

SNaP

**Specific Needs and
Protection Orders**

National Report Germany

Emergency Barring Orders and Court Protection Orders – the Situation of Women with Specific Needs

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Emergency Barring Orders and Court Protection Orders in Cases of Domestic Violence against Women

General Implementation and Implementation in Cases with Victims
with Specific Needs

German National Report

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1. Introduction

Social science studies show that individuals suffering from physical or cognitive disabilities or mental illnesses are victims of physical, psychological and sexual violence significantly more often than their peers (Schröttle/Hornberg, 2013 and 2014; Schachner et al., 2014; FRA, 2014; WHO, 2003; Hughes et al., 2012). This begs the question whether and how measures of protection against violence in close personal relationships are working for this group. *SNaP* – *Specific Needs and Protection* started out with the hypothesis that police and court measures of protection in cases of violence in intimate social relationships are less often imposed when incidents involve women who need support in their daily lives or are in need of care (e.g. women with physical disabilities or mental problems), or do not (effectively) protect them from (further) violence. Two previous Daphne projects¹ showed that in particular the protection of older, dependent women or those in need of nursing care poses particular challenges to the police and/or the legal system. Protective measures aim to remove the endangerer from the victim, only permitting limited, if any, contact between the perpetrator and the victim. Such protective measures, however, presuppose that the person to be protected is not in need of daily assistance from the perpetrator.

¹ "Intimate Partner Violence against Older Women" (www.ipvow.org) and "Mind the Gap" (<http://www.ipvow.org/en/research-reports/mind-the-gap>)

2. The SNaP project: an overview

Scientific studies from different countries (cf. Hague et al., 2007; Ackerman et al., 2014; Schröttle et al., 2013) indicate that the current practice of protective orders is problematic because the support needs of victims with so-called specific needs are not considered or not adequately taken into account. With that in mind, the research teams in the partner countries² examined national protective measures for their suitability and efficiency for different victim groups with specific needs. On the country level, *SNaP* therefore focused on the following issues:

- Which victim groups can be identified by their “specific needs”?
- Are current legal provisions fully at their disposal, or are there limitations?
- What are barriers to an all-inclusive protection of victims?
- What is the scope for improvement, what are alternatives to existing measures of protection against violence?

The study therefore focused on the practical application of protection orders, the essential issue being whether and how those involved are able to identify specific needs and how they react to them. Another point we needed to clarify were the factors that influence decisions about imposing protective measures in cases with victims with specific needs. We analysed from the victim’s perspective what prevented them from having recourse to measures of victim protection, and which problems confronted them when they turned to the police or other agencies.

In order to facilitate the understanding of the results, we will first outline the respective legal provisions for the protection against violence in close personal relationships on the national level and present some statistics on protective measures (see Chapter 3).

On the basis of the research results, we also drafted an international policy paper to increase the awareness of politics, government agencies, lobbying organisations and victim protection facilities for specific needs and the consequences of ignoring them.

² Besides the project leader, the Institute of Conflict Research (IKF, Austria), the participants include ZOOM - Gesellschaft für prospektive Entwicklungen e.V. and the German Police University (DHPol) (both Germany), CESIS - Centre for Studies for Social Intervention (Portugal), Safe Ireland (Ireland) and the University of Białystok (Poland).

2.1. Methodological Approach

As described above, our study aimed to identify victim groups with specific needs, to examine the implementation and effectiveness of protective measures for these groups, and to develop recommendations to improve their protection. To reach these goals, we chose a qualitative research approach³ combining a number of methods and perspectives. The details of our empirical basis in Germany are explained in chapter 3.4:

- Collection of data on legal provisions and regulations and secondary analytic evaluation of existing data on victim protection measures. This step provided an overview of the respective national regulations and their implementation as far as national statistics were available, but also gave us an insight into the problems confronting victims of violence with specific needs.
- Collection of data on legal provisions for the protection against violence within close personal relationships in five more countries. In this literature analysis, we collected data on relevant legal provisions, taking into account evaluations and experiences in Great Britain, Spain, New Zealand and the Netherlands as well as the U.S.A. The analysis concentrated on potentially valuable approaches to victim protection for vulnerable groups that might be adopted, on implementing and monitoring measures and on the protection against violence (Grundel, Nägele & Kotlenga 2015). Insights from these studies were primarily used in the cross-country project report.
- **Interviews with experts and practitioners from the fields of police work, the legal system and NGOs.** The interviews focussed on three areas, namely (i) identifying groups with specific needs; (ii) the most important current barriers to the protection against violence in legal provisions and their implementation as well as room for improvement; and (iii) the collection of agency-specific data and case histories. In addition, two expert interviews were conducted in each country to sketch and draft a national policy paper.
- **Analysis of files and qualitative case histories.** At least 50 files were analysed in each country; the approach regarding the case providers (e.g. police, public prosecution, courts, NGOs) was left open on the national level, and therefore varied considerably. Privacy rules sometimes complicated access to and tracking of cases. As “specific needs” of victims, e.g. disabilities or residence status, are not

³ A quantitative empirical survey leading to sound data was not feasible within the financial framework of the Daphne III programme. On the one hand, such a survey would have required a very large sample in order to determine which victims are particularly vulnerable with regard to barriers in accessing victim protection measures. On the other hand, such a project would only have provided limited information, because it is difficult for research to reach the most vulnerable groups, such as victims with serious cognitive disabilities.

used as classification markers in the institutions that provided the cases, no computer-aided search for relevant files was possible. We would like to emphasize from the start – regardless of the source used for file analysis – that because of the random nature of file selection this cannot be called a representative study in any of the countries.

For file analysis, we developed a project-wide grid which was only adapted with regard to national specifics. We collected information on the socio-demographic data of victims and perpetrators as well as information on the living conditions at the time of the violent incident, on the history of violence and the experienced forms of violence. In addition, we surveyed the victim's attitude towards seeking help – who did the victims turn to, what support did they receive, and what was their attitude towards the involvement of police or public prosecution? Another main focus was the approach of police and judiciary: Were protective measures taken, and if so, which ones? What were the problems that arose in the course of police/ judicial procedures? What was the impact of protection orders? The analysis grid was used to ensure the comparability of basic data while enabling us to enter into the specifics of each case. We did not attempt a statistical evaluation beyond some essential case features for the presentation of the overall sample, as this would not lead to reliable data due to the random selection of cases.

- **Expert meetings on the national as well as EU level.** The aim of national expert meetings – the German one was held in August 23rd 2016, was to present the results of our study and to reflect upon these findings together; but also to discuss the content and target audience of the policy paper. In Germany, 12 experts accepted our invitation, including representatives of the police, the judiciary (and representatives of association of lawyers both for civil and criminal law), victim protection agencies (womens' shelters and nationwide helpline), coordinators for domestic violence and scholars (specialized on rights and needs of homeless women, family law and child protection.

Finally, we held a conference in Berlin in September 2016, to integrate the experiences and perspectives of other European experts and to benefit from their knowledge for the development of recommendations for future activities on the national levels, but also on the EU level.

2.2. Terminologies

In the study, we focused on female victims of violence in intimate relationships who were over 18 years of age at the time of the abuse. We did not focus exclusively on intimate partner violence, but also took into account violence from – male and female – relatives, acquaintances, carers and fellow occupants in institutions.

As “groups with specific needs”, we initially understood the “traditional” fields of disability – physical, cognitive and mental handicaps. Discussion within the project teams, and not least the inspiration from interviewed experts in all five countries, finally resulted in an expanded definition of “specific needs,” which not only allowed for person-centred characteristics, but was based on a more inclusive understanding of vulnerability and included structural, cultural and perpetrator-specific factors (cf. further discussion in Chapter 3).

A research project on “special needs⁴ and protection orders” requires some explanation regarding the meaning of these headline concepts. While “protection order” is more or less a technical term with its meaning depending on the legal and socio-political framework, the meaning of “specific needs” is less straightforward.

In literature, “specific needs” are frequently mentioned with regard to victims of specific types of crime such as intimate partner violence, sexual assault, child abuse, or trafficking in human beings. On the other hand, victim groups such as children, older adults, persons with disabilities, or ethnic minorities are characterized as having “specific needs” (see for example Berson, 2010; Franklin et al., 2015; Jackson et al., 2015; Twyman et al., 2010). While the term „specific“ is very much open to interpretation, it can be considered as an antonym to „standard“. Thus, it indicates that these types of crime are linked to specific (non-standard) victim needs or that these groups of victims have specific needs distinguishing them from other groups. In both cases, the term „needs“ primarily refers to post-victimization processes such as formal and informal victim support and case handling by the police and the judiciary (and not, for example, to pre-victimization needs linked to specific risks of becoming a victim).

In the context of the project, “specific needs” should not be considered as a stable feature of victims or victim groups. Rather, it refers to the interaction of person and situation. This is in line with an interactionist understanding of human behaviour (see e.g. Cantor & Kihlstrom, 1987) or with a concept of “persons in context” (Shoda et al., 2007), the importance of which has been linked to societal tendencies of ever growing interdependencies (Hermans & Dimaggio, 2007).

Specific needs arise and exist in given situations, they are not “permanently attached” to a woman via her ethnicity, disability status or other characteristics. In the field of violence in close interpersonal relationships, the project focusses upon frictions and mismatches between victimization experiences in specific (although possibly repeating) situations, individu-

⁴ The project proposal was referring to “special needs”; in the course of the project, we decided to replace “special” by “specific”, as disabilities result in specific needs, but not necessarily exceptional ones.



als involved in and affected by these experiences, and measures taken to handle incidents and to prevent their reoccurrence.

The situations the project looks at are those where the use of protection orders is an option. The main research perspective is characterized by the following questions:

- Where do tensions, frictions, or problems arise between the application of a standard protective measure and the situation of a victim of domestic violence (DV)?
- How do institutions handle these difficulties?
- How can problems be solved or at least diminished?

Problems and frictions can arise with regard to the (anticipated) consequences of an application of barring orders. This refers to such aspects as not being able to live independently once the perpetrator has been banned, losing one's permanent residence permit, being ostracized by one's significant others, or endangering custody. Since a victim's willingness or readiness to initiate or accept measures taken in a case of violence will at least partly be determined by her anticipation of effects and side-effects, those consequences need not to be "real" or "certain" in order to have an impact on the way in which cases of interpersonal violence are handled.

Problems can also arise with regard to the availability of measures. This may be of limited importance with regard to emergency barring orders issued by the police and is more relevant for measures where a woman affected by DV has to take an active part in getting the measure activated. Availability issues may for example be related to lacking information, being illiterate, not speaking the respective country's official language.

Such critical person – situation interactions may be more prevalent or may have a higher probability among persons with certain characteristics. But this link is not a categorical one. A female DV victim may have a severe disability and still be unaffected by worries about being able to manage her household when the perpetrator is away (because there are good technical solutions or a well-functioning social network). A woman from an ethnic community where very hierarchical conceptions of gender roles are widespread may still have confidence in the loyalty of her significant others if she actively supports banning the perpetrator from her home.

What has been said about "specific needs" also applies to a (related) notion of "victim vulnerability". The term vulnerability has its origin in the Latin word for wound, *vulnus*. In a very broad sense, vulnerability can be understood as the capacity to be hurt or damaged, or as a person's risk of encountering a bad outcome (cf. Aday, 2001; Spiers, 2000). A model presented by Turner et al. (2003) differentiates between a system's exposure to hazards or risks, its sensitivity, and its resilience, hinging upon its capacities to adjust and cope. In the



context of the present project, victim vulnerability – again focussing upon post-victimization issues – refers to a person’s odds of encountering negative case outcomes. Again, it is not some stable and generalized personal feature of “vulnerability” that is important for the project. The project looks at a kind of “situational victim vulnerability” in the sense of a lack or at least diminished capacity of using protection orders to enhance one’s safety. This situational vulnerability can be assumed to be more prevalent among certain groups of people than among others but still it is an interactionist concept linking the person in the post-victimization period, the situation and the context within which she lives, and the measures at hand and the organizations being able to apply them.

2.3. Structure of the Report

Chapter 3, (legal foundations and findings with regard to implementation of protective measures) starts with an overview of the development of protection against violence in Germany and its most important measures, which are then discussed in detail. This chapter also contains statistics on the imposition of domestic violence orders. .

In Chapter 4, (empirical foundations) we first describe the methodological implementation and empirical foundations of the German study. We further describe our reflections on the selection of groups and what (may) lead to (increased) vulnerability or specific needs.

In Chapter 5 (findings for the analysis of cases and interviews with experts) the results of the empirical approach are presented.. In the first part findings related to the general implementation of protection orders are presented. In the second part the presentation is structured along the different groups which were in the center of the German study (women with children, women with impairments and disabilities, homeless women and migrant/refugee women).

In the last Chapter (summary and look forward) we summarize the findings.

3. Legal foundations and findings with regard to implementation of protective measures

3.1. Overview of the development of legislation in Germany and political background

The topic of intimate partner violence is a highly “political” one which had been the starting point for the feminist movement and womens’ rights organisations since the early seventies. Nationwide a huge and differentiated network of lobby initiatives and service support organisations has developed over the last four decades; many of them evolved from local civil society initiatives to professional organisations mainly funded by the local or federal states. At national level most activities and surveys on DV/IPV, violence against women and victim protection have been launched or have been supported by the Federal Ministry for Family, Senior citizens, Women and Youth (BMFSFJ). With new tasks assigned to the police since 2002 (Act of Protection against violence) the police and family courts have become crucial actors in the field of intervention. In 2013 a new government was established by a coalition of the Christian Democratic Party and the Social Democratic Party. The coalition agreement also focuses on combating violence against women and children. The main strategy is focused on closing existing gaps of support for DV-victims (djb 2014).

The National Action Plan II to combat violence against women dates back to 2007 (BMFSFJ 2007); a mixed level working group (Bund-Länder-Arbeitsgruppe) consisting of representatives of the federal states as well as the national government is responsible for its implementation and evaluation. The main emphasis has been put on prevention of violence against women with disabilities and migration background as well as children. Another comprehensive approach is to make the access to help and support easier for all victims of violence.

As a consequence, a nationwide survey on the existing infrastructure of help and support services in the field of DV was carried out on behalf of the Federal Ministry of Family affairs, Senior citizens, Women and Youth (Helfferich, Kavemann & Rixen 2012, Kavemann 2013b). The German government appreciates the implementation of a nationwide helpline for women in 2013 as a milestone for help and support for DV-victims.

International requirements and agreements are also of importance in the area of domestic violence against victims. The **EU Victims’ Directive** was transposed into national law in Germany at the end of 2015 within the framework of the 3rd Reform Act on Protection for

Victims. With regard to victims having specific needs, it was criticised that there are still legal deficits in the area of language mediation, that facilities offering support to victims, in particular women's shelters, are frequently not accessible to victims with disabilities and that there is still no corresponding continuing training requirement applying to members of the judiciary (bff 2016). The **Istanbul Convention of the Council of Europe** was signed by Germany, but has yet to be ratified. Two articles bear relevance to protection orders, which have thus far not been (sufficiently) implemented: Taking violent acts into account in decisions on visitation rights and custody and securing protection against violence when visiting common children (art. 31) and the stipulation that effective, proportionate and dissuasive possibilities must be available in the event of violations of protection orders (art. 53). The **UN Convention on Rights of Persons with Disabilities** went into effect in Germany on 26 March 2009. Criticism has been levied on the physical and communicative accessibility of courts and other legal facilities (Deutsches Institut für Menschenrechte 2016) as well as the lack of barrier-free facilities offering advice and support, which is attributed to deficient financing of these facilities (bff 2016). Above and beyond this, lobby groups underscore the frequent failure to implement emergency barring orders at facilities providing aid to persons with disabilities (bff 2016).

3.2. The legal environment

3.2.1. Eviction orders / restraining orders / emergency barring orders

Following the Protection Against Violence Act (Gewaltschutzgesetz), the 16 German federal states have reformed their police laws and empowered the police with measures for emergency intervention. In cases of imminent danger, the police may ban the perpetrator from the residence and issue an order obliging the offender to keep away from it (emergency barring order). This order lasts for a limited period of time (usually 10-14 days) and is intended to give the victim the opportunity to file a civil law request at the family court and to think over the situation. In most German federal states, the police may take the perpetrator into temporary custody to enforce his eviction from the home. The issue of acute lodging for both the victim and the aggressor remains unresolved particularly with respect to victims and offenders with functional limitations or who are responsible for providing support, causing application of the Protection against Violence Act (Gewaltschutzgesetz) to run up against limits. Additionally the police laws regulate the police cooperation with so-called intervention centres, which have been implemented in order to provide information for victims of intimate partner violence regarding their legal rights under the Protection against Violence Act.

While police laws of the *Länder* do not differ significantly from one another, many local police authorities have developed their own guidelines on how to act, which in some cases vary



significantly. Whether an emergency barring order is issued or not is decided by police officers at the site on the basis of an assessment of the danger. Emergency barring orders are generally speaking independent of the will of the victim and can also be issued in the absence of the perpetrator. He must be informed about the measure, however, and has the right to file an objection.

Only in Northrhine-Westphalia, monitoring compliance with the barring order is prescribed by law. Monitoring is thus primarily left up to the victim, who can notify the police about any violations. In the event of violations, the police can impose a fine in an amount that differs from one locality to another. If the victim applies for protection against violence under civil-law provisions, the eviction order can be extended by an additional 10 to 14 days.

3.2.2. Protection orders under the German Protection against Violence Act

With the federal Protection against Violence Act issued in 2001, victims can apply at family court for protection orders and for allocation of the home. The offender may be banned from entering the shared home or even a larger zone surrounding it. He may also be banned from communicating with the victim (also by electronic means) and ordered to stay away from her and to avoid places the victim regularly visits. The home where offender and victim used to live together may be allocated to the victim only.

In its capacity as the instance having jurisdiction, the family court can order these measures be carried out in a fast-track procedure. Petitions can be filed under the German Protection against Violence Act by victims of domestic violence, violence against partners and stalking. A petition filed under the Protection against Violence Act can only be filed by victims themselves or their attorneys. Measures instituted under the Protection against Violence Act can be issued by the family court without hearing the opponent to the petition as well. The latter may object to such orders, however. Questioning of the victim may also be waived. The length of procedures is usually 1 to 5 days; in cases in which the parties involved have to be heard, the procedure may be lengthened to one to two weeks.

As soon as an order is issued, it enters into force immediately and is to be notified to the opponent. Usually the provisional term of these protective orders is six months; they can be extended for another six months after they expire. Violations of an order that have been issued under the Protection against Violence Act are subject to criminal penalty. In addition, the family court can impose a fine. The victim may petition at any time to have the protective measure that has been ordered lifted.

Emergency barring orders and the Protection against Violence Act build upon and complement each other, but are basically independent of one another.

3.2.3. Alternative police and legal measures pursuant to emergency barring orders and civil-law protection orders

If it is foreseeable that the perpetrator will not abide by an emergency barring order, the police may take him into custody for a short period not exceeding the end of the next day. If it is assumed on the basis of the police's assessment of potential danger that the perpetrator will commit additional offenses against the victim, an additional one to 14 days in custody may also generally be ordered with a judge's consent to prevent additional offenses.

As an alternative to a protection order, a settlement may be concluded by the perpetrator and victim before the family court. Such a settlement has the nature of a contractual agreement and hence does not have the status of a court order; at present, violation of these settlement agreements is not yet subject to criminal penalty. Under a current legislative bill, criminal penalties are provided for here as well (see footnote 2).

If the respective prerequisites have been met, additional possibilities that also result in a spatial separation of victims and perpetrators include imprisonment of the perpetrator (detention awaiting trial) if there is a danger of flight or obfuscation, as well as (mandatory) internment in a psychiatric facility if there is a danger that the perpetrator poses a threat to himself or others in accordance with the German Mental Health Law (Psychisch-Krankengesetz).

Cautioning the party posing the danger, which allows the possible penalties to be underscored without making the separation between perpetrator and victim a prerequisite, is frequently an effective alternative.

3.3. Data and findings on implementation

3.3.1. Data and findings on the implementation of emergency barring orders in cases of domestic violence

In Germany, emergency barring orders are among the standard police measures applied in cases of domestic violence. However, the measure is based on the police laws of the 16 Länder that employ both different definitions of domestic violence and different usage policies of emergency barring orders. Furthermore, several local police authorities have developed their own guidelines regarding the practical use of the law. Therefore, the implementation of emergency barring orders differs not only between the Länder, but also between cities/regions within the Länder.

During the course of the study, all competent authorities of the Länder were asked to provide data regarding the number of domestic violence cases and the number of barring orders issued. An analysis of the provided data showed that in 2014, the barring rate in domestic violence cases ranged between 9% and 49% in the different Länder.

This result may indicate that usage policies are in fact very different in the Länder. However, there are a plethora of other possible explanations: different definitions of what constitutes a domestic violence case between the Länder, the use of various database systems with highly varying modes of case registration and collection, regarding both domestic violence and barring orders, and differences in local issuing practices. Without a more profound analysis of all these factors, which could not be investigated comprehensively within the framework of this study, the question of differences in the practical use of barring orders can not be clarified conclusively.

Information is available at the regional level regarding the question as to which cases of domestic violence involve emergency barring orders. Thus, visible injuries and anxiety or indications that the victim is intimidated, threats by the perpetrator and previous police calls in the family, statements by witnesses and the presence of children at the scene of the offense are relevant factors. (Kavemann et al. 2004)

Helfferrich (2005) derives the effectiveness of emergency barring orders from the constellation of the relationship between the perpetrator and victim. Thus, emergency barring orders were particularly effective when the victim desired separation. In the case of victims who were characterised by social isolation and fear of and dependence on the partner, the effectiveness of measures proves to be very limited (ibid).

3.3.2. Data and findings on the implementation of procedures under the German Protection against Violence Act

The German Statistics Office publishes the number of procedures carried out each year under the Protection against Violence Act. The procedures, separately documented under § 1 and § 2 of the Protection against Violence Act, frequently relate to a victim and a procedure in which an application is filed for the allocation of a shared home as well as restraining orders and prohibition of communication at the same time, which causes the actual number of procedures conducted to be lower and to lie between the total number of all procedures and the number of procedures conducted in accordance with § 1 of the Protection against Violence Act. The number of procedures under the Protection against Violence Act has risen over the last few years (see

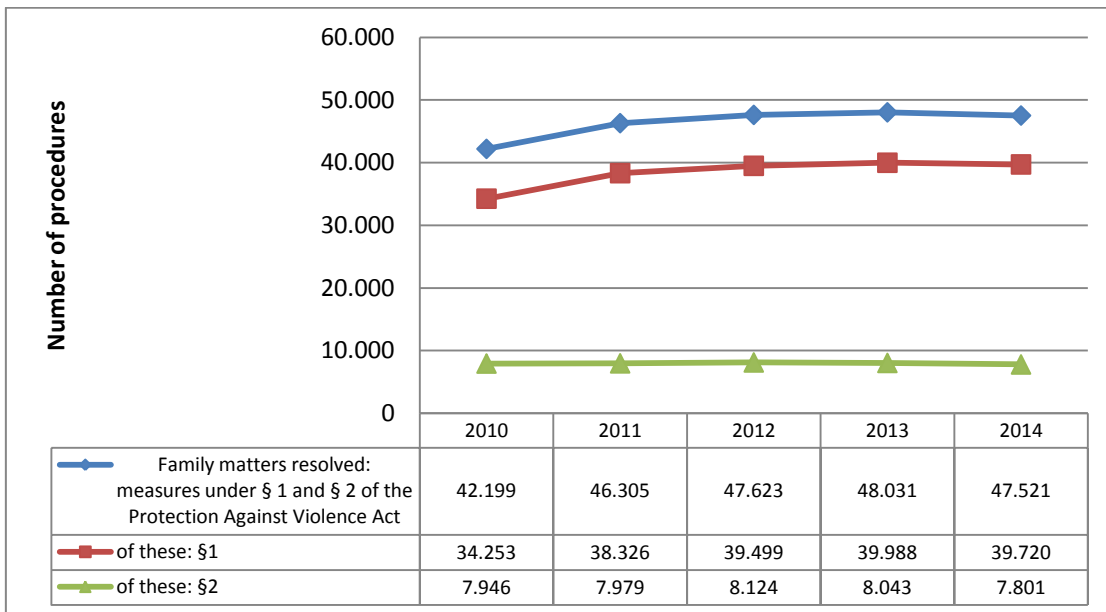


Diagram 1 1): thus, 47,521 applications were processed under § 1 and § 2 throughout Germany in 2014, of which the vast majority relate to long-term evictions, restraining orders and prohibitions of communication and only one-fifth to allocation of a shared home to one person.

No statistical information is available on the outcome of procedures. There is only an estimate for Baden-Württemberg, according to which the order applied for was issued in over-one-third of cases and a settlement was arrived at by the parties involved in another one-third of cases.

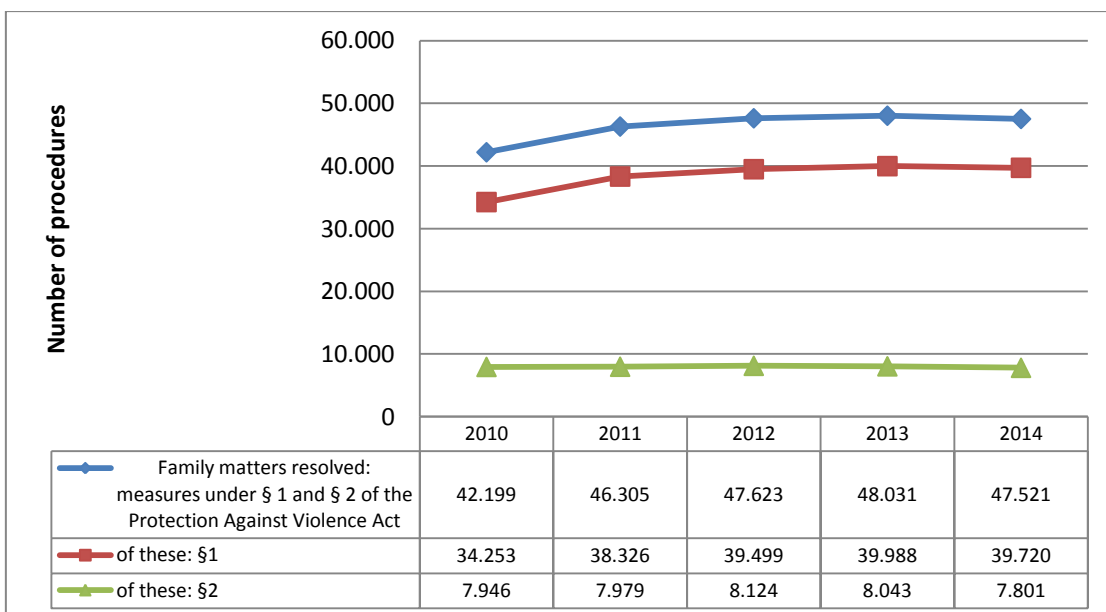


Diagram 1: Time series 2010-2014 for family court proceedings in accordance with § 1 and § 2



2 of the German Protection Against Violence Act throughout Germany (source: Federal Statistics Office)

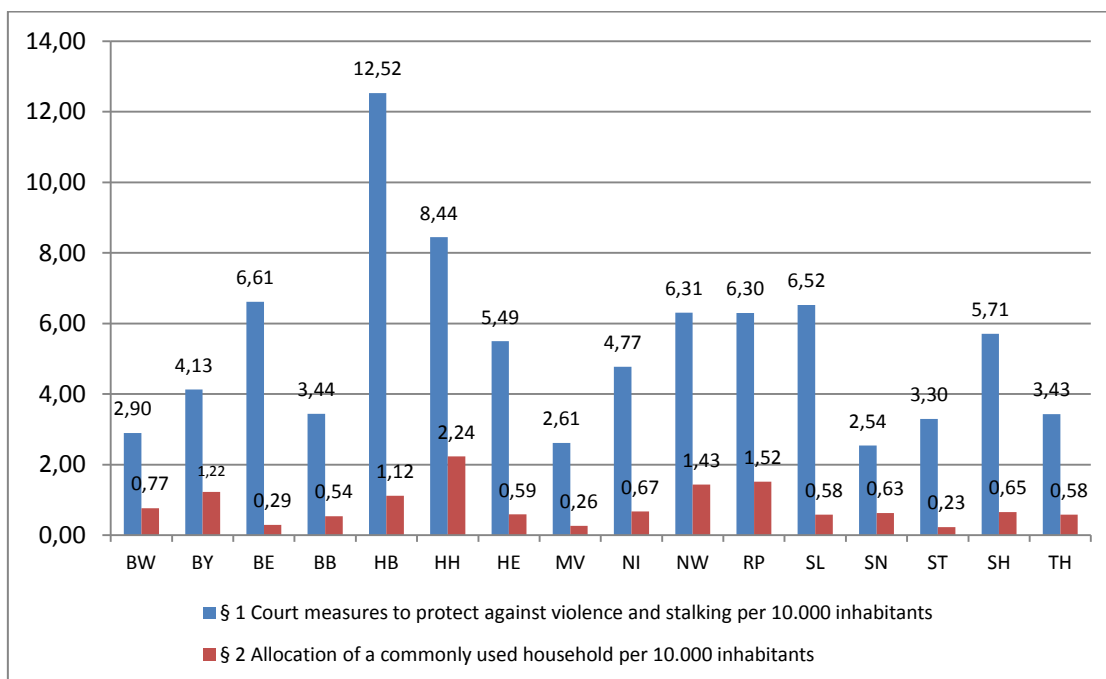


Diagram 2: Number of procedures conducted before family courts in 2014 under the German Protection against Violence Act §1 and § 2 broke down by German Länder per 10,000 inhabitants (source: Federal Statistics Office)

If one compares the number of procedures in the German *Länder* to the respective populations of the *Länder*, it is evident that significantly more civil-law applications for protection against violence were filed in the western German *Länder* than in the eastern German *Länder*

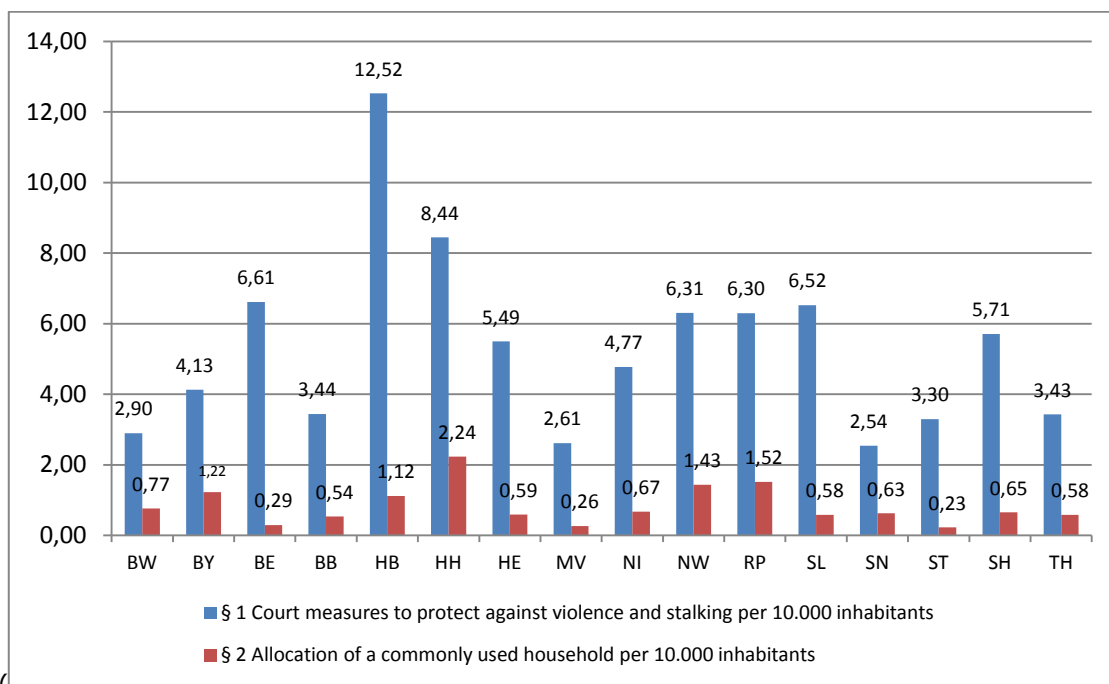


Diagram 2 2). The greatest number of applications in 2014 were accounted for by the city states of Bremen, Hamburg and Berlin; this distribution suggests that there is a tendency for more applications to be filed in urban areas and the difference in rates in the east and west can be attributed to the different population densities.

In 2014 the police recorded 9,070 violations of orders issued in accordance with the Protection against Violence Act (5,186 suspects; PKS 2014). This means that even by conservative estimates more than 10% of all persons barred under this act had violated the order one or more times. Because the total number of orders actually issued is lower and moreover a certain quantity of unreported cases must be assumed, the actual percentage of orders that are not abided by is probably significantly greater.

Ten years after the enactment of the Protection against Violence Act some inquiries of professional experiences of the law have been conducted. The German association of female legal practitioners (Deutscher Juristinnenbund 2012) has initiated a comprehensive survey among judges via the respective departments of the Länder. On the side of the social support agencies for DV victims an inquiry was carried out by the national umbrella organisation of counselling and intervention centres for DV victims (bff 2012) among its members.

61 organisations took part in the evaluation (bff 2012, 1). The results show that practitioners perceive a reevaluation of intimate partner violence in society. They describe that a sensitisation of important actors has been achieved. The Protection against Violence Act is seen as an important milestone for individual victims and for the society (BIG 2012, 13). With the Act,



victims receive more support and violent acts in the family are seen as injustice and no longer as “family arguments”.

The Protection against Violence Act opens ways out of violent relationships by giving victims legal measures, more room and time for decision-making. The Act is seen as effective for empowering the affected persons. According to the policy of “whoever commits violent acts must leave” more women and children can stay in their homes than before and fewer of them are forced to escape. Some main problems are identified by practitioners.

In the first evaluation of the Protection against Violence Act, Rupp (2005) noted that fewer than half of the 234 persons surveyed had opened a formal application procedure, and only somewhat more than half of the protective measures applied for were actually ordered. According to information provided for by the injured parties, almost two-thirds of all orders issued were violated (Rupp, 2005).

Some problems are related to the judicial procedure. For example the courts do not treat applications for protection orders with the necessary speed (BIG 2012, 16). Some courts also refuse to take decisions on applications for restraining orders if the offender fails to appear and thus cannot be heard to the accusations. Exceptions are only made in cases of severe violence (BIG 2012, 13). Additionally, it is criticized that the Protection against Violence Act requires a deliberate violent act of the offender. §1.3 would include the influence of substance abuse, but in many cases victims of offenders with mental illnesses would not be protected by the Act of Protection against Violence (BIG 2012, 15). The survey of the bff shows especially deficits in the implementation of the Act. The greatest problems arise if the offender and the victim have joint children. Here it comes to conflicts between protection needs of the victim and the visiting or contact rights of the offender. Evaluation shows that courts regard the contact right predominantly as a more important legal interest than the need of protection.

In 2009 jurisdiction over procedures involving the Protection against Violence Act was transferred in its entirety to the family courts after prior to this both family and civil courts had had jurisdiction. In a comparison of the two court branches, the Federal-Länder Working Group for Domestic Violence (2008) found that the family courts issued protective measures applied at a significantly lower rate (23%) and also dealt with such less often under interim legal protection, instead working more frequently for a settlement (29%).

Many experts from the field of victims protection criticize this tendency of family courts to promote a so called settlement (Vergleich) instead of a judicial protection order. Mutual agreement means in fact a self obligation by the offender to omit violent acts in the future. Settlements are often promoted in cases when women have children with the offender. These agreements are until now not imposed with sanctions. A nationwide survey among the



courts (via the Länder) by the German female lawyers network shows that the attitude to promote settlements and to avoid judicial orders is predominant among judges. (Deutscher Juristinnenbund 2012/ bff 2012)

In cases of violation the victim has to apply again for a protection order and to undergo the hearing. Violations of protection orders are criminal acts. In practice inquiry and criminal prosecution of those cases take too much time and again the proof for the violation depends mainly on the side of the victim as the most important witness. In fact the majority of these cases are being dismissed, which means that there is no effective tool to force the offender to follow the orders. Given the fact that violations of protection orders turned out to be an indicator for high-risk cases of DV, experts see the need that those cases are dealt with particular urgency . (Schweikert 2013) To protect persons affected by intimate partner violence, a consequent and effective prosecution of violations of the Protection against Violence Act is utterly needed.

In general experts see the necessity to include in the judicial proceedings a regular risk assessment for future incidents of intimate partner violence. Along with that further trainings for all institutions involved are seen as necessary, also in order to prevent an erosion of awareness. The analyses and evaluations related to the Protection against Violence Act show that there still is a need of change on the part of courts and lawyers. As one consequence a women's shelter Network claims to integrate training on DV victims protections rights in the (further) qualification of judges. (ZiF 2013)

4. Empirical foundations and selection of groups of victims

4.1. The selection of groups of victims for the German study – specific needs and case constellations

In the following we look at what groups/situations and constellations of cases were selected for the combined analysis as relevant.

With regard to the question of gaps in protection, the focus was first placed on adult women who as a result of their individual abilities and needs for protection depended on the (violent) perpetrator to date and for this reason police orders and prohibitions against contact and communicating with these women issued by courts could not be easily enforced. The ability of to conduct an independent life is often limited in practical terms in the case of women who have a physical challenge, cognitive or also psychological deficits. The difficulties anticipated by the police as well as women in the implementation of protective measures constitute significant barriers to their application. Several research groups on experience of violence by certain groups, various evaluations of the Protection against Violence Act ten years after it went into force (bff 2012, Clemm 2012, Göpner & Grieger 2013, Kavemann 2012) and information on pertinent interest-representation networks suggested additional constellations in which the application and implementation of police and court measure run up against difficulties. These difficulties do not depend solely on the individual traits and capacities of victims, but rather in many cases with the objective living situation which the victims are faced with and the interrelated underlying social and legal conditions as well as how victims cope with it all. Living situations also influence the application of protective measures to a high degree. Here the focus is above all on women who have common children with violent partners and where visiting arrangements and the obligation to cooperate may run counter to the individual right of the woman to protection. It has also been pointed out many times with regard to migrants that laws and regulations relating to residency in general (when women's right to stay depends on the residence rights of the violent partner), and in the case of refugees their lodging in residence homes and the requirement that they have a domicile impedes application of measures protecting against violence (Rabe 2015, Terre des femmes 2011). With regard to (anticipated) difficulties in implementation, reference is also frequently made to a great dependence on the perpetrator and the social and family environment as well as deficits in other social support networks that are needed for an effective implementation of protective measures. This does not relate solely to migrants, but it applies especially to them.

Underlying social and legal conditions and the (non-)availability of resources can not only impede the implementation of protective measures - they can also prevent access to or availability of measures. These access problems exist in particular with respect to court protection orders, which require an active contribution be made by victims. Measures presuppose that victims have access to the help system in the first place, that they are informed about their rights and possibilities and are in a position to understand information and cope with procedures in organizational and emotional terms, that they can express themselves in the national language or dispose over suitable translation help. All these factors exclude certain groups right from the outset.

On top of this, there are legal preconditions that limit the availability of court-ordered protective measures: thus protective orders issued under civil law do not apply to children of perpetrators and only apply to a limited extent to situations in which women are living in a facility (definition of domesticity) and finally are not applicable in the event that victims only have limited legal capacity.

Based on experience to date and the literature available, the German project team therefore decided to examine migrants – and here especially refugee women – as well as women who have children with the perpetrator and women with limitations and who need support. An additional group for which special living circumstances account for the police and court-ordered protection measures not being applied or not having any effect were homeless women.

Table 1 shows the relevant levels.

Table 1: Barriers to access and gaps in protection of measures protecting against violence

Relevance to use being made Resources / preconditions for use being made	Consequences / anticipated consequences of measures	Access to / availability / de facto availability
Personal capacities / resources	<ul style="list-style-type: none"> - Ability to autonomously conduct life (victim / perpetrator) - Availability of alternative support 	<ul style="list-style-type: none"> - Understanding information - Ability to express oneself - Organisational resources (e.g. filing an application/petition) - Willingness to separate / emotional dependencies
Situational life circumstances / underlying social and legal framework conditions	<ul style="list-style-type: none"> - Legal issues involving residency - Custody and visiting arrangements - Economic / social resources - Family / social networks (impeding / supportive) 	<ul style="list-style-type: none"> - Access to knowledge / information on measures - Integration in institutional structures - Family / social networks (inhibiting / supporting)
Meeting legal prerequisites for making use of specific measures (protective orders)		<ul style="list-style-type: none"> - Legal capacity - Only adults - Definition of domesticity
Institutional practice by the police and judicial authorities - implementation and enforcement of measures	<ul style="list-style-type: none"> - Local design of enforcement of measures (controls/sanctions) - Legal preconditions for intervention in the event of violations 	<ul style="list-style-type: none"> - Local implementation of the statutory mission (decisions/settlements) - High / low thresholds regarding access (above all with respect to court measures)
Institutional practice in protection against violence	<ul style="list-style-type: none"> - Availability / spectrum of services on offer - Equipment - Resources - Cooperation with the police and judiciary / procedures 	<ul style="list-style-type: none"> - Availability / spectrum of services - Equipment - Resources - Cooperation with police and judiciary / procedures

4.2. Methodological implementation and empirical foundations

4.2.1. Qualitative interview methods - interview sample

In the analysis of practice in the area of protection against violence by means of police eviction orders and protection orders under civil law, questions relating to gaps in access and difficulties in general, but in particular with regard to certain groups of persons and constellations as well as specific needs for protection stood at the forefront. Two research approaches were selected. First of all, qualitative interviews were conducted with experts. Secondly, a total of 50 individual cases of emergency barring orders in the context of the said groups of persons were documented in interviews with police and police intervention was analysed in terms of the protective impact. In the quantitative research approach, general questions were asked about the implementation of protective measures against violence and the prospects of special protection for certain groups of persons were assessed in order to then enquire about the relevance of protection orders against violence or alternatives to these in such constellations.

Especially judges and judicial officers were interviewed regarding the implementation of emergency barring orders and court-ordered protection along with police and facilities for protection against violence. Experts in the context of support and interest representation for certain target groups were interviewed with regard to their needs for protection and options for protection practiced in cases of violence in an intimate social environment. To this end, two legal scholars were interviewed along with support and lobby organisations.

A total of 88 persons from the aforementioned fields were included in the qualitative survey (interviews and focus groups). The following were surveyed:

- 12 family-law judges and 6 offices for legal applications and petitions from a total of 13 local court districts (Lower Saxony and Hesse)
- 12 staff members from 7 intervention offices / facilities for protection against violence (Lower Saxony, Hesse, Berlin, Bavaria);
- 18 staff from women's shelters, (of these 15 in a focus group)
- 3 female attorneys (Hesse, Lower Saxony, NRW)
- 2 persons from the field of child protection (one youth welfare office and one representative from a child protection facility)
- 4 specialists in the area of support / interest representation for people with disabilities / psychological illnesses (Hesse, Lower Saxony, NRW)

- 7 experts from the area of support / interest representation for refugees / migrants (of these, 3 work throughout Germany, while the others work at local facilities in Lower Saxony and Hesse)
- 2 experts from facilities for the homeless (Lower Saxony, Berlin)
- 2 holders of professorships on visiting rights/child welfare and protection against violence for persons with disabilities
- 20 police officers from local police departments in NRW, Berlin and Bavaria as well as one regional criminal investigation office (primarily caseworkers and victim protection officers)

15 persons were interviewed in a focus group, 63 (12 by telephone) and 5 double interviews were conducted. Interviews were recorded and transcribed. The interview guides were adjusted for the respective profession. The institutes involved divided up the tasks. While DHPol was in charge of documenting and analysing the cases as well as the qualitative interviews with the police regarding the implementation of emergency barring orders, the staff of Zoom e.V. carried out interviews with other occupational groups. Here the focus was on protective orders under civil law.

4.2.2. Case sample

To analyse pertinent cases, it was originally planned to access files of the police or public prosecutor. As it turned out during the course of the project that special-need constellations of victims could only be surveyed in a very rudimentary way using respective databases and systems, access to material in the form of interviews with police officers as well as additional hand-picked persons working in the field of domestic violence or protection of victims was chosen instead, with these persons being able to identify and describe cases from their own area of practice. In addition, cases involving predefined groups of victims were examined in special surveys: women with small children, women with disabilities and prostitutes that live with their pimp in an intimate relationship⁵.

⁵ The survey on women working in prostitution, Rossiwal (2016): *Spezifische Opferbedürfnisse und polizeiliche Maßnahmen in Fällen häuslicher Gewalt: eine empirische Untersuchung am Beispiel des Polizeipräsidiums München*, is available from the project website www.snap.eu.org (German version only).

Description of the sample

50 case descriptions were collected during the interviews that were identified as problematic with regard to the application of protective police measures. Here, the persons interviewed most frequently cited cases of women with (small) children, physical or psychological limitations (e.g. disability, substance addiction) and migration background (e.g. language knowledge, legal status, cultural acceptance of violence) who had experienced violence at the hands of their partner or former partner. In addition, the interview partners also described cases in which prostitutes had been attacked by their ex-companion as well as cases in which (grand)parents suffered violence at the hands of their adult (grand)children who were still living in the same household or who had moved back into the same household as a result of psychological disabilities / limitations. Table 2 shows that the majority of victims were living in a relationship / marriage with the perpetrator at the point in time of the offense. Cases in which (grand)parents were attacked by their grown (grand)children took place in the group of victims who were living together with psychologically ill children.

Table 2: Specific groups of victims and perpetrator-victim relationship in the cases analysed (N=50)

Groups of victims	Perpetrator-victim relationship				
	Relation-ship / married	Ex-relationship/ divorced	(grand) par-ents-children	other	total
Women with children	6	3	0	0	9
Women with need for support	10	0	5	2	17
<i>Of these: women with physical / psychological limitations</i>	8	0	0	2	10
<i>Of these: perpetrator's illness / need for nursing care</i>	2	0	5	0	7
Migrant women	13	3	0	0	16
<i>Of these: refugees</i>	3	0	0	0	3
Women working in prostitution	4	1	0	0	5
Other	3	0	0	0	3

The victims in the 50 cases were between 18 and 91 years of age, with a mean age of 36 years (SD=18.427). At 46%, almost half were migrants or had a migration background (N=23, n/a: 22% / N=11). Somewhat more than half of the victims (56%) had children who were minors (N=28; n/a: 12%, N=6). In the case descriptions provided by the interviewees, it became evident that among some groups the need for support was manifested at several levels: thus victims with a migration background in most cases had small children, while

prostitutes were frequently foreigners without any knowledge of the language and were moreover psychologically unstable and/or had substance addictions, and (grand)parents whose grown children or grandchildren were living in the same household were frequently older and themselves had health impairments.

Table 3: Specific groups of victims and application of protective measures in the case analysis (N=50⁶)

Groups of victims	Application of protective measures			
	Emergency barring orders		Protection orders	
	yes	no	yes	no
Women with children	2	6	2	3
Women with need for support	9	8	2	7
<i>Of these: women with physical / psychological limitations</i>	5	5	1	6
<i>Of these: perpetrator's illness / need for nursing care</i>	4	3	1	1
Migrant women	6	9	8	5
<i>Of these: refugees</i>	2	1	1	1
Women working in prostitution	1	4	2	1
Other	1	2	1	2
Total	19	29	15	18

Table 3 shows that police barring orders and orders issued under the Protection against Violence Act accounted for approximately one-third each of the cases. By the same token, an especially large number of cases were described for the group of victims "women with children" and "prostitutes" in which no eviction orders were issued. Cases in which no orders were applied for or issued under the Protection against Violence Act were to be found in particular among victims whose primary need for protection was connected with their own physical or psychological limitations.

⁶ Data not available: emergency barring orders N=2 (4%); protection order N=17 (34%)

5. Findings from the analysis of cases and interviews with experts

5.1. Implementation of measures offering protection against violence in general

Findings pursuant to implementation of measures for protection against violence are examined in general terms in the following.

5.1.1. Protection orders

Estimates of use made of protection orders and the spectrum of cases

Very significant differences between individual local court districts are evident - both with regard to the number of protection proceedings (usually two applications per month, a maximum of three per week, at least one case per month) as well as in the estimation of the spectrum of cases. Judges from some local court districts state that they have the impression that the measure is opted for in a large proportion of cases or even a majority of cases when there are disputes between neighbours or, however, are exploited in cases of highly conflictual relationships of women, e.g. in order to obtain advantages in disputes over custody or advantages in the allocation of dwellings. By way of comparison, other judges and judicial officers state that these primarily involve cases of violence between partners. It is conceivable that a distinction can be made in the spectrum of cases before local court districts according to the degree of urbanisation. Similarly, the salience of cases in which women file an application for protection possibly for other reasons might be assessed differently by facilities offering protection against violence and judges because women who exploit the protection-against-violence procedure might not contact aid facilities. Moreover, differences in the description of cases seem to be highly dependent on subjective interpretation, which partly differs between judges and judicial officers, who are in charge of filing/ documenting an application.

Applications for allocations of dwelling according to the statements made by all the courts constitute an exception and account for a maximum of 20% of the cases.

Access – motivation

Courts and facilities for protection against violence alike report that women who are victims of violence are generally alerted to the possibility of an "extension" by the police in the context of an emergency barring order and in part, based on this, seek more detailed information and advice from an intervention office or also women's shelters and sometimes from attorneys.

Facilities for protection against violence estimate that applicants account for 10 to 15% of their clients. Because a permanent separation of violent partners is stated to be a key precondition for an application to be filed, but in many cases women do not desire this, many victims do not consider the possibility of filing an application. There are different assessments regarding whether this measure is high-threshold or whether its accessibility is low-threshold. While facilities offering protection against violence, but also members of the judiciary, draw attention to barriers, other courts criticise that the measure has recently become too well-known and is frequently used by the wrong persons or in an inappropriate manner (disputes between neighbours, "phony" i.e. stalking cases that actually do not involve any criminal offenses, exploitation of the measure in conflictual relationships). One reason to refrain from filing an application or to be discouraged from filing an application is, in the view of the facilities for protection against violence interviewed and attorneys, when it is foreseeable that it will be difficult to prove the occurrence of violence (no attestation, no police call, no witnesses), these incidents lie too far in the past (lack of urgency) or if such involve stalking and psychological violence without any physical attacks. In many cases, facilities offering support / attorneys recommend that evidence first be collected (keep a stalking diary) before an application is filed. The entire field of psychological violence, humiliation, control, isolation or also stalking are not specified in any detail whatsoever in the Protection against Violence Act or it is difficult to provide evidence of things like physical violence and often sexualised violence that do not leave behind any traces. Whether an application is assessed as not having any prospects of success or not depends on widely varying local legal practice.

In addition, the interviewees report that women decide not to file an application because they are convinced that the opponent will not abide by any order, anyway, that an application may contribute to escalation and that there is a risk that the perpetrator will learn about where she is staying.

Filing of an application – the role of the office where an application is filed

The mode or procedure by offices where applications are filed has a significant influence on the actual filing of an application as well as actual practice in the handing down of decisions by judges. Most women file the application at the respective office themselves, while approximately 5% to a maximum of 25% of women have legal counsel file the application. This



percentage is said to rise in the case of an oral hearing. Courts consider legal counsel to be unnecessary at least when the application is filed as a result of the support provided by the offices where applications are filed. These inform women about possibilities for applying for financial aid to defray the costs of procedures as well as possible cost risks in the event of the application being rejected or an oral hearing. Checklists or forms are used almost everywhere. Evidence such as attestations, documentations of stalking, but also information obtained through police measures and the charges filed are requested.

The description of the facts of the case by the applicants is described as a trying task which is difficult especially for persons with low levels of education. Reports are made in some cases using an input mask, while other case reports are detailed and use the words of the applicant as much as possible. Questions about the facts of the case go into varying levels of detail and only some of the persons filing applications seek additional information from the police on their own volition. Questions are asked in varying degrees about the previous history and are assigned differing weights by judges in their decisions. The previous history is not included in the review of urgency as a result of the danger of repetition by all courts.

Even though offices where applications are filed are not allowed to offer legal counsel in the narrower sense of the word, they often point out what preconditions have to be met in order for an application to be successful, or they state that that which has been reported will probably (not) be sufficient. In some cases, they inform applicants about the outcome of other cases so that they can obtain a feeling for decision-making practice by the courts and to ensure that most applications are not filed in vain. In some cases, they also view their task as being to offer emotional support and provide help.

Practice by courts in proceedings and decisions

Judges have a very wide discretionary latitude in the execution of proceedings involving protection against violence. There are considerable differences between courts, and in some case there are differences between judges at the same court. The manner of processing applications for protection against violence differ according to what percentage of cases involve a decision without any hearing, an oral hearing date is scheduled or applications are rejected at the outset or are withdrawn after the applicants have been informed by the court that their application has little prospects of success.

Some of the judges surveyed issue an immediate decision in line with the application in injunctive procedures in the case of applications involving relationships between two persons in most cases. Oral hearings take place when the opponent of the application files an objection. In such hearings, either the original decision is confirmed or a settlement is concluded, above all as a result of difficulties securing evidence and to avoid a complicated review of the facts of the case with witnesses having to be heard. A hearing without any prior decision only

takes place if the description of the facts of the case in the application exhibits major uncertainties and lack of clarity and contradictions or in the case of disputes between neighbours. Applications are only rejected if the arguments forwarded cannot be specified in detail or the preconditions for urgent action are no longer met because the offense took place too long ago. According to the persons surveyed, the applicants usually withdraw their application after being informed about the prospects. Judges who issue decisions without any hearing in the overwhelming number of cases display a potential to view the cases tried before them in the context of a relationship involving violence and control marked by inequality to the disadvantage of the applicant. They base their action on the basic intention of the Protection against Violence Act of providing protection quickly. Usually they initially deem an affidavit plausibly describing the situation to suffice. They emphasise that, in contrast to the field of criminal law, they do not require any comprehensive taking of evidence, and are inclined to leave it at a summary review. Police reports and attestations are examined to strengthen the case, but are not a required condition for a decision without a hearing.

Another group of judges only issues immediate decisions in very few cases of exception or even never at all. Instead, an oral hearing is generally scheduled which always aims at a settlement or an agreement. A separate hearing is in general not initiated. Instead, the observation of the confrontation of the applicant with the opponent is meant to serve the purpose of helping to clear up the facts of the case. Immediate decisions here are only issued in cases of serious bodily harm that evidence shows to have been unilaterally caused followed by police calls.

Individual judges appear to even reject a majority of applications right away or preliminary information provided by the office where applications are filed regarding the prerequisites for a successful application lead to a majority of the potential applicants not filing an application in the first place or withdrawing them or not continuing to pursue such.

Some judges state that the grounds for rejecting a majority of injunctive decisions is that most of the cases brought before them are marked by confused conflict situations, mutual animosities and difficulties in providing evidence. This prevents a decision in favour of one party in the form of an injunctive decision. Scattered judges believe that a majority of applicants are trying to exploit civil-law protection against violence in order to obtain advantages with regard to custody and visiting rights or as a ploy in separation conflicts. These judges tend to apply criminal law criteria to the production of evidence.

But also the question as to what objectives are being pursued with a certain approach has a significant impact on judge's decisions: thus some of the persons surveyed considered the voluntary obligation assumed by the perpetrator in a settlement to be more effective than a

decision imposed from the outside, all the more so because a settlement cannot be subjected to the sanction of a fine if it is not adhered to.⁷ On top of this, some judges consider it to be their task in the area of family law to act as mediators in conflicts in relationships and to try to bring about a change in behaviour.

In contrast, other judges and in many cases experts from the field of protection against violence as well note that a judge's decision provides an important signal, and this not only because of the criminal penalties involved. It is frequently criticised that women affected by violence often consider themselves to be forced into a settlement in de facto terms. Many of them are said to hesitate for a long time before contacting the police and judicial authorities, are intimidated very quickly and in general are not in a position to refuse to comply with the "proposal" of the court, especially given that otherwise they will be informed that their application has poor prospects of succeeding and they thus generally also face the greater costs of an application that is rejected. It is furthermore stated that in settlements concessions and assurances are provided by the women solely due to her desire to have peace and quiet and avoid confrontation.

Effectiveness

One basic difficulty in assessing the protection achieved by measures for protecting against violence is that the persons surveyed, particular from the judicial system, do not have any information on the degree to which violations are committed against the protection order or a settlement as well. Some of the courts surveyed agree that there is a 20% share of all decisions involving protection against violence in which notice of a violation is provided or an application is filed for a fine to be imposed. Other courts have only had to deal with violations in isolated cases thus far. From the perspective of facilities in charge of protection against violence, there are frequently violations which are never reported by applicants as a result of barriers in petitioning for coercive measures.

Generally speaking, the measure of civil-law protection against violence is assessed in a positive manner by many persons. In a large number of relationship constellations, protective effects are assumed to be generated when perpetrators do not want to "attract any social attention" and basically take state interventions like judge's decisions and criminal sanctions seriously.

All the experts question the protective effect of protection orders and settlements in high-risk cases, in cases of extreme violence as well as severe cases of stalking. For perpetrators

⁷ This will change in near future due to a law reform in the context of strengthening criminal prosecution in cases of stalking which was decided upon in July 2016.

who - as a result of other offenses, for instance - "do not have anything to lose, anyway" - a decision does not have a dissuading effect. In such cases the persons surveyed view anonymous lodging in a women's shelter to be the only possibility for protection. The protective effect also dissipates when women themselves undermine the order by "letting the perpetrator back in".

Sanctions

Lack of sanctions in cases of violations is considered by many experts to be a key factor in the limited impact of civil-law measures in protecting against violence (see bff 2012, Clemm 2012). While it is first of all possible for a decision to involve the imposition of a fine or even detention, sanctions can only be applied in the case of violations of settlement agreements if judges stipulate fines if such settlement agreements are violated, which is not always the case. The possibility of criminal-law prosecution is also to apply to settlement agreements in the future as well (see footnote 7). In all cases, the judiciary depends on being informed about a violation. This responsibility on the part of the applicant for providing notification of the violation and filing an application for coercive measures and possibly parallel to this the filing of criminal charges with the police is described as a major barrier because the violation has to be evidenced in an oral hearing (where the victim is confronted with the perpetrator) without this being possible in the injunctive procedure. When - and this happens at times - judges obtain knowledge of violations through the youth welfare office or the police (which for their part are always informed about decisions), most of them usually do not react, as an application is considered to be a mandatory precondition for the initiation of a fine procedure.

Only scattered judges in addition pass on information they receive relating to violations of decisions to the public prosecutor of their local court. Most of them also view it as the task of the victims to file charges with the police.

In cases in which sanction procedures are initiated - and this is a criticism by agencies for protection against violence and attorneys - fines are set at a level that is too low and the sanctions that are threatened are not sufficiently carried through. Courts that impose fines mention amounts between EUR 500 and 1,000. Detention is virtually never imposed.

Aid in defraying procedural costs and assignment of attorneys

In connection with protection-against-violence matters, there is in principle a cost risk to the parties filing charges: court costs might accrue as well as costs of legal counsel, both for one's own as well as for counsel of the opposing side if the court decides to drop the charges. Court costs and attorneys' expenses are especially relevant in connection with a hearing and a settlement in which attorneys are involved. In the event of a decision being success-

fully obtained from a court, the opponents of applications have to bear the costs. If they are not able to do so, however, so-called "liability on the part of the applicant" applies. It is up to the court, however, to apportion the court costs or not. In the event of an oral hearing and a settlement, so-called settlement costs accrue, which generally are split up between the parties, but which also may be imposed unequally on one of the parties.

A financial need must be demonstrated for an application to be filed for court aid to defray procedural costs. Moreover, positive prospects for the success of an application are a precondition for such to be granted. An application for aid in defraying procedural costs is decided by the court. Here there are major differences to be found in the field of practice. Most of the persons interviewed reported that aid in defraying court costs usually does not pose a problem and is granted in almost all cases. Opinions differ regarding the extent to which possible cost risks dissuade persons from filing an application. Thus, a cost risk is apparently a potential dissuading factor wherever a decision is not issued and instead a hearing takes place with the attorneys being present and at the same time the aid in defraying procedural costs are dealt with in a more restrictive manner.

5.1.2. Emergency barring order

Application of the measure

Temporary emergency barring orders against the perpetrator have the status of a measure to prevent violence. In the framework of the interview, it was primarily described by the police officers as an effective measure with which to provide victims space in which to reflect on the pending decisions and initiate additional steps.

Violations and sanctions

In sum total, all of the police officers surveyed stated that emergency barring orders are only effective if the perpetrator and victim both willingly adhere to such, and perpetrators can't be effectively prevented from contacting the victim. The main problems of emergency barring orders described by almost all of the persons surveyed is that violations by the perpetrator cannot be prevented. Even though many police forces monitor the compliance with barring orders, a mandatory check is only prescribed in the police law of North Rhine-Westphalia. Moreover, victims are often not in agreement with the measure or they allow the perpetrator to come into their dwelling once again while the barring order is still in effect. Although an emergency barring order may be issued against the will of the victim, as a result of the great need to conduct checks and controls in private dwellings, most of the persons surveyed felt that it was not possible to enforce these.

The compliance with the measure was generally held to be especially good when perpetrators are well integrated in a social environment in which state-imposed orders are generally followed. In particular in the case of individuals who are already known to the police for other reasons, one can frequently expect that the order will not be abided by according to statements by virtually all of the persons surveyed - not least because this group of persons frequently experiences procedures being discontinued and orders not being enforced.

Fines are imposed in all the German *Länder* in the event of violations against the emergency barring order. Persons surveyed in different areas of investigation in North Rhine-Westphalia assess the ability to enforce this sanction very differently, however: in one police precinct the fine imposed by the police is described as "not capable of holding up in court" and is therefore not enforced, while in another case it is collected without any problem.

Generally speaking, it is possible to take perpetrators into custody or order detention in the event of several violations. The police officers surveyed report, however, that the threshold for such measures is very high and they also complained about the lack of understanding on the part of the presiding court.

5.2. Findings regarding protection of victims for specific groups and constellations

In the following chapters it is discussed how measures for protection against violence are implemented in various specific constellations or groups of victims, how they impact, if applicable why access to measures and protection and support is generally speaking difficult and what alternatives there are to protect victims.

5.2.1. Women with children

Findings regarding implementation of eviction orders with respect to women with children

Generally speaking, evictions orders in the case of domestic violence affecting women with children can be imposed without specific barriers. As a result of the relative short period of 10 to 14 days that these apply, no cases are known from the field of police practice in which the measures stand in conflict with parental visitation rights. The police officers surveyed reported, however, that victims often decide against criminal prosecution or separation for the sake of the common children.

The enforcement of a separating measure within a family with children in which there is a certain division of labour as a rule can, according to reports by police officers, lead to difficul-

ties if the victim is left to carry out the entire care work (e.g. watching over the children) alone, and this stands in conflict with gainful economic activity. Furthermore, the perpetrator's threat of "having the children taken away" is stated as an occasional barrier to contacting the police again or even in the first place - especially in the case of groups with low levels of education.

Findings on implementation of protection orders in the case of women with children

The most serious problems and biggest gaps in the implementation of the Protection against Violence Act are held to be in applying it to women who have common children with the perpetrator (e.g. Clemm 2012, Kiel 2012, Göpner & Grieger 2013, Nothhafft & Stotz 2012, bff 2012, Hille 2012, Schweikert 2012, p. 24).

Orders issued under the Protection against Violence Act do not apply to children and adolescents vis-à-vis their parents (and other persons who have custody of the children). The Protection against Violence Act can apply, however, in cases in which children wilfully and unlawfully injure their parents. At family courts, it is usually the same judge who presides over issues relating to protection against violence, visitation rights and custody for a family in separate proceedings. Generally speaking, an application is first filed for protection against violence and then considered, with issues relating to visitation rights and custody then being dealt with at a later point in time. Issues relating to visitation rights and custody often have a direct effect, however, on procedures for protection against violence, influencing the course and results of such proceedings because family judges see a need to clear up more far-reaching family-law issues.

Cases in which an application being filed for a civil-law protection order lead to a combination of protection and visitation-rights proceedings, in part without the involvement of the youth welfare office and case guardians, are described as problematic. This may catch the woman filing the application unprepared and in an emotionally loaded state. Women overwhelmed by this then in many cases agree to a settlement which they are critical of with regard to protection against violence and arrangements concerning visitation rights. Only scattered experts at courts surveyed assume that women with children have especially great needs for protection. Some of the persons surveyed stated that applications for protection orders for women with children are not handled any differently than those for women without children, while on the other hand some persons surveyed observed that hearings and settlements are more frequent in the case of women with children. The basic orientation towards a settlement in proceedings involving children has a spill-over effect on protection proceedings and leads to the interest in protection no longer being assessed in an isolated manner. Vice versa, the interest in protection does not have the same degree of impact on custody proceedings. In some cases, persons surveyed reported that in the case of settlements and decisions

regarding prohibitions of contact and communication, contact for the purpose of visitation are excepted as contacts for "the pursuit of legitimate interests". It is viewed as a problem that as a result it is more difficult to produce evidence of a violation of the protection order, as it must be proven that initiation of contact by the opponent to the application was not due to a child (see also Kiel 2012, p. 33, Klemm 2012, p. 22). In some cases, lawyers exclude contacts due to visitation rights from applications for protection orders or expressly recommend not to apply for an order, stating the reason that an order does not offer much protection when visits occur, anyway.

The hesitance of some judges to issue protection orders especially for women with children may also be related to a widespread opinion or experience among judges that some women who are not victims of violence also attempt to exploit the Protection against Violence Act to strip the man of custody rights, to prevent visitation rights and to apportion the dwelling to them. When judges are known to be biased in this regard, some attorneys advise their clients against filing any applications for protection in the first place.

Access to protection, help and support in general

In the case of women with children, there are in general higher barriers to access to protection and security than for women without children, as they are often more dissuaded from separation for economic reasons and as a result of the desire to keep the family intact. When the women involved then separate and subsequently seek protection, it is not primarily access to a protection order that poses a problem, but rather the arrangements for visitation, which forces them to have contact with the father and may lead to the protection order or settlement being undermined. Counselling offices draw attention to the tremendous strain and considerable risks involved in a forced confrontation with the perpetrator through contacts in connection with visitation rights. On the other hand, the judges surveyed do not see any major problem in most cases in this regard and play down the threats and risks that come about through contacts in connection with visits, which - this is the view of the counselling offices and attorneys - also relate to the fact that judges do not learn much about what actually happens in visits.

For judges, the good of the child and the right to visits are the most important criteria upon which their decisions are based in proceedings involving family matters. With regard to the relationship between children and parents living separated from them, family courts generally assume that if there is nothing to suggest that a danger is posed to the good of children by the opponent to the application then contact usually has a positive impact on the good of the child (§1626, section 3, subsection 1 of the German Civil Code). In the view of the family judges surveyed, violence in relationships does not automatically pose a hazard to the well-being of children, but they do see that their witnessing of domestic violence also has psychological effects on children and deduce from this the need to protect children. They apply dif-

ferent standards, however, with regard to the degree and duration of the violence. The premise of many family courts that a man who abuses his partner may nevertheless be a good father is not shared by expert counsellors. As a result of the basic attitude of judges, cases of domestic violence do not generally lead to restrictions on visitation rights, either.

Some of the judges surveyed reported that they examine the woman's need for protection and take this into account as well in proceedings involving visitation rights. This aspect is assigned little importance in the overall scheme of things, however. Thus, expert counsellors and attorneys surveyed view it as problematic that in some cases judges are not even aware of a preceding protection procedure. The interest of many women in a suitable point in time and proper framework conditions for contact in visits is frequently not met. Family judges, case guardians and youth welfare offices do not sufficiently follow up on evidence suggesting domestic violence (e.g. in police files) before and during proceedings and the occurrence of domestic violations and negative consequences for women (and children) are not reliably recognised and taken into account. The prevailing approach at family courts of not addressing family conflicts in the past or analysing such, but rather looking towards the future in the desire to find a solution leads to domestic violence not being attached sufficient importance. Misgivings on the part of judges that women may be attempting to exploit protection rights, a lack of sensitivity and insufficient expert knowledge about domestic violence, a large workload and, at the same time, a lack of expert support and supervision result in some family judges being extremely reluctant to view domestic violence as a factor bearing relevance in proceedings involving visitation rights.

While family judges consider themselves sufficiently qualified for their task, most of the other parties surveyed do not share this view. They consider it to be highly problematical that persons having legal authority work at family courts without being prepared or undergoing any specialised training for such. Nor can one assume that other actors involved in other proceedings involving children's rights who have a decisive impact on the outcome of proceedings (youth welfare offices, case guardians and experts) take domestic violence into account or have any expert knowledge of the phenomenon. It is therefore frequently the case that, aside from the legal counsel for the woman in the proceedings, none of the other experts involved view the need of the woman for protection as a relevant factor. Women themselves are less self-confident and frequently feel like they are under pressure in negotiations over visitation rights, leading them to consent to arrangements which are also purportedly based on mutual agreement that run counter to a protective order that they consider to be problematic or do not understand. Counsellors accordingly strongly recommend that women have legal counsel to support them in proceedings involving visitation rights.

The possibility to adequately take women's interest in protection into account by means of spatial separation such as protective precautions in visitation arrangements are made use of

in widely differing scopes and far from sufficiently in the view of attorneys and counsellors. **Separate hearings before family courts** are possible, but according to all of the persons surveyed almost never take place *inter alia* due to the fact that some judges want to clear up the facts of the case through confrontation or the judge is not aware before the hearing that the constellation involves violence. Also, there is an interest in not being exposed to the accusation of lack of transparency and fairness. Finally, a separate hearing also means double the work. The **(time-limited) suspension or exclusion of visitation** - as a secondary effect - prevents the perpetrator and victim from meeting and frequently corresponds, at least temporarily, to the interests of the woman. Visitation rights are "de facto never" excluded permanently as a result of the stringent statutory requirements for such, and few judges suspend visitation rights temporarily in cases of domestic violence on a regular basis. Judges refrain from this, citing parents' rights and the threat of estrangement between the father and child. Visitation rights are abrogated or suspended when children are older and do not have any interest in contact with their father as well as in the case of a serious threat to the well-being of the child, i.e. when a concrete danger or serious strain on the child (e.g. in the case of abuse) can be expected and this is supported by respective expertises. **Supervised visits**, i.e. visits in the presence of a neutral pedagogical or psychological expert, usually take place separately and can provide a protected space for the encounter, preventing the parties from meeting and manipulating or questioning the children (e.g. to find out where the mother is staying) by means of appropriate handover solutions - if suitable language mediators are present on site and financing of such is provided for. Special counsellors and attorneys therefore consider supervised visits in many cases to be compatible with a protective order and have in some cases had good experience with this. They note, however, first of all the strain on the child as a result of the visit, and secondly that there is a risk of meeting, stalking and observation by the opponent to the application or third parties. Judges apply the measure of supervised visits on widely differing scales in cases involving domestic violence, some only by way of exception, others on a regular basis. In this context, it also plays a role whether there is a service at the locality for supervised visits (including on weekends). The costs of such are also a relevant factor in such decisions in many cases. Frequently the low number of supervised contacts in connection with visits and the critical transition to non-supervised visits are cited as a problem. Some judges report that they arrange **visit guardians** in cases of domestic violence. Visit guardians (frequently attorneys) in many cases assume the task of devising specific arrangements and supervising contact in visits, supporting the organisation and in some cases the execution of the visit. This measure is high threshold, however, because the restriction of custody is a precondition for it. Frequently, **modalities** of visits are set out in the visitation arrangement and take protection of women into account (e.g. handover of the children through third parties). Generally speaking, it is not always possible to arrange visitation contacts with the children in the absence of the mother, especially when small children are involved.

Additional/ alternative options for protection orders

For women with children - especially with several children - there are fewer alternative possibilities for protection in the case of domestic violence than for women without children as a result of the need for space. They are more frequently dependent on obtaining lodging at women's shelters. In particular, the persons surveyed did not consider there to be scarcely any alternatives to a women's shelter in the case of great danger. This is not always necessary, however, as families are often integrated into a wide-ranging aid system. Good support through specialised counsellors and family aid, according to persons surveyed, may mean that women are already so well supported and assisted following emergency barring orders and during the following separation that no application for protection is needed.

5.2.2. Women with impairments and disabilities

Findings regarding implementation of protection measures in the case of women with impairments and disabilities

Although many women with impairments and disabilities⁸ have experienced violence in the intimate living environment and there are a large number of unreported cases, it is difficult to provide protection for this group. Measures for protection against violence are almost never used, according to the persons surveyed: protection orders are only issued for women with a need for support outside of facilities in cases of exception, and not at all among inhabitants of facilities.

Emergency barring orders were scarcely reported - with one exception: one special group of women with a need for support in the case analysis were several victims who had taken in adult children/grandchildren because they had psychological illnesses or could no longer live alone for other reasons. In the cases described, there were some reports of ongoing psychological "tyranny" against the victims and their partners and repeated violence. The police issued emergency barring orders in all cases. Victims rejected support by the police in a majority of cases. Even though they assessed the emergency protection provided by the barring order as positive, all of the victims took their children back in following expiry of the emergency barring order or following in-patient treatment at psychiatric facilities.

⁸ Women with impairments in the frame of this study include women with physical and mental disabilities (including substance issues) cognitive impairment, disabilities in visual, auditive and comunication skills (see Schröttle et al. 2012) as well as women with chronic diseases and care dependent women of all ages.

Even when the police learned of domestic violence being perpetrated on a victim with impairments, in the view of the police officers surveyed an eviction order can frequently not be issued because the victim does not have any other support available. In the case analysis, when there was a significant need for nursing care on the part of the victim, perpetrators were only issued barring orders when the victim underwent in-patient treatment as a result of the injuries sustained during the attack. In other cases involving victims requiring nursing care, no emergency barring orders were issued. On the whole, it appeared that cooperation with criminal prosecution authorities depended greatly on the decision for or against long-term in-patient care. The fact that victims requiring nursing care nevertheless contact the police in a dire emergency is not interpreted as a desire for criminal prosecution by some of the police officers surveyed, but rather the need to cope with a serious danger.

Access to protection, aid and support

The following barriers to access to protection were reported in the survey:

- Counselling offices and law firms are in many cases not handicapped-accessible
- Women with impairments or requiring nursing care can scarcely be admitted to women's shelters because these do not have adequate premises or human resources in many cases (see Helfferich, Kavemann & Rixen 2012, S. 45ff.).
- A majority of women with psychological illnesses hesitate to contact institutions like the judiciary authorities or the police and as a result of their illness are unable to file an application or inform other parties. For these women, it is difficult to escape from abusive relationships and to carry through with a separation.
- Some psychologically ill women once again bully and unjustly accuse other persons, including members of the police and judiciary, of stalking and harassment, which causes credibility problems to arise.
- One main problem is that women with impairments who are victims of violence often have difficulties communicating issues, or are entirely unable to do so. For these women as well, the problem of credibility arises with the police and offices where applications are filed.
- For people with legal guardians/carers, it is highly problematical when guardians/carers are at the same time perpetrators. Otherwise they can function as gatekeepers, recognising violence and offering support.
- The closed nature of in-patient facilities also has an ambivalent effect. While these on the one hand may constitute a barrier to individual access to protection for persons with impairments, on the other hand they offer more possibilities to exercise controls and intervene than in private dwellings.

- Examples are reported in which older and / or psychologically ill women requiring nursing care were subjected to violence at the hands of their child or partner, but for whom separation was scarcely considered an alternative. In addition to dependence on the provision of care, gratitude for nursing care offered over periods of many years in some cases, excusing the violence as resulting from being overwhelmed by the task, the frequent threat of loss of the only social contact and the undesired alternative of a move into a nursing-care facility play a role.
- 'Normal' social relationships are highly important to people with impairments. The psychological or emotional dependence which results from this often makes intervention more difficult in cases involving violence.
- Family members are frequently perpetrators of violence against people with impairments.
- Victims endure violent settings especially when they fear that they will not be able to manage everyday life on their own. Many facilities offering protection against violence or protection of victims find that women victimised by violence who have a need for support often do not have many possibilities to establish alternatives in lieu of other social ties and for financial reasons.

Alternative possibilities for protection

Some persons from the legal area surveyed drew attention to the possibilities to have charges filed against perpetrators and to make provisions to a change of the legal guardian. Spatial separations are difficult to implement in some cases when victims and perpetrators are inhabitants of the same facility because the perpetrator also needs protection and for him moving out would mean the loss of all social contacts. According to the heads of residential facilities interviewed, perpetrators are only rarely given notice that they must move out. If this is necessary, however, alternative dwelling possibilities can be found in residential facilities. An alternative for victims with physical disabilities, in the view of the police, is a nursing home as a rule. Other options were not examined in the case analysis.

5.2.3. Homeless women

Only staff working at a counselling office and an emergency shelter for homeless women answered questions relating to protection in the case of homeless women in more detail.

Findings on the implementation of measures for protection against violence

On the whole, emergency barring orders and civil-law protective orders are basically not used in the case of homeless persons. The staff members at a counselling office for the homeless are sceptical as to whether any measures based on civil or criminal law can have

any impact at all here. Homeless women who are temporarily living in dwellings of other persons do not have the option of an eviction order because this would require they have the status of living in a common household on a semi-permanent footing. Emergency barring orders are conceivable both to move perpetrators out of dwellings, but also from public places. The staff of a counselling office reported about the only case of an emergency barring order she was aware of involving an apartment, whereby the women had to subsequently leave it because she was not the tenant.

The use of a prohibition of contact and communication is generally speaking also conceivable in the case of homeless people. One judge describes a dispute between two homeless persons over which one was to be present on a public place, which was then resolved by a protection order. In principle, this practice can also be adopted, for instance in a form in which prohibitions of communication are imposed not only for dwelling places, but also places frequented by homeless women victimised by violence and if need be checks exercised on this.

Access to protection, help and support in general

The situation of homeless people has in the past and the present been marked in general by a very salient problem with violence. Homeless men and women have often had traumatic experiences with violence and abuse in their younger years. The specific situation of homeless women impedes access to protection and support:

- One high barrier is that women who "drop out" are highly dependent on accompaniment (usually male) in order to negotiate life on the streets with its manifold risks. They can therefore only escape violent persons accompanying them with difficulty.
- Dependencies also exist even when homeless women live with men temporarily, are only tolerated and do not have any lease agreement of their own. In some cases, homeless women having this constellation are exploited in a targeted manner.
- Finally, high percentages of homeless women are alcoholics and/or have psychological illnesses.
- The staff in a housing facility for this group observes that homeless women rarely look for other support and devote considerable attention to preserving their facade. Added to this is often a certain amount of ignorance of the legal situation.
- The persons surveyed assess the application filed for homeless women to be high-threshold. For homeless women, it is said to be difficult to imagine that they would seek relief by going into a court building.

- Women's shelters are more or less inaccessible to them *inter alia* as a result of psychological illnesses (among other things, illnesses in connection with addictions).
- The police, and offers of help and counselling offices in some cases as well, often trigger anxieties and distrust among homeless people, who have often had bad experiences with these.

Alternative possibilities for protection

For homeless women there are scarcely any alternative possibilities for protection. Where there are emergency shelters for homeless women, there is generally a ban on the presence of men, which is also enforced with the help of the police.

5.2.4. Migrant / refugee women

Findings regarding the implementation of emergency barring orders

In the case of female migrants who have been living in Germany for some time and are proficient in German, no difficulties specific to migration backgrounds were described within the framework of the interviews with police officers regarding the practical application of emergency barring orders.

Contrary to experiences voiced in other German *Länder*, spatial separation between perpetrators and victims of violence in their dwelling space in refugees' lodgings (NRW) was not reported by the police as posing any problem at all. In all of the cases analysed, victims of violence turned to the staff working at the lodging, who then contacted the police. The victims were usually interviewed using staff who could speak their language, other residents or professional interpreters. In all cases, the perpetrators were immediately removed to another lodging. If no other refugee lodging was available in the short term, the perpetrator was placed in an emergency shelter or in a shelter for homeless persons. No emergency barring order was necessary in these cases; the police merely issued a restraining order. According to the police officers interviewed, victims and perpetrators were generally no longer lodged together unless the persons involved expressly desired such.

Findings regarding the implementation of protection orders

Scattered representatives of the judiciary reported that applications for protection orders by migrants are rising significantly. Access to violence protection measures is very difficult for refugee women who are in the process of applying for asylum and do not yet have any clarity regarding their prospects of success. The persons surveyed only reported one court pro-

tection order involving refugees and scattered police eviction orders with a prohibition of communication.

Access to protection, help and support in general

For migrants

On the whole, there continue to be a wide variety of barriers to migrants making use of protection and help:

- Migrants are less informed about the Protection against Violence Act and possibilities of police protection.
- The persons surveyed cited lack of language skills and the need for language mediation as a significant barrier to access to measures for protection against violence. In an emergency situation in the case of police calls, women with insufficient knowledge of German, according to one specialised counsellor, are usually overwhelmed when they are informed about their rights. For an application to be filed for protection, it is of far-reaching importance if significant facts are missing in the police report because the parties are unable to report what has happened or merely information is recorded that is provided by the opponent to the application. In lieu of any translation possibilities, victims cannot cope with protection procedures. Many persons surveyed pointed out that it is possible to use interpreters in counselling meetings and at hearings before a court, but that there is no legal claim to such interpreting services, it is unclear how such services are to be financed and interpreters are often under time pressure because of other responsibilities or are difficult to find on a short-term basis in emergency situations. Some offices where protection applications can be filed and one attorney reported that migrants who had succeeded in filing an application are for the most part in a position to communicate or bring a language mediator along themselves. If women do not find anyone to translate for them, however, the application fails.
- Many persons surveyed also stated that effective protection against violence can also be prevented by other forms of socialisation, cultural patterns and attitudes. Migrants and above all refugees accordingly often do not trust the police because in many countries of origin the police are only an authority used for persecution and are perceived as a corrupt and violent institution. As a result, the police are generally rejected. Conflicts therefore tend to not be resolved internally and there is said to be a general hesitation to approach third parties. This hesitation is also sometimes fuelled by a widespread and openly propagated patriarchal world view. Violence is also often accepted as a legitimate means. Many people do not know that domestic violence is subject to criminal penalties, nor is this always accepted.

Lack of education and a lack of self-confidence may also constitute barriers to perceiving and satisfying rights.

- One general deficiency with regard to the Protection against Violence Act is that in incidents involving violence the law does not provide protection against the social environment or family system of the victim, as an application can only be filed against a person. Although one judge pointed out the possibility to obtain protective orders against several family members in special proceedings, no use is made of this option. In particular, migrants experience that violence is perpetrated by family units because the family does not accept the separation or wants to impose other rules.
- Cross-border pressure on women has intensified with the new communication possibilities. Experience at one court location indicates that women often withdraw applications as a result thereof.
- Generally speaking, access to and application of measures for protection against violence in the case of migrants are closely related to their residency status. If women possess a residence right derived from their husband, separation and also action against the man is difficult. This especially relates to women who immigrate as family members joining another family member who arrived in Germany earlier or in connection with marriages (including with Germans or in forced marriages). If no children who are minors are involved, the woman may lose her right of residence in the event of separation. Recognition as a hardship case is difficult and does not happen very often.

For refugee women

All problems that exist with regard to protection against violence, anyway, and in particular for migrants, accumulate "infinitely" in the case of migrants in the opinion of one special counselling office. In the meantime, there are manifold strategies for protection and support services that also address violence in intimate living environments. Nevertheless, the barriers to use being made of help and protection are assessed as still being very high.

- All the persons interviewed who deal with refugees reported that women affected by violence often fear that use being made of help and the initiation of a procedure has a negative effect on their own asylum proceeding and impacts the residency rights of the man.
- Above all if there are prospects of returning to the country of origin, it is also difficult to separate from the man and return to being a single woman.

- Refugee women often have no awareness of their rights and do not expect any support. Forwarding of information on protection against violence in refugee lodgings is said to still be insufficient.
- Refugee women generally tend to be fearful and reserved towards the police and judiciary and also overwhelmed when it comes to the search for protection and initiation of contact. Low-threshold offers such as lectures or possibilities to compare experience are better received.
- In general, the barriers to separation for refugee women are very high in a new environment and often without any broad support.
- On the perpetrators' side, lack of knowledge or non-acceptance of the fact that domestic violence constitutes a criminal penalty impedes intervention. On the other hand, however, an insecure residence status may strengthen efforts to avoid criminal penalties.
- Lack of or limited language skills pose a barrier to refugee women having access to protection and support on an even greater scale than for migrants who have been living in Germany for some time.
- An additional problem in this context may be an insensitive approach on the part of the police - for example, when no female police officers are on a call, or if children or in one case even the perpetrator of violence are used as interpreters or if translators from the communities at refugee homes who are not trustworthy serve as translators.
- One key problem in the view of many of the special counselling offices and experts surveyed is the requirement that refugees have a domicile. This prevents protective orders and impedes the separation of victims and perpetrators.
- Even if an emergency barring order is issued, it may be the case that the woman is subject to abuse at the hands of other family members or other members of the community in refugee homes. In these cases, quartering at a women's shelter may be helpful.

Alternative possibilities for protection

Women's shelters are an important alternative for women with a migration background. For refugee women it is in some cases difficult, however, to be quartered in women's shelters because they are subject to the requirement that refugees have a domicile and this gives rise to problems with jurisdiction and financing. Nor can language mediators and social-pedagogic assistance be made available for traumatised individuals in the desirable scope by all women's shelters. Nevertheless, refugee women who have experienced violence tend to



be lodged at a women's shelter, according to a special advisor, because these are safer and easier to implement than emergency barring orders or prohibitions of contact. Whether these problems can be solved varies greatly at the local level, according to the experience of the women's shelters.

'Tailored' solutions can frequently be sought with the police, or an officially ordered allocation of the perpetrator to another home is suggested instead of an emergency barring order.

6. Summary and look forward

The point of departure in the research project was findings from previous projects (see Nägele et al., 2011) that police and court measures to protect victims of domestic violence are not available or are usually not applied in the case of especially vulnerable groups of persons or groups of persons requiring special protection. This is because protection through these measures is based on the notion that victims are supposed to be protected by separation from the perpetrator ordered by Court or enforced by the police. The implicit precondition for such measures is the ability to carry on and cope with everyday life independently of the perpetrator.

At the heart of the study was the question as to whether and in what scope emergency barring orders and civil-law protection orders are appropriate and used for such especially vulnerable persons or female victims requiring protection from violence in their intimate living environment.

General barriers specific to certain measures and factors that limit the protective impact of both measures include the fact that only partial protection can be expected, that protection is not very enforceable and the lack of sanctions applied. Civil-law protection orders are moreover high-threshold because they presuppose that the victims are informed, determined and undertake considerable actions. Cost risks and the course of proceedings may also have a deterring effect, in particular when there are not many official decisions on the ground, and instead more agreements. Generally speaking, thresholds are lower with emergency barring orders, as these do not depend on the initiative of the victim. Whether emergency barring orders and civil-law protection orders are issued or not is highly dependent on the attitudes and technical knowledge of the actors, which in particular family law judges cannot automatically be expected to possess.

In the study, special attention was focused on women with children, women who need support, homeless women and female migrants and refugees. It became clear in our analysis, that on the whole, barriers and gaps in protection may come about in connection with individual features of vulnerability and the need of the women involved for protection as a result of the current living circumstances, underlying social and legal conditions relating thereto and due to the preconditions for access to various measures. These factors relating to specific persons, situations and measures cannot be viewed in an isolated manner. Rather, they interact with each other. They may constitute barriers to access, to availability in principle and to the implementation of measures that are particularly salient for the said groups of persons.

It could be shown that barriers and gaps in protection affect several of the groups studied in a similar fashion. They are in many cases so high for certain groups and life situations that measures for protection against violence are not used or virtually never used - this is the case with homeless women, women with impairments and refugee women. In some cases, measures are used which, however, by virtue of their interaction with other factors end up limiting protection.

Let's look at these barriers in more detail.

- The **availability of information** on rights, help systems and procedures and measures for protection against violence is fundamental to access to and use being made of measures. The availability of information in this regard is greatly limited, however, among women with impairments, homeless women and migrants, in particular refugee women.
- The physical **accessibility of help systems and authorities** is also a factor. This is limited in manifold ways for women with impairments.
- Only when victims can express themselves reasonably well and at the same time understand information bearing relevance to them can they make use of rights and possibilities for protection. **Communication possibilities** are frequently limited, however, in the case of women with impairments, homeless women and migrants, especially refugee women.
- **Familiarity with and trust and confidence in (help) systems** and the police, courts and other government offices are additional preconditions for the use of and access to measures for protection against violence. Here as well there are in some cases considerable limitations on women with impairments, homeless women and, among migrants, in particular refugee women.
- **Conflicts between legal provisions and/or actual practice** may stand in the way of a separation and hence ultimately also prevent use of protection orders. This is the case, for example, when migrants are unable to escape from a relationship as a result of a residence status that depends on the perpetrator of violence and if, as a result of a requirement that a person have a domicile, no effective spatial separation is possible. Conflicting legal provisions may also cause existing protection orders to become ineffective as well, such as when arrangements relating to visitation rights inevitably lead to contact and confrontations with the perpetrator.
- On top of all of this, it is above all the **lack of alternatives to the current living and economic situation** that in many cases prevents a separation, which means that a civil-law protection order is not even considered and an emergency barring

order becomes spurious or is not even implemented in the first place. Here social, emotional and economic factors like dependency on nursing care or financial support are of relevance. Alternatives to current living and financial situations are in many cases only available to women with children or migrants to a limited extent. These are particularly restricted for women with impairments, homeless women and refugee women.

- **An adjustment of measures to conform to living situations and individual situations where women are faced by a threat** does not take place in every case. Application of the protection orders is only limited when several family members exercise violence (like at present among some migrants), when victims live in facilities that are not considered to offer domesticity in the meaning of the Protection against Violence Act (refugee women, women with impairments) and when homeless women live in exploitative, illegal and often only temporary shared-flat situations.

Alternative protection options above and beyond the described measures for protection against violence are available to or used by the groups of persons studied on differing scales. In particular, access to women's shelters and facilities for protection against violence is massively restricted in the case of some groups (homeless women, refugee women in facilities, women with impairments). For women living in facilities, in some cases internal solutions and, in others, solutions in local networks are found. The protection afforded at facilities is ambivalent, as these on the one hand offer a venue for violence with little possibility to withdraw to a protected area, while at the same time, however, opening up special options for protection. A similar ambivalence also exists with regard to assisted persons; persons providing assistance can act as gatekeepers, initiating protection, aid and support. But they are also potential perpetrators.

In implementing improvements, reference can also be made to international obligations and provisions (European Victims' Rights Directive 2012/29/EU, Istanbul Convention, UN Convention on the Rights of Persons with Disabilities). These contain wide-ranging stipulations on the reduction of the said barriers to access and problems in implementation especially for victims with specific needs for protection. The European Victims' Rights Directive and the UN Convention on the Rights of Persons with Disabilities are already implemented in Germany, while the Istanbul Convention will presumably be ratified in the autumn of 2016 and thus become binding. The Victims' Rights Directive already offers a suitable citation basis with which to call for and implement national improvements in many of the areas described. On the whole, codes, bodies of laws, conventions and guidelines contain the following stipulations and rules bearing relevance to this study that



- all measures must consider the needs of victims with a special need for protection and take these into account,
- vocational groups that are involved with victims of domestic violence have to be sufficiently trained,
- victims of domestic violence must receive sufficient information on their rights and possibilities for support in an understandable language,
- they must be conceded the opportunity to understand and be understood,
- there must be sufficient accessible services including for groups of victims requiring special protection,
- needs for protection and the occurrence of domestic violence must be taken into account in proceedings involving custody and visiting rights, and
- the economic independence of victims of violence must be strengthened.

Implementation of these provisions would constitute a major step forward for victims with specific needs and in specific living situations towards an improved protection of victims and should remain on the agenda in the coming years.

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