

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

## **National Report – the Slovak Republic**

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# 1. General overview of the assignment for the national experts

## 1.1. Main objective

Victims of crimes that are characterized by their repetitive nature, such as stalking and intimate partner violence (IPV), show an additional need for protection against recidivism by their offender in comparison to other victims. But also victims of instantaneous crimes (e.g., rape victims) may require extra protection, or perhaps simply wish to keep confrontations with their offender to an absolute minimum. Criminal, civil and administrative protection orders may provide such protection. The problem is that, so far there is no clear view of how victim protection is constructed within the EU Member States. The European Member States seem to harbour a plethora of protection order schemes, but they have never been the subject of a comprehensive study.

Another feature of protection order schemes in Europe which has largely remained in the dark is how these protection orders function in practice. Even though protection orders have been in existence for quite some time now, and even though some of them are imposed on a regular basis, their effectiveness is contested and discussions on the application procedure for protection orders are dominated by assumptions and hypotheses instead of actual data.

Recently, the attention for protection orders in the European Member States has been given a new impetus thanks to the European Protection Order (EPO) and the agreement on mutual recognition of protection measures in civil measures.<sup>1</sup> Once implemented, the EPO will provide a legal basis for EU Member States to recognize a victim protection order that was granted in another Member State. The available data - however marginal - nevertheless suggests that there are enormous discrepancies amongst protection order legislation and levels of protection across the EU (Van der Aa, 2011; Feasibility Study, 2010). The question of whether the EPO is still able to function well in those circumstances then becomes relevant.

The current research project wishes to address these voids and to give an accurate, in-depth, and up to date overview on what legal protection measures are currently in force in the European Member States. It intends to:

- gather in-depth information about the conditions, procedures and settings that allow for protection orders in all European Member States.
- develop a comparative and analytical perspective on the current state of protection order legislation within the EU Member States (e.g., by grouping the Member States according to a 'protection order typology' which reflects the different approaches to protection)
- learn more about the actual functioning of the different protection order regimes in Europe

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Council of the European Union, *EU-wide protection for victims: agreement on mutual recognition of protection measures in civil matters*, Brussels, 5 March 2013, 7285/13.

- identify promising practices and possible gaps in protection
- assess whether the EPO would be able to function well if the levels of protection differ across the EU.

The research team (University of Tilburg, University of Helsinki, Portuguese Association for Victim Support and the University of Naples) will try to attain these objectives with the help of a literature review, 27 national reports on protection order legislation written by national legal experts, and 60 semi-structured interviews with female victims of IPV and stalking whose (former) partner had a protection order imposed against him.

This guideline focuses on the national reports. With the help of the national reports we will try to accurately map protection order legislation in the EU Member States in order to present a comprehensive report to the European Commission. The ultimate goal is to make recommendations to enhance the protection provided to victims.

## 1.2. Definition of protection order

Legal categories or concepts are not consistent between jurisdictions and states. The concept protection order may in some countries refer to a specific criminal provision, whereas other states may only use this concept to refer to the so-called 'barring order' (an order that prohibits the offender of domestic violence to enter the family home for a specified amount of time). Another problem is that there are many synonyms or close relatives for the term 'protection order' in circulation, such as 'protective order', 'injunction order', and 'restraining order'.

In this report we will use the term 'protection order' as an umbrella concept. In order to guarantee that all national experts have a similar understanding of the concept protection order we have defined the concept as follows:

*A protection order is a decision, provisional or final, adopted as part of a civil, criminal, administrative, or other type of legal procedure, imposing rules of conduct (prohibitions, obligations or limitations) on an adult person with the aim of protecting another person against an act which may endanger his/her life, physical or psychological integrity, dignity, personal liberty or sexual integrity.*

This definition is partly based on the one used in the Directive on the EPO. It aims to be as inclusive as possible: we are interested in all legal measures by which rules of conduct can be imposed upon a person with the aim of protecting another person, regardless of the type of procedure by which the decision came about. We are not only covering protection orders issued by judges, but also decisions issued by magistrates, public prosecutors or other public servants.

Excluded from the current study are witness protection programs, or decisions that physically incapacitate an offender to contact a victim (e.g., unconditional prison sentence or pre-trial detention or separate waiting rooms in court premises).

It is a working definition, which aims to be applicable to the situation in all 27 Member States. Since we lack thorough knowledge on protection order legislation in all these jurisdictions, it may very well be that, in your opinion, the definition is not inclusive enough. If you think this is the case, do not hesitate to contact the research team and to include the information in the national report anyway.

Throughout the document we will use legal terms, which may give rise to certain definitional questions as well. The annex contains a glossary with a brief definition of those legal terms.

### **1.3. Tasks and delivery deadlines**

There are two tasks which national experts must complete:

- 1) Write a national report (first draft)
- 2) Clarify sections of the report which are unclear and adjust the report accordingly (final version)

Ad 1) You are asked to write an analytical report on protection order legislation in your own Member State. A template containing detailed instructions on how to write the report is provided later in this document. Next to (substantive and procedural) legislation and policy guidelines, the template also inquires after current debates about victim protection legislation and procedure, proposals for reforms, and research which has assessed the effectiveness of national protection order provisions, both on paper and in practice. Also, you are asked to assess whether some of the national approaches to victim protection can be defined as promising or negative practices.

The first draft of this report must be submitted to the research team by **31 August 2013**.

Ad 2) The first draft of the report will be subject to quality control by one of the research members. In case certain sections of the report are unclear, you may be asked to clarify these sections and to provide supplementary information. You will receive this feedback no later than 30 September 2013. Based on this feedback, you are asked to adjust the national report and send in a final version of the report.

The final version of your national report, with a 1 page executive summary, must be submitted to the research team by **17 November 2013**.

### **1.4. Reference period for the study**

The national reports should present information on protection order legislation in force on **31 August 2013**. Case law, jurisprudence, and statistics on protection order effectiveness may originate from previous years, as long as they are still relevant.

### **1.5. Template, language and size**

We will provide you a template in which you can write the report. The template will provide you with a format and structure for the report. The size of the report should be between 12-17 A4 pages (excluding annexes) as a guideline, font: Arial 10.5, spacing: 14 pt. Statistical and other data (e.g., case law) should be included in the annexes.

Furthermore, in order to standardize the national reports, we kindly ask you to use the OSCOLA referencing format (<http://www.law.ox.ac.uk/publications/oscola.php>) for literature references.

We will also provide you with an example of a national report that has already been written (the Netherlands) to give an idea of the type of information we are looking for.

The national reports should be written in a neutral, objective language, containing no unsubstantiated opinions. All sources of information included should be fully referenced. Whenever possible, refer to the original source and preferably to official sources. References to media sources must be kept to a minimum. If information is available online, please refer to the internet address (preferably to an English version, if available).

## 2. National reports: content and structure

### 2.1. Introduction

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

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

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

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

### 2.2. Overview of the structure of the national reports

#### 2.2.1. Imposition of protection orders

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

#### Responses:

1a: The legal order of the Slovak Republic contains a number of different types of protection orders (hereafter “POs”) in various areas of law, including civil, administrative, and criminal law. The common characteristic of the most POs is that their legal effect is in principle provisional, i. e. they may be imposed only for a limited period of time, basically until the final decision of the competent authority on the merits has been reached and become lawful.

1b: POs are regulated in generic laws, such as the Code of Civil Procedure<sup>2</sup>, the Act on the Police Force<sup>3</sup>, the Code of Administrative Procedure<sup>4</sup>, the Criminal Code<sup>5</sup>, and the Code of Criminal Procedure<sup>6</sup>. There is no specific law on any form of violence so far<sup>7</sup>.

1c: All the laws in official and updated versions are available only in Slovak language on the website of the Slovak Ministry of Justice<sup>8</sup>.

- 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?

Responses:

2a:

Civil law:

POs in civil law are regulated in the Code of Civil Procedure (articles 74 – 78h, 102).

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The Act no. 99/1963 Coll. Civil Procedure Code, as amended.

3

The Act no. 171/1993 Coll. on the Police Force, as amended.

4

The Act no. 71/1967 Coll. on Administrative Proceeding (the Administrative Code), as amended.

5

The Act no. 300/2005 Coll. Criminal Code, as amended.

6

The Act no. 301/2005 Coll. Code of Criminal Procedure, as amended.

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The UN Committee on the Elimination of Discrimination against Women (CEDAW) in its Concluding observations of 2008 requested the Slovak Republic to adopt a specific law on all forms of violence against women and in families. As a good example of such law for the Slovak Republic could serve the Act no. 135/2006 Coll. on the amendment of certain acts in the area of protection against domestic violence adopted in the Czech Republic.

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[http://jaspi.justice.gov.sk/jaspiw1/htm\\_zak/jaspiw\\_mini\\_zak\\_vyber\\_hl1.asp?clear=N](http://jaspi.justice.gov.sk/jaspiw1/htm_zak/jaspiw_mini_zak_vyber_hl1.asp?clear=N)

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POs under the provisions of the Code of Civil Procedure may be issued by the court via interlocutory proceedings which are expected to be followed by proceedings on the merits (i. e. a claimant (a victim) may initiate interlocutory proceedings (i) prior commencement of proceedings on the merits (which happens most often in practice), (ii) concurrently with proceedings on the merits, or (iii) whenever during proceedings on the merits; if claimant does not file a petition to commence proceedings on the merits within the time specified by the court in preliminary measure (PO), the preliminary measure would cease to be in effect upon expire of time set by the court which basically means that the claimant (alleged victim) would not be protected with issued preliminary measure any more; in such a case the alleged victim may initiate new interlocutory proceedings and ask the court to issue a preliminary measure (PO) again). Article 74 (1) states that prior to the trial, the court may issue a preliminary measure if the situation of the parties must be temporarily adjusted or if it fears that the execution of the judicial decision could be endangered. Similarly, prior to hearing the case on the merits, the court acting on the motion may secure evidence if it fears that it would be impossible or very difficult to take evidence at a later date (Article 78 (1)).

Preliminary measures or securing evidence may also be issued whenever after the commencement of the proceedings on merits, if the court needs to temporarily adjust the situation of the parties or secure evidence if it fears that it would be impossible or very difficult to take evidence at a later date (Article 102 (1)).

Pursuant to Article 76 (1) the court may issue a preliminary measure mainly with a view to

- a) ordering the party to pay the alimony in an inevitable extent;
- b) ordering the party to hand over a child to the custody of the other parent or parent granted custody by court; or to the rotating personal custody of both parents;
- c) ordering the defendant to provide the claimant at least part of his income from work where the defendant has a job and the claimant is not employed because of serious reasons;
- d) ordering the party to deposit an amount of money or object in court custody;
- e) preventing the party from disposing with certain assets or rights;
- f) ordering the party to do something, to abstain from doing something, or to suffer something to be done;**
- g) ordering the party not to enter temporarily into a house or apartment in which the person lives in relation to which it is reasonably suspected of violence;**
- h) ordering the party to refrain from conduct which violates or threatens intellectual property rights.

According to Article 77 (1) preliminary measure shall cease to be in effect

- a) if the claimant does not file a petition to commence proceedings on the merits within the specified time;
- b) if the petition on the merits is dismissed;
- c) thirty days from the date of enforceability of the decision on merits if the petition is granted;
- d) upon expiry of the period of time for which it was issued.

The court is obliged to discontinue the preliminary measure when the reasons for it cease to exist (Article 77 (2)).

Although I can imagine how art. 76(1) and 77 (1) work in practice (although technically, no civil protection orders exist, art. 76 (1) could be used to grant them, yet these will cease if the victim fails to petition on the merits, for example) and the consequences for a woman victim of domestic

violence, I would prefer you elaborate on how this really work in practice and what are the consequences for victims, as to prevent possible mistakes or misunderstandings on our behalf when writing the final report. I could imagine, for example, that the woman would petition a protection order, and yet, doesn't file for divorce (many reasons come to mind), then, is she left with no protection? This is the type of elaboration I am missing.

#### Administrative law:

Article 27a of the Act no. 171/1993 Coll. on Police Force, as amended, empowers police officers on the basis of factual findings to expel a person who commits or is reasonably suspected to commit a domestic violence (attack on life, health, freedom or particularly serious attack on human dignity) from a shared household (and from immediate vicinity of shared household as well) and to prohibit him or her to enter the shared household **for 48 hours**. This provision is aimed to protect vulnerable victims of domestic violence **before the preliminary injunction** (i. e. a preliminary measure under Article 76 (1) (g) of the Code of Civil Procedure) restricting use and enjoyment of an apartment or a house by the violator is issued by the court.

Pursuant to Article 43 (1) of the Act no. 71/1967 Coll. on Administrative Proceeding (the Administrative Code), as amended, the administrative authority may order, prior to the termination of the proceedings and to the extent necessary to ensure the purpose of the proceedings is met

- (i) that the parties perform an action or abstain from an action or suffer an action performed by others;
- (ii) to secure of items expected to be destroyed or to become unneeded or which are necessary for examination of the evidence.

The administrative authority is obliged to quash the preliminary measure as soon as the reason for its implementation cease to exist, otherwise the measure shall cease to be effective from the date **when the decision on merits came into force** (Article 43 (2)). The appeal against the decision ordering preliminary measures has no suspensive effects (Article 43 (3)).

#### Criminal law:

Pursuant to Article 51 (1) of the Criminal Code the court may, under the conditions referred to under Article 49 (1)<sup>9</sup>, impose **a suspended imprisonment sentence** if the imprisonment sentence does not exceed three years, if it simultaneously issues a ruling on a probationary supervision over the conduct of the offender imposed for the probationary period. The provision under Article 49 (2)<sup>10</sup> shall apply accordingly.

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Article 49 (1) of the Criminal Code states the following: The court may impose a suspended imprisonment sentence if the imprisonment sentence does not exceed two years and if,

a) considering the personal situation of the offender, in particular his previous life and work circumstances and the circumstances of the case, the court reasonably believes that it is possible to protect the society, and guarantee the rehabilitation of the offender even if the sentence is not executed, or

b) the court accepts the guarantee of the offender's rehabilitation, and believes that no imprisonment sentence needs to be served in view of the educational influence of the person who has offered such guarantee.

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When imposing the probationary supervision, the court shall decide on the probationary period of one to five years. The probationary period starts to run on the day after the day when the judgment becomes final. At the same time, the court shall issue a ruling on the **restrictions and obligations attached to the probationary supervision** (Article 51 (2)).

According to Article 51 (3) of the Criminal Code, the restrictions consist, in particular, in bans on

- a) visiting sporting or other mass events,
- b) using alcoholic beverages and other habit-forming substances,
- c) meeting the persons who have negative influence on the offender, or who were his accomplices or participants in the crime,
- d) entering certain places or premises whereat he committed the criminal offence**
- e) gambling, playing slot machines and betting.

Paragraph 4 of Article 51 states that the obligations consist, in particular, in injunctions

- a) not to go within a distance of less than five meters of the injured party, and not to stay in the vicinity of his dwelling,**
- b) to move out from the apartment or house wherein he unlawfully dwells, or which has been occupied by him unlawfully,**
- c) to compensate for the caused damage within the probationary period
- d) to pay off the debt or delayed alimony within the probationary period,
- e) to make apology to the injured party personally or publicly,
- f) to acquire a certain level of vocational qualification, or to take part in a requalification course within the probationary period,
- g) to undergo a social skills training programme or other educational programme in co-operation with a probation or mediation officer or other professional,
- h) unless protective treatment has been imposed, to undergo the treatment of addiction to habit-forming substances,
- i) to undergo psychotherapy, or make use of psychological counselling services within the probationary period,
- j) to get employed or actively seek employment in a provable way within the probationary period.

The offender on probation placed under the supervision is obliged to comply with the supervision conducted by a probation or mediation officer (Article 51 (5)).

According to Article 62 (2) of the Criminal Code the court may impose **a ban of residence sentence** of not less than one year and not more than five years in respect of a wilful criminal offence if such sentence is required in the interest of public order, protection of family, health, decency or property in view of the previous conduct of the offender and the place of commission of the criminal offence. The sentence may not prohibit residence in the locality or district of permanent residence of the offender.

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Article 49 (2) of the Criminal Code reads as follows: The court shall not apply provision of paragraph 1 when sentencing the offender for an intentional criminal offence committed within the probationary period of a suspended imprisonment sentence, or within the probationary period of conditional release from serving an imprisonment sentence.

The ban of residence means that, during the enforcement of this sentence, the sentenced person is not allowed to take up residence in a certain location or a certain district; if an urgent personal matter arises, an authorisation is required for attending such a location or district (Article 62 (1)).

The court may impose the restrictions and obligations referred to under Article 51 (3-4) on the offender, with the aim of encouraging him to lead regular life, unless the sentence is imposed in combination with an unconditional imprisonment sentence.

The Code of Criminal Procedure in articles 418 – 419 regulates the enforcement of suspended imprisonment sentence for a probationary period with supervision. The court monitors the behavior of person sentenced to imprisonment, the enforcement of which was suspended with probation supervision during the probationary period. In particular, the court verifies whether a convicted fulfills the obligations and restrictions under the probation supervision. The survey concerning fulfilment of obligations and restrictions is conducted by probation and mediation officers designated by the court.

The enforcement of the ban of residence sentence is regulated in article 434 of the Code of Criminal Procedure. According to this provision the court is obliged to notify the municipal authority and the police body to which district the ban applies as well as the municipal authority and the police body in which district the sentenced has a permanent residence on imposing a ban of residence sentence. If the sentenced person works in a district to which the ban of residence applies the court will also notify the organization with which the sentenced has an employment contract. Police body in the place of sentenced's domicile or residence may, on serious grounds, permit the sentenced a visit of the place or district to which the ban of residence applies.

2b:

Aforesaid POs issued in criminal proceedings may not result from pre-trial proceedings.

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

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

#### Civil law:

Preliminary measures under the provisions of the Code of Civil Procedure may be in principle issued by the court only on the motion of the claimant. However, motion for preliminary measure is not required in the proceedings that can be commenced on the court's own initiative, for example, cases relating to minors (custody or guardianship).<sup>11</sup>

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Article 81 (1) of the Code of Civil Procedure states that the court may commence proceedings without a motion in cases involving custody of minors, permission to place or hold a person in a medical institution, legal capacity, guardianship, declaring a person dead, probate and other proceedings specified by law.

Pursuant to Article 75a of the Code of Civil Procedure, if a minor child is found without any care or if its life, health or positive development is seriously endangered or disturbed, the court without a motion or on the motion of authority for the social and legal protection of children and social guardianship will issue a preliminary measure ordering that the minor child was temporarily placed in care of a natural person or a legal entity specified in the ruling.

#### Administrative law:

Short term barring orders under Article 27a of the Act no. 171/1993 Coll. on Police Force may be issued or in fact carried out (the law does not require to issue a formal decision) by the **police officer** without any motion though they are usually performed on the previous request of the victim.

Preliminary measure under the Act no. 71/1967 Coll. on Administrative Proceeding (the Administrative Code) may be issued by the administrative authority on the motion of the party to the proceedings or without any motion.

#### Criminal law:

Aforementioned criminal POs may be issued by the court on the request of the public prosecutor specified in the accusation.

- 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?)

As already mentioned, in civil law a preliminary measure may be in principle issued only on the motion of the claimant (the victim). The only exceptions are preliminary measures under Article 75a of the Code of Civil Procedure concerning a protection of minor child which may be issued without a motion or on the motion of the authority for the social and legal protection of children and social guardianship and preliminary measures issued in the proceedings that can be commenced on the court's own initiative specified in Article 81 (1) of the Code of Civil Procedure.

Administrative PO may be issued on the motion of the party to the proceedings or without any motion. Short term barring order, i. e. the expulsion of the alleged violator from the shared household carried out by the police officer, is usually performed on the informal application of the alleged victim, but can also be realized without any application or without a prior consent of the victim or even against her/his will.

Criminal POs may be issued by the court on the motion of the public prosecutor.

- c. Can protection orders be issued on an *ex parte* basis (without hearing the offender)?
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Civil POs are in principle issued without a hearing, i. e. without (cross) examination of parties to the proceedings or (cross) examination of witnesses. Courts, however, may order a hearing prior its decision on preliminary measure.

POs under Article 27a of the Act no. 171/1993 Coll. on Police Force may be carried out by the police officer even in absence of the offender.

Preliminary measure under the Act no. 71/1967 Coll. on Administrative Proceeding (the Administrative Code) may be issued by the administrative authority without hearing the offender.

Aforementioned criminal POs may in principle be issued only after the hearing of the accused.

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

POs are generally available for all types of victims and crimes (offences).

- 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)?

POs may be issued independently from other legal proceedings. However, in practice the PO carried out under Article 27a of the Act no. 171/1993 Coll. on Police Force (i. e. a short term barring order) is expected to be followed by the preliminary measure issued by the court under Article 76 (1) (g) of the Code of Civil Procedure (i. e. prohibition to enter temporarily into a house or apartment) and finally these proceedings may result in issuing a criminal PO under Article 62 (2) of the Criminal Code, i. e. the imposition of a ban of residence sentence.

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

#### Civil law:

As aforementioned (3a.), preliminary measures under the provisions of the Code of Civil Procedure may be in principle issued by the court only on the motion of the claimant. Motion for preliminary measure is not required in the proceedings that can be commenced on the court's own initiative. Proceedings under Article 75a of the Code of Civil Procedure (protection of minor children) may also begin on the motion of authority for the social and legal protection of children and social guardianship.

As already mentioned (3c.), civil POs are normally issued without a hearing, only on the basis of a written motion and enclosed documentary evidence. Court, however, on its own discretion may order a hearing prior its decision on preliminary measure.

### Administrative law:

Short term barring orders under Article 27a of the Act no. 171/1993 Coll. on Police Force may be carried out by the police officer on the basis of factual findings without any motion; these POs are usually performed on the previous request (written or verbal) of the victim (or anyone who has knowledge of the occurrence of violence, e. g. victim's relatives or neighbours). Theoretically, the police officer may expel the alleged violator from the shared household even against the will of the victim, but this rarely happens. (So here, I come to the police station, I call the police agent to come to the situation?) ???

Preliminary measures under the Act no. 71/1967 Coll. on Administrative Proceeding (the Administrative Code) may be issued by the administrative authority on the written motion of the party to the proceedings or without any motion. Issuing POs without a previous motion is, however, very rare.

### Criminal law:

Criminal POs may be issued by the court only on the motion of the public prosecutor. Issuing of such a motion, of course, may be initiated by the victim or by anybody else.

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

### Civil law:

According to Article 75 (4) of the Code of Civil Procedure, the court should decide to issue a preliminary measure without undue delay, not later than **30 days** from the filing of motion for preliminary measure.

However, if motion fails to meet particulars referred to in Article 75 (2) of the Code of Civil Procedure, the court will not issue a preliminary measure, but instead it will invite the claimant to amend or to complete defective, incomplete or unintelligible motion within the time specified by the court. The court is also obliged to instruct the claimant on how to amend or complete the motion. These rules, of course, do not apply in the proceedings that can be commenced on the court's own initiative.

If the court decides on the motion for preliminary measure pursuant to Article 76 (1) (b) (i. e. ordering the party to hand over a child to the custody of the other parent or parent granted custody by court; or to the rotating personal custody of both parents), it must decide within 7 days from the filing of motion for preliminary measure (provided the motion has contained all particulars prescribed by the law).

If the court decides on the motion for preliminary measure pursuant to Article 76 (1) (g) (i. e. ordering the party not to enter temporarily into a house or apartment in which the person lives in relation to which it is reasonably suspected of violence), it must decide within 48 hours from the

filing of motion for preliminary measure<sup>12</sup> (provided the motion has contained all particulars prescribed by the law).

If the court decides on the motion for preliminary measure pursuant to Article 75a (i. e. ordering that the minor child was temporarily placed in care of a natural person or a legal entity specified in the ruling), it must decide within 24 hours from the filing of motion for preliminary measure (provided the motion has contained all particulars prescribed by the law).

#### Administrative law:

For short term barring orders under Article 27a of the Act no. 171/1993 Coll. on Police Force the law does not prescribe any time limit for their realization. They are normally carried out without undue delay after domestic violence was notified to the police.

Preliminary measures under Article 43 (1) of the Act no. 71/1967 Coll. on Administrative Proceeding (the Administrative Code) should be in simple cases issued without undue delay. Unless otherwise provided in special laws, the administrative authority should issue a preliminary measure within 30 days from the filing of motion for preliminary measure, in particular difficult cases within 60 days.

#### Criminal law:

The law does not provide any special time limits for issuing criminal POs. However, pursuant to Article 2 (6) of the Criminal Procedure Code no. 301/2005 Coll., as amended, unless this Act provides otherwise, the bodies involved in criminal proceedings and the courts should act ex officio. They have the duty to deal with the cases involving detention as a matter of priority and without undue delay. Paragraph 7 of this article guarantees that everyone has the right to a fair hearing of his criminal case by an independent and impartial tribunal in reasonable time and in his presence, and to have an opportunity to comment on any adduced evidence, unless this Act provides otherwise.

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?

#### Civil law:

The preliminary measures issued under Article 76 (1) (b) (i. e. ordering the party to hand over a child to the custody of the other parent or parent granted custody by court; or to the rotating personal custody of both parents), Article 76 (1) (g) (i. e. ordering the party not to enter

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Saturdays, Sundays, and public holidays do not count to the passing of time.



temporarily into a house or apartment in which the person lives in relation to which it is reasonably suspected of violence), and Article 75a of the Code of Civil Procedure (i. e. ordering that the minor child was temporarily placed in care of a natural person or a legal entity specified in the ruling) are enforceable **immediately** on the date of their regulation (i. e. measures do not have to be actually delivered to the defendant) .

#### Administrative law:

Short term barring orders under Article 27a of the Act no. 171/1993 Coll. on Police Force are carried out with immediate effect. A Police officer is entitled to ban a violator from the shared household even in the violator's absence. He or she provides the victim and the violator with the written certificate confirming the ban from the shared household. The passing of the 48 hours period for the authorized exclusion of the violator from a shared household is interrupted during Saturdays, Sundays and public holidays. The period starts passing again on the next working day. Filing a motion on a court for imposing a preliminary measure during the existence of the ban from shared household automatically (ex lege) extends the ban until the court's ruling on this motion becomes enforceable.

A preliminary measure issued by administrative authority under Article 43 (1) of the Act no. 71/1967 Coll. on Administrative Proceeding (the Administrative Code) becomes enforceable as soon as it has been delivered to the defendant (the violator).

#### Criminal law:

Aforementioned criminal POs come into effect together with the final judgments.

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?**

Short term barring orders may be carried out by the police very quickly, practically immediately after the violence or the threat of violence has been reported and provide protection for 48 hours

Preliminary measures under the Code of Civil Procedure (provided they contain all particulars prescribed by the law) may be issued very quickly, depending on the type of the preliminary measure, within days, or even within hours from filing of the motion (see response 5b.) (duration? Finalisation?) However, preliminary measures, as it is obvious from their name, have only temporary effect, i. e. they must be followed by proceedings and decisions on merits in order to preserve their effect.

- 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?

As already mentioned, preliminary measures under the Code of Civil Procedure may in principle be issued only on the basis of a **written motion** which contains all particulars prescribed by the

law, filed by the claimant (i. e. the alleged victim) at the competent court. According to Article 75 (2) of the Code of Civil Procedure, besides general particulars of a motion described in Article 79 (1), motion for a preliminary measure should also contain description of relevant facts justifying imposition of a preliminary measure, presentation of grounds for the claim, which is to provide interim protection, justification of imminent danger of injury or a need for the temporary treatment of a minor child in the interest of the minor child; when it comes to handing over the child to the care of a natural person who is not a close person of a minor child, the proposal must be accompanied by a document showing registration in the list of applicants in accordance with special regulations. The motion must be clear what the applicant intends to seek in motion on the merits. The motion must also include the identity of the natural person to whom the minor child be placed in custody, or identity of the institution in which the minor child be placed for enforcement of the court's ruling.

Short term barring order under Article 27a of the Act no. 171/1993 Coll. on Police Force may be carried out by the police officer only on a person (violate) who shares the household (apartment, house, or other living space) with the victim, if the violator has committed or is reasonably suspected to commit a domestic violence, specifically attack on life, health, freedom or particularly serious attack on human dignity of the victim, particularly in respect of previous such attacks.

As regards criminal POs, see response 2a.

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

The law does not require compulsory legal representation for victims neither in civil, nor in administrative or criminal proceedings concerning POs. In practice, however, it is advisable to have a legal representative especially for civil proceedings (incorrect formulation of motion for preliminary measure may substantially delay imposition of preliminary measure by the court).

c. Is free legal representation/advice available?

Free legal representation and advice are available only to indigent people (i. e. natural persons whose personal financial situation makes it impossible for them to bear the expenses of legal services in order to assert their rights) either via the Centre for Legal Aid, which is a state budgetary organization connected to the budgetary chapter of the Ministry of Justice of the Slovak Republic (its founder) established by the Act no. 327/2005 Coll. on Provision of Legal Aid for People in Material Need, as amended, or via advocates who provide legal aid voluntarily, or via a number of NGOs providing free legal advice and assistance.

7) a. What types of protection can be provided for in the orders (e.g., 'no contact' orders, orders prohibiting someone to enter a certain area, orders prohibiting someone to follow another person around, etcetera)?

The list of preliminary measures under Article 76 (1) of the Code of Civil Procedure is not exhaustive which means that the court may impose a preliminary measure that is not expressly listed in this provision. Furthermore, some types of preliminary measures specifically mentioned in this provision have been formulated quite broadly which allows the court to impose a preliminary measure of the same type in different specific situations (e. g. preliminary measure

under Article 76 (1) (f) ordering the party to do something, to abstain from doing something, or to suffer something to be done).

Short term barring orders carried out under Article 27a of the Act no. 171/1993 Coll. on Police Force provide two types of protection of a victim against the violator. First, the violator is expelled from a shared household (and from immediate vicinity of shared household as well) and not allowed to enter the shared household (and the immediate vicinity) for 48 hours. The law provides the police officer with a discretion, taking into account the preventive protection of the victim, to define the scope of space which the barring order is covering.

When it comes to criminal POs, their list is exhaustive and the court may impose only POs which are expressly specified in the criminal law.

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?

Short term barring orders carried out by police officers under Article 27a of the Act no. 171/1993 Coll. on Police Force have this effect, but only for 48 hours. As already mentioned, the passing of the 48 hours period for the authorized exclusion of the violator from a shared household is interrupted during Saturdays, Sundays and public holidays. The period starts passing again on the next working day. Filing a motion on a court for imposing a preliminary measure during the existence of the ban from shared household automatically (ex lege) extends the ban until the court's ruling on this motion becomes enforceable. If the court, on the motion of the victim, issue a preliminary measure under Article 76 (1) (g) of the Code of Civil Procedure ordering the party (the violator) not to enter temporarily into a house or apartment in which the person (the victim) lives in relation to which it is reasonably suspected of violence, this might provide effective protection of the victim against the violator for a relatively long time. Finally, these proceedings may result in issuing a criminal PO against the violator under Article 62 (2) of the Criminal Code, i. e. the imposition of a ban of residence sentence.

The law obliges the police officer who is performing the barring order to inform the violator about available housings and the victim about the possibility to file a motion for preliminary measure under the Code of Civil Procedure and possibly give it in writing information on organizations assisting victims, including information about the services they provide and provide contact information for organizations providing assistance to victims of domestic violence.

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

The most popular types of POs are the short term barring orders carried out under Article 27a of the Act no. 171/1993 Coll. on Police Force.

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, different types of POs may be imposed in combination with each other.

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

The most popular combination of POs is that of short term barring orders, i. e. the order to leave the shared household and the order not to enter therein for 48 hours.

- 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?

Article 27a (2) of the Act no. 171/1993 Coll. on Police Force obliges the police officer to define "precisely" the scope of space which the barring order is covering. The only limitations of this discretionary power are that the police officer must take into account the preventive protection of the victim and also the previous attack(s) or threat of attack(s) of the violator, if any.

When it comes to preliminary measures issued under the Code of Civil Procedure, there are only general legal requirements applicable for any court's decision specified in Article 157 of the Code of Civil Procedure

Concerning the criminal POs, when a court is imposing a suspended imprisonment sentence under Article 51 (1) of the Criminal Code together with the ruling on a probationary supervision over the conduct of the offender imposed for the probationary period, it may, inter alia, impose a restriction on the offender (the violator) "*not to go within a distance of less than five meters of the injured party (the victim), and not to stay in the vicinity of his dwelling*" (Article 51 (4) of the Criminal Code).

- 9) a. Are there any legal limitations to the scope of these protection orders – e.g., only a couple of streets – or are the legal authorities free to decide the scope of protection orders any way they see fit?  
b. If there are limitations, which factors do the legal authorities have to take into account when deciding on the scope of protection orders?

As regards the short term barring orders under Article 27a (2) of the Act no. 171/1993 Coll. on Police Force, the police officer has a discretion to decide the scope of space which the barring order is covering. The only limitations of this discretionary power are that the police officer must take into account the preventive protection of the victim and also the previous attack(s) or threat of attack(s) of the violator, if any.

The scope of preliminary measures imposed under Article 76 (1) (g) of the Code of Civil Procedure, i. e. ordering the party not to enter temporarily into a house or apartment in which the person lives in relation to which it is reasonably suspected of violence, is not limited only to "a house" or "apartment" and may be broader, for instance, it may also cover vicinity of the dwelling. The wording of the ruling (its judicial dicta) depends significantly on the correct formulation of the motion since the court is in principle bound by the content of the motion.

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

In practice, the public authorities take into account specific factors of particular cases, e. g. if any minor living in the shared household would be effected by the PO, whether restrictions of rights of imposed on the offender (the violator) would be proportional and reasonable, whether the violation reported by the alleged victim is not only simulated by the victim, etc.

- 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")?

Civil POs are most often limited to only shared household of the victim and the violator (i. e. an apartment or house). Preliminary measures prohibit the offender to enter a specific apartment or a house.

Short term barring orders are often much broader in scope than preliminary measures depending on the use of discretionary power of the police officer and the specific circumstances of the case.

Criminal POs indicate limitation of minimum distance between violator and the victim in meters.

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

The exact statistical data on this question is not available. In my opinion, the average scope of an order prohibiting someone to enter a certain area is limited to a specific apartment or a house. The scope mostly depends on the specific circumstances of the case and also on the correct formulation of the motion.

- 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?

As aforementioned, short term barring orders under Article 27a of the Act no. 171/1993 Coll. on Police Force are may be carried out for the period of 48 hours. The passing of this period is interrupted during Saturdays, Sundays and public holidays. The period starts passing again on the next working day. Filing a motion on a court for imposing a preliminary measure during the existence of the ban from shared household automatically (ex lege) extends the ban until the court's ruling on this motion becomes enforceable.

The Code of Civil Procedure does not limit the maximum or minimum duration of imposed preliminary measures to any specific time. However, Article 77 (1) of the Code of Civil Procedure states that the preliminary measure shall cease to be in effect (a) if the claimant does not file a motion on merits to commence proceedings within a specified time; (b) if the motion on merits is dismissed; (c) if the motion on merits was granted and 30 days have elapsed from the enforcement of the decision on merits; (d) upon expiry of the period of time for which it was issued. The judge is obliged to discontinue the preliminary measure when the reasons for it cease to exist (Article 77 (2)).

Criminal POs are bound on probationary period which may range from one to five years.

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

Any authority deciding on the duration of a protection order should take into account specific background of the case, particularly whether the violent behavior of the offender has already been reported in the past, seriousness of the offence, rights and interests of minors that might be touched by PO, etc. No research on this topic available.

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

No statistical information or a research on this question available.

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

Civil POs are basically in hands of the victims (claimants). If they, for instance, do not file a motion on merits to commence proceedings within a specified time (i. e. within the time specified by the court in the ruling on preliminary measure), the preliminary measure would automatically (ex lege) cease to be in effect in accordance with Article 77 (1) of the Code of Civil Procedure. Claimant(s) may also request the cessation of preliminary measure whenever during the civil proceedings.

The situation is rather different when it comes to short term barring orders. The police officer is empowered to carry out short term barring order under Article 27a of the Act no. 171/1993 Coll. on Police Force without the consent or even against the will of the victim (especially when the life or health of minor is at stake), but in practice, this rarely happens.

Only a very small number of short term barring orders, however, have in practice been followed by filing motions for preliminary measures under the Code of Civil Procedure, and even less been granted by the court. According to the statistical information<sup>13</sup>, in 2009 there were 226 short term barring orders carried out, but only 44 of them were followed by motions for preliminary measure and only 28 motions were granted by the court. Similarly, in 2010 there were 228 short term barring orders, 33 motions for preliminary measure, 27 motions granted. In 2011, 277 short term barring orders, 47 motions for preliminary measure, 32 motions granted.

One of problems which the police and prosecution are facing in practice is that victims of domestic violence very often do not cooperate with them after their intimate partner (app. 98% of violators are men of which app. 76% are intimate partners of victims) has been detained and refusing or changing their witness statements which rather worsen evidence situation against the violator. This often leads to situations where violators have to be released from detention for the lack of the relevant evidence and criminal proceedings must be suspended. Prosecution assumes

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Report on Violence against Women in 2011, p. 29, available only in Slovak language on the website: [http://www.ivpr.gov.sk/IVPR/images/IVPR/vyskum/2012/Holubova/2261\\_holubova\\_sprava.pdf](http://www.ivpr.gov.sk/IVPR/images/IVPR/vyskum/2012/Holubova/2261_holubova_sprava.pdf)

that one of reasons for such behavior of victims is their unfavorable social and economical situation resulted from the fact that their partners (breadwinners) have been detained.<sup>14</sup>

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?

Authority deciding on a PO, regardless whether civil, administrative or a criminal one, should always assess the victim's need for issuing a protection order.

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

Victims can influence the type and duration of PO, mainly when it comes to civil protection order since it is the victim who as a claimant requesting the court to impose a specific preliminary measure. They also can markedly influence the duration of short term barring order, for instance, if they stay passive and do not file a motion for a preliminary measure within the 48-hour period (i. e. while the short term barring order is in effect). Concerning the criminal POs, victims can influence type or duration of protection orders only indirectly, by expressing their wishes and interests, but courts are not obliged to take them into account.

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

All civil protection orders can be appealed by offenders (defendants). Regional court will then decide on the appeal and may either confirm, change or suspend the issued preliminary measure.

Short term barring orders carried out under Article 27a of the Act no. 171/1993 Coll. on Police Force cannot be formally appealed, but the offender may ask the prosecution to review the legality of the police officer's conduct concerning short term barring order.

Offenders may also formally appeal against any criminal PO imposed against them.

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?

Short term barring orders may be carried out by the police officer even in the absence of the offender. So his/her wishes in this case do not influence imposition of this PO at all.

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Report on implementation of National Action Plan on Violence Against Women 2005-2008, p. 3, available in Slovak language at: [http://www.gender.gov.sk/wp-content/uploads/2012/06/Spr%C3%A1va\\_o\\_plnen%C3%AD\\_NAP\\_VAW\\_05-08.pdf](http://www.gender.gov.sk/wp-content/uploads/2012/06/Spr%C3%A1va_o_plnen%C3%AD_NAP_VAW_05-08.pdf)

However, according to Article 27a (5) of the Act no. 171/1993 Coll. on Police Force, the police officer is obliged to allow the offender to take with him his exclusive personal belongings, including personal valuables and documents. He may (but does not have to) allow the offender within the period of 24 hours from notification of barring order to take other personal belongings and things necessary for his business or profession.

As regards civil POs, these are usually imposed by the court without a hearing, only on the basis of the motion and enclosed documentary evidence. Offender may influence the further existence of issued preliminary measure basically only in appellate proceedings.

In criminal proceedings, the offender is, of course, allowed to express his opinion against the PO and submits any evidence favorable to his position.

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?

See respond 13b. In the civil proceedings on merits that follows the preliminary measure, both the victim and the offender may agree on the conditions of dispute settlement, and if the agreement is fair and reasonable, the court would formally approve it.

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

It seems that the period of 48 hours during which a short term barring order is effective is rather short. Victims (many of whom can still be in a hospital during this period) do not have enough time for filing a motion for preliminary measure that would contain all particulars requested by the law or finding someone qualified for provision of legal assistance in this regard.

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)?

Previous imposition of PO(s) against the offender, regardless whether it was in civil, administrative, or criminal proceedings, plays in principle a significant role when authority is deciding on the PO, namely on its type and duration. Previous (reported) violent behavior of the offender is considered as an aggravating circumstance that usually leads to more severe sanction imposed by authority against the offender.

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

In civil proceedings, the victim (claimant) must formulate the motion in such a way that the preliminary measure would include also children.



However, as already mentioned, pursuant to Article 75a of the Code of Civil Procedure, if a minor child is found without any care or if its life, health or positive development is seriously endangered or disturbed, the court without a motion or on the motion of authority for the social and legal protection of children and social guardianship will issue a preliminary measure ordering that the minor child was temporarily placed in care of a natural person or a legal entity specified in the ruling. The court must decide within 24 hours from the filing of motion for preliminary measure (if decides on the motion).

As regards the short term barring orders, if the victim or one of victims is of minor age, the police officer must send a copy of the official record he made to the competent authority for the social and legal protection of children and social guardianship.

Neither criminal POs automatically extend to children. The children should be explicitly mentioned in the PO.

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

It mostly depends on the exact wording of the PO. Any conditions or terms for exercise of offender's visitations rights should have been expressly stated in the PO. In practice, however, if PO was imposed against the offender due to his violent behavior, the offender's contact with children would also be temporarily restricted or rather completely prohibited.

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

No information available at this stage. I would be surprised if there were no problems. I will try to find it out from someone who has more practical experience in this area.

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

Short term barring order may apply only against the offender, not the victim.

In civil proceedings a court may order a preliminary measure only against the offender (defendant) if it is deciding on the basis of the victim's (claimant's) motion. However, if court decides on its own initiative or on the motion of the competent authority for the social and legal protection of children and social guardianship (Article 75a of the Code of Civil Procedure), it may issue a mutual protection order restraining the rights of both parents (for instance, if it is not clear at that moment who of the parents was a "victim" and who was an "offender").

Criminal POs may apply only against the offender, not the victim, who has a status of injured party in the criminal proceedings.

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?

The reason why mutual protection orders do not apply in criminal and administrative proceedings is that they are not expressly enacted in respective laws. What is the rationale behind it, I really do not know.

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

Short term barring orders and criminal POs are provided free of charge. Civil POs are not. Claimant is in principle obliged to pay a court fee of 33 € for filing a motion for a preliminary measure, but s(he) can ask the court to free her/him from this duty.

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

In principle, everyone bears its own legal costs and expenses, including court fees and advocate's fees. In civil proceedings, the party which has been defeated is usually bound by the court in its final ruling to pay all reasonable legal costs and expenses of the party who has won. If, for instance, it will appear later in proceedings on merits, that the preliminary measure issued against the offender (defendant) on the motion of the victim was unfounded (e.g. based on false allegations), the court would likely bind the claimant to pay all legal costs of the defendant).

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

The duty to pay legal costs associated with proceedings can for many people with low income represent undue financial burden and discourage them to apply for protection order. Even if they are exempted from the duty to pay a court fee for the motion for a preliminary measure, and even if they are provided with free legal assistance, they always have to count with the possibility to loose the case at the end (e.g. due to lack of relevant evidence against the violator). If this happens, they would likely have to pay all legal costs of the violator (defendant). Since the outcome of any legal dispute is uncertain, and legal disputes are as a rule not cheap at all and can last for a very long time, many people rather refrain from finding a court protection via civil proceedings.

### 2.2.2. Enforcement of protection orders

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

19) Where and how are protection orders registered?

There are no official publicly available registers of POs.

Some of POs, like short term barring orders carried out under Article 27a of the Act no. 171/1993 Coll. on Police Force and civil POs that were issued after the short term barring orders have been registered within the Ministry of Interior of the Slovak Republic mainly for statistical purposes.

Civil POs (preliminary measures) similarly like other rulings issued by courts in civil and criminal proceedings have been published on the website of the Ministry of Justice of the Slovak Republic.<sup>15</sup>

- 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?

Any PO issued either in civil, administrative or criminal proceedings must be communicated to the victim.

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

Short term barring order is communicated to victim both verbally and in writing (certificate defining the conditions of the short term barring order).

Civil PO (preliminary measure) must be delivered to the victim in writing, usually by post. The same applies for criminal POs.

- 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?

Short term barring orders are monitored by the police.

Civil POs (preliminary measures) have not been monitored by authorities. It is up to the victim (claimant) to report the breach of PO either to the police or to the court.

Criminal POs have been monitored by probation or mediation officers designated by the court.

- 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 law does not specify or limit range of activities that authorities may undertake to check the compliance with protection orders. For instance, Article 27a (10) of the Act no. 171/1993 Coll. on Police Force simply states that the police verifies the compliance with the protection order.

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

In practice, monitoring authorities mainly use house visits and extra surveillance for supervision of compliance with POs or just waiting for reports of the victims.

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

Technical devices like GPS have not been used for monitoring of offenders in the Slovak Republic so far.

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

It is generally left up to the victim to report repeated violation.

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?

Pro-active monitoring activities are rather rare. Monitoring authorities generally become aware of a violation of a protection order through the victim.

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

Basically it depends on the exact wording of the PO. However, if it appears that the breach of PO has been initiated by the victim with a bad intention, this fact may lead to the suspension of the PO.

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

See response 23a.

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

See response 23a. If the contact was wilfully initiated by the victim and this fact has been proved to the monitoring authority, the sanction for the breach of PO, if any, would be likely less severe.

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

The law does not specify any special requirements that have to be met for establishing a violation of protection order. Generally, a witness statement would suffice. As civil POs are concerned, the burden of proof rests on the claimant.

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

The victim may report the violence of the PO to the police. The police may commence a criminal proceedings against the offender for commission of criminal offence entitled "Obstructing the Execution of an Official Decision".<sup>16</sup>

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Article 348 (1) (g) of the Criminal Code reads as follows: "Any person who obstructs or substantially impedes the execution of a decision taken by a court or other public authority, by committing serious or repeated misconduct with the aim to breach an order restraining him from

The civil court is entitled to impose, even repeatedly, a procedural fine for disrespect of court's order in accordance with Article 53 of the Code of Civil Procedure.

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

See response 24b.

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)?

I am not aware of any informal reactions. In less serious breach of short term barring order there might be an informal warning made by monitoring police officer.

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

There is no statistical data available on this question.

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

I do not have enough information on this to make an opinion.

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

I believe so. Sensitivity of the police and other authorities in dealing with reported violence has increased significantly in the last years.

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

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

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

See response 24b.

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

It depends on specific circumstances of the case. If the violation is of a serious nature, the police would likely arrest the violator and commence criminal proceedings against him. If a violation is less serious, it can easily happen that the police would just informally warn the offender or remain inactive.

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entering shared household issued under separate regulation or on the basis of a preliminary measure taken by a court shall be liable to a term of imprisonment of up to two years."

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

If the victim calls the police, the police is obliged to assist her/him within its competence. Reactions of the police vary, some police officers are more active than others. If the victim is not satisfied with the police approach, (s)he may ask the prosecutor to check the legality of the police's conduct.

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?

Only a court is authorized to sanction violation of a PO.

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

Making report of civil PO violation is primarily in hands of the victim who is monitoring its compliance.

Violation of short term barring order or preliminary measure can result in commencement of criminal proceedings against the offender with the possible sanctions imposed by the court.

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

In practice, generally only the most serious breaches of POs lead to the imposition of sanctions.

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

No information available.

### 2.2.3. Types and incidence of protection orders

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

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

As mentioned in the response 12a., according to the statistical information<sup>17</sup>, in 2009 there were 226 short term barring orders carried out, but only 44 of them were followed by motions for

preliminary measure and only 28 motions were granted by the court. Similarly, in 2010 there were 228 short term barring orders, 33 motions for preliminary measure, 27 motions granted. In 2011, 277 short term barring orders, 47 motions for preliminary measure, 32 motions granted.

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

It seems from the aforementioned statistical data that short term barring orders are imposed most often.

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

Eviction from the shared residence and no contact with the victim are most often imposed.

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

Although there is no empirical information available on this question, I believe that POs as such are generally imposed for physical cruelty, assault or threat of assault.

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

- a. Are protection orders generally imposed against male offenders on behalf of female victims?

According to the statistical information available in the aforementioned Report on Violence against Women in 2011 98% of short term barring orders are generally imposed against male offenders.

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

Information not available.

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

Information not available.

#### 2.2.4. Protection order effectiveness

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

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Report on Violence against Women in 2011, p. 29, available only in Slovak language on the website: [http://www.ivpr.gov.sk/IVPR/images/IVPR/vyskum/2012/Holubova/2261\\_holubova\\_sprava.pdf](http://www.ivpr.gov.sk/IVPR/images/IVPR/vyskum/2012/Holubova/2261_holubova_sprava.pdf)

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

No empirical information available.

- 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?

No empirical information available.

- 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?

No empirical information available.

#### 2.2.5. Impediments to protection order legislation, enforcement and effectiveness

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

- a. Problems with protection order legislation

The low number of motions for preliminary measure filed by victims indicates that the 48 hour period during which the short term barring orders are in effect is likely very short. It would be advisable in my opinion to extend reasonably this period (for instance to 10 days), but with sufficient guaranties of rights of the offender (offender should have a right to appeal against the short term barring order to the court since his/her constitutional rights are restricted by the PO).

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

See response 36a. In my opinion, the other reason why only a few short term barring orders are followed with motions for a preliminary measure is that it is difficult for a victim to write a motion containing all particulars requested by the law. Many victims of domestic violence do not have adequate access to legal assistance, many of them cannot afford to bear legal costs associated with the court proceedings, and the process for obtaining free legal aid is relatively long and rather bureaucratic.

- c. Problems with protection order monitoring



Monitoring of protection orders is not good in practice. Especially monitoring of civil POs should be improved, respective court and police should be involved in regular monitoring. Using of technical devices, such as GPS, would, in my opinion, significantly improve the monitoring.

d. Problems with protection order enforcement

Problems with protection order enforcement is closely related to problems with protection order monitoring. If offenders know that the monitoring does not work well, they are less hesitant to breach POs since the risk of being sanctioned is very low.

e. Problems with protection order effectiveness?

Short term barring orders are effective only for a very short time if they are not followed by qualified motions for a preliminary measure which are subsequently granted by the court.

Without improvement of the access of victims to effective legal assistance, not only for an advice or writing a motion, but preferably for the whole proceedings, the effectiveness of protection orders will not reach desirable standards.

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

In my opinion, the biggest problems concerning POs are: very short (48 hour) period during which a short term barring order is in effect, unsystematic approach of authorities in monitoring POs, non-use of technical devices (mainly GPS) for monitoring POs, inadequate education of personnel of authorities in correct application and monitoring of POs, and insufficient access to legal assistance (legal aid) for many people with low income.

2.2.6. Promising/ good practices

38) Which factors facilitate the:

a. Imposition

The factor which significantly facilitates imposition of POs, whether short term barring order or a preliminary measure, that they may be imposed even in the absence of the offender and without a hearing.

b. monitoring, and

Using of technical devices, such as GPs, would considerably facilitate the monitoring of POs. Improvement of monitoring would undoubtedly also improved the enforcement of POs.

c. enforcement of protection orders?

One of factors that facilitates enforcement of POs in practice is that filing a motion on a court for imposing a preliminary measure during the existence of the ban from shared household (resulted from imposition of a short term barring order) automatically (ex lege) extends the ban until the court's ruling on this motion becomes enforceable.

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

The factors that, in my opinion, would increase the effectiveness of protection orders are:

- improvement of access to information about availability of POs for victims;
- improvement of access to legal and social assistance for both victims and offenders;
- application of technical devices for monitoring compliance of POs;
- increase of sensitivity of population (namely the personnel of authorities dealing with various forms of violence) on all forms of violence (promotion of zero tolerance for violence);
- improvement of the quality of legislation (e.g. extension of 48-period in short term barring orders accompanied with adequate safeguards);
- improvement of the provision of assistance and support in the network of facilities and social services taking into consideration groups of women with cumulative disadvantages (women from cultural, social and ethnic minorities) and to incorporate their specific needs (such as shelters, protection and assistance, crisis counseling hotlines, crisis intervention centre, walk-in advice centers, interdisciplinary integrated teams, etc.) in all measures.

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

I have not identified any promising practices concerning protection orders in my country as yet. I will work on this.

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

See response 39.

#### 2.2.7. Future developments

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

Not at the moment.

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?

I am not aware of any such changes that might be expected in nearby future.

b. If so, what will change?

Not applicable.

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

I do not know about any at the moment.

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

I suppose that the 48-hour period in short term barring orders will be extended since this has been discussed for some time yet and the shortness of this period is evidently causing problems in practice.

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?

One of the problems that might occur in implementation of EPO in my country is that the monitoring of POs in the Slovak Republic does not reach an adequate standard which is automatically lowering the enforceability of POs. The other problem I see is that there are many different forms of (specific) POs existing in other EU countries that are totally unknown to Slovak law and authorities which will likely create practical problems in applicability.

## Glossary

### 1. General Legal Terminology:<sup>18</sup>

#### **Crime**

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

#### **Instantaneous crime**

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

#### **Continuous crime**

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

#### **Civil law**

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

#### **Criminal law**

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

#### **Administrative law**

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

#### **Case law**

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

#### **Substantive Law**

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

#### **Procedural Law**

Law that prescribes the procedures and methods for enforcing rights and duties and for obtaining redress and that is distinguished from law that creates, defines, or regulates rights. It determines

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the rules of legal process such as the rules of evidence and of procedure in enforcing a legal right or obligation.

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

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

### **Adult person**

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

### **Report**

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

### **Legal provisions**

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

### **Formal complaint**

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

### **Complainant**

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

### **Victim**

A natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, directly caused by acts or omissions that are in violation of the criminal law of a state.<sup>19</sup>

### **Decision**

It refers to an authoritative determination (as a decree or judgment) made after consideration of facts or law. While being an authoritative determination of a disputed issue, it does not have to be a final determination closing the case. Some (interlocutory) decisions may be appealed. With

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

regards to a protection order, a decision can be made by a judge, prosecutor, magistrate, or any other administrative officer or public servant.

### **Legal representation/counsel**

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

### **Legal aid/advice**

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

### **Probation**

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

### **Sanction**

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

### **Notification**

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

## *2. Forms of violence*

### **Intimate partner violence (IPV)**

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

### **Domestic violence<sup>20</sup>**

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

### **Stalking<sup>21</sup>**

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

21

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

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

### **Rape/sexual assault**

Sexual assault is in this study defined as any sexual act committed against non-consenting persons<sup>22</sup>, even if they do not show signs of resistance. Rape is considered one form of sexual assault consisting of the sexual penetration with any means, by one person of another person's body without the consent of that other person.

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

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

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

#### **Injunction**

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

#### **Restraining order**

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

#### **Barring order**

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

#### **Police go order**

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

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

**(The) scope**

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

**Radius**

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

**Practical impediments**

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

**Pro-active supervision**

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