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Protection orders for victims of domestic violence

Report¹

Committee on Equal Opportunities for Women and Men

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Summary

Domestic violence is a persistent scourge affecting the lives of millions of people, especially women. Unfortunately, an inadequate legal framework often affects the capacity of Council of Europe member states to effectively respond to the protection needs of the victims and their dependants.

Member states should strengthen the effectiveness of protection orders available to provide for the physical safety of victims of domestic violence, not only to prevent harm to the victims but also to ensure the credibility of the entire criminal framework on violence against women.

1. Reference to committee: [Doc. 12254](#), Reference 3686 of 21 June 2010.



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A. Draft resolution²

1. Domestic violence is a persistent scourge affecting the lives of millions of people, especially women. Unfortunately, an inadequate legal framework often affects the capacity of Council of Europe member states to effectively respond to the protection needs of the victims and their dependants, whose physical safety is of the utmost importance.
2. In recent years, member states have adapted a number of existing legal measures, such as civil injunctions or restraining orders in the context of a criminal procedure, to suit cases of domestic violence. In addition, some member states have introduced protection orders specifically intended to protect victims of domestic violence, by ensuring the removal of the perpetrator from the common home, provided that certain conditions are met.
3. These developments represent an important step forward in providing a comprehensive framework for tackling the victims' basic protection needs. However, the small proportion of cases of domestic violence which are reported to the authorities, the high number of cases which are withdrawn by the victims themselves and the low rate of convictions indicate that the current framework is not flawless.
4. One of its flaws is the fact that the procedure to obtain protection measures can usually only be initiated *ex parte*, which presents daunting difficulties for victims of violence, in the light of their psychological situation and their fear of retaliation from the perpetrator. Likewise, the often exceedingly short duration of the protective measures does not leave sufficient time for victims to gather their thoughts, find practical solutions to resume a normal life and consider legal steps against the perpetrator.
5. A further element which contributes to weakening the effectiveness of the existing legal framework is a lack of understanding of the phenomenon of violence against women on the part of the law enforcement authorities, whether the police or the judiciary, whose members hardly ever receive specific training in this area.
6. The Parliamentary Assembly is convinced that strengthening the effectiveness of measures available to provide for the physical safety of victims of domestic violence should be a priority, not only to prevent harm to the victims, but also to ensure the credibility of the entire criminal framework on violence against women. Only when victims feel that the legal system is willing and able to protect them against the threats posed by the perpetrator, will they feel safe to report the crimes to which they have been subjected.
7. In this context, the Assembly reaffirms its support for the Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210) which has made a major contribution to bringing the issue of domestic violence to the forefront of the political debate and ensuring that it is not considered as a "private" matter, but one which affects the public interest.
8. With these considerations in mind, the Assembly asks Council of Europe member states to:
 - 8.1. ensure that a variety of legal measures is available for the protection of victims of domestic violence, including civil injunctions, restraining orders in the context of a criminal procedure, and emergency barring orders, as well as specific protection orders for victims of domestic violence;
 - 8.2. ensure that, as far as possible, these measures can be initiated *ex officio*, in addition to *ex parte*;
 - 8.3. instruct the police to investigate and keep a record of all reported cases of domestic violence, irrespective of the level of severity;
 - 8.4. introduce the obligation on law enforcement authorities to pursue investigations or legal proceedings even when victims withdraw their complaint;
 - 8.5. in the context of legal proceedings in the area of domestic violence, ensure that temporary restraining or eviction orders can be imposed for immediate protection, and are followed by a restraining order;
 - 8.6. in cases of serious violence and threats, ensure that a temporary restraining order is automatically imposed, together with an injunction on the perpetrator to undergo rehabilitation;
 - 8.7. ensure that when, in the context of a criminal procedure, a suspected perpetrator of violence is arrested for a short period, a restraining order is also available to protect the victim upon the perpetrator's release;

2. Draft resolution adopted unanimously by the committee on 4 October 2011.

- 8.8. ensure that, in the context of a criminal procedure, a restraining order can be issued both before the trial and after sentencing, in both cases *ex officio*;
 - 8.9. instruct the police to investigate all cases of breaches of protection orders, irrespective of whether or not this is requested by the victim;
 - 8.10. ensure that sanctions for breaches of protection orders are substantial and have an effective deterrent effect;
 - 8.11. ensure that protection orders are free of charge for the victims of violence;
 - 8.12. organise or promote the organisation of training for law enforcement officials on violence against women and domestic violence, in all its forms, including psychological violence and so-called "honour crimes";
 - 8.13. set up one-stop services, providing a wide range of assistance and advice to victims of domestic violence.
9. The Assembly calls on member states to sign and ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence without delay.
 10. Finally, as far as international co-operation is concerned, the Assembly encourages member states to recognise injunctions, restraining and protection orders issued by other Council of Europe member states.

B. Explanatory memorandum by Ms Myller, rapporteur

1. Introduction: the protection needs of victims of violence

1. Domestic violence is a persistent problem affecting the lives of millions of people, especially women, with sometimes fatal consequences.
2. Even if this is a serious and widespread scourge, an inadequate legal framework and a lack of understanding of the phenomenon affect Council of Europe member states' responsiveness to the manifold protection needs of the victims.
3. Before the violence has actually taken place or before it has reached a certain level of severity, victims need to find authorities which are willing and legally able to accept a complaint, start investigations and take precautionary measures to ensure their physical safety and the safety of their children.
4. In the immediate aftermath of violence, victims need to have their physical safety and security ensured, for example through the eviction of the perpetrator from the common residence or the provision of secure premises for themselves. They also need immediate access to health care, including a gender-sensitive and appropriate medical examination and treatment by properly qualified personnel who have also been trained in matters regarding violence against women. Finally, they need to have access to affordable legal advice from appropriately trained personnel on legal options, including taking of statements, preservation of evidence and seeking protection orders.
5. Long-term protection needs depend on the particular situation of the victim and the context of the violence. They may include: guaranteed continued access to secure shelter for the victims and their dependants; ongoing and confidential treatment for medical and psychological harm looking to long-term healing and rehabilitation; and provision for excused absence from employment or assistance in finding another job if it is not safe to return to the previous one.

2. Scope of the report

6. The present report will look at the particular issue of the legal measures which should be made available at the preventive stage, that is to say when violence has not yet taken place or is below a certain level of severity, and in the immediate aftermath of violence. In particular, I would like to analyse the different protection orders that have been set up in a number of member states, assess why they sometimes fail and try to develop new and better measures of protection.
7. It should be clear from the outset, however, that specific orders to protect the victims are only one form of protection; they are not very effective without provision of shelters, the availability of non-violence programmes, fair and efficient criminal proceedings, suitable sanctions and effective enforcement.

3. Who are the victims?

8. Prevalence rates for Europe do not exist, but an overview of national surveys suggests that from one fifth to one quarter of all women have experienced physical violence at least once during their adult lives and more than one tenth have suffered sexual violence involving the use of force. Figures for all forms of violence, including stalking, are as high as 45%. The majority of such violent acts are carried out by men in the women's immediate social environment, most often by partners or ex-partners.³
9. Domestic violence against children is widespread and studies have revealed the link between domestic violence against women and physical abuse of children, as well as the trauma that witnessing violence in the home causes to children.
10. For other forms of domestic violence, such as elder abuse and domestic violence against men, reliable data is relatively scarce.
11. Separation and divorce are the most common situations in which tensions within a couple can degenerate into violence and create a need for protection measures. However, protection is in many cases needed during the marriage or cohabitation as well as after separation or divorce.

3. Explanatory report to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention, CETS No. 210).

12. Harassment, stalking and threats are by no means limited to intimate relationships. This is illustrated in the case law of the European Court of Human Rights in the case of *Osman v. the United Kingdom* (1998), concerning a threat by a teacher against a secondary school student, which caused the death of a parent.

13. Persons in certain professions are often the object of harassment and stalking. Sometimes stalking is not explicitly threatening or even hostile. For example, performing artists and politicians are sometimes harassed by insistent fans. Such stalking may become extremely disturbing and violate the privacy of the victim. It may also suddenly change into threatening mode when the victim does not fulfil the expectations of the stalker. Another example of persons who are often threatened are gays, lesbians and transgender people.

4. Terminology

14. As the national laws vary, so does terminology:

- The European Union uses the term “protection order” to cover all civil, criminal and administrative orders that are issued by national authorities, including courts, to protect victims of violence.
- Civil court orders prohibiting the violent or harassing person from approaching the victim are called “civil injunctions”.
- Orders that are connected to criminal procedure or specifically designed to protect victims of violence are usually called “restraining orders”.
- When the perpetrator is removed from a home shared with the victim, the term used is usually “eviction order” or “barring order”.

5. Types of protection

15. Most countries have introduced legal measures which can be resorted to in the context of cases of violence. Important differences exist as regards:

- the legal nature of the measure (civil law, criminal law, or mixed);
- its aim (to protect the victim or to ensure the physical presence of the defendant at a trial);
- its duration (urgent, short term or medium term);
- the authorities who can issue it;
- who can initiate it (the victim, the authorities or other);
- what sanctions can be taken for breaches of the measure.

16. This picture is further complicated by the fact that in most member states different kinds of measures co-exist.

5.1. Civil injunctions

17. Civil injunctions are legal instruments that exist in almost all countries. They were initially conceived to prevent destruction of property and they continue to be applicable in this area: one of the fields where injunctions are widely used today is to prevent or prohibit the unlawful use of intellectual property rights.

18. A number of countries have adapted civil injunctions to suit cases of violence and harassment. A feature of these orders is that they are issued by a civil law court in a simple and quick civil procedure, and ask the perpetrator to take a certain action (for instance, to stop intimidating behaviour).

19. In general, the victim files for the protection without the assistance of police and prosecutors. The applicant has to satisfy the required level of proof, which is normally “reasonable grounds”.

20. The injunction is usually registered in the police records. Breaches of the injunction may lead to civil sanctions – normally of a pecuniary nature – or criminal sanctions.

21. The fact that, historically, injunctions originate from the protection of property law presents strengths and weaknesses in the context of their application to cases of violence. Their main strengths are that:

- they can be combined with a barring/eviction/temporary restraining order issued *ex parte*;
- they can be obtained quickly;

- the burden of proof is relatively easy to meet (reasonable grounds);
 - as they are filed at the initiative of the applicant they do not burden the officials;
 - thanks to the simplified procedure the costs are reasonable;
 - the procedure is very simple: the victim of violence or harassment can apply for the injunction, appear unaccompanied in court, present the case and call a witness.
22. The main weaknesses of civil injunctions are that:
- they are not necessarily accompanied by any police protection;
 - the sanctions for the breach of the order may be inefficient, especially when they are pecuniary;
 - the law sometimes requires that a lawsuit on the main issue (ownership, divorce, etc.) is filed within a given time, which may be difficult for the victim to do.
23. One of the main weaknesses of civil injunctions is that they require the victim to play a proactive role in initiating the procedure and throughout its course. In the overwhelming majority of cases, this is impossible, as any victim of physical violence is, first and foremost, a victim of psychological violence, having lost confidence in herself and believing that she is the cause of the aggressor's behaviour. It is not infrequent, therefore, for victims who file for civil injunctions to withdraw the request immediately afterwards.
24. As there is no automatic intervention on the part of the authorities to distance the perpetrator from the victim who has filed for protection, victims are not protected against the risk of retaliation.

5.2. Protection orders in the context of a criminal procedure (restraining orders)

25. The bulk of research from the past twenty years shows that domestic violence is often serious, repeated and becomes more dangerous with time if no intervention takes place. Similarly, stalking and sexual violence are often protracted over time, and the signs of threatening behaviour should be addressed before the victim is put at greater risk. In such situations, civil injunctions are not sufficient: it is clear that people who are at risk of serious violence need the protection of the criminal justice system.
26. The laws on criminal procedure traditionally offer instruments that restrain the freedom of the suspect. In cases of serious violent crime, the suspect can be arrested and detained. Instead of arrest, a restraining order is a less intrusive measure.
27. Restraining orders in the context of a criminal procedure restrict the suspect's freedom of movement before the trial. In fact, they have been designed to ensure the presence of the suspect at the trial, and not to protect the victim. A typical problem is that suspects are supposed to be within reach of the police, normally at their home. This, of course, is unsuitable to protect victims of domestic violence as it obliges the suspect to live in the same place as the victim.
28. In other respects, however, coercive measures in a criminal procedure can offer effective protection to victims. For example, the breach of a criminal protection order usually leads to the arrest of the suspect.
29. The most important advantage of restraining orders when applied to cases of domestic violence is that they do not require the victim's proactive role throughout the procedure because the police can initiate the order on their own initiative. In addition,
- the police may also envisage additional protection measures;
 - the sanctions are effective (the perpetrator can be arrested if in breach of the order);
 - the legal safeguards are at the level of the criminal procedure.
30. However, the weaknesses are also obvious:
- If nobody reports the crime – victim nor witness – in the first place, the order cannot be imposed.
 - Unfortunately, the police do not always register a complaint: for instance when they consider that the facts raised by the victim do not reach such a level of gravity as to engage a criminal procedure.
 - As is the case for civil injunctions, also in the context of the criminal procedure in many member states there is the possibility for the victim to withdraw the complaint. In this respect, the French legislation is to be considered as a model of good practice, as it establishes that the procedure will be pursued *ex officio*, even if the victim withdraws the complaint.

5.3. Eviction orders/barring orders/temporary restraining orders

31. The majority of member states have introduced specific protection orders for the benefit of victims of violence, which enables the police and/or the court to order the immediate removal of the perpetrator from the home. These orders may be called eviction orders, barring orders, injunctions or, especially in the United States, temporary restraining orders.

32. Austria was the first European country to introduce eviction orders to protect victims of domestic violence. Its legislation in this area is very comprehensive and is considered as a model. France, Germany and Spain have enacted similar laws. In fact, Germany and Spain also provide the possibility of protection orders for rape victims (outside cases of domestic violence).

33. Eviction orders have been designed specifically for domestic violence: to stop violence, offer short-term protection to the victim and give her or him time to think and seek further protection, such as an injunction. They do not easily fall into the categories of civil injunctions or restraining orders in the context of a criminal procedure. Rather, they are somewhere in-between the two. The removal is enforced by the police.

34. A common feature to all member states is that removal is enforced by the police. Considerable differences remain as regards:

- the duration of the validity of the eviction order;
- the authority which can issue it;
- the assistance which is provided to the victim.

35. To mention a few examples: In Slovakia, in 2008, legislation was passed allowing police officers to remove the perpetrator of domestic violence from the common home and also from the neighbourhood in which the victim lives, for forty-eight hours. The new restraining order introduced by law in Hungary in 2009 permits police removal of the perpetrator for a maximum of seventy-two hours, but application for a court order takes several weeks.⁴

36. At the other end of the spectrum, in Austria the police can order the removal of a perpetrator for twenty days. During such period, the victim is offered support, shelter and legal advice on further steps to take.

37. Most member states that have adapted a version of the Austrian model (such as the Czech Republic, Germany, Luxembourg and Switzerland) aim for a duration that permits medium-term safety measures to be put in place before the emergency measure runs out. Often the removal of perpetrator is for a period of seven to ten days, during which a court hearing on prolongation of the measure can be held.⁵

38. Legislation in force since 2009 in the Netherlands allows mayors to impose a ten-day restraining order. In practice, they authorise an executive police officer to use this power, so that the protection can be implemented on the spot. The court can validate the order within three days after its commencement date. After the ten days have expired, the mayor may decide to extend the order by another four weeks. It is foreseen that both the victim and the perpetrator will receive professional help during the ten-day restraining order.

39. The introduction of specific measures to protect victims of violent crimes, especially in the context of intimate relationships, is certainly to be welcomed. There is scope, however, for further improving their effectiveness:

- If the removal of the perpetrator can be ordered only for a very short time, there is a risk that the victim could be at even greater risk upon his return.
- Not many victims are prepared to seek legal action or further protection after the immediate threat is over. According to a Finnish study, the cases in which the victim did not file for further protection were cases in which violence was quite severe. This gives reason to suspect that the victims were under threat or pressure.

4. "Protecting women against violence. Analytical study of the results of the third round of monitoring the implementation of Recommendation Rec(2002)5 on the protection of women against violence in Council of Europe member states", prepared by Professor Carol Hagemann-White, University of Osnabrück, Germany, 2010, p. 17. Published by the Council of Europe's Gender Equality Division,

www.coe.int/t/dghl/standardsetting/equality/03themes/violence-against-women/cdeg_2010_12en.pdf.

5. Ibid., p. 18.

6. Transnational threats, transnational protection

40. Threats of violence cross borders easily. Not only can the perpetrators move freely or easily in Europe, but also the threats themselves cross borders via the Internet and social media networks, possibly reaching victims wherever they go. The Internet makes it possible to threaten and harass large numbers of people. In response to this phenomenon, a number of countries, such as Spain, the United Kingdom and the United States, have addressed “cyberstalking” as a crime.

41. A number of issues of international and European law can be raised in this context. The most important are cross-border enforcement of measures of protection and the improvement of the level of protection in all European countries by setting common standards and identifying and sharing best practices.

42. The Council of Europe could play an important role in this context, through its Convention on Preventing and Combating Violence against Women and Domestic Violence. In addition, the Parliamentary Assembly should encourage member states to establish closer co-operation in this area, and to recognise protection orders for victims of violence issued by other member states.

7. Mutual recognition of protection orders in the European Union

43. An important step forward in the protection of victims of violence is provided by the Directive on the European Protection Order, which was adopted by the Council of the European Union on 23 September 2011. This directive places the obligation on national authorities across the European Union to recognise protection orders issued on the basis of domestic criminal law in another member state. More specifically, the directive “sets out rules allowing a judicial or equivalent authority in a Member State, in which a protection measure has been issued with a view of protecting a person against a criminal act of another person to issue a European protection order enabling a competent authority in another Member State to continue the protection of the person concerned in the territory of this Member State”.⁶

44. The scope of the directive is wide, since it applies to protection measures which aim to protect a person against a criminal act of another person which may endanger his or her life, or physical or psychological integrity or dignity.⁷

45. In addition to the European Protection Order Directive, the European Commission adopted, on 18 May 2011, a set of proposals to ensure a minimum level of rights, support and protection for victims of violence across the European Union, irrespective of where they come from or live, as well as the mutual recognition of orders issued by European Union member states under civil or administrative law.⁸

46. The proposed regulation on mutual recognition of civil law protection measures is designed to help protect victims of violence from any further harm by their aggressor. It aims to ensure that victims of violence, including domestic violence, can still rely on restraint or protection orders issued against the perpetrator if they travel or move to another European Union country.

47. The European Parliament will start considering the proposed regulation at committee level in autumn 2011, under the normal legislative procedure. After adoption by the Council of the European Union, the regulation will have immediate effect.

8. Protection orders in Recommendation Rec(2002)5 of the Committee of Ministers on the protection of women against violence

48. Recommendation Rec(2002)5 of the Committee of Ministers is, in many respects, the legal and political platform on which much of the work on violence against women conducted by the Council of Europe is based.

49. Although this text does not explicitly mention restraining orders, it asks Council of Europe member states to introduce, develop and/or improve, where necessary, national policies against violence, based on, amongst others, ensuring maximum safety and protection of victims and adjustments of the criminal and civil law, including the judicial procedure. In addition, it asks member states to “ensure that measures are taken to

6. <http://register.consilium.europa.eu/pdf/en/11/st14/st14471.en11.pdf>. See also the press release: <http://europa.eu/rapid/pressReleasesAction.do?reference=PRES/11/323&type=HTML>.

7. Ibid.

8. www.wave-network.org/start.asp?ID=23517&b=7.

protect victims effectively against threats and possible acts of revenge” and “enable the judiciary to adopt, as interim measures aimed at protecting the victims, the banning of the perpetrator from contacting, communicating with or approaching the victims, residing in or entering certain defined areas”.

9. Protection of victims of violence under the European Convention on Human Rights

50. There are several ways in which the European Convention on Human Rights (ETS No. 5) can act as a legal basis to provide protection for victims of violence:

- its Article 2 protects the right to life;⁹
- its Article 3 can be engaged in cases where violence reaches such a level of severity as to constitute inhuman, cruel or degrading treatment;¹⁰
- its Article 8 protects the right to privacy.¹¹

51. The case law of the European Court of Human Rights has clarified the extent of the obligations falling upon Council of Europe member states under the Convention.¹² Not only do they have the obligation to refrain from violations of the rights mentioned above, but they also have a positive duty to take effective steps to protect persons from violations of these rights by private individuals.

52. This means that states must put in place effective criminal law provisions to deter the commission of offences, backed by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions.¹³

53. As far as breaches of Articles 2 and 3 are concerned, this positive obligation extends in appropriate circumstances to requiring the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal act of another individual.¹⁴

54. However, the scope of this positive obligation should not be interpreted as imposing an impossible or disproportionate burden on the authorities and does not apply to every claimed risk to life: “For a positive obligation to arise, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk”.¹⁵

10. Protection orders in the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)

55. The Istanbul Convention, which was opened for signature on 11 May 2011 and has so far been signed by 16 Council of Europe member states, represents a landmark instrument in the protection of victims of violence, especially women.

56. The convention includes provisions on ensuring a physical distance between the victim and the perpetrator. Article 52 on emergency barring orders states that:

“Parties shall take the necessary legislative or other measures to ensure that the competent authorities are granted the power to order, in situations of immediate danger, a perpetrator of domestic violence to vacate the residence of the victim or person at risk for a sufficient period of time and to prohibit the perpetrator from entering the residence of or contacting the victim or person at risk. Measures taken pursuant to this article shall give priority to the safety of victims or persons at risk.”

9. For the case law on its applicability to cases of violence against women, see *Kontrova v. Slovakia*, 2007; *Branko Tomasic v. Croatia*, 2009.

10. For the case law on its applicability to cases of violence against women, see *MC v. Bulgaria*, 2003.

11. For the case law on its applicability to cases of violence against women, see *X and Y v. the Netherlands*, 1985, *Bevacqua v. Bulgaria*, 2001, *MC v. Bulgaria*, 2003.

12. Ad hoc Committee on Preventing and Combating Violence against Women and Domestic Violence (CAHVIO), “Case law of the European Court of Human Rights on violence against women”, document prepared by Ms Christine Chinkin, London School of Economics and Political Science, 4 May 2009.

13. *Opuz v. Turkey*, 2009.

14. *Aydin v. Turkey*.

15. *Kontrova v. Slovakia*, 2007.

57. Rather than placing the burden of urgently seeking safety in a shelter or elsewhere on the victim, who is often accompanied by dependent children, the convention privileges the removal of the perpetrator to allow the victim to remain in the family home.

58. Article 53, therefore, establishes the obligation for states to equip the competent authorities with the power to order a perpetrator of domestic violence to leave the common residence and to bar him or her from returning or contacting the victim. The immediate danger is assessed by the relevant authorities.

59. The convention leaves it to the parties to decide on the length of period for such an order, which should, however, be sufficient to provide effective protection to the victim. Likewise, the convention leaves it to the parties to identify and empower, in accordance with their national legal and constitutional systems, the authority competent to issue such orders and decide on the applicable procedure.

60. In addition to and in complementarity with emergency measures, the convention places on the states parties the obligation to also ensure that appropriate restraining or protection orders are available for the victims of all forms of violence covered by the convention (Article 53).

61. It leaves it to the parties to choose the appropriate legal regime under which such orders may be issued, whether civil law, criminal procedure law or administrative law. In all cases, such measures should meet the following criteria:

- provide immediate protection and without undue financial or administrative burden on the victim. This means that any order should take effect immediately after it has been issued and shall be available without lengthy court proceedings. Any court fees levied against the applicant, most probably the victim, shall not constitute an undue financial burden which would bar the victim from applying. At the same time, any procedures set up to apply for a restraining or protection order should not present insurmountable difficulties for victims;
- be issued for a specified period or until modified or discharged;
- where necessary, be issued on an *ex parte* basis which has immediate effect. This means a judge or other competent official would have the authority to issue a temporary restraining or protection order based on the request of one party only;
- be available irrespective of, or in addition to, other legal proceedings. For example, where such orders exist, research has shown that many victims who want to apply for a restraining or protection order may not be prepared to press criminal charges against the perpetrator. Standing to apply for a restraining or protection order shall therefore not be made dependent on the institution of criminal proceedings against the same perpetrator. Similarly, they should not be made dependent on the institution of divorce or other proceedings;
- be allowed to be introduced in subsequent legal proceedings to ensure that the existence of a restraining or protection order may be introduced in any other legal proceedings against the same perpetrator.

62. As regards sanctions against breaches of such orders, the convention requires them to be “effective, proportionate and dissuasive”, leaving it to the states parties to decide their legal nature (criminal, civil or administrative).

63. Some additional provisions set out in the convention are particularly progressive, even if they do not establish an obligation on the states parties. For instance:

- Since establishing the truth in domestic violence cases may, at times, be difficult, parties may consider limiting the possibility of the perpetrator to thwart attempts of the victim to seek protection by taking the necessary measures to ensure that restraining and protection orders may not be issued against the victim and perpetrator mutually.
- Parties should consider banning from their national legislation any notions of provocative behaviour in relation to the right to apply for restraining or protection orders. Such concepts allow for abusive interpretations that aim to discredit the victim and should be removed from domestic violence legislation.
- Finally, parties may also consider taking measures to ensure that standing to apply for restraining or protection orders is not limited to victims. These measures are of particular relevance in relation to legally incapable victims, as well as regarding vulnerable victims who may be unwilling to apply for restraining or protection orders because of fear or emotional turmoil and attachment.

64. The inclusion of Articles 52 and 53 in the convention is to be welcomed, as a very good basis for a high common standard. Similarly, it is important to underscore that the states parties are not allowed to make reservations to these articles. However, I would like to recall that, in its opinion on the convention, the Assembly proposed to amend Article 53 so that restraining or protection orders could be issued also *ex officio* as well as “irrespective of and in addition to other proceedings”.¹⁶ Unfortunately, these amendments were not accepted by the Committee of Ministers.

11. Conclusions and recommendations

65. The key to all measures aimed at tackling domestic violence is to have a framework in place which can effectively and promptly ensure the safety of the victims. The criminalisation of acts of domestic violence, however important as a political statement and a matter of justice, can tackle only a part of the problem: most cases never make it to court, because victims are in a state of psychological subjugation, but also because, when balancing the advantages and disadvantages of reporting violence, they often conclude that the risk of exposing themselves to retaliation is greater than the chances of obtaining protection. Similarly, a great proportion of cases of domestic violence fall out as they progress through the justice system, for similar reasons.

66. Strengthening the measures available to provide the physical safety of the victims in the short and medium term and ensuring their effective implementation and enforcement therefore become a priority, not only to prevent further harm to the victims but also to ensure the credibility and effectiveness of the entire criminal framework on violence against women.

67. A comparison of the different kinds of protection measures set up in Council of Europe member states shows great disparities. The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence could play an important role in achieving harmonisation of such measures, based on a high standard.

68. However, it is possible and desirable for Council of Europe member states to go beyond the provisions of the convention and introduce more protective measures, as is recommended in the draft resolution.

69. I would like the concluding remark of this report to be on the concept of domestic violence. I have used this expression throughout my report, as a way to make myself easily understood. However, as recently stated by the European Court of Human Rights in the case of *Opuz v. Turkey*, it should be clear that there is nothing “private” about domestic violence: this is an issue of public interest which requires the state’s action and its political commitment.

70. Finally, a special word of thanks to the former rapporteur, Ms Krista Kiuru, who left her assignment as rapporteur to become a minister in Finland and who put a lot of personal effort into the preparation of this report, and to Ms Johanna Niemi, Professor of International Law at the University of Helsinki, for her expert advice.

16. [Opinion 280 \(2011\)](#).