Proceedings

Council of Europe Campaign to Combat Violence against Women, including Domestic Violence

Legal Measures to Combat Violence against Women, including Domestic Violence

The Hague, Netherlands, 21-22 February 2007

Proceedings of the Regional Seminar

organised by the Gender Equality and Anti-Trafficking Division
of the Directorate General of Human Rights and Legal Affairs
in co-operation with the Ministry of Justice of the Netherlands

Justitie

Stop domestic violence against women

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Stop à la violence domestique faite aux femmes

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Legal measures to combat violence against women, including domestic violence

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PROCEEDINGS OF THE REGIONAL SEMINAR

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DIRECTORATE GENERAL OF HUMAN RIGHTS AND LEGAL AFFAIRS
COUNCIL OF EUROPE
2007

Gender Equality and Anti-Trafficking Division
Directorate General of Human Rights and Legal Affairs
Council of Europe
F-67075 Strasbourg

Printed at the Council of Europe

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seminar proceedings

Background to the seminar

During the Third Summit of the Council of Europe in May 2005, the Heads of State and Government of the Council of Europe reaffirmed their commitment to eradicating violence against women, including domestic violence. In adopting an Action Plan envisaging the launch of a *Campaign to Combat Violence against Women, including Domestic Violence,* and the institution of a *Task Force* on the same topic, they defined future activities by the Council of Europe in this field.

The Task Force, consisting of a group of eight international experts in the field of preventing and combating violence against women, developed the Blueprint for the Campaign. This document serves as a roadmap for the implementation of the Campaign and was approved by the Committee of Ministers of the Council of Europe. It contains a definition of violence against women, as well as aims, objectives, messages and activities to implement the Campaign.

Following the approval of the Campaign Blueprint by the Committee of Ministers, the Campaign was launched at a high-level conference on 27 November 2006 in Madrid. The Campaign incorporates three closely linked dimensions: governmental, parliamentary and local/regional. It is carried out by the Council of Europe as well as its member states, in partnership with international intergovernmental organisations and NGOs involved in the protection of women against violence.

The Campaign will end with a closing conference to be held in June 2008. On this occasion, the Council of Europe Task Force to Combat Violence against Women, including Domestic Violence, will present its conclusions and assessment of measures and actions taken at national level to combat violence against women, including domestic violence as well as its recommendations to the Council of Europe for future action in this field.

The intergovernmental Campaign activities carried out by the Council of Europe include five regional/multilateral seminars – in co-operation with the requesting member state – devoted to one of the Campaign objectives as laid out in the Campaign Blueprint.

The *Regional Seminar on Legal Measures to Combat Violence against Women, including Domestic Violence,* was the first such seminar. It was held on 21-22 February 2007 in The Hague, Netherlands.

Around 40 government and NGO representatives from Austria, Belgium, France, Germany, Ireland, Netherlands, Spain and the United Kingdom gathered in The Hague for two days to share information on and discuss different legal measures designed to curb violence against women, including domestic violence.

Keynote speeches and presentations of national experiences centred around topics such as protection and non-molestation orders, specialised courts on domestic violence and aggravating circumstances in criminalising domestic violence. In addition, a large part of the seminar was devoted to ways and means by which to guarantee adequate implementation of legal measures.

Protection and non-molestation orders

Several participating member states have introduced protection, barring and/or non-molestation orders; others are following suit. Protecting victims by legally prohibiting the perpetrator from approaching the victim on the street or in the common home is at the core of such legal measures. However, the seminar has shown that the existing models differ quite significantly in many important areas. In some member states, provisional barring or restraining orders are issued *ex officio*, while the legal system of others require the victim's consent. In some member states, the power to issue such orders lies partially with the police, while in others it is a combination of both police and court powers. Temporary and longer-term barring and non-molestation orders vary in their duration.

The scope of application also differs significantly among participating member states, ranging from applicability to all cohabiting couples to those lawfully married or those residing together for the last six out of nine months only. Finally, not all member states envisage mandatory counselling by intervention centres or women's refuges after a barring or protection order has been issued.

Discussion therefore centred on these variations. Rooted in the particularities of different legal systems, participants considered such strong differences a drawback to the protection of women. It emerged from the discussion that current gaps in the scope of application should be closed and questions of jurisdiction and duration of barring or restraining orders should be harmonised to ensure standardised protection of women throughout Council of Europe member states.

In addition, most participants highlighted the need to embed protection orders as a purely legal measure in a system of well co-ordinated individual assistance to both victim and perpetrator. Any law addressing a subject as sensitive as this needs to be accompanied by systematic communication with both sides. Victims need counselling to better understand the procedure in force, receive information on their options and grow strong enough to re-build their lives. Representatives of women's refuges stressed the importance of counselling to make clear that a barring order is not a punitive measure by the state against the family. Only if victims are aware that this is a safety measure for their benefit will the ground be laid for successful prosecution.

Similarly, to help them move away from violent behaviour, the need to assist and counsel perpetrators was emphasised. While it was agreed that *Council of Europe Recommendation Rec (2002) 5 by the Committee of Ministers to member states on the protection of women against violence* includes valuable recommendations on perpetrator programmes, the importance of evaluating, improving and enlarging such programmes became apparent.[1]

The need to link legal measures with support services for both victims and perpetrators thus crystallised as a core component for improvement.

Nature of relationship between victim and perpetrator as an aggravating circumstance in criminalising domestic violence

Some of the participating member states have introduced a legal basis in criminal law to increase court sentences if violent acts have been committed against a former or current partner as opposed to a stranger. The underlying idea is to reflect in law the serious nature of violent acts against a partner and to signal that this is a serious public matter, not a private one. Others have issued sentencing guidelines to public prosecutors and judges to the same effect.

1. For more information on intervention programmes in Council of Europe member states, please see the Proceedings of the Regional Seminar on Men's Participation in Combating Violence against Women held on 8-9 May 2007 in Zagreb, Croatia. The full text of Recommendation Rec (2002) 5 is reproduced on page 111.

The keynote speech as well as the ensuing discussion raised a set of questions on the benefits and drawbacks of such a legal provision. On the one hand, it was recognised as a useful tool to enhance sentencing and therefore criminal justice in cases of domestic violence because its application is enshrined in law and therefore mandatory. At the same time, clearly stating that a criminal offence perpetrated by an intimate partner carries a stricter sentence than the same criminal offence committed against a stranger sends out an important message. On the other hand, its usefulness for prevention through deterrence was questioned because there is no certainty that harsher penalties will actually be applied. To date, data on the use of such a provision by courts is scant and its implementation therefore difficult to monitor.

Specialised courts on domestic violence

In some of the participating member states, the idea of creating a specialised court within the judiciary to accommodate the particular needs of victims of domestic violence has gained ground. The *Spanish Law on Integrated Protection Measures against Gender Violence* introduces Specialised Domestic Violence Courts, which have simultaneous criminal and civil jurisdiction on all matters related to domestic violence. The United Kingdom is running a pilot project involving several courts where domestic violence cases receive special attention and victims are guided through the judicial process by trained personnel.

The aim of such courts is to enhance criminal justice by improving reporting and prosecution rates as well as victim involvement in the judicial process. The examples of Spain and the United Kingdom have shown that this can be achieved through specialised domestic violence courts, if adequate resources are made available. As with the discussion on protection orders, seminar participants emphasised that independent counsellors offering advice to victims of domestic violence pursuing justice

through such courts are a cornerstone to success. By guiding victims through the justice system, their advice and support helps to attain lower rates of retraction by victims and heightened understanding for judicial proceedings. The significant reduction in length of judicial proceedings has further led to a high level of acceptance among the victims.

Implementation of legal measures

The stage for discussion on the implementation of legal measures was set by the keynote speech on this issue, which provided an overview of issues to consider in implementing legal measures. Suggesting that legal measures pursue a two-fold strategy: deterrence and punishment on the one hand, and protection and support for victims on the other, it was made clear that designing measures which achieve both at the same time has proven difficult. Criminal law sanctions for example reflect the authority of the state to sanction breaches of the law rather than empower the victim. Recognition of this tension has resulted in the establishment of multi-agency support and improved intervention procedures to accompany legal proceedings. Without such empowerment, any legal measure is likely to fail.

Another keynote speech pointed out that legislation needs to be evaluated and continuously monitored through comprehensive and comparative research in order to assess whether or not it is serving its purpose. Different tools and approaches such as theory-based and impact evaluation have been developed in other spheres and can be applied in the context of evaluating and monitoring the implementation of legal measures to combat violence against women. How this could be achieved and which issues to consider was also addressed as was the pertinent question of "what counts as a success". In connection to this question, NGO participants presented their findings on the implementation of legal measures.

Further information on the implementation of measures to protect women against domestic violence can be found in the recent Council of Europe *Analytical study on the effective implementation of Recommendation Rec (2002) 5 on the protection of women against violence in the Council of Europe member states.* ★

Programme

Wednesday 21 February 2007

9:30 Registration of participants

10:00 Opening of the Seminar

Chair

Mr Jan Kleijssen, Director, Directorate General of Human Rights, Council of Europe

Opening addresses

Ms Mulock Houwer, Director General for Prevention, Youth and Sanctions, Ministry of Justice, the Netherlands

Ms Carina Hägg, Chairperson of the Sub-Committee on Violence against Women, Parliamentary Assembly, Council of Europe

Ms Dubravka Šimonović, Chairperson of the Council of Europe Task Force to Combat Violence against Women, including Domestic Violence

Mr Jan Kleijssen, Director, Directorate General of Human Rights, Council of Europe

Innovative Legal Measures to Combat Violence against Women, including Domestic Violence

Protection and non-molestation orders

10:30 Ms Silvia Thaller, Legal advisor, Penal Legislation Department, Ministry of Justice, Austria

Questions

11:15 Coffee break

11:45 *National experiences*

Ms Jolien Janse, Legal advisor, Legislation Department, Ministry of Justice, the Netherlands

Ms Susanne Reiss, Ministry of Justice, Germany

Mr John McDaid, Senior Solicitor, Legal Aid Board, Ireland

Questions and discussion

13:00 Lunch hosted by the Ministry of Justice, the Netherlands

Nature of relationship between victim and perpetrator as an aggravating circumstance in criminalising domestic violence

14:00 Mr Freddy Gazan, Advisor, Department of Criminal Services, Ministry of Justice, Belgium

Questions

14:45 *National experiences*

Ms Catherine Seurre, Advisor, Women's Rights and Equality, Préfecture de Seine-et-Marne, France

Ms Kris De Groof, Association of Flemish Centres for Health, Shelter and Support, Belgium

Questions and discussion

16:00 *Coffee break*

Specialised courts on domestic violence

16:30 Ms Elena Martínez, Professor, Faculty of Procedural Law, University of Valencia, Spain

Questions

17:15 *National experiences*

Ms Jude Watson, Domestic Violence Implementation Manager, Equality and Diversity Unit, Crown Prosecution Service, United Kingdom

Ms Ángeles Jaime de Pablo, Themis Association of Women Jurists, Spain

18:15 End of first day

19:00 Buffet offered by the Ministry of Justice, the Netherlands

Thursday 22 February 2007

Chair

Mr Jan Kleijssen, Director of Standard-setting, Directorate General of Human Rights, Council of Europe

Implementation Measures to Combat Violence against Women, including Domestic Violence

Assessment of the implementation of legal measures

9:00 Ms Carol Hagemann-White, Professor, Faculty of General Pedagogy and Gender Studies, University of Osnabrück, Germany

Questions

9:45 *National experiences*

Ms Clarisse Agostini, National Federation of Women's Solidarity, France

Ms Nicole Weidenfeld, Advisor, Protection of Women from Violence Department, Federal Ministry of Family Affairs, Senior Citizens, Women and Youth, Germany
and
Ms Dorothea Hecht, Co-ordinator, Domestic Violence Intervention Centre Berlin, BIG e.V., Germany

Questions and discussion

Mapping legislation on violence against women in Europe

10:45 Ms Colette De Troy, Co-ordinator, Policy Action Centre on Violence against Women, European Women's Lobby, Belgium

Questions and discussion

11:00 Coffee break

Good practices in implementing legal measures

11:15 Ms Monique Luijpen, Office of the Public Prosecutor of the Netherlands

Questions

12:00 *National experiences*

Ms Deborah Jamieson, Domestic Violence Team, Violent Crime Unit, Home Office, United Kingdom

Ms Laurence Weerts, Human Rights League, Belgium

Questions and discussion

13:00 Lunch hosted by the Ministry of Justice, the Netherlands

Monitoring and evaluating the implementation of legal measures

14:00 Ms Renée Römkens, Senior Researcher, IVA Policy Research, Department of Criminality and Safety, Tilburg University, the Netherlands

Questions

14:45 *National experiences*

Ms Rosa Logar, Domestic Abuse Intervention Centre Vienna, Austria

Ms Pilar Moreno Fernández, Advisor, Special Government Delegation to Combat Violence against Women, Ministry of Labour and Social Affairs, Spain

Questions and discussion

15:45 *Closing addresses*

Mr Peter Levenkamp, Director of the Department of Judicial Youth Policy, Ministry of Justice, the Netherlands

Mr Jan Kleijssen, Director, Directorate General of Human Rights, Council of Europe

16:00 End of Seminar

Opening addresses

Ms Mulock Houwer

Director General for Prevention, Youth and Sanctions, Ministry of Justice, Netherlands

Dear ladies and gentlemen,

It is an honour for me to be able to welcome you here in The Hague for the first seminar in the context of the *Council of Europe Campaign to Combat Violence Against Women, including Domestic Violence*.

I am happy that this Campaign was initiated by the Council of Europe. After all, violence against women does not stop at national borders. Moreover, it is an enduring problem that is difficult to tackle. For the Netherlands, this is every reason for responding directly to the call for member states to organise a regional seminar. We are interested to see how other countries approach this problem. Moreover, we would like to share our experiences, because domestic violence is high on the agenda in the Netherlands. A new coalition has recently been established, and the new government aims to take a strong line against domestic violence and forms of honour-related violence that also often occur in the home. So we are going full steam ahead with our chosen course!

Here, we realise that a solution only comes closer when people are aware of the problem of violence against women – and domestic violence in particular. This is why the Netherlands will soon start a large-scale campaign with the slogan "Now it's enough!" This is intended to encourage victims, perpetrators and others who are affected to seek support in stopping domestic violence. You will understand that we see the European Campaign as an extra support and hope that it will help to further increase awareness of domestic violence.

Back to now, back to this seminar. In consultation with the Council of Europe, we chose "Legal measures to combat violence against women, including domestic violence" as the theme for the seminar. What can we say about it from a Dutch perspective?

I would like to take you back to the year 2002, when the Dutch government published a policy paper eloquently titled *Private Violence – Public Issue*, which contains over fifty concrete intentions and measures. An inter-ministerial project was then launched. At the end of this year, we hope to be able to evaluate it. It should give us answers to questions like: what have we achieved? What have we been unable to do? What still needs to be done?

We are making good progress, even if we say so ourselves. To start with, we are working hard on what we consider a revolutionary measure: the preventive home restraining order. If there is a threat of domestic violence, this measure enables the mayor to ban the perpetrator – in most cases the male partner – from the home for ten days. These ten days are used to set up a support programme for both the partner banned from the home, the victim, and their children, if any. We hope this measure will prove an efficient way of tackling domestic violence at an early stage. And our principal hope is that it will give the police a tool to work with in situations where there is a threat of violence, but no proof, in which the woman does not want to file a complaint. And where you know fully well that the situation could spiral out of control once you have left. You are no doubt familiar with the situation. In extreme cases, you can arrange for the woman and her children to be taken in by the shelter, but that still leaves you wondering why it should always be the victims

who have to leave. This is a subject we will return to in detail during this seminar.

The preventive home restraining order is not the only measure we are working on. In the near future, we will carry out a large-scale prevalence assessment to gather new and reliable figures on domestic violence in the Netherlands. We also hope to focus on co-operation – co-operation between ministries, municipalities and the organisations involved in domestic violence. To stimulate this process, we will shortly offer all regions in the Netherlands a domestic violence information point. This can help all organisations to share information and thereby arrive at an integrated approach. And, from 1 January 2007 onwards, municipalities will also be obliged to make domestic violence a permanent part of their policy, and to render accountability for it. This will compel them to work intensively in partnership with all chain partners involved in the region.

Finally, I would like to draw your attention to honour-related incidents of violence. We set up a special programme for it last year. It is aimed at, among other things, empowering victims and risk groups, enabling welfare workers to recognise honour-related violence and to help victims of this type of violence. Moreover, we hope that this will succeed in giving police the chance to investigate and prosecute perpetrators of honour-related crime better and more effectively.

I have given you an impression of the efforts we are making to reduce domestic violence in the Netherlands. You have heard that we have been involved in tackling this issue intensively for many years already. Nonetheless, we regularly encounter matters that make us wonder how other countries deal with them. This is why we are so interested in what *you* do. Which aspects do *you* emphasise? What are the dilemmas that *you* face? What experiences would *you* like to share with us and other countries? I sincerely hope that this seminar will give all those present a wealth of new information and fresh insights. And, who knows, it might be interesting to see that other countries are also struggling at times. That there is no immediate answer to all problems.

The programme looks extremely promising. I am happy that we were able to convince so many fascinating speakers to come and talk to us. And I am convinced that during the official programme, and during the coffee and tea breaks, during dinner and in the corridors, you will benefit hugely from each other's experiences. I am looking forward to a fruitful, enjoyable meeting. Good luck to you all. ★

Ms Carina Hägg

Chair of the Sub-Committee on Violence against Women of the Parliamentary Assembly of the Council of Europe

Dear Chair, dear Director General, distinguished guests,

It is my great pleasure and honour to address the first Regional Seminar of the Council of Europe Campaign to Combat Violence against Women, including Domestic Violence in my quality as Chair of the Subcommittee on violence against women of the Parliamentary Assembly. Let me first warmly thank the Dutch Ministry of Justice for hosting this seminar today. This will provide us with an opportunity to compare our experience with legal measures to combat domestic violence against women.

As you may know, following the adoption of Resolution 1512 (2006), the Parliamentary Assembly, together with all 46 national parliaments, is implementing the parliamentary dimension of the Council of Europe pan-European campaign. This action is run under the slogan "Parliaments united in combating domestic violence against women". We firmly believe that *all* parliaments can usefully contribute to ensure a better, safer environment for women. Therefore, I very much look forward to our exchange of views, which will enrich our parliamentary work.

In the framework of the Council of Europe Campaign, parliamentarians are invited to denounce and combat domestic violence against women. They should ensure that the appropriate legal framework is in place to punish the perpetrators, assist and protect victims and promote gender equality policies that will contribute to eradicating domestic violence. They have a role to play to ensure that governments table legislation which accords with international agreements, as domestic violence is a serious violation of human rights that cannot be accepted by the Council of Europe.

In this perspective, parliamentarians can play an active role in supporting the adoption of efficient and innovative legal measures. They can for example

- make use of their constitutional right to initiate legislation
- adopt laws that, for example:
  - criminalise rape outside and within marriage
  - evict violent spouses from their home
  - include measures inspired by the Committee of Ministers' Recommendation Rec (2002) 5 [see below, page 111].
- And, last but not least, parliamentarians should supervise the implementation of the laws and ensure that the laws they adopt are implemented and work in practice.

The Parliamentary Assembly has underlined the necessity to launch a comprehensive action to combat domestic violence. Governments, parliaments, local and regional authorities, we all need to work together and pool our resources if we want to reach concrete results, such as

- create safe houses for victims of domestic violence and their children
- set up support facilities in police stations to make sure that the complaints lodged by women victims of violence with the police are taken seriously and are adequately processed
- prosecute perpetrators and remove them from the home
- award compensation to victims
- train staff working in health services, care, police, justice, social and education services

Ladies and gentlemen,

I am one of the now 43 contact parliamentarians appointed by national parliaments across Europe.[1] In this capacity, I will be responsible for ensuring that the Swedish parliament contributes to the Campaign.

Sweden is sometimes referred to as a world-leader in the field of gender equality. Since the 1970s, violence against women has been viewed as an important political issue in Sweden. Despite this, domestic violence against women has not stopped. On the contrary, statistics from the National Council for Crime Prevention indicate that there may have been an increase of incidents in recent years. In 2005, over 24 000 cases of assault against women were reported, and in 75 of the cases the perpetrator was said to have a close relationship with the woman. This probable increase of violence in the home is not unique to Sweden but may concern many Council of Europe member states.

Sweden may be considered to be best in the field of gender equality, but we still have a lot to learn and plenty more needs to be done. What are the best approaches and methods? Exchanging experiences across borders and continuing to work with good examples are crucial if we are to achieve our goal of stopping this violence.

This work can and must get off the ground now. It is our hope that the Council of Europe Campaign will serve as a much-needed catalyst. It is about making a reality of the goals that the Swedish Parliament already supports. All resources must be mobilised if we are to tackle one of our most challenging democratic problems.

In this perspective, I would like to emphasise, once again, the importance the Parliamentary Assembly attaches to working in a comprehensive way and fostering dialogue with representatives of the governments and the local authorities, not forgetting the non-governmental organisations which are often dealing, at first hand, with the victims of domestic violence. You can be assured that the network of contact parliamentarians will be fully involved in the implementation of the Campaign and stands ready to promote such cross-cutting exchange of experience. In this very perspective, the national parliaments will be invited to organise in March 2007 a Day of parliamentary hearing, with the presence of members of parliament, government representatives, local authorities, NGOs and professionals working in the field of domestic violence.

I will be very interested in reporting on the output of this seminar to the members of the Assembly Committee on Equal Opportunities of Women and Men and to the contact parliamentarians who are running, at national parliamentary level, the Campaign. We also look forward to continuing this fruitful co-operation in the upcoming regional seminars.

I wish you a fruitful seminar and thank you for your attention. ★

1. List available at **http://www.coe.int/stopviolence/assembly/**.

Ms Dubravka Šimonović

Chairperson, Council of Europe Task Force to Combat Violence against Women, including Domestic Violence

Ladies and gentlemen,

We have gathered here for the first regional seminar within the framework of the *Council of Europe Campaign to Combat Violence against Women, including Domestic Violence*. We are about to explore how legal measures can be used effectively to protect women from violence.

Before we get into this in detail, I would like to provide you with a brief overview of the Campaign and the work of the *Council of Europe Task Force to Combat Violence against Women, including Domestic Violence* to explain how this seminar is linked to both.

The Campaign and the Task Force are both a result of a decision by the Council of Europe member states taken at their Third Summit in 2005 to place the fight against domestic violence against women at the highest political level in all member states with the aim of achieving concrete results in ending violence against women.

Eight international experts in the field of preventing and combating violence against women were appointed to this Task Force by the Secretary General of the Council of Europe. I would like to acknowledge the presence of Ms Rosa Logar, another member of the Task Force, who is also present here today in her capacity as a member of the Austrian delegation.

The eight of us were, first of all, mandated to develop the blueprint for the Campaign, which was – as you may know – launched during a high-level conference in Madrid in November last year. This document, which you have in your seminar folders, spells out the aims, objectives and messages of the Campaign and describes the activities different actors are invited to pursue. It serves as a roadmap for implementation of the Campaign.

This blueprint clearly recognises that violence against women is a human rights violation corresponding to the responsibility of a state to act with due diligence to prevent violence, to protect women victims of such violence and to punish perpetrators. It also calls on member states to demonstrate strong political will and provide adequate resources to make real progress in eradicating violence against women, ideally through national campaigns that should include measures for stronger implementation of Recommendation Rec (2002) 5 on the protection of women against violence [see below, page 111].

Its objectives focus on four areas: legal and policy measures, support and protection for victims, data collection and awareness-raising. In each of these areas we have listed the most important measures which should be taken to make a change in the lives of women who suffer violence at home. Some of these measures suggested in the field of legislation will be discussed during this seminar.

Turning to the Campaign now, I would like to highlight the fact that this Campaign has three different dimensions: intergovernmental, parliamentary and local and regional. While this may seem complicated at first, it is important to unite these key actors to achieve real change. From our experience we know that violence against women cannot be stopped if it is only decision-makers and institutions who are active. Instead, we need to join hands and unite civil society, particularly NGOs that are working very hard at the grass-root level, and public actors as well as all others capable and

willing to contribute to this Campaign. Joint public action and a multi-agency approach is what is needed.

It is of great importance that this Campaign is implemented at national level, through national action. To achieve this, 36 focal points and 34 high-level officials have been appointed within the governments, as well as 43 contact parliamentarians have been nominated in parliaments to initiate such action. I truly hope that we will see many good initiatives and their concrete results that will make a real difference in eliminating violence against women in the family or domestic unit.

The Task Force was not only mandated to prepare the Campaign. Much more importantly, it is also mandated to monitor and assess any improvements at national level and to evaluate the effective functioning of the measures for preventing and combating violence against women adopted at national and international level. It is also entrusted to make proposals for revising these measures or adopting new measures including those to assist member states to monitor progress achieved.

We will base our assessment on several sources of information. One will be reports submitted to us by national focal points on the results of national campaigns. Another very important source will be outcomes of these regional seminars. We hope to get a clear picture of the developments in member states to see which steps are taken and which measures are proving to be effective or ineffective in preventing and combating violence against women at national level. Of course, we will also take into consideration all other available sources, particularly from other international organisations and NGOs.

At its last meeting, held in Strasbourg from 6 to 8 February, the Task Force took note of Resolution No. 1 adopted at the 27th Conference of European Ministers of Justice held in Armenia from 12 to 13 October 2006 and their call to determine the need for an additional Council of Europe legal instrument on violence against the partner. In line with its mandate, the Task Force will also explore the possibility of developing a binding legal instrument for the Council of Europe member states to combat violence against women. The Task Force pointed out that if this is the direction taken, any such binding legal instrument would have to be based on a holistic approach to combating violence against women, including domestic violence, respecting the three guiding principles of prevention, protection and prosecution.

Today, as I stated at the Launching Conference in Madrid, the main question in this context still is: Do we need a stronger European legal instrument on the prevention of violence against women or stronger implementation mechanisms or both?

As the Chairperson of the Task Force, I hope that by the end of the Campaign we will have received an overview of where Council of Europe member states stand in protecting women from violence and which measures – national and international – should be taken to improve this. A lot has been done in many countries over the past 10 to 15 years, but we all know that much more can and needs to be done. I hope that our final report will help speed up this process.

Thank you very much. ★

Mr Jan Kleijssen

Director of Standard-Setting, Directorate General of Human Rights and Legal Affairs, Council of Europe

Ladies and gentlemen,

Violence against women, including domestic violence, deprives women of their ability to enjoy fundamental rights and freedoms. It is a violation of human rights and this violence concerns all of us.

Women suffering from violence are not only victims of abuse, they are also victims of silence, victims of indifference and victims of neglect.

And this violence happens all around us.

To give you a few figures from a study published by the Council of Europe last year: across all member states, one-fifth to one-quarter of all women have experienced physical violence at least once during their adult lives, and more than one-tenth have suffered sexual violence involving the use of force. Figures for all forms of violence, including stalking, are as high as 45%. More significantly, for women the majority of such violent acts are carried out by men in their immediate social environment, most often by partners and ex-partners. 12% to 15% of all women have been in a relationship of domestic abuse after the age of 16.[2] Many more continue to suffer physical and sexual violence from former partners even after the break-up.

This study also gives the estimated annual costs relative to the population which clarifies just how much each taxpayer contributes. The results of this study indicate that the total national cost of violence against women in Council of Europe member states in relation to the total population ranges from €9.20 to €555 per capita every year. However, the lower figure is not entirely representative as it concerns only women who sought victim support services. According to these studies, the estimated total annual costs of violence amount to 34 billion euros for Council of Europe member states.

The Council of Europe has, in the past 30 years, worked hard to eliminate any interference with women's liberty and dignity. This has sparked many initiatives and brought to light innovative ways in which to improve the protection of women from violence.

One of the most important of these initiatives is *Recommendation Rec (2002) 5 of the Committee of Ministers to member states on the protection of women against violence*. It is included in your seminar folder and I would invite you to take a close look at it. [See below, page 111.]

Let me briefly explain why it is so important.

First of all, it proposes a comprehensive strategy to prevent violence and protect victims. It does not only include one form of violence, but covers all forms of gender-based violence, including domestic violence. For all these forms of violence, it includes specific measures which member states are recommended to take. These range from detailed legal and policy measures to services and assistance for women victims of violence as well as concrete action in the fields of education, training, public awareness and the media.

However, this recommendation is not limited to listing legal and policy measures. It actually does much more than that. It recommends the recognition of two fundamental principles

2. Figures taken from *Stocktaking study on the measures and actions taken in Council of Europe member states to combat violence against women*, Council of Europe, 2006

which any action to combat violence against women need to be based on and which – thanks to a vocal women's rights movement – are now firmly established in international human rights discourse:

The first is the fact that Council of Europe member states have an obligation to exercise due diligence to prevent, investigate and punish acts of violence, whether these acts are perpetrated by the state or private persons.

This means that it is not an act of goodwill to effectively protect women from violence but that member states are firmly obliged to do so.

The second is the fact that male violence against women is a major structural and societal problem, based on unequal power relations between women and men. This is also reflected in the status of women in many areas of public and economic life.

What might sound radical to some is actually a well-established truth which should serve as a point of departure for anybody engaged in combating violence against women. Violence against women needs to be understood in a social context and not as a series of unconnected events. It is the social result of a misunderstood masculinity used by men to justify the use of violence as a means of exercising dominance and control.

The Council of Europe has now made the fight against violence against women a political priority. Too many women continue to live in fear of their own home or in fear of someone who was once close to them.

This is why Heads of State and Government of the Council of Europe member states decided at their 3rd Summit in 2005 to place more emphasis on the eradication of violence against women. They decided to set up a Task Force on this topic, whose chairperson just explained us their mandate and scope of work. They also decided to launch *a Campaign to Combat Violence against Women, including Domestic Violence*. As we heard, this Campaign was launched in November last year and will end in 2008. During this period, but also beyond, member states are invited to make real progress in preventing and combating violence against women, ideally through national campaigns that should include measures for stronger implementation of Recommendation Rec (2002) 5 on the protection of women against violence [see below, page 111].

It is within the framework of this Campaign that we are meeting here today at the first of five regional seminars which will be organised throughout the course of the year.

I would like to thank the Dutch authorities for their initiative to host the first such seminar and for the wonderful co-operation with the Council of Europe in organising the event.

Each of these seminars will focus on a different thematic aspect of preventing and combating violence against women, including domestic violence, which are laid out in the objectives of the Blueprint.

This seminar today is devoted to legal measures. I believe we can all agree that efforts to prevent domestic violence should not be limited to an effective legal framework. At the same time, we will agree that protecting women from violence is impossible without a legal system that treats domestic violence as the serious crime it is. Bearing this in mind, we will spend the following two days discussing new or proven legal measures which aim at protecting women.

During the first day, keynote speakers will present three different approaches to improving the protection of women from violence through law. These include protection or barring orders, which are now considered fundamental in enabling women to free themselves from violence. They also include the idea of setting up a legal basis for increased court sentences if violent acts have been committed against a former or current partner as opposed to a stranger. Last but not least, we will learn about the concept of specialised domestic violence courts and their added value.

The second day will then focus largely on how these or other legal measures can be implemented effectively. You as experts in this field know that it is not enough to simply introduce changes in the law, but that their implementation needs to be ensured and their outcome evaluated and monitored.

This seminar will show us how specialised legislation can be used to really protect women from violence. We should not forget, however, that there are countries where such legislation and its implementation actually leads to the opposite effect.

Since all of you present are experts in this field, you are probably very familiar with much of what I have said and would agree with me that it is now high time for concrete action instead of more talk. That is why I would like to ask you to support the Council of Europe in turning words into deeds during the Campaign, but also beyond. I hope this seminar will be a first step.

On behalf of the Council of Europe, I warmly welcome you to this seminar and look forward to your presentations. As you will see from the programme, a lot of time is devoted to discussion among seminar participants. I would like to invite you to make the most of this and look forward to your contributions. ★

Innovative legal measures to combat violence against women, including domestic violence

Protection and non-molestation orders

Keynote speaker: Ms Silvia Thaller

Legal advisor, Penal Legislation Department, Ministry of Justice, Austria

I am grateful for the invitation to be here today. Violence against women, especially domestic violence, is a serious issue, an issue of great concern to all of us. As we all have a responsibility to tackle it, a common strategy is important. Although violence against women is an old phenomenon, state reactions to it, even in Council of Europe member states, still vary strongly. In some countries a clear and comprehensive strategy has not yet been achieved. So, while new standards emerge, the gap widens to those countries which have not yet taken sufficient legislative and organisational steps.

During this first working session this morning we will have the opportunity to learn more about experiences with different models of protection and non-molestation orders made in Germany and Ireland as well as the reform project in the Netherlands. But before going into a detailed analysis of these systems, I would like to point out some necessary prerequisites which all models should consider, as well as some of their possible benefits and potential drawbacks.

In preparation for the European Crime Prevention Network (EUCPN) workshop on domestic violence held in Vienna in May last year, a comparative study was conducted, which made the different approaches in the evaluated European countries clear. It also revealed that there can be various ways to cope with domestic violence and there is not just one and only solution to the problem. But in the end, the effectiveness of a system depends on some crucial decisions a legislator has to take. Therefore, evaluations like the one mentioned before, but also seminars like ours today are vital to discuss possible strategies in order to find a best practise or maybe even different best practices in this field.

First of all, let me name the most important claim to all models of protection and non-molestation orders: No matter which policy a state adopts, it should make unmistakably clear that domestic violence is a matter of public concern.

Acts of violence perpetrated in the domestic sphere should no longer be defined and treated as a private matter, but as a cause for public concern. They are a public security matter.

Therefore, a first rapid intervention is necessary, determined action which is a signal that there is zero tolerance for violent behaviour against women.

With regard to this first intervention the police have to be a key actor in helping to stop immanent danger, but also to end the violent relationship in the long run. The police shall be empowered to intervene and to immediately remove in their own capacity the presumed offender from the household of the victim. The police should order the offender to keep away, even when it is the common household.

Therefore, the role of the police needs to be redefined. Intervention that just seeks to de-escalate the situation is not only entirely insufficient with regard to prevention, but also emits the wrong signal. A change in attitude is mandatory. The police should no longer perceive domestic violence as a private "conflict", but as grounds for the victim to receive protection from state agencies. The role of the police can no longer be just settling family disputes, but the aim of the police intervention should be on the one hand to make the offender responsible and on the other hand to protect the victim.

Assigning the police this new role inevitably requires accompanying measures. Indispensably, instructions of the police need to be updated and training measures provided.

A shift in paradigm is necessary and already observable in some countries. Nonetheless, it is striking that government action in this field mostly started not more than one decade or even only some years ago.

In countries like Austria, the Czech Republic, Denmark, Finland, some of the German *Länder*, legislation has been introduced empowering the police to expel a person from premises on the grounds that his/her presence would pose a risk to another person living there. These provisions have not replaced but complemented the powers of the police to arrest a suspect, powers which in this group of countries are by far more restricted than in countries with common-law traditions. In Luxembourg and Sweden for example the power of the police to expel the offender or suspect depends on the consent of the public prosecutor. Again other legislations, such as the French, base the expulsion order on a court decision. In Ireland (as well as in the United Kingdom) the first measure, carried out by the police, is not the expulsion but the arrest of the offender. A last group of countries, including for example Estonia, Greece, Hungary, Poland and Portugal, reported in the comparative study that no expulsion order is stipulated by legislation. In the Netherlands reform is under way.

Eventually, whether the expulsion order is decided only by the police, the public prosecutor or a court is both a matter of principle (an aspect of division of powers) and of practicability. No matter which policy a state adopts, the important point is that a fast unbureaucratic intervention is guaranteed to the victim in any case.

Let me stress one thing in this context: when called to a scene of domestic violence, police powers should never depend on the victim's consent for action against the assailant.

Especially during the first phase, the intervention of the police must not depend on the wish of the woman. Any other solution would mean asking too much from a woman at risk who is under psychological pressure due to a violent relationship. In an emergency, the intervention must even take place against her will.

The police should ask the offender to leave immediately and stay off the premises where the victim lives which normally is also the home of the offender. It must be the perpetrator who has to leave the house, not the victim. Not the woman should be the one who has to take refuge at a friend's house or a shelter for battered women. This is not only a practical matter, but a very clear psychological signal to the perpetrator and to the victim in this situation.

This principle aims at conveying the message of the severity of domestic violence and the perpetrator's responsibility, a message of tremendous importance to

- bringing about change in the perpetrator's attitude and behaviour,
- helping the victim cope with the trauma of violence and feelings of shame and guilt,
- society's approach to violence.

At this stage, it is vital that the police make the victim as well as the perpetrator aware of the fact that the police order is enacted *ex officio*, not because the victim wishes so.

This first phase of intervention is very demanding for all persons involved. We all know that it is very difficult to empower, to strengthen the position of a woman faced with violence. The essential question therefore is: which approach best suits the situation of the victim?

The Austrian experience has shown that a dual-phase-model is indispensable. The reaction of the state has to be structured in two phases.

According to the Austrian Police Act, which came into force 1997, law enforcement officers are authorised to expel the assailant from the home in which the potential victim lives and from its immediate surroundings as well as prohibit him from returning to these premises, if it can be assumed on the basis of certain facts that an assault on the physical safety of an individual is imminent. During this first phase, the intervention does not depend on the wish of the women. But this first patronising phase is strictly limited. The ban expires after the tenth day of its issue.

Afterwards, control over the further process of change passes clearly and unconditionally to the woman at risk. Within these first 10 days she can apply for an interim injunction at the family court. In this case, the prohibition order expires when the court decision has been served on the respondent. In any event, the police ban will expire after the twentieth day of its issue.

At this second stage, the initiative of the victim is decisive. She can choose whether to prolong the effectiveness of the ban through an interim injunction or not.

In this context, the so called intervention centres, NGOs specialised in the field of victim support play a crucial role. Tomorrow, we will have the opportunity to hear more from Rosa Logar, the director of the intervention centre Vienna. These service centres help women after police interventions in their decision whether to apply for a interim injunction at the court or not. By supporting the women psychologically and through legal counselling they can help to end violent relationships in the long run.

Summing up, the Austrian model rests on three pillars: eviction and barring orders imposed by the police; longer term protection by means of a temporary injunction decreed by the family court and last but not least free

counselling and support by the intervention centres.

This short look at the Austrian system shows that the victim support organisations are an indispensable link between the state institutions and the victim. Their importance should never be neglected by the state: effective access to victim support is a major cornerstone for a functioning system to fight violence. Therefore, the state has to contribute to the support of these organisations. Again, in Austria, there is a network of victim support organisations. We have nine Intervention Centres all over the country which are financed by the Ministry of the Interior and the Ministry of Health and for Women's Affairs.

Special provisions state that law enforcement authorities are obliged to inform the Intervention Centres about every prohibition order issued by the police. With that information, Intervention Centres can proactively address the victim and offer her legal advice and psychological support. Furthermore, law enforcement officers are by law required to advise the woman at risk on suitable victim protection facilities like the Intervention Centres. This obligation constitutes a core element of the Austrian reform project. It is based on the assumption that in incidents of relational violence the state must not wait for the victim to find her way to a counselling facility, but that there is an obligation to help the woman actively – in form of supportive social work.

But not only in Austria, in many other European countries networks of victim support organisations already exist. Let me just name Denmark, Estonia, France, Germany, Hungary, Ireland, Luxembourg, the Netherlands and Sweden. In these countries, state authorities - the police, courts – also co-operate with the victim support organisations and there is a legal basis for them being financed by the state. Again in other countries there are mixed systems of victim support, including both state institutions/municipalities and NGOs, and in others only NGOs are active in this field. The financing of the NGOs' activities is not always guaranteed, but they can apply for financial support from the state. Nonetheless, the comparative study revealed that the kind of support offered to victims by these organisations varies a lot. In some countries, intervention centres provide victims with a range of services, including psychological, social and legal services, while in others only telephone help-lines were established by now. There are big differences and a big potential to far more strengthen the role of victim support organisations.

Systematic co-operation between the police or state institutions and victim support organisations is a key element in the fight against domestic violence. A legal basis for the exchange of information is necessary, as this is the only way to make close co-operation between the police authorities and private victim support facilities possible. Law enforcement authorities should be empowered by law to disclose personal data of cases of domestic violence to suited victim protection facilities to the extent that this is necessary to protect individuals at risk. They shall be supplied with information on the intervention procedure and the behaviour of the perpetrator, which are of significance to the work of the victim support facility.

Strikingly, European countries that do not hesitate to equip the police with strong powers to intervene in domestic violence cases, are remarkably restrictive when it comes to the communication of personal data from the police to victim support agencies. In this respect, the more liberal Austrian position is exceptional. The question arises whether the prioritisation of protecting the suspect's personal data could limit the effectiveness of victim support.

A violent relationship cannot be ended by police intervention alone; such an intervention can not be an appropriate sanction, neither. It is only one step and there is urgent need for follow-up co-operation with other institutions – such as family courts, the youth welfare offices, criminal courts and private institutions.

The common point of departure for all effective prevention programmes is that no institution can be successful if it operates in isolation. A holistic and co-operative approach is necessary.

And therefore gradually, a shared understanding has to be developed. ★

The Dutch experience: Ms Jolien Janse

Legal advisor, Legislation Department, Ministry of Justice, Netherlands

Ladies and gentlemen,

I was invited to speak about experiences in the Netherlands with protection orders in the field of domestic violence.

I have divided my presentation into three main parts:

- Firstly, I will give a summary of the existing possibilities to issue a protection order while criminal proceedings are instituted or still pending.
- Secondly, I will focus on the possibilities of civil law proceedings.
- And finally, I will turn to the main part of my presentation: the Draft Bill that provides for the possibility of a protection order – or home restraining order – issued by the mayor. This Draft Bill provides for an administrative procedure.

Criminal law

I will start with the existing legal measures in criminal law. Criminal proceedings may only be instituted when acts of violence have already occurred. There has to be a suspect of such an act. If a person is suspected of committing an act of domestic violence, a protection order can be imposed in the following situations:

- The Public Prosecutor can make a conditional decision not to prosecute. The condition may include a protection order, for example: a ban on the suspect contacting the victim, or a ban on appearing in a certain area close to the victim's home. In case the suspect breaches the protection order, the Public Prosecutor will institute criminal proceedings.
- The Public Prosecutor may have good reasons to prosecute the suspect. However, the examining magistrate may be of the opinion that a remand in custody is not necessary, for example because the perpetrator is a first-offender. In that case he can decide to release the perpetrator on bail. A protection order may be issued by the examining magistrate. This can also be requested by the Public Prosecutor. The suspect will be taken into custody if he breaches this order.
- The Public Prosecutor will normally treat offences of domestic violence as serious offences, because they are often committed by repeat offenders. The judge may decide to suspend the sentence on the condition of a protection order. If he breaches the protection order, the suspect will be arrested.

Civil law

A victim of domestic violence may request a protection order against his or her spouse or partner in summary proceedings before a provisional judge. A civil order of protection is generally not requested if the victim and the defendant are still married or living together. In most cases, such orders concern ex-spouses or ex-partners and prohibit any contact with the victim, and/or to be present in a certain area, in particular the street where the victim is living. However, if a victim of domestic violence wishes, he or she could also make use of summary proceedings to request a protection order against other persons living in the same household.

During divorce proceedings, the house may, upon request of one of the spouses, be assigned to the petitioner (i.e. a victim of domestic violence).

Draft Bill: administrative law

In 2005, the police was involved in cases of domestic violence 57 000 times. Although victims of domestic violence may want to call the police, they often do not want to officially report the offence. This makes it difficult for the state authorities to take action. There may be a lack of evidence, so that criminal proceedings can not be instituted, and the fact that the victim does not officially want to report the offence to the police indicates that the victim will not request a civil protection order. All the police can do is try to calm down the situation. No other measures can be taken.

To fill this gap in legislation, it was decided to prepare a Bill. Existing legal measures in Austria and Germany were examined. All kinds of organisations, like the police, the Board of Procurators General, the Association of Dutch Municipalities and the Council for the Judiciary, were consulted. Although practical questions were raised, the reactions to the Draft Bill were generally positive. After comments of the Council of State were received in March 2006, the Draft Bill was introduced into Parliament last summer.

When will a protection order be imposed?

The Draft Bill provides for the possibility for the mayor to issue a protection order (or: home restraining order) to someone whose presence in a house gives rise to an imminent and serious danger for the safety of other persons living in the same household, for example the spouse, the partner or the children. The protection order may also be issued against the perpetrator if such danger is only suspected. There is no need for the victim to report the offence to the police officially. It is for the mayor or – if mandated – for the assistant-prosecutor to decide. Such a decision can be made against the victim's wishes.

A risk assessment instrument is being developed to give a checklist of possible circumstances that may indicate that a protection order is necessary. Examples of criteria are:

- previous convictions, earlier reports
- excessive use of alcohol or drugs
- tensions within the family
- social isolation

Content and purpose of the protection order

If a protection order is issued, the perpetrator has to immediately leave the house he or she has been living in so far. During a period of 10 days, he or she is not allowed to be present in the house, to linger around the house, or to contact his partner, children, or any other person living in the same household. This way a cooling-off period is created. During this period, counselling and support to the victim and the perpetrator can be offered and organised. Further escalation within the family may be prevented. A victim may use this period to decide: should I divorce him? And if not: how can we continue our relationship? Can we call for counselling and support?

Withdrawal or extension of the protection order and consequences of breaching it

If the perpetrator accepts to follow an offender treatment programme, this may be an indication for the mayor to withdraw his decision. However, if there are signs that the situation under which the protection order was issued has not improved after 10 days, the protection order may be extended by a maximum of 18 days to a period of maximum four weeks in total.

Ignoring the protection order is punishable either by a fine or by a sentence of maximum two years. The perpetrator may be taken into police custody. That way a cooling-off period can – unfortunately by using criminal proceedings – eventually be instituted.

Authority to impose a protection order

As I already mentioned, the Draft Bill provides for the authority of the mayor to issue a protection order. He may also give a mandate to an assistant-prosecutor.[1] This is expected to be done frequently, as an assistant-prosecutor will normally already be on the scene. The mayor remains responsible for the decision and the assistant-prosecutor is obliged to inform him immediately after he issued a protection order. The mayor may decide to withdraw the decision if he is of the opinion that the reasons why it was issued are not convincing.

Legal protection

The Draft Bill provides for summary proceedings that give access to a court within three days after the perpetrator lodged an administrative appeal against the decision and requested summary proceedings. Legal aid will be granted to him free of charge for the duration of the summary proceedings within 24 hours of his request.

Child abuse

A protection order may also be issued in case of child abuse or suspicion thereof. In this case, the mayor will contact the Advice and Reporting Centre for Child Abuse (in 2005 the Centre was called 38 000 times). This Centre can check if any child welfare measures are already pending. Perhaps the family is already registered with the Council for Child Protection and intervention (for example: a family supervision order) is already being prepared. The best interest and the safety of the child should always be of primary consideration.

Implementation of the new Bill

Pilot studies aiming at testing the procedures provided for in the Draft Bill are currently pending. For example: does the risk-assessment instrument meet all the requirements? Are the forms and leaflets that have been created clear and evident? How do all the organisations concerned co-operate? What kind of counselling and support will be necessary and how should it be organised?

1. In the Netherlands the assistant-prosecutor is ranked either under the responsibility of the Public Prosecutor or under the responsibility of the mayor.

This is where legislation is being tested in practice: how can the new Bill be implemented? Tomorrow, the focus of the seminar will be on the implementation of legal measures. That brings me to the end of my presentation. ★

The German experience: Ms Susanne Reis

Federal Ministry of Justice, Germany

Ladies and gentlemen,

I am very pleased to have the opportunity to speak to you today on the measures provided by German law to combat violence against women. On the one hand, there are of course the general statutory provisions, for example criminal laws on bodily injury, deprivation of liberty or coercion, as well as the civil law remedies for injunctive relief and compensation of damages against aggressors in such cases, on the other hand an important specific law against domestic violence was established in Germany as of 1 January 2002: the Protection against Violence Act.

The Protection against Violence Act anchors into German law the principle of "the aggressor goes, the victim stays." This has improved preventive legal protection under civil law for victims of violence and stalking. This Act applies both to victims of domestic violence and those affected by stalking.

One of the most important measures included in the Protection against Violence Act is the so-called "stay-away order" provided for in section 1 of the Act. For example, this enables the court, upon motion by the person who was injured, threatened or harassed, to prohibit the offender from entering the home of the victim, from approaching the victim, or from initiating contact with the victim. This possibility of imposing stay-away orders is complemented by section 2 of the Act, which allows the court to order that the victim have the sole use of the home. It provides that the victim may be granted the exclusive use of the common home for at least six months. This applies even if the rental lease is not in the victim's name. In addition to its civil law protection, the Protection against Violence Act also provides for sanctions under criminal law: Section 4 of the Act provides for imprisonment of up to one year or a fine for violations of protective orders issued by the court. This makes it clear that the measures ordered by the court do not only exist on paper but indeed have a real effect.

The German government commissioned a monitoring study a relatively short time – ten months – after the Act took effect. The goal was to determine whether the Protection against Violence Act has proven effective in practice. The study was undertaken by the Institute for Family Studies (*Institut für Familienforschung*) in Bamberg. In addition to a representative analysis of the relevant files, the study also covered the professions involved – judges, public prosecutors, attorneys, counselling centres, and victims as well.

The concluding report of the evaluation was presented to the public in August 2005. The results show that a need existed for the Protection against Violence Act and that the provisions of the Act have shown success.

This is also illustrated by the available figures: In the year 2003, throughout Germany 5 563 stay-away orders pursuant to section 1 of the Protection against Violence Act were issued by the family courts alone. In all of these cases, perpetrators were prohibited from approaching the victim, taking up contact with (him or) her, and/or entering (his or) her home. During the same period, the family courts in Germany ordered in more than 2 848 cases that the home be relinquished to the victim pursuant to section 2 of the Act. A significant increase can be observed for the year 2004: Stay-away orders were issued in

7 371 cases, and orders to relinquish the home to the victim were issued in 3 392 cases. Figures for the year 2005 are not yet available. While the figures thus far are impressive, they are not yet complete. For statistical reasons, they include only cases in which the victim and the perpetrator have a joint household set up on a long-term basis, or had one within six months before filing the motion. This means that the total number of court orders is much higher.

The study found that the instruments provided for in the Protection against Violence Act have proven reliable both for domestic violence and stalking cases, and that the Act therefore fulfils its purpose of preventing violence. The response to the statute – and especially the underlying intent of the legislator – has been largely positive.

The study shows that the willingness to move for a protective order before the court has increased since the new rules were introduced. It has also become clear that the violent conduct upon which such proceedings are based mostly takes place in close relationships between couples. Furthermore, it has been determined that the great majority of those who report domestic violence and stalking are women.

But the evaluation also makes clear that, with regard to the implementation and use of the opportunities provided by the new rules, possibilities for optimisation still exist in practice.

These possibilities for optimisation lie primarily in the area of stalking. In this context, the study primarily referred to the difficulties of proving acts of stalking and convincing the investigative authorities that they are taking place. In order to counter these difficulties more effectively, both victims groups and public prosecution offices have called for an inclusion of stalking in the Criminal Code as a separate offence, which directly and specifically provides for criminal penalties for stalking without the necessity of a prior protection order. The German government has already responded to this appeal: To improve the criminal-law protection of persons subjected to persistent pursuit, harassment and threats, the German Bundestag, in the final reading on 30 November 2006, approved the introduction of a new offence in the Criminal Code: "section 238 (Stalking)". It is expected that this provision will take effect by the end of the first quarter of 2007.

Changes are planned in another area as well: in terms of jurisdiction for measures pursuant to the Protection against Violence Act. The evaluation has shown that the current separate jurisdiction does not respond to the victim's need for a rapid decision. According to the current legal situation, family courts have jurisdiction only when the perpetrator and the victim live together or have lived together within six months before filing of the motion; in other cases, jurisdiction lies with the civil court. In order to maximise the protection of victims, jurisdiction for the measures provided by the Protection against Violence Act is to be concentrated at the family courts.

To conclude, we can see clearly that the Protection against Violence Act has already attained a great deal in terms of protecting victims. The law has also made a significant contribution to creating a general public awareness that no longer sees domestic violence as a purely private matter; this represents an important step toward improving protection for victims of domestic violence. Victims of both domestic violence and stalking are in a better position today than they were before the Act took effect. The Protection against Violence Act is also a good example of how civil law may contribute towards protecting victims from further criminal offences with preventive measures. ★

The Irish experience: Mr John McDaid

Senior Solicitor, Legal Aid Board, Ireland

In common with most other jurisdictions, protection measures in Ireland for victims of domestic violence are available through both the civil (family) and criminal courts. As the primary or first stage remedies are usually sought through the civil courts I propose concentrating on these remedies in this paper.

The principal piece of legislation is the Domestic Violence Act of 1996. It is a gender-neutral piece of legislation and the remedies that it creates are equally available to male victims of domestic violence as they are to women. It provides for two main forms of protection, namely a Barring Order and a Safety Order. A Barring Order has the effect of barring the perpetrator from the victim's home for the period specified in the Order. It can also incorporate "non-molestation" provisions as well as Orders directing a perpetrator not to watch or beset the victim's home. A Barring Order can be granted by a local court Judge for a maximum period of three years though a regional court Judge can grant one for any period.

To be eligible to apply for a Barring Order the victim must be:

- the spouse of the Respondent in the proceedings; or
- if not the spouse, have lived with the respondent as husband or wife for a period of at least six months in total during the nine months immediately preceding the application; or
- the parent of the Respondent and the Respondent is a person of full age and not a dependent of the parent.

In the second and third of these situations the applicant must have at least an equal interest in the premises as the Respondent.

The second main form of protection is a Safety Order. This effectively is a non-molestation Order. It can direct a perpetrator not to use or threaten to use violence and not to watch or beset the victim's home (in the event that the victim and the perpetrator are living apart). A Safety Order can be granted by a local court Judge for a maximum period of five years though a regional court Judge can grant one for any period.

To be eligible to apply for a Safety Order the victim must be:

- the spouse of the Respondent in the proceedings; or
- if not the spouse, has lived with the respondent as husband or wife for a period of at least six months in total in the twelve months immediately preceding the application; or
- the parent of the Respondent and the Respondent is a person of full age and not a dependent of the parent.
- residing with the Respondent in a relationship the basis of which is not primarily contractual.

Barring and Safety Orders can only be made on notice to the Respondent in the proceedings. Given that "tensions" may well be heightened by the serving of an application for a Barring or a Safety Order, the legislation provides for the making of a Protection Order which is a temporary Order that can remain in place until the application for the Barring or Safety Order has been determined. An application for a Protection Order can be made to a Judge *ex parte* or without notice to the Respondent in the proceedings. It would normally be made at the same time as the request to issue a Summons for a Barring Order or Safety Order is made. A Protection Order normally has the same effect as

a Safety or Barring Order i.e, it is a non molestation Order but it does not bar a perpetrator from their home.

In extreme cases, i.e, where there is an immediate risk of significant harm to the applicant or any dependent person, a victim can seek an interim Barring Order without notice to the perpetrator. In the event that a Judge grants an interim Barring Order the matter must come before the Court again on notice to the perpetrator within a period of eight working days. This eight day period was not included in the original legislation which allowed interim Barring Orders to be granted for unlimited periods. The superior Courts determined that the failure to limit the period of these Orders was unconstitutional hence the legislation was amended.

The domestic violence legislation enables the Health Service Executive, which is the body in Ireland charged with ensuring child welfare, to make an application for any of the aforementioned Orders where it becomes aware of incidents which put into doubt the safety or welfare of a person and where it believes that the violence, or level of threat of it, is such that the victim or the appropriate person to apply for protective Orders is unable to do so.

In terms of the sanctions for breaching Orders on foot of the domestic violence legislation, the police can arrest a person without a warrant where they believe that an offence under the legislation has been committed and they are empowered to enter any premises by force if they reasonably believe the perpetrator to be there. If a perpetrator is convicted in court they are liable to a period of imprisonment of up to twelve months and also to a fine.

I should mention that while applications for Orders on foot of the domestic violence legislation come within the 'family law' sphere and are thus heard in camera or privately, breaches of the Orders come within the criminal law realm and thus may be heard in open court.

I also wish to mention one other particular legislative provision namely Section 10 of the Non Fatal Offences against the Person Act 1997. I mention this in the context of the provisions of the domestic violence legislation not necessarily providing a remedy for every victim of violence perpetrated by a partner or ex-partner. Clearly there are victims who are not married to the perpetrator and who may not satisfy the residency criteria or indeed one not uncommon scenario – persons who have not lived together at all but have had a child together. Section 10 provides that any person who, without lawful authority or reasonable excuse, by any means including by use of the telephone, harasses another by persistently following, watching, pestering, besetting or communicating with him or her, shall be guilty of an offence. While this provision is not specifically focused on domestic violence situations it can be a very useful tool in dealing with situations that might fall outside the ambit of the domestic violence legislation.

I have listened with interest to the Austrian experience where the police are empowered to bar a perpetrator of domestic violence for periods of up to ten days regardless of the wishes of the victim. We do not have a similar provision in Ireland and as I mentioned at the outset, we generally look to the civil (family) courts as the locus for the initial solution. Having said that, where perpetrators are charged with criminal offences bail conditions can be imposed that can effectively amount to a perpetrator being barred from a home, or even an area, pending the determination of the proceedings.

In terms of obtaining legal representation in relation to the civil (family) remedies that are available, means tested legal aid is available in relation to all family matters, including domestic violence. I should point out that the Legal Aid Board, which oversees the provision of civil legal aid, does not distinguish between victim and perpetrator in determining eligibility and a perpetrator is no less entitled to legal aid than a victim if they satisfy the general eligibility criteria.

Finally, the State supports a National Steering Committee on Domestic Violence against Women which is made up of various stakeholders in the area of combating violence against women. The State is likely to give careful consideration to any recommendations that that Committee might make in relation to its legislative infrastructure for tackling domestic violence. ★

Nature of relationship between victim and perpetrator as an aggravating circumstance in criminalising domestic violence

Keynote speaker: Mr Freddy Gazan

Advisor, Department of Criminal Services, Ministry of Justice, Belgium

Introduction: The Department for Criminal Policy's viewpoint

As Assistant Advisor General at the Department for Criminal Policy, the view I will take of the problem of aggravating circumstances will of necessity be one of contextualisation, in order to give meaning to what happens: to see ourselves in operation. This is important in order to ensure a reasoned approach and not to rush unthinkingly into something which is fashionable, and indeed legislative.

The Department for Criminal Policy, which I am involved in running, is directly attached to the Ministry of Justice. Its role is to advise the Ministry on the choices of direction for criminal policy. Having no decision-making power, I therefore confine myself to pointing out the pros and cons of certain choices and ensuring that those choices are knowledge-based. That was the role played by my department in particular in connection with the development of an integral and integrated policy on the issue of domestic violence. "Integral" means that the view developed is a general one (for example, the socio-economic context can be taken into consideration); "integrated" means that we ensure that the multidisciplinary approach developed, involving several different authorities, is based on consultation, allowing handovers to take place while still giving due weight to the role of each.

As I have been asked to examine the question of aggravating circumstances, I shall endeavour in particular to do so, while at the same time describing the Belgian model which has recently been renewed, although not legislatively, at least by the introduction of a new directive which is to be enforced by the public prosecutor's department and the police.

Context and issues

In our Western societies where families break up, it may be asserted that the dark number for crime within the family, although still high, is decreasing. It is also known that this factor of permeability of families by social services is a very unequal one, with families in financial difficulties being "infiltrated" by social services more than others. The fight in which all of us here today are engaged requires us to be informed about what goes on within families, so that we ourselves are not neutral in our role with respect to revelation, even though victimisation studies preserve

the anonymity of the people interviewed. I was recently involved in the writing of a brochure on the ill-treatment of children. This brochure is unusual in that it can be consulted either way: one part deals with the intervention of the assistance and support system, while the other, turning the brochure the other way round, is devoted to the involvement of the judicial system. The underlying idea is that anyone reporting an offence has the choice of either route, although the recommendation is for the judicial system in principle to come in at a subsidiary level. While attending a preparatory meeting in this connection, I was greatly surprised to find one speaker wanting to introduce a third option: solving the problem internally, within the family or with the relatives. And in fact, bearing in mind that many instances of abuse take place within the family, it quickly becomes apparent that there is a need to put an end to the system within which that abuse has taken place, and that the solution is to be found elsewhere, whereas a system can also learn from its own dysfunction and be self-regulating. This is an important point, for why should we bypass that first step of solving conflicts internally when there are already signs of the very thing I am going to talk about, namely the establishing of aggravating circumstances, thus going further down the path of punishment and external conflict management. Having said that, the self-regulating system can also be dangerous if it is regulated from a position of abusive power. So, a specialist committee of the French upper house has recommended prohibiting penal mediation in cases of violence against the partner, as it creates the illusion of equality between partners whereas in fact the roles should be radicalised: there is a perpetrator and there is a victim.

But is choice still possible?

Our society is becoming digital, and in consequence every act has to be "digitised". In areas where general, abstract definitions previously allowed judges some scope for assessment, there is now an increasing tendency to try to delimit our everyday lives. We thus have a clustering together of the hold of the executive powers over parliaments, on the one hand, while at the same time the executives are being pushed from behind by our knee-jerk society demanding a law to be passed every time a gap is revealed. Then we have penalty inflation, so that whenever one moral provision – for example concerning adultery or homosexuality – is repealed, a dozen new crimes come along to take its place. In their book, *Illicit and Illegal. Sex, regulation and social control*, J. Phoenix and S. Oerton[2] argue "that contrary to the more common view that contemporary society is marked by increasing levels of sexual freedoms, in fact more and more types of relationships and behaviours are being regulated, and that a new sexual enterprise marked by moral authoritarianism underpins these extensions to sexual social control". Echoing these writers, Crawford[3] adds in his article "Networked governance and the post-regulatory state?" that "far from state withdrawal, in relation to the regulation of social behaviour, the British state (but this concerns our countries too) is engaged in ambitious projects of social engineering in which the deployment of hierarchy, command and interventionism are prevalent".

Several examples can be given. For a number of years, my usual reply to questions concerning sexual mutilation of women was that our Belgian law on violence against the individual sufficed to deal with such cases of mutilation. Then came the time when, although we were not facing a de facto problem, we were obliged by pressure from various quarters to introduce a specific offence and shortly thereafter to introduce aggravating circumstances. Recently, we have been in the dock due to the lack of specific provisions prohibiting "parental punishment". However, our provisions on assault and battery are fully applicable to situations within the family. But in our digital society, everything has to be spelled out. You can imagine the fuss there was, a couple of months ago, when the Antwerp Court of Appeal, carried along by this digital wave, suddenly ruled that zoophilia, hitherto considered debauchery, was no longer falling under this provision and was therefore no more punishable. Need I mention the legislative battle that ensued as each tried to be first to plug this gap that had opened up?

The situation is further complicated by the absence of common consent that prevails in our societies, with the result that legislation is passed to satisfy some groups but is not enforced in order to satisfy others. One frequent case is the exploitation of prostitution, which is regularly prohibited in many countries. It is rare, though, for that prohibition to be applied in full. In such a case the prohibition has a symbolic effect. The law is there, but is scarcely ever enforced until one high-profile action symbolically reaffirms the principle, only for it to lapse back into somnolence. One might think that by adopting a system of aggravating circumstances aimed at very specific cases it would be possible to thwart the de facto impunity, but this is not so. When we say 'aggravating circumstances' we are also saying that what counts above all is to punish the perpetrator on the basis of the basic offence. Now, if there is no prosecution of that basic offence, it follows that there will be no prosecution of the aggravated offence, either.

Debate: ordinary provisions, special provisions, aggravating circumstances

The ordinary, general offence

I will not insult you by reminding you of the principle of the universal declaration of human rights or the Strasbourg convention according to which "Nullum crimen, nulla poena sine lege". Instead, I will stress that in a *de jure* state, a legal provision must be necessary (the offence concerned should not already be covered by another provision). Then, it should be sufficiently precise for the citizen rea-

2. *Illicit and illegal. sex, regulation and social control*. William Publishing. 2005.
3. In *Theoretical Criminology*, Vol. 10, No. 4, Nov. 2006; 2006.

sonably to be assumed to know what he is expected to do. A general provision such as a "prohibition of assault and battery" allows a judge to cover a huge number of situations, notably those arising within the family. Even now, most European legislation on violence against the partner is general legislation not specifically covering domestic violence.

The special offence

Pressure is regularly exerted by lobbies – and we are all involved in one or another of them – for the law to deal expressly with this or that particular demand which, admittedly, should already be covered by the accusation referred to but which – you never know – would be covered more reliably if the particular situation were to be spelled out. This practice, which most often takes the form of adding a special offence to a general offence, also allows the associations to carry off their trophy: they've got their own law. In reality, with the benefit of hindsight, what happens with this method is that anything that has not been made into a more specific crime thus gradually falls by the wayside, or may even start to be questioned. One such example is zoophilia, which I mentioned earlier. Another problem is that creating a specific offence can result in injustice if not every situation is envisaged. Take the case, for example, of a crime involving domestic violence, the French term for which is "conjugal" violence, thus strictly defining the perpetrator as a spouse and not a live-in partner. That does not mean the live-in partner would not be prosecuted, however. He or she would be prosecuted on the basis of the general law. Having a special law gives a clear signal to society. It also gives a clear signal to the victim, to encourage him or her to make a complaint, as well as to the police and the prosecuting authorities, making them aware of this problem by ensuring a more effective response to complaints.

The last problem concerning special laws is that there are too many of them. That reminds me of an association wishing to abolish road signs because there are so many of them that people no longer see them, leaving only a few signs that would then be very easy to see.

Some countries, such as Sweden or Spain, have specific provisions on violence against the partner. One advantage of this kind of specialised legislation is to promote an integrated system and also that it makes it easier to gather statistics.

Aggravating circumstances

Aggravating circumstances are not so much a type of provision, but rather a condition attaching to an existing provision. If the condition of aggravation does not apply, the offence is still an offence, but it will be at a lower level. The idea of aggravating circumstances is that heavier penal consequences are associated with certain personal characteristics (such as authority over the victim) or the facts or circumstances (e.g. at night), or even a result ensuing (e.g. death). This means that the minimum or the maximum punishment applicable, or possibly both, can be increased. This may have the effect of altering the type of offence. Thus, for example, an offence may become a crime, with different consequences attaching (e.g. a longer time limit after which an offence cannot be prosecuted). Sometimes, the offence itself will be altered, as in the case of a killing which if premeditated is classed as murder.

As mentioned earlier, the effectiveness of a provision accompanied by an aggravating circumstance may be increased because it is mandatory for the judge. Of course, a judge can still allow for mitigating or extenuating circumstances, but he will have to juggle with the limits authorised by the text with respect to the aggravating circumstances that will, for example, have raised the minimum level of penalty. It sometimes happens that the principle of aggravating circumstances is made mandatory for the State, for instance within the framework of an international instrument. This is the case with regard to racism, and also leads one to say that European law regularly exerts pressure for heavier penalties, with the familiar consequences in terms of prison overcrowding.

A number of drawbacks may be mentioned in connection with recourse to aggravating circumstances. Firstly, as we are talking about aggravating a principal provision, we first of all have to saturate the basic offence before looking at the aggravating circumstance. Take, for example, the issue of rape within marriage as an aggravating circumstance of rape. It thus appears that some classic criteria of absence of consent, such as the effect of surprise generally associated with an act of violence, carry less weight in the case of rape within marriage, with the result that, in such a case, there is a risk of the aggravated penalty not being applied because the general offence to which it attaches is not accepted. Another problem arises with regard to transitional legislation. How can an aggravating circumstance be made to apply retrospectively to a pre-existing offence which had not, at the time, been established as an aggravating circumstance? And a third problem: the system of "wronged by comparison": by dint of establishing various aggravating circumstances in different acts at different dates, one sometimes loses sight of the fact that unjust situations are being created. To give an example, it has thus been found in Belgium, but only after several years, that the parents of a child who agree out of ritual conformism to have excision carried out on their child will certainly incur the same punishment as the person actually performing the excision, but they will also be subject to an aggravating circumstance, so that the minimum penalty is increased for them, and them alone.

Another, more philosophical problem, has to do with the not always very brave nature of some aggravating circumstances. In France, for example, consideration was given to treating the commission of an offence when under the influence of drink or drugs as a general aggravating circumstance. If that is acceptable in a particular case, such as driving while under the influence of such substances, generalising it gives the impression of

trying to conceal an inability to deal effectively with consumption of intoxicants by increasing the penalty for the commission of other offences.

This example of drink and drugs is interesting, because it shows also how resorting to aggravating circumstances can become a tool for redefining the system of thought, while at the same time signifying distrust of the judge. In the same way as those who would have it that rape within marriage is less serious than rape by someone outside the family, consumption of alcohol or drugs is regularly considered a mitigating circumstance of the commission of the resulting offence. Here, by establishing it as an aggravating circumstance, that symbolically pulls the rug from under the feet of those who would tend to regard it as a mitigating circumstance. However, that only applies to penal systems that contain no obligation to impose minimum penalties.

In conclusion, recourse to aggravating circumstances has to be considered within the framework of an overall policy. Being realistic, one should nevertheless bear in mind that it is often already too late to distance oneself from this phenomenon, which has become a kind of classic mechanism for penal inflation, with the result that not to go down that line often means being prepared not to put the case one is presenting on the front line, whereas if one does have recourse to the mechanism, one is de facto participating in the general weakening of the classic legal rule. Let us remember, also, that the penalty itself is regularly accompanied by supplementary measures, such as social and judicial follow-up, but that, too, is another new trend.

The case of Belgium

Domestic violence is not made a specific offence; acts of physical violence come within the field of application of the provisions on voluntary manslaughter (not classed as murder) and voluntary bodily injury (articles 398 et seq. of the Penal Code). However, our Penal Code provides for aggravating circumstances in cases where such physical abuse is committed by a partner.

As far as mental abuse is concerned, no special provisions have been introduced; this comes within the field of application of the provisions on harassment (article 442 b of the Penal Code).

The same applies to sexual abuse: there are no specific penal provisions applicable to sexual abuse against the partner.

The Belgian legislator has thus increased the penalties applicable to persons committing voluntary assault and battery when the perpetrator is the spouse or the person with whom the victim lives or lived and has or had a long-term emotional and sexual relationship.

This aggravating circumstance is thus linked to the status of the perpetrator.

We are talking not only about violence between husband and wife but also between people living together in a stable relationship.

During the parliamentary work of drafting this law, there was much debate about the definition of "partner": the wording expresses a desire to cover married as well as unmarried couples and both heterosexual and homosexual couples. It should be noted, also, that this aggravating circumstance still applies even though the relationship between the perpetrator and the victim may have ended.

However, while the law increased the minimum penalties for domestic violence, it did not enable the investigating judge to issue an arrest warrant. The maximum penalty in cases of domestic violence was in fact established as six months' imprisonment, whereas the law on detention on remand limits the possibility of issuing an arrest warrant to those cases where the offences are likely to lead to imprisonment for at least one year.

This was remedied by the law of 28 January 2003, which increased the maximum term of imprisonment for voluntary assault and battery against a partner or former partner to one year. The law on detention on remand is therefore now applicable.

Besides the law already mentioned which aims to aggravate the penalties and also to award the matrimonial home in cases of domestic violence, Belgium has also had a national plan of action to combat domestic violence since 2001. Furthermore, Belgium recently passed a directive which is enforceable by the public prosecutor's department and the police. I am going to go into the details of that directive now:

On the basis of a specific technical definition which can be structured in collections of statistical data, the aims of the directive can be summed up under four headings:

- To lay down the guiding lines of criminal policy;
- To develop a uniform system for the police and the prosecuting authorities to identify and record domestic violence situations;
- To determine the minimum measures to be applied in all legal districts of Belgium and to stimulate special local initiatives;
- To give the judicial and police officers involved a set of tools and benchmarks to support them in their work.

The important thing to note is that the directive is not confined to a purely judicial reaction to this issue. This is where the view of an integral and integrated criminal policy, as mentioned at the beginning, reaches its full scale, with its different components, namely a policy of prevention, punishment (including alternative penalties) and, where applicable, follow-up. At the same time, we are also going beyond the purely judicial field and developing a multidisciplinary approach that mobilises the capacities and skills of the health sector as well as the welfare and psychological support services. The directive thus stresses the need to ensure protection for the victim and the need to acknowledge that person as a victim. The protective measures will be extended to the children if necessary. The attitude towards the perpetrator will be to make clear that a criminal act has been committed and to prevent repetition of the offence while at the same time respecting the of-

fender's rights during the proceedings. The resulting message must clearly be that domestic violence calls for a firm response from the authorities, which are resolved to enforce the individual's rights to bodily and mental security.

Generating statistics is another important point, in order to get a better picture of what is going on and thus, hopefully, to refine the policy pursued. From now on, every record in this area will be explicitly headed "Intra-family domestic violence" and will indicate the relationship between the perpetrator and the victim (spouse, former spouse, and so on). The aim is to optimise the visibility of the situation in order to ensure that appropriate decisions are taken.

While the intention was not to impose a rigid framework for intervention, but instead to allow those involved the necessary freedom to take the most appropriate measures, a basic organisational outline has nevertheless been established. It is thus the responsibility of each public prosecutor to draw up a plan of action specifically for his district, after consultation with the appropriate psycho-medical-social and legal circles. The plan of action will notably include an inventory of the phenomenon drawn up on the basis of the data available, an inventory of the options for looking after the victims and the perpetrators and a description of the basis of co-operation between the judicial authorities, the police and the institutions or other associations. Co-operation agreements will be established to this end. Also, at least once a year the public prosecutor must put the initiatives undertaken against domestic violence and in favour of victims on the agenda for the meeting of the district committee concerned with victim support policy. He is also required to submit a specific report to the Principal Crown Prosecutor annually.

One reference member of the national legal service is appointed per judicial district. His job is to ensure that the police, the judges and the secretariat of the public prosecutor's office are familiar with the directive. He is the liaison person for the police, the remand prison, the public services and the private associations involved in looking after the victims and perpetrators of domestic violence (refuges for battered women, reception centres, associations supervising alternative measures, etc.). In each area, that reference person liaises specifically with a reference police officer.

The directive aims at ensuring that both the public prosecution authorities and the police approach their task with the requisite tact and firmness, while respecting the individual and preserving evidence, if appropriate by photographing the marks of the blows. In particular, it is ensured that the victim is put in touch with a member of the police force specially trained in victim support. If possible, it is also ensured that the victim does not have to leave the marital home for her own safety and that of her children, where applicable. Consequently, the alleged perpetrator may be asked if he is prepared to leave the couple's home of his own accord for a specified period and to stay either with a friend or relative, in a hostel which will take him in, or elsewhere at his own expense. If appropriate, he may also be given the address of a specialist centre which will make him aware of his responsibilities and help him to manage his behaviour. Another point to note is that Belgian law gives the victim the right to live in the marital home upon request.

The directive also includes decision support for the public prosecutor. He is asked to look out for certain signs, ranging from repeated complaints to becoming aware of a state of weakness or submission on the part of the victim in relation to the perpetrator. That assessment should help the prosecutor to determine his position with regard to the rest of the proceedings.

As far as the victims are concerned, special attention is paid to preventing secondary victimisation. It is thus permissible in certain cases to make an audiovisual recording of the examination of the victim in order, notably, to avoid repeat examinations. Also, the victim should be given a leaflet by the police with details of his or her rights and contact addresses for help and support. It sometimes happens that the victim support service at the public prosecutor's office takes the initiative of making contact with the victim. In worrying cases, in order to reassure the victim and check on how the situation is developing, the police themselves will contact the victim again a few days after the event. The victim will also be informed about the measures taken with regard to his or her partner. Of course, consideration will also be given to the situation of any children involved, though endeavouring as far as possible to avoid removing them from the parent who is the victim.

Need I say that one section of the directive is concerned with training for personnel working in this area? Also, a schedule to the directive describes, as a prelude to such training, the situation likely to be faced by a police officer on the ground, namely a cyclical phenomenon whereby the victim withdraws the complaint a few days after making it, in accordance with the dynamics of the cycle of domestic violence described by Lenore Walker.

Last but not least, as I mentioned earlier, the directive will be assessed. It will be assessed by my department in co-ordination with an external research team appointed by an independent organisation, the Institute for Equality of Women and Men. The first report is expected by the end of 2007. Being either distrustful or realistic, the project's originators have made it a requirement for the report to refer to "the adequacy of the resources made available to public prosecution departments, the police and remand prisons to implement the model of action described in the common guideline (material and human resources and capacity for looking after the victims and perpetrators of domestic violence)". Here we are talking about making the authorities themselves aware of their responsibilities, by boldly stating the parameters relating to the authorities themselves and on the basis of which they too will be assessed. But isn't that precisely the

aim of an integral and integrated policy, namely mobilisation in a common cause? It was that desire for mobilisation around a comprehensive approach that prompted my country to propose an explicit reference to intra-family violence in the recent resolution on victims of crime passed by the Ministers of Justice of the Council of Europe at their conference in Yerevan last October. ★

The French experience: Ms Catherine Seurre

Advisor, Women's Rights and Equality, Region Seine and Marne, France

Mister Chairman, ladies and gentlemen,

In France, the national survey conducted in 2001 showed that one woman among ten living with her partner is a victim of domestic violence. Information gathered by the Interior Ministry shows that during the first nine months of 2006, a woman was killed by her partner every three days.

In response to this unacceptable situation, the involvement of various ministerial departments, as well as local bodies such as associations that work in the field, has led to concrete improvements in the situation of women who suffer domestic violence.

First of all, considerable legal progress has been made since 1992, the year of the first law against domestic violence. Furthermore, during the last three years twelve legal texts (laws, decrees and directives) have been published to combat and criminalise domestic violence.

Concerning the punishment of offenders

The law of 22 July 1992 introduced the notion that the quality of the perpetrator as spouse or common law husband of the victim constitutes an aggravating circumstance in voluntary assaults on the integrity of another person.

As a result, even if the acts do not lead to a total working incapacity (ITT in French), they constitute an offence, thus subject to criminal prosecution by the Magistrates' court.

The law also envisages the eviction from the place of residence of a perpetrator of violence at various stages of the criminal procedure.

The new law proposed by the Ministry of Justice in conjunction with the Ministry for Social Cohesion and Parity and adopted by the Parliament on 4 April 2006 reinforces the prevention and punishment of domestic violence and violence against minors. This provides France with effective legislation to combat this scourge.

This means that today, domestic violence is more severely punishable because of new legal measures which

- widen the scope in which aggravating circumstances are applied to include registered common law spouses (PACS in French) and former partners as well as new offences such as murder, rape and sexual assault.
- supplement and increase the specificity of the legal dispositions of the law of 12 December 2005 concerning the handling of repeat offenders which makes it easier to evict the perpetrator from the family home.
- recognise the possibility of robbery between partners when it stems from the offending partner's desire to subjugate the victim.

A general definition of aggravating circumstances in relation to violence committed within the couple is contained in article 132-80 of the Criminal Code.

In summary, the types of violence to which aggravating circumstances apply, if committed by a spouse, a common-law husband or a registered common law spouse (PACS), are the following:

- Violence having led to a total working incapacity (ITT) of more than eight days, (222-12 6), which carries a five-year prison term and a €75 000 fine

- Violence having led to a total working incapacity (ITT) less than or equal to eight days, or without a total working incapacity (222-13 6), which carries a three-year prison term and a €45 000 fine
- Repeated hostile phone calls or sound attacks to disturb the tranquillity of others (222-16 1), which carries a one-year prison term and a €15 000 fine
- Threats under condition, either repeated or carried out to commit a crime or an offence, threats of death under condition, or repeated or carried out, threats or acts of intimidation of a victim to convince her not to lodge a complaint or to withdraw a complaint (222-17, 222-18), which carries a prison term from six months to five years and a fine ranging from €7 500 to €75 000
- Sexual assault other than rape (222-28 7), which carries a seven-year prison term and a €100 000 fine
- Torture and barbaric acts (222-3 6), which carries 20 years of imprisonment
- Violence causing unintentional death (222-8 6), which carries 20 years of imprisonment
- Violence causing maiming or permanent impairment (222-10 6), which carries 15 years of imprisonment
- Rape, which carries ten years of imprisonment
- Rape causing the death of the victim (222-25), which carries 30 years of imprisonment
- Rape preceded, accompanied or followed by torture or barbaric acts (222-26), which carries a life sentence
- Arrest, kidnapping, detention or sequestration for more than seven days or followed by a voluntary liberation before the seventh day (224-1), which carries a prison term of five to 20 years and a €75 000 fine
- Murder (221-4 9), which carries a life sentence

These aggravating circumstances are also applied to all former partners, if the offence is committed in connection with the relationship between victim and perpetrator.

The Ministry of Justice, setting out the main criminal policy approaches concerning domestic violence, has published an Authorities' action guide in 2004. The directive of 19 April 2006 officially restated these approaches.

To complete this presentation, I would like to point out that the law, which modifies the civil code, also stipulates that spouses owe each other respect as well as fidelity, help and assistance, thus sending out a powerful message concerning the definition of relations within a couple.

Furthermore, setting the minimum age of consent for marriage at 18 years – in line with the demands of the United Nations and organisations working in this field – allows more effective action to be taken against forced marriages.

In conclusion, I have to underline the fact that, even if essential, these legal measures only form one part of the "Global Action Plan" to combat and prevent violence against women of the French Government. This plan includes the following additional measures:

- awareness-raising among professionals
- financial support to associations and partnerships between actors
- support for women victims of violence: housing, health and professional integration
- awareness-raising among the general public through information and communication
- special attention to immigrant women: support to specialised organisations, guides to promote their rights, fight against female genital mutilation
- preventing repeat offending by working with perpetrators to change attitudes and behaviour through psychological and social responses.

These different themes are presented in two short documents, attached to this presentation, and can be discussed during the next session. ★

Annex 1: Extracts from the French Government Global Action Plan to combat domestic violence

To reinforce the effects of legal measures criminalising domestic violence, the French Government has elaborated a global plan which includes specific actions aimed at:

Awareness-raising among professionals

The Justice Ministry circular of 19 April 2006 presented the latest legislative changes and restated the main criminal policy approaches set out in the authorities' action guide on combating domestic violence of September 2004. It advocates dealing with proceedings rapidly and stipulates the way that proceedings should be dealt with in these specific kinds of cases.

Numerous measures have been implemented to improve the way law enforcement officers carry out their duties, including improvements in:

Receiving and listening to victims in police stations, in particular by having victim support associations permanently present, social workers within law enforcement departments, and a confidential area in most departments where victims can be interviewed in privacy.

Initial and ongoing officer training. This includes specific training programmes for officers responsible for

receiving victims in police stations and police training on the issue of violence against women which has led to the designation of one officer within each *gendarmerie* [police force responsible mainly for rural areas reporting to the Ministry of Defence], as "departmental representative for combating domestic violence".

In addition, a large number of training and awareness-raising actions are organised locally for elected representatives, professionals and the general public.

Financial support to associations and partnerships between actors

In 2005, financial support provided to national and local associations increased by almost 20%. This was maintained in 2006.

In addition, the "departmental action committees against violence against women" have been reorganised.

Support for women victims of violence

Housing

Specialised emergency housing and social reintegration centres (CHRS) are an essential part of the solutions offered to women victims of violence. This accommodation represents, in many situations, the first step in restoring victims' autonomy.

New ways of placing victims and measures adapted to local requirements have also been implemented in some departments, by which women can be given shelter together with their children in host families.

Various measures to ease the housing and resettlement difficulties of women who are victims of violence will be implemented during 2007.

Women who are victims of violence will have a priority for housing funded by the temporary housing fund and will either continue to receive furnished accommodations close to an emergency housing and social reintegration centre (CHRS) or rented accommodations. New CHRS places will be created in 2007.

In addition, specific difficulties concerning housing encountered by women who are victims of violence must be resolved. The primary goal is to recommend to public and private landlords that they accept the lifting of the lease's non-severability clause when the victim of violence leaves the home and hands in her notice to the landlord. A further objective is to modify the regulations so that in case a divorce is demanded, only the income of the spouse who applies is taken into account in the allocation of social housing.

Health

Co-ordination between the various health services has been improved (emergency services, medical experts from coroner units or general practitioners). To achieve this, the Ministry of Health (within the framework of the "violence and health" programme), and the Ministry for Parity have - since January 2006 - supported the implementation of an experimental network of shelters for women victims of violence in three hospitals (Créteil, Nantes and Clermont-Ferrand).

Professional integration

A fundamental measure for women who are victims of violence was introduced into the new 2006-2008 agreement on unemployment benefits. A woman who leaves her home as a result of violence and is therefore forced to leave her job will now receive unemployment benefits in the same way as a person who suffers moral or sexual harassment at work.

The Ministry of Justice is co-financing the European Community programme "EQUAL", whose aim is to set up networks of victim support associations and structures that favour access to employment. Local programmes are developed with this intention (for example in Seine et Marne).

The issue of children who witness domestic violence calls for particular attention, because the majority of them are indirect victims. The government has ensured that this aspect forms part of the reform of child protection. The Ministry for Parity will begin to work with the national child protection society.

Improved research on domestic violence and its consequences

The results of an initial evaluation of the economic consequences of domestic violence carried out by the economic, sociological and management research centre has just been released. Several areas were investigated, including hospital and clinic care, the social management of domestic violence, the indirect costs linked to avoidable fatalities and handicaps, the loss of non-traded production and loss of revenue due to the incarceration of offenders. An initial estimate puts the cost of domestic violence at over one billion euros.

Preventing repeat offending

Locating and combating violence is not enough, prevention is also essential. It is very important to work with the perpetrators of violence.

Perpetrators must first become aware that they are aggressors, particularly when they are faced with law enforcement officials and then judges. The Ministry for Parity will therefore draw up standards of good practice in 2007, together with all ministries and associations concerned.

Finally, an information and awareness-raising pamphlet aimed at the perpetrators of violence will remind them of the severity of their actions and the sanctions they face.

Awareness-raising through improved communication:

Several help lines are available for victims of violence, whether pertaining to specialists in domestic violence or otherwise. In order to improve the initial reception of women who are victims of violence and to raise the profile of this service, a single, easy to remember, and low cost phone number will be progressively set up in 2007 and run by the National Federation for Solidarity with Women.

An information leaflet outlining the law and available services will also be widely distributed to the general public.

These measures should lead to increased awareness in society in general, which is essential to put an end to the scourge of domestic violence. ★

Annex 2: Extracts from the French government policy to support immigrant women

The Ministry responsible for equality between men and women, a stakeholder in the revision of integration policy in which the Government has been engaged since 2002, has pursued and strengthened its actions to support immigrant women with the aim of lifting the many obstacles with which they are confronted. There are four main difficulties for immigrant women:

- Full enjoyment of their rights, particularly in a complex international context marked by confusing legislation and differing national rights.
- Difficulties in playing a full decision-making role in their lives.
- Respect of their fundamental rights, particularly with regard to their physical integrity.
- Participation in social and community life as equals and being recognised by society as a whole, particularly as the latter perpetrates stereotypical or false images of immigrant women.

The new policy, which has been based on notions of equal opportunities and shared responsibility since 2002, consists of a number of actions.

Supporting specialised associations

In 2006, the Women's Rights and Equality Service reiterated and strengthened its support for the actions of organisations who work to end violence against immigrant women, particularly genital mutilation and forced marriage. These organisations saw their financial support of 2004 increased by 20% as part of a three-year plan called "Ten measures for women's autonomy". They are organisations that play an essential role for young women and their families, as well as for the various professionals in this field, as they are familiar with and take into account cultural aspects, the aspirations of young women and the weight and mechanisms of patriarchal traditions against which they are working, and involve institutions responsible for the protection of minors, women's rights and social assistance.

The creation of the High Authority to combat Discrimination and in favour of Equality (HALDE in French) in 2004

In order to ensure that equality is enjoyed and respected by everyone in accordance with the founding principles of the French Republic, a new institution that aims to combat all forms of discrimination was set up by the law of 30 December 2004. The French President had been in favour of setting up HALDE since 2002. The organisation takes the specific circumstances of immigrant women into account, particularly by offering support to those women who have suffered discrimination. The setting up of this independent authority means that France is now in compliance with European Council Directive 2000/43 of 20 June 2000, regarding the implementation of the principle of equal treatment of all people, regardless of their racial or ethnic origin.

A communication campaign in 2005

In 2005, the Ministry for Parity and Professional Equality co-sponsored a communication campaign with the European Social Fund on the issue of equality between men and women.

The campaign, aimed at the general public, should help to evolve mentalities and gain support for equality throughout society. A series of 40 short programmes, *A parts égales* (In equal measures), covering the current situation regarding equality in France, was broadcast on France 2 television between 7 March and 13 May. Among the 40 programmes were 6 that celebrated the successes of immigrant women.

Two guides to promote and facilitate the enjoyment of rights

The Ministry responsible for gender equality has:

- Drawn up a guide to equality for immigrant men and women whose objective is to inform immigrant women of the extent of their rights and the way in which they can be exercised, regardless of their nationality or whether they have just arrived or already live in France.
- Contributed to a Franco-Moroccan guide for Moroccan or Franco-Moroccan women living in France on the new *moudawana* (Moroccan family code).

Legal improvements

In order to combat violence against immigrant women more effectively, a number of bills were adopted as part of the law of 4 April 2006 aimed at reinforcing the prevention and punishment of marital violence or violence against minors.

With regard to the fight against forced marriages, the law stipulates:

- The alignment of the legal age at which girls can marry with that of boys, i.e. 18.
- The addition of the notion of respect to the list of rights and responsibilities of spouses.

- That the time period after which a marriage can be nullified for vitiated consent if a married couple cohabits should be lengthened from six months to five years.
- That a lawsuit to nullify a marriage can be undertaken in the absence of free consent on the part of both partners or either spouse, an option that was previously reserved for husbands.
- The possibility for a marriage to be annulled on the grounds of parental intimidation (without physical violence) of one of the two spouses.
- Modifications of the formalities related to marriage.

With regard to the fight against female genital mutilation, the law stipulates:

- The lengthening of the limitation period for a prosecution to twenty years after the victim reaches majority, bringing it into line with incest.
- The possibility of special authorisation to punish these practices when they are carried out abroad on a foreign minor who is ordinarily resident in France.
- The clarification of No. 1 under article 226-14 of the penal code, regarding the lifting of professional confidentiality, particularly medical confidentiality, in cases of sexual violence committed on a minor by adding the express mention of "genital mutilation", with the aim of increasing such disclosures. ★

The Belgian experience: Ms Kris De Groof

Association of Flemish Centres for Health, Shelter and Support, Belgium

Is the nature of the relationship between victim and perpetrator an extenuating or a aggravating circumstance in domestic violence?

In this short discussion I would like to address the possible reasons for considering the nature of the relationship between victim and perpetrator as either an extenuating or aggravating factor. I have neither hope nor ambition to be complete, for that would lead us much too far, but I would like to consider the issue set out in the title of this speech. As Mr Gazan has already spoken, I will not go into the situation as regards the criminalisation of domestic violence in Belgium, but I would like to mention a few areas for improvement, both as far as the current legislation and circulars are concerned, and as regards future policy making.

Extenuating or aggravating circumstances for domestic violence?

There are a few reasons why the relationship between victim and perpetrator should be considered an aggravating circumstance in deciding the measure of punishment: the victim and the perpetrator have a relationship with one another and know each other very well. More than in the case of arguments between neighbours and other misdeeds amongst people who know each other, there is a particularly intimate relationship between the concerned parties. They have trusted each other, leaned on each other, sought comfort and reassurance from each other, referred to each other … and have shared a bed. In such a close relationship, a break of trust by the use of violence has profound effects. It cuts into one's identity, into one's self-perception. Many researchers have described the effects of domestic violence. Along with sleeplessness and depression, victims suffer (more than ever) a lack of self-confidence, a negative self-image, and an incapacity to trust others.

Some consider domestic violence to be a form of patriarchal violence, done by men, to women, caused by an assumption of inferiority of women. If men see women as being there to serve them, rather than as persons in their own right, then failure to comply can be a trigger for violence. However, while I agree that this analysis cut wood a few decades ago, I do not believe this belief in male superiority legitimating violence is still applicable in our society today. Certain subcultures may be exceptional and still adhere to these patriarchal views. Honour killings are an example of a form of violence against women which is seen as legitimate, within certain cultures, when male honour is affected. This issue is still very much hidden and does not get sufficient attention in Belgium and other Western countries.

On the other hand, there are a number of reasons which indicate that the nature of the relationship between victim and perpetrator can, and should, be considered an extenuating circumstance. Police services, magistrates and councillors often indicate that the line between victim and perpetrator is not always clear, it is not always a matter of black and white. While research shows that men are usually the ones to resort to physical violence, often the women drive them to such extremes through acts of psychological terror. In addition, police

services report that while 'victims' are often prepared to file a complaint during a crisis moment, this can be revoked at a later stage. The motive to changes their minds may be fear, but very often the 'victim' wishes for the violence in the relationship to stop, but she wishes to continue the relationship. I find the use of the terms "victim" and "perpetrator" very unhelpful here.

The question I have is the following: is it necessary to allow the nature of the relationship between victim and perpetrator to play a role in determining the sentence measured out to the perpetrator? Should we not consider the nature of the relationship, and should the question who hit whom first not play a part? Surely we should consider the role the "victim" plays in all this? Should we as a society take it upon ourselves to punish violence without considering the context? Should we not consider, as we do in any other criminal offence, what form the violence took, how serious it was, how long it went on for, etc., in determining the sentence? I would like to stipulate that I do make a distinction here between the violence amongst partners and the violence of parents towards their children. The latter is quite a different matter, for children are innocent by definition. However, we are talking about violence amongst partners here.

Legal issues surrounding violence amongst partners in Belgium: some critical reflections

In general I think, for every crime, it is important to distinguish between what the victim wants and what we want as a society. It seems to me that we are evolving to a society where the victim determines what the punishment of the perpetrator should be, and this seems a dangerous evolution to me. I do think it is necessary that as a society we apply our norms and values to our laws, and so come to a hierarchy, considering the graveness of the crime and the appropriate punishment. The penal code in Belgium still punishes crimes against another person's bodily integrity less heavily than crimes against another person's property! Hitting and wounding is punished with an imprisonment of 8 days to 6 months, while theft is punished with at least 5 years. Our penal code is determined by values and judgments made a least two hundred years ago. Surely it is time to reconsider these measures of punishment, and make them fit the values which are now current in society?

In addition, it is essential to reach better co-ordination and co-operation between the various levels of judicial intervention. I plead for the creation of a family tribunal, where all matters related to family and domestic life may be considered together and approached more holistically.

Domestic violence demands an integrated approach, where each form of violence is not considered in isolation, but is seen as expressions of a dysfunctional family as a whole. Research indicates that the various forms of domestic violence are often combined. There is a far larger chance that both the victims and the perpetrators of violence amongst partners will also abuse their children, than is the case in families without violence amongst partners.

The law on domestic violence of 1997 was evaluated a few years ago, and it turns out that, in spite of the symbolic value of this law, it has scarcely been applied. The law did not lead to a change of policy in dismissing charges for complaints filed by the victims. The possibilities to temporarily hold the perpetrator are not clearly defined, a big opportunity was missed here. Also, as far as the safety of the victim is concerned, there are clear gaps. If the violence has not caused an incapacity to work or other health problems, the only possible sentence is a prison term of six months at most, while an arrest with conditional bail is only applicable if the facts merit an imprisonment of at least a year.

In 2006, the Minister of Justice issued a circular regarding violence amongst partners. As Mr Gazan indicated, this is a staged plan for police and magistrates to tackle violence between partners more thoroughly. The circular requires that a specific reference number for the file is used, requests that police services ask more thorough questions on violence and much more. Earlier research among police services about violence among partners showed that in a great many reported cases the police services did not draw up an official report. Hence, many cases that the police saw never made it to the legal system. In addition, the way of filling in the official report was very varied. Some police officers inquired into the history of violence in the family, the involvement of children and the like. Others simply noted the facts of the moment. Because of these differences, the magistrates had no clear idea of the nature of, and numbers involved in, domestic violence. It also turned out that, of those situations that did lead to an official report, the large majority was dismissed. One of the reasons for this could be that the magistrates failed to see the build-up and escalation of violence involved in domestic violence. Hopefully, correct application of the circular will resolve these problems.

The circular also mentions the need to co-operate with social services. The Department of Justice clearly indicates that it knows its limitations as far as this theme is concerned, and they express a wish to tackle violence in the family in partnership with social services. This avoids an overly repressive approach towards the phenomenon, which could prevent victims from filing complains. Such a co-ordinated, co-operative approach seems very important to me, and the Minister clearly indicates that "follow-up" can, where appropriate, lead to prosecution. This follow-up must be done by both, the Justice Department and the social services, as perpetrators of violence often need the proverbial stick as well as carrot to accept help for their problem, and they should not be left alone until they have tackled the problem.

In Liège, a large project was set up a few years ago, allowing the attorney-general to deny the perpetrator access to the family home for up to ten days. The perpetrator may stay in a recep-

tion centre for the homeless, and within two days a specialised non-residential counsellor visits the centres and motivates the perpetrator to participate. This offer of help for the perpetrators is initially an intensive offer, that starts during the residential stay and continues after the perpetrator has left the reception centre. This system is comparable to a number of projects in other countries which evict the perpetrator for three reasons: he is the one who has committed a crime, and he must leave the house immediately. There is only residential care necessary for one person (the perpetrator) and not for several (i.e. usually a woman and her children). There are signs that an outreach approach, where the social service does not "let go" of the client, works well, particularly when applied very soon after the crisis (act of violence).

In the circular, this system is applied in a very watered down format. The perpetrator is asked to leave the home voluntarily. If this happens on a voluntary basis, the police can offer the victim no guarantees as regards safety. There are no sanctions if the perpetrator decides to return home after all. In addition, there is no time stipulated for how long the perpetrator should stay away and where he should then stay. And to cap it all, there are scarcely any voluntary programmes run in Flanders for the perpetrators of violence amongst partners. Therefore, we feel that this system does not address the problem satisfactorily for either perpetrator or victim, and it is a second missed chance to arrange for a better temporary eviction of the perpetrator.

Finally, I regret that the Minister of Justice did not discuss these circulars with the regions, as it is up to the regional authorities to organise the social services that can provide appropriate help. The consequence of this circular is that police services, magistrates and courts now expect social services to drum up appropriate offers of help, but these services are not able to provide this. In addition, the obstacles must always be resolved at a local level, while this should have been resolved at a higher level. It is essential that the co-operation agreements are sorted out between departments and their services, so that a coherent and proactive approach to domestic violence can be effectively carried out. An outreaching, proactive and coherent approach is vital to dealing with the problem of domestic violence. ★

Specialised courts on domestic violence

Keynote speaker: Ms Elena Martínez

Professor, Faculty of Procedural Law, University of Valencia, Spain

Ladies and gentlemen,

First of all, I would like to thank the Spanish Ministry of Justice, the Special Delegation against Gender-based Violence and the organisers of this Seminar for the opportunity to be here today and to share my experience in this matter with all of you.

I am going to speak about the "Specialisation of the Violence against Women Courts in Spain". I would like to start by making a confession. Despite the fact that when the parliamentary work on *the Law on Integrated Protection Measures against Gender Violence*[4] began, I myself was slightly sceptical of how efficient this specialisation would be and even thought that these Courts might end up having a somewhat "short-sighted" view of the conflict, I must confess that now, more than two years after the Law was first applied, I am entirely convinced of the need, efficiency and importance of this judicial specialisation (as well as the specialisation required in the police forces, legal defence, social and medical services, etc.). Without this specialisation, it would be impossible to understand this very complex type of violence.

The Law on Integrated Protection Measures against Gender Violence is based on four new initiatives of an organic-procedural nature:

- Provision of specialised jurisdictional bodies: Violence against Women Courts, Criminal Courts and Sections of the Provincial Court (Chapter I).
- Overcoming the traditional separation between criminal and civil competencies in the jurisdictional treatment of issues related to gender-based violence (Chapters II and III), in order to avoid victims having to go to various Courts.
- Specific regulation of protection and security measures for victims of gender-based violence (Chapter IV).
- Creation of the Office of the Public Prosecutor to combat Violence against Women (Chapter V).

From a judicial point of view, we are faced with a complex phenomenon which requires intervention from different legal perspectives.

Moreover, any law on the prevention and eradication of violence against women must be a law that will include procedural measures that will allow for fast, summary proceedings, but it must also combine, in the civil and criminal spheres, protection measures for women and their children and injunctive relief, to be enforced on an urgent basis.

As regards the legal measures undertaken in order to guarantee adequate and efficient treatment of the legal, family and social situation of

4. Organic Act 1/2004 of 28 December on Integrated Protection Measures against Gender Violence, Official State Gazette No. 313, Wednesday 29 December 2004, 42166.

victims of violence against women in intra-family relations, the following have been adopted: in conformity with Spanish legal tradition and in line with *Recommendation R 13 (85) issued by the Council of Europe Committee of Ministers to member states on violence in the family*, the chosen option has been a formula of specialisation within the criminal order, of the Investigating Judges, creating the Violence against Women Courts and excluding the possibility of the creation of a new jurisdictional order or the undertaking of criminal competencies by Civil Judges. These Courts shall be informed of the investigations and where applicable, of the sentences on criminal cases in the area of violence against women, as well as related civil causes, so that the proceedings for both may be held at the same location.

As regards the legal nature involved, these would be specialised judicial bodies within the criminal jurisdictional order, with a preference towards certain family matters that belong to the civil jurisdictional order. The specialisation of these courts has been carried out on the basis of scrupulous respect for the constitution: from the right to an ordinary judge or a judge predetermined by the law and the prohibition of special courts. In this regard, the Commercial Courts, Juvenile Courts and Penitentiary Surveillance Courts are also specialised.

Insofar as the judicial structure is concerned, article 43 of the Law, which adds article 87 bis to the Organic Law on the Judiciary (LOPJ), contemplates that each judicial district should include at least include one judicial body equipped with the competencies of the Violence against Women Courts, so that all victims are guaranteed a specialised judicial response regardless of their place of residence.

1. Competency in the criminal order

In the criminal order (Article 87 ter 1 LOPJ (Organic Law of the Judiciary), complemented by Article 44 LVG (Law on Integrated Protection Measures against Gender Violence), the Violence Against Women Courts shall deal with the following:

1. Initiating proceedings to demand criminal liability for crimes described in the titles of the Criminal Code regarding murder, abortion, injury, injury to the foetus, crimes against a person's freedom, against a person's moral integrity, against a person's sexual freedom and inviolability, and any other crime involving violence or intimidation, when it is committed against a person who is or has been his wife or shares or has shared an analogous affective relationship, with or without cohabitation, and those committed against his descendents or those of his spouse or cohabiting partner, or against minors or incapacitated persons living with him or under the parental authority, guardianship, custody or foster care of his spouse or cohabiting partner, when an act of gender violence has occurred.

Therefore, the competency of the Violence against Women Judge is defined by the presence of the following elements:

a. In the first place, the legislator expressly establishes a catalogue of crimes that in principle shall be dealt with by the judge, specifically murder, abortion, injury, injury to the foetus, crimes against a person's freedom, against a person's moral integrity, against a person's sexual freedom and inviolability, adding a general reference to "any other crime involving violence or intimidation".

b. However, for these crimes to be dealt with by the Violence against Women Court, it is necessary for some specific circumstances to be present regarding the subjective elements. For example, these crimes must have been committed against a woman that is or was the perpetrator's wife or a woman that is or has been linked to the perpetrator by an analogous affective relationship, even if they have not lived together; as well as against the descendants, of the perpetrator or of his spouse or cohabiting partner, or against minors or incapacitated persons living with him or under the parental authority, guardianship, custody or foster care of his spouse or cohabiting partner when there has also been an act of gender-based violence. In other words, as regards minors or incapacitated persons related to the victim, the protection of this law and the competency of the Violence Against Women Courts is only granted when the event that has occurred is classified as gender-based violence.

It only contemplates "aggressions" committed by the man against the woman and the regulation may not be applied to identical behaviour when committed by the women against the man, or, in the case of homosexual couples, by one man against another. It is a very clear manifestation of the principle of positive discrimination, in this case on behalf of the woman, inspired by the Law on Integrated Protection Measures against Gender Violence.

The situations not contemplated by this law are nonetheless protected by the ordinary channels foreseen in the Criminal Code and the Criminal Procedure Law, which logically implies that these other aggressions are under no circumstances unprotected.

2. Initiating proceedings to demand criminal liability for any crime against family rights and obligations, when the victim is any of the persons named as such in the previous item.

This section is not exempt from problems either, as the law may not cover, for example, illegal marriages, alteration of paternity, infringement of the duties regarding the custody of minors and inducing minors to leave home.

3. Adopting the corresponding protection orders for victims, without detriment to the competencies assigned to the duty judge.

4. Investigating and issuing sentences for offences listed in titles I and II of Book III of the Criminal Code, when the victim is one of the persons indicated in letter a) of this section.

2. Possible undertaking of competencies in the civil order

A fundamental element in the organic reform brought about by the Law on Integrated Protection Meas-

ures against Gender Violence proved, at the same time, to be one of the most controversial provisions: the fact that Violence Against Women Courts are granted – in addition to criminal competencies – competencies for certain civil issues. These competencies are, in accordance with the application of the rules on the allocation of competencies in the Criminal Procedure Law, the competency of the Courts of First Instance, or, where applicable, of the Family Courts, bodies that are also specialised in the civil order.

Therefore, Article 87 ter 2 LOPJ (Organic Law of the Judiciary), lays down that the Violence Against Women Courts may have jurisdiction in the civil order, in any case in accordance with the procedures and resources foreseen in the Civil Procedure Law, over the following matters:

a. Filiation, maternity and paternity.

b. Nullity of marriage, separation and divorce.

c. Parent-child relations.

d. Matters related to the adoption or modification of important measures affecting the family.

e. Matters related exclusively to the guardianship and custody of minors or to alimony claimed by one parent from the other on behalf of minors.

f. Matters concerning obligatory consent in cases of adoption.

g. Matters aimed at contesting administrative decisions regarding the protection of minors.

h. As well as these competencies, it is necessary to add the cases of illicit advertising involving a degrading or discriminatory use of the image of women.

The allocation of civil competencies to this criminal jurisdictional body is justified by the need to provide comprehensive or total protection to women victims of gender-based violence. The intention is to avoid the shuttling between jurisdictions that has been criticised so often and which is understood to merely re-victimise the women, as well as minors in her care, where applicable.

Therefore, the Violence Against Women Judge is entrusted with a series of civil competencies where it is believed that they may lead to or be caused by a situation of gender-based violence, because it is obvious that some civil proceedings, such as separations or divorce or proceedings involving children, may be the seedlings of situations of violence in the "domestic" domain.

Therefore, the civil judge will not deal with these matters when they occur in the context of a situation of gender-based violence and he/she shall cease to deal with them as soon as there is knowledge of this situation.

In the presence of the following circumstances, the Violence Against Women Court shall deal with civil matters and shall further do so on an exclusive basis, only dealing with such matters when the knowledge of other different issues not related to gender-based violence may not be allocated, and on an excluding basis, as it shall be the sole competent body and they may not be dealt with by any other body, i.e. it shall prevent other civil and criminal jurisdictional bodies from dealing with such matters.

A. Circumstances

This exclusive and excluding competency in the civil order requires that the following requirements be met on a simultaneous basis (Article 87 ter 3 LOPJ (Organic Law of the Judiciary)):

a. It must be a civil proceeding regarding some of the matters indicated in item 2 of Article 44 LVG (Law on Integrated Protection Measures against Gender Violence).

b. One of the parties in the civil proceeding must be victim of gender-based violence, in the terms referred to in section 1 a) of this article, i.e., "regarding murder, abortion, injury, injury to the foetus, crimes against a person's freedom, crimes against a person's moral integrity, sexual freedom and inviolability or any other crime involving violence or intimidation".

c. One of the parties in the civil proceeding must be accused of being the perpetrator, inducer or necessary joint perpetrator in the commission of acts of gender-based violence, in the terms in which the latter is described in the law.

d. Criminal proceedings must have been initiated before the Violence against Women Judge for a crime or offence as a consequence of an act of violence against women, or a protection order must have been adopted for a victim of gender-based violence.

This loss of competency has led to the introduction of a new article 49 bis in the Civil Procedure Law, which is intended to co-ordinate the proceedings of civil and criminal courts in this sphere, establishing the "procedure" that will allow such competencies to be undertaken:

a. The civil judge who is investigating a civil proceeding in the first instance must inhibit his/her competency as soon as he/she becomes aware that an act of gender-based violence has been committed, according to the meaning regulated in Article 1 of the Law on Integrated Protection Measures against Gender Violence, which has led to the initiation of criminal proceedings or the adoption of a protection order for the victim, after the requirements foreseen in the third paragraph of Article 87 ter LOPJ (Organic Law of the Judiciary) have been verified. Once these circumstances have been checked, he/she should forward the court documents, as they are, to the competent Violence against Women Judge, unless the civil proceeding is already at the oral judgement stage in order to guarantee the principle of immediacy.

This discontinuation is foreseen only in such cases in which the civil proceeding is at the first instance as the transfer of proceedings in the second instance does not make sense – despite the fact that the specialisation of Sections of the Provincial Court has been foreseen. In such cases, it is more effective for the Judge of First Instance or, where applicable, the Court, to notify the Violence against Women Judge as to the decisions and measures adopted that may influence the gender-based violence situation being judged by the latter.

b. If the Judge that is investigating a civil proceeding becomes aware of the possible commission of an act of gender-based violence, but has not initiated a criminal proceeding or issued

a protection order; after verifying that the requirements in the third paragraph of article 87 ter of the Organic Law of the Judiciary are met, the procedure shall be as follows: He/she shall immediately summon the parties to a hearing before him/her, with the necessary presence of the Office of the Director of Public Prosecutions, so that the latter may take note of the events that have occurred and proceed, if deemed to be necessary, to report such acts in considering that they qualify as gender-based violence or, where applicable, directly request the protection order from the competent Violence Against Women Court. The Prosecutor must deliver a copy of the report or of the request for the protection order to the civil judge, who will have to continue to investigate the deeds within his/her competency until discontinuation is requested by the competent Violence against Women Judge.

The hearing shall be held within 24 hours after it is summoned and the prosecutor must take a decision on the deeds reported in the following 24 hours.

c. Finally, when it is the Violence Against Women Judge that in the course of investigating an offence becomes aware of the existence of a civil proceeding and the circumstances in the third paragraph of article 87 ter of the Organic Law of the Judiciary are present, he/she shall expressly request discontinuation from the civil court, which must necessarily immediately cease to investigate and forward the deeds to the requesting body.

The request for discontinuation shall be accompanied by proof of the initiation of prior proceedings or judgement of offences, the document proving that the claim has been admitted by the court or the protection order adopted, without which documents the discontinuation shall not take effect.

Functional competency

From the functional point of view, the Violence against Women Court is mainly an investigatory body, with the exception of its task to hand down judgements for certain offences.

It is also possible, when the case is dealt with by the special fast trial process for certain crimes, for the Violence Against Women Court to issue a conformity sentence.

As regards the judgement of these crimes and offences, I should point out that the sentencing body has also been specialised.

Territorial jurisdiction

The Law on Integrated Protection Measures against Gender Violence introduces a new article 15 bis in the Criminal Procedure Law, which implies the creation of a new territorial venue in such cases where offences that fall under the jurisdiction of the Violence Against Women Judge are being investigated, as in these cases, the territorial jurisdiction is determined by the place of residence of the victim at the time of events. However, it is possible that for reasons of urgency, the protection order or other urgent measures described in Article 13 LECrim (Criminal Procedure Law) may be issued by the judge in question according to the general criterion of allocation of territorial jurisdiction in the criminal order, which usually is the place where the events were committed.

The reasons alleged for the establishment of a new jurisdictional venue reiterate the arguments that have so often been raised in these pages, for example better protection for victims of gender-based violence and the will to avoid inflicting additional suffering on the victim through additional criminal proceedings.

The problem is that precisely under the terms of the Law on Integrated Protection Measures against Gender Violence, one of the measures to protect the victim is the possibility of moving house (and jobs) until a higher degree of calm or safety is reached. This means that there are cases where the criminal proceeding is being held in a particular location and the victim is living either in another location or is obliged to move house on more than one occasion, which complicates the problem still further. ★

The British experience: Ms Jude Watson

Domestic Violence Implementation Manager, Equality and Diversity Unit, Crown Prosecution Service, United Kingdom

Aims of Specialist Domestic Violence Court (SDVC) Programme

To improve

- police reporting of domestic violence cases
- victim involvement in the court process
- safety of victim
- successful prosecutions and
- confidence in the Criminal Justice System

To reduce repeat victimisation

Specialist Domestic Violence Court (SDVC) Programme 2003-2005

Evidence from existing systems and pilot projects

Five models were evaluated, between November 2003 and January 2004, in England and Wales.

Two pilots set up to test out setting up Specialist Domestic Violence Courts from scratch – January 2004-January 2005

Urban and rural pilots

Cluster courts – cluster domestic violence cases into one session or Fast track system – have domestic violence slots for hearings with trained staff

Outcomes

Increased reported cases by one third to one half

Decreased number of cases discontinued or victims withdrawing

Increased convictions

Improved victim satisfaction, sense of safety and confidence in the criminal justice system

Cost-effective way

Post-evaluation findings (Caerphilly)

The Caerphilly project illustrated significant improvements between the start of the pilot in January 2004 and September 2005 (nine months after the end of the pilot period):

- Overall offenders being brought to justice increased to 73%
- Guilty pleas rose from 21% to 61%
- Improved convictions rose from 8% to 32%, and
- Reduced victim retractions declined from 53% to 17%
- Continuance of cases was dramatically improved with reduced discontinuance from 32% to 19%, and
- Cases where no evidence was offered fell from 46% to 4%

About the Programme

Steering Group formed – comprising officials from Home Office, Her Majesty's Courts Service and Crown Prosecution Service

From the evaluations, the Steering Group identified 11 core components which represented good practice in Specialist Domestic Violence Courts

Taskforce established including NGOs

National Resource Manual developed

64 court systems set up, with funding plans for Independent Domestic Violence Advisors (IDVAs) and ISVAs

National Resource Manual

National Resource Manual lists 11 key components for a Specialist Domestic Violence Court

- Multi-Agency partnerships
- Multi-Agency Risk Assessment Conferences (MARACs)
- Identification of domestic violence cases

- Independent Domestic Violence Advisors (IDVAs)
- Trained and dedicated criminal justice staff
- Court listings
- Equality and diversity
- Data collection and monitoring
- Court facilities
- Children's Services
- Perpetrator programmes

+ support from health, housing, sanctuary schemes and links with SARCs, drug and alcohol projects

Next steps for Specialist Domestic Violence Courts

Evaluation of first 25 Specialist Domestic Violence Courts in 2007

Data collection by Crown Prosecution Service, police, courts, probation, Independent Domestic Violence Advisors and voluntary sector perpetrator programmes

Revision of National Resource Manual

Funding for more Independent Domestic Violence Advisors (IDVAs) and Multi-Agency Risk Assessment Conferences (MARACs)

Selection of more specialist courts in early 2008. ★

The Spanish experience: Ms Ángeles Jaime de Pablo

Themis Association of Women Jurists, Spain

On behalf of my organisation, Themis Association, I would like to thank the Council of Europe and the Spanish government for their invitation to participate in this Seminar to provide our view on the consequential legal reforms that have taken place in Spain to combat violence against women, in particular, violence inflicted on them by their male partners or former partners, and, also on the framing and implementation of special legal bodies designed to safeguard the rights of female victims, the so-called "Violence against Women Courts".

Since it was set up 20 years ago, my organisation, the Association of Women Lawyers "Themis", has expressed its opinion regarding legislative proposals on this matter which were sponsored by successive governments and approved by Parliament. Hence, Themis has gained the prestige that comes from the experience of its 500 female members, all of whom are expert lawyers in protecting women's rights in court. Many of these jurists, who are practising lawyers, participate in a programme that provides free legal assistance to female victims of certain types of gender-based violence, and this organisation was set up with funding from the Spanish Ministry of Labour and Social Affairs and the Regional Government of Castille-La Mancha.

- Since 1990: Legal assistance at civil or/and criminal level to women and single mothers in case of non-payment of alimony by the father/husband.
- Since 1992: Legal assistance to women suffering of domestic violence by their male partners or former partners.
- Since 2005: Legal assistance to female victims of illegal trafficking for sexual exploitation.

Symbolic and educational value of the Law on Integrated Protection Measures against Gender Violence

From 1999, and until the Law on Integrated Protection Measures against Gender Violence was promulgated in December 2004, the Spanish legal system had made significant advances in dealing with the impunity that characterised domestic violence, putting into place the necessary instruments to provide emergency protection measures to prevent further and more serious violence during the process to build a violence-free life.

Although these legal reforms had resulted in significant improvements in protection measures for female victims of domestic violence, such as pre-trial supervision measures and additional penalties, stricter penalties, and joint and urgent adoption of criminal and civil precautionary measures under a "protection order", the reforms gave priority to a neutral and fragmented approach, shunning any gender perspective.

For this reason, we have collaborated since 1999 with other victims' organisations, demanding the enactment of an integral law on gender-based violence, which will incorporate the terms and concepts laid down in UN Conferences.

The fact that the new Parliament emerging from the elections of March 2004 considered the enactment of this law a top priority, and its unanimous adoption by all political groups, has led to the valuable recognition of this longstanding grievance, thereby con-

ferring a significant symbolic and educational value to the law.

The above sent a clear signal to citizens: The fight against gender-based violence is a top political priority; hence, all avenues to ensure that there is no impunity would be explored and all political forces would have to comply with the mandate laid down in Article 9 (2) of the Spanish Constitution, that is to say, the removal of obstacles preventing equality, where violence against women is the most paradigmatic expression of inequality between men and women, and one of the patriarchal means to uphold this situation.

By penalising threats and coercions, which are considered mere misdemeanours if committed by men, as an offence or with stricter penalties, or by penalising with stricter sentences (3 months to one year or 6 months to one year) a physical assault without bodily harm committed by a male partner on his female partner, the law emphasises that such conduct will lead to greater criminal liability as it also affects other legal assets, such as freedom, family peace and security. Criminal liability is even more compelling if the victim is a stranger or the partner is male, precisely on account that it is an expression of gender-based violence, and violence is used as a means to perpetuate inequality.

The visualisation and explicit recognition of women as targets of this type of violence is a very positive outcome. Furthermore, studies on court proceedings carried out by Themis have identified laxity in pursuing threats and coercions taking place within the family, where these offences are systematically belittled, to the point that they are automatically processed as misdemeanours penalised with small fines, regardless of the severity.

It has been used as an instrument for positive discrimination, and, although some members of the judiciary protested the unconstitutionality of the law as it affected the principle of equality, the fact is that the government report of the judges denies that it is unconstitutional.

The message conveyed to the victims encourages them to identify themselves as such, they are told that their problem is an affair of state, and that they can avail themselves of tools to overcome this situation of which their children are also victims.

Specialised and integral judicial bodies: framing and reality

The creation of the Violence against Women Courts was an event that raised the highest hopes among all the reforms stemming from the Law on Integrated Protection Measures against Gender Violence for the effective improvement of the judiciary dealing with domestic violence against women. These courts started to operate in June 2005, six months after the law was published.

The main features of these courts are:

- As regards competences, they pool the competences of criminal Investigation Courts and specialised civil family courts, even in situations of violence against women:
  - These courts are responsible for investigating crimes against women committed by spouses, former spouses, partners or former partners; however, they may not initiate an investigation into crimes in which the victims are children, unless the offences occur simultaneously. On the other hand, another court or tribunal is responsible for the prosecution.
  - These courts issue, within 72 hours, the protection orders requested by women who have reported an offence committed by their partners or former partners, and these orders may include criminal measures (mainly restraining orders and communication bans), as well as civil measures (custody, maintenance and temporary banning from the family home).
  - In the case of civil proceedings, the court renders decisions aimed at regulating the effects of a family breakdown (divorce, measures about children in unmarried couples), or modifying decisions on issues such as custody, visits by the non-custodial parent or payment of alimony, in the event that these matters have been ordered previously.
- As for its composition, it is formed by teams of experts (female social workers and psychologists), as well as volunteers.
- According to the population density in the territory where it is located, the court may be "exclusive", that is to say, solely and exclusively a court for crimes of violence, or "shared", that is, investigation courts that investigate other criminal offences or combined courts, i.e., civil offences are also investigated.
- In general, they have on call-duty staff (Madrid, with nearly three million inhabitants has six courts in operation, all "exclusive", although only three were initially envisaged), or if it is shared, a permanent on call-duty staff from Monday to Friday, so that if the court is not operating on a given weekend, the on call-duty court will investigate the protection order, which will be subsequently forwarded to the court for crimes of violence.

Unfortunately, despite the provisions laid down in the comprehensive law, neither the criminal courts nor the Regional High Court have specialised sections to prosecute these crimes, at least in the Autonomous Community of Madrid, and these judicial bodies have offered genuine resistance to these changes.

Furthermore, the enactment of the Integral Law on Public Prosecutors for Crimes of Violence against Women, under the Prosecutor-General, and the creation of special Prosecutor's Offices for crimes of violence in every regional and provincial court are milestones towards combating impunity of such aggressions, resulting in fundamental advances in unified criteria and effective pursuit of aggressions.

In conclusion, based on the available judicial statistics, and in the absence of a more detailed assessment, my organisation has observed that in many cases the judges for

crimes of violence do not investigate thoroughly enough to determine the real level of risk for women.

Hence, depending on the willingness and sensitivity of the male or female judges, many courts will frequently apply standard, stereotyped solutions, such as automatic adoption of restraining orders, which hardly diminish the aggressor's rights; however, they are more reluctant to adopt civil measures, such as banning the aggressor from the family home, or pre-trial detention, which is necessary in cases of obvious risk.

The root of this problem may be the lack of technical equipment and human resources, which has been reported by court staff and should be covered urgently, or a nearly ontological resistance of the judges to address an issue that until ten years ago was considered a private matter in which aggressions went unpunished.

Another factor may be the lack of express rules on procedures for protection orders, with the upshot that some courts will not accept any evidence other than the statement of the female victim and partner or former partner during the hearing, rejecting any other type of evidence, such as immediate medical examination of the physical and psychological conditions of the woman and children, which would provide more information to determine the real level of risk so that the necessary protection measures may be adopted. ★

Implementation measures to combat violence against women, including domestic violence

Assessment of the implementation of legal measures

Keynote speaker: Ms Carol Hagemann-White

Professor, Faculty of General Pedagogy and Gender Studies, University of Osnabrück, Germany

The implementation of legal measures – interaction with social interventions and institutional cultures

Legal and social interventions in European-level policy debate

In *Council of Europe Recommendation Rec (2002) 5 of the Committee of Ministers to member states on the protection of violence against women*, a major section concerns legislation [see below, page 111]. Member states are urged to ensure that every act of violence against women is punishable, to take swift and effective action against perpetrators, to investigate and prosecute acts of violence, initiating prosecution by the public prosecutor.

With respect to civil law, the recommendation speaks only to the possibility of compensation for damages, which may in some cases be provided by the state, but may de facto be a further measure to penalise the perpetrator. Measures of protection, such as banning a perpetrator from the home, are framed as orders or actions taken by the judiciary; there is no mention of the victim's right to request such measures or to decide if these fit her needs. The discussion of legal frameworks is thus focused on what the state should do towards perpetrators of violence.

At the same time, the recommendation articulates as its fundamental principle that all measures should be based on empowerment of victimised women and their free exercise of basic rights, ensuring all necessary measures of protection, support, and services. Such measures also imply legal frameworks, ranging from civil law redress to the regulation of access to benefits, and the legal framing of this dimension is less clearly spelled out. The two sides of legal strategy – deterrence and punishment of actions not to be tolerated, and protection and support of recovery and of self-determination for victims – interact in several ways. Most obviously, sanctions against interpersonal violence are rarely effective unless witnesses are able and willing to co-operate; the victim is not the only, but a prime witness. Precisely because violence against women is a structural problem in society, it is usually difficult for victims to assist the law in sanctions. Recognition of this difficulty has been a moving force behind building inter-agency networks in many countries at this meeting. Beyond that, however, sanctions against the perpetrator can rebound and increase harm to the victim, when she is, for example, financially dependent on the man who attacked her, or when it is easy for him to intimidate her or take revenge.

There is thus a tension between sanctions and empowerment that cannot be easily resolved. As a

growing number of national prevalence surveys show, most of the violence that women experience is exercised by men within their circle of personal relationships; and in general, people are not happy to take a family member to court. Overwhelmingly, what women want is to feel safe from further threat of violence – not incidentally, the Swedish comprehensive Act in 1998 was called "Women's peace". Strikingly, assessment of the Domestic Violence Act in Luxembourg found that, while the vast majority of the women saw both the police intervention (including eviction of the perpetrator) and proactive advisory services as beneficial, and most of them then took civil and criminal measures against the perpetrator, only half (52%) felt safe in his presence. If this is the case even where women have been supported in a well-co-ordinated network of interventions, how much less safe must women feel before they enter a "chain of intervention" or where this chain is not sufficiently secured. The tension between empowerment of women towards self-determination and the interest of the state in sanctions and deterrence cannot be fully resolved.

Across the Council of Europe member states, I see some problematical developments during the current wave of efforts to implement transnational commitments. Examples can be cited in which legal frameworks define a confrontation between the state and the perpetrators, while the victims have only a secondary role. (This is the tradition in rape law, and is a prime reason why victims have often found court trials humiliating or traumatic.) In the case of domestic violence, the role of children, always a conflict when there is violence against women in the home, has become particularly ambivalent. When it is recognised that children suffer seeing their mothers victimised, in some countries, the woman who fails to leave her husband can be prosecuted for child maltreatment.

These difficulties are compounded by the fact that the actual effects of legal measures depend very much on the differing ways in which the institutions of policing and justice are organised and on what I will call here the institutional cultures in which they are embedded. I will discuss this in three areas:

- Special laws versus incremental legal improvements
- Protection of victims from further violence
- Implementation of sanctions.

Special laws

In the countries at the present meeting, there has been a long history of social activism raising awareness of the problem of violence against women since the 1970s and leading to the establishment of a broad network of service organisations, usually initiated by women's NGOs, that gradually won at least partial funding out of public money. Legal reform strategies were developed only later, after the specialised services for victimised women had established themselves as the indispensable foundation for addressing violence against women, and in consequence, gained a strong voice in the political sphere. They speak for the principle, affirmed in the Council of Europe recommendation, that "all measures should be focused on the needs of the victims".

In many countries, for example those that more recently entered European institutions, there is no comparable history of social activism, and legislation is seen as a lever to begin the needed process of social and institutional change. Based on United Nations recommendations, there has been a strong trend to call for specific laws on domestic violence. These are typically laws that define the offences covered, the relationships to be considered "family", "household" or "domestic", the penalties and the procedures; a number of them have been passed or are being prepared in countries that recently joined the EU.

The earliest and in some ways strongest was the Cyprus law enacted 1994, revised and extended in 2002, which considers violence in the family to be an offence against the state. Acts causing physical, sexual or mental harm are punished more severely if they occur within the family than elsewhere. Any act of violence committed in the presence of a child is considered violence against that child, being likely to cause psychological harm. In consequence, the spouse – for example, a wife who has been struck by her husband while a child is at home – is a compellable witness against her husband under threat of being prosecuted herself. Family counsellors are given full police powers of investigation and are directly involved in the prosecution, and public officers of health, education and social welfare are required by law to report "concerns, suspicions or evidence of family violence" to the Attorney General. Thus, social measures are centred on the effort to prosecute perpetrators, based on the interest of the state in eliminating violence from the family sphere.

Laws of this type have been spreading especially into countries with little previous activity to address violence against women. The emphasis may be on protecting the family, rather than protecting women. Typically, the definition of domestic violence makes no reference to gender and includes child maltreatment, elder abuse, attacks on siblings and other relations as well as abuse of a spouse or cohabiting partner. It is not at all clear how some very broad definitions of what constitutes "violence", including inflicting emotional pain, will be implemented in legal practice. Will the expansion well beyond the traditional categories of punishable offences upgrade or downgrade the "domestic"? Acts that would, in another context, be considered criminal violence, may now be classified as domestic violence and possibly carry a lesser penalty. On the other hand, a number of states have defined violence within marriage or the family as an aggravating circumstance, calling for a higher penalty. Overall, it can be said that a specific law addressing domestic or gender-based violence needs to be carefully crafted to ensure that the interaction with existing legal frameworks has the desired effect.

To judge by the number of cross-references, the Spanish Law on Integrated Protection Measures against

Gender Violence represents such an integrative framework. It is specific, in being directed at adult relationships and gender inequality, and is also innovative in taking a truly comprehensive, multi-pronged approach, addressing gender violence in context including educational and prevention measures, procedural as well as criminal and civil law provisions, social and economic rights, setting up fast-track specialised courts, and more. Perpetrators can only be sentenced to prison or to community service accompanied by re-education; fines, which often burden the wife, are not possible. Any conviction for gender violence suspends the right to own a weapon, and may exclude the perpetrator from exercising any parental authority for up to five years.

In all cases, whether a specific law is passed or existing criminal law applied, or a combination of both, monitoring is needed to assess whether the police are investigating all cases that come to their attention, what proportion of cases are actually prosecuted and for what offences, and how courts dispose of the cases. Based on the information given by member states of the Council of Europe on legislation and its implementation, it seems that very few countries have a monitoring system which would enable them to know where the new legal activities are actually leading in practice. Only Spain has set up a central observatory to collect and analyse data on all cases as they move through the policing and legal system; only the United Kingdom and Sweden seem to have an inspection system that, at least at intervals, reviews the actions of statutory agencies towards domestic violence and/or towards sexual assault and rape. The United Kingdom has computerised police, prosecution and court records, and is now able to "flag" all cases where an offence of any kind is related to domestic violence; this now allows them to track outcomes over time.

Although many countries have replied that they keep statistics by sex and by relationship between perpetrator and victim, they usually do not disaggregate their criminal statistics by a combination of these facts, so that one cannot even locate data on homicides by intimate partners by sex across Europe. Without data, there can be no monitoring, and legal strategies are largely guesswork.

Protection of victims from further violence

Without effective victim protection, sanctions may exist only on paper. You have already discussed the Austrian model at length. Its innovative provisions for evicting the perpetrator from the home have since met with great interest throughout Europe. It has also met with certain reservations, so that modified measures are emerging.

The Austrian model, since implemented in Germany, Luxembourg, and Switzerland, as well as the Czech Republic and Slovenia, authorises police officers to expel a person who poses a danger to another from the home and prohibit his return for about 10 days, regardless of ownership or whether the persons are related. The decision on eviction and barring orders lies exclusively with the police officers on site, not with the victim, and compliance with barring orders should be enforced. An advisory centre is usually to be informed about the intervention within 24 hours, and will then actively contact the victim and offer her information and support, including how to obtain a court order that extends the police ban.

A growing number of Council of Europe member states are introducing a measure to evict the perpetrator; indeed, it is rapidly becoming a common element of strategy. However, a majority of countries evidently consider it inappropriate to give this power to the police. Although concerns about police powers are quite different, say, in Norway than in Bosnia, there is an overall tendency to define barring orders, like other safety orders, as a judicial measure. Such court decisions are unlikely to take effect quickly. Many of them are dependent on criminal proceedings already having begun, usually presupposing that the victim will have made a statement and is prepared to testify before any protective measures are taken. Just to round off the picture: in Poland, the court can issue an order to remove the perpetrator from the home only after he has voluntarily moved out! A few laws, and some legal systems, foresee court decisions as an emergency measure with an *ex parte* decision.

Whether or not a court-issued barring or restraining order can be effective will depend very much on the way the institutions of policing and justice are understood and how and when they interact. Very little is said about this in country reports on implementing legal measures, because the writers of the reports tend to take the functioning of their own institutions for granted. I am on thin ice here making comparisons, and hope that you will correct me if I am wrong.

Let us take, as a measure for implementation, the "modal case": A woman is attacked by her partner at 10 p.m. on Friday evening, and although there are no injuries needing medical care, she is obviously hurt and frightened, she may have screamed for help, and someone calls the police.

Before the introduction of the barring order in Germany or Austria, the police were fairly helpless and often very unhappy about being unable to help. In German criminal law, the police are defined as the assistants of the prosecutor, and like the public prosecutor (and unlike the norms of an adversarial legal system), they have to gather both evidence of possible guilt and evidence of innocence, submit it to the prosecutor for decision on whether there is a crime, and whether it can or should be prosecuted. This decision will not happen rapidly, probably not for at least a week. Only then can it go to court. On the Friday evening, the police have no power to arrest; they could call an emergency judge to issue a warrant, for example, if there is reason to believe the perpetrator might go into hiding, or if a very serious crime is imminent and cannot be prevented any other way. What the police could do was to take a man into custody if he seemed very drunk or out of control,

but they could only keep him until he was calm and sober, not more than 8 hours as a rule, so he would be back in the flat, probably angry, by 6 in the morning. The only way to protect a woman was to bring her to a refuge, which the police often did.

This seems to be different in the United Kingdom. Awareness that domestic violence is serious has been met by an increase in police arrest. Common assault has been added to the list of offences for which a police officer can make an arrest without a warrant. If the police assess that there has been a crime, or have reason to believe that a crime may be committed, they may even keep the man in jail until taken before a magistrate. Increasingly, the United Kingdom is setting up specialised courts and aiming to fast-track domestic violence cases. A man may be brought before the magistrate within 24 hours, and there is a stricter policy on setting bail: When the risk for the woman seems high, he can thus be kept in detention until trial. To the extent that this system works, or could be made to work by inspection and supervision, it makes the Austrian barring order look superfluous. Why leave the man out there where the woman can never know when he might come back, when you could put him safely in jail?

However, safety is not the prime concern here, but rather branding wrong-doing as such, with a potentially deterrent effect. In actual fact, arrest does not ensure a woman's safety for very long. The magistrate may only schedule a hearing (or pass a serious case on to High Court), or sentence the man to a fine or to community service. In emphasising arrest, British policy sees the police as reinforcing the law, and arrest as a relatively normal event that can happen to ordinary people. Possibly, a much larger proportion of the British population (including a large proportion of women victims) than, for example, either in Scandinavia or in Germany, thinks there is no great harm done if someone who has behaved badly has to spend a few days in arrest, or a month in jail: It will teach him to think twice about how he behaves the next time. There may also be a difference in the cultural perception of the role of policing, and how far it is associated with prevention and protection.

There are, of course, weaknesses to prioritising an arrest response. It assumes that domestic violence situations include identifiable criminal acts and provide enough evidence for a conviction. Most cases are handled by a magistrate, who works as a volunteer, and not by a professional judge. Quite a few men will be let off without a penalty, although the conviction rate is rising. For their own safety, women must actively seek protection orders. This disadvantages the more vulnerable women additionally; to avoid this, significant resources must be invested in supporting women.

In Germany or Austria, there is a very strong aversion to increasing the police power to arrest, or to "fast-track" convictions. This is founded in historical experience of how police powers or special, rapid-conviction courts can be abused. As paradoxical as it may seem, the choice of the police as the ones to issue a barring order is based precisely on concern for strict procedural correctness and presumption of innocence in criminal law. The police ban is founded on the police mandate to protect the life and safety of citizens; it is a preventive measure that the police are required to take when there is reasonable ground to suppose a threat of violence in the home. The fact that an assault has just occurred creates a high probability that further violence threatens, but neither the police ban nor the court injunction requires evidence for criminal prosecution. The police are keeping the peace and protecting people from harm, as they would in case of fire or flood. Criminal accusations must involve the prosecutor, and permit preparation of a defence, thus taking time.

This is also a weakness of the Austrian model: now that the police have an immediate means of relief in hand, they may be disinclined to report crimes and to collect evidence that will stand up in court independent of the victims' inclination to testify. Many domestic violence situations permit collecting evidence, far more than popular opinion (it's only his word against hers) recognised. Photographs of the red marks in her face and the state of the room, statements by neighbours, spontaneous statements recorded on the scene are all very useful. We have found in German evaluation that the police, even if well-trained in respectful interviewing and using the eviction option, rarely collect such objective evidence.

There may be a third model emerging. The institution of the investigative judge working closely with the police in France or Belgium, or the assistant prosecutor within the police force in the Netherlands, could make it possible for the police to have rapid access to a judicial order of eviction from the home without waiting for an actual court proceeding and disposal. The key questions are: would a judicial protection order be available in the Friday night case above, in time to keep the woman in safety until she can seek advice, consider her options, make a safety plan, change the lock on her door and ask for a temporary court order in matters such as child contact, exclusive use of the residence? In many of the German-speaking countries/*Länder*, the police barring order has to be presented to some further authority for approval; if a judge were involved from the outset, this additional bureaucratic step could be eliminated. Court orders can, of course, always be contested. Little written material is available on this model and its relevance for domestic violence.

The high level of success of the Austrian model – very few bans are contested and the level of violations is low – is probably founded on its clear distinction between the actions of the state and those of the victim, and a balance between the state use of force and respect for the victim's right to decide on her own personal life. The state acts *ex officio* in removing the perpetrator and in giving a specialised social support service the opportunity to contact the victim. It is then up to the woman to use this period of safety and the resource of counselling according to her wishes and felt needs.

This carefully thought out balance between the state's clear rejection of violence and the empowerment of victims needs to be explicated for other models as well.

Finally, it should be noted that the preference for rapid punitive measures or for a priority of protection and victim support is not only a matter of institutional cultures: the results differ as well. Protective measures mean that a woman can call the police before she is actually injured, when she recognises from past experience that violence is brewing. A policy of arrest and punishment is hard to apply until some violence has occurred or been directly threatened. Arrest policies will be more effective in protecting women from highly violent men; risk assessment is vital to this goal. Police barring orders will offer protection that is more uncertain, but meets a wider range of circumstances, and may prevent violence. Where the risk seems high, police in Austria or Germany thus may still bring a woman to a shelter after barring the man from the home, and the advocacy services then plan for safety with her.

Implementing sanctions

One of the most striking aspects in the evolution of measures on violence against women across Europe is the tendency to define sanctions without a great deal of discussion on how they may be applied. Nearly all 47 countries in the Council of Europe now penalise rape within marriage, at least nominally. Several member states (Greece, France) have recently lifted the marital exemption, and the remainder may be expected to follow. Yet attrition rates have also been rising. The Regan/Kelly report[1] based on questionnaire responses from 21 member states for the period 1980-2003 found conviction rates for rape to be sinking – in some cases dramatically – across Europe, while women's reporting of sexual attacks has increased. In all countries (except Germany), when reporting rose, convictions sank. In a number of countries (such as Austria, Greece and Poland), reporting has not even increased significantly over the past 20 years, suggesting that awareness and confidence in the justice system have not improved.

There are still very few states that actually make lack of consent the measure of rape, as in the United Kingdom and in Belgium, where it is a sexual offence if the perpetrator either knows that the other person does not consent, or is reckless regarding consent. The United Kingdom has been making changes to address the "unacceptably low" conviction rate of 6%, including specialist rape prosecutors, training for the police, and procedural improvements. Such changes were made in Germany beginning in the early 1990s, and this may be a reason why the attrition rate is lower there.

No systematic data are available from any country, to my knowledge, on the proportion of domestic violence offences that reach the courts at all, or that end in conviction. Research on files from the State Prosecutor's Offices in Vienna and Salzburg during 2001 revealed that about half of the legal proceedings following bodily injuries were abated. A German study of preliminary proceedings in two different prosecution services also found that the majority of domestic violence cases were dismissed. In 95% and 81% of cases no court action was brought.

If I may be excused for simplifying generations of legal debate: Sanctions deter crime generally by conveying the notion that acts are wrong and socially not tolerated, and specifically by creating a reasonable expectation of punishment. Thus, most people do not rob a bank even if tempted, because (a) they think it is wrong, and (b) they expect they would probably be caught and the consequences be very unpleasant.

Violence against women is not like robbing a bank. It rests on a foundation of centuries in which men exercised violence towards women – towards "their" women, towards "loose" or "available" women – with impunity. Men who batter or rape do not go to any great effort to conceal what they do, nor do they expect, if apprehended, that anything very unpleasant will follow. As long as they do not actually draw blood, they tend not to consider what they have done as being "violence" (cf. the research of Hearn 1998), and are thus unlikely to assume that a law against domestic violence will even apply to them. Women mostly recognise acts that hurt and intimidate as being violence.

If we draft laws, policies and action plans declaring that there will be sanctions for domestic or for sexual violence, the law in itself raises expectations among women, while having (at first) no significant deterrent effect on men, as long as they believe that their actions are not punishable. Raising the penalty level is probably not very useful, since it does not increase, and may even decrease the probability that the penalty will actually be applied in any given case. The focus must be on ensuring (a) that sanctions will be applied, and (b) that men understand that their behaviour will give rise to such sanctions.

Here, the West Yorkshire model of police response to repeat victimisation is very promising, and has been assessed as effective. In essence, it consists in identifying repeat offenders – i.e. men whose use of violence has led to police attendance previously – and establishing an automatic increase in the level of intervention with each repeat attendance. This presupposes a database that will allow police to identify, when a call comes in, if the man has used violence against any woman before. Each level of intervention – beginning with an official warning to the perpetrator and rising to court actions – is accompanied by a standardised letter explaining the policy and stating what actions could or would be taken. Many cases can be handled on a routine basis, with only a relatively small number requiring special consideration and discretionary assessment. The model is based on early intervention, and – like the Austrian model, but in a different way – avoids the effort of preparing a case for prosecution when the level of demonstrable harm is still low, yet

1. Regan, L. and Kelly, L.: *Rape: still a forgotten issue*. London Metropolitan University 2003.

communicates very clearly to the abusive man that his behaviour is unacceptable and both can and will result in sanctions if continued. As a result, the small proportion of chronic offenders, who are the most dangerous, can be filtered out of the numerous calls and be targeted for high attention and special protective measures.

Some countries have been introducing electronic foot bracelets to keep track of perpetrators, and cell phones or other alarm systems for victims. These measures will be useful for women threatened by those dangerous men who do not respond to any other deterrents, but effective use requires that these cases be identified. We know from prevalence studies that up to a quarter of all women experience some physical violence by an intimate partner at some time in their lives. A clear message from the police that this is wrong may help them find their own solution; and many will never call the police at all. Knowledge and skills in risk assessment are essential for the police to identify those cases that might call for special protection measures.

From the global to the local and back again

There is a pressing need for *all* European countries to empower women, assist them to escape from violence within the family, and provide resources for advice and practical help. This requires establishing and maintaining woman-centred NGOs to provide assistance and services to victims. Without these, legal action against perpetrators is likely to fail, since women who are intimidated and humiliated will not be able to act as witnesses or to pursue a complaint. Training the police and enforcing high standards of intervention with respect to violence against women also need to be an integral part of the effort to develop good overall services. These are all measures that profit from the engagement of actors on site and "close to the ground", bringing all stakeholders to the table to identify the most pressing needs for action, as well as developing potential for co-operation and designing programmes to fit the local circumstances.

In the longer view, the experience in many countries has been that no single measure is, by itself, effective. In recent years, the network approach has moved to the foreground, as can be seen not only in the United Kingdom and Germany, where there has also been significant evaluation research, but also, for example, in France and the Netherlands. There is a shift in focus from "measures and programmes" to developing community intervention strategies through inter-agency co-operation, beginning on a local level. They build on existing services, and on a growing awareness in statutory agencies of the cross-cutting nature of the problem. Building co-operative programmes is a process which grows from strong roots in local conditions and human resources. They are also probably the best site for working out how the differing and inter-related needs and rights of the direct and indirect victims, the adults and the children in families, can be balanced. However, it is essential that the knowledge and skills developed in such local co-operation networks be brought back into the strategies and policy-making on the national and trans-national level. ★

The French experience: Ms Clarisse Agostini

National Federation of Women's Solidarity, France

The national federation of women's solidarity (FNSF), which I represent today, is celebrating its 20th birthday this year. 20 years of fighting against acts of violence perpetrated against women. The network presently gathers 62 organisations in France which, day by day, welcome, accompany and lodge women victims of domestic violence and their children. The headquarters of the federation, located in Paris, also manages a national phone service. The phone service treats more than 10 000 calls per year; only 8% of the women victim of domestic violence denounces what they have gone through and only 6% of the charges have legal consequences.

About the law

The FNSF has a justice commission made up of lawyers and professionals from the associations who are thinking together about the means to advance justice as regards domestic violence. Today, French legislation concretely does not make it possible to treat the acts of domestic violence as a whole. For example, what can be recognised at the penal level will not systematically be followed by adequate measures at the civil level. A woman who denounces her husband's violence and asks for a separation will often see herself denied the attribution of the residence or the exclusive custody of the children although the violence has been recognised and even sanctioned. The criminal law moves into the direction of the recognition of the gravity of the facts and accentuates the repression of the perpetrators but, at the present time, it is not followed by related actions to efficiently protect the victims from this violence. A good point is that the law of 6 March 2006 is widening the aggravating circumstances to the former husband or boyfriend.

We had hoped for a long time that domestic violence would be recognised even if victim and perpetrator no longer lived together, but a current or passed relationship was acknowledged.

Today we are asking for the implementation of a comprehensive law as the Spanish Law on Integrated Protection Measures against Gender Violence. This comprehensive law could integrate measures which already exist in our country, but which require improvement in order to maintain a coherent and permanent link between them and would allow answers adapted to the needs of victims. I will give you a non-exhaustive list of them.

Prevention

For the past twenty years, prevention campaigns (posters, movies) have become more numerous and regular. Be they on the initiative of the State or of NGOs, it seems an effective tool to get the general public more concerned by the subject. Our association has been collaborating for two years with an advertising agency which produces short movies, which strike the public opinion and thus bring a necessary awakening at the time of March 8th and of November 25th. In 2006, the topic of this campaign was about the children as witnesses. Some campaigns aiming at involving and giving a sense of responsibility to men are starting to appear.

Raising awareness, training and prevention in educational area

We find it essential to inform and educate the citizens but also the professionals who are likely to work with the offender or the victims (doctors, police officers, social workers, teachers). Thanks to local or national conventions, the associations of the network train these professionals to recognise a situation of domestic violence, the reception of victims and the accompanying of the victims. We wish that these actions could be offered to the professional ones systematically by integrating them into the law. In addition, we are engaged in preventive work among young people, as some of our organisations go and meet young people in schools, in some cases in order to raise awareness of respect between boys and girls (Convention of the promotion and the equality between girls and boys of 25 February 2000, of the Ministry of Education).

Right to housing

Women who suffer from violence have priority concerning access to social housing since 8 March 2000. A report published in 2006 presents an inventory of figures and measurements of improvements for the lodging and the re-housing of women victims of domestic violence. A relevant lack of data emphasises an underevaluation of the needs and a lack of financial and human means to match the needs. NGOs find it increasingly more difficult to face the requests of emergency housing; 33 centres in France are able to lodge 1 272 women.

The rights of foreign women

We consider women coming from a foreign country and who are victims of domestic violence as a group of victims of what we call "double violence"; they account for 30% of the women accommodated in our associations. Double violence because of the violence that they undergo due to the mere fact of being a woman and of the institutional violence they experience due to their illegal status. Our structures are often deprived of legal means to assist women properly with difficulties in connection with immigration. Although the law provides that a woman having obtained a residence permit because of her marriage has the possibility of leaving her husband while preserving her residence rights, the woman will not be allowed to stay in France should her complaint for violence not succeed. This means that most of the time they do not want to denounce the violence they experience.

Children as witnesses, children as victims

A report of August 2006 shows the enduring impact of domestic violence on children. On the one hand, children who live in such a context can themselves be victims of violence. On the other hand, their status of witness (to observe, hear and be aware of what occurs between their parents) can have serious and long-term consequences on their physical, social and emotional development. Moreover, the process of reproduction of the behaviours learned during childhood increases the risk of being put in a situation of being a perpetrator or a victim during adulthood. Thousands of children are exposed to domestic violence in France today. The criminal law and the civil law being separate as I explained earlier, the claim of visiting rights or alternating custody of the violent man thus prevails over the safety of women victims of violence and their children. There is no contradiction between committing domestic violence and preserving parental rights.

Conclusion

Day by day, French NGOs are advocating for the recognition of domestic violence as a major social fact based on male domination, which is working to the detriment of women. More of them are willing to open their door but the lack of human and financial means hardly makes it possible to always meet the growing needs of the victims. Nevertheless, the innovative initiatives of these associations (improvement of the reception of victims, working in partnership, creation of tools of prevention, etc.) are increasingly supported by the state, in a context of growing concern for this phenomenon. The FNSF is supported by the women's rights service of the Ministry of Parity and Social Cohesion, the Ministry of Justice, the town of Paris and private companies. Its role among the organisations, which are its partners, is the setting up of a network, which allows, among other things, placing a geographical distance between women in danger and their husbands, disseminating information, participation in national workshops and deliberations. The FNSF organises conferences, as well as universities where associations of the network can exchange their professional observations and their practices.

Finally, the FNSF is a force of proposal with the national and local authorities and is recognised as an expert regarding domestic violence. Through a set of specific commissions and services, we aim at working for real equality between men and women in our society. ★

The German experience (1): Ms Nicole Weidenfeld

Advisor, Protection of Women from Violence Department, Federal Ministry of Family Affairs, Senior Citizens, Women and Youth, Germany

Ladies and Gentlemen,

Combating violence is one of the Federal Government's most urgent aims. At the focal point of its initiatives is the "Action Plan of the Federal Government to Combat Violence against Women", which entered into force at the end of 1999. This Plan represented the first comprehensive concept for combating violence against women ever elaborated. It aims to furnish victims with the greatest possible degree of protection and assistance and to pursue rigorous punishment of perpetrators. In contrast to previous, hitherto isolated improvements, the Plan's main area of emphasis is achieving structural change at all levels in combating violence.

We had come to the realisation that, only when all of the relevant authorities and institutions at all levels – national, regional and local – join forces and approach the topic in a co-ordinated manner, can change really occur. This philosophy lies at the core of our Action Plan, and the latter describes how this is to take place in the areas of prevention, victim protection in the laws and on the ground, work with perpetrators, training and public relations work.

Permit me to mention a few of the main areas of emphasis.

At national level, two co-operation bodies have been set up: the Working Group of the Federal Government and the Länder on Trafficking in Women and the Working Group of the Federal Government and the Länder against Domestic Violence. Both bodies are comprised not only of representatives from the Federal and Land ministries responsible for the specific topic, but also of representatives of Non-Governmental Organisations such as counselling centres and women's shelters. These working groups were responsible for steering the national implementation of the Action Plan.

The Protection against Violence Act in civil law, as explained to you by Ms Reiss from the Federal Ministry of Justice yesterday, entered into force on 1 January 2002. It constituted a milestone in the improvement of the legal protection afforded to victims of violence.

Today, we know that effective protection from violence requires not only that the courts and the police work hand in hand, but that all of the authorities and facilities that work with victims and perpetrators of violence are taken on board as well. In this area, we have managed to achieve a great deal, thanks to the intervention projects and round tables we have funded.

Intervention projects are networks which organise a binding collaborative effort among all local support facilities in the area of domestic violence against women. Irrespective of their size and structure, the intervention projects against domestic violence pursue the same aims:

- decisive action on the part of the state against domestic violence,
- ensuring that perpetrators are called to account, and
- that victims receive swift and reliable protection and support.

The first pilot project funded by the Federal Ministry for Women was the Berlin Intervention Project against Domestic Violence – BIG – which it started to fund in 1995. Ms Hecht, who is BIG's representative here today, will be telling you more about this successful project later on.

Since the founding of BIG, many additional projects of this sort, includ-

ing the so-called round tables, have come into being all over the Federal Republic of Germany. The many and diverse developments in this field were scientifically evaluated by the University of Osnabrück in ten different locations. In this process, it was possible to ascertain the essential factors which must be present for networking to succeed. In addition, facilities which provided social training courses for perpetrators of domestic violence in the context of these intervention projects, were evaluated. The accompanying research revealed that:

- Intervention projects against domestic violence are an extremely successful form of action. Especially BIG has laid the foundations for the Protection against Violence Act and the regulations on police restraining orders.
- The police profited enormously from its co-operation with the intervention projects and proved itself to be an exemplary partner in combating domestic violence. Domestic violence is no longer seen as a private issue by the police; it is perceived as a crime and as a disturbance of public safety and order.
- Outreach counselling, by means of which affected women are actively approached, is able to reach new groups of victims and thus close protection gaps.
- Work with perpetrators in the context of intervention projects also constitutes a sensible and useful measure for violent men.

In addition to co-operation, the topic of nationwide networking is another area of emphasis in the Federal Government's Action Plan to Combat Violence against Women.

The Federal Government promotes the nationwide networking of women's shelters and the counselling centres against trafficking of women and violence in the migration process, as well as the Federal Association of Women's Counselling Centres and Women's Crisis Telephones. The advantages of networking are obvious. All facilities have swift access to up-to-date information. Lobby work can be successful since reform proposals can be quickly reviewed, processed and commented on. Public relations work, the answering of questions from various quarters, the organisation of further training and, not least, the drawing up and implementation of quality standards are tasks which are predestined to fall within the remit of a networking centre.

An important part of the Action Plan was the systematic investigation of women's experience of violence. In an endeavour to obtain reliable statistical data for the first time for Germany regarding the extent, background and consequences of violence against women, and to throw light on the large number of unreported cases of all those offences of which the police remain unaware, the Federal Ministry for Women commissioned a representative survey on violence against women. The survey, based on interviews with 10 000 women, produced figures which revealed a medium to high rate of violence among women in Germany compared with the rest of the world.

With the Federal Government's Action Plan we have been able to score a number of successes since 1999 in our efforts to put a stop to violence against women.

Despite the numerous achievements and efforts over the past 30 years – from the founding of the women's shelters to the Protection against Violence Act – our resolve may not be allowed to falter. We are combining the forces of the public sector and of the voluntary sector to provide early assistance to women affected by violence.

Of decisive importance in the future will be the training of professionals in the health care sector, the police and the judiciary. Doctors are often the first point of contact and, as such, should be prepared for and cognisant of the needs and problems of the affected women. In this area, it will be necessary for further training modules on violence against women to be designed for medical personnel in a joint effort with actors from the health care sector and with non-governmental organisations from the anti-violence field. To meet the needs of children who are affected by domestic violence, corresponding prevention, intervention, assistance and support measures will have to be created. Furthermore, the target group of migrant women affected by different forms of violence, will require measures of prevention, legal intervention and low-threshold assistance and support.

The representative survey on violence against women, as well as the scientific evaluation of the intervention projects against domestic violence, constitute important research projects from the "Action Plan of the Federal Government on Combating Violence against Women". With the publication of both of these studies, the last projects and measures envisaged in the Action Plan were also implemented. The results of these two studies, as well as those of the many other measures contained in the Action Plan, have given us fresh impetus to continue to espouse this strategy. The second Action Plan of the Federal Government to Combat Violence against Women will be published in summer this year and will contain additional strategies and instruments for combating violence against women.

As with the first Action Plan, we can only succeed in preparing and implementing new strategies and instruments if we develop them together with experts from the anti-violence field and therefore in very close proximity to the practical problems. This last thought is my cue to give the floor to Ms Hecht from the BIG – the Berlin Intervention Project Against Domestic Violence – who will be reporting about her work on the ground. ★

The German experience (2): Ms Dorothea Hecht

Co-ordinator, Domestic Violence Intervention Centre Berlin, BIG e.V., Germany

Ladies and gentlemen,

Thank you very much for your invitation and for the possibility of presenting our project.

Dr Weidenfeld has already described the innovative idea of an intervention project, its initiation, its implementation in a national action plan and of course the project's aims.

How does BIG function? First of all it is an NGO-project, but funded by the Berlin Ministry of Women and formerly by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth.

BIG operates a change of institutional and project-related attitudes. Institutions and projects have come together, not automatically or on their own.

The co-ordinators of BIG have convinced and continue to convince over and over again professionals in institutions, administrative authorities – this is a never ending job – and are generating interest among decision-makers in the subject of domestic violence and in joining our alliance.

Above and beyond the fight against prejudice and indifference, there must be a will to go beyond the usual handling and routine in confronting domestic violence.

To bring this about the co-ordinators developed a series of lectures and personal pep talks, which contribute to strong motivation, and have to this day perfected the sense for an urgent situation, with the result that they have been able to convince even the most sceptical. This newly found co-operation has given the input and the impetus for a wide range of police, penal and civil law measures.

It has also spurred political and social action against domestic violence. A very important step towards the enactment of the German Protection against Violence Act into civil law was a conference, organised by BIG, which formulated proposals for the new law, and these proposals were later reviewed by judges, lawyers and social workers and contributed to a very active participation in the elaboration and enactment of the law.

But alongside these big results there is the continuous work on details induced by feedback out of day to day practice. For example we have developed a form that judges can use for the enforcement of protection orders. By signing this form the judge mentions and endorses the article enforcing the protection law. The judges claimed that it was not necessary to invoke the article of the law. They are right from their point of view because it is not compulsory to mention the article of law, but the police who have to decide whether to seek prosecution were unable to precisely judge the legal situation. It is now easier for them to act if they know which measure the court based its action upon. This is an example. We have to be careful not to lean back, thinking we already did it all!

BIG's work is a mixture of dealing with details – after monitoring the practice – and developing new strategies, following and forcing the debates and the new advances. For example, we are now actively pursuing all measures and ideas which contribute to the prosecution of perpetrators. But this stance is not limited to prosecution, but is a wide intervention, which aims to promote awareness of violent fathers and heighten administrative sensitivity. We have to check the competition between the father's or children's rights and being responsible as

the offender, not to forget the safety of the mothers.

The other thrust of our action is the necessary early awakening and implementation of a preventive consciousness within children and young people. Because not only do young people need our protection but it is imperative that such behaviour patterns are not adopted and repeated.

These are the reasons why BIG is a new pilot project, which aims at prevention by joining and co-ordinating key actors such as school, parents and youth counsellors.

This is one of the many ways to combat male domestic violence. ★

Mapping legislation on violence against women in Europe

Ms Colette De Troy

Co-ordinator, Policy Action Centre on Violence against Women, European Women's Lobby, Belgium

Aims of the European Women's Lobby Policy Action Centre on Violence against Women

- To influence EU policy and action on Violence against Women
- To monitor national and EU commitments under international/UN mechanisms
- To develop tools for NGOs
- EU Observatory on Violence Against Women: Experts in 27 EU member states + in Croatia, Serbia, Turkey and Ukraine
- National observatories on violence against women and reports (e.g. Indicators)

Reality check: when women's NGOs map policies and legislation on violence against women in Europe

- 30 national experts on violence against women – European Observatory
- EWL shadow report to the 2006 Council of Europe Stocktaking Study on the measures and actions taken in Council of Europe member states to combat violence against women
- The Council of Europe Stocktaking Study draws on information provided by the governments of member states, while the EWL report draws on information provided by NGOs and national experts on violence against women

Analysing a sample of issues featuring in the Council of Europe Stocktaking Study

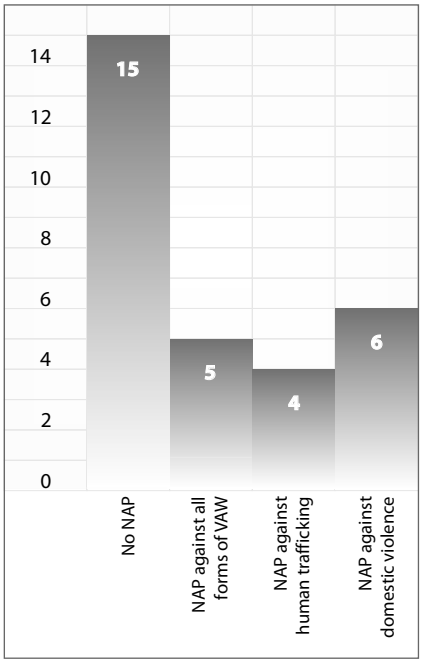
- The National Action Plans
- Definitions and forms of violence targeted
- Existence of specific budget
- Existence of consultation mechanisms with NGOs

Definition of violence against women

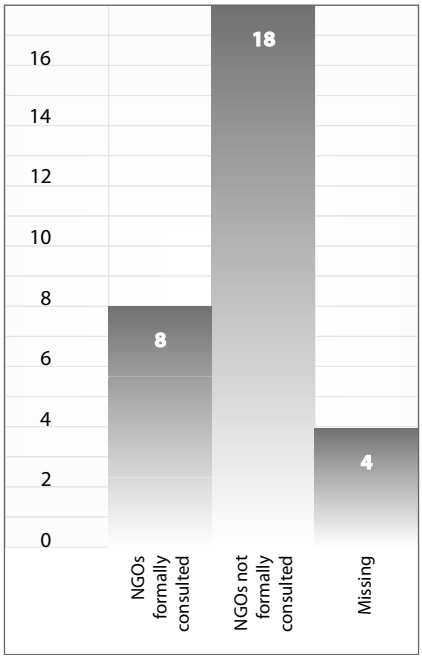
The Beijing Platform for Action

- Any act of gender-based violence that results or might/is likely to result in physical, sexual or psychological harm or suffering to women, including threats.
- Following the Beijing Platform for Action, a national plan of action on combating violence against women could not be regarded as sufficient if it does not include all forms of violence in its definition and policy area

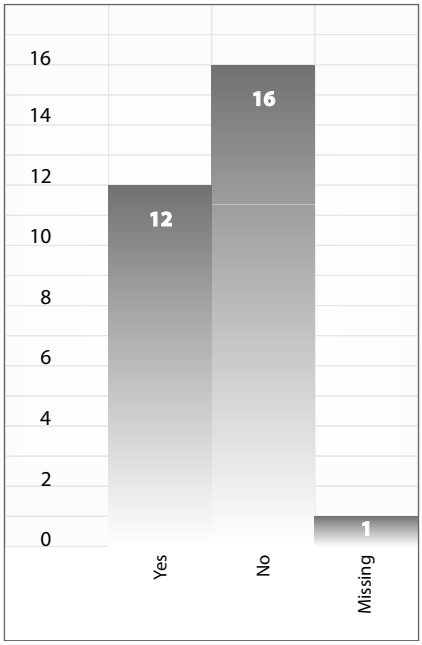
Existence of national action plans on violence against women



Consultation with NGOs on national plans of action and violence against women



Specified allocated budgets for national plan of action

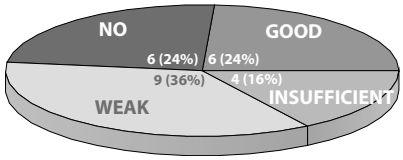


Reality check: content focus

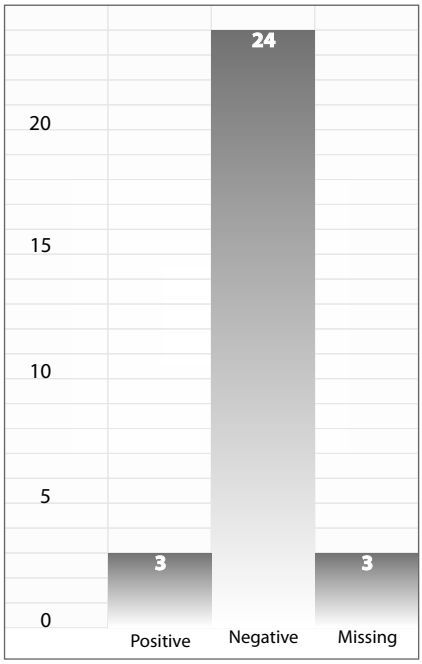
Experts' assessments of legislation and implementation

- Domestic violence
- Rape (including marital rape)
- Harmful/cultural/traditional practices
- Trafficking and prostitution,
- Pornography
- Sexual harassment

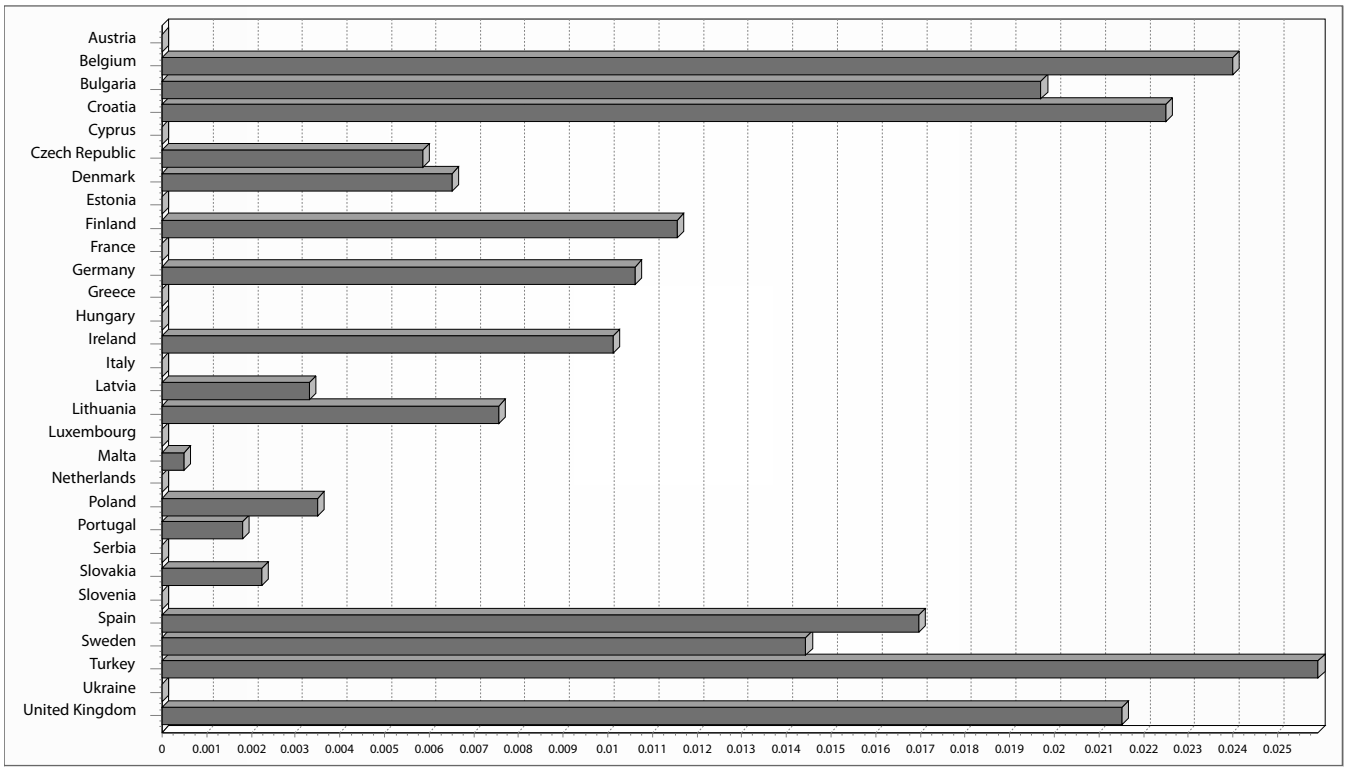
Legislation on Domestic Violence



Implementation of legislation on rape

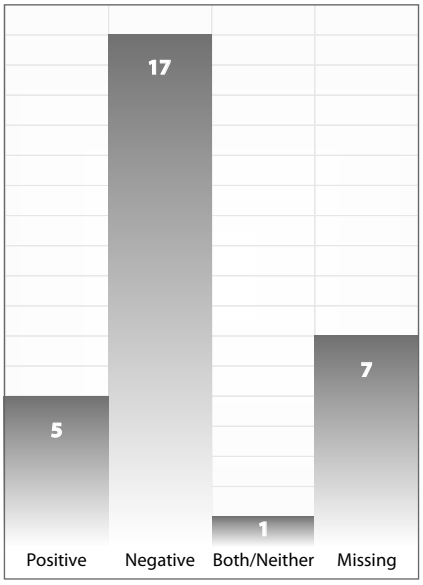


Data on number of reported rapes



Legislation on harmful cultural/religious/traditional practices

Implementation of legislation on trafficking



Conclusions

- Necessary preconditions for the development of a national plan of action
- Content of the national plan of action
- Implementation of the national plan of action
- Monitoring of the implementation
- Evaluation of the above.

For more information please consult the full report *Reality check: when women's NGOs map policies and legislation on violence against women in Europe*, February 2007, available at http://www.womenlobby.org/. ★

Good practices in implementing legal measures

Keynote speaker: Ms Monique Luijpen

Office of the Public Prosecutor, Netherlands

My name is Monique Luijpen. I am a public prosecutor in Rotterdam and in that position I am in charge of the portfolio domestic violence. Each district public prosecutor's office in the Netherlands has an official who is in charge of developing activities to improve, in consultation with other partners in the same region, the approach of domestic violence by the District Public Prosecutor's Office and within the region. This means that for the District Public Prosecutor's Office in Rotterdam this duty was specifically assigned to me.

I have been asked to speak to you today and to inform you about the role of the Public Prosecution Service in fighting domestic violence in the Netherlands.

I will start with a short introduction after which I will try to describe how a case of domestic violence should be treated in the Netherlands based on a case study.

The Public Prosecution Service has a number of responsibilities and authorities in fighting domestic violence which are not only described in the Criminal Code but also in the "Designation Domestic Violence" which has been issued by the Council of Procurators General.

This Designation came into force on 1 April 2003 and describes the policy of the Public Prosecution Service as well as the one of the police with regard to violence committed in the domestic setting of the victim. This refers to all kinds of violence, also mental violence committed by persons in the domestic setting should be included.

It is important that the Criminal Code includes a punishment-increasing factor for violence committed against a mother, legal father, husband and child.

Recently the term "partner in life" was added to this. It has become clear that there were a number of cohabitation forms which were not subject to the latter provision. By including the term "partner in life", this was supplemented. Consequently, persons who are not married but have a long-lasting relationship, whether they are living together or not, are now subject to the provision to increase punishment.

It is also important to mention that when reviewing the maximum punishment in the Netherlands in 2006 the last-mentioned article of the Criminal Code was also modified. Previously, it was not possible to arrest a suspect of domestic violence who was not caught in the act and thereupon keep this person in pre-trial detention. That is now possible and offers many more possibilities to immediately put an end to domestic violence.

The latter was the intention of the National Prosecution Service when issuing this Designation.

The Designation therefore prescribes that the police may immedi-

ately arrest a suspect in case a criminal offence with regard to domestic violence is discovered.

Before, an incident was often reported to the police and when they arrived they were addressed by both the victim and the perpetrator whereby the perpetrator emphatically announced that things were not that bad and that this was confirmed by the victim, after which the police left. Because both parties did agree at that moment there was no "case".

Things are very different now. When the police arrive at the scene and see a crying women sitting on the couch with, for instance, bruises, crying children, etc., the intention is that the police immediately arrest the suspect and take him along to the police station.

By doing so, a cooling down period is created, which of course should be justified by the gravity of the offence. The suspect is interrogated at the police station about the offences of which he or she is suspected.

Furthermore, the possibility is created that, in the case of a possible next pre-trial detention, a suspect will be prohibited from approaching the victim and/or contacting the victim upon his release. The examining magistrate, who in first instance takes the decision about the pre-trial detention of a suspect, may attach this condition to terminating the pre-trial detention. In this way, recidivism will be prevented in the short run, because the police may again arrest him and he will still have to serve his pre-trial detention should he have violated the condition imposed by the examining magistrate.

Moreover, one of the objectives of the Designation and the dealing with domestic violence is to prevent recidivism. It is generally known that domestic violence involves a great risk of recidivism. That is, of course, related to the fact that perpetrator and victim are staying in each other's proximity and are also often living in the same house.

In order to restrict recidivism in the long run, professional help for perpetrators is now considered very important. Counsellors prefer to use the term professional help for offenders.

In Rotterdam, and I know that it is also going to be done in other districts, a suspect who has been arrested for domestic violence, is also visited by a counsellor at the police station. In Rotterdam, a "Screening Team Domestic Violence" has been set up for that purpose, under the direction of the Station of Support Domestic Violence, an initiative of the Municipal Health Service.

The person who is visited may already indicate at the police station whether he, or she, is willing to accept professional help. At the same time, appointments may already be made.

This guarantees that both, perpetrator and victim, will be able to receive professional help.

Also in the framework of the aforementioned pre-trial detention, professional help is important. The examining magistrate may also impose this as a condition to suspend the pre-trial detention. We note more and more that, suspect during the first contact, the examining magistrate imposes the condition that he or she has to comply with, for instance, the instructions of the rehabilitation service. Those instructions often involve participation in a training named "Stop domestic violence".

Anyway, it is also important to mention that this professional help implies more and more that the victim is also actively involved. Often it is the victim who has to start the discussions. There are even programmes in which the whole family, including children, are involved.

A short summary of what I have told you before:

- the Designation provides guidance as to the performance of the national prosecution service and of the police
- The objective of this is, among others, to immediately stop violence and to decrease the risk of recidivism in the long run.

But what is happening exactly at the moment that the police are informed about domestic violence or, rather: what would have to be done in an ideal situation when receiving this kind of information?

Based on a case study I will now try to describe the ideal situation.

The Van Vliet family, living in Rotterdam, consisting of father, mother and two children aged 8 and 11, are watching a football match of the Dutch team on July 9. During the match father's tension increases. The Netherlands lose the game and in the end this results in the fact that, in the presence of his children, father Van Vliet hits the mother. Neighbours hear the mother and the children screaming and phone the police.

Police officials arrive at the scene, separate the mother and the father and listen to the story told by both of them. The children are sitting on the couch, crying. The police report mentions that the mother has a black eye but says that nothing is wrong and does not wish to lodge a complaint. The father, who is not completely sober, denies that he physically abused his wife. Nevertheless, the decision to arrest the father is taken. The reporting officers note the personal details of the mother and the children and arrange that family members are informed about the situation and come to the house.

In the police station the police officials involved write their report about the arrest and describe what they found. The suspected father is brought before an assistant public prosecutor who decides that the man should be locked up for interrogation. After this, an e-mail is automatically sent to the Station of Advice and Support Domestic Violence of the Municipal Health Service in Rotterdam where mention is made of the man's arrest.

Given the late hour the detectives interrogate the father during a short period. He still denies any wrongdoing and is locked up in a police cell during the night.

On Monday morning, the e-mail to the Station of Advice and Support Domestic Violence is read by a staff member of the screening team. The latter phones the detective force and makes an appointment to come to the police station that same morning in

order to have an intake with the father in the framework of professional help to offenders.

The detective force again interrogates the father and sends a fax to the Station for Advice and Support Domestic Violence with regard to the children who witnessed the violence. They will try to intervene in the family within 72 hours in order to evaluate whether further measures should be taken.

The father is taken into police custody in order to collect more evidence. The public prosecutor is contacted. He is of the opinion that more evidence should be collected and issues an order to question the neighbours of the family as well as relatives.

The staff member of the screening team talks with the father at the police station. The father recognises that he needs help, although he denies having hit his wife. An appointment is made for a follow-up meeting (within 2 weeks) at the Centre for Social Services. The member of the screening team makes sure that copy of the invitation is attached to the report that will be drawn up by the police.

The detectives go and question the neighbour who phoned them the previous night. She says that this has happened before and that the mother is regularly physically abused.

Also the mother of the woman is questioned. She also declares that her daughter has previously been abused by her husband. During a conversation with the battered woman it appears that now she has the courage to talk about the abuse. Because she is very scared of her husband and would like to terminate the relation, the follow-up is discussed. The woman prefers not to leave the house. Through the intermediary of the neighbourhood's police officer contact is made with the women's shelter.

After consultations with the public prosecutor the decision is made to bring the man before the examining magistrate. The public prosecutor registers the case with a special code so that it is clear to everyone that this concerns a case of domestic violence.

The examining magistrate remands the man in custody but immediately suspends this. The pre-trial detention is suspended, also at the request of the public prosecutor, on the condition that the man will not go and see his wife and that neither will he contact her. If he does so, he may again be taken into custody immediately. The man should also comply with the instructions given to him by the rehabilitation service.

The man is not released till the afternoon. Meanwhile, the public prosecutor informs the police that the suspect will be released and which conditions have been attached to the suspension. The police will inform the victim about this so that the victim may prepare herself.

In preparation for the trial, the public prosecutor in charge requests information from the authorities who gave professional help to the perpetrator and the results of this professional help. He asks advice about the possibility of re-offending and decides to demand a suspended custodial sentence because the man positively completed the professional help procedure and because the possibility of re-offending is considered to be minor.

I will now mention the issues which are striking and sometimes deviate from the normal state of affairs when declarations are made.

- The police arrests the man in spite of the fact that the woman says that she does not want to lodge a complaint. In the "Designation Domestic Violence", the possibility of *ex officio* prosecution is explicitly mentioned. Too often we see that victims of domestic violence are afraid to lodge a complaint. Therefore the public prosecutor may decide to start prosecution even without that complaint. For instance, if the police officers see injuries or when there are many police reports about earlier interventions, there is sufficient evidence to start prosecution and therefore to arrest the person.
- Immediately after a suspect has been brought to the assistant public prosecutor, professional help is called in. Because the objective is that domestic violence is to be prevented, also in the long run. In Rotterdam this is done in automatically. In other districts, the police officers involved will have to actively approach social services themselves.
- When children are involved in the violence the Advice and Child Abuse Reporting Centre are called in. They will be better placed to decide whether this family also needs assistance from youth care in the interest of the children.
- The suspect is brought before the examining magistrate. When there are sufficient reasons do so, it is easily decided in cases of domestic violence that this is necessary. This is also done in view of the possibility that in this phase required participation in professional help may be enforced and that it is also possible to issue an order prohibiting contact.
- The public prosecutor who is going to handle the case in court investigates the results of the professional. If these are positive, a suspended sentence will be one of the possibilities. In no way will a fine be demanded because this will always affect the family budget. Perpetrator and victim will still form a household or the perpetrator has to pay alimony to the victim (and for the children).

This is a summary of the way in which the national prosecution service should deal with cases of domestic violence.

The "Designation Domestic Violence" is a starting point and the practice, which has many facets, normally demands a special approach. With the Designation as a directive I think that in The Netherlands we are going into the right direction to fight domestic violence. ★

The British experience: Ms Deborah Jamieson

Domestic Violence Team, Violent Crime Unit, Home Office, United Kingdom

Key Legislation on Violence Against Women

- Immigration Rules-Domestic Violence Concession, 1999
- Female Genital Mutilation Act 2003
- Criminal Justice Act 2003
- Sexual Offences Act 2003
- Domestic Violence, Crime and Victims Act 2004
- UN Resolution on Crimes Committed in the name of Honour-2004

National Action Plans

- Domestic Violence National Delivery Plan
- Sexual Violence Action Plan
- Prostitution Strategy
- Trafficking Action Plans

What steps are needed to ensure implementation?

- Agreed definitions across government on Domestic Violence
- Policies and guidance on range of violence against women issues, including forced marriage, honour-based violence
- Specialist Domestic Violence Courts
- Support for victims through Independent Domestic Violence, Sexual Violence Advisors, Sexual Assault Referral Centres, Witness Care Units and special measures
- Training for police, prosecutors, judges, court personnel e.g. domestic violence and rape
- Accredited domestic violence perpetrator programmes in every region of England and Wales
- Awareness raising-national campaigns, e.g. Enough campaign, forced marriage campaign
- Monitoring outcomes, e.g. domestic violence increased successful prosecutions from 46% in December 2003 to 65% in December 2006

Government strategy for domestic violence

- Three key areas set out in *Safety & Justice: the Governments Proposals on Domestic Violence, 2003*
- Prevention; working with victims and perpetrators to prevent domestic violence
- Protection and Justice: including increased legal protection for victims and families, and bringing offenders to justice
- Support: providing support to victims and their families by:

– tightening and strengthening the law to ensure that the system is coherent and effective; and
– closing loopholes in the system to provide victims with the support they need.

http://www.homeoffice.gov.uk/docs2/domesticviolence.pdf

The Domestic Violence, Crime and Victims Act 2004

- Section 1: making breach of a non-molestation order a criminal offence. Breach will be punishable by up to five years' imprisonment on indictment.
- Sections 3 and 4: giving cohabiting same-sex couples the same access to non-molestation and occupation orders as heterosexual couples and making couples who have never cohabited or been married eligible for non-molestation and occupation orders.
- Making common assault an arrestable offence by adding it to the list of offences for which a police

officer may arrest without a warrant.
- Section 12: enabling courts to impose restraining orders when sentencing for any offence.

Children

- Witnessing domestic violence can profoundly affect a child's development, educational attainment and health

Children issues

- Ensuring Safe Contact between Children and non-resident Parent
- The definition of harm amended by the Adoption and Children Act 2002, was formally implemented in January 2005. The amendment already makes clear that when a court is considering whether a child has suffered, or is likely to suffer harm, it must consider harm that a child may suffer, not just from domestic violence, but from witnessing it.

Children and domestic violence

- Revised forms for applications for child contact and residence – 31 January 2005. Courts are now required to consider whether any incidents of domestic violence – not just from direct violence but also from witnessing violence toward another – has had an adverse impact on the child, or might affect the child in the future.

Statistics on honour killings

- In the UK there have been at least 25 homicide cases from 1996-2006
- The Metropolitan Police have been reviewing 109 cases of homicide between 1993-2003 to establish if factors of honour-based violence occurred.
- Of the 22 cases reviewed to date, 9 had elements of honour based violence. Findings also showed that at least half were pre-meditated and often the extended family colluded.

What is the Government doing to tackle honour-based violence?

- In response to this crime, the UK and Turkey presented jointly the 2004 UN General Assembly Resolution on Working Towards the Elimination of Crimes Against Women and Girls in the Name of Honour. [15 October 2004, A/C.3/59/L.25]
- The Resolution aims at preventing honour killings, emphasising that the elimination of crimes against women and girls requires enhanced efforts and commitment from Governments and the international community.

Honour-based violence

- In UK held seminars with NGOs and community leaders jointly chaired by Attorney General and Baroness Scotland (Home Office lead on Domestic Violence)
- Police and Crown Prosecution Service planning pilots to monitor these cases, develop policy and guidance for staff

What is the Government doing to tackle forced marriage?

- Dedicated Forced Marriage Unit to help victims of forced marriage since 2005
- Deals with 250-300 forced marriage cases a year
- Researches and develops policy and projects
- Undertakes outreach work around UK
- Forced Marriage Unit casework:
- Can assist victims of forced marriage in UK and abroad
- In UK provides support, information, useful contacts in other agencies, safe accommodation
- National Consultation carried out, majority were against creating a specific criminal offence of forced marriage

Sentencing Guidelines Council Guidelines – "Overarching principles: domestic violence" and "breach of a protective order" [December 2006]

- To produce appropriate sentencing and serve to prevent offenders receiving community sentences when they should be imprisoned.
- Aggravating factors: abuse of trust and abuse of power, impact on children and where victim is particularly vulnerable
- This includes age, disability, cultural, financial or other reasons
- Custodial sentence for violent breach of orders. ★

Monitoring and evaluating the implementation of legal measures

Keynote speaker: Ms Renée Römkens

Senior Researcher, IVA Policy Research, Department of Criminality and Safety, Tilburg University, Netherlands

Challenging Law: Evaluating and Monitoring the Implementation of Legal Measures regarding Violence against Women

International developments to combat violence against women reveal a variety of efforts in which law often plays a central role. Violence against women is considered a violation of a basic human right: the right to be free from violations of one's physical integrity. In a way legal measures to combat violence against women represent history in the making. It is after all only since three decades that a small but historic change begins to emerge in a growing number of states across the world: the criminalisation of various kinds of violence against women. On one level, the increasing involvement of law in addressing violence against women reflects, at the very minimum, a state's moral concern about the safety of all its citizens, also in the private domain. It can be argued that it is a development to be welcomed. At the same time, law poses its own challenges in the implementation and, as a framework for interventions, the question is how it fits complex problems like violence against women.

I have been requested to address the topic of *evaluation and monitoring of the implementation of legal measures in the field of violence against women*. After presenting a brief overview of the different legal measures in this context, I will address the issue of evaluation and monitoring itself. What does it mean and what tools and approaches can be used? What preliminary questions need to be addressed? In the final part of my presentation I will raise some questions for debate. Evaluation and monitoring legal measures in the field of violence against women entails specific challenges that deserve careful consideration if effectiveness is important.

Brief summary of legal measures

The various legal measures cover various forms of violence against women: domestic violence, rape or sexual violence, sexual harassment, stalking, sexual abuse of minors, killings/violence in the name of honour, and genital mutilation. Broadly speaking, four categories of legal measures can be distinguished.

Protective/preventive measures

From a general prevention perspective on criminal law it can be argued that criminalisation of behaviours has a deterrent effect and could therefore be labelled as a preventive

measure. However, the concept of prevention here refers to measures focusing on secondary prevention (prevention of re-victimisation). It is protection after victimisation that has taken place. For adult victims, the most important ones are the eviction order (criminal and/or civil law), and the protection order (criminal and/or civil law), both targeting the partner or ex-partner as the perpetrator of the violence. Child protection measures are targeted at parents/caretakers abusing and/or neglecting children who are in their care.

Punitive measures

This is manifested most clearly in criminalisation of forms of violent behaviour. At the same time, criminal and civil/administrative law increasingly interact. One of the interesting developments is to see punitive and protective measures increasingly linked. For example in the United Kingdom and Germany, a breach of a civil protection order has become a criminal offence and not just "contempt of court". The same legal regulation is in the making in the Netherlands (the temporary eviction order of the perpetrator of domestic violence as an administrative legal measure; when infringed it becomes a criminal offence).

Restorative measures for victims

The most important are victim support and counselling services after victimisation and the procedures that give legal subjectivity to victims through the right to provide the court with a victim statement.

Re-socializing measures for perpetrators

Increasingly the perpetrator of violence against women is addressed as a subject of legal concern. Re-socialisation efforts to prevent recidivism are in the interest of offender and victim. For example, intervention measures like treatment programmes for batterers are increasingly court-mandated and can be based in either an administrative or a criminal legal context.

Evaluation and monitoring: brief sketch of approaches and tools

We are facing a wide range of legal provisions in this domain within the EU, many of which are under still different legal regimes, and in socio-political contexts that differ even more profoundly from one country to another. So the object of "monitoring and evaluation" (M&E) is rather diverse. The result of looking at the general picture is a bird's eye view: necessary and useful yet limited. When we want to monitor and evaluate the specific implementation of legal measures, it is crucial to specify what is monitored or evaluated. What is at stake here on both a national and trans-national European Union level is not one but many different programmes. This is only to argue that a comprehensive and layered monitoring and evaluation framework is needed that is capable of addressing the larger picture and the relevant details. This underlines the need for comprehensive and comparative research that can address this more fully.

In presenting some approaches and tools, I have drawn from some of the work that has been developed by the World Bank, experts in the field of trans-national M&E work. This list of approaches and tools is not intended to be comprehensive. Some of these tools and approaches are complementary. Some have broad applicability, while others are quite narrow in their uses. The choice which is appropriate for any given context will depend on a range of considerations. These include the uses for which monitoring and evaluation (M&E) is intended, the main stakeholders who have an interest in the M&E findings, the speed with which the information is needed, and last but not least: the costs.

Approaches

Two main approaches toward M&E are generally distinguished: theory-based and impact evaluation. Theory-based evaluation allows an in-depth understanding of the workings of legal measures. In practice, it is often the basis for impact evaluation which is generally more empirical in nature than theory-based evaluation. An impact evaluation involves the systematic identification of the effects – positive or negative, intended or not – on individual households, institutions, and the environment caused by the implementation of measures (although an impact evaluation can be conceived without an explicit theoretical framework; the difference is a matter of theoretical focus underlying and guiding the evaluation).

In this context, I would argue that ideally these two are to be combined. Any impact evaluation without a theoretical informed notion about the kind of impact and why it should be evaluated seems highly empirical. It is not useless, just descriptive and therefore limited. Without a theoretical search light as a starting point, the researches will probably neither see nor look for any other impact than the ones that meet the eye. The research turns out to be severely limited if not shallow in its results. On the other hand: theory-based evaluation can create its own specific focus and bias as well. Theory-based impact evaluation addresses the "how" question: *how* do certain legal provisions work and affect the individual (victim, perpetrator, family) and the wider community, next to the question of *what* the results and impacts are, intended or unintended.

In particular, a theory-based evaluation need not assume simple, linear cause-and-effect relationships. By mapping out the determining factors judged important for success, and how they might interact, it can be decided which steps should be monitored as the implementation of legal measures develops, to see how well they are in fact borne out.

This allows the critical success factors to be identified. Theory-based evaluation is used for mapping a complex of activities and to improve planning and management based on understanding the dynamics underlying the implementation of the measures. The advantages of a theory-informed approach to evaluating legal measures that seems particularly important in this context is that it pro-

vides feedback about what is or is not working, and why. It can help identify unintended side-effects of the measures and help prioritise which issues to investigate in greater depth. The disadvantage is that it can easily become overly complex if the scale of activities is large, or the stakeholders disagree about determining factors they consider important. This is something to bear in mind – it seems to indicate the need for local-national evaluations first before embarking upon large-scale trans-national evaluations.

E&M Tools

Performance indicators are measures of input, processes, output, outcomes, and impact for development projects, programme or strategies. When supported with sound data collection – perhaps involving formal surveys – analysis and reporting, indicators enable managers to track progress, demonstrate results, and take corrective action to improve performance. Participation of key stakeholders in defining indicators is important because they are then more likely to understand and use indicators for policy makers decision-making.

Performance indicators are useful for setting performance targets and assessing progress toward achieving them: increased reporting by victims, more convictions, etc. If correctly monitored they can help to identify problems via an early warning system that allows corrective action to be taken.

In this respect, indicators can be regarded as operationalisations of fundamental core concepts related to the theoretical approach chosen that are relevant for the application of other tools as well.

Advantages of performance indicators

- They provide effective means to measure progress toward objectives.
- They facilitate benchmarking comparisons between different countries and over time.

Disadvantages

- Indicators are often selected for their quantitative measurability, at the expense of their validity. Poorly defined indicators are limited measures of success.

Formal surveys

Formal surveys can be used to collect standardised information. Surveys often collect comparable information for a relatively large number of people in a particular country or between countries or in target groups (for example, prevalence of domestic violence and the percentage of victims reporting to the police, going to shelters).

Survey data can then be used to provide baseline data against which the performance of the implemented measures can be compared (measuring case load of the police compared to other professional support systems, monitoring demand for shelters capacity etc.). They offer the opportunity to establish trends (comparing different groups at a given point in time; changes over time in the same group) and to compare conditions in a particular community or group.

A good example is prevalence surveys in various EU countries.

Advantages of survey data

- Findings from the sample – if representative – can be generalised to the wider target group or the population as a whole.
- Quantitative estimates can be made for the size and distribution of impacts.

Disadvantages

- Data collection, processing and analysis takes a while and is costly.
- Many kinds of information in the field of violence against women are difficult to obtain through formal, standardised interviews.

Participatory methods

They provide active involvement in decision-making for those with a stake in a project, for example a victim support organisation that aims at improving police treatment after reporting. These methods generate a sense of ownership in the evaluation results and recommendations. The most commonly used example is a stakeholder analysis. These methods are used for learning about national/local conditions and people's perspectives and priorities. It is an excellent tool to quickly identify and trouble shoot problems during implementation. It provides knowledge and skills to empower those whose interest it is to implement the measures. Examples of this tool are the various research projects that have been carried out under the Daphne programme, where researchers looked at practice-oriented interventions in the field of violence against women. The advantages of participatory methods are:

- They examine relevant issues by involving key players in the design process.
- They establish partnerships and local ownership of projects

Disadvantages

- Are sometimes regarded as less objective.
- They can be time-consuming if key stakeholders are involved and local/national interests are at stake.
- Potential for domination by some stakeholders to push their agenda

Cost-benefit and cost-effectiveness analysis

These types of analyses are not frequently used yet in the field of evaluation of legal measures of violence against women, but deserve closer examination in this context. A few general costs analyses of domestic violence have been conducted (United Kingdom, Netherlands), but with the increasing implementation of preventive measures the step toward this type of analysis can be made as well.

Cost-benefit and cost-effectiveness analysis is a tool for assessing whether or not the costs of an activity can be justified by the outcomes and impacts. Cost-benefit analysis measures both input and output in monetary terms. Cost-effectiveness analysis estimates inputs in monetary terms and outcomes in non-monetary quantitative terms (such as improvements in victims' health that could lead to decrease in sick-leave, for example, after domestic violence-incidents). In times where various institutions are more strictly evaluated in terms of cost-effectiveness, these

analyses can be used for making decisions about the most efficient allocation of resources. However, this requires a clear vision on what counts as "effective". The same problem can emerge here that was encountered with performance indicators: how to validly choose indicators of effectiveness?

Advantages of cost-benefit analysis

- It makes explicit the economic assumptions that might otherwise remain implicit or overlooked at the implementation stage.
- It is useful for convincing policymakers and funders that the benefits justify the activity.

Disadvantages

- Requisite data for cost-benefit calculations may not be available.
- Results must be interpreted with care, particularly in projects where benefits are difficult to quantify.

A potential application of this tool could be to measure the cost-effectiveness of programmes to protect battered women who are being stalked by their ex-partner (for example the AWARE-programme, using technologically advanced communication devices to enable victims to report a stalker immediately and wherever they are to the police). Does this intervention save the police intervention costs (through its preventive impact?) What does it bring the victim in terms of decrease of stalking/harassment incidents and/or improved mental and physical health (as measured by a decrease of PTSD-symptoms)?

Critical issues revisited: The role of theory and the choice of performance indicators

I would like to focus more closely on two core elements that are, to a certain extent, formative for any evaluation or monitoring: the role of theory and the choice of performance indicators. In scientific evaluations of the implementation of legal measures to combat violence against women and violence in the private domain, an adequate theoretical perspective, that is to say, a theory that offers a comprehensive analytical view of the complexity of the social dynamics in this field, is crucial. Performance indicators should in fact constitute the operationalisation of core concepts that flow from a theoretical perspective and that are also relevant for application in any of the other tools.

A comprehensive perspective may be drawn from socio-legal theory, gender theory and clinical theory. There is no one overarching theory that covers the wide-ranging issues that are at stake in M&E in this field. I have selected several concepts that need to be theoretically positioned before any evaluation and monitoring can start, given the wide range and the inter-disciplinary notion of the measures concerned.

Theoretical reflections on core concepts

Legal measures

What law is concerned and for whom? From a positivist "law-on-the-books" perspective, it is possible to look at whether or not there is legal regulation that deals with all aspects of the violence in order to evaluate whether or not a state lived up to its obligation. From a "law-in-action" perspective, the question is more complex: how does law work in practice? Does it bring justice to rights holders? As indicated above, there is a whole range of measures in different realms of law, targeting different victims (adults, children) in different contexts (at home, at work, in the public domain). This raises different questions when it comes to evaluating them. Of course the major question is: evaluating what, if it is more than legal regulation *per se*? Were goals formulated when the laws were drafted? If so: how can they be measured or otherwise investigated (quantitative, qualitative). If no goals were explicitly stated: what goals can be deducted and what indicators apply to measure the goals?

The basic issue at stake here is what's in the socio-legal literature is framed as "law-in-action". It is crucial to distinguish the different and at times contradictory interests that can be at stake when *implementing* a legal measure. What do legal measures really bring? And to whom? Many different stakeholders are involved (organisations that have to implement it: police, courts, public prosecutors, municipalities, public servants, social workers, health care workers, employees in the educational system, the victims, the perpetrators, the children of the latter two) and they have many different interests.

Social change and the powers of law

The legal provisions in the field of violence against women aim to bring about social change. On the one hand law is positioned as a vehicle for social change so its implementation inevitably touches upon a nexus of social variables and forces that are at play and that facilitate or hinder change. In that nexus of forces, law takes up a uniquely powerful position as the legitimate instrument of the state to regulate people's behaviour. It can be argued that law is not only powerful as the state's steering instrument *per se*. The law and its representatives act as an apparatus that produces knowledge that socially and historically has become endowed with powers that have gained a far superior status than any other knowledge system. The powers of law are dispersed throughout society and exert a profound influence in regulating people's behaviour. Law and legal measures have become a powerful vehicle directly, materially (as a regulatory instrument representing real force and power) and indirectly on a more ideological level (as a system of superior knowledge). Yet in order to effectively bring about social change law is still dependent on gaining social and cultural legitimacy. The evaluation of the legal measures needs to be situated in its context of intersecting political, legal, and sociocultural dynamics in order to present an adequate understanding of the effectiveness of legal measures.

Violence as a gendered concept

Violence against women is not simply violence against female bodies. It occurs in a society and culture where femininity is positioned as less valuable and inferior to masculinity. Gender is no longer understood as referring to a biological body, but to a socially constructed category in

which the body has become the screen onto which historical, social, and personal meanings are projected and attached that evoke psychological dynamics that are perceived as highly subjective and individually constituted, yet reflect a culturally constructed amalgam. From that perspective, the nature of violence in the private domain is not simply gendered because it affects substantially more women and girls than men and boys as victims. It is gendered since atrocities like physical abuse, rape, genital mutilation etc. are tied to social and cultural institutions that condone and facilitate the subjugation of femininity to masculinity. It is crucial in this context to note that social and political institutions like the criminal justice system are part of a gendered culture and therefore reflect and perpetuate some of the subjugating dynamics that are part of the problem of violence against women.

Violence as trauma

Insights from clinical trauma theory are relevant in this context to fully capture the complexity of the dynamics that affect the way legal measures can operate. All violence in this context is a trauma in the most profound meaning of the word: a shock to the everyday range of experiences, something that is way beyond ordinary day-to-day life. Often violence against women has a chronically traumatising effect. A clinical perspective is vital to fully understand what is at play on an individual level to assess the impact of certain measures for victims (and perpetrators) but also on a social level, particularly when evaluating multi-agency intervention measures that explicitly try to include this dimension of the problem.

Indicators

Against this background, what indicators seem useful to evaluate and/or monitor existing legal measures? Going back to the four categories of legal measures presented before several indicators can be presented for each of the categories that reflect some of the theoretical-conceptual concerns outlined above. The indicators presented below do not represent an exhaustive list. It is a presentation of different kinds of quantitative and qualitative indicators to illustrate the range of possibilities and to stimulate further debate. This is a field in development and it takes creativity to launch valid indicators that may not suggest themselves right away but which do represent an important aspect of the impact of a legal measure.

- Preventive/protective measures
  - Increase of (ex-)victim's subjective sense of safety; decrease of (re)victimisation
  - Improved well-being of (ex-)victims
  - Decline of gender-stereotyping in society
  - Decrease of (repeated) victimisation
- Punitive measures
  - Increased reporting rates (short-term)
  - Decreased attrition, increased prosecution rates
  - Increased conviction rates
  - Ideally: general deterring effect leading to decreased reporting rates (long-term)
  - Increased gender awareness in the criminal justice system (police, public prosecutors, courts)
- Restorative measures for victims
  - Positive experience with criminal justice system's handling of the case
  - Improved well-being/health of victims who participated in restorative justice programmes
- Re-socializing measures for perpetrators
  - Decrease in recidivism
  - Improved social reintegration
  - Reconciliation with victim as an option

It is striking that most of the standard performance indicators used to date are strictly quantitative in nature. One indicator that is often used to measure "successes" of police interventions are police statistics about de-/increase in reported victimisation. However, these seemingly simple indicators are always dependent on the reporting behaviour of victims, which is dependent on more different variables than just the presence or absence of victimisation *per se*. As regards statistical indicators, the question remains: how to interpret statistics? The underlying dynamics that can explain drops or increases in rates can be quite complex. In that respect, I would argue that quantitative indicators alone can hardly ever give a full answer to the complex question of monitoring and evaluation. A multi-layered approach is needed that allows the different dimensions of outcomes and impact of legal measures to be fully understood.

Challenges

"Life is difficult!" "Difficult? Compared to what?" – Groucho Marx

Evaluating is quintessentially a normative act: it is necessary to be explicit about what counts as a desirable or undesirable effect. And that is the hard part. Evaluation and monitoring is not only notoriously complex in a methodological sense (how to establish the connection between measures and effects). It requires a standard that results can be measured by and compared to. In this context, I will not be able to address the thorny issues that are generally at stake in the field of evaluation and monitoring. I would like to conclude by addressing four specific challenges as food for debate and further consideration when discussing how to monitor and evaluate legal measures in the area of violence against women. I have distinguished them for the sake of argument, but in their effect they are related to each other.

Multi-agency collaborations and the complexity of goals

Since the early 1990s collaborative multi-agency interventions have been developed in a number of countries. Increasingly legal measures focus on that track as well, particularly in child protecting measures. It is widely recognised that not one single discipline, be it the criminal justice system, shelters, social work of health care professionals or any other professional discipline can effectively address the problem. Interdisciplinary interventions aim to enhance the effectiveness and synergy of the specific tools each of the different professional disciplines can bring. In this respect, vio-

lence in the home and against women and girls in particular represents a case that has wider relevance for evaluating developments in intervention strategies that build upon an intersection of punitive, preventive, and protective measures and goals.

This complexity obviously brings about its own challenges. Organisations with different professional tools, languages, and cultures need to collaborate, which is a challenge in and of itself. The complexity of goals are not easy to address when evaluating the implementation of legal measures. What goals are decisive then? Which interests are considered relevant (quality of life for the victims, number of convictions of perpetrators)? And if more than one goal is considered relevant: are they equally important? Who decides? More research is needed to address the obstacles which hamper a productive synergy in these multi-agency interventions. Scarce research has indicated that the dominance of the criminal legal system has surfaced regularly in setting the agenda for evaluating goals, at the expense of a more balanced approach in these settings. Evaluative research can also help to document innovative ways to resolve this competition.

Criminalisation and the power of the criminal justice system

To complicate matters further: the past decade has witnessed a rapidly growing international tendency to criminalise measures in the field of violence against women. Even when civil and criminal legal actions are linked, it is often criminal law that has priority over civil law. Although multi-agency work is in progress, the police more often play a central role in interventions. This is not surprising. In response to the outcry of the women's and victims' movements, initial policy efforts were more geared towards support and help for victims. Only gradually a more structurally embedded and repressive approach came higher up on the political agenda. Criminal law and the police (and prosecutors) figure more prominently than before as representatives of the state with the responsibility to protect all its citizens when faced with violations of their rights, also in the home, and punish the perpetrators. This brings along new challenges for monitoring and evaluation. In an era where police and public prosecutors' offices are increasingly evaluated in terms of quantitative results (number of reported crimes, number of prosecutions and convictions), there is a potential conflict of interests with victims' needs that are mainly focused on protection and peace of mind. A victim ultimately might not want to press charges or is reluctant to testify. Does the victim become a breaker of 'the rule' that upholds the criminal justice system if she refuses to testify? If a victim's need becomes subordinate to the political and/or organisational need of the criminal justice system, no matter how legitimate the latter might be, would that not defeat the initial purpose of the measure to begin with? Obviously the organisational and political voice of an established criminal justice system is more articulate and more powerful than the victim's voices that are politically less organised, essentially less heard and less researched. Here lies a challenge to reach for balance between the state's interests and those of victims.

Long or short-term evaluation

Obviously these two kinds of evaluations represent different questions. Yet the political reality at times demands short-term answers where the nature of the measures often requires a long-term perspective. The implementation of legal measures in this field often takes longer given the different professional organisations that can be involved in its implementation (certainly in multi-agency measures). This is an everlasting challenge in a policy field were quick answers are demanded at times for political reasons that do not necessarily do justice to the complexity of the issue. Yet more caution is needed, it seems, in an era where the call for "quick fixes" to complex social problems becomes more prominent.

Definition of "success" and the issue of unintended effects

In all the issues discussed so far, the bottom-line question to be answered in monitoring and evaluation efforts is: what counts as a success? And what effects are taken into consideration?

In order to answer that question it is essential to know first and foremost: what goals were set, and how, when devising legal measures? Unfortunately the law-making process is often opaque in this respect. At times where legal measures are called for because they represent political currency ("law and order"), having laws on the book is sometimes more important than having a clear perspective on their intended effect (see, for example, the criminalisation of genital mutilation in France, clearly a symbolic law that only caused most perpetrators to go underground or abroad; it did not provide protection to victims). Even where goals are articulated more specifically (for example, enhancing the safety of women through interventions to protect them against their stalking ex-partner), is the safety of the victim enough of a result to 'count' for the police or prosecutor's office statistics? If the safety of a victim of stalking is achieved without an arrest or prosecution of the perpetrator, has the criminal justice system still booked a success? In practice this is not unequivocally the case.

Conclusion

In addressing challenges, I do not mean to suggest that legal measures as such are by definition or inevitably the cause of trouble. Violence against women is a serious problem that also requires a legal response, in the interest of the safety and security of the victims and of society as a whole. Yet the legal system is still in a unique place of power and has the tendency to prioritise itself. Law and the (criminal) legal system are intimately related to the political dynamics surrounding the efforts to combat violence against women. In that arena, law can easily call upon itself to legitimise its power. It is important to scrutinise and challenge that dynamic. It is one of the tasks of social and legal scientists to critically reflect upon the various impacts of law on victims, perpetrators, and society at large. ★

The Austrian experience: Ms Rosa Logar

Domestic Abuse Intervention Centre Vienna, Austria

The Austrian model of comprehensive interventions in cases of domestic violence[2]

Introduction

In all regions of the world, women experience violence fat the hands of their partners or male family members. For a long time, the extent of this violence could only be estimated, as the cases of violence which become known to the public are only the tip of the iceberg. In the past decade, the extent of violence against women was revealed in large-scale studies drawn up in several European countries. In the first representative study conducted in Germany with more than 10 000 women respondents it was found that approximately one out of four women (25%) have experienced physical or sexual violence at the hands of a partner (Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, 2004). According to an investigation within the framework of the British Crime Survey, 21% of all women fall victim to physical violence or threats by a partner at least once in their lives (Walby/Allen 2004). In a prevalence study conducted in Finland (Heiskanen/Piispa 1998), 20% of all women living in a relationship responded that they had experienced violence by a partner. Apart from causing immense suffering, violence against women also results in costs for the victims and for society (Walby 2004, World Health Organization 2004). In the course of her study, Walby found that the costs of domestic violence in England and Wales are an estimated 23 billion British pounds annually.

Violence against women committed by male partners is not a "private affair" but a public and political problem. Acts of violence are human rights violations. Countries are bound under international agreements to prevent acts of violence against women and to protect the victims. However, a variety of obstacles still hinder the implementation of international standards for the protection of women against violence. These obstacles are the long history and "normality" of exerting violence against women, the view of the problem as a private matter, the subordinate position of women in society and in the family and the role of violence in producing this subordination, prejudice and bias justifying violence against women, sexist, racist, misogynist and anti-human attitudes, neglect of the problem by politicians and lawmakers, ignorance of the responsible actors with regard to international human rights standards, lack of political will and insufficient allocation of means, lack of awareness, training and policy guidelines among the police and justice authorities, etc.

To overcome these obstacles, society will have to make enormous efforts. There is reason to assume that it will take several decades more to come close to the aim of eliminating violence against women. What we need, therefore, is long-term commitment. For making further progress and avoiding backlashes it is essential that the issue remain on the agenda of

2. Updated and adapted version of a paper presented at the UN Expert Group Meeting "Violence against women: Good practice in combating and eliminating violence against women" 17-20 May 2005, Vienna; the expert meeting was held within the framework of preparations for the United Nations Secretary-General's in-depth study on violence against women, published in 2006.

the United Nations, the Council of Europe and many other national and international organisations. *Council of Europe Recommendation Rec (2002) 5 of the Committee of Ministers to member states on the protection of women against violence* is a very important instrument towards the elimination of all forms of violence against women [see below, page 111]. It should be strengthened and its implementation should be improved within the next years.

The Austrian model for the protection of women against violence

The present short analysis of the Austrian experience will identify good practice indicators as well as problems and challenges. It refers to the practical experience in Austria and in other European countries as well as to relevant research (WAVE 2002a, 2004; Humphreys et al. 2000; Federal Ministry for Family Affairs, Senior Citizens, Women and Youth 2004a and 2004b; Kelly 2000; Humphreys/Carter et al. 2006).

With the entry into force of the Austrian Protection against Violence Bill in 1997, Austria has taken an innovative approach which has become a model for other countries that have introduced similar legislation or are planning to do so. However, it is important to note that the Austrian model is not a cure-all and that it mainly focuses on police and civil court interventions. A variety of models in many different spheres are necessary to prevent violence against women. Effective laws to prevent violence against women are of key importance. If acts of violence against women are not sanctioned and if there is no effective protection against violence, this means that violence is tolerated. Thus, effective legal protection against violence is a prerequisite for being successful and credible in the field of prevention.

The making of the Austrian Protection against Violence Bill

In the 1990s, many European countries adopted new strategies to combat violence against women. Activists in the women's movement were increasingly dissatisfied with a situation where women received no protection against violence and the police and courts remained inactive because violence against women was considered a private matter. Experts in women's organisations started documenting cases and demonstrating that women were systematically denied help by the law. They confronted the responsible political actors and authorities with their criticism. Faced with growing pressure by women voicing their discontent, the police had to start to deal with the problem of violence against women and reconsider their practices. As a consequence, awareness emerged among the police that legal measures providing effective protection for women were lacking. In many cases, all the police could do was to calm down the situation and to advise the woman to leave the house with her children.

Essential impulses for change in Austria came from the international level: the campaign "Women's Rights are Human Rights" and the definition of violence against women as a human rights violation on occasion of the UN Human Rights Conference in 1993 in Vienna were important steps (Bunch/Reilly 1994). Upon the initiative of a very committed Minister for Women's Issues, in 1994 the Federal Government established inter-ministerial working groups with the clear mandate to develop measures to improve the protection of victims of violence in the family in such a way that they would be able to stay in their own homes whereas the perpetrators would have to leave. Experts representing women's NGOs took part in all the working groups, as well as members of the police and the courts and feminist lawyers. Initiatives on the international scale such as the Domestic Abuse Intervention Programme in Duluth/Minnesota served as models and were adapted for the situation in Austria.

Of course the Bill also met with resistance, especially with regard to eviction and barring orders against the perpetrators. Opponents said this was an infringement of fundamental human rights and a violation of Article 8 of the European Human Rights Convention. However, the proponents of the Bill could refer to human rights standards also in this respect, as according to Article 8 (2) the public authority may interfere with the privacy of a family if the life, health or freedom of a person is threatened. However, the Bill was not designed for the protection of women only, but for the protection against violence in the family. Although women's NGOs originally had the aim of protecting women against violence, they agreed to the extension of the Bill, well aware of the fact that particularly women and children are victims of violence in the family, so they would benefit most from the introduction of this bill.[3]

Following three years of preparation the Protection against Violence Bill was passed by parliament in 1996 with a great majority of votes and entered into force on 1 May 1997.

Implementation of the Bill

Laws are not enough to protect women against violence. They have to be implemented carefully and effectively. In several European countries, the new laws for the protection against violence are ineffective because they are rarely implemented (Humphreys/Carter et al. 2006; Logar 2004b). In Austria, the implementation of the Bill was prepared with great care. The proponents of the Bill knew that for the Bill to be successful in practice, it would take comprehensive training as well as awareness raising.

For Austria, a conservative, Catholic country, this Bill was somewhat revolutionary: it rules that the master of the house may no longer do as he pleases but is thrown out of his home if he exerts violence. Considerable resistance to the application of the Bill was to be expected especially from the police, where traditional role patterns were still upheld. Until the early 1990s there were no women in regular police service in Austria. Therefore, those

3. In the women's movement there are ongoing discussions on whether special laws for the protection of women are necessary or whether general laws are sufficient; each position has its pros and cons.

responsible asked for a period of six months between the enactment of the Bill and its entry into force in order to organise an adequate training of police officers. In the course of a few months, almost all the police officers (approximately 25.000) received at least some training in a top-down crash course. Family courts, the second important institution implementing the Protection against Violence Bill, also developed a system of training for their colleagues.

Women's NGOs established intervention centres in all the provinces in order to make sure that all victims of violence receive support.

The public was also informed about the new Bill. In a campaign, the slogan "Red ticket for violent men" was used, as it was assumed that this soccer rule would appeal especially to men. What is fair in sports should be fair at home – that would be hard to deny.

Good practice indicator: careful implementation of laws

The careful implementation of laws for the protection against violence is an element of good practice which requires a variety of strategies. These include:

- information and training for the greatest possible number of people in institutions and services who will deal with the implementation of the law
- training should not only refer to the legal aspects but also to the philosophy behind the law, its aims and consequences for society
- developing a top-down training system
- employing multipliers and key persons as trainers
- informing the general public

Key elements of the Austrian Protection against Violence Bill

The Austrian Protection against Violence Bill consists of three elements which were developed in combination and are tuned to each other. Victims of domestic violence shall receive comprehensive and complete protection against violence as well as extensive support, and furthermore they shall have the possibility to stay in their own home.

The three elements of the Austrian Protection against Violence Bill:

- eviction and barring orders[4] by the police for a duration of 10 or 20 days
- longer-term protection by means of a protective temporary injunction under civil law (three months and more)
- support for the victims, violence prevention measures and co-ordination of the interventions by establishing Intervention Centres.

The Bill protects all persons who are threatened by violence in the domestic context; however, police data have shown that violence in the family definitely has a gender bias: Around 94% of the victims of domestic violence are women and children, and approximately 95% of the perpetrators are male family members, in the majority husbands and partners (Wiener Interventionsstelle gegen Gewalt in der Familie 2006).[5]

Eviction and barring order by the police

For each intervention in cases of domestic violence, the police must assess the danger involved. If the result of this assessment should be that a dangerous assault on the life, health and liberty of a person is imminent, the police must immediately evict the endangering person from the dwelling and prohibit that he enter the dwelling and its surroundings for ten days. The eviction protects each person living in the dwelling, no matter who owns or rents the dwelling. Thus eviction by the police protects all persons who are threatened by violence in their sphere of living.

If the persons affected by violence apply for a protective injunction under civil law at the Family Court, the duration of the eviction by the police is extended to 20 days. The Court shall inform the police that such an application has been filed. Also, the police shall inform the nearest competent Intervention Centre via fax and provide the documentation of the intervention. Where underage children are involved, the Youth Welfare Department shall also be informed.

On the occasion of the eviction both the endangering person and the victim shall be informed about this measure via an information leaflet. The evicted person has the right to take personal belongings with him.

The police shall check compliance with the barring order at least once within three days after eviction. In case of a violation, the perpetrator is fined and removed from the dwelling and its surroundings by order and by force if he refuses to leave. Should he repeatedly violate the barring order, he can also be arrested.

The eviction is a preventive measure in that it is not contingent on an act of violence to has already taken place. However, if a violent act has been committed, the police shall addi-

4. The police measure consists of two parts – the eviction and the barring order. In this text, for reasons of convenience sometimes only one of the two terms is used to imply both parts.

5. Terminology: As the majority of the victims are women, I refer to women as victims, not to both genders. Also, I use the term victim, although it is somewhat problematic, as it stresses the passive aspect of being victimised and does not take into account that the person concerned in many ways put up resistance against violence, which makes them survivors of violence. Still, I consider the term victim important, especially with regard to legal measures: persons who have experienced violence must be perceived as victims, in that it should be recognised that they have suffered from injustice committed against them, they have the right to be protected against violence and are entitled to help and support when enforcing their rights. Other terms I use with exclusively male grammatical references are batterer, endangerer (corresponding to the German term *Gefährder* used in the Protection Against Violence Bill) or perpetrator, as the majority of those who commit acts of domestic violence are men. However, this does not mean that I plead for the innocence of women perpetrators (approximately six percent) or take their violent acts lightly. But their acts of violence have a different historical, political and social context – for example, wives have never been entitled to chastise husbands, and husbands rarely depend on their wives economically. Domestic violence against women can be defined as gender-based violence, that is violence that is directed against a woman because she is a woman or that affects women disproportionately (United Nations 1992).

tionally file a report (according to the Austrian Criminal Code any form of physical injury has to be charged and prosecuted).

Good practice indicator: Effective police interventions and victims' trust in the criminal justice system

An important indicator of good practice is the victims' trust in the authorities. In democratic countries the police are the institution in charge of the protection and safety of citizens. It is highly problematic for the safety and legal protection of citizens if women who become victims of violence do not trust the police, if they are afraid to call the police or if they feel the police do not take them seriously or support them. The police have an important gate-keeper function. In many countries, the police are still a male-dominated institution which is not sufficiently sensitised to deal with women who have become victims of violence. According to the International Crime Survey, victims of sex and violence crimes are less satisfied with police activities than victims of theft. Female victims are most often treated without due respect (Schneider 1999). In many countries the police authority has taken considerable efforts to develop a new approach and better interventions in recent years (Kelly 2000). Still, a lot remains to be done in this field. Measures to build confidence should be continually taken and evaluated regularly.

When it comes to building confidence, professional, victim-centred interventions are the main strategy. The following elements of the Austrian Protection against Violence Bill have proven to be good practice:

- all police rights and duties are clearly regulated by law (Police Security Bill)
- the police must react to emergency calls immediately, these calls have top priority
- the police have the power and obligation to enter an apartment even against the will of the husband
- the protection and safety of victims is the priority aim of the intervention
- eviction and barring is an effective instrument for the police to protect victims already before violence has occurred and should be in place
- the implementation of barring orders is regulated in detail; the duration of the barring order is fixed and does not depend upon the decision of the individual police officer in each case
- if the life, health or freedom of a person is threatened, the police must effect the eviction; there should be no scope for discretion
- the police have to monitor compliance with the barring order
- the victim is relieved of the burden of having to consent to the measure
- victims and perpetrators have statutory rights to information, which must be fulfilled by the police
- the co-operation of the police with the civil court, the intervention centres and the Youth Office is integrated in the implementation procedure, so it should not depend on the good will of individuals
- the police are obliged to prosecute if a punishable act has already been committed (mandatory prosecution)
- careful investigation and considering of evidence as well as the detailed documentation of interventions are obligatory
- citizens have the right to file a complaint about police measures with an independent authority or court.

Other important aspects:

- domestic violence units of the police in order to safeguard professional handling of the situation have been proven successful in domestic violence interventions
- special units should also exist at management level for continuous monitoring, evaluation and improvement of interventions
- specific measures such as multi-agency case conferences in severe and repeated cases of violence

Civil law restraining order

Back to the Austrian Domestic Violence Bill: After ten days of police protection, a different system of protection for the victim begins to operate. In case of imminent danger it is the duty of the state to protect the victim. However, a security measure such as the barring order should not last indefinitely, because this would take the power of action away from the victims. The aim of the eviction is to relieve the victims and to free them from the sphere of influence of the abuser. This temporary separation has proven its great merits in practice.

If the persons affected by violence decide in favour of longer-term protective measures, they can apply for a temporary injunction from the Civil Law Courts. If they intend to initiate divorce proceedings or proceedings to secure the dwelling, the duration of the temporary injunction is valid until these proceedings have been concluded. The temporary injunction can also be used to prohibit that the perpetrator takes up contact with the victim, e.g. to prevent him from calling, writing letters or e-mails, from coming to her place of work and to the kindergarten or the school their kids attend. Upon application of the victim the police can enforce the temporary injunction at the Family Court and remove the perpetrator from the dwelling in case of a violation.

The protective injunction is promptly issued by the court so that protection is uninterrupted.

For the protection of the children, the temporary injunction may also be applied for by the Youth Office. The application for a temporary injunction is not contingent on a prior eviction by the police.

Unfortunately, the Federal Ministry of Justice does not publish data on the application of the protective injunction. According to the intervention centres' data, one out of three women applies for an injunction following the eviction of the perpetrator by the police.

Good practice indicators: effective protection through civil law measures

It is important that effective civil law measures of protection be available to women who are victims of violence in the family, because not all

victims seek police help. Good practice elements are:

- clearly regulated protective injunctions, protection for all women/ persons living in families or similar settings
- implementation also in cases of psychological violence, terrorizing or stalking
- comprehensive protection of the individual sphere (house, place of work, kindergarten, etc.) and prohibition of following or contacting the victim
- prompt access to legal measures, legal aid for victims
- prompt issuing of injunctions in case of danger (immediately, or within a few days)
- effective implementation of protective injunctions – in Austria the police has the power of enforcing the injunction
- close co-operation of the courts with the police and services for victims of violence.

Victim support and assistance through Intervention Centres

From the beginning it was evident that laws alone were not enough to help women victims of violence effectively. Therefore the support of victims was planned and implemented as an integral part of the Bill. Without this element of support for the victims, legal measures may be problematic if they lead to a situation where the victim is left alone to bear the consequences of the legal steps taken.

As a victim service concurrent to the Protection against Violence Bill, an Intervention Centre was established in each of the nine Austrian provinces. 50% of the funding comes from the Federal Ministry of the Interior, the other 50% from the Minister for Women. The Intervention Centres are run by women NGOs. The transfer of data by the police to the Intervention Centres is regulated by a corresponding passage in the Protection against Violence Bill. The staff of the Intervention Centres supports the victims and their children in all matters concerning their protection and the securing of their rights, in civil as well as in criminal lawsuits. The Intervention Centres also have the task to take a variety of legal and social measures in order to prevent further violence.

Pro-active approach: the Intervention Centres follow a pro-active approach. This means that rather than waiting for the victims to contact them, they write letters or make phone calls to offer help. It is necessary to meet the persons concerned halfway, as victims of domestic violence are sometimes afraid or too depressed to seek help. Of course it is up to the victims to decide whether they want to accept the help offered to them.

Safety planning: one of the core tasks of the Intervention Centres is to assess the danger inherent in the situation and to plan safety measures together with the victims. It is very important to determine whether the eviction will provide sufficient protection or whether the endangered persons should rather move to a safe place, e.g. a women's shelter, at least for a few days.

Legal aid: supporting women in enforcing their claims and accompanying them when they have to appear in court is also among the tasks of the Intervention Centres.

Medium and long-term counselling, follow-up measures: domestic violence is a problem which takes time to be solved. Therefore the support for those affected and the preventive measures against violence should not end too soon. It is the policy of the Vienna Intervention Centre to contact the persons affected by domestic violence after three months again, offering support. This follow-up measure has proven valuable and effective, first of all because in this way, contact is maintained, which makes it easier for the victims to turn to their counsellor in cases of emergency. The follow-ups are also important for the perpetrators, because they notice that there is still public attention on their family, so they cannot simply go back to their prior behaviour and exert violence.

Financial aid and housing: women who are victims of violence need financial aid if they have no income of their own and depend on the perpetrator. Therefore, Intervention Centres support women who have no financial means. Close contacts to the Social Welfare Offices were established so that women can obtain social aid promptly, without lengthy administrative procedures. Intervention Centres also help women who cannot or do not wish to stay in their apartment (e.g., because they cannot afford it or because they do not feel safe there) to get a convenient apartment soon. The City of Vienna has a very effective social housing programme for people in need which makes it possible to find an apartment within one or two months. This also applies to immigrant women.

Anti-violence training for men: the Intervention Centre in Vienna is running an Anti-violence Training for violent men together with the Men's Centre Vienna. The most important goal of the programme is to make life for women threatened by violence and their children safer and to increase their quality of life. In order to reach this goal, work with the perpetrators is integrated into the system of interventions. The support for the partner is part of the programme. The training is carried out in weekly group sessions supervised by a team of two trainers, a woman and a man, for a duration of at least 32 weekly group sessions. Most participants do not take part in the training voluntarily, but are obliged to participate upon order by the court or the Youth Office.

Multi-agency co-operation: another important focus of the Intervention Centres is to co-ordinate the interventions and continually improve the co-operation of all the institutions involved (Criminal justice system, police, civil court, health system, social services, women's services, child protection, probation, immigrant communities and immigrant organisations, etc.).

Statistics and evaluation

According to the statistics of the Federal Ministry of the Interior, the following data on the implementation of the Protection against Violence Bill were collected between 1 May 1997 and 31 December 2003:

Year	1997	1998	1999	2000	2001	2002	2003	2004	2005	Total
Eviction/barring orders	appr. 1 449	2 673	3 076	3 354	3 283	3 944	4 174	4 764	5 618	32 335
Charges on grounds of violation	appr. 38	252	301	430	508	475	633	641	668	4 046
Other DV interventions	n.i.	n.i.	n.i.	7 638	7 517	7 391	6 552	6 195	6 171	—

n.i. = not indicated

As the statistics show, the number of evictions and barring orders in Austria has risen each year. This is probably less due to growing violence than to the fact that the new legal measures are increasingly adopted by the police. Within the first nine years, a total of more than 32 000 evictions were effected. So the Bill is not just paper work but a tool that is used in practice. It should be mentioned, however, that the growing number of evictions has been registered mainly in urban areas. In rural regions the number of evictions is markedly lower than in the cities and towns (Dearing/ Haller 2000). The number of infringements of expulsion orders is surprisingly small (about 12%). It would appear that perpetrators take this measure seriously, not least because an infringement entails further punitive sanctions – even police detention. Thus expulsion orders by the police seem to be an effective measure. The implementation has been evaluated through two studies so far (Dearing/ Haller 2000; Haller et al. 2002). According to an analysis of more than 1 000 police files the barring order was used in 43% of the domestic violence cases, in 52% the police exercised "dispute settlement" and in 5% they brought in charges against the perpetrator without any protective measures.

Problems and challenges

In the following section some problem areas are presented, which have been registered despite the overall positive evaluation of the application of the Protection against Violence Bill in Austria.

Deficiencies regarding the protection of victims: extensive and comprehensive support of the victims is vital for the prevention of violence. However, because of insufficient financial means the Intervention Centres cannot provide this service to all victims. While the number of evictions grew continually (in Vienna, numbers have risen by more than fifteen times between 1998 and 2005), the budget of the Intervention Centres was increased only to a small extent. In January 2007, eight out of 23 Viennese districts could not be served due to lack of resources. However, the new Austrian government, in power since the beginning of 2007, has decided to increase the financial resources for Intervention Centres.

Extremely dangerous perpetrators: the Protection against Violence Bill is a valuable instrument to create a sphere of protection for many victims of domestic violence. But an eviction does not keep extremely dangerous perpetrators from committing further acts of violence. Deplorably, severe violent crimes have occurred in Austria, which shows that the dangerous situation for victims is not really taken seriously. Two clients of the Vienna Intervention Centre were murdered by their husbands in December 2002 and September 2003. In both cases the perpetrators had repeatedly threatened to kill the victims, who had reported this to the police. However, the perpetrators were not arrested and were left free to commit the crime. These two cases were communicated to the CEDAW Committee under the UN Convention for the Elimination of Discrimination against Women and are still under review.

The criminal justice system as missing link: as the accompanying study on the Protection against Violence Bill shows, in criminal justice the view still seems to exist that "private violence" by the husband need not be punished by the state (Haller 2002). Haller found approximately every second charge on account of physical injury was dismissed and only in one out of seven cases an application for punishment was filed. Only every third case was dismissed because the victim would not testify, in many cases the criminal act was dismissed as a "petty offence". The state follows an inconsistent strategy and its message to both victims and perpetrators is a contradictory one: On the one hand, the police evict the perpetrator and on the other the public prosecution dismisses proceedings initiated after a wife was battered, which weakens the efforts to prevent violence.

Insufficient protection for immigrant women: the Protection against Violence Bill also protects immigrant women living in Austria. However, the Bill alone does not offer sufficient protection, as in many cases, women in immigrant families are socially and economically completely dependent on the batterer. Immigrant women must obtain a residence permit and work permit independently of their husbands, in order to have a realistic chance to leave the abuser.

Children – the forgotten victims: violence against mothers always involves violence against their children and may even be transferred from the mother to the children after a separation (Hester/Redford 1998; Eriksson/ Hester/Keskinen/Pringle 2005; Kavemann/Kreyssig 2005). Children who have experienced violence in the family have a higher risk to become perpetrators or victims themselves. Every child should have the right to obtain therapeutic help in order to overcome the traumatising experience.

Short résumé

According to experience gathered in Austria, the police eviction of violent partners from the conjugal

dwelling in a situation of imminent violence is an important and expedient instrument for preventing violence in emergency situations. It is still too early to make any final assessment of the new violence prevention legislation in Austria, but some comments can be given. The first evaluation study states that the goal of the Family Violence Protection Law to interrupt the circle of violence through the police expulsion of the perpetrator and to support the victim of violence through advice and help by especially established intervention-projects was achieved in most cases. The new legal regulations are an efficient instrument for the improved protection from domestic violence and they are an important socio-political signal (Dearing/Haller 2000: 257).

However, ongoing support for victims is crucial. In the second study, almost all women who stayed with the violent partner reported that he had stopped being violent for a while after the police intervention but that later on he became violent again (Haller 2002). Women also expressed how difficult it is for them to leave the violent partner due to multiple dependences and lack of strength. Some women said in the study that the police had refused to intervene in repeated cases of violence.

Whether measures are effective to prevent further violence depends on the quality of implementation and on the level of integration into an intervention system. Ongoing efforts and training are needed.

Good practice indicator: Victim-friendly intervention systems

Comprehensive help for victims of violence in an emergency situation of crisis is an important element of good practice. In addition to the measures described above, this includes:

- the right of all victims to receive information about help options (as victims tend to turn to their family and immediate environment for help first, it is important to inform the general public about legal possibilities and help services)
- the right to receive help, provision of a nationwide help network (after police interventions or emergency health care measures all victims as well as their children shall receive counselling and support by a qualified institution)
- close co-operation between the police, courts, health and social services with women's help organisations (this will require a legal provision for the transfer of data, which would otherwise be impossible for reasons of data protection)
- pro-active approach: if a case of violence becomes known, the victims shall be actively contacted by the women's help organisation
- help shall be provided over longer periods of time
- prompt financial aid without lengthy administrative procedures and efficient housing programmes must be provided, so that victims can leave their violent partners
- support to secure a sustainable living (education and further training programmes, re-entry into the job market, etc.)
- counselling in legal matters and support to enforce claims in civil and criminal proceedings

Good practice indicator: Independent residence rights for immigrant women

Immigrant women should have a right to residence independently of their husband, as well as the right to hold a legal job.

Good practice indicator: Effective interventions of the criminal justice system

The criminal justice system is another important instrument for the prevention of violence against women which has scarcely been used in many countries.

Here, good practice includes:

- making all forms of violence against women punishable under criminal justice, including rape in marriage
- violent acts should not receive minor punishment if they are committed in the family; on the contrary, this should count as an aggravating factor
- criminal charges and the prosecution should be carried by the State, not by the victims
- effective prosecution of violent acts against women, focusing on thorough investigations and taking of evidence
- during the criminal procedure measures for the protection of the victims and prevention of further violence should be taken (protective injunctions, obligation of the perpetrator to undergo anti-violence training, probation by court order, etc.)
- victims should have the right to participate in criminal proceedings, to ask questions and bring evidence and to apply for damages in the course of a criminal or civil procedure
- victims should have the right to free legal counsel and assistance during criminal proceedings
- before, during and after courtroom meetings special caution should be applied in order to guarantee the safety of the victim, confrontation with the perpetrator should be avoided (e.g., parties should wait in separate rooms)
- victims should have the right to be treated with special consideration, also when they give evidence (not in the presence of the perpetrator, via video recordings)
- judges, public prosecutors and defence attorneys should receive training in the sensitive treatment of victims in order to avoid further traumatisation
- courts and prosecution offices should install special departments dealing with the issue of violence against women

The EU as well as the Council of Europe has developed minimum standards on assistance to victims of crime (European Union 2001; Council of Europe 2006).

General good practice indicators for effective implementation of legal measures

Important general indicators of good practice in implementing legal

and policy measures to eliminate violence against women, which should be observed by all relevant institutions, are:

Clear definition of the problem

A clear and comprehensive definition of violence against women is a prerequisite for the development and implementation of effective interventions. One obstacle to developing measures to combat violence against women lies in the tendency to ignore the gendered nature of the problem and to apply generalising terms like "violence in the family" or "violence by partners". In the context of the family, not only women are affected by violence. But it is important to address the fact that violence against women has a specific historical and social context which should not be denied. Definitions included in the United Nations Declaration on the Elimination of Violence against Women and in other UN documents should serve as a basis, such as the following definitions:

"The term 'violence against women' means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life…."

"Violence against women is a manifestation of the historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of women's full advancement."

Comprehensive and consistent guidelines and policies on violence against women, monitoring and evaluation

Every institution actually or potentially dealing with the issue of violence against women needs clear guidelines in this field. This also applies to institutions which are not primarily in charge of this problem, e.g., social welfare offices or hospitals. The development and implementation of the guidelines as well as monitoring should be an integral part of the management of such institutions. The protection and safety of the women and children concerned should be the priority aim of every intervention. The women concerned and women's organisations should be regularly consulted in the process of evaluation of the guidelines in order to check whether the interventions have been helpful for the victims. Furthermore, it is important to take into account the specific situation of different groups of women (immigrant women, ethnic minority women, women with disabilities, etc.) and to adapt the services provided and the interventions to their needs. It is also vital that every institution develop guidelines for dealing with violence within the organisation.

Systematic data collection, annual statistics and regular reporting are further important instruments of good practice.

Safety as a priority

One of the gravest mistakes that are made in interventions in the field of violence against women is to underestimate the danger involved. In Europe and worldwide, it still happens that women are seriously injured or killed by their (ex-)husbands and partners. In many cases, these crimes are not committed "out of the blue" but are the outcome of a long history of violence. Women who are in the process of separating from their violent partner are in particular danger, as most murders and attempted murders are committed in this phase. Therefore, an important good practice indicator is the priority which institutions attribute to the safety of victims and to safety planning. Several instruments to assess danger have been developed. But, as Gondolf (1999) states in his long-term investigation of programmes for violent men, the most important instrument is to listen to the victims, to believe them and to take them seriously. Checklists and questionnaires are an important source of additional information for the assessment of violence. Safety planning with every individual victim should be a good practice standard for every organisation (WAVE 2004)

Training and awareness-raising

Training everyone working for a relevant organisation is another good practice indicator which requires a specific, well-designed strategy. It is of great importance that training be provided for all those active in the respective organisation. For large-scale institutions like the police this represents a major challenge which requires continuous efforts. Here the mainstreaming approach takes effect: the issue of violence against women shall be integrated into the training and further education in all occupational spheres. Another quality indicator for training is its continuity, the involvement of new staff and ongoing training measures (rolling programme). Experts from women's organisations should be consulted for the planning and implementation of education and training programs so that the victims' perspective will be taken into account (WAVE-Network 2002b).

Multi-agency work

The prevention of violence against women will only be effective if all relevant organisations co-operate and co-ordinate their interventions in an effective way. If an important link in the chain of interventions is missing, this will have a weakening effect on all the other interventions.

In the past decade many European countries have developed initiatives to strengthen the co-operation of all and in German-speaking countries similar initiatives emerged in the form of intervention projects or round tables/institutions against violence. In the United Kingdom, Multi-agency Domestic Violence Forums were founded (Hague et al. 1996; Federal Ministry for Family Affairs, Senior Citizens, Women and Youth BMFSF 2004a; Logar 2006).

However, multi-agency approaches are not automatically effective. In some cases they are no more than an indication of good will with little, if any, practical results. Here are some indicators of effective multi-agency approaches:

- experts from women's organisations play a central role

- the participating institutions are willing and competent to change their own practice
- co-operation goes beyond mere talk: concrete, binding objectives are formulated, projects are planned, implemented and evaluated
- each institution contributes the human and financial resources that are necessary to implement plans and achieve the set goals
- the multi-agency forum and the participating institutions also practice gender equality in their own spheres (gender mainstreaming)
- the multi-agency forum addresses the responsible actors at the political level to provide the necessary means for the support of victims; if resources are lacking, even close co-operation of the institutions involved will hardly contribute to the improvement of the victims' situation.

Targets and tasks of multi-agency initiatives:

- monitoring domestic violence interventions and services
- identifying gaps in services and improving services
- co-ordinating service provision
- developing policies and guidelines
- initiating and organizing training
- engaging in preventive and awareness-raising work in the community.

Accountability of the State and partnership with NGOs

Standards of good practice apply not only to the institutions who deal with the problem, but also to governments. To observe national and international obligations for the protection of women against violence it is not enough to sign the corresponding documents; the words need to be followed by actions. In many countries women's organisations have committed themselves to found initiatives to combat violence against women at the local level. These community initiatives are a very important indicator for the functioning of a democracy. But it is a negative sign if governments leave the task of eliminating violence against women to NGOs or support them with insufficient funding or none at all. This represents a violation of their national and international obligations.

Good practice indicators for governments include:

- clearly defined responsibilities and competence in the field of violence against women, in the government and at national, regional and community administration level
- special departments equipped with adequate human and financial resources in all relevant ministries and administrative units (gender mainstreaming), co-ordinating departments
- a national action plan for the elimination of violence against women, provision of financial means for its implementation
- ongoing implementation, evaluation and adaptation of the action plan
- close co-operation with civil society, especially women's NGOs
- sufficient means for women's shelters and other help organisations; effective social, psychological, legal and economic support for all women who have experienced violence and for their children
- enacting and implementing effective legislation for the protection against violence; legal protection and legal aid for the victims
- systematic collection of data on violence against women in all relevant areas
- continual awareness raising through effective campaigns
- anti-discrimination measures for women in all social and political spheres, gender mainstreaming
- integration of human rights education into curricula and into the training of educators
- respecting and implementing international human rights standards.

Conclusions

As stated in the beginning of this article, it takes more than a few years to completely change the former practice of non-intervention by the authorities. Outdated attitudes and prejudices stand in the way of effective, professional action by the police and judicial authorities. Therefore political and social efforts to reduce violence must be organised on a long-term basis. They should not be limited to temporary pilot projects. Effective violence prevention will cost money, but violence that is not prevented would cost a lot more.

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The Spanish experience: Ms Pilar Moreno Fernández

Advisor, Special Government Delegation to Combat Violence against Women, Ministry of Labour and Social Affairs, Spain

An overview of legal measures relating to violence against women in Spain

The Spanish Constitution establishes the right to equality and non-discrimination on the grounds of sex. At present and since 2004, gender violence is considered a transgression of this fundamental right and co-ordination against gender violence is handled by the Special Government Delegation on Violence against Women which is part of the General Secretariat for Equality Policies.

The legislative framework relating to violence against women comprises two specific laws:

- Act 27/2003 of 31 July on Court Orders for the Protection of Victims of Domestic Violence
- Constitutionally Binding Act 1/2004 of 28 December on Integrated Protection Measures against Gender Violence, unanimously adopted by Parliament

The Law on Integrated Protection Measures against Gender Violence adopts a comprehensive approach to gender violence, amending several articles of the Spanish Penal Code, Code of Criminal Procedure, Employment Act, Workers' By-laws, Constitutionally Binding Act on Judiciary Power, Act on Civil Service Reform and General Social Security Act.

Under this act, gender violence is defined to be violence inflicted on women by their present or former spouses or men with whom they maintain or have maintained an emotional relationship, whether or not in a common dwelling.

The core objectives of the Law on Integrated Protection Measures against Gender Violence are:

- To draw attention to the fact that gender violence is not a problem confined to the private sphere but stands as a symbol of the inequality persisting in society, constituting a clear violation of basic rights such as freedom, equality, life, integrity and non-discrimination upheld by the Constitution.
- To proclaim that public authorities must not remain indifferent to gender violence. On the contrary, under the terms of the Spanish Constitution they are obliged to take positive action to guarantee such rights, removing any obstacles that prevent full exercise thereof.
- Lastly, to stress that eradication of this violence calls for a new scale of values based on the respect for basic rights and liberties and equality between men and women, as well as the observance of democratic principles such as tolerance and freedom.

This is the first act to include provisions on prevention and awareness-raising as well as the respective civil and criminal measures.

The three areas targeted by prevention, awareness-raising and detection are education, advertising and health care. Advertising found to be illegal for its degrading portrayal of women can be suspended, for instance. In the educational sphere, the emphasis is on teacher training and equality in educational materials, while in health care the focus is on specific training to ensure early detection and the adoption of appropriate medical action.

The Law on Integrated Protection Measures against Gender Violence acknowledges the specific rights of gender violence victims, such

as the right to information, a comprehensive package of social measures and legal counsel, as well as a range of employment and Social Security benefits. Absence from work can be justified, for instance, and victims' positions can be held open even when employment has to be suspended. Employers, in turn, qualify for subsidies when they temporarily replace workers suffering gender violence. Public housing and homes for the elderly are also provided.

The law amends the Code of Criminal Procedures, providing for harsher punishment when violence is inflicted on the perpetrator's spouse or former spouse; and specific courts have been created to handle cases of violence against women. Such courts rule on both criminal and any related civil causes. In addition, an office for the public prosecution of violence against women has been instituted.

Monitoring and evaluating the implementation of legal measures

The Law on Integrated Protection Measures against Gender Violence, provides specific tools to monitor and evaluate the implementation of legal measures as well as the evaluation of other actions that are not of legal nature.

It includes, among its institutional innovations, the establishment of a Special Government Delegation on Violence against Women and the National Observatory on Violence against Women.

Both institutions are to issue reports: The law addresses in its provisions the evaluation of the its implementation. It establishes that the Government, through the Special Government Delegation on Violence against Women, in collaboration with the Regional Governments, shall prepare a report evaluating the effectiveness of this Constitutionally Binding Act three years after its entry to force, and this report shall be presented to the Congress of Deputies.

On the other hand, the National Observatory on Violence against Women shall send an annual report to the Government and Autonomous Communities on the evolution of gender violence, under the terms stated in the Act, examining the types of offences committed and the effectiveness of the measures deployed to protect victims. The report shall also single out areas for legal reform to guarantee that the measures adopted in practice confer strong enough protection on the victims of gender violence.

Other institutions are created by the law such as a Public Prosecutor Office for cases of Violence against Women and a Special Commission which operates under the Inter-territorial Council of the National Health Service to advise on, co-ordinate and evaluate health care measures against gender violence. The first must draw up a six-monthly report on the procedures followed and action taken by the Public Prosecutor's Office with regard to gender violence, for submission to the Head of the Public Prosecutor's Office and subsequent referral to the Divisional Prosecutors Board of the Supreme Court and the Council of Public Prosecutors; and the Inter-territorial Council of the National Health Service must report annually.

Moreover, the law establishes that other reports shall be issued:

- The State Schools Council shall draw up and publish an annual report on the education system, describing and evaluating the diverse aspects of the same, including any situation of violence being exercised in the educational community. An account will also be given of measures taken by the educational authorities to prevent violence and to promote sexual equality.
- The competent ministries shall, at the instance of the corresponding inter-territorial bodies, draw up reports on the economic implications of this Act. These reports shall be presented to the Ministry of Finance which shall refer them to the Council of Fiscal and Financial Policy.

The Special Government Delegation on Violence against Women's mission is to formulate public policies relating to gender violence for implementation by the Government, including any action effectively guaranteeing the rights of women who fall victim to such violence, co-ordinating and furthering action undertaken in this respect in conjunction and co-ordination with all other competent authorities. The Bureau's Chief Officer, moreover, is vested with authority to defend the rights and interests laid down in the Law on Integrated Protection Measures against Gender Violence in court.

The National Observatory on Violence against Women, in turn, is ascribed to the Ministry of Labour and Social Affairs through the Special Government Delegation on Violence against Women, this collegiate interministerial advisory body engages in assessment and institutional co-operation and drafts reports, studies and proposals for action in the area of gender violence.

Both are co-ordinating bodies, both must make proposals of action which need a previous evaluation of implementation to be formulated.

These two co-ordinating bodies are currently operational: the first from March 2005 and the second from June 2006.

Actions carried out by the general state administration pursuant to the comprehensive law

Within the scope of sensitisation, prevention and detection

There have been sensitisation activities for the general public by means of the mass media and sensitisation activities aimed at prevention and recognition of situations of violence.

In the educational arena, the Education Act (2006) complies with the mandate contained in Chapter I of Part I of the Comprehensive Act, insofar as:

The regulations governing the State School Council are being modified to include representatives of women's organisations, as well as the Women's Institute, in its composition. In addition, the Annual Report of the State School Council (currently being drafted) will include a chapter on

"Fostering Equality and Social Sharing", which will reflect the measures taken by the educational authorities.

In the health sphere, and in compliance with article 16 of the Law on Integrated Protection Measures against Gender Violence, the Commission against Gender Violence has been set up within the Inter-territorial Council of the National Health System. This Commission includes the participation of the General Secretariat for Equality Policies, through the Special Delegation and the Women's Institute, and it carries out its activities through working groups specializing in the following areas:

- Information systems and epidemiological oversight of gender violence
- Ethical and legal aspects
- Assessment of the actions and establishment of the Commission's criteria for assessing work
- Protocols and health-care action guidelines

Sensitisation and training actions aimed at other professionals involved in comprehensive attention. Activities in this area has been very intense, particularly in the judicial sphere, as the implementation of the Courts for Violence against Women, as well as the regulatory modifications effected by the Law on Integrated Protection Measures against Gender Violence, have required a special training effort for the professionals working in the realm of justice.

With respect to materials, reference should be made to the book published by the Ministry of Justice entitled "The Justice Administration in the Law on Integrated Protection Measures against Gender Violence", as a means of disseminating the contents of the law and the mechanisms established for its application and effectiveness, as well as "The Practical Guide to Law on Integrated Protection Measures against Gender Violence", drafted by the Observatory's Expert Group against Domestic and Gender Violence within the General Council of the Judiciary, with the aim of helping legal professionals to interpret the regulations on gender violence in the judicial system.

Finally, it is of interest to underline the 2nd Congress on Domestic and Gender Violence (Granada, February 23rd and 24th, 2006), organised by the Observatory against Domestic and Gender Violence, an office of the General Council of the Judiciary, with the aim of providing a forum for meetings and discussion among the professionals involved in these situations. The seminar was attended by around seven hundred people (judges, prosecutors, lawyers, Regional Community equality institutions, forensic doctors, women's associations, among others).

The second of the professional groups among which training has been intensified in association with the development of the Act is the members of State Security Forces.

Finally, we should point out that the State Public Employment Service has incorporated a complementary training course on "Sensitisation in equality of opportunities" in its Public Service Training Specialities, within which there is a module entitled "Inequality and gender violence", associated with the occupational training provided in connection with all kinds of professionals engaged in activities in the realm of comprehensive attention.

In the sphere of rights

The recognition of the rights of women who are victims of gender violence from an all-inclusive perspective constitutes one of the most important advances of the law, the application of which entails a certain complexity.

This perspective involves an integrated suite of rights whose application has required not only a considerable number of regulatory amendments but also a transformation in the way of devising how to guarantee their exercise, as women who are victims of gender violence are seen as entitled to rights that have to be recognised and implemented in a co-ordinated fashion by the various competent administrations.

These rights are guaranteed to all women who are victims of gender violence, regardless of their origin, religion or any other personal or social condition or circumstance.

To this end, Instruction 14 was approved on 29 July 2005, by the Office of the Secretary of State for Security on how to act in police stations in connection with foreign women who were victims of domestic or gender violence in an irregular administrative situation. This instruction reconciles the obligations the police force has in imposing the legislation on foreigners with the protection and succour that needs to be afforded to women who are victims of gender violence under the law, in all cases giving priority to the protection these women require.

Furthermore, the Special Delegation also collaborates with the Office of the Secretary of State for Immigration and Emigration to include specific actions on gender violence issues in the Strategic Plan on Citizenship and Integration 2006-2009.

Specific measures have also been adopted in connection with two other particularly vulnerable groups: women with disabilities and Roma women. On the one hand, the Action Plan for Women with Disabilities, approved by the Cabinet on 1 December 2006, includes a chapter on violence against women with disabilities. On the other hand, within the framework of the annual Collaboration agreement signed between the Women's Institute and the Roma Secretariat Foundation, a document entitled "How to act with Roma women at services offering attention to the victims of violence" was produced in 2005, with the aim of providing professionals with tools and advice on their interaction with Roma women.

Right to "accessible" information

The Ministry of Labour and Social Affairs provides two free nationwide 24-hour Hotline Telephones, one of them for women with hearing difficulties, in order to inform them about legal aspects, employment advice and social resources in general.

With respect to the judicial arena, information to victims is provided through the Offices for Attention to Victims of Violent Crime and Offences against Sexual Freedom, which offers psychological and social atten-

tion as well as the mandatory information for women who are victims of gender violence. These offices have dealt with over 10 000 women in connection with violence against women up to the first half of 2006. In order to ensure accessibility for women with disabilities and immigrant women, an interpretation service is available.

As for immigrant women, the Protocol on Actions by the Armed Forces and the Security Forces and for Co-ordination with the Judicial Institutions for the Protection of Victims of Domestic and Gender Violence, updated after the enactment of the law, contemplates the obligation to inform foreign victims in irregular situations of their right to legalise their immigration status on humanitarian grounds.

Furthermore, Instruction 14 dated 29 July 2005, from the Office of the Secretary of State for Security on how to act in police stations in connection with foreign women who are victims of domestic or gender violence in an irregular administrative situation, contemplates this same obligation.

Right to comprehensive social assistance

The Law on Integrated Protection Measures against Gender Violence entails leaving behind the traditional concept of social assistance and advances in the full recognition of social rights and citizenship. To this end, it establishes a new right for women who are victims of gender violence, namely the right to comprehensive social assistance, involving the organisation of permanent and urgent attention services, with multidisciplinary teams of professionals allowing specialised attention.

Several credits have been given to Regional Governments to help make this right of victims effective.

Right to legal assistance

With the enactment of the Law on Integrated Protection Measures against Gender Violence, women who are victims of this kind of violence are legally entitled to a comprehensive protection status, and in this sense they are immediately provided with comprehensive legal assistance in all judicial and administrative proceedings arising out of gender violence, including the enforcement of prior judgements, without the need to apply in advance for free legal aid.

In order to make this new legal regime effective, an amendment has been made in the regulations for free legal assistance through the approval of Royal Decree 1 455 dated 2 December 2005.

Within the scope of the competencies of the Ministry of Justice, 8 268 women were given advice during 2005 through a specific credit of up to 1.5 million euros included in the Ministry's Budget; until 30 September 2006, 4 749 women were given advice for a cost of 1.22 million euros (the budget credit is up to 1.6 million euros).

Employment rights and social security benefits

The employment rights and social security benefits acknowledged in the Law on Integrated Protection Measures against Gender Violence have a three-fold function.

On the one hand, they aim to facilitate the reconciliation of the requirements of employment and public service with the circumstances of those workers or civil servants suffering gender violence (justification of absences and late arrival, reduced working hours, reorganisation of shifts, and change of work centre, including geographical mobility).

On the other hand, specific measures have been established for those occasions in which victims of violence are obliged to give up their employment, either temporarily, with consideration for the possibility of returning to the same job later, or else definitively, ensuring adequate protection for women.

Finally, on those occasions when female victims of gender violence are not employed, they are given assistance in finding employment.

Economic rights (social and housing aid)

In the chapter on social aid, the Law on Integrated Protection Measures against Gender Violence establishes in Article 27 economic assistance for women who are victims of gender violence and have no income or have special difficulties in finding a job. This aid is entirely financed by the General State Budget, although they are actually awarded and paid out in advance by the Regional Governments.

The Special Delegation and the Regional Governments have agreed on the principles that must govern the procedure for awarding this aid, set out first of all in Royal Decree 1 452 dated 2 December 2005, which regulates this economic assistance, and subsequently in the corresponding regional regulations.

Eleven Regional Communities have regulated the procedures for processing these types of financial aid.

In connection with access to housing, on 1 July 2005, the Cabinet approved Royal Decree 801/2005, establishing the general co-ordinates of the 2005-2008 Housing Plan. This includes several actions aimed at women who are victims of gender violence.

In the sphere of institutional, criminal and judicial protection

Within the sphere of the different types of protection available for victims of gender violence, practically all of the provisions of the Law on Integrated Protection Measures against Gender Violence have been developed.

Criminal protection

The law, in its Part IV, introduces rules within the criminal jurisdiction whereby, within the acts classified as aggravated bodily harm, there is one specifically aimed at increasing the criminal penalty imposed when the bodily harm is inflicted as a consequence of gender violence. Similarly, mild coercion and mild threats of any kind committed against women who are victims of this kind of violence will also be punishable offences.

On the other hand, regulations are provided for the suspension and replacement of prison sentences for gender violence crimes, and specific programmes are established for prisoners serving jail sentences for these crimes.

Judicial protection

Within the sphere of Judicial Protection, the Law on Integrated Protection Measures against Gender Violence creates specific Courts for Violence against Women, with complete forensic assessment units, and the figure of the Prosecutor of Violence against Women.

In the sphere of inter-institutional co-ordination and monitoring

In order to provide a complete overview of the measures considered in the Law on Integrated Protection Measures against Gender Violence, this last section includes an analysis of the instruments developed to help make inter-institutional co-ordination effective, as well as to monitor the Act.

Inter-institutional co-ordination

The structures for co-ordination between the bodies involved in the application of the Law on Integrated Protection Measures against Gender Violence have been developed on a complex basis of intra- and inter-institutional relations, in most cases built on the basis of pre-existing co-operation relations.

These pre-existing co-operation relations have been added to with the specific bodies established pursuant to the law, as has been seen throughout the present report.

In the case of co-operation between the General State Administration and the Regional Governments, collaboration generally takes place through agreements adopted in the Sectorial Conference.

Co-ordination structures

Two types of co-ordination structures and institutions can be differentiated. On the one hand, those that are not specifically designed to deal with gender violence, but have included it on their agendas (apart from the different Sectorial Conferences, the National Co-ordination Commission for the Judicial Police). On the other hand, we can find other structures created specifically to deal with the subject of gender violence or to foster the measures foreseen in the Law on Integrated Protection Measures against Gender Violence and instituted through the enactment of the law (such as, for example, the Commission against gender violence of the Inter-territorial Council of the National Health System or the National Commission for the implementation of Courts for Violence against Women).

Action and collaboration protocols

The efforts made in this subject matter have been particularly intense in the areas of the Courts and the Security Forces. Thus, a Protocol for Actions by the Security Forces and Co-ordination with Judicial Bodies for the Protection of Victims of Domestic and Gender Violence was drawn up. This Protocol, which was signed in 2004 and updated in 2005, sets out the criteria to be followed by the Security Forces when acting to assist and protect the victims of domestic and gender violence and it expressly foresees the existence of another protocol to define the instruments for co-ordination between the State Security Forces and the Local Police Forces.

For this reason, pursuant to the Framework Collaboration Agreement between the Ministry of Home Affairs and the Spanish Federation of Municipalities and Provinces (FEMP) on policing matters (signed on 19 September 2002), Collaboration Agreements have been signed with local authorities.

More recently, the Minister for Home Affairs and the President of the Spanish Federation of Municipalities and Provinces signed, on 13 March 2006, a Protocol for collaboration and co-ordination between the State Security Forces and the Local Police Forces for the protection of the victims of domestic and gender violence.

This Protocol establishes criteria for collaboration and co-ordination in order to optimise the human and material resources of the Security Forces in place at the corresponding municipality and ensure effective compliance with the judicial measures adopted to protect the victims of gender violence, in accordance with the provisions of article 31.2 of the Law on Integrated Protection Measures against Gender Violence.

On the other hand, collaboration agreements and action protocols have been signed in specific areas:

- Mobile Tele-assistance: the development of this service is based on a Collaboration Agreement signed between the Ministry of Labour and Social Affairs, through the Institute for Services for Aged People, and the Spanish Federation of Municipalities and Provinces. In addition, to ensure its correct operation, the Ministry has signed collaboration protocols with the Ministry of Labour, the Ministry of Justice, the General Council of Spanish Lawyers, the General Council of the Judiciary and the Office of the General State Prosecutor.
- Protocol for Comprehensive Treatment and Forensic Action in cases of domestic and gender violence.

Monitoring mechanisms

The monitoring of the implementation of the Law on Integrated Protection Measures against Gender Violence is closely tied to the mechanisms in place for inter-institutional co-ordination, especially with regard to the homogenisation of the indicators and pooling of information collected by the various bodies, the instruments for collecting it and its processing.

In this regard, the work of the Special Delegation must be highlighted as, apart from playing a role in the various co-ordination structures that exist, it has set up a procedure for collating information from the various Administrations involved in the struggle against gender violence.

This task has been strengthened by the implementation of the State Observatory on Violence against Women, an extremely useful tool that is in charge of collecting all of the information in the possession of the institutions, whether public or private, that are involved in the struggle against gender violence, be it from the social, health-care, educational, judicial and police perspective, among others, in order to analyse the magnitude of the phenomenon and its evo-

lution. To this end, it is setting up a reference database and will standardise a system of indicators through the establishment of co-ordination criteria to homogenise the collection and dissemination of data.

Data collection instruments

A report on the state of development of the implementation of the law has been issued in December 2006. In order to cope with the collection of the information needed to be included in this balance sheet, so as to be able to describe the actions implemented by the different administrations with direct or indirect responsibility for the development of the Law on Integrated Protection Measures against Gender Violence, a data collection tool was designed for the General State Administration and another for the Regional Government Administrations. It has also been possible to draw on the monitoring documentation available at the Special Government Delegation against Violence against Women, which has allowed improvements in the processing and verification of information from questionnaires.

This information, necessary to have a thorough awareness of the process of implementing the Law on Integrated Protection Measures against Gender Violence, also required qualitative data based on the practice and expertise of the professionals involved with gender violence, as this would allow measurement of the "impact" of the law since its implementation. To obtain this information, a group was set up, comprising professionals and representatives of associations in the various spheres affected by the law, in order to draw on their opinions, practices, observations and concerns. In this same line, it was agreed to carry out in-depth interviews with key informant as well as telephone interviews.

This qualitative information, ranging across the state, regional and local administrations, was collected by setting up a specific working group, with face-to-face and telephone interviews of the main players involved with this phenomenon in many different realms of action. It was an attempt to identify advances and progress in the application of the Law on Integrated Protection Measures against Gender Violence, over and above the data themselves, and bring us closer to the perception of different professionals.

From this perspective, the criteria adopted to determine the group's composition and the interviews were directly related to their role in the framework of the law, either because they were created by the law, such as the Prosecutor of the Delegated Court for Violence against Women, or else because of their strategic position in some of the spheres of the law's application, such as the President of the Observatory for Domestic and Gender Violence within the General Council of the Judiciary. In the case of the telephone interviews, the decisive criterion referred to ensuring comprehensive social assistance and for this reason the Regions were chosen (Andalusia already has a tradition in this field and Asturias is working with a one-stop assistance centre). The territorial criterion was also a decisive element as it was necessary to include a diversity of realities in terms of geography and population. ★

Closing address

Mr Peter Levenkamp

Director of the Department of Judicial Youth Policy, Ministry of Justice, Netherlands

Ladies and gentlemen,

I would like to thank you for coming to the Netherlands, and for being prepared to share your experiences with us.

I have not been able to attend the whole seminar, but I have been told that you have experienced two very interesting days. What makes a conference like this so special is the fact that not only does it give you the opportunity to hear new things, it also enables you to exchange your experiences with other participants.

We, as the Netherlands, have learned a lot. We are currently still busy implementing the restraining order, and we encounter problems of varying sorts. Some were to be expected, others simply popped up out of nowhere. The experiences shared with us by those of you who have similar laws will definitely be extremely useful to us. In any case, it is very motivating for us to know that domestic violence receives so much attention within Europe, and this will help us to continue.

I think I can safely say we can look back on a very successful seminar. This has definitely been the case for us, and I hope the same can be said for you. We would like to thank you again for being here. As a token of our appreciation, we would like to offer you a Dutch delicacy: everyone present here will receive typically Dutch *stroopwafels*. I wish you a safe journey back home. ★

Participants

Council of Europe member states

Austria

Ms Barbara Grosse, E.MA
Ministry for Foreign Affairs

Ms Rosa Logar
Director, Domestic Abuse Intervention Programme Vienna & WAVE – Office Vienna

Belgium

Ms Françoise Goffinet
Advisor, Institute for Equality between Women and Men

Ms Kris de Groof
Association of the Flemish Centres for Health, Shelter and Support

Ms Laurence Weerts
Ligue des Droits de l'Homme, "Human Rights League"

France

Ms Clarisse Agostini
National Federation of Women's Solidarity

Ms Catherine Seurre
Advisor, Women's Rights and Equality, Préfecture de Seine-et-Marne

Germany

Ms Dorothea Hecht
Co-ordinator, Domestic Violence Intervention Centre Berlin, BIG e.V.

Ms Susanne Reiss
Ministry of Justice

Ms Nicole Weidenfeld
Advisor, Protection of Women from Violence Department, Federal Ministry of Family Affairs, Senior Citizens, Women and Youth

Ireland

Mr John McDaid
Senior Solicitor, Legal Aid Board

Luxembourg

[Apologised]

Spain

Ms María Pilar Moreno
Advisor, Special Government Delegation to Combat Violence against Women, Ministry of Labour and Social Affairs

Ms Ángeles Jaime de Pablo
Themis Association of Women Jurists

United Kingdom

Ms Deborah Jamieson
Home Office, Domestic Violence Team, Violent Crime Unit, CRCSG

Ms Judith Watson
Domestic Violence Implementation Manager, Equality and Diversity Unit, Crown Prosecution Service

Representatives of the host country, the Netherlands

Ms Ineke Boerefijn
Utrecht University, Netherlands Institute of Human Rights

Ms Aleid van den Brink
Dutch Federation of Shelters, "Vrouwenopvang Amsterdam"

Ms Suzanne de Groot
Policy Advisor, Ministry of Foreign Affairs, Human Rights and Peacebuilding Department/ Human Rights Division

Ms Ingrid Horst-Vermaas
Policy Advisor, Ministry of Justice, Judicial Youth Policy Department

Ms Jolien Janse
Legal advisor, Legislation Department, Ministry of Justice

Ms Mieke Kleiman
Policy Advisor, Ministry of Justice, Judicial Youth Policy Department

Mr Peter Levenkamp
Director of the Department of Judicial Youth Policy, Ministry of Justice

Ms E.J. Mulock Houwer
Director General for Prevention, Youth and Sanctions, Ministry of Justice

Ms Wendalien Roozendaal
Policy Advisor, Judicial Youth Policy Department, Ministry of Justice

Ms Anneriet Straatsma
Policy Advisor, Judicial Youth Policy Department, Ministry of Justice

Keynote speakers

Ms Colette De Troy
Co-ordinator, Policy Action Centre on Violence against Women, European Women's Lobby, Belgium

Mr Freddy Gazan
Deputy Advisor General for Criminal Policy, Department for Criminal Policy, Ministry of Justice, Belgium

Ms Carol Hagemann-White
Professor, Faculty of General Pedagogy and Gender Studies, Department 03, University of Osnabrück, Germany

Ms Monique Luijpen
Office of the Public Prosecutor, Netherlands

Ms Elena Martínez
Professor, Faculty of Procedural Law, University of Valencia, Spain

Ms Renée Römkens
Senior Researcher IVA Policy Research, Department of Criminality and Safety, Tilburg University, Netherlands

Dr Silvia Thaller
Legal advisor, Judge, Penal Legislation Department, Federal Ministry of Justice, Austria

Other participants

Non-governmental organisations (NGOs)

Ms Dilek Elveren
Médecins du Monde, France

Ms Barbara ten Kate
Head of Médecins du Monde Netherlands

Ms Anje Wiersinga
International Alliance of Women, Representative at the Council of Europe, Netherlands

Council of Europe bodies

Parliamentary Assembly

Ms Carina Hägg
Chairperson of the Sub-Committee on Violence against Women
Sweden

Office of the Commissioner for Human Rights

Ms Sirpa Rautio
Advisor

Council of Europe committees

Task Force to Combat Violence against Women, including Domestic Violence

Ms Dubravka Šimonović
Chair of the Task Force, Head of Department for Human Rights, Ministry of Foreign Affairs of the Republic of Croatia

Council of Europe Secretariat

Directorate General of Human Rights and Legal Affairs

Mr Jan Kleijssen
Director of Standard-Setting, Directorate General of Human Rights and Legal Affairs

Ms Johanna Nelles
Administrator, Co-ordination of Campaign Activities, Gender Equality and Anti-Trafficking Division

Ms Martine Meyer
Administrative Assistant, Gender Equality and Anti-Trafficking Division

Parliamentary Assembly

Ms Sylvie Affholder
Co-Secretary of the Committee on Equal Opportunities for Women and Men

Recommendation Rec (2002) 5

Recommendation Rec (2002) 5 of the Committee of Ministers to member states on the protection of women against violence

adopted by the Committee of Ministers on 30 April 2002 at the 794th meeting of the Ministers' Deputies[1]

The Committee of Ministers, under the terms of Article 15.*b* of the Statute of the Council of Europe,

Reaffirming that violence towards women is the result of an imbalance of power between men and women and is leading to serious discrimination against the female sex, both within society and within the family;

Affirming that violence against women both violates and impairs or nullifies the enjoyment of their human rights and fundamental freedoms;

Noting that violence against women constitutes a violation of their physical, psychological and/or sexual integrity;

Noting with concern that women are often subjected to multiple discrimination on ground of their gender as well as their origin, including as victims of traditional or customary practices inconsistent with their human rights and fundamental freedoms;

Considering that violence against women runs counter to the establishment of equality and peace and constitutes a major obstacle to citizens' security and democracy in Europe;

Noting with concern the extent of violence against women in the family, whatever form the family takes, and at all levels of society;

Considering it urgent to combat this phenomenon which affects all European societies and concerns all their members;

Recalling the Final Declaration adopted at the Second Council of Europe Summit (Strasbourg, 1997), in which the heads of state and government of the member states affirmed their determination to combat violence against women and all forms of sexual exploitation of women;

Bearing in mind the provisions of the European Convention on Human Rights (1950) and the case-law of its organs, which safeguard, *inter alia*, the right to life and the right not to be subjected to torture or to inhuman or degrading treatment or punishment, the right to liberty and security and the right to a fair trial;

Considering the European Social Charter (1961) and the revised European Social Charter (1996), in particular the provisions therein concerning equality between women and men with regard to employment, as well as the Additional Protocol to the European Social Charter providing for a system of collective complaints;

Recalling the following recommendations of the Committee of Ministers to member states of the Council of Europe: Recommendation No. R (79) 17 concerning the protection of children against ill-treatment; Recommendation No. R (85) 4 on violence in the family; Recommendation No. R (85) 11 on the position of the victim within the framework of criminal law and procedure; Recommendation No. R (87) 21 on assistance to victims and the prevention of victimisation; Recommendation No. R (90) 2 on social measures concerning violence within the family; Recommendation No. R (91) 11 concerning sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults; Recommendation No. R (93) 2 on the medico-social aspects of child abuse, Recommendation No. R (2000) 11 on action against trafficking in human beings for the purpose of sexual exploitation and Recommendation Rec (2001) 16 on the protection of children against sexual exploitation;

1. In conformity with Article 10.2*c* of the Rules of Procedure of the Ministers' Deputies, Sweden reserved its right to comply or not with paragraph 54 of this recommendation.

Recalling also the Declarations and Resolutions adopted by the 3rd European Ministerial Conference on Equality between Women and Men held by the Council of Europe (Rome, 1993);

Bearing in mind the United Nations Declaration on the Elimination of Violence against Women (1993), the United Nations Convention on the Elimination of All Forms of Discrimination against Women (1979), the United Nations Convention against Transnational Organised Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000), the Platform for Action adopted at the Fourth World Conference on Women (Beijing, 1995) and the Resolution on Further actions and initiatives to implement the Beijing Declaration and Platform for Action adopted by the United Nations General Assembly (23rd extraordinary session, New York, 5-9 June 2000);

Bearing in mind the United Nations Convention on the Rights of the Child (1989), as well as its Optional Protocol on the sale of children, child prostitution and child pornography (2000);

Also bearing in mind the International Labour Organisation Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999) and Recommendation (R 190) on the Worst Forms of Child Labour (1999);

Recalling the basic principles of international humanitarian law, and especially the 4th Geneva Convention relative to the protection of civilian persons in time of war (1949) and the 1st and 2nd additional Protocols thereto;

Recalling also the inclusion of gender-related crimes and sexual violence in the Statute of the International Criminal Court (Rome, 17 July 1998),

Recommends that the governments of member states:

I. Review their legislation and policies with a view to:
1. guaranteeing women the recognition, enjoyment, exercise and protection of their human rights and fundamental freedoms;
2. taking necessary measures, where appropriate, to ensure that women are able to exercise freely and effectively their economic and social rights;
3. ensuring that all measures are co-ordinated nation-wide and focused on the needs of the victims and that relevant state institutions as well as non-governmental organisations (NGOs) be associated with the elaboration and the implementation of the necessary measures, in particular those mentioned in this recommendation;
4. encouraging at all levels the work of NGOs involved in combating violence against women and establishing active co-operation with these NGOs, including appropriate logistic and financial support;

II. Recognise that states have an obligation to exercise due diligence to prevent, investigate and punish acts of violence, whether those acts are perpetrated by the state or private persons, and provide protection to victims;

III. Recognise that male violence against women is a major structural and societal problem, based on the unequal power relations between women and men and therefore encourage the active participation of men in actions aiming at combating violence against women;

IV. Encourage all relevant institutions dealing with violence against women (police, medical and social professions) to draw up medium- and long-term co-ordinated action plans, which provide activities for the prevention of violence and the protection of victims;

V. Promote research, data collection and networking at national and international level;

VI. Promote the establishment of higher education programmes and research centres including at university level, dealing with equality issues, in particular with violence against women;

VII. Improve interactions between the scientific community, the NGOs in the field, political decision-makers and legislative, health, educational, social and police bodies in order to design co-ordinated actions against violence;

VIII. Adopt and implement the measures described in the appendix to this recommendation in the manner they consider the most appropriate in the light of national circumstances and preferences, and, for this purpose, consider establishing a national plan of action for combating violence against women;

IX. Inform the Council of Europe on the follow-up given at national level to the provisions of this recommendation.

Appendix to Recommendation Rec (2002) 5

Definition

1. For the purposes of this recommendation, the term "violence against women" is to be understood as any act of gender-based violence, which results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or private life. This includes, but is not limited to, the following:

a. violence occurring in the family or domestic unit, including, *inter alia*,

physical and mental aggression, emotional and psychological abuse, rape and sexual abuse, incest, rape between spouses, regular or occasional partners and cohabitants, crimes committed in the name of honour, female genital and sexual mutilation and other traditional practices harmful to women, such as forced marriages;

b. violence occurring within the general community, including, *inter alia*, rape, sexual abuse, sexual harassment and intimidation at work, in institutions or elsewhere trafficking in women for the purposes of sexual exploitation and economic exploitation and sex tourism;

c. violence perpetrated or condoned by the state or its officials;

d. violation of the human rights of women in situations of armed conflict, in particular the taking of hostages, forced displacement, systematic rape, sexual slavery, forced pregnancy, and trafficking for the purposes of sexual exploitation and economic exploitation.

General measures concerning violence against women

2. It is the responsibility and in the interest of states as well as a priority of national policies to safeguard the right of women not to be subjected to violence of any kind or by any person. To this end, states may not invoke custom, religion or tradition as a means of evading this obligation.

3. Member states should introduce, develop and/or improve where necessary, national policies against violence based on:

a. maximum safety and protection of victims;

b. empowerment of victimised women by optimal support and assistance structures which avoid secondary victimisation;

c. adjustment of the criminal and civil law including the judicial procedure;

d. raising of public awareness and education of children and young persons;

e. ensuring special training for professionals confronted with violence against women;

f. prevention in all respective fields.

4. In this framework, it will be necessary to set up, wherever possible, at national level, and in co-operation with, where necessary, regional and/or local authorities, a governmental co-ordination institution or body in charge of the implementation of measures to combat violence against women as well as of regular monitoring and evaluation of any legal reform or new form of intervention in the field of action against violence, in consultation with NGOs and academic and other institutions.

5. Research, data collection and networking at national and international level should be developed, in particular in the following fields:

a. the preparation of statistics sorted by gender, integrated statistics and common indicators in order to better evaluate the scale of violence against women;

b. the medium- and long-term consequences of assaults on victims;

c. the consequence of violence on those who are witness to it, *inter alia*, within the family;

d. the health, social and economic costs of violence against women;

e. the assessment of the efficiency of the judiciary and legal systems in combating violence against women;

f. the causes of violence against women, i.e. the reasons which cause men to be violent and the reasons why society condones such violence;

g. the elaboration of criteria for benchmarking in the field of violence.

Information, public awareness, education and training

Member states should:

6. compile and make available to the general public appropriate information concerning the different types of violence and their consequences for victims, including integrated statistical data, using all the available media (press, radio and television, etc.);

7. mobilise public opinion by organising or supporting conferences and information campaigns so that society is aware of the problem and its devastating effects on victims and society in general and can therefore discuss the subject of violence towards women openly, without prejudice or preconceived ideas;

8. include in the basic training programmes of members of the police force, judicial personnel and the medical and social fields, elements concerning the treatment of domestic violence, as well as all other forms of violence affecting women;

9. include in the vocational training programmes of these personnel, information and training so as to give them the means to detect and manage crisis situations and improve the manner in which victims are received, listened to and counselled;

10. encourage the participation of these personnel in specialised training programmes, by integrating the latter in a merit-awarding scheme;

11. encourage the inclusion of questions concerning violence against women in the training of judges;

12. encourage self-regulating professions, such as therapists, to develop strategies against sexual abuse which could be committed by persons in positions of authority;

13. organise awareness-raising campaigns on male violence towards women, stressing that men should be responsible for their acts and encouraging them to analyse and dismantle mechanisms of violence and to adopt different behaviour;

14. introduce or reinforce a gender perspective in human rights education programmes, and reinforce sex education programmes that give special importance to gender equality and mutual respect;

15. ensure that both boys and girls receive a basic education that avoids social and cultural patterns, prejudices and stereotyped roles for the sexes and includes training in assertiveness skills, with special attention to young people in difficulty at school; train all members of the teaching profession to integrate the concept of gender equality in their teaching;

16. include specific information in school curricula on the rights of children, help-lines, institutions where they can seek help and persons they can turn to in confidence.

Media

Member states should:

17. encourage the media to promote a non-stereotyped image of women and men based on respect for the human person and human dignity and to avoid programmes associating violence and sex; as far as possible, these criteria should also be taken into account in the field of the new information technologies;

18. encourage the media to participate in information campaigns to alert the general public to violence against women;

19. encourage the organisation of training to inform media professionals and alert them to the possible consequences of programmes that associate violence and sex;

20. encourage the elaboration of codes of conduct for media professionals, which would take into account the issue of violence against women and, in the terms of reference of media watch organisations, existing or to be established, encourage the inclusion of tasks dealing with issues concerning violence against women and sexism.

Local, regional and urban planning

Member states should:

21. encourage decision-makers in the field of local, regional and urban planning to take into account the need to reinforce women's safety and to prevent the occurrence of violent acts in public places;

22. as far as possible, take all necessary measures in this respect, concerning in particular public lighting, organisation of public transport and taxi services, design and planning of car parks and residential buildings.

Assistance for and protection of victims (reception, treatment and counselling)

Member states should:

23. ensure that victims, without any discrimination, receive immediate and comprehensive assistance provided by a co-ordinated, multidisciplinary and professional effort, whether or not they lodge a complaint, including medical and forensic medical examination and treatment, together with post-traumatic psychological and social support as well as legal assistance; this should be provided on a confidential basis, free of charge and be available around the clock;

24. in particular, ensure that all services and legal remedies available for victims of domestic violence are provided to immigrant women upon their request;

25. take all the necessary measures in order to ensure that collection of forensic evidence and information is carried out according to standardised protocol and forms;

26. provide documentation particularly geared to victims, informing them in a clear and comprehensible manner of their rights, the service they have received and the actions they could envisage or take, regardless of whether they are lodging a complaint or not, as well as of their possibilities to continue to receive psychological, medical and social support and legal assistance;

27. promote co-operation between the police, health and social services and the judiciary system in order to ensure such co-ordinated actions, and encourage and support the establishment of a collaborative network of non-governmental organisations;

28. encourage the establishment of emergency services such as anonymous, free of charge telephone helplines for victims of violence and/or persons confronted or threatened by situations of violence; regularly monitor calls and evaluate the data obtained from the assistance provided with due respect for data protection standards;

29. ensure that the police and other law-enforcement bodies receive, treat and counsel victims in an appropriate manner, based on respect for human beings and dignity, and handle complaints confidentially; victims should be heard without delay by specially-trained staff in premises that are designed to establish a relationship of confidence between the victim and the police officer and ensure, as far as possible, that the victims of violence have the possibility to be heard by a female officer should they so wish;

30. to this end, take steps to increase the number of female police officers at all levels of responsibility;

31. ensure that children are suitably cared for in a comprehensive manner by specialised staff at all the relevant stages (initial reception, police, public prosecutor's department and courts) and that the assistance provided is adapted to the needs of the child;

32. take steps to ensure the necessary psychological and moral support for children who are victims of violence by setting up appropriate facilities and providing trained staff to treat the child from initial contact to recovery; these services should be provided free of charge;

33. take all necessary measures to ensure that none of the victims suffer secondary (re)victimisation or any gender-insensitive treatment by the police, health and social personnel responsible for assistance, as well as by judiciary personnel.

Criminal law, civil law and judicial proceedings

Criminal law

Member states should:

34. ensure that criminal law provides that any act of violence against a person, in particular physical or sexual violence, constitutes a violation of that person's physical, psychological and/or sexual freedom and integrity, and not solely a violation of morality, honour or decency;

35. provide for appropriate measures and sanctions in national legislation, making it possible to take swift and effective action against perpetrators of violence and redress the wrong done to women who are victims of violence. In particular, national law should:

- penalise sexual violence and rape between spouses, regular or occasional partners and cohabitants;
- penalise any sexual act committed against non-consenting persons, even if they do not show signs of resistance;
- penalise sexual penetration of any nature whatsoever or by any means

whatsoever of a non-consenting person;
- penalise any abuse of the vulnerability of a pregnant, defenceless, ill, physically or mentally handicapped or dependent victim;
- penalise any abuse of the position of a perpetrator, and in particular of an adult *vis-à-vis* a child.

Civil law

Member states should:

36. ensure that, in cases where the facts of violence have been established, victims receive appropriate compensation for any pecuniary, physical, psychological, moral and social damage suffered, corresponding to the degree of gravity, including legal costs incurred;

37. envisage the establishment of financing systems in order to compensate victims.

Judicial proceedings

Member states should:

38. ensure that all victims of violence are able to institute proceedings as well as, where appropriate, public or private organisations with legal personality acting in their defence, either together with the victims or on their behalf;

39. make provisions to ensure that criminal proceedings can be initiated by the public prosecutor;

40. encourage prosecutors to regard violence against women and children as an aggravating or decisive factor in deciding whether or not to prosecute in the public interest;

41. take all necessary steps to ensure that at all stages in the proceedings, the victims' physical and psychological state is taken into account and that they may receive medical and psychological care;

42. envisage the institution of special conditions for hearing victims or witnesses of violence in order to avoid the repetition of testimony and to lessen the traumatising effects of proceedings;

43. ensure that rules of procedure prevent unwarranted and/or humiliating questioning for the victims or witnesses of violence, taking into due consideration the trauma that they have suffered in order to avoid further trauma;

44. where necessary, ensure that measures are taken to protect victims effectively against threats and possible acts of revenge;

45. take specific measures to ensure that children's rights are protected during proceedings;

46. ensure that children are accompanied, at all hearings, by their legal representative or an adult of their choice, as appropriate, unless the court gives a reasoned decision to the contrary in respect of that person;

47. ensure that children are able to institute proceedings through the intermediary of their legal representative, a public or private organisation or any adult of their choice approved by the legal authorities and, if necessary, to have access to legal aid free of charge;

48. provide that, for sexual offences and crimes, any limitation period does not commence until the day on which the victim reaches the age of majority;

49. provide for the requirement of professional confidentiality to be waived on an exceptional basis in the case of persons who may learn of cases of children subject to sexual violence in the course of their work, as a result of examinations carried out or of information given in confidence.

Intervention programmes for the perpetrators of violence

Member states should:

50. organise intervention programmes designed to encourage perpetrators of violence to adopt a violence-free pattern of behaviour by helping them to become aware of their acts and recognise their responsibility;

51. provide the perpetrator with the possibility to follow intervention programmes, not as an alternative to sentence, but as an additional measure aiming at preventing violence; participation in such programmes should be offered on a voluntary basis;

52. consider establishing specialised state-approved intervention centres for violent men and support centres initiated by NGOs and associations within the resources available;

53. ensure co-operation and co-ordination between intervention programmes directed towards men and those dealing with the protection of women.

Additional measures with regard to sexual violence

A genetic data bank

Member states should:

54. consider setting up national and European data banks comprising the genetic profile of all identified and non-identified perpetrators of sexual violence in order to put in place an effective policy to catch offenders, prevent re-offending, and taking into account the standards laid down by domestic legislation and the Council of Europe in this field.

Additional measures with regard to violence within the family

Member states should:

55. classify all forms of violence within the family as criminal offence;

56. revise and/or increase the penalties, where necessary, for deliberate assault and battery committed within the family, whichever member of the family is concerned;

57. preclude adultery as an excuse for violence within the family;

58. envisage the possibility of taking measures in order to:

a. enable police forces to enter the residence of an endangered person, arrest the perpetrator and ensure that he or she appears before the judge;

b. enable the judiciary to adopt, as interim measures aimed at protecting the victims, the banning of a perpetrator from contacting, communicating with or approaching the victim, residing in or entering certain defined areas;

c. establish a compulsory protocol for operation so that the police and medical and social services follow the same procedure;

d. promote proactive victim protection services which take the initiative to contact the victim as soon as a report is made to the police;

e. ensure smooth co-operation of all relevant institutions, such as police authorities, courts and victim protection services, in order to enable the victim to take all relevant legal and practical measures for receiving assistance and taking actions against the perpetrator within due time limits and without unwanted contact with the perpetrator;

f. penalise all breaches of the measures imposed on the perpetrators by the authorities.

59. consider, where needed, granting immigrant women who have been/are victims of domestic violence an independent right to residence in order to enable them to leave their violent husbands without having to leave the host country.

Additional measures with regard to sexual harassment

Member states should:

60. take steps to prohibit all conducts of a sexual nature, or other conduct based on sex affecting the dignity of women at work, including the behaviour of superiors and colleagues: all conduct of a sexual nature for which the perpetrator makes use of a position of authority, wherever it occurs (including situations such as neighbourhood relations, relations between students and teachers, telephone harassment, etc.), is concerned. These situations constitute a violation of the dignity of persons;

61. promote awareness, information and prevention of sexual harassment in the workplace or in relation to work or wherever it may occur and take the appropriate measures to protect women and men from such conduct.

Additional measures with regard to genital mutilation

Member states should:

62. penalise any mutilation of a woman's or girl's genital organs either with or without her consent; genital mutilation is understood to mean sewing up of the clitoris, excision, clitoridectomy and infibulation;

63. penalise any person who has deliberately participated in, facilitated or encouraged any form of female genital mutilation, with or without the person's consent; such acts shall be punishable even if only partly performed;

64. organise information and prevention campaigns aimed at the population groups concerned, in particular immigrants and refugees, on the health risks to victims and the criminal penalties for perpetrators;

65. alert the medical professions, in particular doctors responsible for pre- and post-natal medical visits and for monitoring the health of children;

66. arrange for the conclusion or reinforcement of bilateral agreements concerning prevention, and prohibition of female genital mutilation and the prosecution of perpetrators;

67. consider the possibility of granting special protection to these women as a threatened group for gender-based reasons.

Additional measures concerning violence in conflict and post-conflict situations

Member states should:

68. penalise all forms of violence against women and children in situations of conflict, in accordance with the provisions of international humanitarian law, whether they occur in the form of humiliation, torture, sexual slavery or death resulting from these actions;

69. penalise rape, sexual slavery, forced pregnancy, enforced sterilisation or any other form of sexual violence of comparable gravity as an intolerable violation of human rights, as crimes against humanity and, when committed in the context of an armed conflict, as war crimes;

70. ensure protection of witnesses before the national courts and international criminal tribunals trying genocide, crimes against humanity and war crimes, and provide them with legal residence at least during the proceedings;

71. ensure social and legal assistance to all persons called to testify before the national courts and international criminal tribunals trying genocide, crimes against humanity and war crimes;

72. consider providing refugee status or subsidiary protection for reasons of gender-based persecution and/or providing residence status on humanitarian grounds to women victims of violence during conflicts;

73. support and fund NGOs providing counselling and assistance to victims of violence during conflicts and in post-conflict situations;

74. in post-conflict situations, promote the inclusion of issues specific to women into the reconstruction and the political renewal process in affected areas;

75. at national and international levels, ensure that all interventions in areas which have been affected by conflicts are performed by personnel who have been offered gender-sensitive training;

76. support and fund programmes which follow a gender-sensitive approach in providing assistance to victims of conflicts and contributing to the reconstruction and repatriation efforts following a conflict.

Additional measures concerning violence in institutional environments

Member states should:

77. penalise all forms of physical, sexual and psychological violence perpetrated or condoned by the state or its officials, wherever it occurs and in particular in prisons or detention centres, psychiatric institutions, etc.;

78. penalise all forms of physical, sexual and psychological violence perpetrated or condoned in situations in which the responsibility of the state or of a third party may be invoked, for example in boarding schools, retirement homes and other establishments.

Additional measures concerning failure to respect freedom of choice with regard to reproduction

Member states should:

79. prohibit enforced sterilisation or abortion, contraception imposed by coercion or force, and pre-natal selection by sex, and take all necessary measures to this end.

Additional measures concerning killings in the name of honour

Member states should:

80. penalise all forms of violence against women and children committed in accordance with the custom of "killings in the name of honour";

81. take all necessary measures to prevent "killings in the name of honour", including information campaigns aimed at the population groups and the professionals concerned, in particular judges and legal personnel;

82. penalise anyone having deliberately participated in, facilitated or encouraged a "killing in the name of honour";

83. support NGOs and other groups which combat these practices.

Additional measures concerning early marriages

Member states should:

84. prohibit forced marriages, concluded without the consent of the persons concerned;

85. take the necessary measures to prevent and stop practices related to the sale of children. ★

Gender Equality and Anti-Trafficking Division
Directorate General of Human Rights and Legal Affairs
Council of Europe
F-67075 Strasbourg Cedex

www.coe.int/stopviolence