

THE EMERGENCY BARRING ORDER: TOWARDS A COMPREHENSIVE GENDER SENSITIVE RESPONSE TO DOMESTIC VIOLENCE

According to international binding standards, intimate partner violence or domestic violence is a form of gender based violence. This form of violence affects women disproportionately and is discriminatory in nature because it is directly related to unequal gender relationships. All forms of gender based violence are recognized as a violation of women's human rights (The United Nations Convention on the Eradication of Discrimination Against Women (CEDAW, 1979)¹ and its concomitant General Recommendation no.19 (1992), and the 2011 Council of Europe's *Convention on combating and preventing violence against women and domestic violence* (CoE Convention on VAW)²). Based on the tripartite obligations to respect, protect and fulfil human rights, States must engage with due diligence to safeguard the exercise of the rights. These obligations require different types of legislative and policy actions. The 2011 Council of Europe Convention on VAW explicitly calls upon States to *exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence perpetrated by non-State actors* and urges States to develop *comprehensive and coordinated policies*.

The emergency barring order (EBO, sometimes called the 'go' or 'removal' order), which permits the police to temporarily bar a perpetrator of domestic violence from the home, and in many countries is linked to further support for the victims (and children), is an innovative practice in that it aims to achieve both protection and support for victims and sanctioning perpetrators: to the extent that this integration is achieved, it can also be said to be a form of tertiary prevention. In the 2011 CoE Convention on VAW it is listed as a measure that States should implement (art. 52). In the project *Realising Rights* we looked more closely at how six European States implemented the EBO. One of the key findings is that States converge in the regulation and implementation of the procedure, even though the legal regimes may vary. However, they diverge profoundly in the extent to which they deliver an *integrated* intervention.

INTEGRATION: DIFFERENT GOALS, DIFFERENT MEASURES

All emergency barring interventions aim to simultaneously realise the immediate protection of the victim (and her children) and through linked measures of support and perpetrator programmes reduce potential future victimisation. These goals intersect at the various stages of the measure in different ways.

During the first stage (the barring), the emphasis is obviously on immediate *protection* and to the extent that the perpetrator respects the order, prevents further violence during this period. In order to provide this immediate protection the study indicates that it is imperative to provide the police with the authority to issue the order. To respect the due process principle, all countries provide the option for the barred person to appeal the order in court, or to include a standard review of the police measure by the court. The order also implies empowering elements for the victim by signalling that her right to safety and those of her children are prioritised. On a practical level she continues to have access to the crucial resource of accommodation – for women with young children this guarantees continuity in access to schools, neighbourhoods and friends – and that they can stay in the home, and are entitled to support, holds the perpetrator accountable for his behaviour.

The first stage (the barring) is, practically speaking, unequivocal and rather straightforward – removal of the perpetrator, handing in keys of the joint home, and providing contact details to the police of a temporary address. Its implementation, in all countries is in the hands of the police even where the formal authority for confirming the action lies elsewhere, usually a court or municipal authority. Procedural rules are clearly established through the law, although the legal regimes vary.

During the second stage, support and/or intervention measures aim to strengthen the victim's access to personal, social and economic resources and to enhance her capacity to decide whether, and under which conditions, she wants to continue the relationship. This necessitates that the support provides her with information and options. In some contexts

¹ Convention on the Elimination of All Forms of Discrimination against Women (1979). *Convention on the Elimination of All Forms of Discrimination against Women*. <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>

² Council of Europe (2011) *Convention on combating and preventing violence against women and domestic violence* <http://conventions.coe.int/Treaty/EN/Treaties/HTML/DomesticViolence.htm>

intervention with perpetrators is also possible, through referral to perpetrator programmes, but these are currently sparse in many countries. Whilst these interventions were considered integral in the Austrian model, here significant diversity is evident within and between States.

EARLY INTERVENTION AS A CHALLENGE

Even though none of the laws under study required a history of violence before an EBO can be issued, in day to day practice police tend to raise the bar for issuing the order and apply it mostly to cases where there is a known history of previous violence. This implies that the EBO is implemented primarily in a crime framing - to stop recidivism of known perpetrators of domestic violence. Important as this is, it suggests a tendency to screen some victims, for whom the measure might constitute early intervention, out of the protection which the measure was intended to provide. This is losing both an opportunity to intervene before violence has become embedded in a relationship and arguably contravenes international law under which states are obliged to protect victims where they knew or should have known that the person is at risk. It is therefore crucial that States maximise opportunities to intervene when domestic violence at an early stage, rather than waiting until it is an established pattern of abuse and control.

SUPPORT MEASURES IN PRACTICE

Despite a similarity in underlying philosophy to develop integrated measures, the differences between countries become visible in the extent to which they offer further support. The support and intervention measures are undoubtedly the more fragile component of EBOs, with Austria and the Netherlands providing examples of more elaborated systems. This is the more complex part of the intervention, since it requires case by case assessment and multiple other agencies may be involved. The provision of additional services is not always anchored in policy or law, or, if so, only in general terms. Even if coordination of interventions is assigned to a separate organisation or centre (as is done in most countries), it takes time to establish an effective and comprehensive (in terms of access for all citizens) intervention model.

DOMESTIC VIOLENCE AS A CRIME CONTROL, FAMILY, HUMAN RIGHTS AND/OR GENDER CONCERN?

A striking finding is that the approaches towards intimate partner violence (IPV) vary considerably. In some countries there is a growing tendency to approach it primarily as a safety and crime control concern, alongside a severing of it from gender discrimination and gendered inequalities. Understanding IPV as gender based violence is foregrounded in some countries (for example, Spain, Austria and Germany), whereas it has been considerably diluted in others (for example, Czech Republic and the Netherlands) where it is increasingly positioned as a family problem. The lack of a consistent human rights and gender based framework has tangible consequences, not least on the imbalance between the barring and support components of interventions. Notably the lack of a coherent gender and human rights framework translates into shifting local priorities, especially in rural areas, and gaps in the provision of support services.

RECOMMENDATIONS

Improving early intervention: More thorough training of police on intimate partner violence as a form of gender based violence is necessary to ensure adequate implementation of the barring law as intended. Specific attention is required to the legal obligation of the State to prevent violence and how the police's implementation of the EBO is crucial to fulfilling that obligation. Given the high case load of IPV, training with respect to the EBO, and its potential for interrupting violence at an early point, should form part of the basic police curriculum.

Realising an integrated measure: A perspective on IPV as discriminatory gender based violence and as a violation of human rights underscores the need for an integrated intervention which focuses on realising women's (and their children's) right to protection *and* support through holding perpetrators to account for their violence. It is only where these measures are integrated that the intended potential of the measure can be realised.

Römkens, R and Sosa, L. 'Protection, Prevention and Empowerment: Emergency Barring Intervention for Victims of Intimate Partner Violence'. In: Kelly, L., Hagemann-White, C., Meysen, T. & Römkens, R. (2011). *Realising Rights? Case Studies on State Responses to Violence Against Women and Children in Europe*. London. Available at www.cwasu.org.