



Specific Needs and Protection Orders

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Background

Scientific studies in various European countries have shown that many victims of domestic violence are not protected, at all or adequately, by current practices comprising police and (civil) legal safeguards against further violence.

The instruments here are often not applied, or are not effective, particularly in the case of persons with special requirements for support and protection. This is because protection based on these measures is meant to be ensured through separation between perpetrator and victim, enforced either by the police or a court order. Under certain circumstances, however, this is either impossible or very difficult to implement, both in urgent situations as well as the longer term.

Examined within the framework of the European project SNaP (Special Needs and Protection Orders), also in Germany, was the protection situation of women requiring support, migrant women, homeless women, and women who have children together with the perpetrator. Surveys and case studies focused on impediments to police barring orders and court protection orders, as well as alternative options of protection.

Initial situation - shortcomings in protection against violence

Many victims of domestic violence are not protected adequately by existent relevant instruments against further violence - also irrespective of special support requirements and specific circumstances. The hurdles for certain groups, however, are so high that the instruments of protection against violence cannot be used at all, or virtually at all. Generally lower hurdles exist in the case of police barring orders, because these depend not only on the initiative of the victims of violence.

Shortcomings in protection arise in the interplay between

- personal aspects and associated requirements
- current living circumstances, general social and legal conditions
- the system of protection against violence and the actions of the persons involved.

Shortcomings in protection arise both in terms of access to measures, as well as their availability and implementation – already an anticipation of difficulties in implementation substantially restricts application.

Need for action and recommendations

1. More rigorous enforcement of instruments for protection against violence

Promote consistent and competent application

In the handling of police barring orders, there are significant differences between the federal states, but also locally - both in terms of the proportion and duration of police barring orders, as well as monitoring police measures and dealing with violations.

A problem in many places is the tendency to fall short of the maximum period of 10-14 days, which can lead to chronological gaps in protection until civil protection against violence takes effect.

In some places, initially intensive efforts to train personnel dwindle, resulting in erosion processes and uncertainties in handling the police barring order.

Local practices of family courts differ even more in implementing laws for protection against violence. Some district courts rarely or never issue civil protection orders, while others do so for the bulk of cases in which applications were submitted. Practice differs in terms of whether judicial decisions are taken primarily without hearings, or whether oral hearings, in particular, are arranged with the aim of a consensual agreement, or whether rejections primarily take place, or related preliminary information causes potential applicants to refrain from submitting an application. However, settlements do not have the same effect as judicial decisions and have hardly incorporated any potential punishment so far. Many victims agree to a settlement mainly due to mental pressure, lack of knowledge and lack of alternatives. In terms of protecting victims, a further problem is that separate hearings are almost never held according to the courts - for resource reasons, but also due to family law's orientation toward agreement which is transferred to cases involving protection against violence. Heterogeneous legal practice emerges partly from different assessments of the motives behind applications (instrumentalization, cases of actual violence), but also different understandings of the (family) court order (orientation toward arbitration versus quick protection).

The implementation of violence protection instruments by police and civil law depends to a considerable extent on the expertise, awareness and attitude of professionals in the police and judiciary. In contrast to judicial independence, police forces are bound by service regulations and action guidelines.

Recommendations

- **Police barring orders** should continue to be highlighted as a **standard measure** in action guidelines and police training programs, and the possible duration of 10-14 days should not be fallen short of in order to avoid gaps in protection until the safeguard based on civil law takes effect. To maintain the police's level of competence, **training on the subject of domestic violence and protection against it** must take place on a **lasting basis** for all new personnel.
- The availability of instruments for protection against violence, especially protection based on civil law, should not depend on the victim's place of residence. Measures should be taken to **foster implementation of the civil law instrument** - by enhancing professional standards, promoting specialization and competence development, especially of family court judges, and enforcing

existent recommendations for implementing laws on protection against violence. Here, it is necessary to highlight that the family court's guiding principle of conciliation in cases of domestic violence is usually inappropriate and should not be applied. Enactment of interim measures here should be oriented toward **the legally intended protection mandate** which provides for **summary examination** and credibility, not criminal standards based on presentation of evidence. Hearings should take into consideration the stipulation of the victim protection directive according to which unnecessary confrontation with the perpetrator should be avoided if possible, in order to safeguard victims.

To be able to assess a situation comprising a complex relationship, particularly in the context of domestic violence, and take far-reaching decisions for those involved, **family courts require specialized knowledge**, also from other professional disciplines. Last but not least in accordance with the provisions of the victim protection directive, this knowledge must be ensured, for example, by making **further education for family court judges compulsory** and including treatments of the dynamics and effects of domestic violence, interaction as well as children's well-being, in judicial training programs. This requires legislative changes at the federal and state levels. Extremely problematic against this background is that efforts by justice ministers to coordinate judicial training are intended to diminish, rather than enhance, the importance of family law in such training.

Improve the effects of protection

For the majority of perpetrators (and victims), police barring orders and judicial protection orders have a strong and preventive signalling effect; they imply a short-term "transformation of the system" which might enable further changes.

However, problems arise during violations of barring and protection orders. Police barring orders in many places are not systematically reviewed. The intended criminal or civil sanctions (administrative fine, arrest for disobeying court orders) for violations of court protection orders find only limited application, are ineffective and considered inadequate by many experts. Another problem is that initiation of criminal prosecution for violations of violence protection orders depends exclusively on the applicant's commitment. Effective sanctioning is hindered if stalking is partly regarded by the judiciary as a petty offence "without genuine threat".

Recommendations

- The obligation for regular / **systematic review of police barring orders** should be anchored in state police laws and directives.
- For more consistent penalizing of violations, the available **spectrum of coercive measures** should be applied to a greater extent, e.g. through imposition of administrative fines in the relevant amounts, while arrest for disobeying court orders should also be taken into consideration if necessary. When breaches of violence protection laws are brought to the notice of family courts (after an application for civil coercive measures), the **public prosecutor's should be notified** automatically. Guidelines for this should be established at the state level.
- Regardless of the extent to which the planned legislative reform toward enhanced criminal penalties for stalking also improves the options of intervention by police, reports of stalking should be taken more seriously not only by the police, but also by courts in particular. Training programs and police guidelines should emphasize the importance of consistently applying responses to threateners in cases of stalking.

2. Reduce specific shortcomings in protection - improve protection for women with disabilities, migrant /refugee women, homeless women and mothers

Improve access to institutions for protection against violence

For migrant women without an adequate knowledge of German and for women with disabilities, difficulties in understanding and communication as well as lack of mobility are often key obstacles in accessing institutions for protection against violence and, thus, actually availing of the related measures.

Enabling and allowing communication are indispensable conditions for availing of civil laws for protection against violence, because this can be granted only through submission of an application by the individual and execution of the related proceedings. Though police barring orders are also announced without the victim's cooperation, communication and understanding are key to explaining and comprehending the procedure, describing the incidents and being able to process information concerning further aids and instruments.

The availability of measures for protection against violence depends not only on individual capabilities, but also on the means whereby encumbered groups of victims can access institutions, i.e. whether and how they support access for victims limited in terms of communication or mobility by eliminating barriers and supplying the necessary assistance or linguistic mediation. A provision of (usually poorly comprehensible) written details does not fulfil the information requirements of the victim protection directive. Information must instead be ensured by explanations, including verbal ones. Though the multilingual, national help phone service is a major anchor in the provision of initial protection information in many cases of police intervention, it does not serve to replace linguistic mediation.

Recommendations

- To guarantee the most **comprehensive possible elimination of linguistic and spatial barriers** to institutions for protection against violence, this being incumbent on Germany by way of the victim protection directive and the UN convention on the rights of persons with disabilities, changes must be initiated at the federal level and, above all, the state level. Active build-up of the related capacities is needed to enforce the rights to linguistic mediation. As is already possible in some federal states, victim protection facilities should also provide resources for linguistic mediation.
- Especially for victims with special support needs (linguistic/communicative, psychological, mobility-related), **procedural support before and during application submission, and also during hearings**, is important. For this reason, the **psychosocial process support** established with implementation of the victim protection directive should also be available when it comes to **protection against violence**, and provide for rights of attendance. This must be anchored at the state level.
- Beyond a one-time consultation, intervention agencies in the federal states should be made sufficiently capable of escorting victims to court, if necessary, and offering practical assistance in submission of their application.

Enable contact with the assistance system — overcome reservations and distance

Information deficits and distance to institutions for protection against violence represent key barriers to access, well in advance of initial contact with the assistance system. This affects, in particular, victims of violence whose life situation

is characterized by narrow or closed social and cultural systems. and who at the same time have no opportunity to contact support networks or the assistance system. Concerned here, in particular, are many homeless women as well as many migrant women and handicapped women living in institutions. Such institutions often resemble closed systems. As a gatekeeper, they can either prevent or allow contact with the assistance system providing protection against violence. While police hardly ever take any action against cases of violence at institutions for the handicapped, police and victim support agencies are now involved relatively more frequently at institutions for refugees.

Recommendations

- To achieve a low threshold for access to information and support, police laws in all states should incorporate the provision that operations in response to domestic violence include a **regular relay of contact details to specialized counselling agencies** so that advice and assistance can be provided proactively after such operations. Experiences in federal states where this is already possible show that this leads to a significantly higher proportion of contacts providing information and, often, also counselling compared with places where prior declarations of consent and the necessary detailed explanations are mandatory items of case information. Proactive establishment of contact increases the chance of also reaching those groups of victims in whose case a police explanation of the procedure or obtaining consent to share contact information is forgone, perhaps due to communication problems or perceived barriers.
- In addition to efforts on the part of the police to seek contact with certain groups of victims, it is conversely crucial that **care and support facilities** (for the homeless, people with disabilities, refugees) act **as mediators** and establish concepts for protection against violence in order to facilitate information on, and access to, the assistance system:
 - In accordance with the duties prescribed by the UN convention on the rights of persons with disabilities, development and **verifiable implementation of a concept for protection against violence** should form part of contracts with sponsors at **institutions providing support to handicapped adults**. This should be laid down in the relevant state laws (home supervision) and social codes. It should be compulsory for institutions supporting

the handicapped to deploy women's representatives and equality officers (workshops, residential facilities) - this should be regulated by federal law.

- For **sponsors of reception centres and community accommodation for refugees**, too, there should be **binding provisions** concerning development and implementation of a concept for protection against violence and minimum standards regarding such protection.. Incorporation into admission regulations at the state level should commit municipalities to corresponding contractual practices.

Also of relevance besides the question of information and contact opportunities is whether the concerned persons basically have confidence in assistance systems, police, courts and other government agencies. These are prerequisites for personal establishment of contact and willingness to disclosure with regard to police operations, and a basic requirement when availing of the option to apply for protection against violence based on civil law. In the case of many homeless women and a portion of migrant women, cultural hurdles as well as a lack of confidence often prevent contact with institutions offering protection against violence. Conversely, the police and judiciary also maintain a certain distance to particular groups. This applies in terms of presumptions and attitudes, as well as uncertainties vis-à-vis certain migrant groups, homeless individuals and people with disabilities. In the case of women with children, implementation of laws for protection against violence is in many places characterized by presumptions about child welfare and interaction, the motives behind application, as well as the family court's model regarding conciliation.

Recommendations

- Also needed to overcome the distance between victims and the system for protection against violence is an awareness of the situation and individual needs of the diversity of victims, as well as a **critical reflection on possible presumptions** about particular groups of victims and perpetrators. This applies first and foremost in relation to migrant women, people with disabilities and homeless individuals, but also for the group comprising women with children when it comes to court orders for protection against violence.
- Training programs for police (as well as members of the judiciary) should highlight the **responsibility of the police for all individuals affected by domestic violence**. For an unreserved

treatment (also of the perpetrator), police forces as well as judges need to be made aware that reported violence should not be relativized, called into question or attributed to certain features (disability, social milieu) by the particular context of victim and perpetrator.

- On the part of the police and judiciary, there is a need for special training with regard to dealing with people with cognitive disabilities who are subjected to violence, to allow a better assessment of the situation and "credibility" of those affected.

Create / enable alternatives to living and support circumstances burdened by violence

For several groups of victims, particularly a lack of short- and long-term alternatives to current living and support circumstances prevents separation, so that a civil order for protection against violence is not even taken into consideration, and barring by the police proves futile or cannot be implemented. Dependencies in terms of care and support, above all, are of relevance here in addition to social, emotional and economic dependencies. For women requiring care and support in everyday life, alternatives to dependence on perpetrators of violence are often especially restricted. The same applies to homeless women in precarious conditions of cohabitation. Though a "lack of alternatives" often accompanies certain life situations, it can be remedied at least partly by providing economic and organizational resources to alleviate the consequences of separation. This involves, in particular, specific social safeguarding and care systems as well as the social rights anchored therein which are of relevance to the groups of victims at the focus.

Recommendations

- For **women with disabilities** who are affected by violence, there must be a sufficient, **alternative means of support to allow an independent lifestyle**. This applies, in particular, to social entitlements to assistance services which also cover pre-care needs, emergency support for provisional financing of services, as well as safeguards based on tenancy law and accelerated procedures in applying for aid. Especially the UN convention on the rights of persons with disabilities can provide impulses for necessary adjustments in the relevant legal systems and procedures of service providers.
- In the case of **homeless women**, the central question is whether - in addition to urgent temporary shelters - **affordable accommodation** is available and the related costs can be assumed

by the welfare agencies. Due to the multiple burdens on homeless women, **coordinated assistance procedures** should be developed at the municipal level.

Give safety and protection requirements priority over conflicting legal norms

Legal regimes potentially conflicting with measures for protection against violence affect, in particular, **migrant women and women who have children with the perpetrator**. The general legal conditions for these groups of victims can already hinder separation, prevent a use of protective measures against violence from the very beginning or undermine their effectiveness. Due to a derived residence status, some migrant women cannot separate, or fear a loss of their residence status, before the end of the three-year term during which a marriage needs to exist for setting up an independent residence. In the case of refugee women, effective separation is often not possible due to a residence requirement and a condition of fixed abode for victims and perpetrators. Often not implemented in these cases are measures for police protection against violence, this applying to an even greater degree to civil measures for such protection. Also in the case of women who jointly have children with the perpetrator, conflicting legal norms render orders for protection against violence ineffective because rules regarding relations impose contacts and confrontations with the perpetrator. In some cases, however, courts also refuse to issue orders in anticipation of visitation contacts or when women are dismissed by reference to settlements at hearings. The extent to which such conflicting situations occur and what impact they have depends decisively on the local practices of the relevant legal and institutional systems. For mothers with children, such conflicts can be avoided if rules on care and visitation take protection requirements into account. For migrant women, it is crucial how local immigration authorities (and also social authorities) implement residency regulations in cases of violence, and to what extent they make use of hardship clauses.

Recommendations for mothers

- **Non-discriminatory access** for mothers to protection by civil law against violence must be ensured everywhere; the reference to required rules on visitation must not lead to de facto exclusion. General efforts toward agreements based on rules concerning filiation and visitation should not be applied from the beginning to matters of protection against violence.
- **Visitation arrangements and decisions on filiation must pay more consideration to the protection requirements of women and their children affected by violence** and systematically take

into account reports of domestic violence. In cases of domestic violence, a (temporary) exclusion of visitation should be considered to safeguard the child's well-being. Escorted visitation should be possible, also over extended periods; the actual course of visitations should be actively evaluated by the court. Also to be considered is a reduction in legal / procedural hurdles to establishing supervision of visitation in cases of domestic violence. Reports of domestic violence must be followed by thorough inquiry and investigative activities to assess the child's well-being. The precept of accelerated proceedings must be avoided for this purpose.

- Changes in current practice require, above all, **enhancement of judicial assessment skills on the subject of children's well-being, youth welfare structures, etc. through further training and specialization**. An introduction of special regulations for visitation and custody proceedings in cases of domestic violence should also be considered comprehensively (refer to the Munich model).

Recommendations for migrant women

- Migrant women who are affected by violence and who have residential obligations or must fulfil residency requirements need to have the opportunity to change residences at short notice (women's shelter) or acquire a residence for the longer term at a safe location. **Barring orders and protection orders directed at perpetrators should also have priority over immigration rules**. This should also apply to any required redistribution from admission centres.
- For women with a derived residency status, **hardship cases for acquiring one's own right of residence** before the end of the three-year term during which a marriage needs to exist for setting up an independent residence should be recognized, and must not depend on criminal proceedings.
- For the purpose of protection against violence and matching local practices, the federal government and states should accordingly enact **discretionary directives / guidelines for dealing with local authorities with cases of violence**, and defining the pre-eminence of protection interests as well as police and judicial protection measures vis-à-vis immigration rules (this applies especially to laws concerning residency, asylum procedures and

admission by states). Accordingly, the applicability and **priority of barring orders at admission centres and community accommodations should also be anchored into state police laws.**

Examine and, if necessary, extend the applicability of instruments

Instruments do not always match life situations or individual, threatening circumstances. This is of relevance, firstly, when instrument-specific, sometimes statutory prerequisites for utilization are not fulfilled, especially as concerns civil laws for protection against violence. For example, this is the case when women with disabilities live at institutions which are not regarded as domestic within the meaning of the laws on protection against violence (§ 2), or when homeless women are in a temporary, informal situation of cohabitation without their own rights. The spectrum of implementation of laws on protection against violence is restricted further by exclusion of own children from the scope of application. The effectiveness of police barring orders as well as civil protection orders (prohibition of contact and proximity) can be restricted if multiple several family members engage in violence - this has been described for a portion of migrant women.

Recommendations

- At the statutory level, **residential facilities for people with disabilities** should be regarded as permanent households **within the meaning of § 2 of the laws on protection against violence**, in order to establish individual entitlements to protection. This could serve as a signal for adaptations to legal and service systems which shape living conditions and support for people requiring assistance.
- Whereas application of § 2 of the laws on protection against violence is not possible for homeless women, there is a possibility of ordering **prohibitions of contact and proximity in the case of homeless women**. Police and other institutions who come into contact with homeless women should inform themselves where necessary.
- Even if police barring orders are not issued in all cases, the instrument of **addressing the threatener** should be used aggressively in order to elucidate norms vis-à-vis the perpetrator and victim.
- In cases of threats posed by fellowships within families, flight to a women's shelter is often the last remaining option. In principle,

however, **orders for protection against violence** can also be issued **vis-à-vis multiple persons**.

Ensure alternative options of protection

A use of police and judicial instruments for protection against violence is not always possible, useful or necessary. For women who are affected by violence and who live in facilities (for refugees, people with disabilities), solutions are sometimes found internally or in a local cooperative network to separate victims and perpetrators. However, some extremely threatening situations make it necessary for women to go to a women's shelter. Access to women's shelters, in particular, is restricted for a number of groups for different reasons. For migrant women with a residency obligation, the extent to which they are allowed to change residences for protection, and whether inter-communal solutions for payment of living expenses and women's shelter financing are found, often depends on the discretion of local immigration authorities and social agencies. A fundamental problem is women's shelter financing based on individual cases, which usually requires obtaining SGB XII or SGB II social security benefits, these not being entitlements for the majority of women obtaining asylum-seeker benefits. Whether financing solutions are found also depends on the discretion of local social agencies.

There are hardly any opportunities for women requiring considerable support due to physical and psychological impairments (including many homeless women) to find protection at a women's shelter because the necessary support cannot be provided, and most women's shelters are not accessible to the handicapped.

Recommendations

- A move away from financing based on individual cases and **institutional sponsorship for women's shelters** would eliminate existent financing obstacles and uncertainties. Needed for this purpose is a **legal basis**, binding nationwide, for financing women's shelters.
- In particular, **facilities** providing support for disabled and homeless people, as well as refugee reception centres should be obliged to develop appropriate protection concepts **as part of the contractual relationship with the sponsor**. These should also include standards for procedures in cases of violence, and specify criteria for involvement of the police and judiciary, in addition to rules for internal solutions.
- For victims of violence who require extensive support but cannot be housed in a women's shelter, **accommodation and care facilities**

available at short notice / emergency locations must be created in the local community. In addition, a spatial and conceptual adaptation of existent women's shelters must be made financially possible on one hand. On the other hand, protected residential and care facilities for those affected by violence should be linked to existent specialist centres for physically and mentally impaired people. Financing arrangements within and between the different service providers must be developed in order to allow rapid provision of assistance.

Outlook

For the surveyed groups of victims, there are certain further obstacles in accessing assistance and protection, thereby reinforcing instrument-specific obstacles to access and implementation applicable for all victims. As a result, many victims of domestic violence can avail neither of the provided instruments for protection against violence, nor of the possible alternatives. There is an urgent need for change here against the background of international legal obligations and agreements.

The European victim protection directive, for example, obliges Germany to ensure that all measures taken by the judiciary address and consider the needs of victims of crime who have special protection requirements - this includes, in particular, those affected by domestic violence.

The Istanbul Convention and the UN convention on the rights of persons with disabilities also require low-threshold access to rapid and effective protection for all victims of domestic violence.

In order to achieve this, a comprehensive overall concept and coordinated approach are required to sustainably reduce existent shortcomings in the protection system in a systematic manner accompanied by establishment of structures and procedures. However, considerable efforts are needed so that all victims of domestic violence can avail of urgent as well as lastingly effective protection measures and live in safety.

Disclaimer

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