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I. Introduction

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offenders out of the home. It does not require a divorce proceeding or a criminal court action. The most effective laws also authorize courts to order child support, other kinds of financial support, temporary child custody and other remedies ensuring that the victim can live independently from the violent abuser. Order for protection laws vary greatly throughout the CEE/FSU, Europe and the United States in their specificity regarding the length of the order, its enforceability, who may apply for and issue the orders, whether financial support or other relief may be ordered, and how the authorities should deal with children. As with all laws, the effectiveness of the order for protection greatly depends on an understanding of the dynamics of domestic violence by those who implement the law, as well as diligent monitoring by advocates and legal system professionals to identify gaps and weaknesses that undermine victim safety and offender accountability as the law is applied.

Trainings are essential to ensure that legal professionals understand how to effectively implement the law, coordinate with other community actors, as well as provide them with an understanding of domestic violence. Advocates in Bulgaria, who have conducted trainings in ten cities on the domestic violence law, reported several positive outcomes, including improved relationships and increased knowledge of the issue.² Furthermore, advocates throughout the CEE/FSU are monitoring their new domestic violence laws and returning to their lawmakers for improvements in these laws. For example, amendments to laws are currently being proposed in Bosnia, Georgia, Ukraine, Russia and Bulgaria. In Minnesota, where one of the first domestic violence laws containing the order for protection remedy was passed in 1979, advocates, in partnership with law enforcement officials, have returned to the legislature every year to address the law's gaps, weaknesses and unintended effects on victims and their children. Reflecting that monitoring, the Minnesota law, entitled The Domestic Abuse Act,³ has been amended every year since 1979.

This section does not present an exhaustive review of every law but instead discusses commonalities and differences in legal approaches in order for protection laws in CEE/FSU. It also addresses best practices and lessons learned in new laws offering the order for protection remedy. This discussion will also incorporate the experience of countries with laws that do not present the order for protection remedy in the context of comprehensive domestic violence legislation, but rather amend the family code or criminal provisions to authorize officials to remove violent offenders from the home. Examples of countries with such laws are Serbia and the Czech Republic.

A. Emergency and Permanent Orders for Protection

² THE ADVOCATES FOR HUMAN RIGHTS AND THE BULGARIAN GENDER RESEARCH FOUNDATION, IMPLEMENTATION OF THE BULGARIAN LAW ON PROTECTION AGAINST DOMESTIC VIOLENCE (2008), at 43 hereinafter IMPLEMENTATION OF THE BULGARIAN LAW]

³ Minn. Stat. § 518B (2007).

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Many laws in CEE/FSU offer both an emergency ex parte order and a permanent order, or one that is issued after a full hearing in court. Advocates throughout the region report good experiences with these new remedies. A Bulgarian lawyer noted, “The law filled a vacuum in society. It acts quickly. It is free. The execution of the order is official. Everything, the writ of summons, the order and decision, is served officially by the police. It is controlled and executed by the police. These are good things.”⁴ The Georgian Young Lawyers Association reported that, between September 2006 and June 2007, 271 requests for restrictive (emergency) orders were

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primary goals of domestic violence legal reform – victim safety and offender accountability. Advocates explain that such laws are the result of prioritizing a man's property rights over a victim's right to be free from violence. For example, one Polish advocate explained that the prioritization of men's property rights has been a major impediment to the passage of any order for protection remedy in their country.¹² In Kosovo, although the UNMIK regulation on domestic violence allows for eviction of the perpetrator, property laws limiting women's rights to home ownership make it difficult to enforce this law.¹³

Removing victims from their homes will of course result in hardship and disruption in their daily lives and the lives of their children, including lack of access to personal belongings, the inability to safeguard such belongings from the violent offender, difficulties with access to work and school, and the loss of support systems, including friends and families. Armenia's draft law on domestic violence and Georgia's current law include such provisions. The Georgian police have defended the provision by explaining that it is easier to keep the victim safe if she is removed from the home and that this process is less likely to anger offenders.¹⁴ However, very few shelters exist in Georgia to provide such safety. In addition, succumbing to the threat of violence by the abuser seriously undermines the authority of the justice system and the rule of law and negates any intended message to the community of zero tolerance for violence. There are now amendments proposed to the Georgian law authorizing the removal of the violent offender from the home. The new amendment explicitly states that this removal may occur despite the abuser's ownership of the property.¹⁵

C. Evidence

Some laws in CEE/FSU have introduced new evidentiary standards that do not require the victim to submit additional evidence, other than her own statement supporting her application

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D. Duration of Orders for Protection

Countries with some experience in implementing domestic violence laws are finding that extending the duration of the permanent order better protects victim safety. Many laws in the region authorize the issuance of orders for protection which are very limited in duration. In the Czech Republic, where new domestic violence provisions have been in effect for approximately one year, advocates express the need to extend the length of a preliminary injunction order for protection. Currently, the police can issue an eviction order for ten days.¹⁷ This can be extended to one month upon application to the court. In Austria, based on experience that the orders need to be longer in duration, amendments to the law propose an increase in the length of the order from three to six months.¹⁸ Jurisdictions in the United States are amending their laws to allow courts to issue longer term permanent orders for protection in cases where previous orders have been issued and/or violated.¹⁹ In some circumstances, these orders can remain in effect for a victim's lifetime unless the respondent requests a hearing. This reform reflects research that shows permanent orders best protect the safety of victims and their children.²⁰

E. Prohibition of Possession of Firearms

Another important feature to include in domestic violence laws is a prohibition of possession of firearms by violent offenders. This issue is particularly relevant for certain regions in CEE/FSU, where firearms ownership may be greater due to tradition and/or conflict.²¹ One survey in Montenegro found that 90% of victims reported threats by their partners involving firearms.²² Such provisions are common in jurisdictions with longstanding domestic violence laws, both civil and criminal, and are increasingly common in new domestic violence laws in CEE/FSU. In Minnesota, where ownership of firearms is widespread, courts have authority to prohibit an offender's possession of a firearm for the rest of his life if he used the firearm in the violation of an order for protection.²³ In addition, he may be subject to enhanced criminal penalties if an assault is

¹⁷ Regional Conference, *supra* note 12, at 51.

¹⁸ *Id.* at 21-2. These amendments are the result of two tragic cases where women were killed by their husbands after repeated appeals to law enforcement. The cases were the subject of communications to CEDAW.

¹⁹ The Minnesota legislature is currently considering such an amendment. See H.F. No. 1625, 2007-08 Leg., 85th Sess. (Minn. 2007).

²⁰ Victoria L. Holt, Mary A. Kernic, Thomas Lumley, Marsha E. Wolf, and Frederick P. Rivara, *Civil Protection Orders and Risk of Subsequent Police-Reported Violence*, J. AM. MED. ASS'N 288, 589-94 (2002).

²¹ SOUTH EASTERN AND EASTERN EUROPE CLEARINGHOUSE FOR THE CONTROL OF SMALL ARMS AND LIGHT WEAPONS (SEESAC), FIREARMS POSSESSION AND DOMESTIC VIOLENCE IN THE WESTERN BALKANS: A COMPARATIVE STUDY OF LEGISLATION AND IMPLEMENTATION MECHANISMS (2007), at 3.

²² See *id.* at 5 (citing KRKELJIC, LJILJANA, SMALL ARMS AND GENDER-BASED VIOLENCE IN MONTENEGRO – A RESEARCH STUDY (2007) (citing a survey of 1,500 women).

²³ Minn. Stat. § 518B Subd.14(j) (2007).

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of implementing this law, the Western Ukrainian Centre “Women’s Perspectives” published an assessment of the experience with the law. In particular, the report addressed the problems of official warnings about provocative victim behavior being issued based on the perpetrator’s explanation alone, and issuing such warnings to

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that "[s]eparating from an abusive partner after having lived with him, leaving the home she shares with an abusive partner or asking her abusive partner to leave the home they share were all factors that put a woman at 'higher risk' of becoming a victim of homicide."

Provisions which authorize government representatives to make decisions about the issuance of an order for protection without the involvement of the victim may in some cases interfere with safety and other interests of the victim. A primary goal of government intervention in domestic violence cases should be to respond to the needs of victims. This goal is not served by provisions in a law which authorize government action and intervention in the order for protection process independent of the victim's wishes.

It is important to note that different considerations arise in criminal cases of domestic violence. Pro-prosecution or absent-victim prosecution policies may serve the important purpose of communicating to the violent offender and the community that domestic violence is a crime against the state, not a private matter. In these cases, it may be important for prosecutors to pursue the case without the cooperation of the victim. In fact, this may promote her safety since the abuser cannot blame her for actions taken by the state. However, it is important that domestic violence victims also have access to a legal remedy they can control. This is the value of the order for protection remedy.

III. Criminal Laws on Domestic Violence

A. Criminalization of the Violation of an Order for Protection

Recent experience in countries with new domestic violence laws confirms that criminalization of a violation of an order for protection is a vitally important component of an effective law and one that is frequently excluded from new legislation. For example, in Bulgaria, after three years of implementation of the new law and in the face of widespread frustration of police and prosecutors regarding the lack of consequences for offenders who violate orders for protection, advocates are proposing criminalization of the violation of an order for protection.⁴² Advocates in Macedonia have also expressed frustration with the effectiveness of their law that does not criminalize the violation of an order for protection. Examples of countries that do criminalize the violation are Serbia and Georgia. However, Georgian police report difficulties with implementation due to the lack of specificity of sanctions for the violation of orders.

B. Criminalizing Acts of Domestic Violence

An important focus in reforming criminal laws on domestic violence is a simple one – a clear statement in the law that domestic assault is a crime. Advocates in countries

⁴² IMPLEMENTATION OF THE BULGARIAN LAW, *supra* note 2, at 22, 39.

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domestic violence is not a crime. This attitude remains a serious problem throughout the CEE/FSU.

Probable cause arrest policies allow police to make an arrest at the scene of a domestic violence incident if their assessment of the situation gives them probable cause to believe that a crime has occurred. For example, in cases involving simple or minor injuries, "probable cause" arrest policies allow police officers to make arrests based on the presence of evidence (such as damaged property, visible injuries, or a frightened woman) that would lead to the conclusion that an assault had occurred. Police may make the arrest without witnessing the crime. Mandatory arrest policies take this one step further and require the police to make an arrest at the scene of a domestic assault. Advocates have expressed some concern about pro-arrest policies in countries where police abuse has been a problem. In this context, it is important to note that in several countries in CEE/FSU, advocates report very positive experiences with police taking a leading role in reform efforts on domestic violence. For example, such experience with police has been reported in Georgia, Bulgaria and the Czech Republic.

Pro-prosecution or absent-victim prosecution policies allow prosecutors to pursue cases of domestic violence without the consent or cooperation of the victim. This is very important in domestic violence cases where victims often withdraw cases due to threats by the abuser, fear and many other reasons. Absent-victim prosecution policies send a message to abusers and the community that the state takes these cases very seriously.

Research also indicates that arrests may deter future lethal violence. Since the institution of these policies, however, much dialogue and research has occurred in the United States regarding their benefit to victims of violence. For example, pro-arrest policies have resulted in increasing arrests of women using self-defense against violent partners. Also, pro-prosecution policies have been criticized as another way of taking control away from victims of violence.⁴⁷

E. Strangulation

Strangulation is a serious issue in domestic violence cases and should be addressed in criminal codes. Because choking or strangulation rarely leaves noticeable external physical marks, police may not recognize the victim's need for medical assistance or the seriousness of the violence. Injuries resulting from strangulation can often be lethal; such injuries "may appear mild initially but they can kill the victim within 36 hours."⁴⁸

⁴⁷ For a further discussion of the issues of pro-arrest and pro-prosecution policies, see Stop Violence Against Women, *Prosecutorial Reform Efforts* (2006), http://www.stopvaw.org/Prosecutorial_Reform_Efforts.html; see also Stop Violence Against Women, *Law Enforcement Reform Efforts* (2006), http://www.stopvaw.org/Law_Enforcement_Reform_Efforts.html.

⁴⁸ When Abusers Choke Their Victims, *Violence Against Women* 22-5 (Joan Zorza ed., 2002). See also Stop Violence Against Women, *Lethal and Extremely Dangerous Behavior* (2006),

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mediation in divorce proceedings exists in Montenegro. In the United States, courts have referred cases of criminal domestic assault between intimate partners to mediation as a voluntary alternative to prosecution. Mediation should not be an option in criminal assault cases since it removes these cases from judicial scrutiny and undermines accountability of the offender. In family law and divorce cases involving domestic violence, mediation falsely presumes the equal bargaining power of the parties.⁵⁶ In fact, victims of domestic violence “may be unable to participate fully or freely in mediation. They routinely assess the risks or cost of non-compliance with their abusive partner’s demands, particularly related to disclosure of the abuse.”⁵⁷

V. Conclusion

Overall, there is a positive trend in the growing attention to domestic violence as more governments are passing and amending laws to address this issue. Yet, it is important to closely scrutinize the language of the laws and their implementation to ensure they are truly promoting victim safety and offender accountability. In civil laws, there are many positive examples of good provisions, including the availability of emergency and

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