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**AD HOC COMMITTEE ON PREVENTING AND COMBATING
VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE
(CAHVIO)**

LEGAL PROTECTIVE PROVISIONS OR PROTECTION ORDERS

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Since the mid-1970s various protective provisions, usually labelled as *protection orders* have been made available across various Member States in the EU to complainants/survivors of gender based violence, such as: domestic violence, stalking, sexual harassment, honour based violence, sexual violence.¹ Initially they were developed to provide legal protection remedies to victims of intimate partner violence who, after the separation, continued to be threatened and harassed by an ex-partner. The urgent need for this kind of legal protective tool has become clear with the growing body of knowledge underlining the wide spread prevalence and severity of (post-)separation abuse and domestic killings that put women disproportionately at risk. Recent legislative developments have extended the application of such orders, for example to victims who are under threat of honour based violence or at risk of being forced to marry. Protection orders are considered important legal measures since they aim to provide a *fast* legal remedy to protect complainants who are under threat of gender-based violence. They allow to effectively limit the freedom of movement, prohibit certain activities of the suspect/offender, and/or to mandate certain acts of the suspect/perpetrator.

Over the past decades, the range of substantive measures included in protection orders has been widened and exist under various names, depending on the type of behaviour it prohibits, restrains or prescribes. The most common are: protection order, injunction, order of protection, restraining order, eviction or barring-order. We use the term protection orders here as an umbrella category, to cover the different measures. Despite the differences, the goal of all protective orders is to prevent violence from (re-)occurring. The focus is on the protection of the victim.

Below we have addressed the most important aspects in which the substance and procedures of a protective provision orders can differ. Note that the differences listed below are not always exclusive for one or the other kind of order, and some measures in Member States may have mixed characteristics.

1. The legal regime

The legal regime under which the order is issued and by whom (mostly: criminal law, civil law, sometimes: administrative law, or other special laws). This corresponds with differences in the legal interests and who are the legal subjects as rights holders that are targeted by the order.

In any *civil law* protection order, *civil rights of the victim* are the private legal interest to be protected. The victim can apply for the order and the judge can issue it. The order allows to impose limits on the other party with respect to circumscribed behaviors and/or activities of the person whose behaviour has violated the applicants' civil rights.

Under *criminal law* the protection order is a sanction, imposed by the prosecutor or judge, for a criminal violation. *Ipse facto* a violation of a *public* interest is at stake. It is the State's obligation to protect the public order and the individual victim as a

¹ UN Handbook for legislation on violence against women. (May 2009. See: [http://www.un.org/womenwatch/daw/vaw/handbook/Handbook for legislation on violence against women \(advance\).pdf](http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women%20(advance).pdf)

citizen and prevent further violence (for example in issuing a criminal restraining order as a bail condition, or as (part of) sanction).

Under *administrative law* some Member States position intimate partner violence against women as an offence against the 'public order and safety' and therefore in need of State regulation and intervention. The administrative authorities issue the order; in practice this is usually mandated to the police.

2. The prohibited behaviour/activity

The behaviour/activity that is prohibited or mandated: protection orders can cover a range of behaviours and activities and are usually *prohibitory* in nature: to stay away from the complainant and her children and/or other people if appropriate (sometimes specified in area and/or as a certain minimum distance), to prohibit the defendant/perpetrator from directly or indirectly (via a third party) contacting the complainant/survivor no matter where (at home, in the public domain, at work etcetera), to refrain from causing any further harm or violence; to prohibit the defendant/perpetrator from purchasing, using or possessing a firearm or any such weapon specified by the court. Some jurisdictions require that the movements of the defendant/offender be electronically monitored if they receive an order. Sometimes the order may be *mandatory*, requiring a person to do something, like vacating the family home (barring order), or providing financial (child) support or other relief.

3. The stage at which the order can be applied or is issued

We distinguish emergency orders (civil legal, usually *ex parte*, without a hearing but with an option to appeal) that can be issued in cases of immediate danger of violence upon application, provisional orders (pre-hearing, usual in the course of a court investigation) and a final verdict order (after a court hearing). Procedural requirements for emergency order differ widely, also depending on the legal regime (civil, criminal, administrative law) under which it is regulated.

4. Who can request or issue the order

Usually the victim/complainant is the one who applies under civil law. In some jurisdictions, others than the victim (if they live in the family home) are also allowed to apply for a protection order. Under criminal law, an *ex officio* order is the common route, where prosecutor or magistrate issues the order (in some jurisdictions it is mandatory to consult the victim). In cases where regular judicial proceedings could cause irreparable harm to the threatened party, some jurisdictions allow to issue the order *ex parte* (the legal proceeding are brought to a judge/the court by one person in the absence of and without representation or notification of other parties).

5. Duration of the order

Protective orders are usually a temporary measure and relatively short term, sometimes as a provisional restraining order. Some jurisdictions have introduced long-term or even permanent orders (until it is explicitly dismissed by court). The latter are often labelled as an injunction order (in common law systems). Only the

barring order currently has a particular minimum time frame; across jurisdictions it has a ten-day duration (with a possibility for one extension of the barring type order). If the victim wants/needs longer protection usually the regular civil or criminal law orders are imposed, depending on whether or not the victim and perpetrator have separated. Note that the barring order is aimed at protecting victims who co-habit with the perpetrator.

6. Sanctioning/monitoring

Enforcement of protective orders is difficult since the perpetrator often disappears before the police arrive to effectively provide protection. To enhance the deterrent preventive effect of a protection order, criminalization of the violation of a civil legal protection order is increasingly used as an option (allowing for detention). Issuing fines for a violation of a protection order is hardly effective (and many perpetrators fail to pay them anyway). In some jurisdictions the recipient of a protection order can be subjected to electronic monitoring ('ankle bracelet'), sometimes in combination with a protective electronic alarm device for the victim that allows her to alarm the police if the perpetrator contacts or comes near her in any way.

7. Children and protection orders

With the growing recognition that witnessing intimate partner violence is a form of victimization of the child, it is also argued that this deserves to be taken into consideration when issuing a protective orders in order to improve the effective protection of children.