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PROTECTION ORDERS IN SERBIA

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Abstract: The author analyzes protection orders (barring and restraining orders) in Serbian law in the perspective of victims' protection, bearing in mind the growing importance of these measures in the European Union, which has been confirmed by the adoption of the Directive on the European Protection Order and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. She criticizes certain legal solutions, while also stressing the importance of the existence of the protection orders and their proper application in practice (not just in cases of domestic violence but also in stalking cases and other forms of harassment). Emphasis is on comparative legislative measures which offer possibilities for immediate intervention (by the police) to protect the victim, with the conclusion that some of them are welcomed in Serbia.

Keywords: protection order, protective measure, domestic violence, stalking, restraint to approach and communicate with the injured party

INTRODUCTION

Different protection orders are novelty in Serbian legislation. They could be defined as decisions, provisional or final, adopted by a civil, criminal or misdemeanor court[2] imposing rules of conduct (obligations and prohibitions) on a person causing danger with the aim of protecting another person (victim of violent act/harassment, witness of crime) against an act which may endanger his/her life, physical or psychological integrity, dignity, personal liberty or sexual integrity[3]. They have different requirements for the application, and to some extent the content and goals. These measures and their efficiency are usually discussed in the context of the protection of victims of domestic violence, but one must not forget victims of stalking that is not occurring in domestic violence context, as well as other victims of harassing acts.

In Serbia, the protection orders against domestic violence have been envisaged in family law in 2005, while those from the sphere of the criminal (substantive and procedural) law came into force in 2009. They are designed upon the comparative law provisions, under the pressure of appeals for better protection of victims of domestic violence. However, they suffer criticism from the standpoint of normative regulation, but also from the point of application in practice, as will be discussed in this paper.

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2 In comparative legal systems, an administrative court or other judicial authority, as well as police authority can impose some of these measures.
3 Similar definition in: Directive 2011/99/EU of the European Parliament and of the Council on the European Protection Order (Art. 2. sec. 2), Official Journal of the EU, L 338/2, 21.12.2011.

PROTECTIVE MEASURES IN FAMILY LAW

The protective measures against domestic violence have been envisaged by Family Act[4] in 2005. The circle of family members entitled to protection is determined extensively, which has been exposed to criticism from the point of traditional notion of the family relations and possible misuse of the measures. Criticism has especially affected "persons who have been with each other or are still in emotional or sexual relationship"[5]. The justification of family members definition is based on the response to the need for more effective protection of above mentioned persons suffering violence from a partner who is not a spouse or cohabitee (according to the relevant legal provisions), and in that sense is not a member of the family. International legal instruments dealing with issues of violence against women and domestic violence (as two inseparable themes) insist on efficient protection of these persons.

The reason of broader interpretation of family members is also related to the translation of the term "domestic violence", used in international legal documents[6] which cannot be reduced to family violence (which is the most frequently used term in Serbian translation), because it is much wider notion. In any case, legally binding document of the Council of Europe has resolved this dilemma and gave legitimacy to the said family law provisions. Council of Europe Convention on preventing and combating violence against women and domestic violence[7] defines domestic violence as "all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim" (Art. 3b).

A court may order one or more protective measures against domestic violence pertaining to a family member who acts violently, temporarily prohibiting or limiting the maintenance of his/her personal relations with another family member: the issuance of a warrant for eviction from a family apartment or house, regardless of a right to property or a lease to immovable property; the issuance of a warrant for moving into a family apartment or house, regardless of a right to property or a lease to immovable property; prohibition of getting closer to a family member than a certain distance; prohibition of access to the vicinity of the place of residence or workplace of a family member; prohibition of further molestation of a family member (Art. 198 of the FA). All these measures are envisaged as emergency barring and restraining orders aiming to protect victims of domestic violence (regardless of criminal proceedings and legal status of injured party) temporarily (for a period of one year, at least) and to prevent the recurrence of violence (Art. 199 of the FA). They have been presented as measures suitable to respond to mild forms of violence preventing its escalation[8].

4 „Official Gazette of the Republic of Serbia", 18/2005, 72/2011, 6/2015

5 This provision has been assessed as extremely exorbitant and absurd illustrated by examples of pupils' first love and relationships of prostitutes and their customers (who, according to this provision, would also be eligible for protection against domestic violence), see: M.Škulić "The Basic Elements of the Normative Structure of the Criminal Offence of Domestic Violence - Some Issues and Dilemmas" in M. Škulić (ed.) *Domestic Violence*, Association of Public Prosecutors and Deputy Public Prosecutors of Serbia, Belgrade, 2009 , pp . 20-21

6 See: S. Jovanović, „International Legal Framework of Protection against Family Violence", *Legal Life,* 9/2008, pp. 209-226

7 „Official Gazette of the Republic of Serbia – International Agreements", No. 12/2013; Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, CETS. No 210. https://www.coe.int/t/DGHL/STANDARDSETTING/EQUALITY/03themes/violence-against-women/Conv_VAW_en.pdf

8 N. Petrušić, S. Konstatinović-Vilić, *Guidelines through the System of Family Law Protection against Domestic Violence*, Autonomous Women's Center and Women's Center for Education and Communication, Belgrade,2006, p. 25

Although the concept of family law protection from domestic violence is well-conceived, the practice shows a different picture: the state agencies have been criticized for not respecting the law or because they do not use their authorities to ensure better protection of victims. The courts do not use their official authority to order most adequate protection measure[9] imposing only the measure the party claims for; they fails to order protective measures in a judgment in other dispute (matrimonial dispute, maternity or paternity dispute, dispute over the protection of a child's rights and in a dispute over the exercise or deprivation of parental rights) even though they have been reasonable[10]. Thus, usually legally ignorant parties - victims of domestic violence remain without adequate protection. Also, the courts are often oblivious to the best interest of the child: they do not order protective measure for children even though it is obvious they have suffered harm along with their mother which is party in the dispute; they rarely use the possibility of appointing a temporary representative for the child; a small number of children are entitled to free expression before court[11].

The courts are also reluctant to issue a warrant for eviction of the perpetrator from the family apartment or house, although the argument of inviolability of property rights has been overruled by the Constitutional Court of Serbia[12] (and before that moment – by the European Court of Human Rights and other international legal bodies) which has declared that restrictions of the right to property is socially justified and allowed if there has been need to protect higher interests such as the right to life and right to protection of physical and mental integrity. However, the courts rely on most common practice of issuing non molestation order, and the eviction of the perpetrator from the family apartment becomes an option if the apartment is jointly owned[13].

The urgency of the procedure, stipulated by the law, in cases of domestic violence is of great importance, but it is also in dispute, taking into account the results of the research: hearings are often delayed due to the absence of the defendant, but also due to the failure of centers of social welfare to deliver their reports on time, or due to absence of the social worker... Also, the problem is a great number of withdrawn lawsuits for the issuance of protection measures. The presiding judges often order victims to redact the lawsuit for the issuance of protection measures, but victims as ignorant parties usually fail to do that (they must provide for legal assistance, but very often they don't have money or other resources), so they remain without protection. In practice, the court proceedings in average last from three to six months (in 30% of cases), and sometimes even longer (20%) and protection measures lose their purpose, so it is absolutely clear why victims in such cases withdraw their request[14][15].

9 The court is not bound by the limits of the claim for protection from domestic violence. It could order a protective measure which has not been demanded if it finds that by such a measure the protection is achieved (Art. 287 of the FA).

10 N. Petrušić, S. Konstantinović-Vilić, *Family Law Protection against Domestic Violence in the Judicial Practice in Belgrade*, Autonomous women's Center and Women's Center for Education and Communication, Belgrade Belgrade, 2008, p. 24

11 Ibidem, p. 33

12 Decision of the Constitutional Court of the Republic of Serbia, C-No. 296/05 of 9.7.2009. „Official Gazette of the Republic of Serbia", No.101/2009

13 See: N. Petrušić, S. Konstantnović-Vilić, *Family law Protection*…, p. 34; V. Macanović, "Right to Achieve Equal Family Law Protection of All Victims of Family Violence in Serbia – Analysis of the Proceedings for the Issuance of Protection Measures from Domestic Violence" in: B. Branković et al., *Annual Report of the Observatory on Violence against Women 2012*, Network Women Against Violence and Network for European Women's Lobby, Belgrade, 2013, p. 88

14 There were more withdrawn lawsuits in 2011 than judgements: 285:284; in 2012 the ratio is: 264:380. V. Macanović, op. cit., pp. 92-93

15 About inefficiency of the "urgent" proceedings, see: Z. Ponjavić, *Family Law*, Faculty of Law in Kragujevac, 2005, p. 390

Although action for ordering a protective measure against domestic violence could be initiated by the public prosecutor and the guardianship authority, they often fail to do so, leaving the victim on his/her own. They are reluctant to file lawsuits for protection against domestic violence, shifting the responsibility on each other or on the victim. Thus, in 2012 the public prosecutors filed 37 lawsuits, and centers for social welfare just 14[16]. Having in mind that the largest number of lawsuits, when it comes to prosecution, have been filed by the Basic Public Prosecutor's Office in Zrenjanin, it becomes clear that the involvement of prosecutors' offices depends on the willingness and enthusiasm of individuals (as well as in the centers for social welfare). It is clear that a systematic approach is missing, despite the adoption of the various regulations on actions of different agencies and their coordinated action in order to protect the victims. Another problem is related to the fact that almost 90% of all lawsuits are filed in bigger towns where the NGOs and legal clinics provide free legal aid to victims, as well as "active" public prosecution offices and centers for social welfare[17]. It is obvious that victims of domestic violence throughout Serbia do not enjoy the same level of legal protection.

Even though the Family Act prescribes that the records on issued protection measures from domestic violence are to be kept by centers of social welfare, it often happens that courts do not send judgments to centers. The Family Act does not regulate the situation when protection measures is issued in the form of temporary measures and therefore court is not obliged to send such rulings to centers. Also, they are not obliged to send their decisions to police/public prosecutor' offices (even though it seems important to send them information even before the end of the proceedings, so they could act promptly if elements of an offence are determined). Once again, the need for a coordinated effort and cooperation of mentioned subjects should be emphasized in order to ensure their timely reaction.

It should be noted that if the imposed measure of protection is violated, criminal protection would be activated, because it is considered criminal offence (Art. 194 para.5 of the Criminal Code)[18]. In this respect, let's pay attention to an interesting case that had epilogue before the Supreme Court of Cassation of the Republic of Serbia. The imposed measures of protection against domestic violence (for the protection of wife and minor children) have been violated by the perpetrator who approached children at a prohibited distance. He argued that there was mutual consent to do that, so there was no violation of the order "because he has just brought the sneakers to his son, as previously agreed with his wife". The Basic Court in Zrenjanin and the Appellate Court in Novi Sad ruled that there was no violation of the protection order and no criminal offence, because the act of the defendant was not unlawful. The judges at seminars on protection orders[19] were of the same opinion, without exception. That way of thinking speaks of insufficient knowledge of the problems of domestic violence and even of the criminal law. The Supreme Cassation Court has pointed out at the big mistake when deciding on the request for protection of legality. There is a hope that the judges in the future will not be lenient to those who violate the measures of protection against domestic violence, because "... imposed measures of protection against domestic violence are unconditional, taken in order to protect the victim and must not depend on any of the possible agreement with the victims...".

16 V. Macanović, op. cit., p. 94
17 Ibidem, p. 97
18 „Official Gazette of the Republic of Serbia", No. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014
19 The seminars for public prosecutors and judges „Domestic Violence and Protective Measures" organized by the Autonomous Women's Center during 2013 and 2015.

PROTECTIVE MESAURES IN MISDEMEANOR AND CRIMINAL LAW

Misdemeanor Law of 2005[20] envisaged a protective measure named prohibition of the access to the injured party, structures or to the place of committing a misdemeanor which has been slightly changed and better arranged in new Misdemeanor Law (Art. 61)[21]. The measure has a preventive character with the purpose of preventing an offender to repeat a misdemeanor or to continue to threaten the injured party. The measure shall be imposed to a written petition of the petitioner of the motion to institute the misdemeanor proceedings or to an oral request of the injured party, made at the hearing in the misdemeanor proceedings. A decision of the court imposing prohibition of access contain: the time period in which it is enforced, data on the persons to whom the offender must not access, indication of structures he/she must not access and at what time, places or locations within which access is prohibited to the offender. The imposed measure of prohibition of access to the injured party shall also include the measure of prohibition of access to a joint apartment or household within the period during which the prohibition is in effect. The measure may be imposed for any duration of up to one year, reckoning from the date of the legally binding judgment. The court is obliged to inform the injured party, the interior affairs authority which is in charge of measure execution and center for social affairs if the measure prohibits access to children, spouse or family members. Afore mentioned provision makes confusion about the interpretation of the concept of a family member, as emphasis is on spouse which implies traditional family concept. It is not clear why children and spouse are emphasized when it is undisputed that they are considered family members (it would be better to accept the interpretation given by the Family Act). Article 62 corrected an error that existed in the previous law by resolving the question of sanctions for violations of measures imposed - sanctions would be imposed according to the regulation which determines the offence for which the measure has been ordered.

New Misdemeanor Law has been envisaged procedural measure of prohibition of the access to the injured party, structures or to the place of committing a misdemeanor until the judgment becomes final in order to protect the injured party upon his/her request and presented evidence (Art. 126 sec. 3 item 4) . What is the real situation in practice of misdemeanor courts no one could say, because there is no research on this subject. It is necessary to gather relevant data, having in mind that the issue of misdemeanors has been ignored for too long, even though they are in fact "mini - criminal acts". Their commission usually precedes criminal behavior, so it is important to protect victim promptly and efficiently, which rules of misdemeanor procedure should provide.

Above mentioned protective order suffers criticism because it does not contain no-contact provision, although the art. 62 envisaging sanction for order violation refers to "getting in contact with injured party in improper way or time". The protective order should be extended to a ban on communication with the injured party (by phone, e-mail, messages). It is also clear that the measures protect a wider circle of people than measures of family law protection, as they protect persons who are not necessarily family members, which is a good solution. However, bearing in mind that the existence of an offence against public peace and order means fulfillment of the criteria related to the publicity (public place)[22], when violence occurs in the home (which is the most common case), family members will not be able to ask for protection by applying these measures if an act of violence does not disturb public order and peace. In such a case other types of protection will be applied and the perpetrator's behavior will be qualified as a criminal offence.

20 „Official Gazette of the Republic of Serbia", No. 101/2005,116/2008, 111/2009
21 „Official Gazette of the Republic of Serbia", No. 65/2013
22 „Official Gazette of the Republic of Serbia", No. 6/2016

Criminal law protective measures appeared in the legislation (both substantive and procedural) in 2009, and have suffered several changes since then. The substantive law measure is a safety measure named "restraint to approach and communicate with the injured party" (Art. 89a of the CC). The sanction can be imposed with a fine, a sentence of community service, suspension of driving license, a suspended sentence and judicial admonition (Art. 80 sec. 6). The court may prohibit an offender from approaching the injured party at a specified distance, from accessing the area surrounding the injured party's residence or place of work, and further harassment of the injured party, *i.e.* further communication with the injured party, provided it is reasonable to believe that any such further action taken by the offender would pose a threat to the injured party.

The question is whether the application of the measures could cause the eviction of the offender from the apartment/house which is the property of the offender, because unlike of family law or misdemeanor law provisions regulating similar measures there is no word about the eviction, so it is likely to expect that criminal courts won't prohibit access to the place of residence if it is owned by the offender, even though this would be reasonable. It is interesting to find out how harassment of the victim is interpreted, because according to the linguistic interpretation of the harassment it means (malicious) actions that differ from abusive and violent behavior, which the injured party finds embarrassing, uncomfortable, humiliating, provoking, and disturbing. Fortunately, there is an interpretation given by the Gender Equality Act[23] (Art. 10), according to which harassment means any unwanted verbal, non-verbal or physical act, committed with the aim or which has as the consequence a violation of dignity and cause of fear or establishment of unfriendly, humiliating, degrading or insulting environment. Of course, such actions should be objectively considered harassing, whereby one must take into account the situation that preceded imposing the measure.

The court shall determine the duration of the measure, which may not be less than six months or more than three years, calculating from the date of final decision, with the proviso that time spent in prison and/or medical institution wherein the security measure was enforced is not calculated into the duration of this measure (Art. 89a sec. 2 of the CC). This provision is vague, because it implies the possibility of imposing measures to the prison sentence, which he is not true , but the time spent in custody or other deprivation of liberty is not calculated into the duration of the measure (which is better, clearer formulation). It is questionable why the measure could not be imposed to the imprisonment sentence in order to strengthen its effects, as well as in the case of the prohibition to practice a profession, activity or duty. The same question applies to compulsory psychiatric treatment and confinement in a medical institution or compulsory psychiatric treatment at liberty when one of these security measures is imposed as individual sanction on a mentally incompetent criminal offender.

The problem with this security measure is failure of the legislator to envisage way of its execution, as well as the sanctions in the case of violation (especially if the act of violation doesn't constitute a new offence, when it could be taken into account as an aggravating circumstance in determining the punishment prescribed for that particular offence). The provision of Article 194, paragraph 5 of the Criminal Code could not be applied (although even some judges think differently)[24], given the fact that it implies to protective measures from domestic violence imposed by courts on the basis of family law. It is true that above mentioned security measure is welcomed as a measure of protection against domestic violence, but it is not reserved just for domestic violence victims and the extensive interpretation of criminal law is unacceptable, so we have to wait for the legislator to correct the mistake. It would be best, considering the fact

23 „Official Gazette of the Republic of Serbia", No. 104/2009

24 They express such opinion at seminars for public prosecutors and judges „Domestic Violence and Protective Measures"organized by the Autonomous Women's Center during 2013 and 2015.

that the measure can be imposed if the offender is under pronouncement of suspended sentence, to envisage the possibility of revocation of the suspended sentence if the if the offender violates the prohibition (which has been done in other cases regarding security measures of prohibitions: security measures of prohibition to drive a motor vehicle; prohibition to practice a profession, activity or duty). It has been expected of the Act on Execution of Non-custodial Sanctions and Measures[25] to solve the problem, but it hasn't happened. The Act hasn't even mentioned that measure of security, even though it has provided some provisions on execution of similar measures (related to criminal proceedings). The provisions of the Article 19 are about the defendant, not about the convicted person, emphasizing "the obligation of the defendant to report to the probation officer," which leads to the conclusion that the execution of the restraint to approach and communicate with the injured party has not been regulated.

Although the execution of security measures and their eventual violation are not regulated properly, statistics show that Serbian courts have been imposing it, mostly for offences relating to marriage and family. Thus, in 2014 there were 52 security measures ordered, the most of them for criminal offences relating to marriage and family – 26, crimes against freedoms and rights of man and citizen are on the second place (19 measures). It is interesting that the most of them were imposed on perpetrators in Vojvodina (25); in the region "Serbia - South" – 15, and in Belgrade – 13[26]. When we take into consideration a small number of lawsuits for protection against domestic violence in the territory of Niš and Kragujevac[27] and the information that has been just exposed, it may be concluded that the public awareness rising campaigns and education of professionals, as well as research of judicial practice would be welcomed in above mentioned areas.

If there are circumstances which indicate that a defendant could disrupt the proceedings by exerting influence on an injured party, witnesses, accomplices or concealers or could repeat a criminal offence, complete an attempted criminal offence or commit a criminal offence he is threatening to commit, the court may prohibit the defendant from approaching, meeting or communicating with certain persons or prohibit the defendant from visiting certain places. Also, the court may order the defendant to periodically report to the police, an officer of the public authority in charge of executing criminal sanctions or other public authority specified by law (Art. 197 of the Criminal Procedure Code), but the police authority is in charge of exercising control over implementation of measures (Art. 198 sec. 6). How police would exercise control is unclear, because the Act on Execution of Non-custodial Sanctions and Measures (Art. 19) has envisaged "the delivery of the court order to the probation officer if the order imposes on the defendant the obligation to report periodically, as well as the obligation of the probation officer to inform the court about the violation of reporting obligations". The police and its actions in monitoring the perpetrator are not mentioned.

The control of protective measure execution is of paramount importance from the perspective of victims' protection, but it is obvious that Serbian legislation has to be seriously improved in that sphere. Electronic surveillance of the defendant/convicted person could be one of the solutions (although pretty expensive and demanding). It is suitable for exercising control over the defendant or convicted person who is at liberty, which since 2009. has existed in Serbia for the purpose of executing a sentence of imprisonment that is executing in the premises wherein convicted person lives, or when the convicted person is released on parole, as well as for procedural measure - prohibition of leaving a dwelling. However, since 2011 electronic surveillance could not be applied any more in execution of the prohibition of approaching, meeting or communicating with a certain person and visiting certain places,

25 „Official Gazette of the Republic of Serbia", No. 55/2014.
26 The Statistical Office of the Republic of Serbia, "Adult Perpetrators of Criminal Offences in the Republic of Serbia", 2014, *Bulletin* No. 603, Belgrade, 2015, p. 74
27 V. Macanović, op. cit., p. 90

and as it has been already said, security measure - restraint to approach and communicate with the injured party is not also eligible for electronic surveillance. Here's another example of non-compliance within related regulations. Essentially similar measures have different treatment. Otherwise, electronic tracking of the victim protected by restraining measure is praised as a good way to prevent the offender violates the restraining order[28].

The above mentioned procedural protective measure aims to protect the criminal proceedings, its unobstructed conduct and only indirectly it protects the injured party (while previous concept of this measure took into consideration the protection of the injured party explicitly, envisaging the possibility of applying electronic surveillance to control compliance with restrictions). The concept of mentioned protective measure raises a question: what if the defendant and the injured party live together in the same apartment, bearing in mind that the measure does not include the eviction of the perpetrator from the apartment? It seems that these difficulties should be resolved before ordering the measure. Otherwise, another measure should be ordered or the injured party (or public prosecutor, center for social welfare) should file for protective order against domestic violence.

There is no data on the application of criminal procedural measures nor about their violations, which must be researched in order to draw conclusions about their effectiveness and need for specific changes in their regulation and implementation.

CONCLUSION

The existence of the regulation on protective measures in Serbia is undoubtedly necessary and it presents the response to international law requirements, and to appeals of organizations of civil society (at first place) advocating for women's rights, and protection from domestic violence. However, there is room for improvement in this area since the efficiency of existing protective measures has been an open question, and all the requirements of the international legal documents have not been yet accomplished. Serbian legislation and practice must comply to provisions of the Council of Europe Convention on preventing and combating violence against women and domestic violence, but we must not forget that other victims also deserves help and efficient protection. We still cannot argue that there are measures that meet the requirement of urgency, although it is proclaimed when it comes to family law measures. The Council of Europe Convention requires urgent reaction and emergency barring orders imposing eviction of the perpetrator from the apartment for a sufficient period of time and prohibition from further harassment) in situations of immediate danger (as well as other restraining or protection orders), as well as sanctioning of their violation.

The Austrian legislation model (and its implementation) presents example of good practice that could be recommended to Serbian legislator. Amendments to the Police Act[29] have given authority to police to evict perpetrator from the home and to issue a restraining order (Art. 38) in cases of "immediate danger to life, physical integrity or liberty of another", which is estimated in respect of the previous violent act. The measure protects all persons living in the apartment, regardless of ownership or whether they're related to perpetrator; the issuance of a prohibition does not depend on the will of the victim. The police officers also have an obligation to inform the victim about the other organizations for support and protection, as well as about the possibility of obtaining judicial protection. They seize the keys to the house from the offender, allowing him to take the necessary personal items and inform him about

28 N. Mrvić-Petrović, *Prison Crisis*, Military Publishing Institute, Belgrade, 2007, p. 273
29 Sicherheitspolizeigesetz – Nouvelle, 1999, in: Federal Laws on Protection against Domestic Violence, http//www.legislationline.org/legislation.php?tid

accommodations. Every prohibition shall be reviewed within 48 hours and every relevant institution is obliged to assist in determining the facts. The police authority is in charge of control and must check at least once in the first three days if prohibition is respected. The prohibition may be valid for at least ten days, but if the victim files a lawsuit in family court demanding an interim measure of protection in that period, the duration of the ban is automatically extended to twenty days. Perpetrator which violates the order will be sanctioned with a fine (up to 360 Euros) or with the imprisonment for a period of two weeks (if the fine is not paid). The research results indicate that Austrian model has achieved proper enforcement and effects[30]. Slovenia has got a similar model[31].

An adequate assessment of the risks to the safety of the injured party when deciding on the measures is of paramount importance for victims' protection. This is especially important in criminal proceedings, having in mind that the interests of the proceedings are in the first place, and victims' protection is secondary objective. Research results show that the nature/severity of previous violence, its incidence, persistence of the perpetrator, the presence of stalking, as well as perpetrator's resistance to the order in court have to be taken into account[32].

Beside other problems with Serbian protection orders that were discussed above, one must not be forgotten: stalking is not yet criminalized in Serbia, although this is one of the requirements of the European Convention[33]. There is necessity to acknowledge its dangerousness and provide efficient protection (by imposing various no-contact, stay-away orders, etc.) for all victims, regardless of the relation between perpetrator and the victim. Good practice examples exist in Scandinavian countries. In Denmark, Finland, Sweden urgent issuance of protection measures by the police or public prosecutor (independently from the criminal proceedings) is provided in a specific administrative or "quasi-criminal" procedure[34]. These procedures do not require the occurrence of a criminal offence or a link with criminal procedure. There are also specific legislative acts establishing conditions and procedure for the administration of protection orders. What matters is whether a person is in need for protection, which is the principle which Serbia should follow.

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