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Improving Needs Assessment and Victims Support in Domestic Violence Related Criminal Proceedings

Rights and needs of victims of intimate partner violence in criminal proceedings in Austria

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Introduction

The project INASC – Improving Needs Assessment and Victims Support in Domestic Violence Related Criminal Proceedings, funded by the Directorate-General Justice of the European Commission, aims to improve existing understanding of victims' experiences of trajectories of intimate partner violence cases in the course of criminal proceedings. A second question is how assessment mechanisms relate to the outcomes of criminal proceedings. The main objective of this project is to develop practice-oriented research aiming at identifying crucial aspects of supporting mechanisms available to IPV victims within the criminal justice system and of elements that influence the way victims are being supported and protected at the "entrance door" (security forces receiving the complaints and follow up criminal procedures), at the enquiry stage (public prosecutors initiatives and decisions taken) and in court (courts procedures and final decisions).

In all countries[1] national analyses on the criminal justice response (risk assessment, victims' protection mechanisms and referral procedures) and on victims' experiences and perceptions of the way criminal justice is responding to their protection needs were carried out. (see Amesberger /Haller 2016) This report will summarise the Austrian findings mainly against the background of standards for provision of rights and support for crime victims as defined in the European Victim Protection Directive 2012/29[2], which had to be set into force in all EU countries until November 15, 2015.

In part I IPV related case files of the Public Prosecution Office in Vienna were analysed according to a comprehensive questionnaire with which characteristics of victims, perpetrators and circumstance of the violent incident were explored besides the history of violence. The section on criminal justice response in the questionnaire encompassed issues like the police's first response, evidence collection, victims' support of the criminal prosecution process, use of risk assessment instruments and protection measures, as well as recognition of special needs, information about (and provision of)

[1] The transnational team consists of six partners from five countries: Germany (German Police University DHPol and zoom – society for prospective developments), Austria (IKF), Ireland (SAFE Ireland), the Netherlands (Verwey-Jonker Instituut) and Portugal (CESIS – Centre for Studies for Social Intervention as project coordinator).

[2] Directive of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime.

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support and applicable rights during all stages of the proceedings (receiving information about violence, enquiry phase, court). Finally, data about the outcomes of proceedings were collected. The findings of this analysis are presented in part II of this report.

Part II and III contain the analysis of interviews with IPV victims and professionals in the field of law enforcement (police, public prosecution, court and lawyers) and victim support as well as the analysis of two focus group discussions with practitioners from police and victim support. In the interviews and focus groups we focused on the perspectives of experts and victims on experiences of violence and victims needs as regards support and protection as well as criminal proceedings. Additionally, the reflections of the national advisory board[3] which accompanied the research team during the two years study were considered in the analysis.

In the final part IV the findings of this mixed methodological approach are summarised and discussed against the background of the propositions by the EU-Directive and from the different perspectives with regard to victims' needs, experiences and rights. Part IV concludes with a summary of enhancing and hindering factors for the recognition of victims' rights and needs as well as some recommendations.

[3] The national advisory board consisted of members of victims support organizations, police and the judicial system. Particular thanks to them for their commitment and support.

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I. Quantitative File Analysis

1 Methodological Approach

1.1 Aim of the file analysis

The overall aim of the analysis of law enforcement files is to explore how police, public prosecution and court assess the risk of (further) violence against victims of partner violence and how they respond to protection needs. The actual outcomes of most cases of intimate partner violence seem to be dominated by dismissals and by a persisting gap between the number of complaints and the number of convictions. Moreover, the particular vulnerability of victims of violence in a close relationship often translates into increased cooperation difficulties with the justice system, which has been recognized as one of the factors influencing the outcomes of criminal proceedings. (see Beclin 2014; Gloor/Meier 2014) Thus, a special focus is put on (i) the identification of frailties in risk assessment procedures, (ii) the collection and preservation of evidence and (iii) the assessment of specific needs of victims of partner violence with regard to their personal characteristics (e.g. strengths, vulnerabilities), as well as type and circumstances of the crime. That is, the analysis addresses especially article 22 “Individual assessment of victims to identify specific protection needs” of the Directive 2012/29/EU (Directive of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime) and three main aspects regarding the Directive’s national implementation: (i) the capability of police, prosecutors and judges to deal properly with victims; (ii) the identification of vulnerable victims’ needs and (iii) the provision of protection for all victims during the whole process of criminal prosecution (investigation and court proceedings). The project is built upon the premise of article 3 of the Directive, stating that any victim has the right to understand and to be understood from the first contact and within the context of criminal proceedings. The ability to understand or being understood cannot rest entirely on the victims’ personal characteristics but rather on the context and circumstances of the interaction. The quantitative file analysis will not only highlight the victims’ stance towards criminal prosecution, but also the daily practice of police, public prosecution and court as it is reflected in the files. The findings will be the basis – together with the outcomes of the analysis of victims’ interviews – for the development of a toolkit which should promote a more efficient and protection sensitive criminal justice system regarding intimate partner violence.

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1.2 Content and structure of the quantitative and qualitative instrument for data collection

The information contained in the law enforcement files was collected using a customized quantitative instrument that included various sections. The first sections explored victim and suspect characteristics, especially focusing on characteristics and circumstances that might influence either the victims' competence and ability to seek help or law enforcement's treatment of the case, like disability, care dependency, citizenship, *race*/ethnicity, sexual identity/orientation and language proficiency/literacy. The tool further explored the history of violence and incident-related characteristics, especially the type(s) of violence perpetrated against the victim and factors indicating a risk of escalation, like (attempted) strangulation and use of weapons. The section on criminal justice response analysed the police and/or public prosecutor's first response, interviewing procedure and evidence collection, victims' support of the criminal prosecution process, use of risk assessment instruments and protection measures, as well as recognition of special needs, information about (and provision of) support and applicable rights during all stages of the proceedings.

As many of these characteristics differed significantly between partners' countries legal systems and some theoretical concepts needed further clarification, the instrument was equipped with an extensive codebook in order to define the information sought after.

The quantitative data obtained was analyzed using the statistical analysis software SPSS.

In order to preserve a coherent understanding of each case, all case files were also summarized following a qualitative guideline that focused on the same information as the quantitative instrument, but kept the information in its original context.

The instrument for data collection offered three categories for missing or unclear information: "not available", "unclear" and "not possible". In general, we decided to use "not available" if the files did not contain any information regarding the information sought after, "unclear" if there was some indication, but not enough to make a valid statement (e.g. a husband claiming his wife was "mad"), and "not possible" if the item in question did not apply to the case (e.g. "immediate police measures at the crime scene" if the victim hadn't called the police, but come to the police station).

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1.3 Description of files and samples

The analysis contains 70 files of the Viennese public prosecution office and 14 appending court files (7 district court, 7 regional court). The selection criteria were defined as follows:

- classification as a domestic violence crime[4]
- suspect is intimate partner (previous or current)
- offender is male and 18 years or older
- criminal offences: murder (CC art. 75), (severe) bodily harm (CC art. 83 and 84), unlawful compulsion (CC art. 105), dangerous threat (CC art. 107), continued use of violence (CC art. 107b); rape (CC art. 201), sexual coercion (CC art. 202)
- recent case (should not have been concluded before 2011)

According to these criteria we received a list of file numbers by the Ministry of Justice containing 5,353 entries[5] which met all criteria except "intimate partnership" as this classification is not used as a distinctive feature. Out of this list we selected 70 files brought in to the public prosecution office in Vienna between January 1 and January 28, 2014. Altogether, there are 70 incidents reported by the police with 70 women affected as there was no offender identified in more than one file. We have chosen public prosecutor files (instead of court files) because a high number of DV cases is dismissed already at this stage (Beclin 2014). The access to data via court files would have meant to miss proceedings in which no trial had taken place. Due to this methodical approach we can draw a representative picture concerning the handling of intimate partner violence within law enforcement.

The quality and availability of data varies a lot. It must be established from the outset that the public prosecutor files primarily contain various police reports, a few notes of the public prosecutor and sometimes the correspondence between public prosecutor and the provider of legal support agencies (e.g. intervention centre, lawyer). The police reports document to a lesser or greater extent when what was done and include the protocols of the interviews with the victim, the suspect and witnesses, photos taken from injuries or property damages as well as other evidence of the crime (e.g. medical reports). Risk assessment protocols have not been found in the analyzed files. The public prosecutor's notes are mainly limited to a summary of the case, the decision made by him/ her (including the reasons for it) and in case of an accusation, the demand for criminal prosecution. The

[4] The Austrian justice system uses the abbreviation FAM for violent acts in the family; there is no further differentiation like partnership, parent-child relation etc.

[5] When more than one criminal offence was persecuted then one case is listed several times.

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court files contain information about the proceedings (e.g. the appointment of an interpreter, the adjournment of the trial), the court-sealed copy of the verdict, and sometimes all police reports as well as the public prosecutor's demand for accusation. But again the information available in the transcript of the judgement differs widely. In some the complete statement of the victim and/ or perpetrator (or at least a part of it) is listed, in others only the court decision and the reasons for it. That is, in the latter one, also court data are rather limited.

Both, quality and availability of data, depend on the way of documentation by the police, whether the victim testified or not and/or a trial was held. To start with documentation by the police which plays a vital role for further proceedings: The focus of the (police) investigation lies on the suspect. Therefore, much more information about the perpetrator than the victim is gained. This concerns mainly socio-demographic characteristics like education and source of income. Other features are not available at all (e.g. status of residence, ethnicity, sexual orientation, religious affiliation and language proficiency[6]), neither for the victim nor for the suspect. Information about the history of the relationship (e.g. duration, intention to separate, break-ups) is scarce, too, as are data about the victim's support network . The documentation of the most recent violent incident is quite comprehensive with regard to type and forms of violence whereas former violent acts are only mentioned but not described in detail (even so, when former police interventions took place). That is, the reliability of the data for example concerning indicators of increased risk is not very high. On the one hand, the police documentation of their interventions is rather extensive, on the other hand, highly standardized steps (e.g. informing intervention centers about barring orders, or the review of police data on the perpetrator) often are not mentioned at all. The instrument for data collection that was developed for this project distinguished between police action within 24 hours when getting notice of the incident and after 24 hours. We wanted to know about the immediate actions of the police as time often plays a vital role with respect to the victim's safety , prevention of further violence, and securing evidence. But, a chronological allocation of all actions was not always possible. Data in the police reports are poor regarding measures set beyond the scope of the police. There is no information about the support of the victim from DV agencies and other social or medical services. Very seldom we found information about safety measures set by other institutions (e.g. a restraining order of the district court) in the police reports.

[6] These characteristics became part of the general data collection instrument as in some partner countries detailed information was expected.

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When the victim did not testify at the police information about her socio-demographic characteristics, the relationship, the history of violence, and separation is scarce. Furthermore, interviewed experts regarded as problematic how police interviews with victims are conducted and documented. According to them the interrogations often do not touch important aspects of a violent relationship and the violent transgression. Additionally, the content of the interview is summarized by the police officer (instead of a word-for-word transcription) what might lead to distorted, false and/ or incomplete depictions. The problem aggravates when interpreters are needed for the victim's interrogation.

As already stated above, the documentation by the public prosecutor contains much less information than the police reports in general. The public prosecutors base their decisions about the further proceedings primarily on the interviews by the police with the victim and the suspect. Although they are allowed to do so, they directly speak with the victim only in exceptional cases.

All in all, the quality of data depends on the comprehensiveness, depth and extent of the police documentation. Thus, the significance of the data varies, and as we will see in the analysis, many data are missing.

2 Results

2.1 Victim- and perpetrator related characteristics

Socio-demographic features

At the time of the reported incident 84 per cent of all victims and 83 per cent of the perpetrators were aged between 26 and 55 years, with a peak – of more than half of the women – between 26 and 35 whereas about one out of three perpetrators belonged to the age groups 26-35 and 36-45 (see table 1).[7] The suspects are older than the victims. The average age of the victims is 33.8 years; the one of the perpetrators is 37.2 years.

[7] Comparing to the general female population in Vienna, the age group 26-35 years is highly overrepresented in our sample (18.7 per cent), whereas the victims older than 45 years are underrepresented (Statistik Austria 2015). The overrepresentation of the younger age group goes with the data of the Domestic Abuse Intervention Centre Vienna: Among its clients women from 19 to 40 have a 59.1 per cent share (Annual Report 2014).

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Table 1
Age of victims and perpetrators at the time of the last incident

Age	Victim		Perpetrator	
	Frequency	Valid percent-age	Frequency	Valid percent-age
18-25	10	14.3	9	12.9
26-35	37	52.9	23	32.9
36-45	14	20.0	23	32.9
46-55	8	11.4	12	17.1
56-65	-	-	3	4.3
66+	1	1.4	-	-
Total	70	100.0	70	100.0

This age difference between victim and perpetrator is reflected in the age gap between partners. In nearly one third of all cases (31.4 per cent) the difference is eight years minimum. In 13 per cent the age gap is even more than ten years. 12 women were older than their partners with a gap of one up to 25 years.[8]

Concerning the victims' educational background the data situation is not sufficient. Table 2 shows the educational background of the perpetrators: One eighth (12.7 per cent) have only primary education or less than six years of education (ISCED[9] level 1 or below). A third have between eight and eleven years of consecutive education (ISCED level 2), 42 per cent upper secondary education or an equivalent vocational qualification (ISCED level 3/4) and about 11 per cent a university degree. Comparing these data with those of the Austrian male population the sample is rather representative (except university degrees).[10]

With regard to the male Viennese population the age groups 26-35 years and 36-45 years are also overrepresented (20.4 per cent resp. 18 per cent) (Statistik Austria 2015).

[8] Two couples had an age difference of 7 years, each one of 9 and 25 years.

[9] ISCED means International Standard Classification of Education. This is a classification approved by the UNESCO Institute for Statistics in 2012.

[10] About 11 per cent only have primary education, 57 per cent completed vocational training or an equivalent qualification, and another approx. 16 per cent each have upper secondary resp. university education. (Statistik Austria 2015: 49)

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Table 2
Educational level of the suspect

Educational level	Frequency	Percentage	Valid percentage
Less than primary education (below ISCED level 1)	1	1.4	1.6
Primary education (ISCED level 1)	7	10.0	11.1
Lower secondary education (ISCED level 2)	21	30.0	33.3
Upper secondary education (ISCED level 3)	9	12.9	14.3
Vocational/work-oriented programmes (ISCED level 3/4)	18	25.7	28.6
Tertiary education (ISCED levels 5 and up)	7	10.0	11.1
Not available	7	10.0	
Total	70	100.0	100.0

90 per cent of the files contained information about the victims' employment status. More than a half of them (58 per cent) were employed or self-employed. 22.6 per cent were unemployed and 11.4 per cent homemakers (see table 3) – it seems that they are the only eight ones (out of 62) who depended exclusively on their partners' income. But as we do not have further information about the victims' weekly working time and income, it is not possible to draw any conclusions about the victim's economic dependency on the partner.[11] Considering the employment status of the suspects (and the victims) one can assume that the family's/ perpetrator's affluence is not very high. Only a bit more than a half of the offenders was employed or self-employed at the time of the most recent incident, whereas one third was unemployed (see table 3). Furthermore, these figures show that unemployed perpetrators are strongly overrepresented (as unemployed victims)[12] what indicates that unemployment increases the risk of violence.

[11] Only two files indicate that the perpetrator depends on the victim's income.

[12] In 2014, the average unemployment rates were 13.2 per cent for males and 9.8 per cent for females in Vienna. (http://www.arbeitsmarktprofile.at/9/teil_05.html; accessed: August 25, 2015)

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Table 3

Employment status of victims and perpetrators at the time of the last incident

Employment status	Victim		Perpetrator	
	Frequency	Valid percentage	Frequency	Valid percentage
Still in Education	0	0	1	1.5
Employed	34	54.8	32	47.1
Self-employed	2	3.2	5	7.4
Unemployed	14	22.6	23	33.8
Homemaker	8	12.9	0	0
Other[13]	4	6.5	7	10.3
Not Available/ unclear	8		2	
Total	70	100.0	70	100.0

The source of income for the employed is a salary. But a major part of both, victims and perpetrators, depends on welfare allowances (unemployment benefits, child benefits) or pensions (victims: 18 of 50 (36 per cent); perpetrator: 26 of 62 (41 per cent)).

Regarding the regional and national background, our sample comprises only persons from the city area of Vienna (we exclusively analysed files of the Viennese public prosecution office). More than half of the victims are Austrian citizens (52.2 per cent), of which four out of ten (38.9 per cent) have migratory background. The others are citizens of another country of the European Union[14] (8.7 per cent) or third-country nationals (39.1 per cent) (see table 4). Nearly two thirds of these non-EU nationals (63 per cent) come from successor states of former Yugoslavia (44.4 per cent) and from Turkey (18.5 per cent), the home countries of the two big Austrian migrant groups[15]. Among the remaining 37.1 per cent are citizens of Afghanistan, China, Mexico, Moldavia, Nigeria, Pakistan, and Somalia.

The suspects' national background is as diverse as the victims', but there are slight differences especially as the amount of suspects with Austrian citizenship is lower (37.1 per cent compared to 51.4 per cent). Another 10 per cent are citizens of another EU country. More than half of the perpetrators come from non-EU countries (see table 4), whereas the majority of them belong to the two biggest

[13] The category "other" includes with respect to the victims, women who receive parental allowance, with regard to suspects those who are retired or for whom more than one working status fits (1 person is still in education and employed, another is still in education and unemployed and 2 persons are unemployed and in an early retirement-program).

[14] Among them are Slovak, Polish and Romanian citizens.

[15] According to Statistics Austria 460,163 foreigners have been living in Vienna on January 1, 2015, of which 23.8 per cent are citizens of successor states of former Yugoslavia and 9.8 per cent are Turkish citizens.

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migrant Austrian migrant groups (originating from former Yugoslavia and from Turkey).[16] Altogether, 70 per cent of the perpetrators in this sample have a migratory background, but the data do not reveal whether they are first or second generation migrants. Concerning 8 of the 26 Austrian suspects (30 per cent) we know that they have a migratory background, too.

Table 4
Nationality of victims and suspects

Nationality	Victim		Suspect	
	Frequency	Valid percentage	Frequency	Valid percentage
Austria	36	52.2	26	37.1
Other EU-country	6	8.7	7	10.0
Non-EU-country	27	39.1	37	52.9
- Ex-Yugoslavia	(12)	(44.4)	(15)	(40.5)
- Turkey	(5)	(18.5)	(13)	(35.1)
- Other non-EU-country	(10)	(37.1)	(9)	(24.4)
Total	69	100.0	70	100.0

Looking at the couples' nationality, in 29 per cent of the cases both were Austrians, in another 23.2 per cent only the victim. Six non-Austrian victims (8.7 per cent) had a relationship with an Austrian and in 27 cases (39.1 per cent) the victim and the suspect did not have the Austrian citizenship.

Table 5
Nationality of couple (N=69)

Nationality of couple	Frequency	Valid percentage
Both AUT	20	29.0
Victim AUT / suspect non-AUT	16	23.2
Victim non-AUT / suspect AUT	6	8.7
Victim non-AUT / suspect non-AUT	27	39.1
Total	69	100.0

Information about the residence status of the third-country nationals is rather vague and often missing in the files. Mostly we deduced the residence status out of the narration of the victim or perpetrator. For example when the victim said in the interview with the police that she came from Turkey to Austria as an 8-year girl, we assumed that she now has a permanent residence permit. Said this,

[16] Among the other non-EU citizens are Afghan, Chinese, Indian, Nigerian and Somalian citizens.

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about half of the non-Austrian victims (51.5 per cent) and less than half of non-Austrian perpetrators (45.5 per cent) have such a permit. Probably 64 per cent of the suspects had a work permit in Austria at the time of the last incident.[17] The public prosecutors' files do not reveal any information whether the residence status is dependent upon the partner's permit.

We assumed that the level of speaking and writing German might be an indicator for dependency and that a bad command of the language would be disadvantageous during the whole process of prosecution. Here again we had to rely on indicators about the command of the country's language: When an interpreter was provided either during the investigation phase or at court we categorized it as "somewhat, but not fluently" (victim: 15.7 per cent; suspect: 10 per cent). We found out that nearly one-quarter of the victims (22.8 per cent) belongs to this vulnerable group as they needed an interpreter[18], whereas the rest is able to speak, read and write German. In 12 cases an interpreter was present for the interrogation of the suspect at the police or at court. Therefore, we can assume that (at least) 17.1 per cent of the perpetrators had limited knowledge of German. Only in cases where the police stated that it was not at all possible to communicate with the victim or the suspect because of their lacking command of German s/he was classified as not speaking the country's language (victim and suspect: 7.1 per cent each).

With one exception, all victims lived in their own home at the time of the most recent incident. Only four women who had a relationship lived alone in their flats, more than three quarters of the victims (76.8 per cent) lived with the perpetrator. In most applicable cases (85.4 per cent) the victim lived with the perpetrator and the joint children. The average household, ranging from 1 to 7 persons, consisted of 3.37 persons (including the victim).

55 victims (78.6 per cent) have children, the majority of them one to two. Most of the children were minors at the time of the reported incident; the youngest was just one month old.

83 per cent of women with children live with them, what means that in a rather high number of attacks against the victims children witnessed them. Two thirds (65.1 per cent) lived with her and the perpetrator's joint children and 14.1 per cent with children from former relationships. Twelve women (21.8 per cent) have (other) children – either with the perpetrator or with someone else –, some of them being grown-ups, who are not living with them.

[17] With regard to the residence status we have related information in 25 of 44 relevant cases (56.9 per cent). 11 per cent probably did not have a permanent legal residence status. Concerning the work permit we found information in 32 of 44 files (72.7 per cent). Four suspects (9.1 per cent) had not obtained a work permit.

[18] That is, not for all victims an interpreter was provided.

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From the interviews with victims (see chapter II.2) we know that the issue of shared or sole custody for the children shows a propensity to conflict, especially when a separation is intended. But in the public prosecutors' files no information about custody is available.

Regarding the victim's relationship to the perpetrator the table below shows that the vast majority of the couples were married and lived together (48.6 per cent), another 17.1 per cent were cohabiting intimate partners (see table 6). Furthermore, the data confirm the endangerment of women by their former partners: In 21.4 per cent of all cases, women experienced violence by their former spouses or intimate partners.

Table 6
Victim's relationship to the perpetrator

Nature of the relationship	Frequency	Percentage
Husband, cohabitation	34	48.6
Intimate partner, cohabitation	12	17.1
Intimate partner, no cohabitation	4	6.7
Spouse, divorced/ separated, no cohabitation	10	14.3
Former intimate partnership	1	1.4
Former spouse/ intimate partner, still cohabiting	4	5.7
Other	2	2.9
Unclear	3	4.3
Total	70	100.0

The following table 7 illustrates the duration of the couple's marriage or relationship. No data were available for a quarter of all files. For another 56 women we have relevant statements: more than a third had a relationship with the perpetrator for up to 5 years, another third for 6 to 10 years and the last group for 11 years or more. The median duration is 8 years. However, there is a large range of 7 months minimum and 37 years maximum.

Table 7
Duration of relationship in years

Years	Frequency	Percentage	Valid percentage
0-5	20	28.6	35.7
6-10	18	25.7	32.1
11-15	8	11.4	14.3
16-20	4	5.7	7.1
≥21	6	8.6	10.7
N/ a	14	20.0	
Total	70	100.0	100.0

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The figures about the intention of the victim to separate and the actual history of separation have to be treated with caution because many files do reveal no or only vague respective information (see table 5). This said, about 41 per cent intended to separate at the time of the most recent incident and another 47 per cent following this incident. With regard to the history of break-ups the data are not very reliable as they are missing in nearly 60 per cent of the files. But, when combining cases with a prior history of break-ups and those where the victims intended to separate prior the incident, then nearly two thirds of the victims (62.9 per cent) wanted to separate at least once during their relationship.

Table 8
Victim's intention to separate

	At the time of the most recent incident		Following the most recent incident	
	Frequency	Percentage	Frequency	Percentage
yes	29	41.4	33	47.1
no	15	21.4	13	18.6
N/a, unclear, does not apply	26	37.2	24	34.3
Total	70	100.0	70	100.0

Serious physical illness, physical disability, mental health problems or substance abuse problems might increase the victim's dependency of the perpetrator as well as the potential of violence. Once more data available about health issues – for both, victims and suspects – are very poor.[19] According to the files no victim suffered from a serious illness or was physically disabled. Furthermore, in only a few files (legal and illegal) drug abuse (1 case) and mental health problems (2 cases) of victims were reported.

Just like the victims, no suspect was physically disabled. According to the police files a very small number of suspects suffered from a serious illness (4 cases), had mental health problems (1 case) or substance abuse problems with alcohol or other legal (6 cases) / illegal drugs (2 cases).

[19] Especially information about health status, substance abuse and/ or addiction was rare. We assumed that physical illnesses or disabilities are easily noticeable and that the intervening police officers would have mentioned them in their reports, whereas mental health problems or learning disabilities might not be so easily discernible. Therefore, with regard to serious illness(es) and physical disabilities we supposed that they were not given when not mentioned in the files. Other health issues we only listed when they had been explicitly mentioned.

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With regard to the support of the victims by DV services or women support organizations, other social or medical services at the time of the most recent violent incident the files do not contain enough information to make a reliable statement about it.

History of violence

The intention for exploring the history of violence was to gain information about the prevalence of continued/ repeated violence and also in as far such experiences were considered by the police, the public prosecutor and the court. We were interested in the suspects' acts of (physical, sexual, psychic) violence against partners as well as against other persons. Therefore, when the victim mentioned previous violent acts during the police interview or when previous police interventions were mentioned we took this for a history of violence (without using a police record as a criterion). According to this definition 78.1 per cent of the perpetrators had acted violently against the victim or other persons already before the most recent incident (see table 9), but only eight of them, that are about 12 per cent, had been convicted because of DV (on average 1.25 prior DV convictions). Only for four of them information about the sentence is available, the suspects received a suspended sentence. (No reliable data concerning violence in former partnerships or against the victim's children are available.) This means that only a small percentage of offences came to court.

According to the victims' statements in their interviews the average duration of their history of violence was 2.84 years, whereas the mean value lies at 0.55 years. There is a broad range of 0 to 36 years of experienced violence. A majority of 60 per cent mentioned that they endured aggressions and attacks for one year or less, further 22 per cent for 1 to 5 years, and 9 per cent each for 5 to 10 resp. more than 10 years.

The number of barring and restraining orders having been issued and/ or violated in previous incidents is not available, nor information on failures of alcohol/ drug abuse or anti-violence programs .

16.9 per cent of the suspects have records of other offences.

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Table 9
Prior history of violent offences

Prior history of violent offences	Frequency	Percentage	Valid percentage
Yes	50	71.4	78.13
No	12	17.1	18.75
Unclear	2	2.9	3.12
Not available	6	8.6	
Total	70	100.00	100.00

2.2 Incident related characteristics

In 68 of the 70 analyzed public prosecutor files only one IPV incident was investigated, the remaining files (32 and 35) were dealing with two incidents each. Al-though the police reports often mentioned much more incidents.[20] Only about a quarter of the victims (17) said that the reported attack had been a single violent transgression by their partners.

The majority of the files deal with unilateral partner violence, 13 (18.6 per cent) with mutual violence – and in all these cases except one, the male suspect was barred from the victim's home. The police have to file a complaint against both and do not have to judge whether injuries result from an attack or from self-defending.

Experienced violence in the most recent case

In congruence with our sample definition nearly all victims were attacked or hurt by their partners, only in one case (file 15) it is not clear whether the injuries derived from the partner or her falling due to heavy alcohol consumption. In ten cases the victim's and/ or perpetrator's child(ren) were attacked/ hurt, in four cases other family members. Eleven perpetrators were injured, too. Finally, in two cases was mentioned that a police officer and/ or another person were attacked (see table 10).

[20] It is not possible to give detailed figures about the number of incidents mentioned, because the police have no comprehensive lists of previous interventions.

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Table 10
Who was attacked or hurt in the most recent incident (n=70)

Person attacked/ hurt	Frequency	Percentage
Victim (N=70)	69	98.6
Victim's and/ or perpetrator's child(ren) (N=51)	10	21.3
Other family member(s) (N=70)	4	5.7
Perpetrator/ suspect (N=70)	11	15.7
Police officer(s) (N=70)	2	2.9
Someone else (N=70)	2	2.9

The big majority of the victims, namely nearly 80 per cent, experienced physical violence in the last reported incident, followed by dangerous threats to kill or severely injure the victim in more than two thirds of the files, and emotional/ verbal/ psychological violence in every second file. Coercive control and other forms of violence were much less frequent (see table 11). Except for 18 victims – about one quarter – the others reported more than one type of violence during the last incident. Most often physical violence goes along with dangerous threats (in 36 of 55 cases) and also with emotional/ verbal/ psychological violence (in 30 of 55 cases). It is noteworthy that no one complained about economic abuse, but some perpetrators exercised control over the victim via financial means (see below). From these data follows that most victims only inform the police when physical violence is at play.

Table 11
Types of violence in the most recent incident (n=70)

Types of violence	Frequency	Percentage
Physical violence	55	78.6
Threatening to kill/ severely injure	48	68.6
Emotional/ verbal/ psychological violence	36	51.4
False imprisonment/ confinement	3	4.3
Sexual violence	2	2.9
Harassment/ stalking	1	1.4
Economic abuse	0	0
Other forms of coercive control	8	11.4
Other	4	5.7

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In total, 56 victims were physically and/ or sexually assaulted. Within this group, more than two-third (69.6 per cent) were hit or slapped at the most recent incident. Half of them were punched or beaten and pushed or shoved, more than one fifth (21.4 per cent) was kicked and one out of seven (14.3 per cent) was strangled. In one case the victim was thrown at with objects and in another she was raped. 13 files referred to other physical assaults such as trying to suffocate the victim, pulling her hair or wounding her with a kitchen knife.

In the most recent incidents, none of the offenders used a (legal or illegal) weapon designed as such, but in about one eighth of all cases they made use of other items like a belt or the pipe of a vacuum cleaner to threaten or injure the victims.

For the majority of the victims who experienced physical and/ or sexual violence, the physical consequences – as shown in the following table 12 – were not severe. According to victim statements and sometimes supported by medical investigations/ reports 57 per cent claimed minor injuries (e.g. scratches, minor bruising, bloody nose/ lips, redness or abrasion, swelling, minor cuts) and about 9 per cent suffered of moderate injuries like cuts which needed stiches, bites that wounded the skin or bruised eyes (see table 12).

Table 12
Physical consequences of the most recent physical or sexual attack (n=56)

Physical consequence	Frequency	Percentage
No injury claimed	8	14.29
No injury visible	10	17.86
Minor physical injury	32	57.14
Moderate physical injury	5	8.93
Not available	1	1.79

Increased alcohol consumption or alcoholism and other forms of drug abuse often boost violence (see Amesberger/Haller 2010; Hoerl 2009). Nearly one third of those suspects from whom we have related data (n=58) in the files was intoxicated with alcohol or other drugs during the most recent violent incident. In contrast, however, only 4 victims (6.56 per cent; n=61) were under influence of alcohol or drugs.

90 per cent of the violent incidents took place in either the couple's home (72.86 per cent) or in the apartment of the victim (12.86 per cent) or the suspect (5.71 per cent). Therefore the aggressions were primarily witnessed by the couple's children (if they had any). In about 40 per cent of all cases

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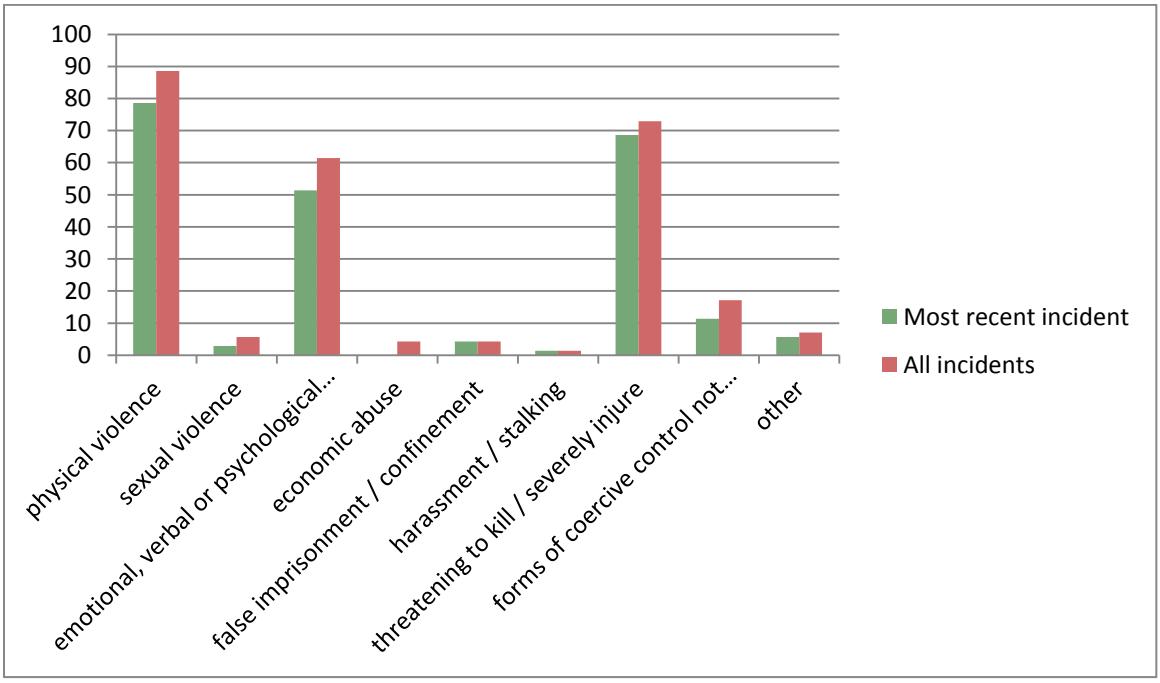
eye witnesses, 70 per cent of them children were present. Other eye-witnesses were friends, neighbours and other family members.

Repeat violence and high risk victims

As described above, three quarters of all victims suffered from repeat violence, some of them over long periods. Graph xx below illustrates that when looking at all incidents[21] the same types of violence predominate as in the most recent incident. It also shows that especially physical and emotional violence as well as dangerous threats were rather frequent before the last reported incident.

Graph 1
Types of violence in the most recent incident and in all incidents (in per cent)



On average, the victims mentioned about 3 types of violence (mean value: 2.63) experienced during the violent relationship (maximum: 6) (see table 13).[22] As table 13 illustrates about one third each was exposed to two resp. three types of violence.

[21] All incidents include the most recent one.

[22] Here a word concerning the quality of data is necessary: As in most police interviews previous violence was addressed but not in detail listed and described one can assume that the chart illustrates only the bottom line. Therefore it does not make sense to name the forms of physical and sexual assaults in detail.

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Table 13
Number of types of violence experienced in all incidents

Number	Frequency	Valid percentage	Cumulated percentage
1	11	15.7	15.7
2	23	32.9	48.6
3	22	31.4	80.0
4	10	14.3	94.3
5	3	4.3	98.6
6	1	1.4	100.0

Cross-references of the various types of violence with each other show that 91 per cent of emotional violence, 88 per cent of severe threatening and 75 per cent of coercive control went along with physical violence. That is, women report other forms of violence mostly then when physical violence happened, too.

Birgitt Haller (2012: 60 f.) identifies in her small-scale, but representative study about femicides in Austria the following high-risk groups:

- Women who live in partnerships with a history of violence
- Women who want to terminate the relationship
- Women whose partners are very jealous
- Migrant women or women in bi-national relationships
- Employed women whose partners are unemployed or – to a lesser extent – (early) retired

Haller continues that a combination of factors might elevate the risk of being murdered. That is, with regard to our sample many women are high-risk victims: Many suffered from continued violence, about 40 per cent intended to separate, about 40 per cent of the perpetrators were unemployed or retired, and the amount of migrant women in our sample is high, too. In this research we also investigated further possible indicators of elevated risk of severe or lethal violence. As table 14 shows, threats by the perpetrator to harm or kill the victim or her children occurred very often (50 resp. 52.9 per cent of all cases). Also very high is the percentage of perpetrators who attempted to or strangled their partners, who showed extremely jealous behavior and who used objects to injure the victim (18.6 per cent each). Furthermore, nearly 60 per cent of all victims stated during police interviews that they were afraid of further violence (see table 14).

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Table 14
Indicators of elevated risk of severe or lethal violence (all incidents)

Risk indicators of severe or lethal violence	Frequency	Percentage
Perpetrator has strangled (or attempted to do so) the victim (N=70)	13	18.6
Perpetrator has physically abused the victim when she was pregnant (N=56)	6	10.7
Perpetrator has threatened to kill the victim or her/ joint children (N=70)	37	52.9
Perpetrator has threatened to kill himself (N=70)	3	4.3
Perpetrator has threatened bodily harm to the victim (N=70)	35	50.0
Perpetrator has exhibited extremely jealous behaviour (N=70)	13	18.6
Perpetrator has used weapons (designed as such) (N=70)	1	1.4
Perpetrator has used other objects as weapon (N=70)	13	18.6
Perpetrator owns a weapon designed as such (N=70)	2	2.9
Victim states that she is worried about future violence (N=70)	41	58.6

On average a case shows 2.3 indicators of risk of severe and lethal violence (maximum: 6). We classified those cases with less/ equal 2 indicators as low risk group – 58.6 per cent belong to it – and all others as high risk group (41.4 per cent).

The data concerning the knowledge of IPV by others can be deduced mainly indirectly. For example, when a barring order was issued in former incidents then we concluded that at least the police and the intervention center knew about it. In nearly half of the cases with continued violence, someone else knew about incidents of IPV in the respective relationship before the most recent reported incident. This group amounts 26 cases. Mostly (in 20 cases) it was a law enforcement agency like the police or a public prosecutor. In ten cases a domestic violence emergency service or a crisis intervention center knew about previous incidents. In three cases a non-residential counselling service, in two cases each a battered women's shelter/ refuge and a child protection service had knowledge about previous incidents.

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2.3 Criminal justice response

The typical procedure in DV cases is depicted in chapter 3 of part 1. In the following we trace this procedure in practice as it is reflected in the public prosecutors' files, whereby we focus on how the risk of further violence is assessed, how/ if evidence is secured, and in as far victim rights and victim needs are considered during the various stages of law enforcement.

Getting notice of IPV and (immediate) police response

In two thirds of the cases the victim herself reported the police about the violent incident. They either went to the police station or called the police. Neighbors called the police in about one eighth of the analyzed files (13.23 per cent), followed by friends and acquaintances (5.88 per cent). Three times the police was called by the suspect. Health service and DV service professionals played a minor role in informing the police.

In more than half of all cases (52.86 per cent) the police were notified by an emergency call in the result of which they came to the incident site. A police guideline recommends that in cases of DV a female officer should be present on-site. Due to the low share of women in the police forces (about 14 per cent) and due to shifts this is not always possible. The police reports often do not reveal the gender of the intervening officers and therefore related information was available only in 21 of 37 relevant cases: In 71 per cent of these interventions a female officer was at site.

Graph 2 below illustrates the immediate response by the police after an emergency call or when the victim came to the police station. It clearly shows that the police observe the guidelines for DV interventions. In the majority of cases the victims were questioned and given information about their rights and support possibilities, a banning order was issued, the domestic violence emergency service (intervention center) was involved and the suspects were questioned as well as cautioned. Therefore it is interesting to look at the exceptions: The questioning of victim and suspect is necessary for the evaluation of what had happened and of the risk of further violent occurrences.[23] That is, the interviews are the basis for issuing a barring order. Three of the 70 victims and 21 of the 70 suspects were not immediately questioned. Concerning the victims, this was due to language barriers (2 cases) and to intoxication (1 case). What concerns the suspects, immediate interrogation often was not possible

[23] In Austria the prerequisite for barring orders is imminent danger.

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because they had left the incident sites before the arrival of the police or because of intoxication. The absence of the suspect also explains why only 57 barring orders have been issued as a first response as he has to be informed about the barring order before its imposing. In three cases only a so-called conflict resolution took place and in two others a barring order was issued only later on. Altogether, after 10 incidents the suspects were not barred from the victims'/ couples' homes. The reasons for that will be explored below. In general, victims are informed about their rights and protection measures verbally and/ or by letter or during the second extended interrogation at the police station. We assume that the necessary information is given in almost every case, but it is not always documented in the reports. The police are also obliged to inform the responsible intervention center about barring orders and to involve the youth welfare service when minor children are living in the household. Whereas in most files the notification of the intervention center is documented, the referral to the child protection service is mentioned in only nine files, although in 50 affected households children have been living. Nevertheless, we assume that many more than these nine cases were referred to the child protection service as much (political) emphasis is laid on child protection. However, the documentation has to be improved in respect to referrals. It might also be a matter of incomplete recording that in only 18 files the separation of victim and perpetrator during their interviews is documented as this measure belongs to the standard procedures. Among "other" responses mentioned are measures like referring the victim to the public health officer, informing the children's school or the service for victims of crime about the barring order.

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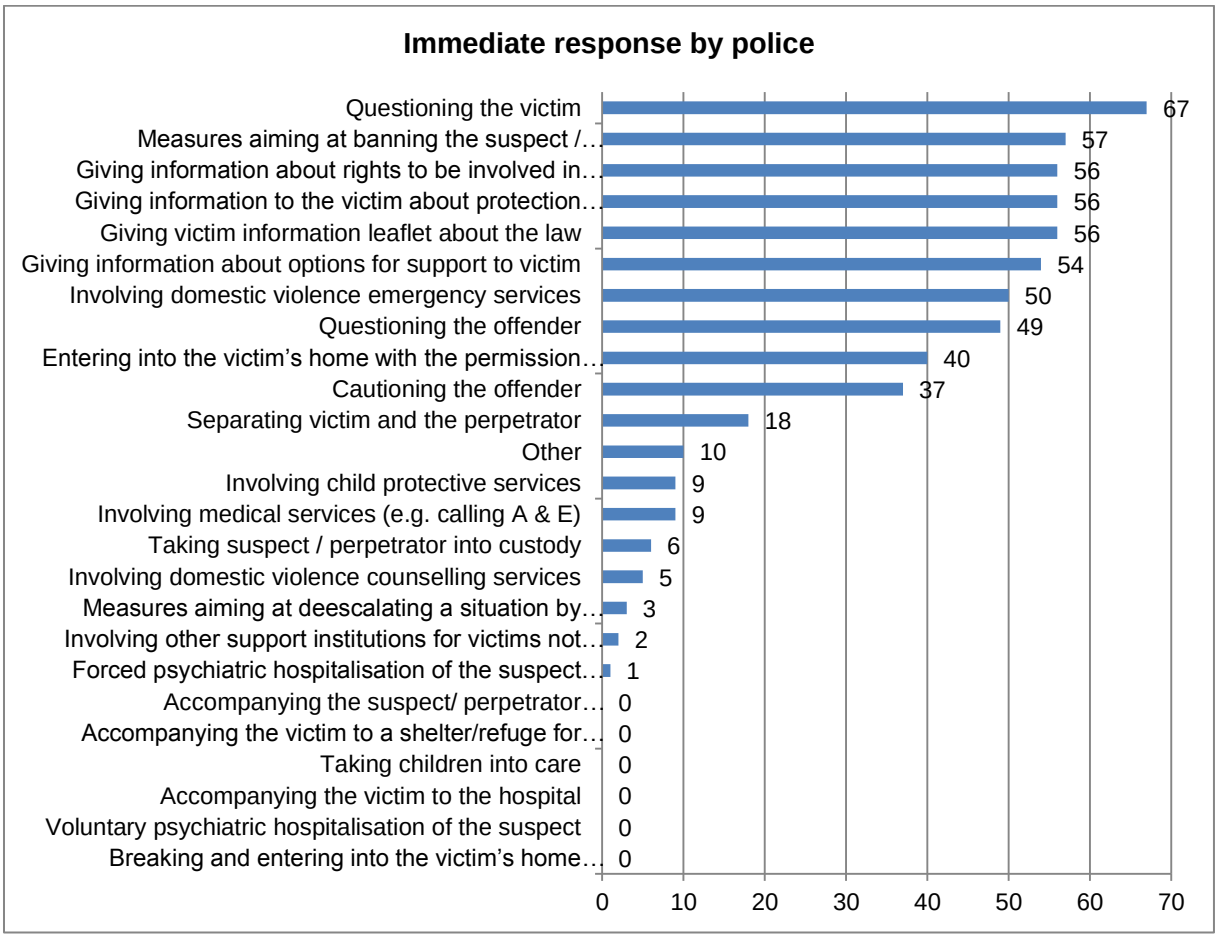
Graph 2

Immediate response by police (N=70)



Securing evidence

With respect to the response of the PP and court it is very important that the incident/ crime is properly documented and evidence is collected by the police as PPs and judges build its decisions upon dismissal or accusation and the sentence primarily on them.

In the course of further proceedings of the police victim and suspect are interviewed more comprehensively at the police station. About 87 per cent of the extensive victim interviews at the police station took place within 24 hours, 36 per cent of them even within the first hour after the police intervention. Also 75 percent of the suspects were questioned within one day. In comparison with the interrogation of the suspect, victim interviews were done more readily. This is not surprising as the police always start with questioning the victim to be able to confront the suspect with her statement. The police interviewed a quarter of the offenders more than 24 hours after the incident. Two

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suspects were not interviewed at all although the police tried to do so; one could not be found, the other one had already been abroad for several months. In total, in 29 cases there have been eye-witnesses of the aggression. In seven of 20 appropriate cases where children witnessed the aggression against their mothers at least one child was interviewed within one day. These children were between the age of 7 and 27 years.[24] In nine cases other witnesses than children were interviewed within 24 hours. From that we can conclude that the police start the investigation and secure evidence within a few hours.

The police may use further means to secure evidence like reports from counselling and health care services, risk assessment reports, or photos taken from injuries and the crime scene. In more than half of all cases (54.3 per cent) the files contained such documentary evidence, mostly photographic documentation of the victim's and/ or suspect's injuries and of the crime scene (68.4 per cent of the applicable files). Reports of a health care service or the public health officer were included in 23 of 38 files (60 per cent). Besides a documentation of text messages by the suspect (one case) and one surveillance camera tape no other documentary evidence was found, nor did the investigation include psychological examinations of the suspect (in order to assess his dangerousness) or the victim (e.g. if she suffers from Post-Traumatic Stress Disorder).

Weapons and (other) physical evidence (e.g. damaged mobile phone, pants) were confiscated by the police in two cases.

According to the law the public prosecutor is the head of the investigation but in the files only rare hints of interventions by the public prosecutor were evident. Most often s/he was informed about police measures (e.g. when the suspect was arrested) or asked for legal advice by the police. In each of the 70 cases charges were filed but the public prosecutor did not demand anyone's arrest. Neither orders to secure evidence nor to carry out additional interviews with victims or suspects were documented. Once, the public prosecutor ordered to interview the victim anew as she had not been informed about her right to refrain from a statement. Only one victim was interviewed by a public prosecutor himself during the investigation phase as she had reported the offence directly to the public prosecutor and not to the police.

[24] Three children were between 7 and 10 years old, another three between 14 and 16, five between 19 and 27.

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Risk assessment and consequences

In part 1 of this report, chapter 3.1, we described in detail how the risk of endangerment is assessed by the Austrian police. In general, the police officers at site evaluate the situation focusing on several risk factors which are mentioned in the barring order form like the offender's behavior, the victim's emotional condition, injuries and damages as well as features hinting at further violence and escalation. Such a risk assessment is the precondition for issuing a barring order. That is, the police actually use a partly standardized form [25] that does not result in scores indicating the risk of ongoing/ escalating violence or lethal violence.

The bases for the assessment are primarily the talks with the victim resp. the suspect and other evidence of violence at site as well as the interviews at the police station. Additionally, as a standardized procedure police data on the suspect are reviewed and it is controlled whether the perpetrator is known as violent and whether he is registered as a weapon user. The files do not contain any information whether the case was reviewed in team meetings or case conferences.

The risk assessment led in 60 cases (85.7 per cent) to a barring order. In the remaining ten cases the police did not issue a barring order because – as they justified – victim and offender were not living together (anymore) for several months (five cases), the complaint was filed only several months after the incident (five cases), either the victim or the suspect were leaving Austria for at least two weeks the day after the violent incident (two cases), and because of the heavy drunkenness of the couple/ victim (two cases). This means, that in all these cases no (further) endangerment was expected by the police.

After a barring order in 94.2 per cent of the relevant files the shared apartment was allocated to the victim. In one case (file 45) the woman was barred from home: when the police intervened she was drunk, he not, and she had already some records because of partner violence. In another case (file 19) the respective information is missing.

Among the 60 applicable files we found three cases, where the suspect violated the barring order. The remaining files did not mention non-compliance, so it can be assumed that a violation either did not take place or was not detected. Concerning the suspect's prior failures of attending alcohol-/ drug-treatments or anti-violence programs the police files contain no related information. In two

[25] A standardised risk assessment, the SALFAG (Situational analysis of domestic violence), is currently prepared. As it has been tested as a pilot in some provinces, in one of the analysed files this assessment tool had been used.

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public prosecutors' files it is documented that the suspects pursued or harassed the victim or her parents.

Victim rights

According to the law the victim has the right to be questioned by an officer of the same sex. Half of the victims in our sample were interviewed by a female officer, about one third by a male. For the rest the sex of the interrogating officer is not available. Sometimes it is explicitly stated that victims waived this right, but again not in all cases related information is available. When both victim and suspect were interviewed, the police always questioned them separately.

When the police get notice of a violent act against a person they have to report the offence to the public prosecutor. That is, the victim neither can decide upon filing a complaint or not nor can she/ he withdraw the charge in the course of proceedings. But she/ he has the right to refuse to give testimony at the police or at court when being a close relative or partner. All victims were informed about this privilege.[26] As we will see below the majority of the victims provided evidence against the suspect both at the police and at court.

Victim support and recognition of victim needs by the authorities

In 1997, in each of the nine provinces violence protection centers/ intervention centers were established by the Austrian violence-protection law. These centers are directly and immediately informed by the police about each barring order and they contact the victims offering psycho-social and legal support (especially at civil courts). We mentioned already that – as the referrals to the responsible violence protection/ intervention center are obligatory – they are only rarely documented in the police files. Moreover, the files vary a lot regarding the documentation of referrals. Sometimes a comprehensive list of addressees is provided and sometimes not even the most essential ones (e.g. intervention center, child protection service, public health officer) are mentioned. Therefore, no reliable figures about referrals can be given.

Support during criminal proceedings has been institutionalized in 2006 as a special service which is also offered by violence protection/ intervention centers, but not exclusively.[27] Only seven files indicate that the victims made use of psycho-social and legal support in criminal proceedings. Neverthe-

[26] As already mentioned, in one case the police had forgotten to do so and therefore they were urged by the public prosecutor to repeat the interview. She again provided evidence.

[27] Other providers for DV victims are women's shelters, counselling centres etc. on the basis of a contract with the Ministry of Justice.

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less, the actual number of supported women might be higher as informal psycho-social assistance is also provided by DV counselling services, women's shelters etc. No information is available in the files whether the victims received support from social or medical services.

Apart from the accompaniment by organizations the victim has the right to be interviewed in presence of a person of trust (with the exception of the offender). Five women made use of this right. They were primarily accompanied by friends or relatives, in one case by a DV support service. No one came with a lawyer to the police interview. There are no hints that this right was denied by the police.[28]

15 victims were recognized by the police as needing special support with regard to communication. In 12 of these 15 cases a professional interpreter was provided, in the remaining three ones a relative acted as interpreter.[29] Four other files inform about the need of an interpreter which was not provided during the investigation phase.[30] However, it seems that the majority of victims with limited knowledge in German received support, although no information is available whether all women concerned were informed about their right to an interpreter. One victim has obviously been illiterate; this was not noticed by the interviewing police officer although the victim's signature and the statement of the suspect indicated it. A woman with mental illness/ disability (one case) was not recognized as special needs victim.

Contrary to the decision about a barring order, the victim herself has to apply for a long term restraining order, which is issued by the civil court (see chapter 2.1, part I). Therefore the number of applications can be taken as an indicator for the victims' subjectively perceived protection needs beyond the two-week duration of a barring order. In total, five victims applied for a restraining order. One of them withdrew the application later on, all others were approved.

The victims' support of the investigation

It is often supposed that the victim's behavior during the investigation and at court (which reflects her attitude towards the criminal persecution of the offender) is decisive for the outcome of the criminal proceedings. The many dismissals and acquittals are often reduced to the lack of support of the investigation by the victim (sources: interviews with judges and PP).

[28] In total about 30 per cent (19 victims) were accompanied to the police station (mainly by family members), but most of them were not present at the interview.

[29] In one case a cousin and in two cases the daughter stepped in as interpreters.

[30] For example, in two cases the probation service "Neustart" requested an interpreter for victim-offender mediation.

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Our data do not confirm this assumption. As stated above the Austrian police has to report all offences when they get notice of them. Therefore it was not always clear whether the police or the victim herself filed a report. According to the police records, 57.6 per cent of the victims filed a complaint[31] and about one eighth (13.6 per cent) did not do so. In the remaining cases we were not able to extract related information. Contradicting to the often made assumption that victims do not support the investigation is also the fact that 88 per cent provided evidence against the suspect; only eight out of 68 victims did not do so. In those cases where a trial was held (in total 16) still half of the victims made an offending statement at court.[32]

Another indicator for the victims' support of the investigation might be the visit of a medical doctor or a hospital in order to secure and store evidence, but such a visit might also be necessary for a medical treatment. About 30 per cent of all victims who experienced physical violence visited a doctor/ hospital but without further explanation in the files.

All in all, there is a rather high support by victims of investigating the offences. In the following chapters we will deal with the results of the criminal proceedings and the question whether the victim's support had any influence on them.

Accusation phase

Having closed their investigations the police report all offences, committed either by the suspect or the victim, to the public prosecutor.

Charges pressed against the suspect

As table 15 shows, in total 148 offences were reported (on average 2.1 complaints per suspect). More than 90 per cent of them concerned violent offences: bodily harm (39 per cent) and dangerous threats (31.62 per cent) prevailed, followed by compulsion (15.44 per cent) and repeat violence (8.09 per cent). These figures roughly mirror the types of violence reported by the victims (see table 11), but it is obvious that recurrent violent acts mentioned by them were only rarely judged as continued violence.

[31] This figure contains only those cases when the police reports explicitly mentioned that the victim filed the complaint.

[32] Five victims refused to give evidence at court and in three cases no information is available.

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Table 15
Reported suspects' offences (N=70)

Offence	Frequency	Percentage (all offences)	Percentage (violent offences)
Bodily harm (§ 83 CC)	53	35.8	39.0
Dangerous threat (§ 107 CC)	43	29.1	31.6
Compulsion/ coercion (§ 105 CC)	21	14.2	15.4
Repeat violence (§ 107b CC)	11	7.4	8.1
Severe unlawful compulsion (§ 106 CC)	3	2.0	2.2
Rape (§ 201 CC)	2	1.4	1.5
Sexual coercion (§ 202 CC)	1	0.7	0.7
Detention (§ 99 CC)	1	0.7	0.7
Assault of an officer (§ 270 CC)	1	0.7	0.7
Non-violent offences[33]	12	8.1	
Total	148	100.0	100.0

In Austria the police do not have the authority to decide whether an offence has to be prosecuted or not, this is up to the public prosecutor. In 22.9 per cent of all cases (16) the public prosecutor decided to file a charge. Of the remaining 77.1 per cent (54 cases) nearly 95 per cent were dismissed according to art. 190 or 191 CCP.[34] Only three cases were not dismissed. In these three cases diversionary measures were imposed: twice as a reaction on mutual physical violence victim-offender mediation (one offender had also been charged because of dangerous threats and continued violence) and in one case of bodily harm a fine of 200 Euros was imposed. After the victim-offender mediations the public prosecutor finally stepped back from prosecution.

Although the Austrian law allows a victim after dismissals to apply for taking up proceedings again, this was done only once in a case of continued violence (file 49). This victim had legal and psychosocial support provided by the Viennese women's shelters. The application was not successful.

As graph 3 illustrates most dismissals were based on lack of evidence (25 cases), sometimes connected with the argument that the decision was taken in doubt for the accused (7 cases). Nine victims made use of refraining from testifying against the suspect what again meant lack of evidence.

[33] This includes among others: damage of property, trespassing, violations of the Weapons Law, drug-related crimes, theft and suppression of documents.

[34] Art. 190 CCP says that investigation proceedings have to be terminated when the deed is not punishable by court or no reasons for further persecution of the suspect are given. Art. 191 CCP states that the public prosecution can refrain from prosecution on the grounds of the act's minor nature. The latter article does not seem to be very important; only six offences were dismissed according to it whereas the remaining ones were discharged on the basis of art. 190 CCP.

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Graph 3

Reasons for dismissals by the public prosecutor

* “no further violence expected, couple is divorced”

Charges pressed against the victim

Victims also were accused of having committed crimes. This primarily concerns mutual violence (13 cases) whereas in most of these cases the victims argued that they had just defended themselves. Against four women the police filed complaints because of false testimony and libel (see table 16).

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Table 16
Reported victims' offences (N=17)

Offence	Frequency	Percentage
Bodily harm (§ 83 CC)	13	56.52
Dangerous threat (§ 107 CC)	2	8.70
Repeat violence (§ 107b CC)	1	4.35
Criminal damage (§ 125 CC)	1	4.35
False testimony (§ 288 CC)	2	8.70
Libel (§ 297 CC)	4	17.39
Total	23	100.00

The charges against the victim concerning bodily harm, dangerous threat and continued violence were dismissed too in the majority of cases.[35] With regard to libel one case each ended with an acquittal and a dismissal, and in another one victim-offender mediation (art. 204(1) CCP) took place.[36]

Duration of criminal proceedings

The criminal proceedings – starting from the first police intervention to the termination by the public prosecutor – lasted 49 days on average (median value); the mean value is 66.5 days.[37] The time span between first police intervention and dismissal by the public prosecutor ranges from 6 to 221 days.

Court's action

Altogether 16 cases went to court. A full hearing took place in 14 cases.[38] In the following we will again focus on the support of the victims and its consequences for the outcome of the proceedings. Before, we will shed some light on the behaviour of the accused and the victim regarding court proceedings/ in front of the court.

[35] One of the two others was concluded according to art. 204a CCP; and for one no information is available.

[36] No information is available for the fourth case.

[37] Related data were available in 53 of 56 applicable public prosecutor files.

[38] In the two remaining cases no information about court's action, suspect's and victim's behaviour and victim's support at court is available.

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Behavior of accused and victim

12 of the 16 accused (75 per cent) appeared at court; for the others information was not available. Nine of them accepted the allegations brought forward against them. Four accused pleaded guilty (in the other cases information is either unclear or not available). Two men were represented by lawyers.

Only eight victims (50 per cent) testified at the court hearing, six refrained.[39] None of the victims had hired a lawyer.

Support of victims during court proceedings

Except for those three women who received psycho-social and legal support by an intervention center or DV service no data is available whether the victims got information about their right to be heard, about options for support or special protection measures (e.g. separate waiting room) etc.

Two victims – both provided with the already mentioned state-financed psycho-social and legal support by a lawyer – were assisted by interpreters when giving evidence. But here again the availability of data is scarce.

In six of the 16 trials also other witnesses than the victims testified: two times each the joint children of victim and suspect and police officers, once the victim's superior and a neighbor.

Court's decisions

Six offenders were sentenced: three for bodily harm (two of them additionally for unlawful compulsion, one for dangerous threat); another two for dangerous threats and one for criminal damage. One perpetrator was condemned to an imprisonment of 1.5 months, four to imprisonment between 2 and 5 months, with a probation time from 1 to 2 years, and one to a fine (40 daily units).

[39] How the remaining two victims behaved is not known.

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Table 17
Offences committed by the accused (N=16)

Offence	Frequency	Percentage (all offences)	Percentage (of accused)
Bodily harm (§ 83 CC)	11	40.8	68.8
Dangerous threat (§ 107 CC)	7	25.9	43.8
Compulsion/ coercion (§ 105 CC)	2	7.4	12.5
Repeat violence (§ 107b CC)	2	7.4	12.5
Assault of an officer (§ 270 CC)	1	3.7	6.3
Non-violent offences[40]	4	14.8	2.5
Total	27	100.0	

In a further case the accusation because of bodily harm and dangerous threat against the wife was dismissed[41] but the offender was sentenced with 5 months imprisonment on probation because of aggressive behaviour and dangerous threat against police officers (file 8).

Three accused, whose victims refrained from a statement, were fully acquitted because of lack of evidence.

In five of the 16 court cases diversionary measures were imposed as the offenders had shown remorse and the offence had not been serious. Three men got a probation time of 12, 18 resp. 24 months, a forth offender was additionally obliged to participate in an anti-violence program[42] (art. 203 CCP), the fifth one had to pay a fine of 900 € (art. 200 CCP) plus 200 € compensation to the victim for pain and suffering.

According to the public prosecution's files only three victims requested compensation; one of the accused was acquitted, the two other cases were diversion cases, in one of them the accused paid a reduced compensation.

Duration of criminal proceedings in court cases

In eleven cases exact dates for the first intervention, the first trial and the court decision are known. On average, proceedings lasted about 5 months (152 days) until the first trial; taking the median val-

[40] This includes among others: damage of property, trespassing, violations of the Weapons Law, drug-related crimes, theft and suppression of documents.

[41] The victim refrained from testifying at court.

[42] The probation service did not find the perpetrator suitable for an anti-violence programme due to his drug addiction. No information about the consequences is available.

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ue – 119 days – it is a month less. The overall duration up to the final decision was 6.5 months (194 days) on average, whereas the mean value with 128 days (4.2 months) shows a much shorter period. That is, that most court proceedings were closed after the first trial. Due to restorative justice measures two cases (file 23 and 49) were still pending (for a two-year period).

Factors influencing the proceedings

As the majority of cases were concluded by the public prosecution office and only 16 cases went to court and as other data (e.g. concerning protection measures and victim needs) are so scarce, cross references are of limited information value. Nevertheless, they might hint at tendencies and/or shortcomings.

Influence of victim's evidence: In all cases which went to court the victim testified at the police. However, in the remaining three quarters of files where the victims testified, too, the proceedings ended at the public prosecutor. Correlating the 'outcome at court' and 'victim give evidence at the court hearing' shows that in five of six cases where the perpetrator was sentenced the victim testified at court, in the remaining one this information is not available. With regard to the five conditional dismissals three victims gave evidence, two not. In two of the three cases where the accused was fully acquitted the victim did not testify, in the third case again no information is available.[43]

Influence of photo documentation: The provision of a photographic documentation of the victim's injuries influences the proceedings what stresses again the importance of documentation (Chi^2=0.032): Nine of the 21 appropriate cases (42.9 per cent) went to court.

Influence of repeat violence: Only one of the files with a single violent act went to court, whereas more than a quarter of continued violence cases (28.8 per cent) ended at court. A prior history of reported violent offences also slightly influences whether a case is proceeded with at court or not. But, only 29 per cent of all cases with a prior history of reported violent offences ended at court. And only two of eight suspects with a prior IPV related conviction came to court: one was acquitted and the other got a suspended prison sentence (1.5 months) for criminal damage.

Influence of victim-offender relationship: Public prosecutors and judges stressed in their interviews that violence committed by an ex-partner is more likely to end at court (see interviews). Our sample does not confirm this statement, although the percentage of accused ex-partners is higher than the

[43] The correlation is not significant (Chi^2=0.297).

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accusation rate in the whole sample (30.8 resp. 21.2 per cent): only about one quarter of the files in which an ex-partner was alleged led to court proceedings, three quarters were dismissed by the public prosecution office.[44]

Influence of common children: According to public prosecutors and judges, diversional measures are more likely set when the couple has children. Due to the fact that the majority of couples had children and that altogether only eight criminal proceedings ended with a diversion (at PP and court) the cross tabulation is not significant (Chi^2=0.671) but nevertheless, seven of the eight perpetrators with diversion measures had common children.

Influence of intention to separate: There is a slight tendency that those couples which intend to separate following the incident end more likely at court (27.3 per cent compared to 15.4 per cent with no intention to separate), whereas the victim's intention to separate prior the incident does not make any difference.[45]

Influence of the couple's nationality: The correlation of nationality with the conclusion of the proceedings only showed an interesting result when the victim was non-Austrian and the suspect Austrian, as half of those cases ended at court (but there only four cases altogether). This is a clue that public prosecutors are aware that non-Austrian victims are more dependent on their Austrian partners/ that within such couples an imbalance of power exist. The migration background – either of victim or suspect – seems not to have a relevant influence whether the case goes to court or not.

Recognition of severe and lethal risk: Above we categorized low and high lethal risk groups (see p. 41). The correlation of belonging to one of these groups with the conclusion of the proceedings shows that cases where the victim is at high risk are more likely to end at court (about 43 per cent high risk and 16 per cent low risk). In this case the correlation is significant (Chi^2=0.044).

Furthermore, we categorized suspects according to indicators which might increase their dangerousness. For this we clustered suspects according to socio-economic features (e.g. unemployment, health problems, migration background) and a prior history of violence. Each indicator was counted and afterwards the scores were grouped. On average, each suspects' profile revealed 2.14 indicators which might elevate the risk of endangerment for the victim.

[44] Chi^2=0.462 and therefore the results are not significant.

[45] These correlations are not significant according to Chi-square after Pearson.

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From that we can conclude that no single factor increases the probability of a file going to court (but it has to be mentioned that they were no cases of severe bodily harm in our sample) – but when the victim is a migrant and married with an Austrian, when she testifies at the police and at court, when her injuries are documented by photographs, and when she is belongs to a higher risk group it is more likely that the case ends at court.

2.4 Conclusions regarding risk assessment and victim support

The data available in the public prosecution files gives limited information about risk assessment, victim support and protection. The most comprehensive documentation is provided by the police, although it draws only an incomplete picture, too.[46]

The police fulfil their tasks concerning risk assessment, victim protection and support to a great extent. When victims sign the protocol of their interview, they confirm that they have understood the attached information about their rights. Nevertheless, sometimes this might not be true as the information contains mostly legal matters and is written in a very bureaucratic language, and as, additionally, the stressful situation of immediately before experienced violence and police intervention may makes it even more difficult to understand. No information is available whether all victims not using German as their first language were asked whether they wanted an interpreter – but one might doubt it as it takes some time to organize an interpreter and as it is a matter of costs, too.

Neither at the public prosecution level nor at court standardized risk assessment takes place. So for example a prior history of violent offences (both convictions and non-convictions) is not (strongly) decisive for bringing a case to court. According to the files, protection measures like a separate interrogation were only set when the victim received psycho-social (and legal) support by an intervention center or a DV counselling service.

[46] This result goes along with the evaluation of the Viennese Intervention Centre that heavily criticised in its annual report 2014 the lack of data especially at the level of the Ministries of Justice and of the Interior and to a lesser extent the lack of police statistics.

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II. Victims' experiences

1 Methodological approach

1. Research aims

The main objective of the interview study has been a qualitative analysis of victims' needs, their expectations towards the criminal justice system and their experiences within the system. This includes a close look at mechanisms of assessment of needs and risks, measures for ensuring safety, protection and support – including cooperation and referral procedures – as well as the access to procedural rights. The study aims at identifying influencing factors on the extent, to which victims' needs are taken into account within the criminal justice system, and also analyses the influence of victims' experiences within the system on their willingness and ability to participate and contribute to criminal prosecution.

2. Methods and choice of interviewees

The study combines the views of experts and victims on the justice system's practices regarding victims' needs. In the project proposal qualitative expert interviews with 3 judges and 10 public prosecutors with experiences in DV cases as well as qualitative in-depth interviews with 10 victims of DV who have experienced the criminal justice system were foreseen. One focus group with police officers from criminal investigation sectors was planned and another one with victims support services.

On the basis of our knowledge of significant differences between the criminal justice systems of the participating countries the research group agreed upon flexibility as regards the choice of interview techniques and – within clear limits – the interview guidelines. The group decided to stick as closely as possible to the proposed empirical methods (interviews and focus groups) and the sample composition but adjust it to the specific needs of each country. Basically each partner had to carry out 23 interviews and two focus groups with a fixed share of 10 victim interviews and a minimum of 5 interviews with public prosecutors. Time-resources and travel costs as well as geographic dispersion of interviewees were accepted as relevant factors for planning the empirical program. A random sample and theoretical sampling were not regarded as useful given the size of the sample. It was agreed that for the expert interviews persons with experience and commitment to the topic could contribute best, especially as the intention of the interviews has not been to expose deficiencies and problematic attitudes, but to gain expert knowledge.

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The research group considered to include the following criteria when choosing interview partners:

- experts and victims from urban and rural areas
- misdemeanors and felonies
- different working cultures/ routines
- country specific relevant professions and experts involved in model projects relevant for the our research
- different types of victims' support organizations
- victims with different experiences within the criminal justice system - starting from police intervention up to court trial.

3. Interview guidelines

First drafts of the guidelines for the interviews and focus groups were developed by Zoom e.V. and finalized at the transnational meeting in April 2015. Partners translated the guidelines into their national languages and adapted it to national specificities.

The interview guideline for experts starts with information on the interviewee, his/ her professional background and experiences with victims of intimate partner violence (IPV) in criminal proceedings. Information about the EU Directive 2012/29 on victims' rights is given and interviewees are asked about the relevance of the Directive for their work. As an introduction to the issue, reasons for the difference between the number of IPV cases reported to the police and the number of cases that go to trial are explored.

The main part of the guidelines for experts and victims is structured along the trajectory of the criminal justice proceedings and asks for needs and experiences of victims, focussing on specific challenges and burdens, how they are taken into account and how their experiences influence their contribution to the investigation and trial. It covers – as a mental walkthrough – the different stages and actors involved. Starting with the victim's first contact with the justice system, which in general is an emergency call to the police or a police complaint by the victim, it covers the investigation phase and follows the proceedings until the trial and – if it comes so far - a possible sentence. It asks for good experiences/ good practice and explores ideas for improving the support of victims in criminal proceedings.

Besides, the guidelines explore a couple of comprehensive aspects:

- effects of the proceedings on women and how they evaluate them
- expectations of victims towards criminal proceedings
- factors influencing the victims' stance towards criminal prosecution

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- support needs and experiences with support, influencing factors
- proceedings in other legal fields

1.1 Description of interview sample

Interview partners being victims of IPV were found with the help of various DV support services:[47]

- Violence protection centers: Salzburg, Upper Austria and Burgenland
- Domestic violence counselling centers: 24-Hour Women's Emergency Helpline, counselling center of the Shelters for Women in Vienna

The staff addressed women asking whether they would give us an interview; additionally, we presented our project in the online-forum and on the helpline of the 24-Hour Women's Emergency Helpline.

In total, 11 victims of IPV were interviewed; 10 interviews have been coded (with Atlas-ti) and analyzed (the 11th one turned out to be rarely informative). The analyzed interviews lasted between 2 and 3.5 hours.

Victims background

The age range of the victims spanned from 26 to 46 years. Most of them were aged between 30 to 41 years. Referring to their education, the highest educational achievement ranged from compulsory education/ completed apprenticeship to master degrees. Five in ten women had at least a high school diploma. The job situation of the interview partners varied: Half of them were employed or self-employed, living on their own income. The others, except a homemaker who depended on her husband, were receiving unemployment benefits, housing benefits or needs-based minimum benefits, partly in addition to an income out of marginal employment.

All interviewed women were mothers of at least one child. The age-span of the children reached from 4 to 22 years. Six women had one or two children, the others three. With one exception the minor children (4 to 14 years) have been living with their mothers in a household.

[47] We want to thank all DV support services for their commitment and help. Our special thanks also to all women for sharing their story and experiences with us and giving us insights which we otherwise would not have had access to.

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As summarized in table 1, the majority of the interviewees have been living in urban areas. Four were Austrians, six foreigners: three Slovaks and one woman each from Turkey, Croatia and Canada. With one exception all of them have been living in Austria since the 1990ies.

Half of the perpetrators were Austrians, among the others were two Turkish men and one each was German, Kosovar and Egyptian. In most relationships the partners had different nationalities, only three couples were Austrians. Two foreigners had a relationship with an Austrian, one Austrian woman with a foreigner. In four relationships both were non-Austrians.

The age range of the perpetrators spanned from 25 to 55 years, the majority being between 50 and 55 what means – and this corresponds with the analysis of the Viennese public prosecution files – that they were slightly older than the victims. Two men had no completed education, one of them was illiterate. The highest educational achievement of the others ranged from a commercial school diploma to master degrees, the majority having a degree of a secondary school. With one exception all perpetrators were employed. Two were unskilled workers, two taxi drivers. The others were practicing professions from stonemason to engineering, kitchen management to business consulting.

Three perpetrators had one or two previous convictions, e.g. because of robbery and bodily harm, and another one had even nine convictions, for instance because of unauthorized ownership of weapons and bodily harm.

The relationship between perpetrator and victim lasted on average for 11 years; with a range from 2.5 to 23 years. Six interviewees were married to the perpetrator, three lived with him and one woman had a dating relationship with many breaks for about five years. At the time of the interview all women were divorced or had separated from the offenders.

In some cases violence started soon after the beginning of the relationship and in most cases the interviewees endured violence for several years. For three women aggressions started during pregnancy with the first or second child. First they experienced “only” humiliations, which they did not want to notice as such. Over the years violence escalated and they became victims of slaps, beatings, threats of bodily harm, unlawful compulsion and rape.

What concerns protection and support measures, with two exceptions all perpetrators were at least once barred from the premises by the police. In the two other cases, it was argued that victim and perpetrator did not share a flat. Four out of ten interviewees had experienced (several) previous police interventions which did not result in barring orders. As table 1 show, the majority applied for a civil restraining order which was granted in almost all cases; one was declined. All interviewees have received support by violence protection centers and/ or DV counselling services.

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With regard to the criminal proceedings (see table 1), a half of them has already been concluded at the time of the interview, several victims had been involved in previous criminal proceedings against their partners, too. What concerns the most recent cases, three suspects had been acquitted, two convicted, and five proceedings were still pending.

Table 1
Victims' characteristics

	Frequency
Living in urban areas	7
Living in rural areas	3
Austrian victims	4
Migrant victims	6
Barring order issued	8
No barring order	2
Restraining order issued	7
No restraining order	3
Criminal proceedings ongoing	5
Criminal proceedings concluded	5

To sum up: Our interviewees picture in many ways the characteristics of victims we have found in the public prosecution files. So many of them have a migration background, they have stayed for many years in a violent relationship and experienced various types of violence, it took a long time before they looked for help. But the interviewed women differ insofar as all of them finally wanted their partners to be prosecuted and as all of them received psycho-social and/ or legal support. That is, our interviewees represent a well-supported group. Therefore, it is especially interesting, how this group experienced the criminal proceedings. The narrations will not only highlight positive and negative experiences, but also give insights into the effects of support as well as the shortcomings of PP and court which they experienced despite the provision of assistance. Hence, we can learn about the challenges victim-witnesses face during criminal proceedings, what is needed by them and which victims' rights are observed or neglected.

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Presentation of the interviewees

In the following the interviewees are briefly introduced. All names have been anonymized and replaced by fictitious ones; also other information which might hint at the victim's identity was slightly changed.

Anna A. is a 30-years old homemaker (Croatian citizenship) and has one minor child with the perpetrator. Anna had been in a violent relationship with her nowadays ex-husband (33 years old, Austrian) for six years. His offences included dangerous threat and bodily harm. One case is still pending, another one was dismissed. At the first emergency call the police did not issue a barring order; this was done only after Anna had addressed the police a second time. Anna had psycho-social and legal support and a restraining order against the perpetrator was obtained, but later on annulled by the court again. She also reported acts of psychological violence.

Barbara B. (38 years old; Slovakian) is working as a secretary and is mother of three children, two of them are minors. Her violent and threatening ex-husband (54 years old, Moroccan) was accused of dangerous threat, rape, blackmailing and stalking. All cases were either dismissed or the suspect was acquitted. After the proceedings concerning stalking, Barbara fought for sole parental custody in a lawsuit and is now living with her two under-aged children and her new partner; her adult son stays with his father. Barbara also had psycho-social and legal support and has been living in a shelter for half a year.

Clara C. (41 years old; Austrian) is working as a civil servant and has one daughter with her violent ex-husband (44 years old; Bosnian). He came to Austria under the title of family reunion. His visa was extended shortly before they got divorced. He was sentenced to two years prison because of rape and continued violence. Clara had joined the proceedings as a private party, had psycho-social and legal support and had obtained a barring order and a restraining order against him.

Dora D. is a 40-years old secretary (Austrian) with two children. She had been in a relationship with her ex-partner (50 years old, Austrian) for 15 years. Actually, he is serving 1.5 years in prison because of rape. As the common children had been eye-witnesses of the rape they have been traumatised; meanwhile they are getting better as the psychological violence has stopped. Dora had psycho-social and legal support. At the time of the interview a restraining order was still upright.

Ela E. is a 46-years old woman (Canadian), who is working as a part time consultant and is mother of four children, which are all living with her. Up to now the proceedings against her former husband

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(51-years old, tax consultant; Austrian) have not been concluded (accusation of bodily injury). The outcomes of the divorce and custody proceedings are still outstanding, as well as her second application for a restraining order. The former application was denied – one of the arguments was that the couple was not living together any more for three years. She receives psycho-social support by a DV-counselling center and she has engaged a private lawyer. Ela is suffering from a post-traumatic stress disorder.

Frida F. is 45-years old and Slovakian. At the time of the interview she was unemployed, before she had been working in the trade sector. She had been living in a women's shelter for some months, now she is staying with her daughter in a council flat. Frida was in a violent relationship with a 55-years old man (Turkish), she reported him to the police because of stalking, dangerous threat and bodily injury. For the last two offences he was convicted to six months conditional imprisonment. The proceedings because of stalking are still pending. Frida had obtained a restraining order against her violent ex-partner and has been awarded psycho-social and legal support for both proceedings.

Guelden G. has been living in Austria since the age of nine (Turkish, 26 years old) and has a child with her former husband (Turkish, 25 years old). Nowadays they are divorced and she has got sole custody. She is unemployed, before she had been working as a trained retail saleswoman. When her husband had been violent and attacked her, a barring order was issued, and in the following they got divorced. Two years later she reported dangerous threats by her ex-husband but he was acquitted. Guelden had psycho-social support during the proceedings.

Hannah H. is 41 years old and is Austrian. She was in a non-cohabiting relationship with a 45 years old taxi driver (Austrian), who beat her severely. She reported him for bodily injury but he was acquitted, his dangerous threats she did not report. No barring order had been issued; she got psycho-social and legal support and in the interview she said that she would like to begin a psychotherapy, but she could not afford it.

Irena I. is a 40-years old Slovak. She receives the needs-based minimum benefit as she is working under-employed in the gastronomy. Previous emergency calls because of bodily harm and damage of property had not led to barring orders but after the two last incidents the police issued barring orders, and after the very last one also a restraining order was approved. Her former husband (50-years old, citizen of Liechtenstein) was accused for bodily injury, sexual violence, and dangerous threat. The proceedings are still pending. Nowadays Irena is living together with her three children. She had psycho-social and legal support during the proceedings; in the interview she talked about having had a massive sleeping disorder.

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Julia J. is a 46-years old medical assistant (Austrian). Nowadays she is living with two of her three daughters; the third one is staying with her father (who has not been the offender). Although separated for several years, her ex-partner (55-years, Austrian) still acts violently against her and one daughter from a previous relationship. He was accused for bodily injury, property damage, stalking and dangerous threat. The charges were partly dropped and he was convicted of dangerous threat and stalking. There had been two restraining orders against him; Julia had psycho-social and legal support. Julia told us that her ex-partner is still making life difficult for her and that new criminal proceedings because of stalking are ongoing.

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2 Stance of victims towards the criminal justice system

2.1 Expectations with regard to police, public prosecution and court

For most of the interviewees calling the police and involving the criminal justice system was not an easy decision. Most of them needed several years to make this step and they did so only after the dynamics of violence had gotten worse. The foremost motive to do so was protection for themselves and their children. The following statement by Frida represents many others: *"It must have an end eventually. Someday I want to leave the house without fear."* (Frida) For others like Julia it was the worst to have the feeling not being able to protect her children. *"Setting steps for criminal proceedings gave me the feeling, now I protect my kids."* (Julia) It is safety, peace and relief of constant fear what the victims longed for the most.

Safety and protection

> *"Now as he had seen what he did, I thought it would stop. But it did not. He did not hit me any-more, but the psycho terror …"* (Frida)

This quote illustrates that the interviewees hoped violence would end and they could live in peace. The presentation of the interviewees above makes clear that in most recent cases a barring order was issued by the police and that the majority of women applied for a restraining order at the civil court. This reflects that women expected protection by the police and the court. Three interviewees sought safety and protection in a women's shelter. One of them, Barbara, only was ready to file a complaint against her partner after having fled to the shelter.

Several women contacted the police a long time before they finally filed a complaint. They wanted someone to know what had happened to them and the incident to be documented.

> *"When I went into the police department, the man at the police, and I said I need to speak to someone about what my husband did, and he said: 'Are you gonna file a report?' And I said: 'I don't know.' (…) If she had said: 'I can't take your statement without a report', I would have run out of the room, because at that time, it may have been the right thing to do, but I just had no control over what was going on."* (Ela)

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Furthermore, the victims gained information about protection orders, how they would be protected, how to protect themselves and what to do in a dangerous situation. They were assured to call the police whenever necessary what made them feel safer.

Although the victims felt safer when a barring order or restraining order was issued; nevertheless the fear did not vanish. Although most perpetrators respected the protection orders, they succeeded in scaring the victims. Anna, for example, told us that her still-husband always parked his car nearby her flat, but respected the rules. Moreover, as her parents-in-law still had keys of her flat, she did not feel overall protected. Therefore, it is not astonishing that those women whose partners have had only a temporary residence permit wished his visa would not be renewed.

> *"It would be best, when his visa would not be renewed. Then I would have peace. (…) At the moment he is not in Vienna for two weeks. That is wonderful. I am not afraid of leaving the house. I can go out without constantly looking around whether he is nearby."* (Frida)

Guelden G. was satisfied that her ex-partner's residence permit was limited to one year.

The expectations of protection and safety were not always met by the police and the court. Four interviewees told us that they have involved the police (several times) before and no barring orders were issued. The victims expected at least that the police would have reprimanded the perpetrator but *"they only said, you have to solve the conflict by yourselves"* (Anna) or *"He should sleep off his intoxication"* (Irena) According to two women police refused to impose barring orders because they did not cohabit with the perpetrator (any more). Ela's application for a restraining order was also denied by the district court with the argument of non-cohabitation and, additionally, that the victim has stated in the police interview she was not afraid anymore of her ex-partner (Ela).

(Expectations of) Support

Most of the interviewees were surprised about the well-functioning support system. They did not at all expect support by counselling and social services when reporting to the police. That support was provided promptly and efficiently and, in particular, that it was offered pro-actively was welcomed by the interviewees. For Dora it would have been an *"extreme overburdening"* to seek support.

Especially foreign women were amazed by the unexpected support. On the one hand, foreigners often have little information about support systems and on the other hand, the victims' husbands had told them repeatedly (and successfully) that they have no rights in Austria and that no one would

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believe them. Ela, who is married with an Austrian, realised that her fears over many years have been in vain:

> *"I made the statement [on Friday] and on Monday my phone went busy-busy. The youth welfare office called. They said they want to see us, which was good, the lady from the intervention centre called me for the first time and said 'I need to see you' and so as far as I saw we were in the system."* (Ela)

Only one interviewee, Hannah, complained about a lack of support. She expected that she would receive more psychological support while staying in the shelter and afterwards. Hannah also criticised having being passed from one institution to another and that her precarious economic situation was not considered.

Of course the victims expected support by the police when turning to them. As we will see in chapter II.3 most interviewees were satisfied with the police work which went partly far beyond their tasks whereas PP and court were not considered very supportive. Asked about protection measures during criminal proceedings, Clara answered: *"The court does not do anything. If there would not be the support by the violence protection centres one would be quite lost."* (Clara)

Being heard and evaluation of all aspects of the violent relationship

One of the most frequently mentioned expectations was a fair judgement meaning the evaluation of all aspects of the violent relationship by the judge, including prior aggressions of the accused, former barring orders, medical reports etc. It was also expected that documents which proof injuries would be considered properly.

Julia was irritated when she received a letter by the public prosecutor telling her that the criminal proceedings against her ex-partner were conditionally dismissed. She was surprised as she had "*expected to get a letter by the court for a hearing*." (Julia)

Judging the wrong and justice

It is known from research that the expectation of a fair judgement often includes both punishment in various forms (imprisonment and fines) and compensation (Sautner 2010, pp. 261-265). Not all interviewees anticipated a conviction, but all wished that the criminal proceedings should make the perpetrator clear that he committed a crime. *"I did not expect a conviction, but I wanted to have him in front of court. (…) This was very important for me. He should feel, what he is doing is wrong."* (Clara)

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The court should give a clear signal, not necessarily a prison sentence but at least an entry in the criminal record and/ or a punishment on probation for several years. Frida said: *"It would be ridiculous if he would be only fined. Because he really should understand that what he is doing is not normal."* (Frida) Contrary to Frida and Julia, for Clara it would be enough to bring him to court knowing that trials are stressful for perpetrators, too, because they have to justify their behavior and they do not know the outcome. That is, all these women hope that the court clarifies and emphasizes societal norms and that intimate partner violence is a crime. The punishment – in whatever form – is regarded as a matter of justice and fulfils victims with satisfaction; their sufferings are acknowledged by the court. Acquittals are considered unfair by most women (see Irena).

Not all victims want the accused to go to prison, but in severe cases they regarded prison sentences as appropriate. Two of three interviewees whose former partners had been imprisoned because of rape (in two cases) and one for robbery of an old woman stressed that they would have preferred a combination of prison and the obligation to attend an anti-violence training resp. a detoxication treatment. But Dora, one of them, also said: *"I had mixed feelings. On the one hand, I was a bit shocked because of the high prison sentence [1.5 years]. On the other hand, I thought the judgment is appropriate. In hindsight, I think it is the minimum. It is necessary for recovering… for me. And it is important for feeling safe."* (Dora) In her view it very problematic that therapy for perpetrators is only provided during imprisonment but not afterwards. *"Perpetrators need help, too."* (Dora)

A compensation for the sufferings was expected and considered important only by a minority of the victims. As stated above, the recognition of having been victimized is considered much more important. On the one hand, many interviewees thought that the emotional sufferings over years could not be compensated with money and/ or that because of the perpetrator's low income compensation payment would be ridiculously low. On the other hand, compensation was demanded for costs of medical treatment as a consequence of bodily harm.

2.2 Challenges for victims

Victims of violence face many challenges in the process of terminating the violent relationship and (again) during criminal proceedings. Challenge here is understood as an exigency to overcome fears, social and economic barriers as well as the obligation to deal with authorities like police and court.

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Individual obstacles

Self-empowerment is one of the biggest challenges for the victims. Their stories were full of self-doubt, difficulties to take themselves seriously, standing up against humiliation and violence, coping with shame, of fear of further violence, of their economic situation and future in general. One interviewee quoted a friend summarizing the process of self-empowerment: *"A woman endures too much until she comes to the conclusion that there is no hope for her marriage."* (Anna) The daily routine gives stability whereas the outcomes of resistance are highly uncertain. Traditions and gender roles are further factors hindering self-empowerment. The very same interviewee said that she had to regain self-respect (Anna).

With regard to challenges only issues about children had a higher importance than self-empowerment: A deeply ingrained conviction that children need a father or should be raised in a "complete family" makes women hesitate for a long time whether they should leave a violent partner. When having made such a step – for example by calling the police – it is the fear what might happen to the children, their bonding to their fathers, their pleas to go back, what makes it hard to stay firm. Victims often talked about their children's emotional distress because of a separation and consequences like sleeping disorders, not eating any more, blaming the mothers for disrupting their social networks (e.g. when a change of school is necessary). All this makes them think over their decision again and again and causes feelings of guilt.

Additionally, perpetrators misuse children to exert pressure on their mothers and as a means to control the victims. Blaming the mothers for the changes in the children's lives is another strategy to challenge the children's loyalty. Often fathers cut off the contact to their children what is also burdening them.

Visiting rights of fathers often cause problems for ex. when they do not keep to the agreed schedule for fetching and bringing back the children. When the father has visiting rights only under surveillance[48], in particular the costs seem to be a problem. It is not self-evident that the father bears the costs as Julia's experience shows. Women whose ex-partners are foreigners constantly fear about kidnapping the child. In cases of restraining orders which prohibit the perpetrator to contact the victim, problems concerning his visiting rights were mentioned, too. For not violating the restraining

[48] The father can meet his child in a so-called visitor cafe and a social worker is present during this time. Another kind of arrangement is that the child is brought to and fetched from the father by a social worker.

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order either a third party has to be involved who brings the child to the father or specific arrangements have to be made, but this will be discussed in more detail later on.

Due to the above mentioned emotional burden because of separation and/ or witnessing violence the mothers arrange psychological support for their children. Several interviewees are afraid that their children cannot cope with the situation and with what they have experienced. Dora, whose children witnessed her being raped by their father, said: *"That I do not know whether they can master it, that they are burdened with such a great sadness, this is a big burden for me. In fact, it is the biggest psychic strain of the entire story."* (Dora) Besides the emotional burden, therapies are time consuming (also for mothers) and again a matter of costs. The therapeutic institution is only open during regular working hours which are conflicting with Dora's working time, therefore she had to reduce the number of therapy hours for the children. Julia, her daughter, has been attending a children's therapy group for one year; the social insurance paid only for ten hours, now Dora has to pay for the costs what she can hardly afford.

Most of the women had to face a very precarious economic situation after separation. A few admitted that the relationship provided financial security and therefore it was hard to separate, others expected that the partner would misuse their economic dependency. *"He is not paying child support. As soon as I'd call the police I know exactly what's gonna start happening and two weeks later, the next month: no money."* (Ela) This is not an isolated case. Also other interviewees did not receive alimony after separation. Due to a well-established welfare system, the victims were financially supported by the State or by communal institutions (alimony advance, social help etc.), but nevertheless organizing the support took much time and many bureaucratic ways were needed, as the following quote illustrates:

> *"I did not have money at all, until I got unemployment benefits. (…) He received the child allowance and I had to apply for a transferral to my bank account. It took four months until they did so. Then I applied for needs-oriented minimum income at the social welfare office. It also took four months until it was granted. And we were only able to move to this flat [after staying in the women's shelter] with the support of the city administration. I got a state-subsidized apartment and I obtained subsidies for buying furniture and other household stuff."* (Frida)

These quotes show the victims' and children's economic precariousness and how important the welfare system is for gaining independency from the violent partner.

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The separation from a partner also causes many bureaucratic ways; in situations of psychic stress due to violence they are an additional burden. As the above quote by Frida illustrates, the ways are numerous, and there are even more when the victim and her children move to another place (e.g. a new school or kinder garden has to be found), when the children need psychological support, when one cannot afford the flat, when one wants to have sole custody etc. Additionally, often deadlines for applications or appeals exist which must not be missed. Several interviewees expressed how important the assistance by violence protection and counselling centres was with regard to taking over bureaucratic ways or at least helping to deal with them.

The social network can be another additional challenge instead of offering backing. So some victims' families did not support their decision to separate what led in some cases to (at least temporary) splits. For some, like Anna, it was burdening that her social environment did not want to hear about the marital problems and her exposure to violence. Different, but also difficult, it was for victims whose friends, siblings and parents did not understand why they stayed in violent relationships. This led sometimes to silencing the victim, too. Some of the interviewees were denounced (mainly by the aggressor's family) for exposing the aggressor to criminal proceedings and (possibly) damaging his future. When the perpetrator is imprisoned, in particular, the family often lacks understanding. *"In the beginning, they were not at all aware what such a violent act implies. "* – so Dora and she added: *"Of course they had condemned the deed, but at the same time, they wanted to blame me, too. Statements like 'Something must have been wrong in the relationship for a long time' made me really angry."* (Dora) It was also Dora who addressed another aspect of pressure deriving from the social network. She and her former partner work in the same professional environment where people know each other.

> *"You do not want everyone to know what happened and that the ex-partner is imprisoned and you do not want to be asked 'How is he?' In consequence you will retreat from your social network. Sometimes I am looking forward to his release, because then I can deal with it differently in my social environment."* (Dora)

But not all friends and family members are hindering victims to terminate the violent relationship. Many interviewees spoke about friends and sisters who supported and encouraged them. Without their friendship and understanding some interviewees would not have dared to seek help, to involve the police and they would not have endured the process of separation and the criminal proceedings.

All the above described aspects made seeking help a challenge, too. The challenge consists in overcoming shame, fear and also in the ability to accept support. Most interviewees did not tell anyone

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about the physical and psychic violence experiencing by their partners for a long time. *"I was so ashamed. It was terrible. I am a perfect homemaker, a perfect mother. I am beaten up? How can that be? Women like me are neither bashed by their partners nor beaten up. It needs a lot of courage to admit that this has happened to you."* (Anna) This young woman thought about what she did wrong for a long time before realizing that she is not to blame for her husband's violence. This confession illustrates the persistence of societal norms in which women are still held responsible for the functioning of relationships. And even when the first step was made, it was not easy to do the next. Following the advice of a police officer Barbara contacted the violence protection center for getting information; nevertheless, the decision to seek refuge in a women's shelter took another several months. *"I really had to force myself, one does not know what will be, how long does it take and what the outcome will be."* (Barbara) The narration by Irena who did not contact the violence protection center out of fear is similar. Only a promise to a dying friend gave her finally the strength and courage to do so. That is, it is not necessarily a lack of information that prohibits women from seeking help. Julia said that she had got a lot of information by the police and yet would not have known whom to approach. She related this to her difficulties to accept support: *"I prefer to resolve my problems myself, because I think I am a burden for others when seeking help. It has always been like this. Then, I had to ask for help and I had to learn accepting it."* (Julia)

To summarize, the interviewees have to deal with a variety of pressures and individual constraints, which affect not only the victims but their children, too, and which influence decision-making as well as the process of separation. Listening to the interviewees, it seems that the perpetrators can shirk from their responsibility. Emotional and financial problems as well as structural shortcomings (e.g. lack of adequate and affordable support for children; long bureaucratic procedures) are loaded on the victims' shoulders.

Challenges by the system during criminal proceedings

> *"Everything was difficult for me, it was somehow a whole package: to call the police, the divorce, at the police, at the court, the questioning, to recall everything what had happened over the previous years. At the same time, it was relieving, too, to speak about it. I always told myself, it can't get worse. You will get support and it will be better."* (Irena)

This quote illustrates very well that each step in the course of terminating a violent relationship is highly demanding for victims. Focusing on criminal proceedings and the situation at court the interviewees addressed several topics which were difficult to endure.

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All victims understood that judges have to conform to legislative standards and that they have to acknowledge the rights of the accused. However, it is very important for them to be recognized as a victim during all stages of the criminal proceedings and especially by the court. In the first place, being acknowledged as a victim means being believed. Anna expressed her frustration about doubts about her credibility. At first, the police did not bar her partner from home after he had detained her; she had to go to the police a second time before protection measures were set. Later on, the interrogation by the judge reinforced the feeling of not being believed:

> *"I know that I am telling the truth. I know how much I had to endure. Having to convince the others that one is telling the truth is humiliating. I do not expect that I am believed when crying. (…) But when one feels like being the criminal, it is tremendously exhausting. And when one is not believed because of my appearance …"* (Anna)

Other victims also stated that they felt treated like being the perpetrator: *"There is one who causes stress, but he is not hindered to do so. In the beginning I always had the feeling that I had to justify wanting protection despite thousands things illustrating what was going on."* (Julia)

Anna told about repeat warnings by the police to be accused of libel when not telling the truth: "The police officer said, 'This appears staged. You know that you risk a complaint because of libel when you give false evidence." (Anna) This evoked the impression that it is assumed the victim wants to harm the partner or wants to benefit from a complaint with regard to divorce or custody for children.

A highly important issue for a victim is being regarded as credible, and their credibility is at stake when their stories are contradictious. But for the victims the necessity to recall everything what happened in detail is very demanding, especially in cases of repeat violence, and so they often cannot provide exact dates or mix up various incidents.

> *"I think it is the feeling of total helplessness and the many fears which become overwhelming during the police interview. You are interrogated for one and half an hours or even more and asked the same again and again: 'When did it happen? How was it? What was first?' This is tiresome and extremely exhausting. All together makes you feel like in a vacuum."* (Julia)

Interviewees who are stalked by their ex-partners found it very challenging to note each incident over a long period and they were frustrated when the evidence provided was not enough for a conviction. Even more frustrating it is when witnesses other than the victim are not heard by the court. But most often is criticized by the interviewees – as already detailed in chapter II.2.1 – that not all indicators of the suspect's violent behavior are considered by the court. According to Barbara, the

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judge did not reflect the accused's prohibition to enter the child care center or that accompanied visits of children also had failed.

The presence of the perpetrator and of other audience while they were interrogated by the court was another challenge for some victims. Altogether three victims stated that they did not want to testify in presence of the perpetrators and they asked for separate questioning at court; two of them the right was granted. Another one requested the exclusion of the public what was accepted.

Although all interviewees received psycho-social and/ or legal assistance, some interviewees addressed their ignorance concerning criminal procedures in general and the state of criminal proceedings in their particular cases. Some victims did not know how the system works, what is coming next, and sometimes even could not tell us what the perpetrator was accused for or what was the final outcome. *"I still do not know how I could get insight into the proceedings. It is stupid, but I have not called anyone for information."* (Julia) The ignorance increases victims' feelings of insecurity and fear.

The interviewees also criticized judges for their lack of empathy. They would not realize that the court is a strange world for victims, that victims are nervous and that there are numerous challenges for a victim like testifying in front of the offender, answering precisely, not being allowed to react on the suspect's narration of what had happened.

Representative for many other interviewees, Barbara B. is quoted here. Barbara who was again threatened by her ex-partner immediately after the divorce suit reported this only the day after:

> *"The day after I reported to the police and in the trial I was asked why I did not inform the police earlier. I tried to explain that I was in a state of shock, but they did not believe me. There I felt treated like a perpetrator, not as a victim. Unfortunately, it was not the first time that this happened to me. The judge was very strict. Up to a certain degree I can understand this. (…) I spoke quietly, I was nervous. I did not find sympathy from her. She kept saying I should speak up otherwise my statement could not be documented. Judges do not understand that someone is nervous at court. They think to testify at court is the most normal thing on earth."* (Barbara)

That is, victims missed empathy and politeness of judges and were especially irritated by their impatience and their rude way of interrogating.

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3 Experiences with criminal proceedings

3.1 Police interventions & inquiries

The interviewees' experiences with police are rather diverse: The quality of intervention depends a lot on police officers' know-how and sensitivity and it seems that interventions in the country side are still more problematic than in urban areas, but also the standards are not always observed.

To start with the bad examples where no protection measures were set by the police: After a detention – her partner had taken Anna's keys and locked her up in their common flat – the police only requested the offender to give back the keys to her. They neither interrogated the suspect and the victim separately nor did they impose a barring order, nor report the detention. Anna did not receive any information about her rights or addresses of DV counselling services. The perpetrator felt confirmed in his action because the police did nothing. After this police intervention the desperate victim called a DV counselling service which advised her to go to the next police station and to file a complaint. At the police station another officer again did not believe her and warned her that she could be alleged of libel. Only when she started to cry, the police officers changed their behavior and made a report. This happened in Vienna.

A similar experience had Irena, who is living in a rural area. Although the police must have noticed the damages done by the perpetrator (garden destroyed) and the emotional consternation of the victim, her children and her mother and despite the drunkenness of the perpetrator they neither reprimanded him nor barred him from home. Irena was not informed about her rights; she did not get any information about protection orders or DV counselling services. After another incident the very same offender was barred from home but no report because of bodily harm was filed. Only the Family and Youth service that had been informed by the police advised Irena to take pictures of her injuries.

Also victims' rights of another interviewee, Hannah, were not respected when she went to the police station in Vienna after having realized that her partner had filed a complaint against her although he had beaten her so severely that she needed medical treatment. She wanted to report this, but she was not asked into a separate room, instead she was interrogated publicly in the general reception room. Moreover, she had not been asked whether she preferred a female officer for the interview. No barring order was issued and no information leaflets were handed over to her. Information about DV counselling services she received only from the hospital.

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Ela and Barbara, two interviewees from urban areas, made good experiences when they addressed the police wanting them to document informally violent acts they had experienced by their partners. According to the Austrian laws the police must report any violent act they get knowledge of. Both women stressed in their interviews that they had been asked several times to report officially. They were sent to specialized officers who informed them about their rights and possibilities as well as about protection measures. Nevertheless, both did not want to start proceedings against their partners at that point of time – one of them needed one year for the decision to file a complaint against her husband, the other one three years. During this period of time the specialized officers kept contact with the victims. The victims considered the behavior of these police officers positive without any reservation. They felt understood and therefore gained trust into the police.

Also other aspects of these two examples illustrate good practice what will be shown in detail in the case of Ela E., who needed three years for her decision to report her husband to the police. After another violent attack Ela went to the doctor who documented (also with pictures) her injuries; afterwards she went to the police to make a statement. There she was informed that she would get an invitation for an extended interview. Due to her request this interview was conducted by the female police officer with whom she had already spoken several times. While being asked in German by the officer, the interviewee could tell her story in her mother language English. She was asked in detail about her marriage and the history of violence. After the interrogation the officer made sure that she understood the interview protocol before signing. Although the victim had already a medical report about the injuries, the police again took pictures of them. Ela was surprised how quickly the system started to work. A barring order against her husband was issued. Nearly without delay she got a call by the intervention center and by the Family and Youth service. The following days were busy with appointments with these services and the interview with the specialized police officer, who had contacted the intervention center to discuss further proceedings before the extended interview took place. Furthermore, the police made an unannounced inspection whether the barring order was followed. At this visit the officers gave further information to the victim stressing that she had to apply for a restraining order within the next two weeks when she did not want the perpetrator to get the keys back. They also urged her to go and see the public health officer for securing evidence.

These short depictions of various cases show the diversity in quality of police work. But overall, the majority of interviewees were rather satisfied with the support and measures set by the police. Most narrations illustrate that police respected the victims' rights, took care for their safety and collected evidence. In the following, we want to analyze in more detail in as far the requirements of the *Di-*

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rective 2012/29/EU and the Austrian *Violence Protection Act* are met by the police, what works, where problems are and which factors influence police work in a more positive or negative way.

Victims' rights: to understand and be understood – the right to receive information

According to Art. 3 and 4 of the *Directive 2012/29/EU*, member states shall ensure that victims understand the ongoing proceedings from the first contact with the authorities (Art. 3) and that they receive information "without unnecessary delay" (Art. 4). The above described cases show already that this right is not always respected when victims contact the police for the first time, but the majority said information about their rights (e.g. to refrain from testifying, possibility to receive legal and psycho-social support) was given verbally and/or handed over to them during the extended interview at the latest. The bigger issue seems to be whether the given information was understood or not. The following quote from Clara illustrates some factors which cause a lack of understanding:

> *"I have to admit, I was so excited that I could not capture the information given. I had to read a lot, because before the interrogation one has to sign a declaration, but I could not remember most of it. I got a copy of my statement and of the documents I have signed which included the declaration that I have read everything, that I have got information. But you cannot recall everything. You are overburdened with the situation or at least I was. The police officer was very nice and he explained me the most important issues. But I think this depends on the officer."* (Clara)

And Clara continues that the written legal information was difficult to understand.

> *"First of all, the information was printed in very small letters, mind-boggling information on a very small space. One cannot capture it. Secondly, as far as I can remember, many paragraphs have been listed, the content of which you do not know. In exceptional circumstances this is really, really hard to capture. According to my opinion, this information should be short and precise, summarized in a few key words one can recall."* (Clara)

That is, although information is given, one issue of Art. 3 – *"that communications with victims are given in simple and accessible language, orally or in writing"* – is not met in full extent. As Clara has stated, the oral explanations depend very much on the capacity of the officer and therefore the danger is given that victims do not know their rights and about the possibilities of support. Clara is aware of possible legal consequences when legal information is not precise enough, but the way how it is handled transfers the responsibility to the victim. She suggests an additional leaflet which provides

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concise information written in bigger characters and where the most important issues are highlighted. Other interviewees, like Dora or Julia, also pointed at these problems. In particular, in situations of stress it is way too much to keep all information. Therefore, all these legal information at the first contact are somehow in vain. It should be ensured that the victim's rights are explained several times by different agents, as it is done when the victim is supported by specialized police officers and violence protection and counselling centers.

> *"I got information leaflets from several organizations. They provide more or less the same information, but this is somehow assuring, comforting that there exists a net. That is very good. I did not expect it. I was really astonished and it was a good experience."* (Dora)

The right to understand and to be understood is addressed in several articles of the Directive. Especially, a focus is laid on the provision of interpretation and translation (see Art. 7) for victims who do not speak the national language. Six of our interviewees are no native speakers, but most of them have been living in Austria for many years and, therefore, are able to communicate in German language. None of them requested an interpretation service at the police (or at court). But as some experiences show, an otherwise good command of the national language can deteriorate in situations of emotional distress and may lead to misunderstandings with fatal consequences. Ela, her mother tongue is English, was interrogated in German language by a female police officer and Ela was allowed to answer in English. Before signing the interview protocol the police officer reviewed the whole protocol together with Ela. In this protocol was stated that the victim is not afraid of her still-husband anymore. Later on, when her application for a restraining order was declined[49], Ela realized that this was a misunderstanding or at least an abbreviation of her statement:

> *"Honestly before, three years ago I was definitely scared of the system because he would tell me 'I am going to take the kids away from you.' (…) I was scared that the youth office was going to take my kids away from me when actually he was the one doing the stuff. And because I'm not Austrian, he said 'they are going to kick you out, you know?' (…) But the Austrian system is good and because I saw that, I told police what had happened and I did say in my police interview: 'Now I know I can call the police, I am not scared of him anymore'."* (Ela)

[49] This was not the only reason why the application for a restraining order was declined. The judge argued that it was not necessary because the perpetrator had moved out of the house three years ago.

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She meant to say that at this point of time she understood that her still-husband always had tried to worry her by pointing out her status as a stranger who has no rights in Austria. As this is not true she can now call the police as they will not take her children away from her. But nevertheless, she was still afraid of her husband's violence. This misunderstanding might have been detected, if the victim would have been in full command of the German language.

In Art. 6 of the Directive *"the right to receive information about their case"* is laid down. This includes the right to be informed about the criminal proceedings (e.g. its state, decisions to terminate or prosecute, final judgments, the release from custody).

Crucial for the victim's safety is the information whether the perpetrator is detained or released. Frida, for example, was immediately informed when her ex-partner was released from a short-term detention, but experiences of other victims indicate that the information chain does not work properly in all cases. As Dora wanted to leave the hospital, where she was transported to while the police intervention was going on, she did not know whether her partner was still in the flat.

> *"I was still at the hospital and I said: 'I would like to go home now and I would like to know whether he still is at home.' It was impossible for them to find out. The police argued that they are not allowed to give this information. It was scary for me that I did not know."* (Dora)

Finally, she was informed that the perpetrator was barred from home and was in remand of custody. Her relief lasted only for a short time, because as she wanted to know later on, if he was still detained she again got no information for a whole day: *"I thought, they have to release him after twelve hours and I panicked. Total panic, because they did not find out immediately, and it was weekend. This day was horror."* (Dora)

Another victims' right is "to be accompanied by a person of their choice" (Art. 3). One interviewee made use of this right when filing a complaint at the police. The possibility of being accompanied is highly appreciated by the interviewees. It was stressed that it was important to be calmed, to have a supporter who makes sure that victims' rights are respected (e.g. not to meet the suspect while waiting for testifying). Barbara, for example, said that she would not have been able to file a complaint without the support of the women's shelter.

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Victim's protection

The interviewees have chosen different ways to report violence by their (former) partners to the police: they set an emergency call; they went to the police station; they informed police via email. In one case each the police were informed by a hospital and by a neighbor. In the previous chapters it became already clear that the victims were not always satisfied with police interventions. Four out of ten interviewees called the police even several times but none of the interventions resulted in a barring order and/ or reprimand of the perpetrator. Despite several indicators of further risk of violence (e.g. previous protection orders, damaged property, aggressive behavior of the perpetrator) the police either did not expect imminent endangerment of the victim or deemed a barring order not necessary because victim and perpetrator did not live together. In total, against six perpetrators a barring order was issued at least once; one of them was put in pre-trial custody. [In two cases neither a barring nor a restraining order was imposed.] Notwithstanding such negative experiences, eight of ten victims evaluated the encounters with police positively. Irrespective whether barring orders were imposed or not, the victims had, at least finally, the feeling that police took the case seriously. *"But the police bothered about my security very much. They never just said good bye after an interview. They gave advice how to protect myself. They recommended calling specific counselling services. I have received a lot of understanding at the police, but not at court."* (Barbara) The majority of interviewees said that they got safety tips by specialized police officers; in particular, they were advised not to hesitate calling the police again. Specialized police officers called victims from time to time; this again showed the interviewees that the police bothered about their well-being. Furthermore, having a specialized officer at hand made it easier for interviewees to contact police. Knowing that several authorities work together contributed to the feeling of safety, too.

A barring order should be controlled at least once within three days after its imposition. In most cases where barring orders were issued it was controlled – so the interviewees. These checks increased again the feeling of safety: *"The police checked the house and patrolled in the area several times during day and night. I felt safer then, although I was still afraid."* (Irena) These checks had mostly been used by the police to provide again legal information to the victim and to give her security tips.

Problematic seems to be the right of perpetrators to fetch personal belongings from home after a barring order was issued. This is sometimes misused by withdrawing shared property (money, savings books, gold coins) or upsetting the victim anew. Anna was troubled because the police officers did not intervene, when her partner wanted to take away gold coins. According to Anna, they just said, 'that is none of our business'. The following quote from Ela vividly illustrates that police officers

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do not always just accompany perpetrators to fetch things from the house; in this case Ela's husband showed them around like visitors.

> *"And I went into the room and gave him his jacket and he had the doors opened again to all of the kids' rooms, showing the police our house. This is my house, these are my children, and I looked at the police and I said, 'He is playing a game with me and he is playing a game with you.' (…) I called the police station the next morning and I said, 'I didn't think he could come over just because he wanted to.' And they said that will not happen again."* (Ela)

Excursus: Restraining orders and problems of controlling

Restraining orders are an instrument for long-term protection and although not being issued by the police they are addressed here as they touch police work, too. Contrary to barring orders which can be imposed without the victim's agreement, victims have to apply for a restraining order at court. In total, eight of ten interviewees filed an application at least once. In one case the restraining order was abandoned later on and in another one, namely Ela's, the request was declined by the court. As mentioned above, as a consequence of a misunderstanding it was written in the police report that she was not afraid of her still-husband anymore. Moreover, the judge argued that they couple did not live together anymore and that therefore Ela was not at risk of violence. Talking about the judge's decision, Ela indicates that he might not have understood the situation and that it is difficult to describe the circumstances in a form:

> *"I do know that the judge had the [restraining order] form that I filled out, which was very comprehensive. There might have been good reasons for a judge not to grant a protection order because he doesn't live here for three years and it was written in the protocol that I am not scared of him anymore. (…) I was never in a hospital or near of death, but does it mean it's not as bad? And in fact it's worse sometimes because what he's done during the last three years had made us all feel like animals in our home. That's very hard to communicate, when it's literally black and white: 'Does he live there?' 'No.'"* (Ela)

Another problem evolved for Frida. The restraining order which forbade the perpetrator staying at certain places as well as contacting her was issued for the address of the women's shelter, where she lived at this time. Several months later – Frida did not live in the shelter anymore – her ex-partner stood in front of her apartment and shouted at her. When the police came the perpetrator had left, but he called Frida while the police was present. That is, the perpetrator violated the restraining order twice. And this was the outcome according to Frida: *"[The police] left and half an hour later I got*

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a phone call that they are not able to do anything against him because the restraining order is issued for another address. This is a complete nonsense." When Frida went to the police station to report another violation, the officer sent her away saying that this is not his business whereas at another occasion, she was assured that the perpetrator would be fined.

Especially with regard to perpetrators who harass their former partners with repeat phone calls the police seems to have little room for manoeuvre. Both Frida and Julia complained in their interviews that in this respect some recommendations by police and civil court are short-sighted and/ or that the burden of terminating this form of violence is laid on their shoulders. The police advised them to change their phone numbers and both made the experience that doing so is not useful, because the perpetrator either finds out the new number, or calls the victim at her work place or puts pressure on her children. When Julia was told that three text messages per day are not enough to be considered as stalking, she said:

> *"What else is it, when one gets text messages every day, when one is called in the middle of the night? I have pulled off the landline phone, because he had called at two o'clock in the morning, at three o'clock, at five o'clock. It was terror. Yes, I can lay the receiver besides. But, it is my life which is completely hampered. (…) When applying the first time for a restraining order, I was advised to change my phone number. I said: 'How often shall I do this again. It costs me about 50 to 60 Euro each time. Who does refund me these costs? Why should I change the number, only because no one tells him to stop this?* (Julia)

The narrations of Julia and Frida illustrate the burden of this kind of violence and how much it affects the daily lives not only of the victims but also of their children and work mates; they also show that regulations against stalking are insufficient.

The Directive 2012/29/EU states in Art. 8 and 9 that the member states shall ensure that victims have access to victim support services free of charge and that the referral to them by competent authorities is facilitated. Austria fulfils these obligations to a large extent: With the introduction of the Austrian Violence Protection Act in 1997 so-called intervention centers (now mostly: violence protection centers) have been established all over Austria on the one hand, and the referral of victims to these centers as well as to family and youth services (when the victim has minor children) after barring orders is obligatory on the other. Without any exception, in all cases where a barring order was issued the violence protection center was informed and when minor children were involved also the family and youth office. At the same time this means when no barring order is imposed the victims are not referred to a violence protection center. Then it is up to the victim to contact such a center.

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In such cases, information given about the possibilities of support in the course of police involvement is essential. The narrations of the interviewed women are full of praise for the received psycho-social and legal support by violence protection and other counselling centers. In unison, they appreciated their help, because the staff members of the centers explained everything, gathered information and documents at the police, said what had to be done next, took care that deadlines were not missed, informed victims about possibilities to improve their socio-economic situation, encouraged and motivated them to stand firm. *"Friends would never ever be able to give such support." (Guelden) and "I would never have gotten through it (…), if I didn't have the police and the family and youth office and definitely the* 24-Hour Women's Emergency Helpline." (Ela) These quotes express very well, how important referrals are and also the interaction of the various players. That the intervention centers seek pro-actively contact with the victim is essential, too. Due to the emotional and physical overburden, many victims would not have the strength to seek additional help.

Collection of evidence

The collection of evidence is very important for bringing a case at court and the outcome of criminal proceedings. One of the most important measures regarding the collection of evidence is the questioning of the victim and other witnesses. That is, several articles of the Directive are relevant here: Art. 10 codifies the right of the victim to be heard and Art. 18 and 20 state that victims and their family members are to be protected *"from secondary and repeat victimization, from intimidation and from retaliation, including against the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying"* (Art. 18) and that interviews should be done *"without unjustified delay"* and be *"kept to a minimum"* (Art. 20). Furthermore, in the Austrian Violence Protection Act it is laid down that victim and offender have to be questioned separately.

As described in chapter 2.2 ("Challenges during criminal proceedings"), for most interviewees testifying was a huge challenge and connected with fear. With regard to police interviews the victims drew an overall very positive picture. However, when looking at various occasions and different stages of police interventions the picture becomes more faceted. Some interviewees made at least once the experience that the police had not acted according to the standards after former incidents: Two women were not separated from the perpetrator during the interview at the incident site. One of them had to strive for filing a complaint (she went to the police station after the first intervention) and the other was not summoned to the police station for an interview despite clear signs of violence. Another woman was questioned in the general reception room of the police station after hav-

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ing filed a complaint concerning bodily harm. Moreover, she has not been asked if she wants to be interrogated by a woman. As these women had made positive experiences with police officers, too, they related the negative ones with the respective persons ("it depends on the person"). But another aspect might be training and specialization; we will come back to that later on.

According to the Austrian law victims of domestic violence and sexual violence have the right to be questioned by a person of the same sex (see also Art. 23 of Directive 2012/29/EU). This right was observed in all cases except one. Another woman did not mind being interviewed by a male officer. In a few cases a specialized "violence protection officers" conducted the interview. Most women were interrogated shortly after the incident; one was questioned two weeks later and another one complained that the interview took place only three weeks later.

Although all women described their police interviews as difficult, demanding and exhausting, most of them also stressed that the police officers were sensitive, supporting and polite. Representing many other voices, Barbara's experiences with her first police interview are quoted:

> *"The female police officer was very sensitive. She explained that I can take my time whenever something is difficult to tell. She asked very intimate things concerning being raped, but she responded in a good manner to my narration. It was not easy, but I managed. I was able to tell everything what I wanted to tell."* (Barbara)

Dora (and others) pointed at other important aspects of interviewing and evidence collection:

> *"A female officer conducted the interview. That was quite good. She asked the right questions, I have to say. Because in the very moment one might not think about certain aspects and incidents which are necessary for the reconstruction of the crime happened." Later on she added: "I had the feeling she knows that I am traumatized."* (Dora)

That is, they were guided through the interviews, the officers' sensitive and relevant questions gave them confidence and took off the fear to forget something important which might cause negative effects for the outcome of the criminal proceedings. So it seems that most police officers did their best to avoid repeat and secondary traumatization; repeat interrogations of victims by the police did not happen. When a victim reported another crime it was very helpful and relieving being interviewed by the same person as during the previous criminal proceedings: The police officer knows the history of violence, therefore she/ he can evaluate the situation better and some questions need not to be asked again.

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The overall positive memory of the interrogation partly also relates to the fact that the victims stayed in contact with the officers after the interview. They cared about the victim's safety, provided information and were always available when needed.

With regard to other evidence collected by police, in most cases police took pictures: from injuries, property damages as well as of text messages and lists of phone calls in cases of stalking and dangerous threat. Furthermore, the police advised injured victims to go and see the public health officer for medical documentation, even so when the injuries had already been documented by a hospital or another doctor. In one case the victim handed over to the police a USB memory stick with all text messages of the perpetrator. (The public prosecutor finally filed a complaint.) In a few cases the police also summoned other witnesses for an interview. Children (13 and 17 years) were only interrogated in two cases, in one of them the daughter herself was affected of stalking by her step-father. In chapter II.4 we will deal with the outcome of criminal proceedings and the role of evidence collection in more detail.

3.2 Public prosecutor

The victims' experiences with public prosecutors (PPs) are rather limited as most of them were only confronted with PPs when testifying at court. Therefore they did not play any role in the victims' narrations and the interviewees had to be asked explicitly about the PPs' role. The general tenor in the interviews is that the PPs did not seem to be very "committed" as they kept silent and did not intervene during contradictory interrogations and trials.

Those women whose partners' cases were still pending at the time of the interview did not know at which stage the proceedings were. Even for interviewees who are supported by violence protection centers or similar agencies the judicial system seems to remain confusing and blurred:

> *"I honestly don't know. I mean I got a letter and I said: "What is this to do with?" and they [intervention center] said: „That's just for you to know that it's in the court system, he might have to pay a fine." I don't know. I really don't know what the status of that case is. I don't know what normally happens, either."* (Ela)

The right to review a decision not to prosecute (Art. 11 of the Directive) was not used by any of the victims.

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3.3 Experiences at court

In general, most victims only get in contact with a judge during their interrogations at the criminal court. Except for those who joined the criminal prosecution as a private party, they have to leave the court room after testifying. A few interviewees met a judge before the actual trial when going through a contradictory interrogation.

The interviewees had much more experiences with judges at the family court due to their applications for restraining orders and/ or children's custody. Therefore, compared to the victims' narrations about the criminal court their experiences at the family court were much more dominant in the interviews. This is not surprising as there the women are not only witnesses, but parties in the proceedings. Furthermore and probably more important, the victims' emotional involvement is much stronger as the topics at the family court are long term protection (by restraining orders), the regulation of parental custody and divorce.

In the following we focus on the criminal court. Much has already been said concerning the judge's behavior towards the victim-witnesses (see chapter II.2.2). Here we will focus on the tasks of judges and how they fulfil them from the point of view of the victims.

Victim's support at court

Our interviewees belong to a well-supported group: Eight out of ten received psycho-social and legal support by intervention centers or women's counselling centers. Another one had engaged a lawyer by herself before; and what concerns the last one the reasons are not known. That is, the situation of non-supported victims might be worse. All interviewees emphasized that without the help of these organizations they either would not have been able to stand the proceedings or it would have been at least more difficult for them. Therefore all interviewees recommended other victims to turn to and accept the help of DV organizations.

The right to legal aid – as stated in Art. 13 of the Directive 2012/29/EU – has therefore been granted for the majority of our sample. But also those receiving "only" psycho-social support felt very well supported.

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Evidence collection and acknowledgement

In chapter II.2.2 has already been mentioned that judges did not consider aspects which indicate the aggressiveness of the accused (e.g. previous barring orders; prohibition to see the child alone). So, for example, interviewees did not understand why former barring orders or dismissals by the public prosecutor were not considered for the court's decision. This is how Barbara put it:

> *"Although my lawyer pointed out several times that my ex-partner is not allowed to enter the child care center and that the accompanied visits of the children (visit-cafes) failed because of his aggressive behavior, the judge kept saying: 'We are focusing on the incident of dangerous threat. Everything else is irrelevant'."* (Barbara)

Some interviewees criticized that no steps were taken by the judge for the collection of further evidence. From their point of view they should have ordered, for example, telephone surveillance or a printout of text messages which would have proved harassment over a long period. Others had the impression that existing evidence (e.g. medical reports about and pictures of injuries; printouts of text messages) was not considered properly by the judge.

Julia expressed her disappointment that she was not heard at all in a case of bodily injury. She expected so as it was not the first time that her ex-partner acted violently against her and others; several barring orders were issued because of violence against his mother and sister before. Furthermore, although a diversional measure was set by the PP, this was not considered to be appropriate. The critique of not being heard also suggests that an interview might have led to another decision.

> *"The outcome was a diversional measure. I was not heard at all. The police had sent me to the hospital and there my hematomas were x-rayed. Nothing was broken, but I had hematomas and I had a contusion of the shoulder. However, it is more than just nothing."* (Julia)

Not always other witnesses than the victim were additionally summoned for testifying at court. In Barbara's case of stalking, for which she named eight witnesses, none of them was interrogated. Therefore, she could not understand that her ex-husband was acquitted because of lack of evidence.

But other interviewees made the experience that the court acknowledged the evidence provided to a large extent. Clara showed several medical reports which documented the consequences of her husband's violence – medical reports about physical injuries but also confirmations of psychological treatment because of depression which arose from intimate partner violence and the need of rehabilitation. Although a medical proof of rape was missing Clara's ex-partner was sentenced because of rape and continued violence. That is, the judge considered the various medical reports and the vic-

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tim's statement reliable enough. In Clara's case as well as in others the court summoned other witnesses (e.g. children, staff from a women's shelter, the psychiatrist of the suspect), too. For Dora it was very relieving that she did not have to testify at court. The public prosecutor and the judge deemed it not necessary because of the medical report and the perpetrator's confession.

Some disappointment about the proceedings' outcome was diminished by an understandable reasoning of his decision by the judge. When the judge has to acquit a case because of lack of evidence the wording of the judgement is essential. Guelden, for example, stated that she was satisfied with the outcome of proceedings despite the suspect's acquittal because the judge expressed very clearly that this did not mean that *"nothing had happened"* but that he could not prove the dangerous threats. Victims found it very relieving when judges stressed that, for example, acquittals "in dubio pro reo" do not mean that the victim has lied.

Acknowledgment of victim's rights

As stated before, the interrogation by the police was perceived much more positive than the one at court. With regard to questioning victims, special measures may be applied for their protection at court. One is the right to avoid contact between victim and offender (Art. 19 EU Directive), another one the right to protection of privacy (Art. 21) as well as the identification of specific protection needs (Art. 22) and their recognition (Art. 23). Among the actions suggested in Art. 23 are measures *"to avoid visual contacts"* (3a), *"to ensure that the victim may be heard in the courtroom without being present"* (3b) and *"measures allowing a hearing to take place without the presence of the public"* (3d). In Austria, victims of intimate partner violence can request separate questioning and/ or contradictory questioning but a legal right it is only in cases of sexual abuse and when the victims are minors.

Separate questioning means there is no visual contact between victim and offender. When circumstances (technical and spatial) allow it – what is not always the case – the victim's questioning is video-transferred to the court room or the suspect has to move to another room where he can listen to what the victim is saying. Three interviewees requested a separate questioning but although all of them were supported by a lawyer, only one of them was granted this right. (And the judges were not obliged to comply with the request as no sexual abuse was concerned.) The judges did not deem it necessary, although the victims expressed fear and unease. Furthermore, a judge argued that victim and perpetrator had seen each other several weeks before (for instance during the divorce suit), therefore a separate questioning is not required. Although the judge in the third case agreed to a

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separate questioning, the victim was finally confronted with the suspect as the preconditions for a separate questioning were not given at the district court.

In two other cases – both suspects were alleged of rape – contradictory interrogations took place. That is, prior the trial the victim is questioned by a judge in a separate room. This interrogation is video-transmitted to another room where the public prosecutor, the suspect and his lawyer are situated being allowed to ask questions to the victim. As parts of this video-taped interview will be presented at the court hearing, the victim does not have to be present.

A contradictory interrogation can ease the victim's emotional burden a lot, but the experiences of the interviewees, Clara and Irena, who had contradictory interrogations, are rather diverse. Clara wanted to testify at court only after having been informed about the possibility of a contradictory interrogation. All in all she found this kind of questioning helpful and she was very satisfied with the way it was done.

> *"The situation was somehow strange, because one does not see and hear the persons who are asking questions. These questions have been forwarded by the judge. But it was agreeable that I need not see my still-husband and that I did not hear the questions by his lawyer. I would not have managed to sit in front of him."* (Clara)

Out of the judge's statements Clara could conclude that the suspect's lawyer repeatedly asked the same questions which were blocked by the judge. Furthermore, it was helpful – so Clara – that the psycho-social assistant was in the same room with her.

Irena's experiences oppose the intentions of a contradictory interrogation: Although she emphasized that it was very comforting that the perpetrator was not in the same room and that she was accompanied by a staff-member of the violence protection center, the interview by a female candidate judge nearly turned into a night mare for Irena. The interrogation lasted four hours, the judge kept asking repeatedly the same questions concerning bodily harm which made the victim very insecure and unsettled her. This had the consequence that the victim's good command of German deteriorated; she either did not understand the judge's questions or gave confusing answers. According to the psycho-social supporter the candidate judge had difficulties to address the topic of sexual violence and everyone was afraid that she would start crying at any moment. The victim's lawyer tried to convince the male supervising judge to take over the lead but he refused.

Also trials concerning domestic violence are public, but the public can be excluded in cases dealing with sexual violence. The right to protection of privacy was granted to one victim – Dora –, whose lawyer requested the exclusion of the public from the hearing. Although Dora was not summoned for

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the court hearing she did not want that friends and colleagues of the perpetrator might learn of intimate details of their relationship.

With regard to information rights, some interviewees showed us, for example, letters by the PP and the court which informed them about the outcome of the proceedings. Nevertheless, they did not feel well informed about the case. It is the court's obligation to inform the victim or her legal representation when the convicted person files an appeal, what did not happen in Dora's case. Moreover, informing the victim about the (temporary) release of the perpetrator is a matter of safety and protection. Here the prison management failed in Dora's case: the message about a one-day release of the perpetrator contained a false date; she never received a letter with the correct one. Clara, whose ex-partner is sentenced to two years in prison, complained that he was still at large several months after his conviction and that it was not possible to obtain information why the prison sentence was deferred. For her this question is crucial and a matter of feeling safe as the following quote illustrates:

> *"This is a weak point on the level of court. After the conviction the victim does not get any information anymore. (…) One is not informed when his prison sentence is due, if and why it is postponed. One does not have the right to know that, although this is a time where one feels unsafe. It is a difference to know whether he is imprisoned or still at large. For me that is a huge difference. (…) It is possible to apply for being informed about the release of the perpetrator, what is great, but one should also be informed about the beginning of imprisonment."* (Clara)

All interviewees said that they had been informed about their rights (and obligations) by the judge before testifying, especially about the right to refrain from a statement.

All interviewees made use of the right to be accompanied at court. The person of trust was for all interviewees the psycho-social assistant provided by the intervention center or other women's counselling services. A few wanted the psycho-social supporter to stay in the court room for observing what was going on when she had to leave.

4 Outcome of proceedings and effects for women

Involving police and finally supporting the criminal proceedings was seen as a means to stop violence and make the perpetrator recognize that he has done wrong. But many of our interviewees had to realize that nothing changed. Recognizing this confirmed the women in supporting the criminal pro-

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ceedings wanting the perpetrator to be punished. But at the same time they had doubts whether their commitment with regard to criminal proceedings was worth all the troubles and emotional burden.

4.1 Outcome of proceedings

Against all perpetrators proceedings had taken place or were still pending, the prosecuted crimes being dangerous threats, stalking, blackmailing, rape, continued violence and/ or bodily harm against their partners. Half of them were accused once, two twice resp. three times and one suspect was accused six times.

Apart from the five proceedings which were not closed yet, three cases had been dismissed, four proceedings had resulted in an acquittal and five others led to convictions. What concerns the most recent cases, three suspects had been acquitted, two convicted, and five proceedings were still pending. In detail, two rapists, both were accused the first time, were sentenced to unsuspended prison (two years resp. one and a half). In two cases of bodily injury, one offender was sentenced to suspended prison (six months), the other one was fined. That is, only five out of 12 cases which have already been concluded led to a conviction of the perpetrator.

Art. 16 of the Directive 2012/29/EU addresses the question of compensation. Three victims requested compensation for sufferings from the perpetrator. The court granted compensation in two cases (5,000 Euro resp. 3,000 Euro). In the third case, the suspect had no income at all and so the lawyer advised the victim to demand a very low compensation which made the judge comment mockingly: *"The sufferings cannot have been very severe when you only demand 50 Euro for compensation."* (Hannah) However, when compensation was awarded, this did not mean that the victims received it. The victims have to be prepared that it might be a lengthy procedure like in Clara's case. Her ex-husband refused to pay; therefore, she applied for execution proceedings. *"I think he works less now so that less money is transferred to me. But I know, he has saved enough money and that really annoys me. He could pay off easily the compensation, but he still does not acknowledge having committed a crime and why he should compensate me."* (Clara) Contrary to Clara, Dora is quite convinced that she will get the compensation, although the trial has already ended about nine months before the interview.

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4.2 Effects for women

Several women went for another criminal proceeding, although previous ones had been dismissed or the perpetrator had been acquitted. According to interviewees, they see criminal proceedings as the only way to stop violence. However, this cannot conceal that some of them are frustrated by the outcomes of the proceedings having doubts if the involvement of the criminal justice system has been reasonable. When it had come to another dismissal, Julia asked herself: *"I do not know what a person must do to be convicted."* While she expressed her frustration about the outcome of the proceedings, others understood the outcomes. It is in the first line the judges' lack of empathy, their sometimes rude behavior and their contestation of the victims' credibility which let the interviewees doubt that going through proceedings is worth the effort: *"I have received a lot of understanding at the police, but not at court. And this has nothing to do with the outcome of the court case."* (Barbara)

Regardless of the proceedings' outcome, despite of all challenges that the criminal proceedings implied for the victims and despite of the fact that criminal proceedings did not always have the desired impact on the perpetrators, all victims except one said that they would again go through criminal proceedings. This is not because all of them were satisfied with the criminal justice system, but because of realizing that nothing else would end violence and because of having received support by violence protection centers and other DV counselling services.

The only woman who would not report her partner to the police again justified this with having been treated at court like a perpetrator. As this also happened at the police, she lost her trust in the Austrian law enforcement institutions. And she added that this loss motivated her to support this research, *"because I want to understand how this could happen."* (Hannah)

4.3 Advice for other victims

We asked our interviewees what they would recommend to other women who are experiencing intimate partner violence. The answers to this question provide indirectly insights on the impact that their experiences within the criminal justice system had on their decisions related to criminal proceedings.

One of the most often heard advices was to break silence about experiencing violence. These women have learnt to overcome shame and that there is help. Guelden stressed in this respect that women in Austria have rights and therefore do not have to be afraid: *"I recommend to have confidence in*

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oneself and to break silence. As long as they remain silent they will be discriminated against." (Guelden) And Anna seconded: *"What can happen? Only that no one listens."* (Anna)

All except two women suggested without reservation to go to the police. Although all cases against Barbara's ex-husband have either been dismissed or acquitted, she still thinks a report is a must because perpetrators have to be stopped. Not reporting violence might lead to dismissals in the end; it is important that violent acts are documented: *"Someday you will be asked by the judge why you have not reported earlier incidents."* (Barbara) And she continues: *"There are the police, there is support, there are institutions whom one can turn to, with whom one can speak. In any case, report to the police."* (Barbara) And also Irena stressed that one should inform the police: *"There you won't be left alone; you will be supported and taken seriously."* Being asked whether she would again file a complaint, Julia answered: *"Yes, because it is better than to do nothing."* One interviewee would inform the police only in cases of bodily harm or sexual violence as psychological violence is difficult to prove and therefore the chance for conviction is low. Furthermore, she thinks that *"police still do not understand psychological violence"* (Dora). Only Hannah said that she would not file a charge but seek help from organizations like DV counselling services.

But: The majority of the interviewees also recommended not going for criminal proceedings without psycho-social and legal support. Clara's statement reflects the opinion of many others:

> *"But in any case with the help of a violence protection centre. Otherwise it would be too exhausting when one has to get through the entire proceedings alone. This would not pay since it is way too much what one has to accomplish. (…) In any case, support is necessary. It is important to have one to talk with, who tells what has to be done next. Otherwise one would be lost when one would be alone with police, public prosecution and court. I think that one would fail. Probably one would have to be a lawyer to manage the criminal proceedings."* (Clara)

It is also recommended by interviewees to collect as much information as possible and to accept support. Frida, for example, said that she is angry with herself, because she accepted violence by her partner for such a long time. And she also emphasized that help is available. Ela put it in this way: *"If you're being beat up, just go and let someone else figure it out."* (Ela)

The interviewees also gave advice concerning the appearance at court. Anna, who described herself as a self-confident young woman and as someone who does not show emotions easily, replied to the question of her experiences at court: *"Due to my appearance and look it was rather difficult. During the last trial the judge was very, very humiliating."* (Anna) Whereas some victims realized that a con-

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fident appearance, not crying or not being emotional would be considered as not being affected by violence and/or having exaggerated in previous interviews, others made contrary experiences. Barbara, therefore, would now behave in another way and she suggested: *"I would prepare myself and try to learn to appear tough. (…) I would not show any more that I feel miserably. Because judges do not want to see how victims feel – and I think most victims feel terrible and most are afraid – but judges do not see that and they have no understanding."* (Barbara)

In previous chapters the issue of credibility has already been mentioned. It came up again when thinking about recommendations for other victims. Some advised others to be prepared for being treated like a perpetrator.

5 Conclusions

The objective of the EU Directive as outlined in Art. *1 "is to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings".* Reflecting the findings against this aim, the victim interviews show that victim rights and needs are widely respected in Austria and protection measures are set to a large extent. However, the interviews also point at several deficiencies and the necessity of improvements.

To start with informational rights as set in Art. 4 (*"Right to receive information from the first contact with a competent authority"*) and Art. 6 (*"Right to receive information about their case"*): Providing information is essential both in order to gain support for the criminal prosecution and for the victims' safety. The interviews showed that the women received oral and written information regarding their rights and about psychosocial and legal support during their first contact with police or, at the latest, during the police interview. They also got information about their cases. But as most victims are legal laypersons and often in a stressful situation when receiving information, they have difficulties to understand and grasp it. Additionally, the quality of information given by all law enforcement institutions varied in its extent and intelligibility. Furthermore, according to victims' experiences it was often difficult to obtain information that is essential for victim's safety (e.g. the imposition of a barring order or the (temporary) perpetrator's release from custody).

Art. 3 of the EU Directive, the *"Right to understand and be understood"*, is also addressed in other articles, like Art. 5 (2) and Art. 7 (*"Right to interpretation and translation"*) as well as to the before mentioned Art. 4. For those victims whose mother tongue is not German and who depend on interpreters' service, it is often hard to understand and to be understood. The interviews with migrant

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victims showed – although all besides one spoke German quite fluently – that alarm and stress had a negative impact on their linguistic competence. Therefore, linguistic assistance should be offered in any case and the difficulties to express oneself in a foreign language should be at least taken into account by the interrogators at police and court. The right to be accompanied by a person of trust in the first contact with police is granted (Art. 3 (3)).

The interviews showed a strong need to be heard by police and court and they also revealed that the *"right to be heard"* (Art. 10) was largely respected. All interviewees were questioned by the police and in cases of court proceedings were also interrogated at court.[50] Moreover, a majority of interviewees highly acclaimed the capacity especially of specialized police officers to interrogate in a sensitive manner. However, following the victims' narrations, there is still substantial room for improvements. Some victims made the experience that police are sometimes unwilling to record their reports or felt treated like an accused when they were interrogated. Nevertheless, most victims were satisfied with the way being treated by police officers, whereas many of them criticized judges for their insensitivity, inquisitorial manner, lack of empathy and impoliteness. Testifying at court was considered an extreme burden, in particular when the victim's credibility was at stake. At the same time, victims deemed testifying important as this was an opportunity for them to name the wrong they had experienced or to master a violent relationship. Judges often seem not to be aware that they could ease the situation for victims very much and that they could inhibit secondary victimization by interrogating the victim in a sensitive manner or explaining why s/he has to act in a certain way. Several interviewees raised the issue of flawed evidence collection, the disregard of evidence provided and the refraining from questioning other witnesses by police and court alike. Victims also complained about a lack of interest and commitment of PPs during court sessions.

The interviewed women represent a well-supported group.[51] All were supported by victim protection centers and those with minor children also by the Family and Youth service. The interviewees were promptly contacted by these institutions. That is, the referral procedures at the level of police work well. Eight of ten victims additionally received legal court assistance. Their assessment of psychosocial and legal support was unreservedly positive. So the right to access victim support services (Art. 8) *"free of charge, acting in the interests of the victims before, during and for an appropriate*

[50] One interviewee was exempted from testifying at court as the accused had confessed the deed and medical reports were available. None of the interviewed women were interrogated by a PP.

[51] This is due to the fact that the contact with most interviewees was made through victim support services.

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time after criminal proceedings" and also the minimum services referred to in Art. 9 of the EU Directive have been implemented.

In the majority of the most recent cases reported by the interviewees a barring order was issued. But four of ten women had to call the police repeatedly for help before a barring order was imposed. In particular this affected women who did not live in a common household with the perpetrator, or who had taken refuge in a women's shelter. During a valid barring order the offender has the right to fetch personal belongings from home in accompaniment of police officers. Some victims criticized that the officers did not intervene when the perpetrator took away other than personal objects. Furthermore, protection measures seem to be rather limited in cases of stalking and affected women complained that suggested measures would have led to serious constraints in their own everyday life.

The EU Directive ensures victims the *"right to avoid contact between victim and offender"* within the premises of law enforcement institutions (Art. 19). In Art. 23 this right is reiterated as the member states are demanded to provide provisions to avoid (visual) contact with the offender during testifying. At court this provision was not always guaranteed to the victims; in two out of three cases the judges declined the request for separate questioning doubting the victims' fear. Art. 20 seems to be observed to a large extent: most interrogations by police were conducted without delay, the number of interviews was kept to a minimum (at police and court) and all victims were accompanied by a legal representative and/ or a person of trust. Protection measures like being interviewed by the same person and, if desired, by a person of the same sex as designated in Art. 23 of the EU Directive are widely observed at police level.

Finally it has to be emphasized that from the victims' point of view, the history of violence in their relationships or the context of the prosecuted offence was not taken into account sufficiently by PPs and court what in consequence led to dismissals and acquittals. In total, only in five out of 12 cases which were concluded at the time of the interview the accused was convicted. Despite their frustration with the outcomes and the burdens of criminal proceedings most interviewees would again report violent acts as they are convinced that criminal persecution is the only way to stop violence.

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III. Results of practitioner interviews

1 Profiles of the professionals

13 interviewees with different professional backgrounds were asked about their perceptions of women's protection needs as well as about risk assessment instruments and procedures for improving victim protection used by their organizations. Another focus was on the interconnection and cooperation between police, legal practitioners and victim support services in protection procedures.

Among the experts were four public prosecutors, four judges (two each from regional and district courts), a police officer, a lawyer, two representatives of victim protection centers and a staff member of an advisory center for women.

In addition to the interviews **two focus groups** took place: one with eight police officers and the other one with nine women working in victim support organizations.

Nearly all experts involved have been working either in Vienna or in smaller communities in Lower Austria or Burgenland what means that the research focused on the eastern part of Austria. All interviewed persons and participants of the focus groups have many years of experience in the field of partner violence.

Interviews and focus groups were performed between April and September 2015.

Moreover, information gained in four **advisory board meetings** (between Nov. 2014 and Jan. 2016) was included. The experts came from intervention centers/ violence protection centers (among them a lawyer who supports victims at court), an emergency hotline, police and court, a support organisation for migrants, and the Viennese men's counselling center.

2 Experiences of experts

Information taken from the expert interviews is grouped along the trajectory line of law enforcement: the police intervention as an initial step, the inquiry phase dominated by the public prosecution office and – in a minority of cases – the trial that ends usually either with a conviction or an acquittal.

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2.1 Police intervention

In Austria, the precondition for a **barring order** is imminent danger – and such interventions need "*lots of sensitivity and experience*" as an interviewee from the police forces formulated (Po.1). But often the police also state criminal acts (typically bodily injuries, sometimes together with dangerous threats) when intervening because of IPV. In such cases nearly always barring orders are imposed.

When being called because of domestic violence it is part of the risk assessment that the police check via intranet all information available on the perpetrator (like records because of DV in the Central Violence Protection File (*Zentrale Gewaltschutzdatei*), condemnations, possession of firearms etc.) on their way to the crime scene. The officers decide on imposing a barring order after having interviewed the present persons, possibly also children and neighbors, as well as on basis of their observations on mood and behavior of victim and perpetrator, on signs of demolition in the apartment) etc. They are obliged to fill in a **form**[52] which on the one hand documents the intervention, on the other hand it is a **risk assessment instrument** raising questions on risk indicators like aggressive atmosphere, drunkenness of the perpetrator or anxiousness of the victim.

The representatives of victim protection institutions do not regard the barring order form as sufficient for risk assessment. They would prefer a more precise tool, being at the same time "*something short that can be used more quickly*" (FG-VSO), easy to handle, like a checklist. But also further reaching critique concerning risk assessment by the police was expressed: They would rely on their "*gut feeling*" (FG-VSO) as criterion for a barring order instead of evaluating risk factors, mingling increased risk and reasons for a barring order. According to their own experience much expertise is required for assessing risks even when using standardized instruments – and sometimes police officers did not even take enough time to fill in barring order forms properly.

Barring orders should be imposed as a safety measure also if the victim prefers to go to a shelter as she might decide to go home. Nevertheless, although this is considered to be important for victim protection it is not done regularly all over Austria.

Another procedure to minimize risks is the mandatory **police control** of the observance of barring orders, at least once within a three days period.

[52] At the time of the focus group the police was developing a new, more detailed form. For example, actually it is only asked whether the perpetrator has drunk alcohol, in the future it has to be filled in additionally how much he has drunk. Furthermore, not only the presence of children but also their behavior will be asked about.

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Both in interviews and focus group, police representatives were aware of the problem that explanations and information given in a stressful situation cannot be completely understood. (Victim protection experts agreed.) Therefore they underlined the importance of not overextending victims by giving too much information verbally, but to hand over written material and to assure the victims that they could call any time. This is why information on psycho-social and legal support in court proceedings was not given during the first intervention but only during the interview at the police station (usually within 24 hours after the first intervention). In the victim support focus group experts criticized that victims frequently were not well informed about the possibility of support and a discussant mentioned her impression that police officers sometimes did not know much about psycho-social and legal support and therefore their references remained unprecise.

The choice of **interpreters** may become a risk problem if they are biased for the perpetrators and conceal facts. Especially at night, when it is not possible to reach a professional, sometimes neighbors or even the couples' children are asked to interpret during the intervention on-site. The situation in Vienna is better as police officers who speak foreign languages can be called. Also one of the PPs remarked that interpreting was a problem for the police and that sometimes a relative who was involved in the conflict was asked to interpret. It is much easier to organize professional support for the talks at the police station. Nevertheless the interviewed judges criticized that they were confronted more and more frequently with victims who were not able to speak German although the police had not mentioned this in their files: Such incidents were annoying as they obliged them to postpone the oral proceedings, and the police argued with the lack of time and money. A judge reported that the police ask the involved persons whether they need an interpreter – and then the officer passes on their answers to the court without adding his/ her own perception. Especially at the district courts judges were confronted with incomplete victims' statements as the police argued "*they can tell the judge afterwards their whole story*" (Ju.4).

Also in the focus group with victim support organizations problems with regard to interpreting were discussed. Migrants often preferred going to a shelter instead of calling the police as they were afraid that the police would not believe them but the perpetrators – this was relevant especially in cases when the partners' command of German was better than the victims' and when victims were married with autochthonous Austrians. This observation did not only apply to women from Turkey, but also from former Yugoslavia.[53] On the one hand the fear of these women was based on the fact that

[53] This has to be stressed as women from Ex-Yugoslavia are usually regarded as much less vulnerable than Turkish.

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– being strictly isolated by their husbands – they did not speak German (well) and were not informed about support institutions. On the other hand their partners fueled their fears by assuring them that nobody would believe them and that they were deported when leaving their partners.

In a board meeting an expert recommended the establishment of an **interpreting hotline** which should be available for the police as a standby service during 24 hours; she knew about positive experiences in Germany. The group agreed that the police regarded interpreting as less important than the judges did and therefore sometimes did not ask properly whether the interviewee needed support.

Only a few years ago a new instrument for victim protection was established at the police level, the so-called **complex work with/ for victims** (*komplexe Opferarbeit KOA*) which focusses in the first line on victims of violence but also deals with perpetrators.[54] In some police departments specialized officers are working in this field; in others the whole staff is involved. Two or three days after the intervention when the victim has calmed herself, she is invited to the police station. An officer tries to make her understand that living with her partner might be dangerous and how she can protect herself (and where appropriate her children). Sometimes these talks are even taking hours when victims are in need of support. Also the perpetrators are invited to talks after a few days; the main topics are the wrongness and the consequences of further violent behavior. The interviewed police officer stressed the instrument's preventive effects referring to only a few cases of recidivism.

The police focus group discussed whether the actually voluntary **talks with perpetrators** should become obligatory. Officers who have been working in this field for several years strictly voted for voluntariness as these talks required confidence – this is why they worked in plain clothes. The majority of the perpetrators would follow the invitation to an interview as they wanted to talk to someone without being pre-judged. The men were not aggressive, most of them were emotionally charged, and some "*even burst into tears, feeling completely left alone*" (FG-VSO). The officers were convinced that – as an effect of confidence and constructiveness – extreme violence was prevented.

> *We give him the feeling that someone is interested in his story. Perpetrators are always seen as real bad guys, no one is interested in their background. Nowhere else he gets the chance that someone works with him in a constructive way. (FG-Po)*

[54] In the first meeting of the national board was mentioned that such talks (both with victims and perpetrators) only took place with German speaking persons.

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Another topic in this group was the wish of some victims to talk with officers on a confidential basis about experienced violence. Sometimes women need a long time to feel strong enough for separation and should be supported in taking this step without overruling them. On the other hand police are required by law to report any offence of which they get knowledge what creates an ambiguous situation. A discussant then pretends to talk with the victim about fictitious problems, others insisted on reporting: "*In the first line I am a police officer, the social aspect is in the background*" (FG-Po).

In this context was mentioned that sometimes victims were not at all interested in prosecution and that police officers had problems in accepting this position – nevertheless, the police intervene also the next time. "*It is the legitimate right of a victim to take her own decisions. (…) If they are only afraid of witnessing the victim protection center is supposed to empower them*" (Po.1).

The interviewed police officer and some focus group participants have been engaged in a **MARAC** (multi-agency risk assessment conference) team and think very positively about this instrument, in the first line as it strengthened the cooperation of the involved institutions. (Also one of the interviewed public prosecutors had been active in a MARAC and judged the instrument as very positive for networking and as an important source for information). Discussants from a region where MARACs have not been established so far emphasized that cooperation did not depend on MARACs. Problems were brought up as well, for example that the MARACs would not fit the Austrian legal situation as the British model had been implemented without any adjustments (esp. concerning data protection[55]). Moreover, it was criticized on a fundamental level that in some regions organizing a monthly meeting would not make sense as there were not enough high-risk cases[56]; whereas in Vienna the high number of actual cases did not leave sufficient time for each of them.

Apart from MARACs, police and intervention centers/ victim protection centers are cooperating on a case-related level more or less intensively: *"… there is no automatic exchange. But this is not at all necessary. The case-related exchange concerning risk assessment is good and sufficient"* (FG-Po).

The questioned police officer and the focus group agreed that the (minimum) standards of the **EU Directive** on victim protection have been implemented in Austria. At the same time the interviewee pointed out that as a matter of fact the **immediate protection** of victims was solely a **police** task whereas PPs and courts remained passive. (The violence protection centers agreed but stressed addi-

[55] If the MARAC team decides upon protection measures they can only be imposed if the victim agrees.

[56] According to a discussant a maximum of five per cent of the perpetrators who have been barred have to be considered as highly dangerous.

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tionally their own importance). As an example he referred to the MARACs where representatives of the justice system were usually missing.

The focus group with victim protection organizations regarded as essential that victims and perpetrators were questioned separately and that victims were interrogated in an understanding, not suspicious manner as well as in a protected space. Some experts mentioned that the primary protection need was **being treated respectfully** what was not guaranteed as a matter of course.

As additional measures to **optimize victim protection** the police experts mentioned intensified teamwork and networking. They did not agree on the need for specialized victim protection officers responsible for contact with victims and other institutions – in Vienna this has been realized in a few districts.

On the contrary, an interviewed judge pleaded for specialized DV police officers: For him the most important victim right is the right on **information and notification**, including instructions about whom to address. This support offer is in the first line a police task, and here specialization would be helpful.

Critique from representatives of victim support organizations concentrated on other topics. They attested the police in general that their attitudes had changed a lot since the coming into force of the violence protection laws. Nevertheless, a discussant objected: The attitude had not changed that much, some officers were still rather misogynist, but they did "*not dare anymore to wave barring orders*" (FG-VSO). Another one added that officers often did not show objective distance in the individual case but made it a personal affair and acted out prejudices; therefore supervision was necessary in her view. Last, but not least a more specific training was regarded basic for all hierarchical levels, focusing especially on the effects of traumatization.[57]

Finally has to be mentioned that victim protection experts regarded police work as partly responsible for the **high number of acquittals**. Firstly, the preservation of evidence should be improved, e.g. by taking photos on-site what could make criminal proceedings independent of the victim's statement. Secondly, when protocoling victim interviews officers sometimes would not report objectively but were influenced by their own attitudes and personal views. When the victims' statements at court differed from the protocols this made them seem unreliable. Therefore, the experts pleaded for word-for-word protocols instead of making them look 'pretty'. Thirdly, the police did not charge files

[57] An interviewee mentioned that the German police tested if victims were traumatized by using a specific computer program.

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in any case: "*If the police don't want to report they do not report. (…) And sometimes they do not report on the victim's request*" (VSO.1). The expert supposed that a main reason behind such behavior was the wish to protect the picture of the family as being "holy".

All interviewees were asked whether in their view **only a supported witness is a good witness** – a phrase that is often used in Austria as a pro-argument for institutionalized court accompaniment. A police officer totally agreed: He had made the experience that a perpetrator's glimpse was sufficient for manipulating the victim. "*If she is not supported she will stop giving evidence*" (Po.1). For him it was clear that neither police nor intervention centers/ violence protection centers would influence witnesses.

2.2 Inquiry phase: Public prosecutors (PPs)

Among the interviewees from PP offices were three women and a man, all of them being allocated in **specialized departments** for sexual crimes and domestic violence.[58] Each of them works with both female and male colleagues what allows crime victims to choose with whom they want to talk.[59] All have participated in various seminars focusing on their special topics and some criticized that attending such seminars was not mandatory for specialization.

Although specialized PPs deal with partner violence during the investigation phases this is not the case in trials.[60] Due to administrative reasons the investigating PP usually does not participate in the trial. Just one of the four interviewees mentioned that the PP may demand her/ his competence also during the court phase. Sometimes she does, namely if either the crime has been very massive, if she expects that adducing evidence will be difficult, or if the file concerns a high number of criminal acts and/ or involved persons. Therefore, the reason behind is not her status as a DV expert but the fact that she knows the file by heart and therefore it would not make sense that a colleague takes over.

[58] Such specialised departments are obligatory if ten or more PPS are working for the authority. PPs volunteer for these positions and they only work part-time in these departments, in the remaining time they work on 'ordinary' cases. An interview partner estimated that about one third of her files were 'special' ones, for another one it was about two thirds.

[59] In the Austrian system incoming files are distributed by chance what guarantees the public prosecutors' objectivity. (Before this regulation was established the distribution of files was connected with the initials of the accused person's name.) A PP reported that victims always accepted the responsible PP regardless of her/ his sex.

[60] Usually lawyers who are still in training for becoming a judge represent the PP office. A judge had the impression that they were especially competent as they were in training.

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Representatives of victim support organizations were divided: Some regarded a specialization of PPs and judges as essential, for others it was not relevant for guaranteeing victims' needs or influencing the outcome of proceedings. Moreover, they criticized that PPS at court sometimes even would not know the contents of the files.

Not all interviewed PPs knew about the coming-into-force and the contents of the **EU Directive on victim protection** (Directive 2012/29/EU) and underlined that for their work only the national regulations implemented by the CCP were relevant. Others criticized that no specific seminars about the Directive were offered. In general, they felt well informed about victims' rights and protection and judged the situation in Austria as good.

Which burdens for the victims do they identify? Situations like making a complaint, being questioned, and participating in court proceedings; but also the fact that they have to make a comprehensive statement (not only bits and pieces). Victims often were still afraid of the perpetrators, so it would be important to inform them about imprisonment and release. Only for one interviewee the PP's task is explicitly to find out and react on such burdens, especially when the victim is not accompanied and has not got psycho-social and legal support – and she also stressed that a PP is obliged to observe the rights of both victim and perpetrator.

The PP is the 'master' of the investigation phase but he/ she usually does desk work and has neither personal contact with the suspect nor with the victim. If the police report is not sufficient they may ask the police to continue their investigations but they also may conduct interviews by themselves. The interviewees choose the second option either not at all or at least not regularly for ex. as this would take too much time. A PP mentioned that she only talked directly to a victim if the case was extremely serious or brought up specific legal problems. Another one contacted victims especially when they denied their partners' violence to illustrate them how dangerous their situation was – but these talks never had changed anything, she added. (An interviewed lawyer who has been working in the field for years remembered a single case when a PP had interviewed a victim personally.)

Experts in the victim protection focus group represented different opinions. On the one hand, they would have preferred PPs interviewing because they knew which information they needed for prosecution and asked more precisely; besides, the atmosphere was much more positive. (A contra argument was that no one wanted to get an invitation to the PP office.) Repeated police interrogation was regarded as problematic because of the differences between the protocols that often produced confusion. Sometimes was not clear whether an interrogation was just a repetition of the previous one or whether it followed other intentions. "*After all these interviews even the women themselves*

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often do not know any more what has happened exactly" (FG-VSO). On the other hand, interviews by PPs lasted much longer and were therefore a large burden for victims – especially if the case was dismissed afterwards.

Another opportunity for a direct contact PP – victim would be the **contradictory hearing** of a victim during the investigation phase.[61]The victim stays in a separated room, accompanied by the judge, and looks into the court room via video; she cannot be seen. Questions of the PP and of the perpetrator/ his lawyer are directed to the judge who then asks the victim; so he/ she can reformulate questions which might be harmful and aggressive and therefore re-traumatizing. Some interviewed PPs make use of contradictory hearings either in extremely serious cases, or if further questioning is necessary because of various allusions, or if only one attack has been reported but they suspect repeated violence. They regard it a positive side-effect of the hearing that they can get a personal impression of the victim. (The lawyer mentioned that sometimes the investigating PP did not even participate in the contradictory hearing – and if she/ he did so this was often the first personal contact with the victim.)

A victim support expert tended to be against contradictory hearings: "They do not necessarily mean protection. Firstly, maybe a camera was part of the abuse, we do not know this. Secondly, the perpetrator has the right to get the video tape as it is evidence; he can do with it whatever he wants. And thirdly, it means that immediateness is not given" (VSO.3). (Therefore she preferred a **separated and so-called considerate examination** of the victim as an alternative to a contradictory hearing. This means that the accused is sent out of the courtroom during her testimony but the door remains open. So she does not have to see him/ he cannot see her but is allowed to listen to her.)

The PPs' perceptions concerning the **dismissal of files** vary: so one of them reported "*a real big number of dismissals*" (PP.3) and another one assumed that in domestic violence cases were as many as after other offences.[62] According to them, the most relevant setting for dismissals is a **combination of three factors**: the victim refuses testifying, the suspect does not make a confession and the vic-

[61] The contradictory hearing is usually regarded as one of the most important instruments for the protection of victims and witnesses as it allows avoiding multiple questioning. (A negative aspect on the other hand is that the jury gets no immediate impression of the witness what is important in order to judge her liability.) It is mandatory when the victim is younger than 14 and in cases of sexual violence; in other cases it can be applied for (without a legal claim – victim protection experts criticised that a judge who has never seen the victim has the right to decide on it). Because of the presence of the suspect (and his right to ask) the video can be used in the main proceedings – even if the victim refuses testifying there. The necessary video system has been installed at all larger courts, but not enough rooms are equipped, and therefore waiting periods sometimes last from four to eight weeks.

[62] As official statistics are missing this assumption cannot be verified.

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tim's injuries are not documented. Eye witnesses were rare and not always reliable; sometimes neighbors changed their former accusations when they found out that the couple had reconciled. Therefore indictments were unusual in cases when the victims refused to testify.[63] (In this context it is important to know that in Austria the PP is obliged to dismiss a file if a conviction 'cannot be expected'.[64]) According to an interviewed judge the PP could nevertheless leave the decision on the case open to the court: "O*ne word being against the other it makes sense if the judge gets her/ his personal impression of both parties' credibility*" (Ju.1).)

The police focus group criticized the high number of dismissals. They were skeptical towards the argument that victims often refused testifying as according to their experiences women usually wanted to charge a file, particularly immediately after the assault. "*However, in cases when the neighbor calls the police often both perpetrator and victim do not want a report*" (FG-Po). The criticism of some of them was more in principle: Punishment was regarded as essential for a positive change, the message transmitted to a perpetrator by a dismissal was fatal, and dismissals were frustrating for the police that had "*built up the basis for punishment*" (FG-Po).

Even when the victim testifies, when the suspect denies his attack evidence is needed. Mainly during court proceedings (rarely in the investigation phase) therefore the judge occasionally seeks an expert opinion – but even if the expert can explain how injuries occurred it cannot be verified who hurt the victim and therefore a conviction is not possible. Additionally, if the expert needed the victim's medical examination for his report a non-testifying victim would not consent.

A PP who sees herself as victim-oriented mentioned that in about 15 per cent of dismissed cases she had the impression that there was "*more behind it*" (PP.2) but as evidence lacked she had no alternative to a dismissal.

Partner violence files frequently include (severe) bodily harm and **dangerous threats**[65]. The second ones are often dismissed as they are regarded as so-called 'statements of resentment made due to social milieu' and therefore are not taken serious. The police focus group pointed out that police would not hesitate to file a complaint in such cases but they were aware of the fact that providing evidence was difficult.

[63] A PP stressed the importance of the victim's right of refusal as means for protection against prosecution because of libel (PP.1).

[64] Art.191 CPC

[65] (Severe) bodily harm: Art. 83 (84) CC, dangerous threat: Art.107 CC; a less frequent crime is continued use of violence (Art. 107b CC).

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A further reason for dismissals is the assessment of an incident's **minor nature**[66]; PPs assured that in such cases they considered the victim's statement (e.g. whether she wanted to continue the relationship). In this context was stressed that PPs had to be neutral and objective contrary to victim support organizations that were and had to be on the victim's side. An interviewee mentioned that for the decision on indictment or dismissal **mitigating and aggravating circumstances** were considered "*and that for example after two dismissals because of minor fault a third incident might be too much*" (PP.1) and lead to further prosecution.

Dismissals were criticized by the other professional groups for various reasons. The police focus group complained that, the allocation of files being random selection, repeated charges against the same perpetrator were not processed by the same PP "*and so the history of violence does not become visible from the very beginning*" (FG-Po). This was regarded as an important reason for dismissals as "*dismissed cases are never looked at again*" (FG-Po). A judge has been observing the public prosecution's tendency to dismiss charges against women in case of mutual violence and to file a suit only against the male perpetrator "*although the assessment of evidence has to be done by the court*" (Ju.4).[67] Finally, the victim support focus group talked about the frustration of victims when their charges were dismissed. "*They decide to report their partners as they are longing for justice so the decision is hard for them*" (FG-VSO). However, a feminist expert mentioned that women support organisations sometimes showed a tendency "*to report everything they suppose being relevant*" (VSO.3), thus overstepping a mark.

The Austrian criminal law allows victims of a crime to apply for the **continuation of a dismissed investigation** among certain circumstances, e.g. if the decision was wrong in law or if there are serious doubts about the accuracy of relevant facts (Art.196 CPC). This decision is taken by the court. For the interviewed lawyer the legally tricky regulation is 'dead law' that is never applied.[68]

The interviewees stressed the importance of the victim's (and the perpetrator's) **credibility** – knowing that credibility cannot be objectified. A PP argued that there would not be enough evidence for a charge when a woman informed the police about year-long violence without having ever reported

[66] Art. 191 CCP: Dismissal concerning minor criminal acts is possible if the perpetrator's fault is minor, if he is remorseful (e.g. reimbursement) and if his punishment is not deemed necessary for individual or general prevention.

[67] According to a victim protection expert in the advisory board, the police practice of reporting also the woman when the man accused her of mutual violence had the effect that the next time endangered women refused to call the police.

[68] Also in other than DV cases such applications are only rarely approved. Since January 1st, 2015, a continuation has become even more unrealistic because of an amendment of the Public Prosecution Act (Art.35c) (StPRÄG 2014).

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this and, on the other hand, injuries were not attested and her partner called her a liar. (But someone else might understand that the woman has been victimized for years and that she is now taking an effort to escape.) Following an interviewee working in a victim protection institution, about one quarter of DV victims are **traumatized** and cannot testify straight – in such cases other tools were necessary for providing evidence.

Three out of the four PPs frequently use **diversion** in cases of partner violence, mostly victim-offender mediation, sometimes probation time, rarely the attendance of anti-violence trainings (as there are no suitable possibilities except from Vienna), but never fines or charitable activities. (However, discussants in the police focus group reported the use of fines.) They regard a form of 'perspective' as a prerequisite for diversion: for example, the couple wanting to continue the relationship or having common children. All of them rejected the use of diversion if the perpetrator had relevant previous convictions or did not assume responsibility. A judge criticized the use of victim-offender mediation: "*If the PP chooses VOM he/ she does not want diversion to be successful as this measure will fail: Why should the victim agree to it?"* (Ju.4)

Risk assessment was mostly seen as a usual task by the PPs ('looking at the perpetrator's environment', checking parameters like drunkenness, weapons, previous convictions), one of them emphasized its importance. She wants risk assessment to be mandatory in each case und uses a self-made check-list of relevant topics. Especially in regard of pre-trial detention she pays attention on the perpetrator's stability; indicators are having work and a place to live, moreover, she also includes his financial situation as well as mental health problems. Do the responsible intervention centers/ violence protection centers notify the PPs about the results of their risk assessments? They do so, although not regularly, and their reports become official part of the files. A PP stated that the NGOs' risk assessments never were correct – they either over- or under-estimated the situation. Another one who has been active already for several years remembered only one single information letter – however, she was not very much interested in it as the centers were partisan (a position which was adopted by one of her colleagues as well). For her the estimate of the police is more relevant (especially when the suspect is known as violent); most important is her personal impression.

A judge has often been confronted with risk assessment reports in the PPs' files that had been provided by violence protection centers/ intervention centers. He criticized nevertheless that they often used just standardized forms and exaggerated their findings. Also for him police reports were more convincing – and when in such cases he additionally got the report of a victim protection organization he felt alarmed; "*but then the perpetrator has usually already been arrested*" (Ju.1).

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A year-long expert for victim protection reported that her organization regularly sends risk assessment results to PPs and judges and calls them additionally by phone. She had made positive experiences with PPs (but not with judges). A colleague of hers from another region was convinced that PPs and judges "*have no idea what risk assessment means and how it is done and are even not interested in it*" (VSO.3). This was affirmed in the advisory board meeting by the observation that PPs never inquired risk assessment reports of victim protection centers/ intervention centers.

All PPs collect information about the suspect via intra-net, both on the criminal and on the civil level (divorce, parental custody). Whether a **barring order** has been imposed is not seen as important by some PPs as the criteria for using the police instrument differ from the ones PPs have to use; just for one PP the first thing to do is checking the police report, in her view it is relevant.

One of the PPs appreciated very much the contact with the violence protection center as a source of information. According to her, the center has always been very active, informing about the experts' perceptions, sometimes suggesting pre-trial detention.

One out of the four PPs has been active in a **MARAC** (multi-agency risk assessment conference) and judged the instrument as very positive for networking and an important source for information. Another one had been confronted with results of the SALFAG in police files and was not at all convinced of the instrument's accuracy.

For PPs **pre-trial detention** is a highly massive instrument so they rarely impose it. Moreover, they argued that arrest meant only limited protection – "*he could attack her three weeks later*" (PP.1) – and that normally a barring order was sufficient. Outside regular office hours a PP who is on attendance decides on arrest; then the file goes to the responsible PP (depending on the PP office's size either the next working day or with a delay of four to five days). Thus it is guaranteed that DV cases are reviewed by a specialized PP who can amend the previous decision. In the Austrian criminal system the judge decides on pre-trial detention on the PP's request. An interviewee remembered that her demand of arrest was not followed by the judge in two cases[69]; another one estimated that her and the responsible judge's assessments differed only "*once in two years*" (PP.2).

An interviewed judge –she is responsible of pre-trial detention when being on attendance – is very cautious as detention has far-reaching implications for the perpetrator, for ex. concerning his workplace. Sometimes she imposes short-time detention as a measure for cooling down – to estimate the

[69] The PP may appeal against the judge's decision but she did not as the answer would have taken some days.

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perpetrator's "*explosiveness*" she provokes him (Ju.2). For her, different assessments of judges and PPs are 'normal' as a consequence of their roles: judges were more reluctant towards detention, she preferred less severe measures (a tendency that was criticized by victim support representatives).

The police focus group agreed that PPs were more reluctant to impose pre-trial detention than they were. Nevertheless, they did not side with the violence protection centers/ intervention centers. "*Preventive detention is not possible; a crime has to be committed. (…) Aggression towards the partner is not sufficient; in such cases barring orders are imposed*". (FG-Po) If the perpetrator is aggressive towards the police he gets detained and after dangerous threats a detention is at least possible according to the CCP.

> *I wouldn't say detention is 'too rare' as our prisons are already full. But there are cases where every police officer wonders whether the perpetrator hasn't be detained, especially in MARAC cases. (…) Today preventive detention is only used after massive criminal acts; it is not like in former days. But at that time victims were alone with the perpetrators and had to stay with them. The situation has changed by the instruments given to the police. (Po.1)*

If the PP does not follow the police assessment the officers sometimes try to bring the victim to a shelter to assure higher protection. A discussant regretted that no risk assessment instrument existed the results of which were compulsory for all institutions involved. However, also some police officers were not convinced of pre-trial detention as "*in the end the perpetrator gets out again; a relapse cannot be prevented by detention*" (FG-Po).

A discussant pointed out that the pressure towards the PP to impose pre-trial detention could be increased by written statements instead of phone calls. "*So no one can say afterwards that these facts have not been communicated sufficiently*" (FG-Po).

Analogous to the PP on the level of the regional courts (*Landesgericht*), prosecutors are also working on the level of the district courts (*Bezirksgericht*) where less severe crimes are judged. They are no academics but get a special professional training and are supervised by PPs. Although they are not specialized in domestic violence, some interviewees assumed that their colleagues were sensitized for the topic by the long cooperation with them. Another one mentioned that he has known the local PP for years and therefore was aware in which cases more control was needed.

Also for the PPs the final interview question was whether they considered only a **supported witness to be a good witness**. This assertion was judged as being too general and was more or less emphatically rejected. An expert admitted that some women who were hesitating needed psychic support to go to court. But the phrase also evoked the (often heard) critique that victims were 'prepared' for

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their statement at court in the sense of being influenced. Another interviewee was less negative: In her view witnesses were not influenced but sometimes seemed to be influenced – for example when they were nervous, looked into the direction of the accompanying person all the time, and spoke in an "*unnatural manner*" (PP.4).

2.3 Trial: Criminal court

Two female and two male judges were interviewed, two each from regional and district courts. They estimated that DV cases made up 20 to 30 per cent of their files. Other than in the public prosecution offices, specialization at court has only been established in cases of sexual violence but not for domestic violence/ partner violence (what has been criticized by victim protection organizations for many years). The interviewees did not see this as a problem as DV cases would not differ from other criminal acts.[70] Maybe this is the reason why none of them has participated in any seminars or trainings; one is planning to do so but as seminars in this field usually take three days he does not have enough time at the moment. (Victim protection experts criticized the lack of knowledge about the victims' situation among judges. In their view judges had a better understanding of victims of sexual violence, being aware of traumatization, but with regard to domestic violence they believed – wrongly – more in themselves.)

The judges know – like the PPs – the contents of the **EU Directive on victim protection** (Directive 2012/29/EU) and stressed like them that in the Austrian legal system counted only the victims' rights formulated in the Austrian CPC.

The interviewees were aware of the fact that single assaults often had a "*history of quarrels and humiliation, it was just the first physical attack*" (Ju.2). They supposed that a single slap in the face was not even reported. But if it was reported, the following interview usually would reveal other attacks in the past "or at least a dangerous threat. Sometimes mutual violence became visible. (In this context a judge mentioned that she has been several times confronted with persons misusing criminal proceedings as 'munition' for divorce proceedings.)

Do women often **refuse to testify** against their (former) partners? A judge at regional level answered that this was applicable to one out of three or four whilst the other one estimated every second vic-

[70] This view is confirmed by the fact that at district courts – other than at regional courts – DV cases are not even bookmarked as FAM ('family') cases.

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tim. "*Half of the cases look like this: He beats her – she is angry and reports him to the police – then the couple reconciles – she does not testify – then he is acquitted*" (Ju.2) Women who are supported by an intervention center/ violence protection center usually give evidence. Apart from **reconciliation**, **pressure** by the perpetrator or his family is a reason for refusing evidence.[71] Some judges ask the victims directly whether the perpetrators exert pressure and talk with them about support possibilities like going to a shelter. An interviewee mentioned that women often were in fear of the future and endured a lot worrying about the situation of their children – "*the law does not solve the real problems of these women*" (Ju.2).

When a victim of IPV is told to appear before the court she is not only invited as a witness, but also – with another form – as a victim; a procedure which even a judge called confusing. When a woman has declared at the police that she will not testify at court, she gets both forms as well; this means she has the opportunity to appear at court if she had changed her mind. This is the typical procedure but an interviewee goes another way. She wants to meet the victim and hear from her directly that she will not testify; she even uses coercive measures to make her appear at court. If the victim wants to apologize on the phone she sends her a form for signing.

Sometimes women decide – instead of refusing to witness – to weaken their first statement thus risking a charge because of defamation. A judge draws their attention to the fact that the penalty for bodily injury is one year, but for defamation it is three years.[72]

"*If a woman does not testify this does not automatically lead to a dismissal*". (Ju.1) Documented injuries (which were rare) and eye-witnesses who have seen the injuries might be sufficient for a conviction; also expert opinions are sought in such cases. Such answers were given by engaged judges who told perpetrators that they were acquitted 'in dubio' – "*and next time it will not necessarily be like this*" (Ju.1), trying to influence their behavior for the better. Another judge tells the perpetrators in case of convictions that being sentenced was their own fault, not their partners', in order to prevent new conflicts.

Also when there is one word against the other a conviction usually is not possible. Frequently the man does not say anything or tells the court that the woman has only fallen down – and when no

[71] The lawyer mentioned that she had never met a victim who tried to cover up a violent incident out of fear, in general they would refuse to testify.

[72] Recently he informed a victim at trial about her right to refuse testifying, and then she stood up, said that she would not give evidence and added 'I did not say the truth at that time'. She had to expect a serious (conditional) sanction as defamation is always sued.

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witnesses have been present an assault cannot be proven. A judge had made the experience that the reaction of suspects depended (among other factors) on their educational status: Academics often would refuse to give statements as they were aware of the risk of being inconsistent.

Perpetrators sometimes confessed and tried at the same time to relativize their behavior as 'not that violent' or by maintaining that they had not beaten the victim with their fist, but just with their hand. Their lawyers would tell them to do so in order to influence the punishment, for example asking for diversion.

Dangerous threats are often dismissed by PPs as 'statements of resentment made due to social milieu' – how do the judges think about it?[73] One of them had the impression that dangerous threats were charged in case of doubt, even when the perpetrator had no previous convictions. In principle, he acquitted the accused 'in dubio' when it was the first time; in case of a prior conviction he did not believe any more that '*the words just slipped out of his mouth'* (Ju.1). For him 'due to social milieu' would not refer to 'lower class' but to the situation (mentioning by the way that also academics threatened their partners, using other words).

> *When threats are expressed in anger and wrath, especially when the speaker is drunk, they can rarely be qualified as dangerous threats. But it is different when he also says something like 'I have bought a weapon.' And it is different when he gets angry at somebody but sees him only the next day and threats him purposefully. (Ju.1)*

The qualification as a dangerous threat requires 'fear and anxiety' of the victim but they often answer when being questioned at court that they were not afraid and that

> *… he has said things like these already 1,000 times. And when I ask her 'Why did you report it this time?' she answers that a friend advised her to do so. The victim protection centers tell them to report threats as they are convinced that threats are only the first step and physical violence will follow. Therefore they want a conviction. But I cannot sentence him when the victim says that words like these have been said already many times before in disputes. Then it's not a dangerous threat. (Ju.1)*

Another judge was much more pragmatic: She did not accept 'due to social milieu' as a qualification ("*You cannot tell someone that you will kill her or him*" (Ju.2)) and for her the combination of bodily injury and dangerous threat underlined the seriousness of the threats.

[73] The regional courts are in charge of dangerous threats.

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The witnesses' **credibility** was also an issue in the interviews with judges. Good witnesses would answer spontaneously, without any preparation and without having reread the police protocols but sometimes they would stick too much to their statements at the police and nearly learn them by heart what damaged their credibility.

A judge regretted that victim interviews did not take place at-site immediately after the incident – memories were still fresh and no manipulation had taken place. In order to get an impression of the situation then, she regularly listened to the victim's emergency call at the police station.

Victim protection experts reproached judges to show too little interest in the situation victims had to cope with. They did not only bring in the issue of resilience and traumatization (FG-VSO) but also of self-reflection.

> *Someone should walk with the judge around the house and ask her/ him afterwards for the color of the car around the corner – without any stress and without somebody standing next to her/ him with a knife and threatening to kill her/ him. (…) Nonetheless, in general the situation has changed to the better. If judges want to know more about the victims' situation this is a big progress for the ascertaining of the truth.* (VSO.1)

The interviewed judges knew by experience that **acquittals** could be a big disappointment for women who had witnessed against the accused. They offered them to explain their arguments for a better understanding (although this was usually done by their psycho-social or legal supporters). The worst aspect for the witnesses was when they were judged as 'not reliable enough'. Therefore some interviewees acquit suspects 'in dubio'; they gave reasons like "*it promotes peace what is especially important when they have common children; the victim should not be left out in the cold; and last but not least, it often remains open what has really happened*" (Ju.4).

In case of an acquittal the judge must not criticize or caution the accused but he/ she may tell him that the acquittal is based on lack of evidence and that the next time evidence might be available.

An interviewee stressed that judges were very flexible with regard to **penalties**. If for example the victim wants to continue the relationship and if the perpetrator has shown remorse, the penalty could be less high, or only a conditional one, or diversion could be an option. In general, severe bodily harm, without previous convictions, would lead to a conditional prison sentence combined with the obligation to attend an anti-violence training. "*Using a conditional sentence I can influence the perpetrator's behavior much stronger than with a fine*" (Ju.1). Instructions imposed on the perpetrator mean extra-work for the judge (controlling, warning) but on the other hand the instituted probation officer keeps an eye on him.

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Victim protection experts as well as police representatives did not have the impression that anti-violence trainings were frequently used; on the contrary, they demanded a higher number of assignments.

All judges use **diversion** in IPV cases but prefer partially different measures. Probation time is mostly applied in combination with anti-violence trainings, alcohol withdrawal or the support of a probation officer; yet one respondent rejected anti-violence trainings with the argument that a person needing such training should not benefit from diversion. Moreover, as only a few specialized institutions offer these trainings they are not easily available. Two judges impose fines – a diversion measure that has been regarded as inappropriate for domestic violence since the implementation of diversion in 2000. The same applies to community-service that is used by one of them. Victim-offender mediation is considered by three interviewees, the fourth one is completely against it. VOM is seen as suitable especially when the couple wants to stay together or if they have been reported because of mutual violence. Representatives of victim support organizations as well as the interviewed lawyer affirmed that these were frequently used arguments for VOM – plus the parenthood of common children.

The **wish to be heard** is regarded the most important need of IPV victims at court. An interviewee tries to keep the balance being efficient and giving time.

> *In the beginning I give her five minutes to tell her story and then I start asking. A victim must not be questioned too long as she will say then that she has already told everything the police and does not remember the situation properly. (…) Then I ask her whether her memory was better during the police interview and if she said the truth there. Thus I can stop questioning her.* (Ju.1)

It would be natural that victims who are questioned extensively feel under pressure and get nervous, but the lawyers of the accused tried to take advantage of it. The victim telling her story in the beginning would not only allow her 'to be heard' but was also important for her credibility.

A respondent is not that sensitive: Exploring the truth would require unpleasant questions even if some witnesses felt treated like accused.

For victim support experts it is most important that women get enough time to tell their stories and that judges take their time to listen to them.

> *They are asked: And what was then? And what was then? (…) And they are always asked to specify the time. (…) They are told 'But in the police interview you said …' But the police interview has lasted two hours, there is much more time.* (FG-VSO)

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Furthermore, they reproached judges for blaming victims in a moralizing way of having waited too long, of not having seen the police earlier.

Another basic interest of many victims is to **avoid contact** with the perpetrator. (If the victim has psycho-social and/ or legal support they inform the court on this issue.) According to the interviews it is made possible by using different waiting areas, on different floors, and by **separate questioning** or **video interviews**. One interviewee never had to organize a separate questioning so far because she tells the witness that she is safe at court and does not have to be frightened – "*they are already both in the courthouse and she will not have to look at him*" (Ju.4).

The victim protection experts confirmed that the separation mostly worked but especially at the district courts technical means for video interviews were not sufficiently available. One of them reported that a judge had found a provisional solution by questioning victim and perpetrator at two different district courts and using video. But all of them knew cases when victims were refused separate questioning arguing that they met the perpetrators anyway: during divorce proceedings, when handing over the children etc.

Risk assessment at court is not standardized, for most interviewees their personal impression, their 'gut feeling' plays the most important role. Previous convictions respectively criminal proceedings are considered, by one of the interviewees also civil proceedings, especially divorces. She reproached her colleagues that they often were too lazy to check civil law files. The judges at district courts have never been informed about high-risk cases by violence protection centers/ intervention centers, other than at the regional courts where such information usually is part of the files and actualized during the proceedings. (The use of standard forms was not only criticized by the judges but also in the advisory board.) Information from victim support organizations gains importance when also police reports are alarming – but then the perpetrators generally are in detention. Barring orders are looked at but not regarded as very relevant.

As already mentioned, in the Austrian criminal system the judge decides on **pre-trial detention** on the PP's request. Following an interviewee, more or less severe 'cultures' of pre-trial detention can be found in Austria – a fact like the existing differences regarding penalties. Moreover, in the aftermath of a violent crime he had observed that PPs tended more to request pre-trial detention but after some time they returned to the previous level. For him barring orders are not a 'less severe measure' but a completely different, administrative measure that has nothing to do with pre-trial detention. Besides, he did not accept the argument that the perpetrator will be released after some time and regarded a cooling-off phase as quite helpful.

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An important issue for **victim protection** is the **cooperation** between all relevant agencies, police, PPs, judiciary and victim protection organizations. At some locations this seems to work very well, the relevant actors talking respectfully about each other. A judge for example remembered that in the 1990ies she perceived victim support organizations as 'too radical', now she is very glad that they take over the contact to the victims, functioning as a link. Following some NGO experts, cooperation with judges is in general much more difficult than with PPs: "*You have to think twice before calling them as they always fear that you try to influence them*" (VSO.2).

According to the interviewed judges, in most substantial cases victims are provided with **psycho-social and legal support** – both at regional and district courts; nevertheless, victims who live in the countryside are less frequently accompanied. At least three out of the four highly appreciated this instrument and did not have the impression that victims got manipulated ("*The experts' task is a kind of interpreting in both directions*". (Ju.2)) According to the forth one, psycho-social and legal support was offered too frequently, also for injuries that were minimal even for district court standards, or for victims who had contact with the perpetrators. Moreover, as a consequence 'real' victims would be overlooked.

Victim support experts criticized that the Austrian regulation concerning support during proceedings is more restrictive than the EU Directive (e.g. parental child abduction and property damage are not covered although the EU Directive demands support for all victims of crime). To save costs the Ministry of Justice does not pay all services rendered respectively restricts them. For example on the day on which the proceedings take place only half an hour of psycho-social support is paid for – "*a regulation that does not necessarily fit the situation of a victim*" (VSO.3). The same applies to the legal support as financing ends with the closing of the proceedings and does not include reviewing the court's decision. Also other aspects were mentioned in the focus group as well as in the national board meetings: police would not always inform victims strongly about the offer and usefulness of support; legal supporters were not treated like 'normal' lawyers and so they sometimes were not informed in due time about upcoming stages of the proceedings. Last, but not least they complained that judges did not know much about psycho-social support and therefore would not see the supporters' amount of work and its effects.

What did the judges think about only a **supported witness being a good witness**? Like the PPs they denied the correctness of this statement and problematized the meaning of 'good': "*Is a good witness the one who enables an acquittal or a sentence*?" (Ju.2) Moreover, support was regarded as connected with advantages as well as disadvantages. An interviewee even stated that the contrary

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was true as 'natural' witnesses were more reliable but nevertheless preparation in the sense of informing a witness about how the questioning was conducted was important.

Although the judges agreed that the intervention centers/ violence protection centers did not 'prepare' their clients for witnessing, one of them criticized that clients sometimes were influenced: "*Occasionally they exaggerate and that's counter-productive because it makes the judge suspicious*" (Ju.4). Another one had watched psycho-social supporters shaking their heads during the victims' interviews: "*Then I know they have talked about it and she does not response in the way they have discussed. But I am sure that no one is encouraged to tell lies*". (Ju.1)

3 Conclusion

To fulfil their task of victim protection the police use a standardized **risk assessment** instrument: Barring orders are documented with a form which contains basic information on the involved persons, the situation at-site etc. and which is sent to the intervention centers/ violence protection centers as a basis for contacting the victim. Public prosecutors and judges do not use formalized instruments for assessing risks, but they gather information on the perpetrator for ex. by checking files of previous criminal proceedings and partly also civil proceedings related to divorce and fatherhood. Additional information provided by victim protection organizations is not highly estimated in general; finally they mostly seem to rely on their gut feeling.

In some police departments **specialists** are active in domestic violence cases, in others generalists work on all cases which occur. Whereas in larger PP offices special departments for sexual crimes and domestic violence are obligatory, there is no comparable regulation for courts – a fact that has been criticized by victim protection experts for years as they expect better knowledge and understanding from specialists (what is proven for the police).

At the police level the provision of **interpreting** services often is a problem – especially (but not only) at-site, during night-time and in rural areas. This is problematic as it restricts the right of being heard and is not only noticed by victim support organizations but also by judges. As an expert suggested, it might be helpful to establish an interpreting hotline that is on duty during 24 hours.

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A major topic in the interviews with practitioners was the high number of **dismissals** in domestic violence cases.[74] As one reason among others the police were reproached that they did not take enough efforts in a proper collection of evidence, e.g. when they did not take photographs of injuries or not write precise protocols of victims' interviews. But the public prosecutors play a much more important role when they dismiss cases for ex. because of their 'minor nature'. PPs mentioned in the interviews that they often had to do so as victims did not want to testify against their (former) partners – an argument which is not supported by the file analysis.[75] Experts from victim support organizations pointed out that victims refused testifying not primarily because they had decided to continue the relationship but mostly out of fear and/ or stress or because they did not want to be confronted again with the act of violence. Therefore, the further back the incident is, the lower is the number of women who are ready to witness.

Not only the rate of dismissals but also of acquittals is high – and not only because of non-testifying witnesses but also if the witnesses' credibility is in doubt. Most of the interviewed PPs and judges know how difficult witnessing can be for a victim, both emotionally and with regard to making a comprehensive statement. The supporting judges allow the victim to tell her story with her own words, without interrupting her, what gives her the opportunity of calming down. Nevertheless, there are others who question very rudely, interrupt, and who hold the view that this is inevitable in the search for truth. In case of 'in dubio' acquittals, especially when victims have no psycho-social support, some judges offer them to explain their arguments in order to avoid that the women feel not reliable enough.

Credibility has also been an issue with regard to **contradictory hearings** when a practitioner of a counseling center questioned the use of this instrument as it would not allow the court to get a personal impression of the witness what might have negative effects. She preferred separated questioning.

PPs as well as judges use **diversion** in IPV cases but the preferred measures vary, ranging from victim-offender mediation to imposing a fine. A prerequisite for VOM seems to be that victim and offender either plan to continue their relationship or that they have common children; moreover, it is used in cases of mutual violence.

[74] See also chapter I.2.3.

[75] See also chapter I.2.3.

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According to the interviewees on court level, **probation time** is often combined with anti-violence trainings (which should be made available more easily), alcohol withdrawal or the support of a probation officer. On the other hand, victim protection experts as well as police representatives criticized that anti-violence trainings were only rarely used.

Finally, all practitioners were asked whether they considered only a **supported witness to be a good witness** – an argument which is often used to underline the importance of institutionalized victim support in proceedings. Some PPs and judges did not agree and reproached victim support organizations of influencing their clients what was strongly contested by others. Moreover, the correctness of the statement was questioned In general, asking if a good witness is the one who enables an acquittal or a sentence.

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IV. Discussion & conclusions

In this final chapter we discuss the findings of the quantitative file analysis, the interviews with victims and practitioners as well as the advisory board meetings against the background of the propositions of the EU Directive 2012/29. This discussion combined the different perspectives with regard to victims' needs, experiences and rights. We will conclude with recommendations for the improvement of victim rights and support.

1 General treatment of cases and victims by police and court & communication

In Austria, there is no specific criminal legislation on IPV/ DV. Crimes like assault, rape or murder committed in a partnership are treated in the same way as crimes of strangers.

A sign for taking IPV and DV cases seriously are specialized officers and departments. All over Austria, there are police officers specialized in DV and violence in close relationships without being limited to such cases. A few Viennese police districts' departments have additionally established structures in which specialized violence protection officers are exclusively responsible for contact with DV victims and perpetrators and the cooperation with other institutions. The interviewed police officers did not agree about the necessity of such expert functions, but the importance of specific qualification in DV was undisputed (Po.1; FG-Po). The victims interviewed appreciated the support provided by specialists without reservation: they provided sound legal information and information about possibilities of support; they showed understanding and took victims seriously; they gave safety tips; they were contact persons what made calling the police easier, etc. Victim support organizations did not value the work of specialized police officers so univocally, although acknowledging their expertise. A representative of a violence protection center stated an increase of specialized officers and at the same time a decrease of issued barring orders in her province. Furthermore, the experts' tasks were not clear and this development had led to less cooperation between police and victim support organizations (e.g. the violence protection center not being involved in police training anymore).

At the level of public prosecution specialized departments for sexual crimes and DV are obligatory when at least ten PPs are working for the authority. Nevertheless, PPs who specialized in DV and sexual crimes work on 'ordinary' cases, too, and because of administrative reasons the investigating PP usually is not the one who is responsible at court. The interviewed PPs, who all have attended

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seminars focusing on DV and sexual violence, criticized that such courses are not obligatory for specialization. In the focus group with victim support organization concerns were raised with regard to a lack of knowledge about traumatization and dynamics of violence among PPs and judges.

Specializations at court exist only regarding sexual violence. Further qualifications with respect to DV was not regarded necessary by the interviewed judges as DV cases would not differ that much from other offences.

According to a representative of a violence protection center specialization does neither have an impact on acknowledging victim needs nor on the outcomes of proceedings (VSO.1).

1.1 Collection of evidence

The collection of evidence and its quality are essential for criminal proceedings and their outcomes. With regard to IPV evidence is primarily taken by questioning victim and perpetrator, when appropriate medical, forensic and photographical evidence of damages and injuries are collected, too.

The PP file analysis has shown that nearly all victims and the majority of perpetrators were interviewed by the police within 24 hours after the incident. Following the file analysis and the victim interviews, victims (and perpetrators) are only rarely questioned by the PP. That is, the quality of evidence collection relies heavily on a thorough and sensitive police interrogation[76] as well as on its proper documentation. Some of the interviewed PPs and judges are aware of the burdening of multiple questioning and therefore try to shorten it as much as possible. When the police protocol provides a comprehensive picture the judges focus in their victim interviews only on topics which are either unclear or have not been addressed so far. This means that Art. 20 of EU Directive 2012/29 is implemented as the majority of interviews are done *'without unjustified delay'* and *'kept to a minimum'*.

The critique of victims with regard to evidence collection and acknowledgement is primarily oriented towards PPs and judges. They would not order, for instances, telephone surveillance in cases of stalking, consider evidence by medical protocols to be unreliable or refrain from interviewing other witnesses. The victims especially complained that some judges would not reflect the context (e.g. histo-

[76] According to members of the advisory board it happens once in a while that even victims of severe violence are questioned (informally) by the police several times during the night, sometimes while still in the hospital. This is not considered a considerate examination.

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ry of violent relationship, the perpetrator's behavior) in which the incident at stake had taken place. The judges on the other hand stressed that they always considered former incidents regardless whether they had been dismissed or acquitted, but that they had to evaluate the evidence provided and to respect the suspect's rights. The case file analysis backs these statements as cases with a prior history of violence ended more often at court. Nevertheless, only in one quarter of all cases with prior violent incidents finally a court trial was held.

Contrary to the victims, who blamed the PPs and judges for the high number of acquittals, some victim support organizations held the police responsible due to deficient evidence collection and preservation as well as flawed interview protocols. An improvement of evidence collection would – according to them – make criminal proceedings more independent from victims' testimony.

We cannot evaluate whether the high number of dismissals by the PP in our survey (51 of 70 cases) was justified or not. Most often these cases were dismissed because of lack of evidence (25 cases), as the victim refrained from statement (11 cases) (what again contributed to lack of evidence) and in doubt for the accused (11 cases). According to the interviewed PPs a combination of factors leads to dismissals: the victim refuses to give a statement, the perpetrator denies the crime and/ or injuries are not documented. The low number of victims who refrained from testifying at the police (11 of 70) and also the police's perception contradicts the often heard statement about the victims' unwillingness to support investigations.

1.2 Treatment of victims, the right to be heard and informational rights

Nearly all victims were satisfied with the way how police conducted the interviews. Contrary to many victims' experiences at court, they felt taken seriously and treated respectfully. Although it seems that police, PP and court are aware of the challenges of testifying victims pointed at their experiences: Not a few of them problematized the lack of empathy by judges, their sometimes rude behavior and, most of all, that their own credibility was questioned in a way that they felt like being the perpetrators.

According to an expert of a women's counselling service a lack of recognition as a victim is rooted in the judicial system which is not oriented on victim needs (VSO.3). Another interviewee found the PPs' aim to ascertain the truth while putting pressure on the victim absurd as they should try to proof guilt (VSO.1). Looking at the victim's situation would also help to establish truth. Furthermore, in her view, the traumatization of victims was not recognized or underestimated by PP and court. In the

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VSO focus group was also mentioned that judges often were not sensitive enough regarding victims' challenges at court especially when the case concerns 'only' physical violence. In cases of sexual violence judges would be more aware of traumatization.

As outlined in the previous section, Austrian criminal proceedings respect the victims' right to be heard to a large extent (Art. 10 of EU Directive 2012/29). In as far as protection measures (e.g. contradictory hearing, separated questioning) are set when interviewing will be discussed in chapter II.3 ("Experiences with criminal proceedings"). According to victims and the PP file analysis also the right to be interviewed by a person of the same sex is applied in the majority of cases. Problems are mentioned with respect to interpreters: for some languages female interpreters are hardly available.

The EU Directive also lays emphasis on the right to understand and be understood (Art. 3). This affects communication in case of special needs like persons with disabilities or no/ low command of the national language (Art. 7). The interviewed practitioners and victims as well as the focus groups and the case file analysis pointed at problems especially with regards to communication/ interpretation: Sometimes there is a lack of quality of interpretation because the interpreters are biased for the perpetrator or there is a lack of understanding with regard to domestic violence and traumatization. Especially in the country side and during nights interpretation services are not easily accessible. In such cases children, other relatives or neighbors are used for interpreting or police officers interrogate the victim without any help. This may have severe implications for further proceedings and their outcomes. Judges criticized that police do not take communication problems seriously so that they had to realize during the trial that victim and/ or suspect cannot follow the proceedings. Non-native German speaking victims pointed at the problem that the command of German might deteriorate in situations of stress like court hearings or police interviews and therefore made it difficult to provide a concise statement. Altogether 19 PP files (out of 70) indicated the need of interpretation, but in only 12 of them a professional interpreter was provided, in three a relative acted as an interpreter and in the remaining four no one assisted. No information is available how often relevant documents (e.g., court summons, written confirmation of complaint) are translated.

Another right set in the EU Directive and implemented in the Austrian criminal law, the right to review a decision not to prosecute, is more or less 'dead law'. In only one of the 56 dismissed cases a – finally unsuccessful – application for continuation was filed by the victim's lawyer. Also none of the interviewees' dismissed cases was reviewed.

The right to information (see Art. 4 and 6 of EU Directive) is fundamental for access to support and protection. According to PP files and to the interviewed victims the majority received information on

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support, proceedings, protection as well as psycho-social and legal aid in the course of reporting violence to the police and afterwards when supported by intervention centers/ violence protection centers and women's counselling services. But from the victim interviews we also can conclude that the information was not given in *'simple and accessible language'* as demanded in the EU Directive. Especially during the first contact with police the information given was too comprehensive and/ or not well understood due to the state of shock or superficial explanation by the officer.

What concerns the right to information about the case (Art. 6) the victims were often ignorant about the status of the proceedings, although many had received written and/ or oral information by the PP and court. This might be based on a general lack of knowledge about the legal system. But the victim interviews revealed deficiencies: A victim who was transported to a hospital during the police intervention was not informed whether the perpetrator was barred from home or not; information with regard to the perpetrator's imprisonment was given only the next day; a letter about a temporary release named a false date; neither the victim nor her lawyer were informed about the perpetrator's appeal.

2 Support related to criminal proceedings

2.1 Availability of and access to support and referrals

The support system for victims of DV/ IPV is very well established in Austria. As part of the Violence Protection Act (1997) intervention centers/ violence protection centers have been founded in each Austrian province; additionally, 30 women's shelters provide protection. Both institutions offer (among others) psycho-social and legal assistance. Several emergency helplines supplement the support system.

It is obligatory for the police to inform the intervention center/ violence protection center and, when children are living in the household, also the child and youth welfare about the imposition of a barring order. The victims interviewed confirmed that they were contacted by intervention centers/ violence protection centers shortly after the barring order was issued; also in most PP files the provision of information was documented. The interviewed representatives of victim support organizations confirmed that this standard procedure is observed to a large extent.

That is, victims get access to support via this standard referral proceeding. In cases of police interventions without the issuing of barring orders the access to support is limited in as far as (usually) no

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information about the intervention is forwarded to intervention centers/ violence protection centers. Victims appreciated the pro-active approach as they would not have had the strength to contact counselling and support organizations. Therefore, victim support organizations have been demanding information on all interventions for a long time.

But, a barring order is no precondition for receiving support by these institutions. Every victim of DV can turn to them and will be supported free of charge.

The PP files only rarely provide information about the support of victims by other institutions. Referrals to shelters by the police are mentioned only occasionally.

From that follows that Art. 8 of the EU Directive is implemented in Austria and the right to access victim support services is observed. In the countryside there are still deficiencies with regard to access to victim support organizations, but the violence protection centers try to cope with them offering regular consultation days and individual measures.

2.2 Psycho-social and legal assistance

The interviewed victims praised the support provided by intervention centers/ violence protection centers and other women's counselling services. These organizations offer a wide range of help for victims affected by DV/ IPV. Just to name a few: general counselling with regard to protection orders, protection and support, separation/ divorce, children custody, financial issues; accompaniment to police and court; psychological and legal aid regarding criminal proceedings.

In the following we will focus on psycho-social and legal assistance as one of the most important instruments for victim support. A legal entitlement for victims of certain crimes (e.g. physical and sexual violence, dangerous threat) exists since 2006. As described in detail in Amesberger and Haller (2016) victims can be supported before, during and after criminal proceedings. Besides psycho-social support, it includes legal advice and the provision of an attorney.

Whereas all interviewed victims obtained psycho-social and/ or legal support, only in a few PP files (7 out of 70) this kind of support is documented. In general, eligible victims should be supported already during the police inquiry. With respect to psycho-social assistance the low number in PP files is not necessarily conclusive, because neither police nor PP and judiciary are officially informed about this kind of assistance. On the contrary, legal assistance which is usually not a stand-alone measure is always announced to PP and court. Representatives of support organizations criticized that victims

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are often not well informed by the police about the access to psycho-social and legal support (FG-VSO) and police officers acknowledged problems in explaining the instrument (FG-Po).

The majority of practitioners considered psycho-social and legal assistance as a useful and important instrument, but among judges and PPs also more critical views are recognizable, for ex. the concern that too many victims are supported and those with special needs sometimes overlooked (Ju.4).

Representatives of victim support services stated that the number of victims supported not only depends on the victims' acceptance but also on the financial resources provided by the Ministry of Justice (interviews and FG-VSO). Especially what concerns legal assistance support institutions do not try to convince victims to make use of it, criteria for providing are the severity of the case, whether the perpetrator has engaged a lawyer, whether the victim claims compensation for personal suffering, and whether a conviction is considered essential for victim's safety and protection (VSO.1). According to a judge (Ju.1) victims living in urban areas are more often assisted by an attorney than those living in the countryside.

Notwithstanding these shortcomings, psycho-social and legal support for victims of crimes can be regarded as a good practice model. Art. 13 of EU Directive, concerning the right to legal aid, is implemented und applied although the group of entitled persons for legal support is narrower than in the EU Directive, as an interviewee pointed at (VSO.1). For instance, witnesses of a crime (e.g. children), cases of child withdrawal or property damages are not eligible for legal assistance.

2.3 Interagency cooperation

Mainly the discussions in both focus groups (VSO and police) and the interviews with practitioners provided information on interagency cooperation; the findings from the case file analysis and victim interviews contributed to the general picture. It has already been mentioned that the referral from police to intervention centers/ violence protection centers and when appropriate to youth and family welfare works very well. Cooperation is essential in terms of effective victim protection (VSO.1).

For intervention centers/ violence protection centers cooperation with police, PP and judiciary results from legal requirements; in most cases the initiative for exchange and working together comes from their side (VSO.1), they miss the police's initiative and commitment for a close exchange (FG-VSO). In their view case-related cooperation with the police contributes to victim protection but is not necessary in each and every case. When cooperation takes place – so focus group participants –

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police mostly show a positive attitude and cooperation works well (FG-VSO). From the perspective of interviewed victims interagency cooperation contributes to feeling safer and more protected.

Members of the national advisory board see a need for improvement with regard to communication between police, PPs and judges as there were many misunderstandings due to different background information on each side. Whereas police representatives agreed PPs and judges did not recognize communication deficits.

3 Protection by police, PP and court

Chapter 4 of the EU-Directive 2012/29 focuses on 'the protection of victims' and the 'recognition of victims with specific protection needs'. Art. 18 says: *"(…) Member States shall ensure that measures are available to protect victims and their family members from secondary and repeat victimization, from intimidation and from retaliation, including against the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying."* In the following, Art. 19-21 specify the right to avoid contact between victim and perpetrator, the right of protection during criminal proceedings and the right to protection of privacy.

3.1 Protection orders and risk assessment

In Austria, two kinds of protection orders are in use: 1) barring orders which are issued by the police in cases of imminent danger; the perpetrator is dismissed from home for two weeks, the police have to control the premises at least once within three days; 2) restraining orders have to be applied for by the victim at the civil court and can be imposed for a maximum of 12 months (see for details Amesberger/ Haller 2016). Barring and restraining orders are efficient instruments to *'protect victims and their family members from secondary and repeat victimization, from intimidation and from retaliation'* (Art. 18).

As the PP file analysis and the experiences of victims interviewed showed, barring orders were issued in the majority of cases. The eviction of the perpetrator was considered as a warning by victims and they often hoped that this stop-signal would lead to behavioral change of the perpetrator – what did not happen in their cases. However, barring orders provided protection and the police controls contributed to the victims' safety, too (this standard was followed in most cases according to the inter-

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viewed victims). In general, most victims were highly satisfied with protection and support provided by police.

Nevertheless, the victim interviews also revealed a few critical points: Four out of ten interviewees mentioned that the officers did not issue a barring order although imminent danger was evident (e.g. in cases of non-cohabitation). Victim support organizations consider imposing a barring order as an important safety measure, even when the victim decides to go to a shelter, what is not done regularly all over Austria. Another issue raised in the victim interviews is the right of the perpetrator to fetch personal belongings from home (under surveillance of police) after a barring order was imposed. Seemingly this was misused to withdraw shared property or to upset the victim anew but the police officers did not intervene and/ or accompany the perpetrator a second time to fetch belongings. Furthermore, and this was mentioned primarily by some representatives of victim support organizations (FG-VSO), but also by victims, the misogynous attitude of some police officers towards DV victims leaves room for improvement. Additionally, as the victim interviews illustrated, protection in cases of stalking is difficult to be obtained. On the one hand, because of a very narrow definition of stalking, on the other hand, as suggested protection measures were not useful and required profound changes in victims' lives.

Victim support organizations criticize that pre-trial detention is too rarely requested by PPs with the argument that a barring or restraining order has been imposed as a less severe measure (1st advisory board meeting). Police representatives confirm that PPs are rather reluctant, issuing pre-trial detention only after severe crimes. If they do not agree with the PP's decision police officers sometimes convince victims to seek refuge in a shelter.

As a prerequisite for a barring orders police officers have to **assess the risk** of imminent danger. They have to fill in a form which documents the intervention and substantiates the barring order along some questions like behavior of victim and perpetrator, drunkenness of perpetrator, prior police interventions etc. Following the PP files, in about 86 percent of the cases the risk assessment resulted in a barring order. However, this form is not considered sufficient for risk assessment by most representatives of victim support organizations (FG-VSO), but a more thorough assessment would firstly require a lot of expertise and secondly might not be done properly because of lack of time. Also some representatives of the police preferred a more detailed and precise tool, listing risk indicators like the victim's pregnancy, pending divorce proceedings, the amount of consumed alcohol etc. In general, the police focus group pleaded for further development of existing instruments instead of introducing new tools (FG-Po).

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Most PPs make a risk assessment (e.g. by checking the perpetrator's background), but none of them applied a standardized risk assessment tool, one uses a self-made check-list. In her view, risk assessment should be mandatory. Most PPs and judges alike considered the risk assessment reports of intervention centers/ violence protection centers flawed having made the experience that they either underestimated or exaggerated risks, the police's assessments being more reliable[77]. Representatives of victim support organizations and advisory board members on the other hand stated that most PPs and judges did not know what risk assessment implies and were not interested in it.

As the imposition of **civil restraining orders** is not within the competence of police and criminal justice, the issue was not touched in the interviews with practitioners. Nevertheless, they should be mentioned here as restraining orders are an important instrument for long-term victim protection. According to victim support and police focus groups about every third victim applies for a civil restraining order. This figure seems to be very high compared to the five cases in the PP files (out of 70; that is seven percent) (as with an application the period of eviction from home is extended from two weeks to four such information ought to be documented in the files). Eight of ten interviewed victims filed an application at least once, seven were approved (one was withdrawn later on). Victims criticized that the responsible judges did not always understand the effects and dynamics of violence and therefore did not realize that visiting arrangements for fathers and restraining orders might be conflictual. Well considered regulations which guarantee victim protection while enabling a father's contact with his child(ren) are central, but often difficult to obtain.

3.2 Protection measures during inquiry phase and at court

Besides protection orders there is a number of other measures for the protection of DV victims. Among them are (not obligatory) **talks with victims and perpetrators** by police, so-called complex work with/ for victims. Offered by specialized or ordinary officers (it depends on the department), these meetings aim at the victim's safety, and in the victims' interviews was stressed that the talks were very helpful: The women were heard, they got information and safety tips and, also very important, they met a trusted contact-officer to whom they could turn to whenever necessary. The talks with perpetrators illustrate the wrongness of their behavior and possible consequences of repeat violence. According to the police the talks are highly effective as there are only a few cases of

[77] Barring orders are not seen as relevant by PPs, as this police measure is based on different requirements.

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recidivism; nearly everyone would follow the invitation what is considered a sign of perpetrators' needs to talk and to be listened to.

A way to optimize protection of high-risk victims is establishing **MARACs** (multi-agency risk assessment conferences) what has been done in a few regions. Some of the police officers participating in the focus group, one interviewed PP and some of the victim support staff were involved in MARACs. Despite some problems brought forward (e.g. too little time for a sound discussion; too often held), all of them think very positively about the instrument as it enhances networking, the exchange of information and finding appropriate protection measures (see also part I). It is criticized that representatives of PP and judiciary usually do not participate in MARACs.

In chapter 4 of the EU Directive protection measures like the right to avoid contact between victim and perpetrator (Art. 19) are set, what includes being heard in court without being present or measures avoiding visual contact with the suspect while testifying (Art. 23(3)). **Contradictory hearings** not only allow to prevent contact but also to avoid multiple questioning. In Austria it is mandatory when the victim is younger than 14 years and in cases of sexual violence, but it may also be applied in other cases. According to some interviewed PPs, they mainly employ contradictory hearings when a very severe crime is at stake. Two interviewed victims had a contradictory hearing (the suspects were alleged of rape and child pornography). The narrations by these two women illustrated that, depending on the judge, this kind of interrogation does not always ease testifying. Representatives of victim support organizations mentioned several reservations with regard to contradictory hearings: The immediateness of testifying is not given what might have negative impacts; the video-taped interview can be requested by the perpetrator and in the following misused (e.g. put at the internet); the video-taped interview can be shown at court even when the victim refrains from testifying. Additionally, not all courts are equipped accordingly; long waiting times are the consequence. Furthermore, it is up to the judge to decide over the application for a contradictory hearing, and the victim has no right to appeal. That is, albeit contradictory hearings are implemented for victim's protection, they do not necessarily contribute to it

Instead, some victim support experts prefer **separate questioning** meaning that the accused is not in the court room while the victim testifies but can overhear what she says. Here again it is within the judge's discretion. That only one out of three victims interviewed who asked for separate questioning was granted this right shows the judges are hesitant to do so.[78] Justifications like 'the parties have

[78] Members of the advisory board and one practitioner (VSO.1) confirmed that judges often refuse separate questioning.

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seen each other recently during divorce proceedings' or not accepting that victims are afraid of the perpetrator illustrate on the one hand a lack of understanding of violent relationships and the judges' arrogance on the other hand as the decision is made without having talked to the victim.

Protection of privacy is addressed in Art. 21 EU Directive. This right is implemented in cases of sexual violence as the public can be excluded from the trial on request of the victim or her/ his representative. An interviewed victim had experienced such a decision.

The **right to be questioned by a person of the same sex** is respected on the level of police to a large extent. Following the PP files, at least half of the victims were interrogated by female officers, one third by male ones. However, practitioners criticized that interpreters and judges are often male what in their view contradicts the intention of protection and support (1st advisory board meeting; FG-VSO).

With regard to the **accompaniment of the victim** by a person of trust to police and court (Art. 3 and 20) neither the PP files nor the interviews with victims and practitioners indicated any problems.

4 Summary of enhancing and hindering factors for recognition of victims' rights and needs & recommendations

One of the most important factors enhancing victims' rights and needs is the access to psycho-social (and legal) support provided by victim support organizations whereby the referral procedure by police after barring orders and the pro-active approach of the violence protection centers/ intervention centers are crucial to gain access to support. Both obligations are fulfilled although police interventions are sometimes criticized, even almost 20 years after the coming into force of the Violence Protection Act. So the likelihood that every victim gets in contact with the victim support service shortly after the incident is very high.

This research has also shown that a sound training in DV/ IPV is important for victims' protection and for the recognition of their rights and needs. Training ensures awareness of the dynamics of violence, empathy and understanding for victims. The provision of comprehensive and intelligible information is another enhancing factor: Only when victims receive situation-adequate and repeat information at all stages of criminal prosecution it is ensured that they can use services according to their needs.

An individual-centered approach is the precondition for the recognition of victims' needs. This means that every victim might have different needs and therefore different measures might satisfy the gen-

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eral need for safety and protection. As victims' needs may change in the course of criminal proceedings their reassessment from time to time safeguards the appropriateness of support measures. This is facilitated when – especially at the police – just one person is in charge of the case and when inter-agency cooperation is well established.

From that follows that a lack of support, a lack of training, a lack of information and refraining from risk and needs (re-)assessments inhibits the recognition of victims' rights and needs.

In the following we point at the main hindering factors for the recognition of victims' rights and needs as well as for assuring protection and formulate some recommendations to overcome these shortcomings.

4.1 Deficiencies in communication inhibiting the victim to understand and to be understood

Victims' needs are respected when

- Possible problems with language/ communication are taken into account and, when in doubt, interpreters' services are requested. By establishing an Austria-wide interpreters' hotline operating around the clock, access to interpreters' services are facilitated considerably.
- In particular children or other relatives should not be used as interpreters in the police interview, especially because of connected conflicts of loyalty and psychological stress. Objectivity of interpreters has to be ensured.
- Confirmation of reporting the offence, criminal charges, court summons, decisions etc. have to be translated into the victims'/ the accused's mother tongues if need be.
- Judges need to be competent to treat (sometimes traumatised) victims of partner violence with care and question them accordingly.
- The important role of court support is explained to the victim of violence.
- It is important to the victims to understand the court's decision, whichever way it goes.
- Further trainings of police officers and public prosecutors regarding communication, interview techniques and the recording of interviews would improve their quality.

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4.2 Lacking or flawed quality of information inhibiting the victim to obtain support for criminal proceedings

Victims' needs are respected when

- Information is passed on in an intelligible and situation-adjusted manner. The majority of victims are legal laypersons and do not have any experience with the law, and in a stressful situation (e.g. immediately after the assault or during the police interview), their receptivity is additionally limited.
- It is necessary to stress the importance of medical care and the securing of medical evidence.
- Information on court support is provided to all eligible victims of violence at an early point in time and in an intelligible form, and if the important role of court support is explained to them.
- Information should, on the one hand, be repeated, and, if necessary, supplemented as the situation requires, and, on the other hand, be presented in plain and simple language (oral and written).
- In order to comply with these requirements, communication with specific groups of victims needs to be addressed in police training/ further training.
- Case-related information should be a special focus, as it is essential for the victims' safety and sense of security. Where there is no specialised officer in a police station, naming a contact with the police who the victim can turn to (at all hours) would be helpful.

4.3 Flawed (quality of) evidence collection and lacking consideration of evidence limiting the victims' right to be heard

Victims' needs are respected when

- A stronger emphasis is on securing evidence and recording it in order to make criminal prosecution more independent of the victim's statement.
- It is necessary to establish verbatim transcripts without linguistic editing.
- Prosecution should more often get its own impression of the victim and verify evidence offered by the victim.

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4.4 Deficiencies with regard to protection

Victims' needs are respected when

- In the context of trainings for the executive forces, the subject of requirements for barring orders is allowed more space.
- In the police force as well as with regard to public prosecutors and judges, a strong focus of trainings should be on recognising risk factors for (repeated) use of violence.
- Risk assessments of victim protection institutions should be given more consideration in the public prosecutor's and judge's decision on imposing pre-trial detention.
- "Less severe means" like barring orders or interim injunctions do not offer equal protection as remanding detention.
- The wish of the victim witness to make her statement in the absence of the accused is respected.
- In particular when a victim refuses to testify, judges should increasingly refer to histories of violence and the context of the offence in their decision in order to assess the significance of the situation.
- More referrals to anti-violence trainings make sense, because such measures are most likely to achieve a change of behaviour, which results in avoiding further violence. Probation assistance is a measure of violence prevention, too.

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Bibliography

Amesberger, Helga / Haller, Birgitt (2010): Partnergewalt gegen ältere Frauen. Länderbericht Österreich. Wien. http://www.ikf.ac.at/pdf/IPVOW_Austria_Deutsch_final.pdf
[Intimate Partner Violence against Older Women. Country report Austria]
http://www.ipvow.org/images/ipvow/reports/IPVOW_Austria_English_final.pdf (download November 13, 2014).

Amesberger, Helga / Haller, Birgitt (2016): The protection of IPV victims: legal framework and criminal procedures – Austria. Wien. http://www.inasc.org/

Beclin, Katharina (2014): „Aussage gegen Aussage" – häufige Pattstellung bei Strafverfolgung häuslicher Gewalt? Zwischen Zuweisung von Verantwortung und sekundärer Viktimisierung, in: Juridikum – Zeitschrift für Kritik, Recht, Gesellschaft, Nr. 3, pp. 360-372.

Gloor, Daniela / Meier, Hanna (2014): „Nach dieser Zeitspanne fragt man sich wirklich, ob das jetzt ein Witz ist." Erfahrungen gewaltbetroffener Frauen mit Interventionen des Rechtssystems, in: Juridikum – Zeitschrift für Kritik, Recht, Gesellschaft, Nr. 3, pp. 327-337.

Haller, Birgitt (2012): „High-Risk Victims". Tötungsdelikte in Beziehungen – Veurteilungen 2008-2010, Wien.
https://www.bmbf.gv.at/frauen/publikationen/highrisk_victims_endbericht__26166.pdf?4dz8a1

Hörl, Josef: Übergriffe, Gewalt und Aggression gegen ältere Menschen. Eine Studie zu den Erfahrungen von Experten und Expertinnen in österreichischen Beratungs- und Hilfeeinrichtungen. Unter Mitarbeit von HASLINGER, A.; MULSER, K. & HELLWEGER, U., Büro für Sozialtechnologie und Evaluationsforschung, Wien. Im Auftrag des Bundesministeriums für Arbeit, Soziales und Konsumentenschutz, Wien 2009.

Sautner, Lyane (2010): Opferinteressen und Strafrechtstheorien. Zugleich ein Beitrag zum restorativen Umgang mit Straftaten. Victimologie und Opferrecht, Schriftenreihe der Weißer Ring Forschungsgesellschaft, Bd. 6, Innsbruck / Wien / Bozen.

Statistik Austria (2015): Bevölkerung am 1.1. 2015 nach Alter und Bundesland - Frauen, unter:
http://www.statistik.at/web_de/statistiken/menschen_und_gesellschaft/bevoelkerung/bevoelkerungsstruktur/bevoelkerung_nach_alter_geschlecht/023472.html (download: September 14, 2015).

Statistik Austria (2015): migration & integration. zahlen – daten – indikatoren 2015. Wien.

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List of abbreviations

CC	Criminal Code
CCP	Code of Criminal Proceedings
DA	Danger Assessment
DAIP	Domestic Abuse Intervention Program
DV	Domestic violence
DyRiAS	Dynamic Risk Assessment
FG-VSO	Focus Group – Victim Support Organisations
FG-Po	Focus Group - Police
IPV	Intimate Partner Violence
Ju	Judge
MACC	Multi Agency Case Conference
MARAC	Multi Agency Risk Assessment Conference
ODARA	Ontario Domestic Assault Risk Assessment
Po	Police
PP	Public Prosecutor
SALFAG	Situational analysis of domestic violence (*Situationsanalyse familiärer Gewalt*)
SARA	Spousal Assault Risk Assessment
VOM	Victim-offender mediation
VSO	Victim Support Organisation

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