are involved in particular in relation to perpetrators equipped with many procedural guarantees.

All these practices are promising and may have impact on the effectiveness of protection measures.

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

See point 39. Moreover, the electronic monitoring should be extended not only to those who have been released from prisons but also to perpetrators convicted for suspended penalties.

Also involvement victims in procedure leading to imposition of protection measures should be granted. The wishes of victims should be thus taken into account. However, procedural rights of suspects and accused should be equally preserved.

Researches regarding social dimension of protection measures should be strengthened.

2.2.7. FUTURE DEVELOPMENTS

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

The debate is at the moment more focused on the scope of the possible amendments resulting from the expected adoption of the Council of Europe Convention on preventing and combating violence against women and domestic violence. However, it is to pointed out that it is more concentrated on the definition of domestic violence than protection measures as such.

Protection orders *per se* were an important element of political debate in Poland in 2011 under the Polish Presidency in the Council of EU. Both things mattered at that time: negotiations on the draft Directive on European Protection Order and exercising of newly adopted amendments to the Domestic Violence Act.

43) a. Will the legislation/practice on protection orders change in the nearby future? Are there, for instance, any bills proposing changes to the current practice?
b. If so, what will change?
c. Are there at the moment any pilots in your country with a new approach to victim protection orders.

There is not in place any bill related to change of an existing mechanism of protection measures.

However, it is to be pointed out that there is under preparation a bill aiming at strengthening victims' rights connected with the implementation process of the Directive of the European Parliament and the Council

2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime in the European Union⁵. It may also influence protection of victims.

Apart from that it is considered to raise the effectiveness of the amendments to the Domestic Violence Act adopted just in 2010. It is expected to find out the solutions aiming at stepping up functionality of correction programmes addressed to perpetrators of domestic violence. The correction programmes has shown their effectiveness in relation to perpetrators of domestic violence deprived of liberty since while serving a sentence they are obligatory subject to therapies adjusted individually to the persons concerned. Therefore, the concern is to shift those solutions to those remaining in the outside world. Since there are not many entities realising correction programmes, and taking into account geographical constraints resulting from a distance where they are located (usually big cities) as well as time needed to start running the individualised programmes adapted to the persons concern there are still many issues to be considered.

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

It is discussed and analysed in Poland much broader use of electronic monitoring. For the time being this a measure allowing persons convicted for relatively less serious crimes to stay out of the prison system after serving a fixed period of the penalty. Therefore, the nearest future may bring also application of electronic monitoring to those who are under surveillance but not deprived of liberty in order to control their behaviour. This may also raise the effectiveness of protection measures as well as confidence of victims that they are protected in the real time (24/7).

Also the scope of changes into the Polish law may be extended following ratification into the Polish law the Council of Europe Convention on domestic violence and violence against women where some protection measures have been set out.

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 mechanism establishing in victim's favour the right to demand the enforcement in the executing State (State where the victim moves to) protection measures imposed on an alleged offender in issuing States can improve the protection of the victims.

The problem which many Member States may encounter while executing protection measures imposed in one Member State and transferred via EPO to the other Member State results from divergent regimes in which protection measures have been imposed and the legal consequences of the breach of those measures in some other country. This is caused by divergent procedures applied regarding imposition of protection measures and a possible liability in case of their breach (administrative sanction, criminal responsibility, a warning, no sanction).

This may result in unequal treatment of an alleged offender (in case the preventive measures have been applied) or a convicted person (if the protection measure assists the penalty). Given that a person subject to protection measure imposed following civil or administrative procedure could bear criminal responsibility in case of breach a recognised protection measure sent to Poland via EPO. And on the other way round, if a protection measure has been imposed in Poland according to the criminal procedure and EPO transferred to some other country s(he) could be subject to financial responsibility following administrative or civil procedure

5OJ L 315, 14.11.2012, p. 57.

which is in place in the executing country in case of breach of this protection measure.

In Poland, as long as the execution of protection measures transferred from a different country and recognised by the Polish court will be subject to criminal procedure this should not result in any legal interferences.

GLOSSARY

1. General Legal Terminology:⁶

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.

⁶ 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.⁷

⁷ 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 violence⁸

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.

Stalking⁹

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 persons¹⁰, 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

⁸ Rec. (2002)5. (VAW) (Committee of Ministers).

⁹ 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.

¹⁰ Council of Europe Convention on preventing and combating violence against women and domestic violence, art. 36 b.

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.