

United Nations  Nations Unies

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**United Nations Office on Drugs and Crime  
United Nations Division for the Advancement of Women**

**Expert Group Meeting on good practices in legislation on violence against women**  
United Nations Office at Vienna, Austria  
26 to 28 May 2008

**Legal Reform on Domestic Violence in Central and Eastern Europe and  
the Former Soviet Union**

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\* *The views expressed in this paper are those of the author and do not necessarily represent those of the United Nations.*

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## I. Introduction

Since the 1990s, there has been a great deal of activity towards legal reform on domestic violence in Central and Eastern Europe and the former Soviet Union (CEE/FSU). This paper will focus on the effectiveness of legislation enacted to address domestic violence in this region. Countries throughout CEE/FSU have recently enacted or are considering civil and criminal legislation that addresses domestic violence. These reforms appear most often in national plans, revisions or additions to family codes, criminal codes or, most effectively, in new more comprehensive laws addressing domestic violence. This reform has, in many circumstances, resulted in huge successes, such as groundbreaking laws and policies and practices that promote victim safety and offender accountability. Unfortunately, other reform efforts have not been successful and some have resulted in laws and policies that have hurt victims and their children and perpetuated impunity for offenders. Both situations will be addressed here. This paper will also present some examples from the state of Minnesota as a jurisdiction with longstanding domestic violence laws and experience with police, prosecutors and judges implementing these laws. For the most part, this paper will focus on the language of new domestic violence laws. It is important to note, however, the growing consensus that one of the most significant obstacles to achieving victim safety and offender accountability for domestic violence victims is gaps and weaknesses in *implementation* of the laws. As one recent report states:

“The most significant challenge for ending domestic violence work in Southeast Europe remains the gap between legal provisions and governmental commitments, under national strategies to promote gender equality and/or combat domestic violence and their translation into concrete action and particularly into financial support and budgets to address domestic violence.”<sup>1</sup>

## II. The Order for Protection Remedy

One of the most prominent legal reforms on domestic violence in CEE/FSU has been the introduction of the civil order for protection remedy in a new law or as an amendment to a family code or criminal provisions. This civil order for protection remedy was introduced first in the United States in the mid-1970s. Many jurisdictions throughout the world now offer this remedy to domestic violence victims and, though it is certainly not without problems, it has proven to be one of the most effective legal remedies available to domestic violence victims. The order for protection offers an immediate remedy to domestic violence victims and their children by authorizing courts to order violent

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<sup>1</sup> UNIFEM, ENDING DOMESTIC VIOLENCE IN SOUTHEAST EUROPE AND TURKEY: TOWARDS A REGIONAL STRATEGY FOR ACTION (2007), at 21. In many cases, governments are not providing the financial commitment needed to implement the laws nor to execute specific provisions within the laws.

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

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

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

#### A. Emergency and Permanent Orders for Protection

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

<sup>3</sup> Minn. Stat. § 518B (2007).

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Many laws in CEE/FSU offer both an emergency ex parte order and a permanent order, or one that is issued after a full hearing in court. Advocates throughout the region report good experiences with these new remedies. A Bulgarian lawyer noted, “The law filled a vacuum in society. It acts quickly. It is free. The execution of the order is official. Everything, the writ of summons, the order and decision, is served officially by the police. It is controlled and executed by the police. These are good things.”<sup>4</sup> The Georgian Young Lawyers Association reported that, between September 2006 and June 2007, 271 requests for restrictive (emergency) orders were made, of which the courts granted 244.<sup>5</sup>

In some circumstances, police are granted the authority to issue the emergency order. In Georgia, the emergency order is referred to as a “restrictive order,” and it is issued by the police.<sup>6</sup> Police issue emergency orders in Bulgaria, Czech Republic and other countries also.<sup>7</sup> However, police in Georgia have also found that their greatly expanded authority in these cases can be a burden.<sup>8</sup> One police officer explained that under the new law “the district police are supposed to be social workers, psychologist and teachers”.<sup>9</sup>

New laws in CEE/FSU frequently allow courts too much time to issue orders for protection. For example both Kosovo and Bulgaria allow courts 24 hours to issue an emergency order.<sup>10</sup> Despite this window, most judges in Bulgaria have developed a positive practice of issuing emergency protection orders within a few hours.<sup>11</sup> The most effective laws will direct courts to immediately issue emergency orders for protection upon application. A full hearing can then be promptly ordered by the court upon the request of either party. These procedures best protect victim safety and also the rights of offenders. The authorities should not decline to issue these orders nor should they wait 24 hours to issue them.

## B. Removing Victims from the Home

New or draft laws in CEE/FSU have included police and court authority to remove the victim from the home rather than the violent offender. This practice undermines the

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<sup>4</sup> IMPLEMENTATION OF THE BULGARIAN LAW, *supra* note 2, at 6.

<sup>5</sup> GEORGIAN YOUNG LAWYERS ASSOCIATION, THE MONITORING OF USING LEGAL PROTECTION MECHANISMS WITH RESPECT TO THE LAW ON “PREVENTION OF THE DOMESTIC VIOLENCE, PROTECTION AND ASSISTANCE OF THE VICTIMS OF THE DOMESTIC VIOLENCE” (2007), at 23, 25. These numbers reflect requests in Tbilisi and other regions as reported by the police, prosecutors and city courts. *Id.*

<sup>6</sup> Law of Georgia on the Elimination of Domestic Violence, Protection and Support to its Victims (2006), art. 10(3) [hereinafter Law of Georgia].

<sup>7</sup> The Czech law came into force in 2007 and is modeled after the Austrian law.

<sup>8</sup> MINNESOTA ADVOCATES FOR HUMAN RIGHTS AND INSTITUTE FOR POLICY STUDIES, DOMESTIC VIOLENCE AND CHILD ABUSE IN GEORGIA: AN ASSESSMENT OF CURRENT STANDINGS OF LAW AND PRACTICE (2006), at 15 [hereinafter DOMESTIC VIOLENCE AND CHILD ABUSE IN GEORGIA]

<sup>9</sup> *Id.*

<sup>10</sup> Protection Against Domestic Violence Act [hereinafter Bulg. LPADV], State Gazette [SG] 2005, No. 27, art. 18; Regulation No. 2003/12 on Protection Against Domestic Violence (2003) (UNMIK), § 9.

<sup>11</sup> IMPLEMENTATION OF THE BULGARIAN LAW, *supra* note 2, at 33.

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

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

### C. Evidence

Some laws in CEE/FSU have introduced new evidentiary standards that do not require the victim to submit additional evidence, other than her own statement supporting her application for an order for protection. Judges in the region who have adjusted to these new standards should be commended. Nevertheless, some judges still place heavy emphasis on the presence of supporting evidence. Despite explicit language in the Bulgarian law allowing the issuance of an order for protection based solely on the victim's declaration, many judges are influenced by the presence of additional evidence in determining whether to order protective measures and what forms of relief they will order.<sup>16</sup>

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<sup>12</sup> Regional Conference on Domestic Violence Legal Reform [hereinafter Regional Conference] 16-17 (Feb. 12-14, 2007) (transcript on file with authors).

<sup>13</sup> UNIFEM, *supra* note 1, at 14.

<sup>14</sup> DOMESTIC VIOLENCE AND CHILD ABUSE IN GEORGIA, *supra* note 8.

<sup>15</sup> Proposed Amendments, Law of Georgia on Addendums to the Administrative Procedure Code, art. 21(4) (Geor.) [hereinafter Georgia Addendums].

<sup>16</sup> IMPLEMENTATION OF THE BULGARIAN LAW, *supra* note 2, at 32.

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#### D. Duration of Orders for Protection

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

#### E. Prohibition of Possession of Firearms

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

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<sup>17</sup> Regional Conference, *supra* note 12, at 51.

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

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

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

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

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

<sup>23</sup> Minn. Stat. § 518B Subd.14(j) (2007).

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carried out while possessing a weapon.<sup>24</sup> Serbia and Slovakia increase the penalties for domestic violence offenses that involve a firearm.<sup>25</sup> Proposed amendments to the new domestic violence law in Georgia grant police and courts authority to restrict the abuser's rights to purchase a weapon while the order for protection is in effect.<sup>26</sup> Albania's new law authorizes law enforcement officers to seize any weapons belonging to the perpetrator or order him to surrender those weapons.<sup>27</sup>

#### F. Other Relief Authorized in Order for Protection Laws – Child Custody and Other Issues

In addition to removing a violent offender from a shared dwelling and ordering him to stay away from the victim, it is critically important that new legislation grant courts the authority to include other relief in the order. For example, experience has shown that the orders will often not be effective unless the victim receives payment for child support and basic living expenses.<sup>28</sup> Without these payments, victims cannot remain independent from violent offenders. Other relief, such as restraining one or both parties from transferring or disposing of property and ordering that violent offenders attend treatment programs, is also important. Albania's new law lists multiple forms of relief, including payment of rent, financial maintenance and child support.<sup>29</sup>

Some laws provide courts with authority to include directives about child custody in orders for protection. For many years, domestic violence was not considered relevant to custody and visitation determinations in the United States. Judges making custody determinations "routinely concluded that violence toward the other parent had nothing to do with one's ability to adequately parent, and most court decisions revealed that judges did not believe that domestic or sexual abuse of one parent by the other fundamentally compromised the interests of the children."<sup>30</sup>

Because of serious harm suffered by children who witness domestic violence and the ways in which batterers can use child custody and visitation against their former partners, however, advocates argued that the laws governing custody and visitation should take this violence into account. Some jurisdictions now require the judge to consider domestic

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<sup>24</sup> *Id.* at Subd.14 (d)

<sup>25</sup> Criminal Code, Official Gazette of the Republic of Serbia 85/05 (2005), art. 194 (Serb.); *Legislation concerning violence against women in SLOVAKIA*, Zuzana Magurova (Feb. 12-14, 2008) (unpublished manuscript, on file with authors).

<sup>26</sup> Georgia Addendums, *supra* note 15, art. 21.

<sup>27</sup> LAW No. 9669 of 18.12.2006 "ON MEASURES AGAINST VIOLENCE IN FAMILY RELATIONS," art. 10 (2006) (Alb.) [hereinafter Albanian Law].

<sup>28</sup> Such living expenses might include rent, insurance and food.

<sup>29</sup> Albanian Law, *supra* note 27, at art. 10.

<sup>30</sup> National Advisory Council on Violence Against Women and the Violence Against Women Office, *Chapter 3: Enhancing the Response of the Justice System: Civil Remedies*, TOOLKIT TO END VIOLENCE AGAINST WOMEN (2001), <http://toolkit.ncjrs.org/files/fullchapter3.pdf>.

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violence in making a custody award. Others create a presumption against an award of custody to the abusive parent, or prohibit an award of joint custody to an abusive parent. The Model Code, drafted by the National Council of Juvenile and Family Court Judges in the United States, for example, provides that a finding of domestic violence creates a presumption that it is not in the child's best interest to be placed in the sole or joint custody of the perpetrator.<sup>31</sup>

In Albania, the new domestic violence law is very detailed in specifying the relief authorized in an order for protection. The new law allows for “transferring the temporary child custody rights to the victim and temporarily removing parental rights for the defendant.”<sup>32</sup> In Georgia, the new domestic violence law includes an important provision that directs courts to determine if the “retention of the representation rights of the child to the violent parent is prejudicial to the interests of the child.”<sup>33</sup> In Minnesota, courts are granted the authority after a hearing to award temporary custody of children “which gives primary consideration to the safety of the victim and the children.”<sup>34</sup> Despite these laws, many advocates throughout the CEE/FSU and in the United States report that victims of violence are very vulnerable to losing or compromising their rights to custody of their children when they report domestic violence.

In countries such as the Czech Republic, that do not have comprehensive domestic violence laws that allow for specific relief regarding child custody, advocates report difficulty with this issue when implementing the order evicting the abuser from the home.<sup>35</sup>

#### G. Provisions Referring to Behavior of the Victim That “Provokes” the Violence

In at least two countries, Ukraine and Armenia, laws have been drafted or passed that reference “victim behavior” or behavior that “provokes, results in or creates conditions” for the violence.<sup>36</sup> Needless to say, this language does not promote victim safety and offender accountability, nor does it communicate a zero tolerance for violence message to the general public. Instead, this language implies that the victim may be blamed for the violence against her. It will dissuade victims from seeking protection and undermine accountability for violent behavior of the perpetrator. This is extremely dangerous language to include in a law that purports to protect victims of violence. Advocates in Ukraine are working to amend this law that has been in effect since 2001. After five years

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<sup>31</sup> ADVISORY COMMITTEE OF THE CONRAD N. HILTON FOUNDATION MODEL CODE PROJECT OF THE FAMILY VIOLENCE PROJECT, FAMILY VIOLENCE: A MODEL STATE CODE (1994) [hereinafter MODEL CODE].

<sup>32</sup> Albanian Law, *supra* note 27, art. 10(j).

<sup>33</sup> Law of Georgia, *supra* note 6, art. 14(3).

<sup>34</sup> Minn. Stat. 518B Subd. 6 (2007).

<sup>35</sup> Regional Conference, *supra* note 12.

<sup>36</sup> It is the author's understanding that similar language from the draft domestic violence law in Armenia has been removed at the recommendation of The Advocates for Human Rights.

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of implementing this law, the Western Ukrainian Centre “Women’s Perspectives” published an assessment of the experience with the law. In particular, the report addressed the problems of official warnings about provocative victim behavior being issued based on the perpetrator’s explanation alone, and issuing such warnings to discourage victims from requesting police assistance in the future. The report concluded that “the legislative norms on the victim behaviour and liability for such behaviour violate human rights of domestic violence victims and are discriminatory against women....”<sup>37</sup>

Furthermore, trainings for police, judges and prosecutors should be used to disabuse them of any misperceptions of provocative victim behavior. In Bulgaria, The Advocates learned of at least two cases where judges referenced the victim’s behavior. In one case, the judge issued the order for protection against the husband, but noted that, “His behavior was a typical reaction to the wife’s aggressive approach.”<sup>38</sup>

#### H. Provisions That Authorize Excessive Government Intervention in Domestic Violence Cases

Several laws or draft laws throughout the CEE/FSU have contemplated a great deal of state intervention in cases of domestic violence, independent of victims’ wishes or requests and without the involvement of advocates who work with victims and can best represent their interests. In Albania, the new law authorizes police and prosecutors to apply for protection orders on behalf of victims.<sup>39</sup> In those cases, even the victim’s request to drop the application has no effect. In Romania, the law requires that family social workers “identify and keep account of the families where potential violent situations may occur and identify amiable settlement by maintaining contact with the persons herein.”<sup>40</sup> In Bulgaria, the law allows courts to issue orders for protection that are initiated not only by the victim but also by the Director of the Social Assistance Directorate, a state agency.<sup>41</sup>

Women who are victims of violence are often the best judges of the dangers presented to them by violent partners. Therefore, it is not advisable to exclude victims from decisions about how to handle a violent situation in their home. This is particularly important since we know that one of the most dangerous times for many women is when they separate from their abusers, which would occur, of course, upon the issuance of an order for protection. A 2003 study described by the Family Violence Prevention Fund confirmed

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<sup>37</sup> H. FEDKOVYCH, I. TROKHYM, M. CHUMALO, *COMBATING DOMESTIC VIOLENCE: UKRAINIAN AND INTERNATIONAL EXPERIENCE* (2007).

<sup>38</sup> *IMPLEMENTATION OF THE BULGARIAN LAW*, *supra* note 2, at 34.

<sup>39</sup> Albanian Law, *supra* note 27, art. 13.

<sup>40</sup> Law to Prevent and Fight against Domestic Violence (2003) (Rom.), art. 13(1) (unofficial translation, Luana Banu, trans.).

<sup>41</sup> See Bulg. LPADV, *supra* note 10, art. 8(2).

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

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

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

### **III. Criminal Laws on Domestic Violence**

#### **A. Criminalization of the Violation of an Order for Protection**

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

#### **B. Criminalizing Acts of Domestic Violence**

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

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<sup>42</sup> IMPLEMENTATION OF THE BULGARIAN LAW, *supra* note 2, at 22, 39.

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throughout the CEE/FSU have expressed concern and frustration that criminal justice officials do not pursue domestic violence cases. These officials often cite to gaps or obstacles in the language of the laws to explain their inaction. Clear language in the law criminalizing domestic violence can address this issue. For example, Macedonia, Czech Republic, Slovakia and Serbia have recently enacted provisions clearly stating that domestic violence is a crime.

Many countries' laws or policies require a victim to pursue prosecution on her own, with little if any involvement of prosecutors or police, for all but the most serious assaults or homicides.<sup>43</sup> In Bulgaria, victims who sustain light injuries must file a complaint and proceed through the criminal justice system alone; victims who sustain medium-level injuries from a relative must proceed through the criminal justice system without the help of a prosecutor.<sup>44</sup> Given the batterer's close relationship and power and control over the victim, it would be easy for him to influence a victim not to prosecute.<sup>45</sup>

### C. Risk Assessments

An important component of criminal laws and policy on domestic violence is the requirement that officials at every level of the system undertake risk assessment to determine the level and immediacy of danger to victims and adjust their response accordingly. In countries where criminal justice officials have not taken domestic violence seriously, this risk assessment analysis can be very important and can serve to raise awareness among these officials of the extreme danger often presented in domestic violence cases. Risk assessments can be performed at the point of arrest, during court proceedings and prior to sentencing. Assessing the risk in domestic violence cases is very complicated and a number of instruments have been developed to facilitate this process. In the Czech Republic, some police have been trained to assess risk using the Spousal Assault Risk Assessment Guide (SARA) made available in the United States in 1995. Minnesota law requires a pre-sentence investigation in domestic violence cases that includes recommendations to ensure victim safety.<sup>46</sup> Such recommendations are then based on a risk assessment analysis performed by probationary officers.

### D. Arrest and Prosecution Policies

Other important reforms that occurred in the criminal justice system's response to domestic violence in the United States since 1980 were probable cause arrests, pro-arrest policies and pro-prosecution policies. These policies are seen by many as necessary to combat a long-standing and globally prevalent police and prosecutor attitude that

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<sup>43</sup> See, e.g., Criminal Code (Bulg.); Criminal Code (Ukr.).

<sup>44</sup> IMPLEMENTATION OF THE BULGARIAN LAW, *supra* note 2, at 40.

<sup>45</sup> *Id.* at 40.

<sup>46</sup> Minn. Stat. 609.2244 (2007).

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

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

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

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

#### E. Strangulation

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

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

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

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Furthermore, strangulation itself ranks high in lethality assessment and is a “red flag” for potential homicides; batterers who strangle their victims often end up murdering them.<sup>49</sup> Several states in the U.S. have recognized this behavior and passed laws that specifically criminalize strangulation or increase its punishment.<sup>50</sup> A specific strangulation law is not vital to prosecution, as prosecutors could still charge the offender with attempted murder.<sup>51</sup> Nevertheless, it is important for legal professionals to be aware of strangulation when responding to domestic violence so as to ensure the victim is afforded help and the offender held accountable.<sup>52</sup>

#### F. Enhancement

Enhancement of penalties for repeated low-level assaults, which are common in domestic violence cases, has proven to be an effective reform. Changes to the criminal code in the Czech Republic provide for enhancement of penalties for repeated domestic violence offenses.<sup>53</sup> In Minnesota, repeated low-level assault can result in felony convictions.<sup>54</sup> Even where there have been no such specific amendments to criminal codes, advocates in some countries are working with the criminal justice system to use current laws to achieve more severe level sanctions. In Russia, advocates report that provisions of the criminal code not previously recognized as applicable in domestic violence cases can be used to more effectively prosecute domestic violence crimes.<sup>55</sup> Criminal law in Russia pertaining to systematic assaults and torture can clearly apply in many domestic violence cases where repeated assaults have occurred. Using these provisions of the law can result in “enhancement” of penalties for offenders. Charging domestic violence crimes under these provisions also may invoke the responsibility of the state prosecutors.

### IV. Mediation in Domestic Violence Cases

In several CEE/FSU countries, women are offered the opportunity to participate in mediation as part of the divorce process. Drafters of domestic violence laws in Romania and family law in Serbia have included mediation provisions, and a law requiring

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[http://stopvaw.org/Lethal\\_and\\_Extremely\\_Dangerous\\_Behavior.html?SEC={37B13DFB-21A8-48A8-8CC4-184FAFE0D619}&Type=B\\_BASIC](http://stopvaw.org/Lethal_and_Extremely_Dangerous_Behavior.html?SEC={37B13DFB-21A8-48A8-8CC4-184FAFE0D619}&Type=B_BASIC).

<sup>49</sup> Fred Karasov and Susan Gaertner, *Two Minnesota Prosecutors Explain the Need for Increased Criminal Penalties for Strangulation in Domestic Violence Cases* (2005), [http://stopvaw.org/Expert\\_s\\_Corner.html#28Apr2005](http://stopvaw.org/Expert_s_Corner.html#28Apr2005).

<sup>50</sup> See Allison Turkel, “*And Then He Choked Me*”: *Understanding and Investigating Strangulation*, NAT’L CENTER FOR PROSECUTION OF CHILD ABUSE UPDATE 20 (2007).

<sup>51</sup> Turkel notes that a prosecutor could charge a defendant with attempted murder if he states, “I’m going to kill you” and strangles her. See *id.* Note, however, that because strangulation does not often result in visible external injuries, prosecutors may not be able to charge the crime under general homicide provisions. See Karasov and Gaertner, *supra* note 47.

<sup>52</sup> See Turkel, *supra* note 48.

<sup>53</sup> Criminal Code (2004) (Czech Rep.), § 215a.

<sup>54</sup> Minn. Stat. 609.2243 (2007).

<sup>55</sup> Regional Conference, *supra* note 12.

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

## V. Conclusion

Overall, there is a positive trend in the growing attention to domestic violence as more governments are passing and amending laws to address this issue. Yet, it is important to closely scrutinize the language of the laws and their implementation to ensure they are truly promoting victim safety and offender accountability. In civil laws, there are many positive examples of good provisions, including the availability of emergency and permanent orders for protection, prohibitions against firearms, and the introduction of new evidentiary standards. There are, however, troublesome provisions included in the laws, such as removal of the victim from the home, references to provocative victim behavior, and insufficient duration of orders for protection. These provisions may not only fail to protect victims, but may ultimately do greater harm to the victim and/or perpetuate impunity for the batterer. Also, while a few countries have addressed child custody and financial support, the general failure to adequately address these issues will reduce the efficacy of orders for protection. Further, there remains a need to improve criminal laws. While there is a positive trend in several countries that have explicitly criminalized domestic violence, many criminal laws still require private prosecution in cases of light injuries perpetrated by a relative.

While attention to and reform of domestic violence laws are welcome, the ultimate goal will not be fully realized until and if the government provides the necessary funding to implement these laws and provide services to victims. Legal professionals must continue to undergo trainings to better understand the dynamics of domestic violence, as well as how to implement these laws. Finally, advocates must both monitor and seek to reform laws and practices as they learn what works best to promote victim safety and offender accountability.

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<sup>56</sup> See Stop Violence Against Women, *Mediation* (2008), <http://www.stopvaw.org/Mediation.html>.

<sup>57</sup> National Advisory Council on Violence Against Women and the Violence Against Women Office, *TOOLKIT TO END VIOLENCE AGAINST WOMEN*, <http://toolkit.ncjrs.org/> (last visited May 8, 2008).