



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

The protection of IPV victims: legal framework and criminal procedures

AUSTRIA

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0 Introduction

The project INASC – *Improving needs assessment and victim’s support in domestic violence related criminal proceedings* – is co-funded by the Directorate-General Justice of the European Commission. It aims to improve existing understanding of victims’ experiences of trajectories of IPV 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).

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 as project coordinator). In all countries national analyses on the criminal justice response (risk assessment, victims’ protection mechanisms, referral procedures) and on victims’ experiences and perceptions of the way criminal justice is responding to their protection needs will be carried out.

As a first step all partners draw a baseline and describe the current knowledge on the issue in their countries. Based on an analysis of existing literature they describe the national legal frameworks on domestic violence/ intimate partner violence as well as existing protection and support procedures and mechanisms. The report at hand compiles the results of this literature research in Austria.

The first chapter describes the relevant laws and regulations in Austria focusing on the current policy context. The main issue at stake is intimate partner violence (IPV). As rarely any measures exist specifically on IPV, the report will mostly focus on specific regulations and measures for domestic violence (DV). These are detailed in chapter two; additionally general features of the Austrian judicial system and the investigation mechanisms that police and public prosecution use in DV cases will be presented. Chapter three provides details on victims’ protection, including risk assessment procedures, and support mechanisms related to the judicial system and the police. Referral procedures from the criminal justice system to victims’ support services are highlighted. In chapter four the report details the current state of needs of victims of IPV. Existing research on needs and access to social support, intervention and the justice system is described. Good practices in this field are point-

ed out. This description is based on the analysis of printed material, online resources and interviews with stakeholders.

1 National policy context

Austria has been among the first countries which guaranteed victims of DV state support by introducing emergency barring orders issued by the police against perpetrators. Core elements of the protection of (mainly) women as victims of partner violence are the so-called **intervention centres** (meanwhile most of them call themselves **violence protection centres**). They have been established by the Federal Protection against DV Act in 1997 as a crucial part of the reform: Based on empirical and research findings about the difficulty of leaving a violent relationship, they should support the victims' empowerment (among other tasks like giving legal and psycho-social support). Therefore the intervening police officers have to inform the regional intervention centre about every barring order without delay, and the organisation concerned contacts the victims promptly in a pro-active manner.

There are nine intervention/violence protection centres all over Austria, one in each federal state, some of them running additional regional offices in rural areas. They are non-governmental organisations, but are financed on a legal basis by federal ministries. Their main tasks are, on the one hand, to take care of victims of violence, to develop crisis plans as well as safety programmes with them, and, on the other hand, to network and to cooperate with all the authorities and private facilities involved in violence protection.

Other than the intervention centres, women's **shelters** have a weak legal basis. Support from their part is mostly asked for by migrants who often need special forms of protection.¹ In case of emergency several **helplines** – on the national as well as on the regional level – are available during 24 hours like the Viennese 24-Hour Women's Emergency Helpline or the general emergency helpline for victims of crime (*Weißer Ring*); some of them offer specialised support for victims of sexual violence or for children. The specialisation of helplines can be seen as a good practice model as such helplines recognise the special needs of victims.

Although Austria was among the first countries that have established legislative measures to address IPV, the first National Action Plan (NAP) for the protection of women against violence as a policy

¹ For example, when the family is not on her side, but on the perpetrator's.

measure was issued only in August 2014.² In this field Austria has been the last one among the EU-28 while a few other countries have been using NAPs even since the 1990ies. The NAP that covers the period from 2014-2016 has been resolved on the occasion of the Istanbul Convention's entry into force. Nevertheless, the preamble stresses that Austria has already implemented most measures that are demanded by the Convention.

Several Ministries are addressed in the NAP: Internal Affairs, Justice, Health, Family and Youth, Work, Social Affairs and Consumer Protection, Europe, Integration and Foreign Affairs, as well as Education and Women's Affairs. Like other NAPs the Austrian one focusses on prevention of and tackling violence, on training of relevant actors (one of the most extensive chapters) and on victim support.

Another important topic is the legal system, e.g. concerning substantive law, for example the introduction of the aggravating factor 'violence in the family' as well as the need for a special law combating psychological violence will be examined. A special focus lies on the prevention of forced marriages. On the police level it is planned to develop and implement a standardised risk assessment tool, and to introduce MARACs (Multi-agency risk assessment conferences) in two more *Laender* (in addition to Vienna). Moreover, a standardized documentation of bodily harm that should be used by police and court will be implemented.

As a result of the government's actual austerity program scientific research has not got a prominent place in the NAP.

² Before that Austria had implemented NAPs combating against specific forms of violence: the NAP to fight human trafficking (2007–2008; 2009–2011; 2012–2014) and the NAP for the prevention and elimination of female genital mutilation (2009–2011).

2 Law and regulations in Austria

2.1 The legal framework on DV /IPV

When looking at the **substantive law**, there is no specific legislation about IPV/DV.³ Criminal offences such as assault, rape and murder are treated in the same way whether they have been committed in a partnership or not. Rape and sexual assault within marriages/ cohabitations have been recognized as crimes since 1989, but until 2004 the complaint has to be filed and could be withdrawn by the victim.⁴ On June 1st, 2009, a new offence called “continued use of violence” came into force (introduced by the 2nd Federal Act on Protection against DV).⁵ Stalking is regarded as a criminal offence since 2006; in the same year, ‘dangerous threat’ committed in the family became an offence that had to be pursued ex officio (before that, prosecution depended on the victim’s consent).

Criminal **prosecution** is initiated with the notification of the crime either by the victim or by organizations/ institutions (e.g. police, hospitals, doctors) that have become aware of the offence. Public authorities and in certain cases also doctors have to file a complaint when they get to know a criminal act, private persons are not obliged to do so. A crime can be reported to the police or the public prosecutor. With the exception of crimes that require private enforcement (e.g. unlawful entry) or the victim’s authorisation (*Ermaechtigungsdelikte* – e.g. libel and slander), both, criminal police and public prosecutor, are obliged to investigate each suspected case. It is not possible to withdraw a charge.

A criminal proceeding comprises the judicial inquiry and the trial phase. During the judicial inquiry the public prosecutor in cooperation with the criminal police tries to get a comprehensive picture of the case. On the basis of these investigations the public prosecutor decides whether criminal prosecution will be continued or terminated; under certain circumstances s/he can impose diversion

³ This is why no statistics on DV/IPV are available (neither at the police, the courts or the PP offices). For the most relevant offences – like bodily injury – the police statistics categorizes relationships between victim and perpetrator as follows: family relationship with common household/ without common household, acquaintances, chance acquaintances, no relationship, unknown relationship.

⁴ <http://www.familienrecht.at/index.php?id=2371> [October 13, 2014]. Due to the critique of women’s organisations the persecution and punishment of rape and sexual assault within marriages/cohabitation do not depend on the victim’s notification and complaints cannot be withdrawn any more since May 1st, 2004.

⁵ For this offence statistics are available: In 2012, the police reported 436 cases of continued use of violence (Criminal Code art. 107b). The regulation does not only address DV, but supposedly most charges refer to IPV.

measures as an alternative.⁶ When the case is not closed by the public prosecutor it goes to court. The court's tasks are twofold: On the one hand, it acts upon the public prosecutor's request, especially when it takes evidence under special conditions or by authorising coercive instruments/ measures. On the other hand, only the court is supposed to undertake the so-called reconstruction of the crime⁷ as well as contradictory interrogations of the accused and of witnesses. The court retains this right as these two procedures are essential for the judgement and cannot be repeated during the main hearing. As the court has an active role, it is not obliged to rely on evidence provided by the public prosecutor, but is allowed to collect evidence itself (Koenig/Pilnacek 2007, 39f.). The judge – in severe crimes together with another professional and lay judges – decides on guilt or innocence of the accused and on the punishment. The court also may impose diversion measures until the end of the main hearing. The judge cannot dismiss a case, s/he can only return it to the public prosecutor for providing more evidence or for closing the file. The procedural law allows the victim to refuse to testify against a close relative, and s/he has the right to join the proceedings as a so-called accessory private prosecutor in order to claim compensation.

The so-called **Federal Act on Protection against Domestic Violence**, which came into force on 1st of May, 1997, is the legal basis for the eviction of a perpetrator and the issuing of a barring order that forbids him to return to the premises where the potential victim lives. rests on three pillars, which will be explained in more detail in the following paragraphs:

- barring orders and go-orders imposed by the police;
- a longer term protection by a civil restraining order issued by the family court; and
- free counselling and support by the so-called 'Intervention Centres'.

Police officers are by law required to protect individuals who are living in the same household with a perpetrator from imminent criminal attacks on their safety. Whenever the police are called to a home because of an act of violence, it is expected that they will immediately take action to ensure safety for the threatened individuals.⁸ Police officers have to carry out a risk assessment which forms

⁶ Imposing a diversion measures requires several preconditions, in particular the maximum penalty for the criminal act must be less than five years imprisonment and the perpetrator's guilt has to be minor.

⁷ The reconstruction takes place at the crime scene and comprises the (audio-/ video-taped) interrogation of the accused/ witnesses.

⁸ According to interviews with victims of IPV, barring orders were helpful for most of them as they could gain some distance to the perpetrator and therefore realized the character of their relationships (Haller 2005, pp.314-317). Supported and

the basis for their decision. They are authorized to evict the assailant from the home in which the potential victim lives (even if it is also the perpetrator's home) and from its immediate surroundings, and to prohibit him from returning to these premises. When children are victimised the eviction may be extended to their kindergarten and school. Perpetrators can also be forcibly removed and may be arrested according to legal provisions. The police do not depend on the victim's consent. They have to issue a **barring order** (lasting for two weeks) even against the will of the victim if they regard it as necessary.⁹ The police are also required by law to inform the violence protection centre in charge which contacts pro-actively the victim (see "Referral procedures" in chapter "Collaborative risk assessment and management").

This period is extended to four weeks, if the person at risk applies to the **family court** for a **civil restraining order**.¹⁰ It can be issued after physical abuse, or after threats, or in case of psychological terror if this seriously impairs the victim's mental health and whenever these attacks make living with the violent person intolerable. Whereas discretion for imposing barring orders lies exclusively with the police, the victim herself decides on the application for a civil restraining order. Although they are frequently issued after barring orders, there is no 'guarantee' for that (in 2008, about 90% were admitted – no later data available). Nevertheless they would be a very important instrument for protection: Within the last years several women were killed by their (ex-)partners after the court had denied an interim injunction.

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In 2009, the 2nd Violence Protection Act specified two forms of protection by **civil restraining orders**: on the one hand, concerning co-habitation and on the other hand, concerning encounters at specifically defined places and contacting the victim. To guarantee protection against violence at home, the perpetrator is refused coming back home as well as staying in the premises' vicinity. It is valid for a maximum of six months (only if the victim has filed for a divorce and in a few other special cases it

empowered by the women working in the intervention centres, they often managed to separate from the perpetrator what they would never have done without the police intervention. Only a few women reported that their partners had understood the meaning of the 'red card' and changed their violent behaviour. In some cases the police had not imposed a barring order, but decided that a 'dispute settlement' was sufficient. This is a rather informal act meaning that the police officer talks to the 'conflicting' persons telling them to calm or to behave themselves. According to victims this kind of police intervention had even strengthened the perpetrators, as they realized that nobody would stop their aggressive behaviour.

⁹ In 2014, 7,587 barring orders were issued by the police (39 per cent of them in Vienna where about one out of five Austrians is living). About 10 per cent of the barring orders (764) were violated. In the beginning the number of barring orders increased only slowly: From May to December 1997, within the first 8 months, the police issued about 1,400 such measures. In 1998, the total number amounted to 2,700. But the police became more and more competent, mostly as a consequence of intense training.

¹⁰ Civil restraining orders are much less frequent than barring orders: In 2008, about 2,120 were applied for and about 90 percent (1,920) were admitted by the Court (no actual data). Approximately one out of three barring order leads to an interim injunction.

can be prolonged up to the date of the divorce). The second regulation focuses on general protection. It forbids the perpetrator staying at certain places (workplace, school) or other defined areas (e.g. the route to the victim's workplace) as well as contacting the person who has to be protected (for a maximum of 12 months). The court is obliged to inform the police of the civil restraining order. If the offender violates the order, he has to be fined.¹¹

When the **police close their investigations** and have found evidence of a criminal act, they submit the file to the **public prosecutor** who decides whether the case will be prosecuted or dismissed (for example if there is not sufficient evidence to proceed) or if diversionary measures should be taken (e.g., victim-offender mediation).

The weakest allies involved in the system of combating partner violence and victim protection are **criminal courts and public prosecutors**. Both judges and public prosecutors are still sometimes rather reluctant to treat domestic violence in a decisive way. Proceedings instituted because of DV are quickly abated, not only because victims of violence refuse to give evidence, but also because the crime is not regarded as punishable. This underlines that violence in the private sphere is still often perceived as a privileged offence (Haller 2005, pp. 381f.). Another reason for the reluctance of judges and public prosecutors is that they are often confronted with victims who want to separate only in the first moment, but when the trial comes closer they blame themselves for what has happened. They do not want their partners to be punished and deny violence. Judges and public prosecutors are caught in a dilemma: They know that the couple will stay together and that a fine will be paid from the household money what might be even harder for the woman than for the perpetrator (ibid.).

In 2006, a legal entitlement to **psycho-social as well as legal support at court** has been guaranteed to victims of violence or dangerous threats or whose sexual integrity has been violated. (In practice this instrument has already been used since 2000.) It encompasses both psycho-social support before, during and after police interrogation and court hearings and legal counsel and representation before court by attorneys. Initially this right solely related to all phases of criminal proceedings, in 2009 psycho-social support was expanded to civil procedures which stand in a close substantive relationship to the criminal procedure (see chapter "Psycho-social and legal support at court and during police investigations").

¹¹ Also youth welfare authorities may file for a civil restraining order, if a child is at risk. This applies to cases of direct and indirect violence against children, provided that the mother, as the children's statutory representative, has not filed an application herself.

In conclusion, the three pillars have proved to be a solid foundation for victim protection in Austria. The first response mechanism of barring orders achieves breathing space to allow the victim to gather her thoughts and to reflect on her situation. Following this, the violence protection centres and other victim support agencies are there to provide support, psychological as well as legal. Yet, while the laws have shifted to ensure victim protection, in practice this has not been fully implemented by courts and public prosecutors.

2.2 Investigation mechanisms implemented by the police, the public prosecution offices and the criminal courts related to DV/ IPV

The Austrian police force is divided into security police and criminal police; IPV/ DV cases are investigated by both. There are no specialised instruments for collecting evidence in case of DV/ IPV, but support for the officers is given by the Guideline for police interventions (*Kriminalistischer Leitfaden*), a tool which is available for all police officers at the intranet. This content management tool provides general information about violence in the private sphere as well as information relevant for an officer's first intervention. As a part of the Guideline, checklists, both for domestic violence and stalking, should give guidance especially to police officers who are only rarely confronted with domestic violence.¹² The DV checklist informs on which data to collect, on intervention steps and on measures in order to end actual and to prevent future violence. Other items of the checklist refer to the collection of evidence (e.g. questioning of witnesses, collecting physical evidence), to reporting and referral procedures.

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The standard investigation procedure follows the following steps:

2.2.1 (Emergency) call / getting notice of IPV

As already mentioned above, everyone can report a crime and the police have to investigate. Very often the victim herself or a family member calls the police.¹³ When the police get notice of IPV/DV, they have to react without delay as this offense is classified as high priority. Usually, two security police officers (if possible a mixed couple) go to the scene of crime.

¹² A checklist in case of endangerment of children (*Kindeswohlgefahr*) is in preparation (Information provided by E. Lentsch, Ministry of the Interior, November 14, 2014).

¹³ See Amesberger/Haller (2013, p. 10f.); Messner/Amesberger/Haller (2013, p. 23); Amesberger/Haller (2010, pp. 64f. und 148).

2.2.2 *At the place of incident: security police intervention to stop imminent danger*

The main tasks for the police are to stop ongoing violence, to take measures to prevent continued violence and to protect the victim as well as to collect and secure evidence for court proceedings. Before entering the crime scene the police have – also for their own safety – to query the so-called EKIS (*Elektronisches Kriminalpolizeiliches Informationssystem*), a databank where all person-related information relevant for the police is collected (DV register, criminal recordings, entries in the police records, weapons register etc.).

At the place of incident, first of all, police officers have to assess the situation, separate the couple and to provide assistance in case of injuries. The police are allowed to enter the premises by force. Usually, the first interrogation of victim and offender takes place on-site. But when victim or perpetrator are in a physical or psychological condition where testifying is not possible (e.g. severe injuries, drunkenness) or when an interpreter is needed they are summoned to the police station later on. Police officers are supposed to interrogate the couple separately. The victim has the right to be questioned by an officer of the same sex.

For the decision whether immediate protection measures (e.g. barring order, remand) are necessary the police officers have to ask the victim about the dynamics of the incident, injuries, the history of violence, specific characteristics of the offender (e.g. alcohol or substance abuse), his use and/or possession of weapons/arms, the situation of children living with the couple. Furthermore, they have to collect and document evidence for bodily injuries and wilful damage to property. Means at hand for securing evidence are taking pictures¹⁴ of injuries, the site of incidence and/or damaged things, confiscating weapons, saving fingerprints. Witnesses of the incident, like neighbours or children, are questioned, too. When the officers are not sure about the measures to be set immediately, they can call the judicial police service for advice.

Besides a general explanation of their rights (e.g. the right to refuse giving testimony) by the police officers, victim and offender should be handed over an information sheet. The victim is informed about her rights and that a violence protection centre will contact her. The leaflet for the offender provides information about the barring order and the consequences of violating it.¹⁵

¹⁴ Nevertheless, photographs are often missing in the files or of such a bad quality that they are useless (minutes of the INASC-national advisory board meeting, November 27, 2014).

¹⁵ When the police do not have such leaflets with them – as it happens when they are confronted unexpectedly with IPV – this information has to be given verbally and the leaflets should be handed over as soon as possible.

If the victim does not speak German well enough for the questioning the police are advised to look for someone to interpret. At the incident site most often a family member of the victim helps, at police stations in most cases an interpreter is called in.¹⁶ The Guideline for police intervention in case of violence in the private sphere (see above) does not give instructions for specific groups, but the brochure “Intimate partner violence against older women – Handbook for police interventions”¹⁷ is available at this intranet platform. Instructions for the contact with persons with special needs are given, but they are not specified for DV cases.¹⁸

If necessary the police have to issue a barring order, confiscate the offender’s keys and weapons (see chapter “Protection measures / procedures within the judicial system”). The intervention and inquiry report is completed on the spot and is later-on controlled by the superordinate authority which has to annul the barring order if it has been imposed unlawfully.¹⁹ The report has to be sent immediately to the intervention centre in charge. [The latter contacts the victim then.]

In case that no crime has happened, for example when the victim has not been injured or threatened and/or no things have been damaged, the police intervention terminates with issuing the barring order and controlling it at least once within three days after enacting. In case of a crime the public prosecutor and the criminal police get involved.

2.2.3 Investigation mechanisms in case of a crime: the role of the public prosecutor, the criminal police and the court

The public prosecutor has to be informed by the police about every crime they are confronted with. S/he decides about taking up, continuing or closing of investigations and may order further investigations by the criminal police as a basis for decisions about additional measures (e.g. custody or charges). As a general rule, the public prosecutor instructs the criminal police with the collection of evi-

¹⁶ The experts of the INASC-national advisory board criticized that the police still are handling the issue very casually. Often relatives who normally are not acquainted with legal terms are used as interpreters. The police cannot control whether the statements were interpreted correctly, in full extent and objectively (minutes of the INASC-national advisory board meeting, November 27, 2014).

¹⁷ The brochure was developed at the IKF in the frame of the Daphne project “Mind the Gap” (http://www.ipvow.org/images/ipvow/manuals/Manual_law_enforcement_agencies_Austria_en.pdf).

¹⁸ Information by E. Lentsch, Ministry of the Interior, November 14, 2014.

¹⁹ In 2014, only 53 out of 7,640 barring orders were annulled.

dence for example by means of questioning the offender, victim²⁰ and witnesses, but – if the case has already gone to court – s/he can also ask the judge to do so. In any case, provisions should be taken that offender and victim do not meet at court. In most cases, the accused remains at large. The court decides upon request for detention by the public prosecutor.

When the investigations are finished the public prosecutor either closes the case or presses charges. What concerns the court, see above chapter “The legal framework on DV / IPV”.

3 Victims’ protection mechanisms and practices

In this chapter we look at risk assessment procedures and protection measures used by the police, the public prosecutor and the court. Although intervention centres/ violence protection centres are not part of the judicial system we will describe also the measures they use because of various reasons: The Federal Act on Protection against DV 1997 established the legal basis for the co-operation of police and intervention centres. Besides the obligation of the police to inform the violence protection centres about barring orders, other forms of close collaboration – partially integrating also other organisations – have been developed and institutionalised in some *Laender*, such as MARACs (Multi Agency Risk Assessment Conferences) or so-called case-conferences (Amesberger/Haller 2010, pp. 158-163). They will be described in more detail below. Furthermore, the violence protection centres are among the most relevant agencies for the provision of legal and psycho-social support at court (see chapter “National policy context”).

3.1 Risk assessments procedures available within the judicial system in Austria

There is a vast literature about risk factors for DV and since the 1990ies many risk assessment tools have been developed and are used today. However, there are some doubts whether these time-consuming assessments really lead to a better protection of victims (Logar 2014, pp. 18f.).²¹ The problem of risk assessment is not a lack of information, but a non-systematic collection of data and its analysis. More important than the type of the chosen tool is, according to Logar (2014, pp. 19f.),

²⁰ Experts criticized that even victims of severe violence are sometimes questioned several times during their stay at the hospital what means a violation of their right of sensitive examination (minutes of the INASC-national advisory board meeting, November 27, 2014)

²¹ The strengths and limitations of risk assessment tools are also addressed among others in Northcott (2012, p. 14f.).

the need to use it systematically and that the assessors have a profound knowledge about domestic violence; a mechanical usage of checklists might lead to ‘downgrading’ violence and to ignoring the victim’s individual situation. As each case is special, a detailed analysis of the actual situation and the dynamics of violence is necessary to prevent further violence (Kroess 2009, p. 12).

In the WAVE project ‘PROTECT – Identifying and Protecting High Risk Victims of Gender Based Violence’ 13 organisations²² were asked about the risk assessment procedures used by them (WAVE 2010, pp. 20-26). It showed up that all of them assessed risks, but only eight of them utilised standardised tools. When trying to identify a danger, all organisations relied mainly on the victim’s statements, however, some of them used other sources, too (e.g. evidence at the scene of crime, the severity of injuries, and information from other organizations). The most frequently used tool was the BIG 26 of DAIP (Domestic Abuse Intervention Program), followed by DA (Danger Assessment) and SARA (Spousal Assault Risk Assessment); three institutions had developed their own tools. The majority applied more than one instrument when the first assessment showed a risk.

Which risk assessment tools are used in the field of domestic violence varies according to the involved institutions (and their function), the goals of risk assessment and the addressees (adult victim or children, offender). Therefore in the following we will present the risk assessment tools used by the main actors in the judicial system – police, public prosecutor/ court and violence protection centres/intervention centres.

3.1.1 Police

Risk assessment often is combined with high risk, that is, the danger of being killed. Therefore, it is important to know that risk assessment tools also (can) evaluate the risk for escalation of violence and the degree of endangerment (from low to high risk). As described above barring orders must be based on a risk assessment. The intervening police officers evaluate the situation focusing on risk factors which are mentioned in the barring order form and on the basis of their experience. In the basic training, police officers learn how to recognise signs of violence (e.g. mental state of victim/offender, torn cloth, damaged things). Between September 2013 and June 2014 a new tool, the so-

²² Among the organisations questioned were the police, the judiciary, women’s support services, intervention centres, health services, child protection and immigrant women’s services. Unfortunately, the report does not detail the information collected according to organisations.

called **SALFAG**²³ (*Situationsanalyse familiaerer Gewalt/ Situational analysis of domestic violence*), has been tested in several Viennese districts, in Linz (capital of the province Upper Austria) and the province Vorarlberg. It uses criteria drawn from renowned risk assessment tools like SARA or ODARA (Ontario Domestic Assault Risk Assessment) and includes questions about the concrete situation²⁴, the perpetrator and the victim. According to the interviewee from the Ministry of the Interior this tool was developed because the existing instruments were not suitable for the Austrian context. With the help of this instrument the police officers on-site should be able to assess the dangerousness of the situation and the dynamics of/ the potential for escalation in the course of the first intervention.²⁵ The assessment results in a gradual rating in four steps, whereby level 3 and 4 indicate a (very) high risk. Depending on the identified level of risk specific measures are recommended. It is important to understand that the SALFAG is just a snapshot of the current situation and therefore, does not replace professional risk assessments in which offenders are screened with psychological tests.

Before starting the pilot, all police officers were trained on the correct use of SALFAG. A first evaluation of its effectiveness showed that most of the regional police departments questioned were satisfied with the new tool.²⁶ According to the interviewee from the Ministry of the Interior are its advantages easy handling and that it serves as a good reminder for police officers on what to look for in DV situations. Most of the violence protection centres however criticise SALFAG for being too comprehensive, too time consuming, and for raising the threshold for taking safety measures by requiring severe criteria for imposing a barring order.²⁷ These criticisms are rejected by the interviewee of the Ministry of the Interior as the testing would only take 10-15 minutes. Furthermore, the SALFAG resulted in 96 percent of the cases in the implementation of a barring order.²⁸ Nevertheless, it is conceded that the categorisation of risks needs some adjustments. The strong doubts of the intervention

²³ The information about the SALFAG derives from Stoeckl (2013b, p. 276) and the interview with Harald Stoeckl (Ministry of the Interior) from July 3, 2014. The idea for a new risk assessment tool was developed by the Task Force Child Protection after the murder of a boy by his father, who had been barred from home, at school.

²⁴ For instance: what happened exactly; the reason and trigger for the escalation of violence; victim-perpetrator-relationship; social status of victim and offender; stress factors.

²⁵ That is, the officer has to do the assessment either during the intervention or immediately afterwards.

²⁶ Harald Stoeckl (Ministry of the Interior) assumes that the SALFAG will be implemented all over Austria in autumn 2015. Training courses for police officers for the use of the SALFAG are already scheduled in September 2015.

²⁷ It is also criticised that no standardised and therefore scientifically evaluated tool is deployed. The necessity for another risk assessment tool is not seen as most police officers had not had problems in imposing barring orders (see interviews with: Annemarie Reiss (Violence Protection Centre Burgenland), June 18, 2014, Marlies Leitner (Violence Protection Centre Lower Austria), July 1, 2014, and Rosa Logar (Domestic Abuse Intervention Centre Vienna), July 3, 2014).

²⁸ In total, in 264 interventions the SALFAG had been used for risk assessment (January to June 2014). The director of the Upper Austrian protection violence centre, Maria Schwarz-Schloeglmann, confirmed in the INASC-advisory board meeting (November 27, 2014) that she had not noticed a decline in issued barring orders.

centres seem to derive from a lack of transparency and involvement by the regional police in the pilot phase.²⁹ Yet, not all protection centre officials agree; the head of the violence protection centre in the province Vorarlberg welcomes the SALFAG because its implementation was accompanied by training for all police officers which in turn raised the awareness about domestic violence. As the violence protection centre and police officers often disagreed, judging the same situation differently, the SALFAG served for discussing risks in more general terms.³⁰ Furthermore, the obligation to use such a tool would signal that violence against women was an important issue for the Ministry of the Interior.³¹

The second method used is called ‘**preventive legal information**’ (*praeventive Rechtsaufklärung*) which is regarded as means of risk assessment, too (Stoeckl 2013a, p. 275). Specialised police members contact (mostly by phone) victim and offender 2-3 days after the officers’ intervention. Neither perpetrator nor victim are obliged to speak with the police, but the willingness to do so seems to be high. This is supported by the figures given by the Ministry of the Interior: In 2014, preventive legal information talks were held with two thirds of the perpetrators (4,953 of 7,587).³² The aims of these talks are numerous. For offenders they include norm clarification, the collection of further information about the general situation and the illustration of the consequences in case of repeated violence. Also in the talk with the victim the overall situation is addressed, s/he is questioned about the history of domestic violence and protection measures are explained to her/him.

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The above described instruments are used at the operative level of police work. In cases of dangerous threats or coercion – to name only a few examples – the lawyer in the district police department can involve the Department for Threat Management and Danger Analysis (*Abteilung für Bedrohungsmanagement und Gefahrenanalyse*)³³ for a more thorough analysis of the risks of further

²⁹ Most violence protection centres stated in the interviews that they would not know how and when the SALFAG was used and whether it replaced the old form of risk assessment or was only to be used additionally. They have not been involved in the implementation and training.

³⁰ This problem was also addressed by other interviewees from the violence protection centres and the Ministry of the Interior. The first ones complained that some risks are not taken seriously by the police, public prosecutor or judge, the latter criticised that the risk ascertained by violence protection centres is often too high.

³¹ Interview with Ulrike Furtenbach (IFS Violence Protection Centre), June 26, 2014.

³² According to the knowledge of the INASC-advisory board members such legal information-talks are conducted less frequently with migrant perpetrators who do not speak German well (minutes of the INASC-advisory board meeting, November 27, 2014). It is not usual to call in an interpreter for these talks.

³³ Interview with Petra Glueck (Police Directorate Vienna, Department Threat Management and Danger Analysis), July 3, 2014. The Department for Threat Management and Danger Analysis, established in September 2012, exists only at the police directorate in Vienna. Between September 2012 and June 2014 the department supported the police on the operative level in 31 cases of violence within the private sphere (*Gewalt in der Privatsphäre, GiP*) (e-mail from Petra Glueck, July 3, 2014).

victimisation. The Department investigates not specified sources concerning offender, victim, family situation etc., including the intervening of specialised police officers who are involved as informants and as contact persons to victim, offender and their social network. Depending on the case, the risk assessors co-operate with various institutions like the youth welfare office or victim protection centres. If necessary, the department's experts suggest further measures to the police lawyer who is the only person whom they report to. The risk analysis does not become part of the police file nor will it be sent to the public prosecutor or judge, but sometimes the Department informs them directly about the victim's endangerment.

3.1.2 Public prosecution and court

Neither at court nor by public prosecutors is a standardised risk assessment procedure used very frequently. But in cases of severe crime against life and limb, against sexual integrity and self-determination external reviewers are appointed by the court to assess the risk of further crimes and the accountability of the suspect. These reviewers use standardised forecasting and assessment tools.

However, the Ministry of Justice organises trainings focussing on risk assessment which are open to both profession groups. On an average they offer one seminar per year that lasts several days for volunteers. Since 2009, judges and public prosecutors in training have to work at least two weeks either in victim support or in welfare organisations.³⁴ Moreover, in all public prosecution offices with more than ten public prosecutors special groups that deal with domestic violence have been established.

According to the interviewees in the violence protection centres, it depends strongly on the person whether public prosecutors and judges take into account risk assessment protocols they send them. In contrast, an interviewed public prosecutor explained that every document related to a specific case sent to the public prosecution office by whoever became part of the file; therefore it had to be considered. He added that he rarely got such information from an intervention centre.

In some provinces the local public prosecutors and judges are involved in multi-agency case conferences (MACCs) organised by the violence protection centres, what has improved the co-operation and the acceptance of risk assessments.

³⁴ Information provided by judge Petra Schindler-Pecoraro (June 26, 2014) and Margit Hofmann, Ministry of Justice (June 30, 2014). This decree is in effect since October 1, 2012.

Additionally, to further enhance the co-operation between victim support services and the judicial system and to improve the implementation of victims' rights, interdisciplinary 'round tables' have been established. Since 2009 the presidents of the criminal courts of first instance are obliged to convene such round tables at least once a year.³⁵ The ministerial decree requires the invitation of judges, public prosecutors, victim support services, attorneys, the local police and the children and youth advocacy among others. The agenda and the summary minutes of the expert meeting have to be sent to the Ministry of Justice.

Thus it can be said that while risk assessment in the judiciary is less established than at the police level, there are initiatives from the Ministry of Justice and the court administration to increase the usage of such tools.

3.1.3 Violence protection centres

Risk assessment is a standard procedure in victim protection centres as it is seen as a precondition for developing a safety plan with the victim.³⁶

The above quoted WAVE PROTECT-Report (2010, p. 22) mentions that the majority of organisations use the risk assessment tools DANGER ASSESSMENT (DA) by Jaqueline Campbell and BIG 26 of DAIP (Domestic Abuse Intervention Program). In the meantime, BIG 26 is not in use anymore because it fails to provide a differentiated picture of the risk exposure. Nowadays DA and DyRiAS (Dynamic Risk Assessment) by Jens Hoffmann³⁷ are the most frequently used tools by violence protection centres. About a half of the six questioned organisations rely on DA, whereas the other half utilises DyRiAS. The latter ones often use DyRiAS as second step in assessing risks. For instance, a risk assessment with DA is only followed by a DyRiAS when DA detects a risk; others use DA only when there is not enough time for DyRiAS. Time constraints in the support services, but also the urgency to develop a safety plan or the psychic situation of the victim influence the choice of the risk assessment instrument.

Even if the goal is that each client of the violence protection centres should undergo risk assessment, **extended danger identification** with the above mentioned tools is in most cases only done with a

³⁵ Erlass vom BM für Justiz (Decree by the Ministry of Justice), January 13, 2009.

³⁶ The following description of risk assessment is based on telephone interviews with the heads of various Austrian violence protection centres/intervention centres and on their work reports as well as on the following articles and reports: Schwarz-Schloeglmann/Sorgo (2013), WAVE (2010), Kroess (2009).

³⁷ DyRiAS is a tool exclusively for assessing IPV. For more details about DyRiAS see Hoffmann & Glaz-Ocik (2012).

minority of IPV victims due to a lack of resources. For instance, in one of the violence protection centres only one out of three or four women who come there after a police intervention passes a risk assessment with a modified DA³⁸, and only those where higher risks have been identified (app. 10 percent) are tested additionally with DyRiAS. In two violence protection centre a quick assessment for all clients is made with DA, and only two to five percent of IPV clients are checked by DyRiAS. None of the protection centres uses DyRiAS for assessing all IPV clients; however, four use it for a second evaluation in cases where a high risk has been identified. Only two institutions rely exclusively on DA. The reason why DyRiAS is only sparingly utilised is its time consuming nature: it takes at least a two hours session with the victim³⁹ and a lot of information to complete it.⁴⁰

The outcome of risk assessment depends on the sources and the amount of information available. According to the interviewees of the intervention centres the procedure is mainly based on the information provided by the victim, but other sources such as police reports, information from collaborating agencies and/or documents from earlier interventions are integrated, too. However, all interviewees emphasise that even the most sophisticated tool cannot replace the evaluators because the results of the assessments have to be analysed and interpreted and depend largely on the experts' knowledge about domestic violence.

The mode of documentation of the risk assessment is determined by the chosen method. DyRiAS offers the advantage of an automatically generated pdf-report which illustrates the risk graphically and summarises the risk factors and the dynamics. This pdf-report can be used without further processing by the court or the public prosecutor. As DA does not lead to a similar output, the victim protection centres have to inform other organisations by summarizing the results. The advantage of such non standardised information is that the case's specificities can be pointed out.

The main goal of risk assessment is to prevent the victim's further exposure to violence. For this purpose **safety plans** are developed together with the victim and in consultation with other organizations such as police, youth welfare services, the social network of the victim etc. As described below, the element of co-operation plays a very important role for a thorough evaluation and a coordinated management of risks to the victims, and therefore also in the work of violence protection services.

³⁸ The Danger Assessment tool by Campbell consists of two parts – a calendar and 20 item scoring instrument. Those interviewed violence protections centres that use DA for risk assessment use only the scoring instrument.

³⁹ A more nuanced assessment may require up to four hours.

⁴⁰ At least 55 percent of all questions have to be answered for a valid risk calculation (Hoffmann/Glaz-Ocik 2012, 49).

To summarise, risk assessment is a widely used instrument in protection centres, different tools being employed. Whether extended danger identification takes place and which tool is used (and how often and when) depends not least on the centres' human and financial resources.

3.2 Protection measures/procedures related to criminal proceedings

3.2.1 Protection measures/procedures within the judicial system

Protection measures within the judicial system aim on the one hand at the victim's protection from continued violence and on the other hand at her protection from re-traumatisation. The main protection measures are set in the Federal Act on Protection against Domestic Violence and in the Code of Criminal Proceedings (CCP).

The following protective measures can be set after a DV/IPV case:

- Go- and barring orders have to be issued by the police in cases of imminent danger. They last for two weeks when the offender is not allowed to contact the victim and has to avoid certain places. The perpetrator has to hand over his keys to the police; if he wants to pick up some belongings, he has to inform the victim of his visit. The compliance with the barring order is controlled by the police at least once within three days after issuing.⁴¹
- A civil restraining order has to be filed by the endangered person with the family court. There are two forms: The perpetrator can either be forbidden to come back to the victim's premises (duration: max. 6 months) or to contact the victim and to access defined areas (as the vicinity of the victim's apartment and work place) (duration: max. 12 months).
- Depending on the severity of DV/IPV detention on remand can be imposed on the suspect. This is also possible in cases of violation of barring orders and when the offender refuses to leave home.

With regard to **procedural law**, it should be mentioned that a large number of regulations protecting victims came into force in 2006, for instance the explicit obligation of all public authorities involved in criminal procedures to treat victims with consideration, respect and in an appropriate manner, to

⁴¹ See chapter "Law and regulations in Austria" for a detailed description of barring and restraining orders.

inform them about their right of being notified of the suspect's/ accused's release from custody, as well as about their compensation claims and the right of victims of sexual offences to be interviewed in a considerate manner. One of the most important innovations was the introduction of the legal entitlement to **psycho-social and legal support in criminal proceedings** for victims of violence.⁴² The victims' status was improved further on by the Criminal Proceedings Reform Act of 2008 that, moreover, introduced the term 'victim' into the Austrian criminal law; and by the Second Protecting against Violence Act 2009.

Relevant for victim protection during court proceedings is the **contradictory interrogation** of a victim/ witness⁴³: The interrogation can either be videotaped before the main hearing and then be presented there, or it can take place during the trial – then the victim is questioned in a separate room and the interview is transmitted by video. This guarantees that the victim will not meet the perpetrator at court and – in the first case – ensures that she will not be questioned several times.⁴⁴ The second proceeding (which is also called 'careful questioning') is obligatory for victims of sexual violence who are younger than 14; furthermore, both the public prosecutor and the victim can demand it if victim and perpetrator are next of kin or (former) partners.

3.2.2 Collaborative risk assessment and management

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The focus of this subchapter is on cooperation between various professional groups with regard to assessing the risks of and the prevention against continued domestic violence.

Referral Procedures

The most relevant referral procedure is the obligation of the police to inform the relevant intervention/ violence protection centre immediately about every barring order they impose and to deliver every piece of documentation to the centre after a barring order, including the victim's personal data.⁴⁵ Subsequently the centre contacts the victim and offers legal advice as well as psychological sup-

⁴² In 2009, this entitlement has been extended to psycho-social support in violence-related civil proceedings.

⁴³ Art. 165 Code of Criminal Proceedings.

⁴⁴ In practice – when several hearings take place at the same time – the problem arises that there are not enough video-equipped rooms. In such cases the accused is brought to an adjoining room during the questioning of the victim; the door is left ajar so that he may hear the questions and answers.

⁴⁵ Already for several years the women's side has demanded such a procedure for interventions like 'dispute settlements' as well, but the police refuses.

port. The idea of this regulation is that in case of partner violence the state must not wait for the victim to find her way to a counselling facility, but has the obligation to help her actively. So the legal instruments of the Federal Act on Protection against DV signify a change of paradigm: domestic violence being no longer perceived as a private ‘conflict’, but constituting a ground for receiving protection from state agencies, thus confirming the rightful claim to live free from violence also inside one’s home.

Inter-institutional conferences

Multi Agency Risk Assessment Conferences (MARACs) and Multi Agency Case Conferences (MACCs) aim at the safety of high risk victims of domestic violence and the prevention of repeated violence. The purposes of such meetings are to share information about general risks and actual developments, assess the victim’s needs, improve her/his safety, provide appropriate and coordinated services, and reduce repeated victimization (WAVE 2012, p. 128f.). Further objectives of both collaborative instruments are to share the responsibilities between the involved organisations, to become aware of specific endangerments as well as to understand differing results of assessments.⁴⁶ In the following paragraphs these two procedures will be explained in more detail.

To begin with, **MARACs** are still pilot projects in Austria, implemented only in some districts. In Vienna the pilot started in two police districts in May 2011.⁴⁷ Due to legal provisions regarding data protection the Viennese MARACs are split, the section for case-related co-operation and the structural networking section. The first group deals with concrete cases of domestic violence. The intervention centre, the Youth and Family Office, the legal supporters (*‘juristische ProzessbegleiterIn’*) and the police meet in the monthly conferences. Each participant can bring in cases of repeat and severe violence. Between May 2011 and March 2013, in total 39 conferences took place and 118 cases were reviewed.⁴⁸ The second section – a platform for professional exchange and networking – meets once a year. It aims at the prevention of domestic violence on the structural level. This steering committee involves a broad range of organisations like the 24-Hour Women’s Emergency Helpline, the children’s

⁴⁶ See interviews with: Angela Federspiel (Violence Protection Centre Tyrol), June 23, 2014, Maria Schwarz-Schloeglmann (Violence Protection Centre Upper Austria), June 23, 2014, Annemarie Reiss (Violence Protection Centre Burgenland), June 18, 2014, and Marlies Leitner (Violence Protection Centre Lower Austria), July 1, 2014. See also the presentation by Barbara Bergmann and Rosa Logar at the Viennese Safety Talks (Wiener Sicherheitsgespräche) on April 22, 2013.

⁴⁷ The following description of Viennese MARACs is based on the presentation by Barbara Bergmann and Rosa Logar at the Viennese Safety Talks (Wiener Sicherheitsgespräche) on April 22, 2013 and on the article by Sticker (2011).

⁴⁸ According to the work report of the IST - Viennese Intervention Centre (2014a, p. 24) 20 MARACs were held in 2013 and 50 victims, mainly women and children, received intensified support and protection via this collaboration.

protection centre, women's shelters, health organisations, counselling services (for women and men) and probation services. Its task is planning and reflecting on developments. Recently the Ministry of the Interior and the Minister of Women's Affairs agreed on the expansion of MARACs in Vienna and other Austrian provinces (IST 2014, p. 24).

In 2014, MARAC pilots were launched in several districts of the provinces Tyrol and Lower Austria.⁴⁹ Other than in Vienna, where the inviting institution is the intervention centre, in the two *Laender* the regional police departments are leading. Members of the police, the violence protection centre, the court, and the public prosecution office meet once a month or bi-monthly. Depending on the case, the list of invited institutions is extended to other organisations (e.g. Youth and Family Office, women's shelter). In each MARAC session about three cases, which can be brought in by each participant, are reviewed.⁵⁰ Under the overarching aim of preventing domestic violence the members discuss what each organisation can do to improve the victim's situation and how to coordinate these measures. The heads of the violence protection centres draw partly positive, partly hesitant conclusions: Within this short period the co-operation has improved, and the exchange has become much more intensive. It became obvious that there is still a need to discuss with the other professionals what is deemed as a risk for experiencing domestic violence. For some police forces the necessity of institutionalised MARACs is not yet apparent what shows in absence/unwillingness to attend, slow implementations of structures, and failure to present high risk cases. Nevertheless, the interviewees from the intervention centres welcome the initiative of the Ministry of the Interior to install MARACs since it emphasises the importance of preventing further victimisation through more co-ordination which can only succeed as a joint effort of all organisations involved. They are convinced that MARACs will help to professionalise risk assessment in all institutions involved.

Some violence protection centres carry out less formalised **MACCs**. They are mostly organised when needed; that is, there is no fixed date. In acute cases telephone conferences are held. Especially in less populated regions monthly meetings are not considered necessary due to a lack of high risk cases.⁵¹ The participating institutions are the same as in the MARACs and vary according to the case's requirements. The Upper Austrian Violence Protection Centre additionally invites the victim (and if necessary an interpreter) to the meeting because the process should be as transparent as possible

⁴⁹ Interview with Angela Federspiel (Violence Protection Centre Tyrol), June 23, 2014; interview with Marlies Leitner (Violence Protection Centre Lower Austria), July 1, 2014.

⁵⁰ The victim must give her/his consent for the case to be discussed in the meeting. In Lower Austria only the victims' protection centre brought in cases so far.

⁵¹ Interview with Annemarie Reiss (Violence Protection Centre Burgenland), June 18, 2014.

for all participants, but especially for the victim.⁵² The lesser degree of formalisation seems to go along with a lesser degree of commitment in some institutions. To reinforce the value of this mechanism, a clear statement by the police's and public prosecutor's authorities that such case conferences are important would help.⁵³

Co-operation with public prosecutors

Unfortunately, despite attempts to encourage coordination between intervention centres and public prosecutors, this is still largely considered to be inadequate. The centres have offered for years to inform the public prosecutors about risk assessments' results to better support the victims, but they have got the impression that this was not broadly accepted. In 2006, the Ministry of Justice made an attempt to establish a closer coordination. The aim was to take a decision based on all information available. The effectiveness of the decree for the information exchange ended per end of February 2007.

Psycho-social and legal support at court und during police investigations

The police are obliged to inform a victim about his/her right to psycho-social and legal support, if he/she is entitled to it.⁵⁴ This has to be documented in the protocol set up with the victim. As an effect of the EU-wide trend to strengthen victims' rights, victims of deliberate violence are guaranteed since 2006 both psycho-social and legal support during police investigation and court proceedings against the perpetrator (art.66 (2) CCP). In the first line this instrument is supposed to avoid secondary traumatisation of victims and to reduce their feelings of fear and uncertainty. But it has also been expected that a strengthened victim would be a 'better', in the sense of a more reliable victim. The relevant agencies are various victim support organisations most of which are contract partners of the Ministry of Justice and are financed by it.⁵⁵ Support like this has been provided already since 2000 by some institutions such as women's shelters (depending on their time resources), but until

⁵² Interview with Maria Schwarz-Schloeglmann (Violence Protection Centre Upper Austria), June 23, 2014.

⁵³ Interview with Annemarie Reiss (Violence Protection Centre Burgenland), June 18, 2014.

⁵⁴ Entitled are persons who are victims of an intentional criminal act, who have been threatened to be killed or whose sexual integrity was violated (rape or sexual abuse).

⁵⁵ For example, the Viennese 24-Hour Women's Emergency Helpline, which is specialized in sexual violence, also provides psycho-social and legal support in full extent, but is not reimbursed by the Ministry of Justice. In 2013, the helpline offered legal assistance to 70 women; the psycho-social support is not documented as it belongs to the general task of the helpline.

2006 no legal claim to any assistance existed. The new system of victim support was successfully implemented within a short period of time and is in principle accepted by all professional groups concerned (lawyers, police, judges and state prosecutors, youth welfare authorities) as well as by the victims (Haller/Hofinger 2007). Psycho-social and legal supporters as well as evaluation studies⁵⁶ see in this measure overwhelmingly positive effects. A study by Haller and Hofinger (2007, pp. 92, 164-179 and 198; 2008, pp. 21f.) about the psycho-social and legal support during criminal proceedings stresses that this kind of support stabilises victims emotionally and increases their self-confidence.⁵⁷ The feeling of ‘not being alone’ gives them strength. As the mechanisms of police and crime prosecution are very unclear and confusing for most victims, the psycho-social and legal support is a great relief for them and very welcomed, so the victim support organisations and the experts of the INASC-national advisory board. It unburdens the work of victim support organisations, too. Legal supporters/ lawyers were more accepted by public prosecutors and judges in comparison to social workers who would be considered bothersome. Meanwhile public prosecutors and judges have learned to appreciate the work of the legal supporters.

Psycho-social supporters are not party representatives in court proceedings. They can accompany the victim to the court hearings as persons of trust (*Vertrauensperson*). During a full hearing a maximum of three persons of trust may be present.

A high number of victims are supported after sexual violence, both children and adults, and also after domestic violence as the intervention/ violence protection centres are contracting parties of the Ministry of Justice. So when they work with a victim they can also offer this sort of provision.

Apart from the psycho-social backing victims receive, they are supported in their contacts to the court, e.g. what concerns avoiding an encounter with the perpetrator in the court building. Moreover, their rights are explained to them and they are kept up to date about the development of the court proceedings. The psycho-social institution co-operates with lawyers who are experts in the field and represent the victim at court.

Despite the prevailing positive evaluation of the psycho-social and legal support there is some space for improvement. According to the figures of the largest intervention centre, the Viennese one, about a quarter of their crime victims make use of the legal support offer. At the same time the staff

⁵⁶ Interview with Martina Sommer and Angelika Breser (24-Hour Women’s Emergency Helpline), December 15, 2014 and minutes of national board meeting, November 27, 2014. A research about legal support of victims of human trafficking has shown that this measure has a positive effect on compensation payments (Planitzer et al. 2011).

⁵⁷ Among 13 interviewees (in-depth interviews) were eight female victims of intimate partner violence.

cannot try to convince more clients of the usefulness of this measure because of financial reasons; the budget allocated by the Ministry of Justice is capped. Problems with respect to legal support arise from the quick dismissal of proceedings by the public prosecutor; in Vienna, often proceedings are dismissed before the legal support has even started⁵⁸ – because of personnel shortage the public prosecutors seldom try to gain a personal picture of the case. Furthermore, authorisations for legal representation and/or file inspection are not electronically recorded. Due to this, legal supporters are informed too late about trial dates, inquiries, inspections of the crime scene etc. Victim support organisations still perceive a lack of knowledge about traumatising at the level of criminal prosecution which is mainly at the disadvantage of the victim.

Recidivism prevention projects

The convention of the European Council on Preventing and Combating Violence against Women and Domestic Violence demands measures/programmes (art. 16) aiming at perpetrators. This is the basis for two projects of the Domestic Abuse Intervention Centre Vienna. The first one was established in 2012 in co-operation with the Men's Counselling Centre Vienna: They established a nation-wide working group for victim-oriented work with offenders where quality standards for offender work were developed. In the beginning several hindrances for an effective victim-oriented work with offenders were identified, namely the lack of referrals to anti-violence trainings by judges and youth welfare services, the lack of common quality standards, and the lack of financial means (IST 2014, p. 25f. and 2014b, pp. 5-9).

The second project's goal is to prevent recidivism after the release from prison and to protect victims. Generally, judges have been hesitant to impose preventive measures like the attendance of anti-violence trainings or alcohol withdrawal programs; therefore the project aims at an increase of such directives. Consequently, the public prosecution office and the Viennese Criminal Court agreed to inform the Domestic Abuse Intervention Centre Vienna, the NGO *Neustart*⁵⁹ and the police immediately about imposed conditions (*Weisungen*). It is expected that this will lead to a lower rate of re-offenders thereby providing indirect protection for victims.

⁵⁸ According to the 24-Hour Women's Emergency Helpline 90 per cent of all sex crimes are dismissed because there are no or only light injuries and lack of evidence.

⁵⁹ See IST (2014a, p. 29f.). The project is carried out in co-operation with the probation service of the NGO *Neustart*.

Medical documentation of (sexual) violence

There are four institutes of forensic medicine in Austria (located in Vienna, Graz, Innsbruck and Salzburg with a branch in Linz). Only some of these departments collect evidence themselves; usually hospitals send forensic evidence for investigation to them. With the exception of the forensic departments in Graz and Innsbruck, victims of sexual violence were only examined upon the request of the public prosecution or court (what happens rarely). When victims do not want to file a report (yet), the secured evidence is stored for six months in Innsbruck and Graz, one year in Vienna and two years in Salzburg / Linz. (BMBF 2015, 2f.)

For victims of sexual violence a medical documentation form has recently been developed by medical doctors, police officers, and victim protection institutions (project 'MedPol' of the Ministry of the Interior and medical organisations). The tool allows a precise documentation of injuries what is crucial in court proceedings. It has been completed in September 2013 and is well accepted by the police, but some doctors and medical personnel are still reluctant to use it.

For securing evidence a tool kit has been developed by the Viennese 24-Hour Women's Emergency Helpline in cooperation with the forensics: DNA and clothes can be stored for at least 6 months at the forensic department.

Measures to facilitate co-operation

As networking of all institutions involved is an essential precondition for effective victim support, the centres have to stay in close contact with representatives of the judicial system and if necessary also with other victim support organisations. Moreover, all these partners meet regularly with representatives of all relevant ministries in an *inter-ministerial work-group* where important topics are discussed (e.g. changes of curricula, quality standards).

4 State of the art regarding victims' needs and victims' rights in Austria

According to several law experts the Austrian Code of Criminal Proceedings (CCP) takes account of victims' needs and interests in a far reaching sense. They consider that a turn towards a victim-oriented criminal justice system has taken place.⁶⁰

4.1 Victims' needs and victims' rights – state of the art

Additionally to the already above mentioned rights of protection and careful interrogation further rights are subsumed under the heading Victims' rights in the CCP (art.66 (1)). They include

- to have access to all documents;
- to be informed about further proceedings, for example the release of a detained perpetrator;
- to be compensated for the material damage;
- to demand the continuation of the proceedings if the case has been dismissed by the public prosecutor.

Moreover, there are other participation rights, depending on the victim's statement that she/he joins the prosecution, like the right to request further evidence.⁶¹

Lyane Sautner (2010, p.139) concludes in her publication about victims' interests and theories of criminal justice that the Austrian law goes far beyond the EU Framework Decision on procedural rights in criminal proceedings. The victim gained a special position in the criminal proceedings that enables her/him to influence the ongoing. However, she sees a deficit in respect to the compensation of victims as this is mainly based on the perpetrators' economic capacity.

Also victim protection centres state that the Federal Acts on Protection against Domestic Violence (1997 and 2009) and the Code of Criminal Proceedings (2008) have enhanced the legal and police measures for victims.⁶² The psycho-social and legal support in particular has improved the consideration of victims' needs and rights by actors in the judicial system. In addition, it enhanced the co-operation between victim protection services and the judiciary. Nevertheless, some difficulties still

⁶⁰ See Sautner (2010, p. 126) and Stueckler (2011, p. 60)

⁶¹ This is necessary when the victim demands compensation.

⁶² See Schwarz-Schloeglmann/Sorgo (2013, p. 272) and interviews with violence protection centres.

remain such as the attitude of some public prosecutors and judges who are annoyed when victim support organisations intervene pointing out, for example, the risks of further victimisation. From the violence protection services' perspective, efforts are made by the members of the judiciary but nevertheless the employees of the centres still have to engage themselves for the victims' rights.

4.2 Existing research on victims' needs

Unfortunately, in Austria exists hardly any empirical research about victims' needs. An exception is the study by Lyane Sautner and Helmut Hirtenlehner in 2006 – its handicap is that no victims of intimate partner violence/ domestic violence were interviewed.⁶³ Nevertheless, the main finding is that victims' needs are very heterogeneous. They largely depend on the degree of and the type of crime as well as the ability of the victim to cope with the damages done, on sex and age of the victim, the circumstances of victimisation and the relationship to the perpetrator. Not only do groups of victims show diverse and ambivalent interests, such ambiguities can also be found with the individual victim.⁶⁴ Sautner (2010, pp. 261-265) sees two basic expectations of victims towards the criminal justice system: sanctioning the perpetrator's acts and compensating the damages. The first one is oriented towards the re-socialisation of the perpetrator, the latter at self-stabilisation.

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A small scale study about older IPV victims revealed that the majority of the interviewees reported negative experiences at court (see Amesberger/Haller 2010, p. 112f.) The ten interviewed women mainly criticised that they were not taken seriously by the judges and even by their own attorneys. Questions of the judges were sometimes interpreted as an attempt of allying with the accused which was again regarded as disrespect and another sign of not being taken seriously. Some women complained about having had to sit directly next to the perpetrator during court proceedings and that they had to testify in presence of the offender. Another topic addressed were the long periods before criminal procedures commenced. The interviewees uttered a more positive attitude towards the court (proceedings) when their expectations were met and/or they had the feeling that the judge believed them.

⁶³ See for the following Sautner (2010, pp. 159-162 and pp. 257-265). In this study Sautner and Hirtenlehner questioned all persons who had reported a criminal offence (with the exception of sexual assaults and of domestic violence) to the police in the city of Linz. In total 659 questionnaires were analysed.

⁶⁴ Only a minority of the victims wish a formal punishment of the perpetrator (one fifth). Two thirds would prefer probation measures, but this again depends on the type of crime and on its severity. On average, victims of contact crimes do not desire a conviction as much as the victims of burglary. Severely victimised persons and people with a strong subjective feeling of impairment tend towards 'traditional' punishments. Yet, the research has also shown that the victims' needs change over the time. Neutral or positive feelings towards the perpetrator are growing with the temporal distance.

For the victim – to continue with Sautner – it is very important to be recognised as a victim of crime already before the offender is convicted and having not to prove again and again that they experienced injustice.⁶⁵ The recognition as a victim of crime could be seen as a first step towards ‘careful’ treatment and support of victims in criminal proceedings, a further main interest of affected persons. The quoted researches also identified the possibility to participate actively in the proceedings as well as comprehensive compensation for the damages caused by the offence as substantial for victims. Unfortunately there is no research about victims’ needs and interests after the implementation of the new Code of Criminal Proceedings in 2008. Therefore we do not know how much the new legal provisions meet the victims’ needs in practice, but the analysis of case files and of interviews with victims of IPV will provide some insight (see Amesberger/ Haller 2016).

4.3 Good practices regarding the protection of victims of IPV

As already described above, and as is shown in Amesberger and Haller (2016), the **psycho-social and legal support** during police investigations and criminal proceedings is extremely helpful. We consider this as a best practice model as it is applicable for all victims of violence, and because in the ideal case the support starts with the beginning of the investigations (each victim has to be informed by the intervening police about the entitlement of psycho-social and legal support⁶⁶). Despite of different professional systems and the tension between victim protection and law enforcement (Schwarz-Schloeglmann/ Sorgo 2013, 262) the cooperation among the various professional works well (Haller/Hofinger 2007). Psycho-social and legal support is seen by Schwarz-Schloeglmann and Sorgo (2013, 256ff.) as a means of tertiary prevention⁶⁷ that helps victims to cope with the emotional bur-

⁶⁵ See also Dearing (2003, pp. 183f.) about the importance of recognition as a victim and the punishment of the offender. The position of the victim within the criminal proceedings reflects the court’s self-conception – the state’s claim for punishment for violating the legal order or the recognition that a wrong was done to a person. In respect to the right of being interrogated ‘carefully’, Dearing (ibid, pp. 184-188) stresses that the victim must not be instrumentalised by the criminal prosecution what might happen when the victim is repeatedly ‘used’ as a witness. A balance has to be found between the contradicting interests of the victim, her/his entitlement of prosecution and interest in active participation on the one hand, and in ‘careful treatment’ on the other. For Dearing the manner of communication is a central element to restore justice, to illustrate the wrong and responsibility of the perpetrator as well as to rehabilitate the victim.

⁶⁶ Leaflets informing about psycho-social and legal support are available in various languages (German, English, Polish, Turkish, Russian, Serbian-Croatian and Spanish).

⁶⁷ Schwarz-Schloeglmann/ Sorgo refer to a classification developed by Godenzi (1996, chapter 5). He differentiates between primary, secondary and tertiary prevention. Primary prevention encompasses measures which promote and ensure structural and economic gender equality; secondary prevention tries to intervene into the dynamics of violence, whereas tertiary prevention takes place in the aftermath (e.g. counselling, therapy) and tries to strengthen the victim and inhibit continued violence.

den and the anxiety about for the victim so far unknown criminal proceedings. Legal assistance, organised via the violence protection centres and other victim support agencies, is provided by lawyers who have specific training. Since June 2009 the entitlement to psycho-social support has been extended to civil proceedings.

In the last years **manuals for victim protection at hospitals and medical centres** have been developed by experts in the field of healthcare and domestic violence (BMWfJ 2011; Stadt Wien/MA 57 2006). These manuals provide general information about domestic violence, medical provisions for and signs of domestic violence. Furthermore, they deal with how to address suspected domestic violence with the victim. The centre piece is diagnosis, documentation and safeguarding evidence for which specific tools have been developed (BMWfJ 2011). Another example of such tool kits is the checklist for the medical staff in case of violence against women compiled by the 24-Hour Women's Emergency Helpline. This checklist which fits in the pocket of every working coat is divided into four subsections: early recognition and first steps, examination and securing evidence, further measures (e.g. aspects of safety, children, duty of disclosure) and important phone numbers.

A core element of the implementation is the multi-agency approach what is ensured by internal cooperation. In several Austrian hospitals so-called **victim protection groups**, consisting of physicians, nursing personnel and social workers, have been established. (Since 2010 all main Austrian hospitals are obliged to install such groups according to the Law concerning hospitals and sanatoriums (§ 8e).⁶⁸ The aims of these victim protection groups are to facilitate early recognition of violence and to standardize the following proceedings. All hospitals run by the City of Vienna have installed such victim protection groups and the staff has been trained in dealing with victims of violence. Members of the Viennese victim protection groups meet 3 to 4 times a year for exchange and discussing pressing topics; these meetings are facilitated by the 24-Hour Women's Emergency Helpline.

A survey among the hospitals' staff conducted after the implementation of the Viennese Curriculum for victim protection showed good results "... in terms of gaining knowledge, confidence to deal with victims and improved inter-sectorial exchange and institutional cooperation to define standards" (Stadt Wien/MA 57 2006, pp. 5 and 39ff.) The fact that victim protection is regarded as an interdisciplinary and collaborative task of the medical sector is made visible by the integration of a list of the most important domestic violence support agencies in Austria as part of the Curriculum.

⁶⁸ The pace of implementation of victim protection groups varies in the *Laender*, but they seem to be very well established in Vienna (interview with Martina Sommer and Angelika Breser (24-Hour Women's Emergency Helpline), December 15, 2014).

5 Main conclusions

The legal provisions on rights, support and protection of victims of crime in Austria meet to a great extent the **requirements of the Directive 2012/29/EU** of the European Parliament. There are provisions demanding that victims of domestic violence receive appropriate information, support and protection (article 1) as well as assistance when making a formal complaint (art. 10, 13, 14 and recital 34, 47). The access to victim support services is given regardless whether the victim makes a formal complaint or not (art. 8, 9 and recital 37). Nevertheless, the access to victim support services is sometimes still difficult in rural areas. Barring orders as well as restraining orders are important instruments for preventing further victimisation by partner violence for rather a long time (art. 18-21 and recital 52, 53, 54). As confirmed by various legal experts, a turn towards a victim-oriented legal system has taken place in Austria. The planned amendment of the CCP (Code of Criminal Proceeding) (in 2016) will probably further enhance victim rights and the awareness of victim needs. However, sometimes problems arise on the level of implementation.

Various points of critique directed towards the judicial system in most EU countries have to be admitted for Austria as well. Many of these topics touch victim protection: the reluctance of public prosecutors and judges to treat partner violence like violent acts by strangers, ignorance about violent relationships, long-lasting proceedings, unwillingness to impose measures like anti-violence trainings. But some of these problems can be compensated in cases where psycho-social and legal support is admitted to victims.

Members of the INASC-national advisory board criticize that Austria does not fulfil its obligation to protect victims of violence like it is stated in the Istanbul Convention (art. 5 in chapter 1). Violations of most victims' rights are not sanctioned at all. Furthermore, it is considered a problem that the victim cannot raise an objection when diversion measures are imposed. Moreover, there is a crucial controversy between feminists and (male) legal practitioners about the detention on remand. The feminists argue that barring orders by the police are used as an alternative to remand what would lead to insufficient protection.⁶⁹ The legal practitioners admit that barring orders offer them the possibility of avoiding imprisonment but apart from this, the legal basis for detention often would not be given.

⁶⁹ Minutes of INASC-national advisory board meeting, November 27, 2014.

Several suggestions by Haller and Hofinger (2007, pp. 206-209) regarding the improvement of victims' rights and needs have been implemented in the meantime, like the psycho-social support in civil procedures or the establishment of a specialised public prosecution section for domestic violence (only in large offices). Other suggestions are still pending such as the prolongation of support after the ending of criminal proceedings.⁷⁰ There is also still a lack of space in some courts for avoiding encounters between victim and offender and often victims are informed too late about psycho-social and legal support.⁷¹

With regard to **risk assessment**, mainly violence protection centres evaluate the endangerment by partner violence systematically and with standardised tools. To improve their risk assessment and management the centres would need an electronic administration programme for high risk cases.⁷² Actually the police mainly focus on a few criteria for assessing risks in DV cases, what is judged as sufficient by the violence protection centres. The SALFAG – a special risk assessment instrument developed by the Ministry of the Interior – will probably be introduced nation-wide. No standardised and systematic risk assessment is done by public prosecutors and judges.

One can draw the conclusion that there still is a deficit concerning an agreement on risk factors in the context of domestic violence/ intimate partner violence among the various institutions involved and that institutionalised collaboration might enhance such a process.

⁷⁰ See Gloor (2014) and recommendations by the platform for psycho-social and legal support for persons affected by male violence and trafficking in women. The psycho-social and legal supporters also demand the establishment of a co-operation forum, which should meet twice a year, to improve quality.

⁷¹ Interview with Maria Schwarz-Schloeglmann (Violence Protection Centre Upper Austria), June 23, 2014.

⁷² Interviews with Annemarie Reiss (Violence Protection Centre Burgenland), June 18, 2014, and Marlies Leitner (Violence Protection Centre Lower Austria), July 1, 2014. The Domestic Abuse Intervention Centre Vienna uses such an electronic programme.

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List of abbreviations

CCP	Code of Criminal Proceedings
DA	Danger Assessment
DAIP	Domestic Abuse Intervention Program
DV	Domestic violence
DyRiAS	Dynamic Risk Assessment
IPV	Intimate Partner Violence
MACC	Multi Agency Case Conference
MARAC	Multi Agency Risk Assessment Conference
ODARA	Ontario Domestic Assault Risk Assessment
SALFAG	Situational analysis of domestic violence (<i>Situationsanalyse familiärer Gewalt</i>)
SARA	Spousal Assault Risk Assessment



