Sede | *Head Office* Rua José Estêvão 135 - A | piso 1
1150 - 201 Lisboa | Portugal

T. + 351 21 358 79 00 | F. + 351 21 887 63 51 | apav.sede@apav.pt

Mapping the legislation and assessing the impact of Protection Orders in the European Member States (POEMS)

National Report Portugal

APAV

Sede | *Head Office* Rua José Estêvão 135 - A | piso 1
1150 - 201 Lisboa | Portugal

T. + 351 21 358 79 00 | F. + 351 21 887 63 51 | apav.sede@apav.pt

Content

Sede | Head Office Rua José Estêvão 135 - A | piso 1
1150 - 201 Lisboa | Portugal

T. + 351 21 358 79 00 | F. + 351 21 887 63 51 | apav.sede@apav.pt

1. National reports

1.1. Summary page

In Portugal protection orders are mainly (if not exclusively) of a criminal nature. They are regulated both in generic law - in the Code of Criminal Procedure and the Penal Code - and specific law - the Domestic Violence Act. They are usually imposed in a pre-trial phase (as well as during trial phase) as coercive measures, but they can also be issued as injunctions to suspended pre-trial detention, provisional suspension of proceedings, suspended sentence and conditional release. For the crime of domestic violence, they can also be accessory penalties.

The range of protection orders is rather wide. The Portuguese system allows for barring orders (often containing a 'no contact' order), 'no contact' orders (usually also entailing the prohibition of approaching the house and the workplace of the victim), prohibition of approaching certain people or places, mandatory permanence within certain locations, travel bans, mandatory attendance of special programs (for domestic violence offenders or rehab), prohibition of having and using arms.

Domestic violence victims have a special status that provides them with more and more holistic rights. These include urgent coercive measures that shall be issued within 48 hours of the indictment of the defendant.

The most frequently imposed protection orders are the 'no contact' order and the barring order. The latest is however seldom imposed in a pre-trial phase.

The public prosecutor has a central role to play in terms of protection order imposition. Although the issuing of a protection order can only be made by a judge (either the judge of the proceeding or the injunction judge), the public prosecutor has the initiative (coercive measures and provisional suspension of proceedings). Victims can also request the issuing of a protection order provided that they constitute themselves as 'assistants' to the proceeding, therefore becoming a party to the proceedings. In domestic violence cases and in the event of particular urgency and risk the police also apply for the imposition of a protection order on behalf of the victim.

All protection orders are registered but only within the proceeding and there is no central registration. In case of protection order violation, generally it is up to the victim to report this violation. There are however electronic monitoring mechanisms in place for monitoring 'no contact' orders within the crime of domestic violence. This system uses a GPS technology and has been rather successfully implemented.

There are some problems with the imposition and enforcement of protection orders in Portugal related to the lack of resources in the field and also the lack of an interim speedy mechanism that enables a timely response to the victims' needs.

There are not enough studies in this specific field, especially in what concerns the effectiveness of protection orders in Portugal. This limits the prospects of improving the current system.

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1.2. Overview of protection order legislation in Portugal

1.2.1. Imposition of protection orders

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

1 a-c) Protection orders are mainly found in Portuguese criminal law, with a wide range of measures set forth in generic laws (the Penal Code and Code of Criminal Procedure). Nonetheless, there are also protection orders set in specific laws, namely Law 112/2009 for the prevention of domestic violence and protection and assistance to its victims (hereinafter, Domestic Violence Act).

Although it is also possible to impose protection orders through civil proceedings, it has scarcely been the case[1]. In fact, in the field of civil law, protection orders can be imposed via the general protection of personality (Civil Code, Chapter 1, Section 1, article 70, paragraph 2, second part). It is possible to impose measures such as a barring order through a special procedure (of voluntary jurisdiction) as a response to a violation or threat of violation of a personality right (Civil Procedural Code, Chapter 18, Section 14, articles 1474 and 1475). Since this is a voluntary jurisdiction procedure, the civil judge is not bound by strict legality principles and thus a change in circumstances can alter the decision. The major problem of this procedure is its fable enforceability[2]. Enforceability has proven problematic, giving rise to discussion among scholars and in jurisprudence on whether there would be criminal liability for the violation of such measures or solely civil liability[3].

In Portugal there are no exclusively administrative protection orders that fall under the definition considered for this project.

As a consequence of the above mentioned regarding both civil and administrative protection orders, we will only focus on criminal protection orders in this report.

In the field of criminal law we can find several protection orders' types: barring orders, prohibition of approaching certain locations, travel ban (both a ban on travelling outside the country and on leaving the village/town/district the offender lives in, or not to do so without permission, except for certain locations, such as the workplace, and upon authorization) and prohibition of contacts. Furthermore, there are other measures such as apprehension of arms and mandatory attendance to certain programs, e.g.: drug addiction rehabilitation or programs of domestic violence prevention, but these do not fit

[1] Maria Elisabete Ferreira, *Da Intervenção do Estado na Questão da Violência Conjugal em Portugal* (1st edn, Edições Almedina 2005), p. 160.
[2] Ibid, p. 155.
[3] In favour: TRP Acórdão 17/06/1998; Against: TRC Acórdão 28/03/1984, STJ Acórdão 18/10/1989.

into the definition of protection order considered for this report. Also, offenders can be prevented from attending certain meetings or associations and to exercise a specific profession or activity, but again it does not subsume to the definition defined for this report.

Most protection orders can be found in the Coercive Measures chapter (Book 4) of the Code of Criminal Procedure (namely article 200), which applies for all victims of a crime that has a penal scale with the severest punishment of more than three years of imprisonment (for instance, rape, sexual abuse of children, domestic violence). These orders are provided for under the coercive measure of imposition of conducts (article 200) and the list of orders there established is exhaustive. All these orders can cumulate with other coercive measures, except pre-trial detention and house arrest (we are referring not to the penalty of house arrest but to a coercive measure, by definition provisional, alternative to pre-trial detention). The only protection order that can be imposed together with the measures just mentioned is prohibition of contacts.

Coercive measures can also be found in article 31 of the Domestic Violence Act specifically for victims of domestic violence. Domestic violence cases are urgent proceedings, as determined in article 28 of the Domestic Violence Act, by reference to article 103 paragraph 2 of the Code of Criminal Procedure.

Protection orders are also established as accessory penalties to a conviction in cases of domestic violence, under the Penal Code 1995 (Book 2, Title 1, Chapter 1, article 152 paragraphs 4 and 5).

There are protection orders imposed on the grounds of provisional suspension of proceedings as injunctions in the Code of Criminal Procedure (Book 6, Title 2, Chapter 3, Article 281, paragraph 2) or as conditions to conditional release. Protection orders can furthermore be imposed as conditions to a suspended sentence, under the Penal Code (Book 1, Title 3, Chapter 2, Section 1, articles 50, paragraph 2, and article 52).

Regarding protection orders imposed as requirements for a conditional release, they are foreseen in the rules of conduct prescribed in articles 52 to 57 of the Penal Code and add up to the mandatory provisional house arrest for the transition period (usually after this period is finished), which is monitored by remote technical resources.

Finally, protection orders can also be established as conditions to a suspended pre-trial detention (Code of Criminal Procedure, Book 4, Title 2, Chapter 2, article 211). This suspension is motivated by illness or pregnancy of the offender and paragraph 2 establishes that any adequate protection order suitable to be applied under the circumstances the offender is in can be issued during this period. The suspension lasts for as long as the reasons for it to be determined remain.

There is only one official website with some Portuguese Laws translated into English (http://www.gddc.pt/legislacao-lingua-estrangeira/english.html). However, none of the laws relevant to our report is listed there. We were not able to find the translated version of these laws online.

In Portuguese, however, these laws can be found in several official websites. The two most relevant are: http://dre.pt/ (the website of the official journal for legislation publication) and http://www.pgdlisboa.pt/leis/lei_main.php (Lisbon Public Prosecution Office's website – it is constantly updated with the newest changes to each diploma).

Penal Code:
http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=109&tabela=leis&
Code of Criminal Procedure:
http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=199&tabela=leis&
Civil Code:
http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=775&tabela=leis&
Civil Procedural Code:
http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=570&tabela=leis&
Law 112/2009:
http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=1138&tabela=leis&ficha=1&pagina=1&

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

2 a-b) In the area of criminal law, protection orders can be imposed in various ways. Nevertheless, all of them are dependent on criminal proceedings.

The barring order aims at preventing the continuation of the criminal offense and serious public disorder that derives from the circumstances of the crime or of the personal characteristics of the offender in serious criminality. It can be imposed as a "precautionary measure" either in a pre-trial stage or throughout the whole proceedings (until *res judicata*) under the Coercive Measures chapter of the Code of Criminal Procedure (Book 4, Title 2, Chapter 1, article 200 paragraph 1 al. a) second part). All coercive measures are to be imposed only after the indictment of the offender and in accordance with the material requirements foreseen in article 204 of the Code of Criminal Procedure.

Law 112/2009 and Law 61/1991 establish urgent coercive measures. Law 112/2009 is the Domestic Violence Act and Law 61/1991 addresses the protection of women subjected to violence, including sexual crimes, harassment against spouses or partners, as well as kidnapping or assault when motivated by a discriminatory attitude towards women. The first diploma includes a barring order under article 31 paragraph 1 al. c) and the second under article 16 paragraph 1.

Article 16 paragraph 1 of Law 61/1991 establishes that the barring order is mandatory when provisional imprisonment is not imposed, and therefore it is only applicable as a subsidiary measure to provisional imprisonment. Since this order is applied when the offender and the victim live in the same house and in common economy and there is danger of continuation of the victimization, it can cumulate with another coercive measure, the guarantee, to help the victim's financial autonomy.

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The barring order can also be applied as part of an accessory penalty to domestic violence cases under article 152 paragraph 5 of the Penal Code. In fact, this article determines the terms of the protection order prohibiting contact with the victim where the requirement to stay away from the family home of the victim (or the victims' workplace) is included.

The travel ban is regulated under the Coercive Measures chapter of the Code of Criminal Procedure (Book 4, Title 2, Chapter 1, article 200, paragraph 1, al. b) and c)) and forbids the offender to travel either abroad or simply outside of a certain administrative circumscription, or to do so without authorization. The offender can however be allowed to leave the designated area when his or her professional obligations so demand as long as that is authorized by the court. As any other protection order under this chapter of the Code of Criminal Procedure, the travel ban can be applied in pre-trial stage or anytime throughout the proceedings, in the same terms explained above for the barring order.

Both the prohibition of contact and the prohibition of approaching certain locations are coercive measures under article 200 paragraph 1 al. d) of the Code of Criminal Procedure, as well as urgent coercive measures established for domestic violence cases under article 31 paragraph 1 al. d) of the Domestic Violence Act.

These protection measures can also be imposed as injunctions to the provisional suspension of proceedings. Article 281 of the Code of Criminal Procedure defines the proceeding of provisional suspension, which is applied to crimes with a maximum penalty of five years imprisonment or a non-imprisonment penalty (paragraph 1). Within this framework, a special regime is laid down to crimes of domestic violence non-aggravated by the end result (paragraph 7) and to sexual crimes against children non-aggravated by the end result (paragraph 8). Paragraph 2 of this article determines a set of injunctions that include protection measures such as the prohibition of residing in certain areas or approaching certain places. The judge has discretionary power to determine any other appropriate measure (under al. m)) and the prohibition of contacts is often imposed. This suspension can last up to two years, but in cases of domestic violence or sexual crimes against minors it can take up to five years. If the perpetrator obeys to all injunctions imposed against him the Public Prosecutor shall archive the case, otherwise (if there is a violation of the injunction or a new crime of the same nature – crime that protect the same legal asset - is committed) the suspension will be terminated and the proceeding continue.

Article 52 of the Penal Code lays down conditions for conditional release (via article 64 paragraph 1) and rules of conduct for the suspended sentence, determining a prohibition of residing in certain areas and a prohibition that restricts entrance in certain locations. Since the list of injunctions set is not a closed one, there is a discretionary power of the judge to determine others, as long as they are not offensive of the convicted person's dignity.

In the case of the prohibition of contact, it can also be imposed as an accessory penalty to the sentence under article 152 paragraph 4 of the Penal Code for a period of minimum 6 months to a maximum of 5 years. This order entails mandatory prohibition of approaching the house or the workplace of the victim.

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For domestic violence cases, the prohibition of contacts shall be monitored by distance monitoring technical resources (electronic surveillance), as determines article 35 of the Domestic Violence Act. This is the case regardless of how the protection order is imposed, if as an accessory penalty (article 152 of the Penal Code), as an urgent coercive measure (article 31 of Domestic Violence Act), as a condition to a suspended sentence or conditional release (article 52 of the Penal Code), or as a condition to the provisional suspension of the proceeding (article 281 of the Code of 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).

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)?

3 a-c) In the case of coercive measures, the public prosecutor has the prime initiative (article 194 paragraph 1 Code of Criminal Procedure).

When the protection order is imposed as a coercive measure during the investigation phase of the proceeding, besides the public prosecutor, also the 'assistant' can apply for it (article 268 paragraph 1 al. b) and paragraph 2 of the Code of Criminal Procedure). The victim can constitute him or herself as an 'assistant' to the proceedings. The public prosecution has a duty to conduct the investigation and will lead the accusation that the victim can "assist" in different terms depending on the nature of the crime (if it is a crime of public or semi-public nature[4]; differently in a private accusation crime, which is beyond the scope of this research).

[4] To better understand the Portuguese system, I add this note with a brief description.
Public crimes such as homicide, theft or domestic violence, can be reported both by the victim or anyone who knows of the crime and this is enough for the public prosecutor to start criminal proceedings, even against the wishes of the victim. Reporting can be made anonymously.
In the other types of crimes, either semi-public crimes such as petty theft, non-serious offences against one's physical integrity or private crimes such as insults, it has to be the victim presenting the complaint within 6 months of the crime taking place. Otherwise, the public prosecutor will not be able to start criminal proceedings. If the victim cannot do it, because he/she is aged under 16, has died or is unwell, or any other reason, then a close relative such as the husband or wife, father or son, can present the complaint. The complaint can be withdrawn by the victim (but not the reporting of a crime). The victim can withdraw the complaint, as long as the defendant is not against it. The request to withdraw needs to be submitted to the authority responsible for the proceedings at that time: the public prosecutor during the investigation phase and pre-trial phase or the judge during the trial. Reporting a crime or making a complaint is free of charge, does not require formalities and can be done verbally or in writing.

During this phase of the proceedings and in cases of exceptional urgency or jeopardy for delay, the police can also request the issuing of a protection order in the same terms. Nonetheless, in this case the public prosecutor can oppose the protection order requested, either before or after it was imposed (article 268 paragraph 2 of the Code of Criminal Procedure).

In cases of intense danger, the police shall make a risk assessment (Auto de Avaliação de Risco) within the record of the crime (Auto de Notícia Padronizado), providing reasoning for a possible issuing of a protection order through a coercive measure. The police might also make a risk assessment (Auto de Avaliação de Risco) upon request of the judicial authority, throughout the investigation phase in order to assess the urgency of imposing a protection order that can stop the defendant from continuing the criminal offense.

The defendant always needs to be heard, in any phase of the proceedings a protection order might be imposed, which means that there is no *ex parte* issue of protection orders. In this phase of the proceedings, the defendant can either be heard during the first inquiry or simply notified of the need to manifest his or her view on the procedural documents[5]. Nevertheless, there is no need to hear the defendant upon reexamination of the protection order imposed if the judge considers there is no change in the circumstances[6].

During the pre-trial phase the competence to impose such protection orders is of the judge of instruction[7]. Coercive measures can still be applied after the inquiry and instruction phases. However, it will be the judge of the proceeding issuing them.

The legitimacy to apply for protection orders also varies. First and foremost the public prosecutor, in which case both the 'assistant' and the offender have to be heard. The 'assistant' can also apply for a protection order, provided that the public prosecutor and the defendant are heard. During trial the judge can also impose a protection order as a coercive measure without request from any party.

The same regime of the Code of Criminal Procedure applies for urgent coercive measures under the Domestic Violence Act.

The Domestic Violence Act establishes urgent coercive measures without impairment of protection orders set forth in the Coercive Measures chapter of the Code of Criminal Procedure, which also determines the requirements that need to be respected when applying these measures, thus also in terms of active legitimacy and issuing competence.

The Domestic Violence Act establishes a "statute of victim" to domestic violence victims. A certificate is given to the victim upon the report of the crime and rights and

[5] TRC Acórdão 09/05/2012 and TRE Acórdão 07/10/2012, see also Gabinete de Estudos e Observatório dos Tribunais, *Parecer da Associação Sindical dos Juízes Portugueses (Opinion of the Labour Union of Portuguese Judges)*, March 2010, pp. 13-4, in: http://www.asjp.pt. On a contrary position, Sónia Fidalgo, 'Medidas de Coacção: aplicação e impugnação' [2010] Revista do Ministério Público 123.

[6] TRG Acórdão 19/10/2009.

[7] Instruction phase is, under Portuguese Law, an optional pre-trial phase, between the investigation phase and the trial phase. It only takes place when the victim, in his/her role of assistant in the criminal proceedings, or the defendant do not agree with the decision taken by the public prosecutor by the end of the investigation phase and request a pre-trial criminal investigation.

measures included initiated immediately. The statute of victim entails in great part the rights set forth in the Council Framework Decision of 15 of March 2001 on the standing of victims in criminal proceedings (2001/220/JHA). The Portuguese legislator opted for positive discrimination due to the high level of incidence of domestic violence in the country, decision with which APAV disagreed considering that the rights established in the Framework Decision should be transposed to the Code of Criminal Procedure and thus granted equally to all victims of all crimes. It is important to clarify that APAV is in favour of positive discrimination in all aspects of the regime that are specifically relevant for domestic violence victims (for instance urgent coercive measures), however, we consider that some of the aspects should be applicable for other victims of other crimes and there is no reason why such a distinction should be made (for example exemption from user fees in hospitals that should for instance also apply for rape victims).

An important remark regarding the Domestic Violence Act concerns competent authorities to declare the 'statute of victim'. In exceptional cases and provided that thorough reasoning is presented, the Domestic Violence Act attributes competence to the National Committee for Gender Equality and Citizenship (CIG) to concede the 'statute of victim' to domestic violence victims, and not only to judicial authorities and police forces (article 14 paragraph 3 of the Domestic Violence Act). The criteria to determine when the CIG has the competence to do so was established by order of the High Commissioner and determines that it is only competent when no other competent authority has done so and CIG's technical support team to domestic violence victims provides for a reasoned decision in the matter. This statute defines a long set of rights in different areas, from healthcare to police protection. However, the statute as it is given by CIG will only entail the victim with part of the full range of rights established in the Domestic Violence Act, since any procedure of the competence of police forces or judicial authorities will not be provided for within it, as they are is in fact, contrary to other measures foreseen in the Domestic Violence Act, dependent on the beginning of a criminal proceeding. Therefore, CIG does not have competence to issue any protection order.

For protection orders imposed on a provisional suspension of proceedings, the public prosecutor, from his/her own initiative or upon request of the 'assistant' or the defendant, can determine the suspension of the proceeding, provided that the instruction judge agrees and all the other conditions set forth in article 281 paragraph 1 of the Code of Criminal Procedure are met. Among these conditions is established that both the 'assistant' and the defendant have to agree to this suspension.

There are some particularities to sexual crimes non-aggravated by the end result of the crime (article 281 paragraph 8 Code of Criminal Procedure) and domestic violence crime non-aggravated by the end result of the crime (article 281 paragraph 7 Code of Criminal Procedure).

The first can be determined by the public prosecutor if in the interest of the child and both the instruction judge and the defendant agree. When the minor is an 'assistant' to the proceeding (if he/she is between 16 and 18 years old) or his/her legal representative on his/her behalf (if the child is between 14 and 16 years old), the 'assistant' also has to be heard.

The second is also determined by the public prosecutor upon request of the victim provided that the instruction judge and the defendant agree. This provision for domestic violence (article 281 paragraph 7) implies that when the victim requests the suspension to the public prosecutor (provided that in full free and informed consent) the suspension is determined in compliance with less requirements, only upon agreement of the judge of instruction and the defendant, as well as inexistence of prior conviction for the commission of crime of the same nature or previous provisional suspension imposed for crime of the same nature[8]. This means that, for instance, there is no need for a low degree of culpability, mandatory in any other crime to which the suspension can be applied[9]. However some scholars (Albuquerque, 2009: 737) have considered this provision void of meaning when systematically read because article 152 paragraphs 1 and 2 of the Penal Code already allow for application of article 281 paragraph 1. have interpreted it as an exception to the need of the victim becoming an 'assistant' to the proceedings. Insofar, even without having the role of 'assistant' to the proceedings, the victim still has the right to express his/her will to suspend the proceeding to the public prosecutor that then has the duty to suspend it, provided that all other conditions above mentioned are met[10].

Protection orders imposed as conditions to a suspended sentence or as accessory penalties are exclusively issued by the judge of the proceeding.

Accessory penalties are not automatic penalties as a direct effect of a conviction; the defendant maintains the right to be heard before its imposition if such a protection order was not requested prior in the proceeding by the public prosecutor[11].

In the context of conditional release, probation services (DGRSP) play a consultation role in determining protection orders. They are required to make a report (Article 173 paragraph 1 al. a) and b) of the Code of Penalty Enforcement and Measures involving Deprivation of Liberty) that will be presented to the judge of penalty enforcement and are part of the technical council (Article 8 of Decree-Law 215/2012, of 28th of September) that gives a final opinion to be considered by the judge. However, the protection order can only be issued by the judge.

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?
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)?

[8] Cristina Augusta Teixeira Cardoso, 'A Violência Doméstica e as Penas Acessórias' (MSc thesis, Portuguese Catholic University 2012).
[9] MARIA ELISABETE FERREIRA believes that «it is correct to exclude this requirement as otherwise it could make this newly created institute inapplicable in practice [for domestic violence offenses] …», *in ob. cit.*, p. 92.
[10] Paulo Pinto de Albuquerque, *Comentário do Código de Processo Penal à luz da Constituição da República e da Convenção Europeia dos Direitos do Homem* (3rd edn, Universidade Católica Portuguesa 2009), p.737.
[11] TRP Acórdão 01/02/2012 and STJ Acórdão de fixação de jurisprudência nº. 7/2008.

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4 a-b) As mentioned previously in response to questions 1 and 2, protection orders are available for victims of various crimes (see above Q.1 and Q.2). However, domestic violence victims are paid particular attention.

It is important to note that there is no solely gender specific approach to the crime of domestic violence as it is defined in the Penal Code. A victim of domestic violence can be a female or male spouse or ex-spouse, partner or ex-partner, person with whom one has or had a dating relationship, co-residing or not, heterosexual or homosexual couple. But it can also be a son/daughter of the offender or a father/mother of the offender or any person considered defenseless (due to age, handicap, illness, pregnancy or economic dependency) that co-resides with the offender.

The Domestic Violence Act sets up special mechanisms and special units within the police forces (NIAVE within GNR and EPAV within PSP) and public prosecution, as well as specialized services and social rights for victims of domestic violence (for instance, exemption of paying the hospital user fee).

One example is the *teleassistance* system. This is a system of emergency response in cases of domestic violence that allows the victim to have 24/7 service of emergency call to get emotional support or call the police on site with maximum urgency. The victim is provided with a set of electronic means (mobile communication and geolocalisation) that work as alert in cases of danger. The victim is also contacted from time to time by the Telephone Emergency Service that operates this service to know how he/she is and check if the equipment is working properly. This line is operated by the Portuguese Red Cross, and the services are provided by a set of organisations and entities parties to this protocol. This system can be requested by the police, organisations that belong to the national network of support to victims of domestic violence or by CIG. This mechanism can only be activated by issuing of the public prosecutor of the case (if in pre-trial stage) or by the judge of the proceeding (post pre-trial stages). CIG has the competence to operate the service by activating the protocol and contacting the relevant agencies to start it. However, this system cannot be applied if the victim does not consent. Only the court can terminate the system operation, but the victim can request it. Nevertheless, the service can solely last up to 6 months. The service is free of charge for the victim. This system is namely applied in cases of prohibition of contact with the victim.

The barring order was only introduced in the Code of Criminal Procedure in 1999. Before it was only foreseen for cases of women victims of gender based violence under Law 61/1991. Domestic violence was at the center of the legislators' concerns. Even though domestic violence was only typified as an autonomous crime in 2007 (Law 59/2007 of 4th of September amending the Penal Code), preparatory works show a concern with high numbers of abuse within the family. The Opinion of the High Commissioner for Gender Equality (then High Commissioner for Promotion of Equality and of the Family) then presented shows concern that family members other than women, namely children, would be further victimized with abuse and sexual offenses. Therefore this inception in the Coercive Measures chapter of the Code of Criminal Procedure was

suggested and the approved legal diploma includes it, accepting the Commissioner's legitimate concerns[12].

As it has also been referred before, all criminal protection orders are dependent upon a criminal proceeding.

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)

As previously mentioned (question n. º 3), protection orders can be imposed at any stage of the criminal proceeding.

During the investigation phase and until an accusation is made, the judge of criminal instruction is competent for issuing a protection order, upon request of the public prosecutor (article 194 paragraph 5 of the Code of Criminal Procedure), of the 'assistant' or the police authority (article 268 paragraph 2 of the same Code). If the victim is not an assistant in the proceeding, he/she may inform the public prosecutor of the facts that might sustain the issuing of a protection order (mainly the risk of re-victimization) and then the public prosecutor has the initiative to request its issuing to the judge of criminal instruction.

After receiving the request, the judge of criminal instruction has 5 days to hear the public prosecutor and the defendant and decide whether to issue a protection order or not (article 194 paragraph 5 of the Code of Criminal Procedure). The judge can however issue a more severe protection order than the one proposed by the public prosecutor. The defendant is always notified of the decision so that he can be heard (article 194 paragraph 9 of the Code of Criminal Procedure), unless there are strong reasons to believe the defendant will not voluntarily show up for the hearing, in which case the judge, the public prosecutor or the police officer can issue an arrest warrant.

After the accusation is made and during the trial phase, the judge can issue a protection order by his/her own initiative if precautionary needs of the case so justify, but the public prosecutor and the defendant will always have to be heard before the decision in this matter (article 194 paragraph 1 of the Code of Criminal Procedure).

In criminal proceedings regarding domestic violence, it is possible to issue urgent protection orders, which must be issued by the judge of criminal instruction within 48 hours after indictment (article 31 of the Domestic Violence Act).

It is important to highlight here the differences between the detention regime under the Code of Criminal Procedure (article 257) and the Domestic Violence Act (article 30). In fact, under the Domestic Violence Act a detention outside of *flagrante delicto* is possible both through an arrest warrant issued by the judge or by the public prosecutor of the case in case of danger of continuation of the crime or jeopardy for the victim's protection. However, under the Code of Criminal Procedure there is only such possibility when there is an arrest warrant by the judge and in case of a warrant issued by a prosecutor it is only possible if preventive detention was possible for the case and in both

[12] Available at http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheIniciativa.aspx?BID=4699.

cases only when there are strong reasons to consider that the defendant would not show up for the hearing or victim protection would be impossible otherwise.

Police officers can also have the initiative. According to the Domestic Violence Act, this is possible in the same circumstances when a timely issuing of warrant by the judge or prosecutor is not possible within an appropriate time. Whereas under the Code of Criminal Procedure this is only possible in cases where preventive detention is admissible and if there is the risk that the defendant will runaway, persist in committing the criminal offense or danger caused by delay of the procedure.

Protection orders can also be imposed as conditions for certain legal benefits for the defendant, such as the provisional suspension of the criminal proceeding, a suspended sentence or conditional release.

The provisional suspension of the criminal proceeding (article 281 of the Code of Criminal Procedure) can be requested to the judge of instruction during the investigation phase by the public prosecutor, by his/her own initiative or upon the defendant's or the assistant's request, if the penalty foreseen for the crime under investigation is under 5 years of imprisonment or other non-imprisonment sanction.

The suspension can only take place if the defendant and the assistant agree with it, if the defendant has not been convicted before for a crime of the same nature as the one under investigation, if the defendant has not benefited from the provisional suspension before in another criminal proceeding, if there is not a case to determine the defendant's confinement in a mental institution for criminal offenders, if the degree of culpability is not high and if the facts show that the suspension is enough to prevent the defendant's relapse. These are cumulative requirements.

If the requirements are fulfilled, the criminal proceeding is suspended for a maximum period of two years with the imposition of certain obligations for the defendant, which must be complied with during the suspension period. Article 281, nº 2 of the Code of Criminal Procedure provides some conditions that the judge may impose for the suspension of the criminal proceeding, including the prohibition to attend to certain places or to live in certain locations (barring order).

Besides the measures provided by law, the judge can impose other measures according to the concrete circumstances of the case. Being so, the judge can determine the prohibition of contacts with the victim during the period of suspension, in order to prevent re-victimization.

If the defendant fails to comply with any of the measures determined, the suspension is revoked and the criminal proceeding follows to the trial phase. On the other hand, if all the measures are fulfilled the criminal proceeding is filed and cannot be re-opened.

The suspended sentence (article 50 and followings of the Criminal Code) can be determined if the penalty of imprisonment imposed was under 5 years, taking into account the defendant´s personality, lifestyle and behaviour before and after the commitment of the crime and the circumstances of the crime to assess if the simply possibility of imprisonment is enough as a reproach.

When imposing a suspended sentence, the judge may or may not determine certain conditions to be fulfilled by the defendant during the suspension period. The law

provides the measures that can be imposed in this case, but the judge is free to impose others that are more adequate to the concrete situation and to protect the victim, such as the prohibition of contacts or a barring order. If all the conditions are satisfied, the penalty is extinct, but the conviction remains in the criminal records; if the defendant fails to comply with one or more conditions, he/she may go to imprisonment for the period of time determined in the sentence.

Conditional release is determined when the defendant has complied with at least half of the imprisonment sentence (minimum of six months), considering the defendant's behaviour during imprisonment, the circumstances of the crime and other facts that shows that the defendant will not relapse if released from prison (article 61 of the Criminal Code).

In terms of procedure, in 90 days before the decision about the conditional release the judge must ask the prison facility to provide information about the defendant's behaviour during imprisonment, his/her family situation, occupation, needs for social reintegration and also about the victim's need for protection. The probation services (by DGRSP) also give an opinion about the conditions to be imposed by the judge for the period of conditional release (article 173 and followings of law 115/2009).

After receiving all the information requested, the judge hears the public prosecutor and the defendant in order to make a decision. In the decision that determines the conditional release, the judge imposes the conditions to be fulfilled by the defendant that may take into account a prohibition of contacts with the victim.

Finally, protection orders can also be imposed as an accessory penalty for the crime of domestic violence. In this case, the judge considers the victim's need for protection together with the other elements that sustain the choice of the penalties to be imposed. In the specific case of domestic violence, article 152 of the Penal Code determines that the accessory penalties may comprise the prohibition of contacts and to bear weapons, for a period between six months and five years. In this case, the prohibition of contacts must be imposed together with a barring order and the measures must be electronically monitored.

After the decision concerning the imposition of a protection order, and especially when the protection order is a prohibition of contacts in the context of domestic violence, the Court may determine the monitoring of the protection order by an administrative authority, that must be informed of the decision (see answer to question 19 and followings about the monitoring procedures).

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

The yearly Justice Statistics provided by the Ministry of Justice show that in 2011 the investigation phase of proceedings (because it refers to services of the public prosecution) take up to five months in average. Since the protection order decision is not a separate proceeding, we cannot find more concrete information concerning.

In cases of domestic violence the proceeding is urgent meaning that all acts will have priority regarding other proceedings running, whereas in cases of other crimes only if the defendant is detained the proceeding will have urgent nature. Also, in cases of urgent proceedings they will still run during judicial holidays. Legally protection orders

imposed as coercive measures (either in the investigation phase or throughout the proceeding) in domestic violence cases have to be imposed with urgency, with mandatory ponderation within 48 hours. The law is extremely vague, not clearly setting an obligation of decision within 48 hours (when the defendant is not detained); however that is the most adequate interpretation. Practice however shows that this is rarely the case.

According to article 268 paragraph 4 of the Code of Criminal Code the judge shall decide upon the imposition of a coercive measure within the investigation phase in 24 hours from its request in case of a detained defendant. In this context, a protection order requested by the public prosecutor for a non-detained defendant has to be decided by the judge within 5 days (article 194 paragraph 5).

Another indicator in the Justice Statistics refers to the average length of the proceeding within the first instance courts. It includes the whole duration of the proceeding until a decision is reached, but before *res judicata*. In 2011 criminal proceedings took on average 9 months, according to this official data.

c. Does the protection order come into effect as soon as the decision on a protection order is made or are there any additional requirements before the orders really come into effect (e.g., in civil proceedings the notification/service of the verdict to the defendant)? In other words, is the victim immediately protected or can there be a lapse of time before the actual protection begins?

In Portuguese criminal procedure, the decision to apply a coercive measure has immediate effects. However, there are protection orders imposed as such that imply the use of technical resources to enforce them (for instance, electronic bracelet or *teleassistance*). In these cases the enforcement of the protection order depends on the responsible technical teams that will install the mechanisms, which will usually happen within 24 hours of the court's decision.

Recent amendments to the Domestic Violence Act (Law 19/2013) have facilitated the imposition of protection orders under article 31, and therefore as urgent coercive measures, by creating the possibility (under article 36 paragraph 7) of dismissing the consent of the parties (most importantly, the defendant) to determine the use of technical electronic means of monitoring when the judge considers it inevitable for the protection of the victim, provided that such a decision is reasoned.

Regarding accessory penalties, the order becomes effective when the main decision becomes *res judicata*.

For the provisional suspension of proceedings, the imposition of injunctions or rules of conduct to the defendant is of immediate effect, obviously after determination by the public prosecutor, provided that the conditions for its application are met and there is agreement of the judge. Article 281 paragraph 5 of the Code of Criminal Procedure establishes nonetheless that the enforcement of such orders might imply the support of social reintegration services (DGRSP), police forces or administrative entities.

A suspended sentence has immediate effects, under article 492 of the Code of Criminal Procedure, and insofar also the conditions imposed to it, when existing, also have immediate effects.

Sede | Head Office Rua José Estêvão 135 - A | piso 1
1150 - 201 Lisboa | Portugal

T. + 351 21 358 79 00 | F. + 351 21 887 63 51 | apav.sede@apav.pt

Regarding conditional release, the imposition of protection orders is made through conditions to the release, therefore, after a decision is reached the convicted person is notified and the prison services and DGRSP informed, after which the conditions are enforced.

Also due to the recent revision of the Domestic Violence Act previously mentioned, the wording of article 35 (referring to the use of electronic means of monitoring) became stronger, imposing on the judge the duty to impose the use of such mechanisms for domestic violence cases in every protection order, either through article 31 (urgent coercive measures) or injunctions imposed through the provisional suspension of the proceedings (article 281 of the Code of Criminal Procedure) or a suspended sentence or conditional release (both via article 52 of the Penal Code).

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?

There is no such regulation in Portugal. The closest institute would be that of the urgent coercive measures for domestic violence cases under the Domestic Violence Act that we have previously explained.

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?

6 a-b) Protection orders such as the accessory penalty of prohibition of contacts, which includes a barring order from the home and the work place, are safeguards of the victim's fundamental rights after the end of the proceeding with a convicting sentence. In its decision process the court considers the personality of the defendant, his/her behavior and the seriousness of the offense, the risk the convicted person might represent for the victim.

Protection orders imposed as coercive measures aim at ensuring that the criminal proceeding runs without incidents and protection the victim's fundamental rights throughout the proceeding. Therefore, the court will evaluate the existing risks for the victim, pondering if there is a need to restrict the defendant's freedom in order to preserve them. Hence, in the Code of Criminal Procedure there are general requirements to all coercive measures for all crimes they can be applied for. These are: 1) Risk of the defendant running away; 2) Risk of disturbing the normal course of the investigation or instruction of the proceeding and, usually, to the gathering, preservation or truthfulness of evidence; 3) Risk of continuation of the criminal actions, due to the nature of the crime or the defendant's personality.

When imposing a coercive measure the facts should have occurred not long before the moment of the decision. There is no legal indication of such timeframe, as it will be analysed by the court in each case according to the danger involved to and the needs of the victim and the proceeding.

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1150 - 201 Lisboa | Portugal

T. + 351 21 358 79 00 | F. + 351 21 887 63 51 | apav.sede@apav.pt

Finally the principle of practical adequacy will guide the decision imposing proportionality criteria. A balance between the rights and protection needs of victims and the order less invasive for the defendant will be the basis for the court's decision, without jeopardizing the interests and protection of victims.

c. Is free legal representation/advice available?

The imposition of protection orders does not generally oblige the victim to be represented by an attorney. However, in the case of coercive measures, if the victim wishes to request directly to the judge the imposition or substitution of a protection order he/she will have to become an 'assistant' to the proceeding and in such a case it will be mandatory.

The victim of domestic violence has, under the Domestic Violence Act, the right to legal aid, both to legal advice by an attorney (articles 18, 19 and 25 of the Domestic Violence Act) and, in case the victim does not have the means to pay, legal representation provided with urgency (article 25 of the Domestic Violence Act).

Law 47/2007 of 28th of August determines that Portuguese and EU citizens, as well as foreigners and stateless people with a valid title in an EU member State, in situation of economic difficulties can access free legal representation provided their economic status is proven. Social Security is the entity responsible to evaluate this situation. In case this requirement is not met costs will be borne by the victim.

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)?

As explained in questions 1 and 2, there are several types of protection orders within the Portuguese legislation:

- prohibition of contacts with the victim, implying a prohibition of approaching a victim, or the exact location or the area she/he lives or works in, or contacting her/him by any means from telephone to email;
- prohibition of contacts can be determined in the same terms above combined with a barring order (mainly as an accessory penalty, as, in this case, that combination is mandatory by law), obliging the perpetrator to leave the house where he/she lived with the victim, if that is the case. The prohibition is in fact to stay in the village/town or district or in the house where the victim or his/her family members or other relevant people live in or where the crime was committed;
- barring order implies that the perpetrator leaves the common or family home. The prohibition is in fact to stay in the village/town or district or in the house where the victim or his/her family members or other relevant people live in or where the crime was committed;
- prohibition of approaching certain locations, neighbourhoods, villages and insofar of entering certain areas;
- travel ban entails a prohibition of leaving certain areas.

Sede | *Head Office* Rua José Estêvão 135 - A | piso 1
1150 - 201 Lisboa | Portugal

T. + 351 21 358 79 00 | F. + 351 21 887 63 51 | apav.sede@apav.pt

As also mentioned before, there are other obligations imposed as rules of conduct to perpetrators, namely the obligation of undergoing medical treatment for any kind of addiction that has been a relevant factor for the commission of the criminal offense, upon the offender's consent; not to acquire or use in a given period of time any kind of arms or similar objects that can be used for committing another crime. In the case of domestic violence, the perpetrator can also, upon his/her consent, be obliged to attend special programs for offenders of domestic violence.

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

Yes, there is a barring order that, as mentioned before, can be imposed as an accessory penalty, in which case it can last from 6 months up to 5 years; or as a coercive measure, in which case it can be issued for a maximum period of 1 year and 6 months.

During this period victims can receive psychological support and legal advice (article 18 of the Domestic Violence Act). Special protection measures are set for victims, also in relation with their contact with the perpetrator (article 20), and information is to be provided constantly through specialized offices (Article 27). The victim can also be granted with the *teleassistance* system if the public prosecutor so determines.

Regarding defendants, after conviction or provisional suspension of proceedings the perpetrator can enjoy psychological or psychiatric support for the crime of domestic violence and he/she can also, if he/she so agrees to it, attend programs on domestic violence in these cases as well as during a suspended sentence or, if such an order is issued, during the investigation phase.

It is important to mention that under the Domestic Violence Act the victim can receive support to rent a house, be granted social housing or a similar help measure can be put in place (article 45).

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

Our experience and jurisprudence consulted allows us to say that prohibition of contacts is the most commonly issued protection order.

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)?

Yes, they can. Coercive measures can be imposed cumulatively (except preventive detention and house arrest), as can injunctions imposed for conditional release or suspended sentence or provisional suspension of proceedings. In the case of

Sede | Head Office Rua José Estêvão 135 - A | piso 1
1150 - 201 Lisboa | Portugal

T. + 351 21 358 79 00 | F. + 351 21 887 63 51 | apav.sede@apav.pt

accessory penalties it is even mandatory to apply a prohibition of contact with a barring order and a prohibition of approaching the victims' workplace.

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

The protection orders most often issued together are the prohibition of contact and the barring order.

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

8 a-b) The elements that need to be included in the protection order vary according to the order at stake. However, there are common elements such as the duration of the order and the identification of the people protected by it.

When imposing a prohibition of contacts with barring order included through an accessory penalty for the crime of domestic violence (article 152 paragraph 4 of the Penal Code), the judge will have to mention the duration of the order, a full identification of both the convicted person and the victim, and of the victim's place of residence and workplace. This is required in order to allow for the enforcement and monitoring of the order by electronic technical resources.

Regarding the provisional suspension of proceedings, the injunctions imposed on the defendant are of mandatory inclusion on the decision. These are the protection orders.

Protection orders shall always refer to the places that cannot be accessed by the perpetrator or the person that cannot be contacted.

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?

If the protection order consists on the prohibition of contacts, there is no legal limitation for its scope. Often the decision refers that the defendant is prohibited to contact the victim "by any means" or, when imposing a prohibition to approach the victim, it usually determines a radius. Only when the protection order is monitored the administrative authority in charge of the monitoring must determine the area under surveillance, which usually is the victim's house, work place and the way between one and the other.

If the protection order consists on the imposition of conducts, the judge must decide which conducts are going to be imposed among the ones provided by law or others that are necessary to guarantee the victim's protection, and the decision must refer to all the conducts that the defendant is obliged to fulfill (for instance, attending certain programs like rehab or special programs for domestic violence offenders).

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

See answer above in a).

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

When deciding about a protection order, the public prosecutor and the judge take into account the risk of re-victimization considering the defendant's behavior (if there are current acts of violence or threats against the victim), the defendant's personality and the gravity of the crime. The concrete circumstances of the case are also taken into account, for example, if the defendant works in the same place as the victim, the Court would not prohibit him to approach the work place, but only the victim's house or to contact the victim by any means. Nonetheless, there are rights granted in the Labour Law to guarantee protection for domestic violence victims in such cases (also previewed in article 44 of the Domestic Violence Act).

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)?

10 a-b) According to the jurisprudence analysis we developed[13], we can conclude that the use of radiuses is frequent. However the majority of the jurisprudence consulted made use of direct naming of streets or places (such as the street of the house, school or workplace or, in some cases, mainly in the countryside, even the village/town of the person protected by the order) that are of forbidden access to the defendant to enter. The address of the house is frequently used to indicate restricted areas.

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

There are indeed legal limitations to the duration of protection orders.

In the case of prohibition of contacts and prohibition of approaching certain locations established as coercive measures under the Code of Criminal Procedure, the maximum duration is the same determined for pre-trial detention (article 215, by way of article 218

[13] We analysed jurisprudence of 2nd instance courts and the Supreme Court and Constitutional court available at www.dgsi.pt, as well as 1st instance courts' decisions and public prosecution decisions available in our internal database and, in the case of 1st instance courts, in published jurisprudence compilations.

paragraph 2)[14]. This means that in cases of domestic violence, for instance, the protection order can last up to four months, if no accusation has been made; eight months, if there no decision by the instruction judge has yet been issued; one year and two months if there is no decision by a first instance court; one year and six months if there is no decision reaching *res judicata*. However, when a crime has a maximum penalty framework of more than eight years imprisonment, such as, for example, the crime of rape, the legal maximum duration is of six months, ten months, one year and six months and two years, respectively.

For the urgent coercive measures laid down in the Domestic Violence Act the same timeframe applies, as became clear by what was stated above. Nevertheless, the decision on issuing these measures can only be made within 48 hours of the indictment of the offender.

In cases of exceptional urgency or jeopardy of delay, coercive measures have to be issued within 24 hours of the request for their imposition (Code of Criminal Procedure, article 168 paragraph 4).

Protection measures taken as accessory penalties to the crime of domestic violence have a minimum duration of six months and a maximum duration of five years.

When protection orders are imposed as conditions to a provisional suspension of proceedings there is no determined minimum/maximum legal limitation to the injunction itself, only to the suspension. The maximum duration of a provisional suspension of proceedings is of 2 years but in cases of domestic violence it can last up to 5 years.

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

In cases of domestic violence, the court will take into account the seriousness of the crime, the nature of the facts, the perpetrator's personality and the level of violence and the defendant's indifference or not to it.

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

We could not find any empirical information to respond to this query.

Regarding conditional release, the latest statistics found on this variable (of 2012) show that most of them were imposed for up to eight months.

In our own jurisprudence analysis we concluded that, as an accessory penalty to a conviction for a crime of domestic violence, many protection orders are imposed for close to the maximum but most often for the period of 2 years.

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?

[14] Fernando Gonçalves et al, *A Prisão preventiva e as restantes medidas de coacção – A providência do Habeas Corpus em virtude da prisão ilegal* (2nd edn, Edições Almedina 2004), p. 149.

Sede | Head Office Rua José Estêvão 135 - A | piso 1
1150 - 201 Lisboa | Portugal

T. + 351 21 358 79 00 | F. + 351 21 887 63 51 | apav.sede@apav.pt

Victims can influence a decision on imposing a protection order only in the sense that evidence is often obtained through the victim and ensuring victim protection is one of the requirements to the issuing of such orders. Aside from that, the victim will hardly be able to influence the imposition of a protection order or the determination of its length.

Even when the order is not requested by the victim, he/she will still be heard.

Only in the case of provisional suspension of proceedings victims' wishes will be paid a different attention, as they have to consent on or be the ones requesting the use of such an institute[15].

The victim has to consent on the use of technical means of electronic monitoring, except, in domestic violence cases, when the judge considers that it is essential for the protection of the victim.

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?

There is no specific mechanism for it, however the issuing of any protection order demands that, regardless of who requests it and in any case, the victims' needs will be assessed for the judge's decision-making process (protection needs, labour situation, economic and family circumstances) because these orders aim at the protection of the rights and interests of the victim (right to life, right to physical and psychological integrity, right to privacy). The decision of issuing a protection order implies considering cautionary demands of the case, which underline needs of the victim and when the judge ponders its issuing he/she can also impose more restrictive measures based on the needs of protection of the victim.

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

No, victims cannot influence such decisions in any way other than that mentioned in a).

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

[15] It is important to note that this institute is used in domestic violence cases when it is still possible for purposes of preserving the family sphere or help simplify situations that would interfere in a divorce proceeding. This institute is used in the interest of the parties (and upon their consent) to avoid a painful judicial path and allow protection for the victim even when conflict resolution is still possible in a non-litigant way. The most important advantaged scholars have pointed out are linked to: faster conflict resolution, less stigmatization of the perpetrator, promoting the offender's rehabilitation (Carmo, 2007). According to the experience of public prosecutors interviewed, this institute is not frequently used for cases of domestic violence but when it is used it has been very effective. Its effectiveness has been considered successful also in recent research (Dias e Alarcão, 2012).

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1150 - 201 Lisboa | Portugal

T. + 351 21 358 79 00 | F. + 351 21 887 63 51 | apav.sede@apav.pt

In the case of coercive measures, the Code of Criminal Procedure prescribes the possibility of appeal (article 219), which can be made by the defendant or the public prosecutor. The defendant can also request the substitution or revoke of the order to the judge who issued it at any time (article 212 paragraph 4).

Regarding accessory penalties, the convicted person can appeal of the sentence in the general terms provided in articles 399, 400 and 411.

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

The defendant is always heard before any protection order is issued. However, there is no specific mechanism laid down for accounting the wishes of the perpetrator. Nonetheless, when deciding on issuing a protection order through a coercive measure, the judge considers several factors related to the defendant: his/her personality, his/her financial situation, his/her professional or family circumstances, his/her social integration, as well as his/her attitude towards the court and the charges. If the defendant shows attainable reasons (namely medical) the judge can issue a lesser damaging order for the defendant, provided that the interests and safety of the victim are guaranteed.

In the case of a barring order, often the courts do not impose it when disproportionate disadvantages would arise for the defendant (namely, lack of financial resources, lack of a supporting family structure that can host him/her, medical reasons). However, the court shall consider the potential risk for the rights of the victim, which should be at the core of this decision.

In the case of accessory penalties, the court does not consider the wishes of the defendant but solely other factors such as seriousness of the crime.

In cases of conditional release, the behaviour of the convicted person is the cornerstone of the decision of issuing a protection order, and factors related to him/her are central to the decision (the circumstances of the case, the perpetrators prior life, the evolution felt throughout the enforcement of the penalty and his/her personality – article 61 paragraph 2 of the Code of Criminal Procedure).

Regarding injunctions imposed on a provisional suspension of the proceedings, the defendant has to consent on the application of this institute, not on the injunctions to be imposed under it (article 281 paragraph 1 al. a) of the Code of Criminal Procedure).

The defendant has to consent on the use of technical means of electronic monitoring, except, in domestic violence cases, when the judge considers that it is essential for the protection of the victim.

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 offender cannot influence the type, scope or duration of the protection order, and he/she is heard on the facts but not on his opinion on the order to be issued. It is however different in the case of a provisional suspension of proceedings, where he/she can request and has to consent to it in case it was not of his/her request. For more information read answers to a) and b).

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

We could not find any empirical material on this topic in Portugal to adequately answer this question. However, what we verify in practice and in contact with practitioners in the field is that lack of resources is a problem in the country that tends to increase with the current economic and financial crisis, not only in what concerns the guarantee of protection but also the social rights of victims. There is not only a problem of lack of resources or uneven distribution of resources, but also of bad articulation between entities.

In interview with public prosecutors some revealed that they had already requested protection orders different from those they deemed more appropriate because otherwise victim protection could not be adequately guaranteed. Namely two situations were mentioned: imposition of preventive detention when, if there were enough human resources within the police, they would have simply requested a prohibition of contacts; and even more often, in this case by a lack of legal provision and not solely lack of resources, issue arrest warrants when in fact detention was not needed if the police could take the offender away from the victim. In fact, it is only possible to issue a protection order as a coercive measure (the only pre-trial mechanism to impose protection orders) through a judicial decision by the instruction judge after the defendant is heard. For domestic violence cases pondering on the application of a protection order would theoretically be done within 48 hours, but in reality that does not happen. Detentions are often made to allow for the issuing of a protection order, it is legally possible but magistrates feel it should not be the solution as it is invasive. Another aspect mentioned regarding the lack of resources is the influence the shortage of police personnel has in the good implementation of a mechanism they foreseen as very useful: *teleassistance*. A similar concern (of lack of professionals) affects the operation of programs for offenders of domestic violence.

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)?

No, it is not possible. Each legal proceeding shall only consider proof made within that proceeding, and that applies as well for decisions to impose protection orders. However, it can influence indirectly since, when issuing a protection order, the judge

considers the nature and circumstances of the crime and the personality of the offender, with the possibility of requesting an expert opinion on the offenders' personality and access to the registry of the defendant's criminal history.

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

16 a-b) No, children are not automatically included in the protection order issued in cases of domestic violence. Protection orders are aimed at specific people that the court identifies, which, in cases of domestic violence within a couple, will generally be the partner victim. The protection order will usually directly mention the children if it is to include them.

When children are the victims themselves (either direct or indirect victims – by witnessing the criminal behaviours) the judge can issue protection orders applicable to them, a different protection order. In fact, the penalty for the crime of domestic violence is aggravated in such cases, raising the minimum penalty.

The Code of Criminal Procedure determines that crimes with a maximum penalty of two years or more, which is the case of domestic violence (and even more so domestic violence against a minor or in the presence of a minor, which, as previously mentioned, constitutes an aggravation), parental responsibilities can be suspended (article 199 paragraph 1 b)). Therefore, visitation rights can be suspended. The terms in which parental responsibilities can be limited or suspended are established in the Civil Code under articles 1915 and 1918 and articles 194 to 201 of Decree-Law 314/78 (bill on the jurisdictional organisation of minors). It is possible that, for instance, a prohibition of contact is imposed and therefore there is a limitation to visitation rights taking into account the best interest of the child.

When there is no protection order aimed at the direct protection of the child, in order to guarantee the defendant's visitation rights the Court either accepts the victim's suggestion of relatives who can ensure visitation rights, or, in cases where there is a conflict or no agreement on who shall play this role, establishes that visitation rights will be guaranteed by a third party, counting with the support of the Technical Support Team to the Court.

The Domestic Violence Act further establishes that in cases where the victim is placed in a shelter for domestic violence victims (in Portugal there are only shelters for female victims of domestic violence – this does not include the children, though, who can be both boys and girls) the children are also to be hosted in the shelter together with their mother (Law 112/2009, articles 68 and 70).

16 c) We did not find any empirical data on the topic. However, APAV's experience allows us to affirm that the lack of coordination between the criminal courts and the family and minors' courts can bring about incompatible decisions. Moreover, problems within a

family court proceeding can have a reflex in the criminal proceeding and vice-versa in terms of guardianship and visitation rights. It is for example possible to conceive the situation where a victim will be further victimized by the offender who has a protection order of 'no contact' imposed upon him/her by using the child phone to call the victim.

On a brief note, it is important to mention that there are problems with other civil proceedings as well. For instance, if a coercive measure entailing a protection order is issued barring the entry of the offender in the family home the core problem is still to be solved: who can legally keep the house? This problem will only be solved afterwards, is totally independent from the criminal proceeding and might lead to contradictory decisions as these civil matters will not be considered within the criminal proceeding.

Another problem that many times arises is linked to the resources on the ground to guarantee a correct enforcement of the decision. In fact, the courts tend to attribute the function of guarantee of visitation rights to the child welfare, the so called Commission for Minors' Protection (Comissão de Protecção de Crianças e Jovens - CPCJ). According to Law 147/99, the Commission (an administrative authority) has its own competence to impose some protection orders, others being left to a judicial decision, including support to the enforcement of such decisions. However, this is the case only when children are in danger situations (legally different from risk situations), which is not usually the case of the situations that fall into this scope. However, the Courts tend to determine that the CPCJ teams are responsible for guaranteeing visitation rights.

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?

17 a-b) This possibility is not legally foreseen. We do not believe that under our legal system this could ever be possible, since rules of conduct can only be imposed on the defendant.

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)?

Protection orders are not imposed through independent procedures, therefore the costs entailed are not specific to the issuing of such orders but considering the complexity of the case (article 8 paragraph 9 of the Regulation of Court Fees). There are no costs associated to the imposition of protection orders, but if related complex acts were undertaken these will be considered for court fees.

Court fees are borne by the defendant, the assistant or the complainant according to articles 513 to 524 of the Code of Criminal Procedure.

There is no court fee associated to the provisional suspension of the proceeding (article 516 of the Code of Criminal Procedure).

Domestic violence victims are exempted from paying court fees if they benefit from free legal aid (article 15 paragraph 1 al. ii) of the Domestic Violence Act). Legal aid can consist on legal advice or legal representation. Legal advice is for free in all cases but legal representation is not and it is also not provided for automatically. Victims ought to be informed of this right and how to exercise it, but they shall request it to Social Security services and it will be granted upon proof of their economic insufficiency.

The support provided can be of non-payment of court fees or payment by installments. The victim can also request an appointed attorney.

In case of conditional release the victim does not pay any fees as he/she is no longer a party to the proceeding.

1.2.2. 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 no specific registry for protection orders, these are only included within the records of the proceeding.

Depending on the characteristics of the protection order, it may be registered before an administrative authority (Probation Services – DGRSP) in order to be monitored.

Protection orders (as defined for the purposes of this research) issued under a criminal investigation are not registered unless it is related to domestic violence. In this case, the order is informed to DGRSP and electronic monitored (see answer to nº 22).

Concerning protection orders imposed as requirements for the suspension of the proceeding or to a suspended sentence, the Court may ask DGRSP to support and supervise the defendant in the fulfillment of his/her obligations accordingly to the conditions of the protection order (Code of Criminal Procedure, article 281, paragraph 4, and Penal Code, article 51, paragraph 4).

Regarding protection orders imposed as prerequisites to conditional release, the Court must inform DGRSP and any other institution that may influence the fulfillment of the order (Law 115/2009, article 77, paragraph 3) of the order issued. For example, if the Court determines that the defendant must attend an educational program during probation time, the decision must be communicated to the institution where the program will be taken.

Finally, protection orders imposed as an accessory penalty (for the crime of domestic violence) must be monitored (article 152, paragraph 5 of the Penal Code), and in order to do so the decision must be informed to DGRSP.

Sede | Head Office Rua José Estêvão 135 - A | piso 1
1150 - 201 Lisboa | Portugal

T. + 351 21 358 79 00 | F. + 351 21 887 63 51 | apav.sede@apav.pt

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?

According to the Code of Criminal Procedure, the issuing of a protective order must be informed only to the defendant (article 194, paragraph 8). Being so, there is no obligation to inform the victim.

There is also no legal obligation to inform the victim when the protection measure is imposed for provisional suspension of the proceeding, for suspended sentence and for conditional release.

Even though there is no legal obligation to inform the victim, in many cases the Courts does it in order to ensure the victim's protection and to make the victim aware of the conditions imposed, relying on him/her to inform of any breach of the protection order. There is no legal provision determining whether to inform the victim or not – the Courts have discretionary power to decide in this concern.

Anyway, the victim may be aware of the imposition of a protection order through some decisions made in the criminal proceeding. For example, the Public Prosecutor must argue in the decision to prosecute on the need for the protective order to be imposed against the defendant during the following steps of the criminal proceeding. This decision to prosecute must be communicated to the victim, according to article 283, paragraph 5, combined to article 277, paragraph 3, of the Code of Criminal Procedure.

We found national jurisprudence determining that the decision concerning the suspended sentence and its conditions, as well the decision concerning the violation of the conditions of the suspension, must both be considered as a final sentence and, in consequence, must be informed to the defendant and his/her attorney[16]. The grounds for this decision may also be applied to determine that also the victim must be informed about this decision, but only if he/she is an 'assistant' in the proceeding.

In the field of domestic violence, the Domestic Violence Act states that, as a result of the right to information, the victim must be informed of the defendant's situation in the course of the criminal proceeding, as long as the disclosure of this information does not impair the investigations (article 15, paragraph 2, b)). In spite of the generic scope of this article, we believe it should be applied in relation to protection orders, assuring the victims' information about the compliance of the order and possible modifications of its conditions.

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

The victim is informed by notification, usually sent by letter (but he/she may be informed by telephone in urgent situations, according to article 113, paragraph 7, b)). It is not automatic considering that there is no legal obligation to inform the victim.

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?

[16] STJ Acórdão 15/04/2010.

As mentioned in question nº 19, coercive measures imposed in the course of criminal proceedings are not registered and, insofar, are not monitored. The only exceptions are the proceedings concerning domestic violence, when protection orders may be monitored by a GPS system (see answer to number 22).

Victims of other types of crime who benefit from a coercive measure may inform the protection order's violation to the Court, and based on this information the Court may request the defendant's hearing or other evidences in order to decide whether to maintain the same protection order or to impose a more restrictive one (for example, when the defendant violates an order of prohibition of contacts, then Court may determine the temporary house arrest, which is more restrictive than the first one).

Regarding other types of protection orders, namely as a condition for the provisional suspension of the criminal proceeding, for suspended sentence, for conditional release or as an accessory penalty, DGRSP is responsible for monitoring the compliance of the order and is obliged to inform the Court of any violation.

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

The activities undertaken by monitoring authorities depend on the conditions of the protection order. For instance, DGRSP may determine the obligation of periodic attendance to the relevant authority, make house visits and contact other institutions in order to verify the compliance with certain obligations (such as to attend to specific program on drugs or alcohol addiction)[17].

The use of electronic means of surveillance is admitted to monitor house arrests and also to monitor the prohibition of contacts imposed as an accessory penalty or as a coercive measure in a domestic violence proceeding. From jurisprudence analysis we verify that the barring order as a coercive measure related to domestic violence is usually imposed together with the measure of prohibition of contacts and only the last one can be monitored. When prohibition of contacts is imposed as an accessory penalty it is by law determined that it shall include a barring order and a prohibition of approaching the workplace of the victim.

Regarding prohibition of contacts related to domestic violence, the electronic means used is a GPS System[18]. A GPS location device is put in the defendant's and the victim's body (an electronic bracelet or anklet). The Court or DGRSP team defines the area that the defendant cannot approach to guarantee the victim´s safety (namely the victim's house, work location and the way between one and the other).

If the defendant approaches the area of exclusion, the device immediately transmits a signal to the DGRSP monitoring system and the defendant is contacted by the team, being advised that he/she is in a prohibited area, violating the protection order. If the

[17] Despacho nº 41/2009, da Senhora Procuradora-Geral Distrital de Lisboa (Order nº 41/2009 of the General Prosecutor of the District of Lisbon) in http://www.pgdlisboa.pt/docpgd/doc_mostra_doc.php?nid=92&doc=files/doc_0092.html.
[18] DGRSP website (http://www.DGRSP.mj.pt/c/portal/layout?p_l_id=PUB.1001.17)

defendant remains in the area or goes forward to meet the victim, DGRSP team may intervene in the location with the support of police officers to guarantee the victim's safety.

If the victim approaches the defendant, a signal is equally transmitted to the monitoring system and DGRSP team contacts him/her in order to give advice and recommend a safe alternative.

Every breach or attempt to breach the protection order's rules is communicated to the Court in order to assess the need to impose a more restrictive measure (such as preventive detention).

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

DGRSP discloses data about the number of cases using electronic surveillance to monitor prohibition of contacts in cases of domestic violence and house arrest order imposed as a coercive measure under the Domestic Violence Act, as a penalty, as a condition to modification of prison sentence and as a condition to conditional release. Prohibition of contacts order can be issued for the crime of domestic violence as a coercive measure (Code of Criminal Procedure), an urgent coercive measure (Domestic Violence Act), condition to a suspended sentence, and a condition to the provisional suspension of the proceeding.

Year[19]	Coercive measure of house arrest	Penalty of house arrest	Adaptation to conditional release	Prohibition of contacts – domestic violence only
2002	71	--	--	--
2003	180	--	--	--
2004	332	--	--	--
2005	450	--	--	--
2006	617	--	--	--
2007	501	76	1	--
2008	467	273	56	--
2009	497	189	57	3
2010	509	129	70	30
2011	581	114	48	66
2012	544	130	44	156

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

[19] DGRSP, Resumed Data on Electronic Surveillance 2012, available at http://www.DGRSP.mj.pt/web/rs/estat

Sede | Head Office Rua José Estêvão 135 - A | piso 1
1150 - 201 Lisboa | Portugal

T. + 351 21 358 79 00 | F. + 351 21 887 63 51 | apav.sede@apav.pt

There is no statistic data concerning the number of protection orders imposed in criminal proceedings. However, it is possible to compare the number of criminal proceedings concerning the crime of domestic violence initiated each year and the number of protection orders monitored.

Year	Nº of complaints – domestic violence[20]	Nº of protection orders monitored by GPS system[21]
2009	23.263	3
2010	25.129	30
2011	23.742	66
2012	22.254	156

It is important to have in mind that not every case of domestic violence registered is followed by a criminal proceeding and a trial (it is estimated that only 1/5 of the registered cases in Portugal follows to the trial[22]) and, as we believe, only in a small percentage of the cases the Court imposes a protection order.

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

The only protection orders that can be electronic monitored are obligation not to leave one's house (we are now referring not to the penalty of house arrest but to a coercive measure, by definition provisional) and prohibition of contacts orders imposed in criminal proceedings regarding domestic violence. All the other situations are not monitored and violations must be reported by the victim.

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

See answer to question nº 22, d).

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

[20] General Directorate of Justice Statistics (criminal proceedings initiated concerning domestic violence per year), available at http://www.siej.dgpj.mj.pt/webeis/index.jsp?username=Publico&pgmWindowName=pgmWindow_635132222371066250

[21] DGRSP, Resumed Data on Electronic Surveillance 2012, available at http://www.DGRSP.mj.pt/web/rs/estat

[22] Information disclosed by the media in 2012, according to newspaper O Público (http://www.publico.pt/sociedade/noticia/um-quinto-dos-inqueritos-por-violencia-domestica-chegam-a-julgamento-1543182).

There is no legal provision determining that the contact initiated by the victim is a breach of the protection order. Considering that the restriction is imposed to the defendant and not to the victim, the latter cannot violate the order, only the defendant.

Practice shows that the court will not consider a contact initiated by the victim or initiated by the offender but allowed and wanted by the victim as a breach to the protection order[23].

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

The violation of a protection order is usually assessed considering the defendant's behavior. If the defendant responds to the contact initiated by the victim, the violation will probably be considered; if there is no response and the defendant follows the restrictions under the protection order, there should be no violation.

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

The contact initiated by the victim does not mean that the risk of re-victimization is gone. According to the law, when analyzing the violation and assessing the need to impose a more restrictive protection order, the Court must considerer, among other criteria, *the reasons of the violation* (article 203, paragraph 1, of the Code of Criminal Procedure), and under this rule the contact initiated by the victim may be considered to show a lower degree of culpability of the defendant for the violation.

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

When the protection order is electronically monitored, every breach is registered and provides evidence to show the violation. Every three months or whenever the defendant violates the protection order, DGRSP sends a report to the Court with electronic registry of the breach, which can be used as evidence and, based on this report the Court, is able to analyze possible violations of the rules.

In other situations – when the order is not electronic monitored -, the evidence should be provided by the victim or other witnesses' statement. Telephone calls, SMS, e-mails and other means of contact by the defendant with the victim can also prove the violation of the protection order.

[23] Opinion shared by Dra. Maria João Taborda, public prosecutor with Oporto DIAP, expressed in Comment to the results of Project Rebeca, promoted by APMJ, on the 28th of October 2009, available at http://www.apmj.pt/index.php?option=com_content&view=article&id=56:comentario-da-dra-maria-joao-taborda-&catid=44:comentarios&Itemid=73.

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

The protection order once imposed continues to be valid after a violation by the defendant. However, the defendant must be presented to the Court so the judge can consider the need to impose a more restrictive measure.

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

Regarding a protection order imposed in a criminal investigation, the violation of the conditions may lead to the imposition of a more restrictive order. For example, in a pre-trial phase, if the defendant in a proceeding of domestic violence violates the prohibition to contact the victim, the Court may impose the preventive detention.

In fact, according to article 203, paragraph 1, of the Code of Criminal Procedure, *"in case of violation of the obligations imposed in a protection order, the judge can, considering the gravity of the crime and the reasons of the violation, impose another protective order legally admitted for the case"*. According to paragraph 2 of the same article, the judge can decide to impose preventive detention only if the crime is punishable with a penalty of more than 3 years of imprisonment.

In any case, pre-trial detention is the most severe coercive measure and can only be imposed if no other coercive measure would be sufficient to hamper the criminal act. It does not mean that the Court must impose all the coercive orders provided by law and then, only if they are not enough, impose pre-trial detention. According to jurisprudence, the Court may consider the characteristics of the case and come to a decision imposing pre-trial detention right away.

For example, in a concrete case where the defendant violated the prohibition of contacts and was continually threatening the victim, that was his ex-girlfriend, the Court decided that the defendant´s behavior leads to the conclusion that his subjection to house arrest would not hamper the criminal activity, considering that he could simply leave the house and materialize the death threats he had been doing towards the victim. Thus, the Court decided to impose pre-trial detention instead of house arrest, considering that that was the most adequate and proportionate measure considering the gravity of the crime and the defendants' personality[24].

When a protection order is imposed as a condition for the provisional suspension of a criminal proceeding, the violation has as a consequence the re-opening of the proceeding and the defendant may be brought to trial (article 282, paragraph 4 of the Code of Criminal Procedure).

When a protection measure is imposed as a condition to a suspended sentence, the violation of the condition may lead to a legal warning by the judge, the demand for other guarantees (such as a bail), imposition of additional conditions or extension of the period of suspension in which the defendant must comply with the conditions and obligations set forth (article 55 of the Penal Code). If the violation is serious or repeated, the Court may

[24] TRC Acórdão 27/10/2010.

revoke the suspension and, in this case, the defendant must be imprisoned (article 56 of the Penal Code).

When the protective order is imposed as a clause for conditional release, the Court may revoke the conditional release in consequence of the violation and the defendant sent back to imprisonment (article 185, Law nº 115/2009).

If the protection order is imposed as an accessory penalty, the violation is punishable with a penalty of two years of imprisonment or a fine (article 353 of the Penal Code – crime of violation of impositions, prohibitions or interdictions).

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)?

All the possible reactions to the breach of a protection order are provided by law. There is no informal reaction in consequence of the breach of a protection order.

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

We did not find any available data about the measures most frequently imposed for a protection order violation. Nonetheless, the only reactions that can follow the violation are the ones provided by law.

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

The sanctions provided by law are adequate to guarantee the enforcement of the protection order, but the actual effectiveness, proportion and dissuasion can only be assessed considering each case. In fact, the Court must consider the gravity of the crime, the reason for the violation and the victim's need for protection when deciding about the sanction to be imposed, having to decide according to solid facts. We believe that if the decision is grounded in the circumstances of the case, the sanction will be effective, proportionate and dissuasive.

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

When the protection order is electronically monitored, the violation, or any attempt of violation, is immediately detected by the monitoring authority (DGRSP), which may contact the police for intervention. In other cases, the victim or other people who notice the violation of the protection order may contact the police for immediate intervention. In both situations the calls go through the general emergency system and there is no priority.

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

The violation is criminalized is when the protection order is imposed as an accessory penalty, as prescribed in article 353 of the Code of Criminal Procedure.

In the case of coercive measures, a crime of disobedience can be imposed as sanction to the breach of the protection order in the same decision that imposes the protection (according to article 438 paragraph 1 al. b) of the Code of Criminal Procedure). However, jurisprudence analysis shows that it most frequently is not the case. There is discussion among professionals on this matter and its actual legal possibility[25].

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

In this case the violation is punishable with a penalty of two years of imprisonment or a fine (article 353 of the Penal Code – crime of violation of impositions, prohibitions or interdictions).

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

In case of violation of a protection order imposed as an accessory penalty, the police must detain the defendant and register the crime, communicating the Court in order to initiate a criminal proceeding.

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

The police can be advised of a violation of protection orders by DGRSP, when the order is electronically monitored, or by the victim. If the defendant is violating the protection order by contacting the victim, the police cannot make a detention[26], but if there are acts of violence or an actual crime, the police must detain the defendant and present him/her to the Court.

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?

DGRSP, as the monitoring authority, is not capable of issuing a sanction following a violation of the protection order. In this situation, DGRSP must inform the Court and the sanction can only be imposed by judicial decision.

[25] On the presentation of Project Rebeca, project promoted by Associação Portuguesa de Mulheres Juristas (APMJ) under programme QREN/POPH in 2010, Dr. Artur Guimarães (first instance judge at the Criminal Instruction Court of Porto) and Dra. Maria João Taborda (public prossecutor at Porto's DIAP) presented their comments in which they manifested their opponent views on the topic, the first for the impossibility and the lattest for the possibility of constituting a crime of disobedience in the terms described.

[26] Despacho nº 41/2009, da Senhora Procuradora-Geral Distrital de Lisboa (Order nº 41/2009 of the General Prosecutor of the District of Lisbon) in http://www.pgdlisboa.pt/docpgd/doc_mostra_doc.php?nid=92&doc=files/doc_0092.html.

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

DGRSP is obliged by law to inform the Court about the monitoring of the protection order and about any violations of the restrictions imposed. According to article 10, paragraph 1, of Law nº 110/2009, *"the monitoring authority (DGRSP) must inform the Court about the monitoring results of the protection order, sending periodic reports"*. Additionally, paragraphs 2 and 3 of the same article state that the monitoring authority must inform the Court, *"through a report of incidents, [of] all the circumstances that may compromise the enforcement of the protection order or of the penalty"*, and *"this report is considered urgent and must be presented to the judge immediately, who decides about the necessary diligences to undertake in the case, namely the revoking of the protection order".*

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

As mentioned above (question 27 b)), there is no discretionary power.

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

There is a special team within DGRSP only to control protection orders subjected to electronic monitoring. The team works 24 hours a day in a daily basis, including weekends and holidays. They are responsible for checking the accomplishment of the protection orders and to detect any violations or attempts to violate the order, gathering the relevant information to elaborate periodic reports to the Court.

1.2.3. Types and incidence of protection orders

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

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

There is very little empirical information available on these matters. The Ministry of Justice (Directorate General Justice Policy) provides for yearly Statistics on Justice but in these the variable of protection measures is not analyzed.

This information is locally available for protection orders imposed as coercive measures within the public prosecution DIAPs (therefore, we would only be talking about coercive measures) but not all departments make it available for public, making it

impossible to have a national perspective. The Lisbon DIAP has a special Section within dedicated to the crime of domestic violence and abuses towards children (7th Section) that provides more and more detailed information. For instance, it is possible to say that within the 1.232 investigations completed in the year 2011 only 11 cases had barring orders (with prohibition of contacts) imposed as coercive measures.

Also, we could not find information on which suspensions or conditional releases are imposed with protection orders as conditions.

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

We could not find any empirical information on this matter, but jurisprudence shows that barring orders are frequently imposed as accessory penalties to crimes of domestic violence but not usually as coercive measures. Prohibition of contact seems to be the most frequently used coercive measure.

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

As an accessory penalty, prohibition of contacts entails a barring order bindingly by legal determination, however this combination has also been seen in jurisprudence for coercive measures. More frequent, however, is the combination of prohibition of contacts and the attendance of mandatory programs (e.g.: rehab) or prohibition of continuing certain professions or activities or approaching certain locations.

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

Since we could not find any empirical studies on this matter, we base our findings in jurisprudence analysis. As explained above, there are certain protection orders only applicable to domestic violence crimes and this is the most frequent type of crime with protection orders imposed to. However, protection orders are also very frequently used in cases of sexual crimes against children.

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?

We could only find one study that addresses this issue but in a limited manner. Project Rebeca (previously referred to in question 27 d) – footnote) aimed at analyzing the needs of victims of domestic violence by following the proceedings of 25 cases in which protection orders had been issued. Of these 25 cases all victims were women and offenders male. Jurisprudence and our own experience allow us to verify that that is most commonly the case.

Hence it is possible to have more precise information on national terms regarding the type of crime, but not exclusively on cases where protection orders were issued. The Annual Report of Internal Safety (RASI) of 2011 shows that for the crime of domestic violence 82% of the victims were women and 88% of the offenders were men. In the case of sexual crimes 82,8% of the victims were women and 97,7% of the offenders were men. There is no such information available for other violent crimes.

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

We found no empirical information for this issue at a national level.

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

We found no empirical information for this issue at a national level.

1.2.4. 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)?

We could not find any empirical data on the effectiveness of protection orders in the country.

b. Which percentage of the imposed protection orders are violated?

We could not find any empirical data on the percentage of protection orders violated in the country.

In fact, it is currently not possible to know within the first instance courts which protection measures were imposed through coercive measures and therefore it is also not possible to know how many were violated. The only data available concerns coercive measures that entail detention (preventive imprisonment and obligation not to leave ones' house).

This has been cause for complaint even by magistrates, as there is not even a database of the number of proceedings against the same perpetrator simultaneously running in different judicial districts, let alone the number of protection orders imposed on the perpetrator or even less how many of these measures were violated. This situation

brings serious problems for instance in terms of the coercive measure the public prosecutor can ask for in a given case.

Nonetheless, a database was created in 2012 as a pilot project within the Lisbon's Criminal Lawsuit Investigation Department (Departamento de Investigação de Ação Penal de Lisboa – DIAP Lisboa)[27]. This database for Public Prosecutors is meant to be adopted as a national database in the near future. A similar database is planned for police officers.

According to the information given by a public prosecutor of the DIAP of Évora, this system is not available national wide, however this information (coercive measures imposed within other proceedings) is known by the police. The police officers are informed of other proceedings running against the offender and can inform the public prosecutor and the court of the number and court of the other proceedings simultaneously running. Magistrates can therefore access this information upon request.

In terms of protection measures imposed as accessory penalties for the crime of domestic violence or as condition to provisional release or provisional suspension of proceedings or suspended sentence, we could not find information on the percentage violated either.

c. If protection orders are still violated, are there any changes in the nature of the violence (e.g., violent incidents are less serious)?

We could not find any studies on this topic.

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)?

We could not find any empirical data on this topic.

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?

We could not find any empirical data on this topic.

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

35 a-c) We could not find any empirical data on this topic.

[27] Rute Coelho, 'Juízes aplicam medidas de coação sem saberem se arguidos cumprem' *Diário de Notícias* (Lisboa, 27 February 2012) 16.

1.2.5. Impediments to protection order legislation, enforcement and effectiveness[28]

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

a. Problems with protection order legislation

One of the most evident problems that can be identified is the lack of harmonization between specific laws and the Code of Criminal Procedure. This is namely the case with the Domestic Violence Act. The Act determines that the victim shall be informed of what steps were undertaken after reporting of the crime (article 15, paragraph 2, al. a) of the Domestic Violence Act). However, notification of the victim of a decision to impose a coercive measure (and insofar a protection order) to effectively guarantee the accomplishment of this information is not previewed in the Code of Criminal Procedure.

However, most of the harmonization problems detected prior have been sorted out with the recent revisions of the Domestic Violence Act.

Law 19/2013 solved long felt problems with 'no contact' order and barring order. However, protection of victims of other violent serious crimes remains a striking problem, with these victims being under protected, namely victims of attempted homicide, sexual crimes, crimes which can also be integrated in domestic violence and benefit from this framework (urgent proceeding, special protection mechanisms, etc). Thus, these same crimes committed outside of this context might be in need of a similar treatment, and the same can be said for hate crimes, not to mention stalking which is not even *per se* a criminal offence in Portugal.

b. Problems with protection order imposition/issuing/procedure

Another problem of the Domestic Violence Act regards the so-called urgent coercive measures, which, in fact, are not urgent, since that would imply their immediate issuing. That can only happen when the defendant is in detention otherwise, since he/she shall be heard before the issuing of the order, he/she will have to be notified and in the majority of cases it will be impossible to impose a protection order within the 48 hours mandatory under article 31 of the Act. Furthermore, the article talks about the need to "ponder the application of a coercive measure within 48 hours", which leaves a lot of uncertainty regarding what exactly that means: shall there be a decision issued within 48 hours? Is it merely an abstract weighing of facts?

APAV's experience shows that many magistrates still maintain reservations to the issuing of protection orders as coercive measures, due to an excessively high conception of the level of certainty needed to impose such a measure. This is particularly felt with the barring order, which many judges end up issuing as an

[28] The observations made for this chapter are the reflection of APAV's positions on the topics and also opinions, with which APAV agrees, expressed by public prosecutors Dra. Aurora Rodrigues (DIAP Évora) and Dr. Valter Batista (public prosecution with the first instance court of Santarém), both interviewed for the purposes of this report.

accessory penalty, therefore within the sentence at the end of trial phase, and not as a coercive measure with precautionary characteristics.

Another concerning factor is that judges seldom impose injunctions as conditions to a suspended sentence. In fact, this can be linked to wrongful evaluation of the case by the technical team, lack of resources influencing the elements provided to the court or simply because by then the risk really does not exist anymore.

Finally, the lack of articulation between all the entities involved in the process, not only police and judicial authorities, but also social services, DGRSP services, child welfare services and even victim support and shelters leads to a less effective intervention. Sometimes this is even motivated by little sharing of information and even lack of information on, for instance, what the other can and shall do and on lack of proper referral in the interest of the victim.

c. Problems with protection order monitoring

Only a limited amount of orders and, even among these, a limited number of cases are actually electronically monitored, all others lack appropriate mechanisms to do so as they are only registered within the proceeding (and therefore to the knowledge of the court and the police) and rely on the victim to report a violation.

d. Problems with protection order enforcement

There is a problem of lack of resources and of articulation between entities. Particularly in the case of risk assessment and, above all, management, for which the existing tools for evaluation are incipient. These tools should first and foremost analyze how indispensable the measure at stake is and this does not really happen.

e. Problems with protection order effectiveness?

There are no relevant empirical studies on the effectiveness of protection orders and that in itself is a problem.

Another problem is the lack of programs for domestic violence offenders. Although attendance of these programs is previewed since 2009 these have only been put in place recently.

Most importantly, an always felt problem emerges from the personal-emotional relationship of the victim with the offender. This is the cause for the frequent refusal to testify by victims. Although domestic violence is a public crime, the victim still has the possibility of not to testify under article 134 of the Code of Criminal Procedure. Often without the victim's testimony it is very difficult, if not impossible, to gather proof to form a conviction and many investigations are closed under article 277 paragraph 2 of the Code (regardless of the possibility of being re-opened afterwards due to its public nature). This is a common reality in domestic violence cases.

Precisely because of the particular circumstances of the domestic violence crime the legal institute of provisional suspension of proceedings was created to allow for

reconciliation or easier divorce on common agreement. The institute is applied to domestic violence crimes in the terms previously explained to allow for conflict pacification. A recent study[29] on the topic points out that the institute has been successful and that injunctions (which include protection orders) have been rarely violated and in 80% of the cases physical violence did not re-occur and the general levels of violence decreased. However, this does not mean that the violence ended, as there is no knowledge of the psychological violence that went on and often there is a shift from one to the other for fear of criminal convictions; nor is it possible to know if violent behaviours changed after the end of a 'successful' suspension.

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

One of the most serious problems seems to be the impossibility of having a protection order issued as a coercive measure (the only pre-trial mechanism for PO issuing) within an adequate time to ensure victim protection.

1.2.6. Promising/ good practices

38) Which factors facilitate the:
   a. Imposition

The recent modification of the Domestic Violence Act through Law 19/2013 is a major step forward in this regard. This Law amended articles 35 and 36 of the Domestic Violence Act solving a long felt impediment regarding the barring order with prohibition of contacts (for domestic violence cases): the impossibility of using technical resources (electronic surveillance) to monitor the compliance with this protection order when the defendant did not give his/her explicit consent. The recent amendment allows the judge to determine the use of such means and the imposition of this order as an urgent coercive measure as long as the decision declares in its mandatory reasoning that it was an essential measure to guarantee the victim's protection. Therefore, nowadays there is no need for consent either from the defendant or from the victim to determine the use of electronic monitoring devices in cases where there is a strong need to guarantee the victim's protection.

A promising practice on what has been highlighted on the problems of articulation between courts and its effect on children is the fact that more and more Courts of Family and Minors start asking for the criminal record of the parents when dealing with regulation of parental responsibilities.

[29] Sofia Dias e Madalena Alarcão, 'A suspensão provisória do processo em casos de violência conjugal: um estudo exploratório' (2012) Revista de Reinserção Social e Prova, 9. This study first analyzed all cases of domestic violence cases dealt with by the DIAP of Coimbra during the period of 2000-2002, focusing exclusively on violence between married couples (a total of 367 cases – 97% of the perpetrators were men). Therefore the cases analyzed were prior to the most relevant changes in the system regarding domestic violence. However, in a second phase of the study all cases from 2000 to 2007 were analyzed to determine which among them how many provisional suspension of proceedings had been imposed and in the end the study used a total of 42 cases.

b. monitoring, and

The electronic monitoring system already previously mentioned (to monitor house arrest and, in the case of domestic violence, prohibition of contact) is definitely a best practice. The program started in 2002 just for house arrest and since 2009 for prohibition of contacts in domestic violence cases. This program faced several problems initially, namely with a lack of technical resources to really enforce it, and therefore long delay between the decision and the actual enforcement, and also a deficit of knowledge of the possibility to implement it and the available resources by magistrates. This has progressed along time and such problems are very rare at the moment. The program is well implemented, stocks are adequate and the monitoring authority (DGRSP – probation services) provides thorough information about the program, both on explanation of what it is, why it is useful and how to implement it directed at different target audiences (both general public via media and several professionals such as police officers and magistrates) and on yearly updated statistical information.

It is also noteworthy that the amendment to article 35 (referring to electronic surveillance) of the Domestic Violence Act - via Law 19/2013 – changed the wording from "can" to "ought to" implement such mechanisms of monitoring when a prohibition of contact order is applied. Reasoning is, of course, mandatory and through this amendment not only when the judge decides to implement them but also when the judge opts not to use them.

All interviewed magistrates manifested their praise for the mechanism, referred that it has been well implemented and in a relatively speedy manner. The DGRSP statistics show its rapid increasing use within the years, with only 3 orders monitored in this manner for the crime of domestic violence in 2009 and 156 in 2012.

c. enforcement of protection orders?

This is surely one of the fields were more development is needed. The role of the police would be important to actively monitor compliance and not let it left only to the victim, particular in IPV crimes.

A promising practice is the *teleassistance* system for victims of domestic violence previously explained in question nº 4. However, there is no empirical information at this point to evaluate how efficient the program has been and how often it has been used so far.

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

For reasons thoroughly exposed before in question nr. 4 and section nr. 1.2.2, respectively, *teleassistance* and the use of electronic monitoring mechanisms and its functioning are best practices in terms of protection orders.

Another promising practice is the program for domestic violence offenders (PAVD). This program entails a multiplicity of elements, from the mandatory individual intervention and attendance to sessions on psycho-educational training in group session, to the possibility of rehabilitation for those with addiction problems of some sort, family therapy or even social interventions.

Furthermore, several on-going projects in this field can be of great added value, namely one designed to develop a risk assessment tool for cases of domestic violence to which the Portuguese police forces PSP and GNR[30], as well as the Public Prosecution Office participate.

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

Firstly, it would be a major improvement to create speedier procedures in a pre-trial phase, with more power given to the police to allow for a timely protection of victims in risk situations.

Secondly, special training programmes not only for police personnel who engage with domestic violence victims regularly but also to judicial practitioners, especially judges.

Thirdly, we should invest in good practices such as the *teleassistance*, making resources available and more coordinated between them. Another best practice that should be fostered is the programs for domestic violence offenders.

Finally, from a legal point of view, we consider that the stabilization of the Domestic Violence Act with its recent amendments will allow for a mentality change that is much needed to cast away traditional approaches that impair an adequate response to victims' needs. Yet, problems with compatibility of decisions within criminal and civil proceedings that impact on the same reality be it for the ownership of the house or the guardianship of children. This is certainly one of the biggest pitfalls of the system. Some professionals have suggestion the adoption of a solution similar to that of the Spanish judicial system.

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

It would be particularly important to find a mechanism that would really ensure a timely response to the victims' needs of protection in a pre-trial stage. Coercive measures are not a sufficient response. Even within the Domestic Violence Act, which establishes a stronger regime of protection, the urgent coercive measures bear the same problems that any other coercive measure bear, without adequate mechanisms to actually guarantee a decision is always reached within 48 hours. A possible solution could be granting the police with the power to impose a separation between the victim and the offender immediately in cases of serious danger, upon reasoning supported by strong indication of high risk for the victim. This police order could even be confirmed within a short and

[30] GNR has been developing a long-term project in the field of domestic violence called IAVE, which includes the above mentioned special units for victims of domestic violence – NIAVE.

reasonable timeframe by a magistrate, issuing a coercive measure that would entail continuation of the needed protection, or reject it and the protection order would cease effect. This deems feasible under our Constitution considering that detention outside of *flagrante delicto* is already possible under certain circumstances and that is surely a more invasive measure. This temporary order would resolve problems pointed out by public prosecutors on the need to detain to guarantee protection when it would not be needed if an intermediary measure existed before a coercive measure can be imposed.

It would be important to find a solution for the lack of harmonization between civil and criminal matters running in separate proceedings in different courts but in fact referring to a one and only reality. This is particularly the case in domestic violence situations. A solution seen as suitable by the two prosecutors that we interviewed most specifically on the topics of this section would be the creation of a similar system to the Spanish specialized mixed Chamber.

1.2.7. Future developments

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

We have no knowledge of any discussions in politics relevant to the purposes of this report. However, criminalization of stalking as an autonomous crime has been talked about not only by scholars but also by professionals (most prominently public prosecutors), who have noticed more and more need to respond to the needs of those victims. It is currently impossible to provide an adequate response since only specific actions within the crime of stalking can amount to a criminal offense. It is only a matter of time before this discussion reaches the political sphere.

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?

43 a-b) There has been a recent alteration in the Code of Criminal Procedure concerning the imposition of protection orders. This alteration gives to the Court the power to impose a more restrictive protection order in the investigation phase than the one that was proposed by the Public Prosecutor. This change caused some discussion among law professionals because according to the Portuguese law it is the Public Prosecutor who conducts the investigation and should have the power to decide which protection order should be imposed according to the evidences gathered in the proceeding and the victim's needs. However, the Court has the power to guarantee the respect for fundamental rights during the investigation phase of the criminal proceeding and, based on this power, the legislation now grants the power to decide about the protection order to be imposed (article 194, number 2, of the Criminal Procedure Code).

Sede | Head Office Rua José Estêvão 135 - A | piso 1
1150 - 201 Lisboa | Portugal

T. + 351 21 358 79 00 | F. + 351 21 887 63 51 | apav.sede@apav.pt

The (also) recent revision of the Penal Code altered article 152 – domestic violence – including violence within a dating relationship as a form of domestic violence.

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

We have no knowledge of any undergoing pilots relevant to the purposes of this report.

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

For the moment there are no proposals we are aware of.

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?

We do not foresee problems in the implementation of the penal EPO as the range of criminal protection orders is quite wide (we have more doubts regarding the civil EPO).

2. Annex

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Sede | Head Office Rua José Estêvão 135 - A | piso 1
1150 - 201 Lisboa | Portugal

T. + 351 21 358 79 00 | F. + 351 21 887 63 51 | apav.sede@apav.pt

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