Protection Against Violence:
The Challenges of Incorporating Human Rights' Standards to Procedural Law

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Abstract
In the past three decades, violence against women has received considerable attention in human rights law. While traditionally a matter for national law, today several human rights instruments place obligations on state parties to protect victims from gender-based violence, for instance, via judicial protection orders. National procedural law doctrines, however, have not been particularly adaptive to these demands. In this article we discuss the structures, principles, and mechanisms of procedural law in relation to the demands from human rights law.

I. Introduction

In the past three decades, considerable attention has been paid to violence against women (VAW) in human rights.[1] While traditionally a matter for national law, today several international legal instruments oblige state parties to protect victims from gender-based violence.[2] The introduction of judicial protection orders (POs) is an expression of this duty to protect. Protection orders can be defined as prohibitions to approach or contact another person, issued by a court, a prosecutor, police, or an administrative body. National procedural law doctrines, however, have not been particularly adaptive to the demands from international law. The implications of this lack of flexibility of the civil and criminal procedure on (the effectiveness of) POs have rarely been considered. In this article we discuss the structures, principles and underlying assumptions of procedural law in relation to the demands from international law on POs.

The difficulty in adopting the international human rights' standards on VAW into procedural law is largely a result of the contradictions between two legal fields (civil and criminal) and two levels of legislation (international and national). During the past decades, which have been characterized by increased globalization, human rights law has been evolving rapidly. [3] In comparison, national law and the doctrines underlying specific legal disciplines seem to have evolved much more protractedly. Similarly, the separation between legal disciplines (civil, administrative and criminal) seems to be rather stable. Despite several examples where elements of one legal discipline permeate the realm of another – e.g., allowing civil claims for compensation within criminal procedure – the division by legal disciplines is apparent in the codifications and drafting of laws and in the legislative process, as well as in legal education, which for the most part is still organized along the lines of the prevailing legal

fields.

Real life, however, is not lived according to the division of legal disciplines. Many activities and actions have legal consequences and relevance in relation to multiple areas of law. For example, a physical act characterized in criminal law as battery is investigated and tried according to procedural law and, most likely, leads to the obligation to pay damages according to private law. As the UN Special Rapporteur on Violence against Women (UN SRVAW) points out, the lack of coordination between different branches of the legal system, such as criminal courts and family courts, can impede women's access to justice.[4]

A number of international legal standards and obligations are relevant in this respect, and directly applicable. Human Rights instruments address issues that used to be regulated within national law. Today, there is an on-going interaction between international, European, and national law, which leads to much discussion about how the three levels of regulation are consolidated.[5] European law and international (human rights) law have shaped the national legal systems in Europe in profound ways, sometimes in ways that were not anticipated.[6] With the development of the international norms on violence against women, the obligations of states to protect victims have become more specified, including references to judicial protection orders. These types of orders have traditionally belonged to the domain of national *procedural* law, both civil and criminal. However, the principles and doctrines of procedural law have not had a central role in the preparation of international documents. One reason for this may have been that the international legal instruments on violence against women have been prepared by experts on violence, gender, and international and substantive criminal law.[7]

Procedural law is based on established doctrines and principles, which are quite distinct for criminal and civil procedure. These doctrines hold, for instance, assumptions about the parties, which may be problematic in the context of VAW. One of the difficulties lies in the role attributed to the victims. In criminal procedure, the prosecutor and the defendant are still the main parties, while the victim has only entered the procedural discussions during the past decades. This has resulted in an extension of victims' rights, but they still lack a central role.[8] In civil procedure, the point of departure is that the parties are individuals who are autonomous, capable and equal, a picture that is often far from the reality of VAW. A central theme in this article is how these basic tenets of national procedural law correspond (or not) with the international obligation to protect.

This article is organized in the following manner. First, in part II, we explore the obligations and standards on protection orders in international and regional human rights norms and in case law by the CEDAW Committee (CEDAW CEE) and the European Court of Human Rights (ECtHR). In section III, we identify the availability, accessibility, and monitoring and enforcement of protection orders as analytical tools of assessment. In section IV, we discuss the procedural alternatives for providing protection. We cover three types of protection orders: criminal protection orders, civil protection orders, and a new type of protection order that has emerged in response to the increasing demands of protection against domestic violence: the emergency barring order (EBO).[9] We use these three types as archetypes of protection orders,

connected to the criminal procedural tradition, the civil procedure tradition, and the claims of the battered women movement. As such, our three archetypes do not correspond to any specific national legal system. However, we can identify features of each of the archetypes in the European Union Member States and we use concrete examples derived from national laws to illustrate our argument. Next, in section V, we offer a theoretical discussion on the strengths and weaknesses (pros and cons) of the criminal and civil procedural approaches to protection. Since the protection of the victims is the focus of the international norms on VAW, we discuss the possibilities to amend the procedural norms to increase protection provided to victims of interpersonal violence, in line with due process requirements. The paper concludes with some final observations in section VI.

II. Protection Orders in International Documents and Case law

Until the 1990s, violence against women was considered an issue for national law. Since then, VAW has been conceptualized as a human rights violation. Over the past 25 years, several international documents on VAW and domestic violence (DV) have indicated the responsibility of the State to protect women,[10] aligning with the broader development of state responsibility for acts by non-state actors.

Human rights norms on VAW suggest that the protection must address the continuous nature of the violence, calling states to provide protection from imminent harm and against the repetition of violence in the long term.[11] The positive obligation of the states regarding acts by private parties has evolved in the international instruments on VAW in terms of the prevention, protection, and prosecution of violence.[12]

A. Protection Orders in the CEDAW Committee

The CEDAW Committee holds in its general recommendations that violence against women is a form of discrimination based on gender[13] and has given specific recommendations on how the states should address issues of VAW. In individual communications the Committee has established a basic list of protection *measures* that include the duty of States to enact specific legislation to combat violence, particularly domestic violence and sexual harassment. [14] More specifically, the Committee has asserted that immediate protection of women victims must be provided, for instance by means of exclusion orders and shelters.[15] Measures offering longer-term protection are also needed. For instance, the Committee has clarified that during ongoing judicial proceedings detention should be possible and protection orders made available.[16]

Temporary protection of the victims while criminal proceedings are in progress is needed in order to prevent any risk of irreparable harm.[17]

The incorporation of *protection orders* in human rights norms has been progressive. Initially referred to in the assessment of individual cases, protection orders have only recently started emerging in the General Recommendations, such as 33 (GR 33) on women's access to justice,[18] according to which protection orders may appear under family law and/or under criminal law.[19]

B. The Council of Europe

Although the European Convention on Human Rights (ECHR) does not explicitly mention VAW, the case law of the European Court of Human Rights (ECtHR) has by now established that a state's failure to protect victims and adequately investigate domestic violence may constitute a violation of the Convention.[20] Such failure to protect may violate several rights guaranteed in the Convention: right to life (art 2) [21], prohibition of torture (art 3),[22] and/or right to respect for private and family life (art 8).[23]

Like CEDAW, the Council of Europe has progressed from references to protection *measures* to explicitly addressing protection *orders*. In Rec (2002)5, the Committee of Ministers linked the obligation to exercise due diligence to prevent, investigate, and punish acts of violence to the adoption of interim measures of protection.[24] Since 2007, the ECtHR flagged for national protection measures against domestic violence in several decisions.[25]

Finally, the Council of Europe Convention on Violence against Women and Domestic Violence (Istanbul Convention, 2011) explicitly incorporates the obligation to include protection orders to the norms.[26] It identifies different 'moments' of protection: immediate and longer-term protection and requires states to offer victims of violence both emergency barring orders in situations of immediate danger[27] and longer-term protection orders.[28] That said, the Istanbul Convention does not specify how the protection orders should be implemented, allowing the States to choose their procedural avenue. This silence is deliberate, a sign of respect for national laws and legal traditions. [29]

III. Criteria for the Assessment of Protection Orders

Since protection according to the human rights law must be offered notwithstanding and in line with the national legal traditions, the specific nature of protection orders and in particular the distinction between criminal and civil protection has rarely been central in the discussions. The

international norms have clarified some basic criteria and scope of protection that these orders should provide. They should be available and accessible to DV victims,[30] while monitoring and enforcement mechanisms should be in place.[31] The analysis in this article will focus on three basic interconnected elements of protection that emerge from the international norms: 1) availability, 2) accessibility, and 3) sufficient monitoring and enforcement.

A. Availability

The need to make protection orders *available* is clearly stipulated in the normative documents. CEDAW General Recommendation (GR) 33 clarifies that such availability entails 'the establishment of courts, quasi-judicial bodies or other bodies throughout the State party in urban, rural and remote areas,' suggesting that protection orders should be provided for in all areas of the country.[32] In addition, POs should be provided promptly, following simple procedures and have immediate effect.[33] For example, in *E.S. v. Slovakia* the ECtHR stated that a domestic violence situation called for an immediately available separation order concerning the apartment of the spouses.[34]

Another aspect of availability is the question who has the power (or duty) to request or impose the POs. In DV cases the competence should depend on the particular 'moment of protection.' Immediate danger seems to call for *ex officio* application of the orders, ensuring the protection of the victim and thus complying with the due diligence obligations of the state. [35] In less severe situations, victims should have the chance to decide whether and when to request a protection order.[36] Finally, the protection order should be available notwithstanding other (main) proceedings[37] and last long enough for the situation of domestic violence to desist or for the victim to apply for prolonged protection.

B. Accessibility

Access to justice constitutes a human right,[38] and the international standards on POs are an operationalization of that right. According to the CEDAW Cee, all justice systems, both formal and quasi-judicial, must be secure, affordable, physically accessible, adapted, and appropriate to the needs of women, including those who face intersecting or compounded forms of discrimination.[39] Accessibility, thus, entails both substantive and procedural aspects.

The CEDAW Cee has warned that traditional stereotypes on the roles of women in family and society, contrary to articles 2 (d) and (f) and 5 (a) of the CEDAW Convention, can affect the provision of protection orders and make them inaccessible.[40] Stereotypes can taint the

authorities' assessment of the risk that women face, for instance, by regarding the victim's response to violence as contrary to the expected behaviour,[41] dismissing the severity of the violence or deeming it as a 'private' quarrel.[42] The general impact of stereotypes on access to justice is discussed in GR 33, highlighting the importance of changing the prejudiced perceptions about domestic violence and its victims, and of training professionals in a gender-sensitive manner.[43]

The effect of stereotypes on the assessment of the risk women face may hinder the accessibility of protection orders. For instance, providing protection orders only in extremely urgent situations, involving bodily injuries, ignores the psychological and economic forms of violence and reflects the preconceived notion that domestic violence is a private matter, not subjected to State control.[44]

The procedural aspects of accessibility relate to information as well as to linguistic and economic barriers. The CEDAW Committee has highlighted that even in the most comprehensive national systems, where protection orders and shelters are available and the detention of the abuser is possible, some women might be excluded from the protection, for instance, due to language barriers.[45] Information about the protection orders and how to obtain them is crucial and should be provided in different languages at all moments of protection. Regarding the economic barriers, the tolerable costs of the procedures seem to vary.[46]

C. Monitoring and Enforcement

Finally, to be effective, POS must be observed and, in case breach, an effective enforcing mechanism must be in place.[47] According to the Istanbul Convention, protection orders must be subject to effective, proportionate, and dissuasive criminal or other legal sanctions.[48] Enforcement and monitoring are interconnected and they can be assessed by the international supervisory bodies in cases of fatalities. State responsibility can arise in case the police knew or should have known about the danger but did not act.[49]

That said, states often have established some formal enforcement and sanctioning mechanisms for the breach of an order, yet no monitoring is in place.[50] In several cases, the CEDAW Committee noted that the lack of a follow-up procedure to check if the POs were observed had resulted in the death of the victims.[51] In *Mudric v. Moldova*, the ECtHR found that the lack of enforcement of the protection orders was a central element in the establishment of the violation of art 3 of the ECHR.

Proper monitoring calls for the registration of the orders, their violations, and the availability of an electronic monitoring system. The authority in charge of monitoring should be identified and breaches of orders should be sanctioned. Emergency calls from the victims, their next of kin, and professional personnel should be prioritized.

As indicated above, the international normative documents do not indicate a specific

procedure to be followed. Nevertheless, the characteristics of the national civil and criminal procedures will likely influence the design of the protection orders, enabling them in some aspects and restricting them in others. In the section below, we will juxtapose the characteristics of civil and criminal procedures against the criteria of availability, accessibility, monitoring, and enforcement to see if they line up.

IV. Procedural Systems and Protection

The procedural systems of Western countries are based on a division between civil and criminal procedures. These two types of procedures have different theoretical bases, even if they share many common characteristics. The criminal procedure is the venue in which the state channels the public reaction to a violation of the criminal law. The civil procedure and trial are, in contrast, a venue for private parties to solve their legal disputes. Both procedures provide for interim measures, that is, temporary measures granted while the proceedings are carried on and until a final verdict on the merits of the case is given, to preclude further violations by the defendant.

In the traditional law of procedure, the interim measures have not been designed with protection against interpersonal violence in mind. However, they can be amended so that they offer feasible protection against violence. This is what European states started doing from the late 1990s onwards, albeit that they chose different routes. [52] Some European states have redesigned the interim orders in the criminal process to meet the needs of domestic violence victims.[53] In many countries, victims have access to protection orders that are civil in nature.[54] As part of their policy programs to eradicate VAW, several states have enacted new mechanisms of protection that are independent from civil and criminal procedures and can be characterized as hybrid protection orders.[55] Among them, emergency barring orders (EBO) have been introduced in relation to domestic violence as a specific procedure, exceeding the traditional criminal or civil categories.[56]

This section explores the different theoretical backgrounds of the three archetypical forms of protection: criminal protection orders, civil protection orders, and EBOs and places them against the yardstick criteria of availability, accessibility, monitoring and enforcement.

A. Protection Orders in Criminal Proceedings

Notwithstanding recent reforms, many victims feel that they are still left on the side-lines of the criminal proceedings. The nature of the criminal process contributes to this feeling since criminal

law is predominantly public law. Even when it punishes the perpetrators of crimes that have private victims, its main focus is on the prevention of crime and just retribution in the interest of society and the public at large. The main task of state officials, the police and prosecutors, is to investigate crime, bring a case to court and present the evidence. After the trial, the criminal sanctions are executed by the state authorities. The protective measures in the criminal process have been designed from this point of departure, which has an effect on their availability, accessibility and enforcement in cases of VAW.

1. Availability

The original purpose of criminal interim measures was to secure the conduct of the criminal proceedings and the execution of the final sentence. All EU member states offer these kinds of interim orders before, during and after the trial. In the POEMS study, one expert described the purpose of the generic interim measures in criminal proceedings as:

"To ensure that the defendant attends the next court hearing, commits no new offences in the meantime, and does not interfere with any witnesses or obstruct the course of justice."[57]

However, even if interim measures did not initially aim at the protection of the victims, many countries have introduced protection orders[58] into their criminal procedure to protect the victims of domestic violence and/or stalking.[59] Still, the differences between EU Member States are striking. Some laws offer protection orders only before and during the trial, whereas others only provide post-trial protection orders.[60] In some countries, protection is offered only to victims of domestic violence, leaving victims of other forms of interpersonal violence unprotected.[61] With recent amendments, some of these gaps in protection have been closed but differences prevail.[62]

The availability of protection orders is also conditional on other elements. First, the behaviour must qualify as a criminal offence, which is not necessarily the case with some forms of harassment, stalking, threat and psychological abuse. Second, a criminal protection order may not necessarily be available at all if the victim and the abuser share a household. Despite these disadvantages some criminal protection orders can be imposed relatively quickly – for instance when they are imposed as a condition to the suspension of pre-trial detention – they can be imposed ex officio and they can be imposed long enough to allow for the change of behavior.

2. Accessibility

Even when the legal hurdles regarding availability are overcome, protection orders are not always accessible to victims, because they depend on the discretion of state actors. As part of the

criminal procedure, the protection order relies on the action and the assessment of the risk by the police, the prosecutor or the judge.[63] In principle, this takes the burden away from the victim, which is necessary if she is too scared to ask for an order, but on the other side it makes her dependent on the criminal justice system, which may not be understanding of her predicament due to stereotypical conceptions of violence and victims. [64]

In domestic violence, the sanctity of the home is, for instance, a persistent stereotype. Even if the law criminalizes battery, notwithstanding the place where the violence occurred and the relationship between the perpetrator and the victim, domestic violence, stalking, and sexual violence have been considered to fall outside the realm of state intervention. The justification has been that the privacy of the victim and the intimacy of the home need protection. Public intervention could, in line with this reasoning, induce more suffering to the victim. Although awareness raising around violence against women has brought about changes to official viewpoints,[65] traditional, stereotypical views about women, violence against women, and the home may still guide the interpretation and implementation of the laws by criminal law practitioners. The system is only as good as the authorities implementing it.

Another factor impacting on accessibility relates to the evidentiary threshold. As part of a sentence, the post-trial order requires that the threshold of evidence in a criminal trial, "beyond reasonable doubt", is reached.[66] Very few countries allow the courts to impose a protection order when a criminal charge is dismissed.[67] Because the threshold of evidence is high, some charges are dismissed even if there is a need for protection.[68]

3. Monitoring and Enforcement

In principle, the criminal justice system takes responsibility for the execution of sanctions, including a post-trial protection order. As part of the criminal procedure, the police can arrest a perpetrator who violates the order. Thus, in theory, the enforcement of criminal protection orders should be efficient. In practice, however, there are a lot of problems in enforcement. The victims feel that they are required to report violations and collect evidence, yet the response from the police is inefficient or absent.[69] Monitoring systems, including the electronic monitoring of the perpetrator, registering violations of the orders and the availability of alarm systems are still at a rudimentary level all over Europe.[70]

B. Protection Orders in Civil Procedure

The regulation of civil procedure is tightly entangled with the ideas of civil law and its

conceptualization of the person and personal autonomy. The traditional notion of a person in civil law is based on the liberal idea of a rational decision maker who, besides being rational, is characterized as autonomous, self-determining, and independent. In civil procedure, the adversarial principle[71] guides the organization of the trial, that is, the autonomous parties are entrusted with the most important decisions concerning the trial, and the best guarantee of a fair trial is that the parties are given the opportunity to counter each other's arguments. In contrast to criminal procedure, the initiative to civil procedure is taken by a private party, as the parties define the scope of litigation and what evidence they present (the dispositive principle).[72] In addition, the parties to a civil trial are assumed to be equal; the equality of arms is one of the leading human rights principles of civil procedure. [73] Below we will discuss how these specific characteristics of the civil procedure relate to the three criteria of availability, accessibility, monitoring and enforcement.

1. Availability

Civil procedure codes include protective measures against actions by the other party of the trial (usually the defendant) that aim at hiding or destroying the property which is in dispute. The aim of these interim remedies or interlocutory injunctions is to maintain a status quo until the verdict is given and to ensure that the verdict on the merits can be executed.[74] The need for this kind of protection may be urgent, since the defendant may have an interest to hide assets when the claim is filed in court.

Already this short description indicates that the interim civil protection was not originally designed for the protection against violence. As accessory to the civil trial, protection requires that a main trial be filed promptly in order to sustain the injunction in force. For instance, a special interim injunction can be used to guarantee the outcome of divorce proceedings. Albeit that there are now many jurisdictions that *de facto* allow for civil protection orders to be imposed independent of proceedings on the merits of the case, there are still states where substantive proceedings are required. Protection against interpersonal violence is, however, needed notwithstanding any forthcoming trial. The Istanbul Convention and its Explanatory Report specifically note that the protection against domestic violence cannot depend on the prospect of divorce or other substantive proceedings.[75] The civil protection orders can provide a feasible form of protection against some forms of violence, but this requires that the order be an independent remedy, not auxiliary to the main proceedings.[76] The attachment to divorce proceedings is particularly restrictive because many domestic violence victims are co-habiting but not necessarily legally married.

Also, protection against violence is usually needed immediately, often at inconvenient times of the day (typically on weekend nights). Even if the process for getting a civil protection order can be simple and quick, it nevertheless requires that an application has been filed in a

court. The civil courts are not usually on jour. However, as an interim injunction can be given ex parte, the simple and quick access to a protection order can be an obvious strength.

2. Accessibility

When it comes to accessibility, the threshold of evidence in civil cases is lower than in criminal procedure, thereby making civil protection orders more accessible. The standard of evidence is stated as the balance of probabilities or as preponderance of evidence,[77] meaning that the order can be given if the evidence is in favour of the claimant[78] and if as a default judgement if the defendant does not show up at the court session.[79] Civil protection orders also have an advantage that they can be granted *ex parte*, without giving prior notice to the defendant.[80]
The financial costs, on the other hand, pose a disadvantage of civil protection orders. As with any civil procedure, the costs are borne by the parties, and in the end the "loser" is usually ordered to compensate the costs of the winning party.[81] Civil protection order procedure are relatively simple, and can be filed for by a private party, without the involvement of a public authority or lawyer, thereby keeping the costs at a minimum. Still, as many domestic violence victims have limited economic resources, the court fees and the risk of having to bear the defendant's costs can be an obstacle.

A final factor impacting the accessibility of civil protection orders relates to the aforementioned notion of parties as autonomous and equal subjects. There is a considerable body of (feminist) theory showing that the idea of the autonomous subject in civil law is a gendered one.[82] From the perspective of a victim of DV or stalking the notion of equality or autonomy is troubling, because the power relation in situations is not equal. Under the threat of violence, the victim subdues and makes concessions. Many victims are seriously traumatized and typically consider the perpetrator's reactions before their every move. To act as an active driver of a civil process and claim civil protection as an autonomous party is beyond their means. [83] This is not to say that the civil protection orders are futile.[84] To the contrary, they can be feasible in some cases, if the victim is empowered enough to use them and receives the necessary support.

The enforcement of the civil protection orders can also be problematic, since enforcement is predominantly based on monetary sanctions. In many cases, both the perpetrators or victims of violence do not have any assets to speak of, and even if they do, monetary fines do not necessarily help to end the violence. In some countries, the enforcement of civil protection orders has been entrusted to the criminal justice system.[85] This is, however, an area where a lot of development work has to be done before civil protection orders can offer an effective alternative for protection. The two CEDAW cases against Austria in the mid-2000s are all too typical examples of insufficient implementation of civil protection orders, due to lack of effective monitoring and enforcement.[86]
These examples show that – in addition to civil protection – detention and criminalization are

needed in cases of serious violence and high risk.

C. Emergency Barring Orders

Emergency barring orders (EBO) have emerged in the European national legislations as a response to the need for immediate protection against domestic violence. The pressure to enact such a law first came from the national women's movements and was later supported by the international law. EBOs were originally introduced in Austria in 1997.[87] The Austrian model has been influential in Europe, both on national laws and on the formulations of the Istanbul Convention. At the national level, however, there is a lot of variation in the way the states provide for immediate protection.[88]

The Istanbul Convention, building on earlier case law, establishes a duty to the states to provide immediate protection against violence through emergency protection orders. According to article 52, the authorities must have the power to order the perpetrator of domestic violence to vacate the residence of the victim and to prohibit him from re-entering the premises or contacting the victim. It is clear that the EBO must be available when the victim and the perpetrator have a common dwelling. The prevailing notion is that the perpetrator should go, not the victim.[89]

1. Availability

The point of departure in the EBO laws is effective and immediate protection by making it possible to remove the abuser from the home. The Istanbul Convention refrains from specifying which authorities should have these powers,[90] but in practice the only authority that has the capacity to physically move a person are the police. In several countries, including Austria, also the order is given by the police on the spot when they are on call-out duty, [91] which enhances the accessibility of protection since the police is directly accessible regardless of location and time.
The EBOs are typically granted on the initiative of the police. There is variation, however. In some countries, a request by the victim is a prerequisite. [92] The immediate effect requires that the order not be delayed until the perpetrator is heard. If the police encounter the perpetrator on the call-out, the order can be communicated immediately. If he has already left, the order can still enter into force immediately and is communicated as soon as possible.

From the point of view of procedural law, the EBOs are hybrid; they are neither civil nor criminal procedure. The EBO is focused on protection, not on crime. Thus, it does not automatically open a criminal investigation. It is not civil in nature because it relies on the criminal procedure actors: the police, the prosecutor and the court. In several European countries,

the EBO is characterized as an administrative measure.

The hybrid nature of EBOs can be problematic when the period of protection expires. The duration of an initial EBO varies. In Austria, it lasts for two weeks with a possible extension of another two. Some other countries require confirmation by the court within a short deadline. For example, in Slovenia an EBO given by the police has to be brought before the court within 48 hours and the court can extend it, first by ten days and then by sixty days. Likewise, in Finland, an EBO has to be brought to the court within three days. Hungary has a very different policy: the EBO lasts for seventy-two hours, with no possibility of extension.

Because an EBO is imposed in a procedure that is separate from the criminal and civil proceedings, it is not automatically extended, nor converted either to criminal or civil proceedings. Therefore, it is important that the victim is informed about the need to file for a longer-term protection order. In this regard, the Austrian and German systems encourage a proactive approach, in which support services guide the victims in the process of filing a longer-term civil protection order.[93] Some other countries allow the police to file for a long-term protection order in the court.[94]

2. Accessibility

The availability and accessibility of EBOs is enhanced by simple procedures that are specifically designed for the protection against (domestic) violence. In some states, attention has been paid to the training of professionals, such as the special VAW courts in Spain.

Notwithstanding the improvement in protection, there may exist a problematic stereotypical understanding of VAW in the regulation of the EBOs. The programs on violence against women, although important and needed, are focused on domestic violence and based on a model of a heterosexual married couple, in which the husband is the perpetrator and the woman the victim. But even if co-habiting and same-sex couples are formally included in the scope of EBOs, the model is exclusionary: in practice it may be more difficult to access protection against roommates, in on-off relationships, stalking, and other forms of relationships.

The heteronormative construction of EBOs is connected to their focus on short-term and non-criminal protection. There appears to be a tacit understanding that the preference of the female spouse victim is to protect the male spouse from criminal prosecution. Therefore, it has been important to characterize the EBOs as administrative and non-criminal measures.

The short duration of the order is also part of this heteronormative model, which has proved to be problematic.[95] According to a Finnish study on EBOs, only half of them were followed within three days with the filing for a longer PO in the court, and the attrition was higher in cases with more serious violence.[96] Traumatized DV victims are not able to make decisions about the future during the short EBO. An EBO may even increase their risk by provoking the perpetrator or because it ends at the so-called honeymoon moment when the abuser apologizes and the victim

regrets asking for an EBO.[97]

3. Monitoring and Enforcement

Special attention has also been given to the monitoring and enforcement of the order. EBOs and POs are recorded in police registers and electronic monitoring is favoured. The police are obliged to a rapid response to a breach of order and the sanctions for a breach are regulated in the law.

V. Discussion and Recommendations

The implementation of the international norms mandating states to protect against VAW has not been a simple task for the national legislators. As we indicated in the beginning of this article, the international norms do not prescribe the procedural order in which the protection must be realized. This may be a strength, given that the national laws have adopted quite different and even innovative approaches, such as the EBOs. Nevertheless, it may also be a weakness in protection, since each procedural form has its problems when protection against violence is concerned. There have been shortcomings in the implementation of international norms. There seems to be tension between the rationale of procedural law and the international legal obligation to provide protection. The review of national legislation found that systems, both civil and criminal, have some inherent limitations for meeting the international standards of protection.[98] In Table 1 below, a summary of the models of protection orders and their relation to the criteria of availability, accessibility and monitoring and enforcement shows that there is plenty of room for development.

Table 1: Comparison of Models of protection

		Criminal protection orders	**Civil protection orders**
	Main criteria	(Severity of) crime Accessory to criminal procedure	Victim's request Sometimes accessory to substan
Availability	**Role of victim**	Passive (ex-officio) Active (auxiliary)	Active
	Role of authorities	Active (ex-officio or at request)	Passive

	Time to get the order	Depends on authorities and stage of procedure	Short
	Duration of order	Long (trial + sentence)	Varies per jurisdiction from sho
Accessibility	**Procedure**	High threshold of evidence Burden of proof on authorities	Lower threshold of evidence Burden of proof on victim
	Costs of procedure	Free of costs	Costs are a burden if victim is r
Monitoring and enforcement	**Registering**	Police and criminal registry	None
	Monitoring	Police responsible, at least in theory	None
	Sanctions for breach	Fines Arrest and detention possible	Fines, if any

All three procedures can be designed to be more widely available and more accessible to the victims. In practice, the criminal trials are wrought with delays and caseloads. Even when the cases are processed efficiently, the victims often feel that they and their wishes are side-lined. The victims do not always get the protection order when they need it or – conversely – protection orders are sometimes imposed against the victim's wishes. The high standard of evidence in criminal procedures may also limit the accessibility of protection in criminal procedure.

The protective measures in civil procedure are designed for other types of disputes. The underlying assumptions about the autonomy, independence, and equality of the parties do not correspond to the situations of VAW. However, with adequate legislative adaptations, civil injunctions can be designed as feasible tools of protection. Access can be easy and the procedure quick, supported by reasonable standards of evidence. No involvement of authorities is needed. Since no one should need to pay for protection against violence, civil POs should be available for free.

The EBOs have been designed to fit the needs of domestic violence victims. However, the EBOs are, as a rule, short. If they are not transformed into or connected to a long-term protection order, the situation may turn into a risk. The original idea of the EBOs was that they are introduced with a comprehensive package of victim support. An EBO alone cannot offer sustainable protection.

Because the EBOs have been drafted specifically to meet the needs of DV victims, there is usually some kind of monitoring and enforcement system in place. The EBOs are at the minimum, registered by the police, making a rapid response possible, and electronic monitoring systems have also been developed. Arrest is a possible response to a violation of an EBO as well, but such an arrest is usually short.

The monitoring and enforcement mechanisms of criminal and civil procedure do not automatically correspond to the needs of protection. In criminal procedure, the monitoring and sanction system is already there, on paper, but a consideration of the victim's safety should be improved. The sanctions of a civil injunctions order are mostly monetary which is typically inapt in cases of VAW. Legislators are advised to develop more efficient and dissuasive sanctions.

VI. Final Observations

Protection orders are a necessary part of a comprehensive and integrated strategy in response to violence against women and other forms of interpersonal violence. They should not be seen as a panacea and an effective alternative to detention in cases of high risk, or be used as an excuse for not providing support services. Nevertheless, they have an important role in ensuring protection against violence, and it has been acknowledged as such in the international norms.

All procedural forms discussed in this article have both strengths and weaknesses in relation to the protection of victims of interpersonal violence. These strengths and weaknesses are related to the structures and principles of civil and criminal procedure, respectively. Neither of these procedural forms has been designed with interpersonal violence in mind, and even less gender-based violence. The emergency barring orders and other hybrid protection orders have come to existence to fill the gaps in the protection. However, our analysis shows that both criminal and civil procedural forms provide a potential for improved mechanisms of protection, often with relatively minor amendments.

Our overall conclusion is that combining all three forms of protection orders is needed in order to effectively avert the different degrees of risk as well as respond to the needs of the victims. In the face of severe violence, criminal sanctions and protection are the only options, which cannot be replaced by civil protection orders or EBOs. If arrest and detention are not deemed necessary after a risk assessment, a criminal protection order is a valid option. Civil protection orders may well work for victims who have been threatened or stalked but who are not in immediate danger. The EBOs fall somewhere in-between these two, but their immediate effect makes them a valuable tool of protection.

As the law now stands, several changes are needed. The amendments range from making protection orders truly available and accessible (also to non-heterosexual and non-cohabiting couples), to consistently monitoring and enforcing them. Both criminal protection orders and civil protection orders must and can be made more responsive to the needs of the victims. The integration of EBOs with long-term protection orders can help to avoid gaps in protection. When the target of policies is the protection of victims, an integral response, free from stereotypical understandings that prevent the access to justice is needed for providing truly comprehensive protection.

Endnotes

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This article builds on data on protection orders collected by the 2012-2014 Daphne Project on "Protection Orders in the European Member States" (POEMS). For more information on the POEMS project, see http://www.poems-project.com.

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[1] *See, e.g.,* ALICE EDWARDS, VIOLENCE AGAINST WOMEN UNDER INTERNATIONAL HUMAN RIGHTS LAW (2013); LILIAN GRAHAM, INTERNATIONAL EFFORTS TO PROTECT WOMEN (2010); Christine Chinkin, *Violence against women: The international legal response*, 3 GEND. DEV. 23 (1995); Dubravka Šimonović, *Global and Regional Standards on Violence Against Women: The Evolution and Synergy of the CEDAW and Istanbul Conventions*, 36 HUM. RIGHTS Q. 590 (2014); L. SOSA, INTERSECTIONALITY IN THE HUMAN RIGHTS LEGAL FRAMEWORK ON VIOLENCE AGAINST WOMEN: AT THE CENTRE OR THE MARGINS? (2017).

[2] *See* G.A. Res. 48/104, Declaration on the Elimination of Violence against Women (Dec. 20,

1993); *Fourth World Conference on Women: Action for Equality, Development, and Peace, Beijing Declaration and Platform for Action*, U.N. GAOR, U.N. Doc. A/CONF.177/20 (Sept. 15, 1995); UN Committee on the Elimination of Discrimination against Women (CEDAW CEE), CEDAW General Recommendation No. 19, adopted at the Eleventh Session, 1992 (contained in Document A/47/38), Organization of American States (OAS), Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belem do Para Convention), 9 June 1994; the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, art 4, 11 July 2003 and the Council of Europe Convention on preventing and combating violence against women and domestic violence, 11 May 2011 [hereinafter *Istanbul Convention*].

[3] By 'European Law' we refer to both European Union law and the Council of Europe, yet the latter has so far been more proliferative in bringing forth legislation and case law related to VAW.

[4] Rep. of the Special Rapporteur on violence against women, its causes and consequences, U.N. Doc. A/HRC/35/30, at 87 (2017) (Advance edited version).

[5] ALAN E. BOYLE & CHRISTINE M. CHINKIN, THE MAKING OF INTERNATIONAL LAW (2007); Terence C. Halliday & Pavel Osinsky, *Globalization of Law*, 32 ANNU. REV. SOCIOL. 447 (2006).

[6] On this, *see* Venice Commission, *Report on the Implementation of International Human Rights Treaties In Domestic Law and The Role of Courts, adopted by the Venice Commission at its 100th plenary session* (Rome, 10-11 October 2014), CDL-AD(2014)036, available at http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)036-e.

[7] For instance, see the role of Catharine MacKinnon as Special Adviser on Gender Crimes at the International Criminal Court and Christine Chinkin as scientific expert to the Ad Hoc Committee drafting the Istanbul Convention, and to various UN bodies on issues such as human trafficking, gender-based persecution in armed conflict, peace agreements, and gender and violence against women, and as expert witness before the Inter-American Court of Human Rights.

[8] The EU Victim Directive is an example of the new attention to victim rights. *See* Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA; FRA — EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS, VICTIMS OF CRIME IN THE EU: THE EXTENT AND NATURE OF SUPPORT FOR VICTIMS (2014); TYRONE KIRCHENGAST, THE VICTIM IN CRIMINAL LAW AND JUSTICE (2006); Christof Safferling, *The Role of the Victim in the Criminal Process – A Paradigm Shift in National German and International Law?*, 11 INT. CRIM. LAW REV. 183 (2011).

[9] Emergency Barring Orders are available when the parties live together. They allow the immediate removal of the perpetrator/suspect from the home and includes a prohibition to enter and harass. *See infra* Section IV.

[10] *See supra* note 2.

[11] On empirical findings confirming the need for long term protection orders, *see* Jane K Stoever, *Enjoining Abuse: The Case for Indefinite Domestic Violence Protection Orders*, 67 VANDERBILT LAW REV. 1015–1098 (2014). For a legal instrument honouring this call, *see* Istanbul Convention, art. 52–53.

[12] Istanbul Convention, art. 1–5. More specifically, art. 1 states that "The purposes of this Convention are to (a) protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence". *See also* other documents in note 1. The most important antecedents in jurisprudence are Osman v. United Kingdom, 101 Eur. Ct. H.R., para. 115 (1998); and *Velásquez Rodríguez Case*, Inter-Am. Ct. H.R. (ser. C) No. 4, at 172 (July 29, 1988).

[13] *General Recommendations made by the Committee on the Elimination of Discrimination Against Women*, U.N. ESCOR, Comm. On Elim. of Discrim. Against Women, U.N. Doc A/RES/32/13 [*hereinafter CEDAW Recommendations*], General Recommendation 19 on Violence against Women.

[14] *A. T. v. Hungary*, CEDAW CEE Communication 2/2003, para. 9.3. (2005). In this case, the abuser had first refused to move out of the family apartment, and after having moved out, he continued to break into the apartment and harass the victim and her children. The victim initiated civil proceedings, yet, in spite of several medical certificates confirming the incidents of severe physical violence, the Budapest Regional Court granted permission to the perpetrator to return and make use of the apartment. Furthermore, the victim requested a division of property and injunction orders, all of which were rejected by the Hungarian judiciary.

[15] *A. T. v. Hungary*, *supra* note 14.

[16] *A. T. v. Hungary*, CEDAW CEE Communication 2/2003, para. 8.4 (2005).

[17] *A. T. v. Hungary*, *supra* note 16.

[18] CEDAW Recommendations, General Recommendation 33 on Women's Access to Justice, para. 40.

[19] CEDAW Recommendations, *supra* note 18.

[20] The first case in which violence against women was regarded as a form of discrimination was Opuz v. Turkey, 33401/02 Eur. Ct. H.R. (2009).

[21] In Opuz v. Turkey, 33401/02 Eur. Ct. H.R. (2009).

[22] In E.S. v. Slovakia, 8227/04 Eur. Ct. H.R. (2009); Valiuliene v. Lithuania, 33234/07, Eur. Ct. H.R., (2013); Eremia and others v. Moldova, 3564/11 Eur. Ct. H.R. (2013); Mudric v. Moldova, 74839/10 Eur. Ct. H.R. (2013); B. v. Moldova, 61382/09 Eur. Ct. H.R. (2013); Elizaveta Talpis v. Italy, 41237/2014 Eur. Ct. H.R. (2017). For more about Talpis, *see* Sara De Vido, ESIL REFLECTION: STATES' POSITIVE OBLIGATIONS TO ERADICATE DOMESTIC VIOLENCE: THE

POLITICS OF RELEVANCE IN THE INTERPRETATION OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS EUROPEAN SOCIETY OF INTERNATIONAL LAW (2017).

[23] In *A v. Croatia*, 55164/08 Eur. Ct. H.R. (2010); *Hajduova v. Slovakia*, 2660/03 Eur. Ct. H.R. (2010).

[24] Council of Europe, Committee of Ministers, *Rec(2002)5 on the protection of women against violence*, point 58.b. C BENNINGER-BUDEL, DUE DILIGENCE AND ITS APPLICATION TO PROTECT WOMEN FROM VIOLENCE (2008).

[25] *E.g*. Opuz v. Turkey, 33401/02 Eur. Ct. H.R. (2009); E.S. v. Slovakia, 8227/04 Eur. Ct. H.R. (2009); Valiuliene v. Lithuania, 33234/07, Eur. Ct. H.R. (2013); Eremia and others v. Moldova, 3564/11 Eur. Ct. H.R. (2013); Mudric v. Moldova, 74839/10 Eur. Ct. H.R. (2013); B. v. Moldova, 61382/09 Eur. Ct. H.R. (2013); *A v. Croatia*, 55164/08 Eur. Ct. H.R. (2010); *Hajduova v. Slovakia*, 2660/03 Eur. Ct. H.R. (2010).

[26] Council of Europe, *Council of Europe Convention on preventing and combating violence against women and domestic violence* (2011).

[27] Istanbul Convention, art. 52.

[28] Istanbul Convention, art. 53.

[29] Explanatory Report to the Istanbul Convention, at 269. *See* Council of Europe, *12 steps for complying with the Istanbul Convention*, available at https://rm.coe.int/168046e809.

[30] CEDAW Recommendations, *supra* note 18, para 14.

[31] UNITED NATIONS, HANDBOOK FOR LEGISLATION ON VIOLENCE AGAINST WOMEN 50 (2010).

[32] CEDAW Recommendations, *supra* note 18.

[33] CEDAW Recommendations, *supra* note 18, para. 51 (j). In *Kalucza v. Hungary*, 57693/10 Eur. Ct. H.R. (2012), the Eur. Ct. H.R. held that the lapse of time required for getting a protection order exceeded a reasonable time for acquiring such an order. *See also T.M. and C.M. v. Moldova*, 26608/11 Eur. Ct. H.R., paras. 47–49 and 59–60 (2014).

[34] E.S. v. Slovakia, 8227/04 Eur. Ct. H.R., para. 43 (2009).

[35] CEDAW Recommendations, General Recommendation 28, para. 34. Although the Istanbul Convention does not explicitly mention ex officio proceedings, art. 52 requires that immediate protection is provided by competent authorities, without the requirement that a victim files an application.

[36] Istanbul Convention, art. 53.2. The Explanatory report to the Istanbul Convention points out that standing to file for protection should not be limited to victims only, in relation to legally

incapable victims, as well as regarding vulnerable victims who may be unwilling to apply for restraining or protection orders for reasons of fear or emotional turmoil and attachment, but third persons should be able to apply as well.

[37] Istanbul Convention art. 53.2. *See also* Rep. of the Special Rapporteur on violence against women, its causes and consequences, *supra* note 4, para. 112 (c).

[38] Eur. Conv. on H.R. art. 6-1; Treaty on the Functioning of the European Union art. 47, May 9 2008, 2008 O.J. (C 115) 47 [hereinafter TFEU]; International Covenant on Civil and Political Rights (1966) art. 14.1. For Eur. Ct. H.R. case law see FRA — EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS & COUNCIL OF EUROPE, HANDBOOK ON EUROPEAN LAW RELATING TO ACCESS TO JUSTICE 25 (2016).

[39] CEDAW Recommendations, *supra* note 18, para. 14 (c); Istanbul Convention, art. 53.2.

[40] *V. K. v. Bulgaria*, CEDAW CEE Communication 20/2008, para. 9.11–12 (2011).

[41] Holding the woman/female victim as too passive, because she does not report, or too reactive when she responds with violence on her part, or as not needing protection if she withdraws her complaint etc.

[42] A clear example of stereotyped interpretations of violence is found in *V. K. v. Bulgaria*, CEDAW CEE Communication 20/2008, para. 7.3 (2011).

[43] CEDAW Recommendations, *supra* note 18, paras. 26–35.

[44] *V. K. v. Bulgaria*, CEDAW CEE Communication 20/2008 (2011). *See, e.g.*, paras. 4.7 and 7.1.

[45] *Jallow v. Bulgaria*, CEDAW CEE Communication 32/2011, para. 8.8.2 (a) (2012).

[46] CEDAW Recommendations, *supra* note 18, para. 17 (a); Istanbul Convention art. 53.2 states that protection orders should be available without undue financial burden.

[47] CEDAW Recommendations, *supra* note 18, para. 18 (g). Empirical studies show that breaches of POs are frequent and that there are problems in their enforcement. *See* SUZAN VAN DER AA ET AL., MAPPING THE LEGISLATION OND ASSESSING THE IMPACT OF PROTECTION ORDERS IN THE EUROPEAN MEMBER STATES (2015).

[48] Istanbul Convention, art. 53.3. For empirical discussions on the effectiveness of protection orders and the need for monitoring, *see* Brenda Russell, *Effectiveness, victim safety, characteristics, and enforcement of protective orders*, 3 PARTNER ABUSE 531 (2012); Christopher T Benitez, Dale E McNiel & Renée L Binder, *Do protection orders protect?*, 38 J. AM. ACAD. PSYCHIATRY LAW 376 (2010).

[49] *Sahide Goekce v. Austria*, CEDAW CEE Communication 5/2005, para. 12.1.4 (2007).

[50] See AA ET AL., *supra* note 47.

[51] *See, e.g., Sahide Goekce v. Austria*, CEDAW CEE Communication 5/2005 (2007); and *Fatma Yildrim v. Austria*, CEDAW CEE Communication 6/2005 (2007).

[52] AA ET AL., *supra* note 47; TERESA FREIXES & LAURA ROMÁN, PROTECTION OF GENDER-BASED VIOLENCE VICTIMS IN THE EUROPEAN UNION. PRELIMINARY STUDY OF THE DIRECTIVE 2011/99/EU ON THE EUROPEAN PROTECTION ORDER. (2014).

[53] According to AA ET AL., *supra* note 47, these are: Austria (AT), Belgium (BE), Bulgaria (BG), Cyprus (CY), Czech Republic (CZ), Denmark (DK), Germany (DE), Estonia (EE), Greece (EL), Spain (ES), France (FR), Hungary (HU), Ireland (IE), Italy (IT), Latvia (LV), Lithuania (LT), Luxemburg (LU), Malta (MT), the Netherlands (NL), Poland (PL), Portugal (PT), Romania (RO), Slovenia (SI), Slovakia (SK), and United Kingdom (UK). See also TERESA FREIXES & LAURA ROMÁN, THE EUROPEAN PROTECTION ORDER. ITS APPLICATION TO THE VICTIMS OF GENDER VIOLENCE. (2015).

[54] AT, BE, CZ, DE, DK, Finland (FI), HU, IT, LU, NL, SI and SK, *according to* AA ET AL., *supra* note 47.

[55] *See id*.

[56] Emerging barring orders are available AT, BE, CZ, DK, FI, DE, HU, IT, LX, NL, SK, SI, *id*.

[57] The British expert, POEMS, national report.

[58] The terminology used by the national laws and the translations are often vague. While the term *protection order* is often used for both criminal and civil orders, criminal protection orders are sometimes called restraining orders. For the sake of clarity and consistency, we will use the term 'protection order' throughout the article.

[59] *E.g.* Cyprus, Italy, the Netherlands, Portugal, and Spain.

[60] The pre-trial orders seem to be somewhat more common than post-trial orders. FREIXES AND ROMÁN, *supra* note 56,

at 68.

[61] AA ET AL., *supra* note 47, at 64.

[62] Suzan van der Aa, *Protection Orders in the European Member States: Where Do We Stand and Where Do We Go from Here?*, 18 EUR. J. CRIM. POLICY RES. 183, 194 (2012); AA ET AL., *supra* note 47, at 63.

[63] For instance, MT, CY, EE, HU, and PT. In practice, the police and prosecutor often do not automatically impose or file for an order unless the victim actively asks for one.

[64] FREIXES AND ROMÁN, *supra* note 56, at 70. In recent reforms the victim's formal request for a criminal protection order, adjusting its conditions, or revocation has been recognized.

[65] *See supra* notes 1 and 2. Especially findings on the severity, injuries, and repetition of domestic violence before the victims contacts the police for the first time have challenged the myth that victims fail to report batteries because of insignificance of the incidents and concern for privacy, showing the need for state intervention.

[66]*E.g.*, A A S ZUCKERMAN, THE PRINCIPLES OF CRIMINAL EVIDENCE (1989). The Eur. Ct. H.R. elaborates on the presumption of innocence (ECHR art 6-2) and has formulated that "any doubt should benefit the accused" in Barberà, Messegué and Jabardo v. Spain, A/146 Eur. Ct. H.R., para. 77 (1988).

[67] Exceptionally, Ireland and the UK can impose certain PO in spite of the acquittal of the suspect. AA ET AL., *supra* note 47, at 62–63.

[68] A study found that interim orders imposed by the police were not continued. This attrition was common in the more serious cases of violence. Kati Rantala et al., *Kaltevalla pinnalla*, 239 PERHEEN SISÄISEN LÄHESTYMISKIELLON ARVIOINTITUTKIMUS.OIKEUSPOLIITTISEN TUTKIMUSLAITOKSEN TUTKIMUKSIA (2008).

[69]AA ET AL., *supra* note 47.

[70] *Id*. at 81, 84–87.

[71] Ruiz-Mateos v. Spain, 12952/87 Eur. Ct. H.R., para. 63 (1993). In procedural law literature, e.g. NEIL ANDREWS, PRINCIPLES OF CIVIL PROCEDURE 34, 50 (1994); JOHN ANTHONY JOLOWICZ, ON CIVIL PROCEDURE 177 (2000). In the continental civil procedures, the role of the judge in organizing the trial may be stronger but the leading principle is still adversarial.

[72] The Eur. Ct. H.R. case law is rich on these points, starting with Vermeulen v. Belgium, 19075/91 Eur. Ct. H.R. (1994). See also MAURO CAPPELLETTI, THE JUDICIAL PROCESS IN COMPARATIVE PERSPECTIVE (Paul J Kollmer ed., 1989); ANDREWS, *supra* note 75.

[73] There is a rich case law in the Eur. Ct. H.R. *See*, *e.g.*, Kress v. France, 39594/98 Eur. Ct. H.R., paras. 72–73 (2001). ADRIAN ZUCKERMAN, ZUCKERMAN ON CIVIL PROCEDURE: PRINCIPLES OF PRACTICE 138 (3d ed. 2013).

[74] An interim injunction can freeze assets, such as bank accounts, prohibit their sale through the seizure of the relevant documents, and tangible assets can also be seized. If the plaintiff files for an interim injunction at the beginning of the trial, he is not expected to prove his right in full.

[75] Istanbul Convention, art. 53; Explanatory report to the Istanbul Convention, at 273.

[76] Rep. of the Special Rapporteur on violence against women, its causes and consequences, U.N. Doc. A/HRC/35/30, at 112 (c) (2017).

[77] ANDREWS, *supra* note 75; JOLOWICZ, *supra* note 75.

[78] In any jurisdiction there are, of course, rules of evidence that may direct the preponderance in one direction or another. In this article, we will stay at the level of general principles.

[79] The rules on the absence of the defendant can be complicated but after the defendant has been notified of the court session, his presence in the court is not a precondition for a verdict.

[80] ZUCKERMAN, *supra* note 77; ANDREWS, *supra* note 75. In European law, *see, e.g.*, PAOLO BIAVATI, EUROPEAN CIVIL PROCEDURE 160 (2011).

[81] ANDREWS, *supra* note 75; ZUCKERMAN, *supra* note 77; JOLOWICZ, *supra* note 75. There are exceptions and mitigations to this "winner takes it all" rule but the main principle is still very strong. The right to free legal aid has facilitated the access to justice but (it) has not taken away the obligation to compensate the costs of the winning party.

[82] NGAIRE NAFFINE & ROSEMARY J OWENS, SEXING THE SUBJECT OF LAW (1997); MARGARET DAVIES, ARE PERSONS PROPERTY? LEGAL DEBATES ABOUT PROPERTY AND PERSONALITY (2001).

[83]Karla Fischer & Mary Rose, *When "Enough is Enough": Battered Women's Decision Making Around Court Orders of Protection*, 41 CRIME DELINQ. 414 (1995); James C. Roberts, Loreen Wolfer & Marie Mele, *Why Victims of Intimate Partner Violence Withdraw Protection Orders*, 23 J. FAM. VIOLENCE 369 (2008).

[84] Sally F Goldfarb, *Reconceiving Civil Protection Orders for Domestic Violence: Can Law Help End the Abuse Without Ending the Relationship?*, 29 CARDOZO L. REV. 1487 (2008); Clare Connelly & Kate Cavanagh, *Domestic abuse, civil protection orders and the "new criminologies": Is there any value in engaging with the law?*, 15 FEM. LEG. STUD. 259 (2007).

[85] AT, BE, CZ, DE, EE, EL, ES, FR, HU, IE, IT, LU, MT, RO, SE, SK, UK, AA ET AL., *supra* note 47, at 90.

[86] *Sahide Goekce v. Austria*, CEDAW CEE Communication 5/2005 (2007); and *Fatma Yildrim v. Austria*, CEDAW CEE Communication 6/2005 (2007). In both cases, a protection order prohibiting contact and access to the home had been given to protect the victim against her husband. The protection order did not hinder the husband from killing the victim. The prosecutor should have allowed the abuser to have been arrested, as the police had actually requested (*Goekce v. Austria*, para. 12.1.5).

[87] Rosa Logar, *Introduction: National and international measures to prevent domestic violence against women and children*, *in* TEN YEARS OF AUSTRIAN ANTI-VIOLENCE LEGISLATION: INTERNATIONAL CONFERENCE IN THE CONTEXT OF THE COUNCIL OF EUROPE CAMPAIGN TO COMBAT VIOLENCE AGAINST WOMEN, INCLUDING DOMESTIC VIOLENCE, 10 (Michaela Krenn, Klara Weiss & Rosa Logar, eds., 2007).

[88] For example, the EBOs in the Czech Republic, Denmark, Finland, France, Germany, Hungary,

Italy, Latvia, the Netherlands, Poland, Slovenia, and Slovakia have been influenced by the Austrian model. AA ET AL., *supra* note 47.

[89] Explanatory report to the Istanbul Convention, at 264.

[90] Renée Römkens & Lorena P.A. Sosa, *Protection, prevention and empowerment: Emergency barring intervention for victims of intimate partner violence*, *in* REALISING RIGHTS: CASE STUDIES ON STATE RESPONSES TO VIOLENCE AGAINST WOMEN AND CHILDREN IN EUROPE (L. Kelly, C. Hagemann-White, T. Meysen, & R. Römkens, eds., 2011),

[91] This can be done autonomously by the officers (CZ and SK), or with the approval of a higher-ranking officer or authority (BE, NL, IT, FI, LU).

[92] Exceptionally, victims can formally request an EBO in FI, DK, and HU.

[93] AA ET AL., *supra* note 47, at 43; FREIXES & ROMÁN, *supra* note 57, at 19.

[94] AA ET AL., *supra* note 47, at 98.

[95] Jane K Stoever, *Enjoining Abuse: The Case for Indefinite Domestic Violence Protection Orders*, 67 VANDERBILT LAW REV. 1015 (2014).

[96] Rantala et al., *supra* note 72. About the Finnish law see Johanna Niemi, *Gender and criminal law policy*, 34 OIKEUS 225 (2015).

[97] Marsha E Wolf et al., *Who gets protection orders for intimate partner violence?*, 19 AM. J. PREV. MED. 286 (2000).

[98] *See* AA ET AL., *supra* note 47.