



*Protection of Abducting Mothers in Return Proceedings: Intersection between
Domestic Violence and Parental Child Abduction ('POAM')*

SLOVENIAN NATIONAL REPORT

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POAM SLOVENIAN REPORT

Contents

SLOVENIAN NATIONAL REPORT	0
POAM SLOVENIAN REPORT	1
1. Child Abduction Procedures in the Republic of Slovenia – Protection Measures in Focus	2
1.1. Legal Framework	2
1.2. General Data on the Implementation of the Child Abduction Convention	3
1.3. Measures for the Protection of the Child in Return Proceedings	5
1.3.1. Provisional Measures	5
1.3.2. Measures Securing the Return of a Child	7
1.4. Lack of Protection of Abducting Mothers in Return Proceedings	7
1.4.1. Securing the Protection of Mother upon Return - Burden of Proof with Alleged Domestic Violence	7
1.4.2. Intersection of Civil Child Abduction and Criminal Offence of Child Abduction	9
2. Slovenian Legislative Framework for Domestic Violence	11
2.1. Protection Against Domestic Violence - Legislative Framework	11
2.2. Contemporary Regulation of Domestic Violence through the Domestic Violence Prevention Act	17
2.3. Contemporary Regulation of Domestic Violence in Criminal Law	20
2.4. Safety and other Measures	21
2.4.1. Measures according to Police Tasks and Powers Act	21
2.4.2. Specific Measures in Criminal Procedure Act	22
2.4.3. Safety Measures in Criminal Code	23
2.5. Way forward	25
2.6. Slovenian Case Law in respect of Protective Measures for Domestic Violence	25
3. Application of the Protective Measures Regime to International Child Abduction Cases – Slovenian Perspective. Conclusions and Recommendations	28

1. Child Abduction Procedures in the Republic of Slovenia – Protection Measures in Focus

1.1. Legal Framework

International child abduction regime is subject to a general framework of child protection, as well as general human rights protection. Main international treaties Slovenia has acceded are:

- UN Convention on the Rights of the Child of 1989 (hereinafter: CRC);¹ (ratified by Slovenia)²,
- Council of Europe Convention on Protection of Human Rights and Fundamental Freedoms of 1950 (hereinafter ECHR) ³ (ratified by Slovenia 1994)⁴;
- Charter of Fundamental Rights of the European Union of 2000;⁵
- Council of Europe European Convention on the Exercise of Children’s Rights (ratified by Slovenia 1999).⁶

When dealing with child abduction cases, Slovenian authorities are bound by international conventions:

- Hague Convention on International Child Abduction of 1980 (hereinafter: Child Abduction Convention);⁷
- Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children of 1996 (hereinafter: Child Protection Convention).⁸

¹ UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, Vol. 1577.

² Official Gazette SFRY, International Treaties No. 15/90, Notification of succession in respect of United Nations Conventions and conventions adopted by IAEA, Official Gazette of Republic of Slovenia, International Treaties, No. 9/92.

³ Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, ETS 5.

⁴ Act ratifying the Convention on Human Rights and Fundamental Freedoms as amended by Protocols Nos. 3, 5 and 8 and amended by Protocol No. 2 and its Protocols Nos. 1, 4, 6, 7, 9, 10 and 11, Official Gazette of Republic of Slovenia, International Treaties No. 7/94.

⁵ OJ C 83, 30.3.2010, p. 389–403.

⁶ Council of Europe, European Convention on the Exercise of Children’s Rights, done at Strasbourg, the 25th January 1996, ETS No.160, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007cdaf>. Official Gazette of Republic of Slovenia, International Treaties, No. 86/99.

⁷ HCCH, The Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, www.hcch.net/en/instruments/conventions/full-text/?cid=24. Official Gazette of Republic of Slovenia, International Treaties, No. 6/93.

⁸ HCCH, The Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, http://www.hcch.net/index_en.php?act=conventions.text&cid=70. Official Gazette of Republic of Slovenia, International Treaties, No. 85/2004.

The EU legal framework comprises of:

- Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (hereinafter: Brussels II *bis* Regulation).⁹

Other Slovenian sources of law include:

- The Constitution of the Republic of Slovenia (Art. 8)¹⁰,
- Claim Enforcement and Security Act¹¹,
- Family Code¹² (previously Marriage and Family Relations Act¹³),
- Civil Procedure Act¹⁴.

1.2. General Data on the Implementation of the Child Abduction Convention

The national research conducted on all the district courts in Slovenia (11 District Courts) for the period of 1 January 2009 – 1 January 2019 indicated that a small number of child abduction proceedings are brought before the national courts. The research showed that only five¹⁵ district courts have dealt with cases of child abduction, in total 15. This analysis on incoming cases before all Slovenian courts indicates that there was 1 case in 2009, 1 in 2012, 3 cases in 2014, 2 cases in 2015, 4 cases in 2016, 2 cases in 2017 and 2 cases 2018. Considering the low number of international child abduction cases, such spreading of cases is deemed to be inefficient. In order to follow the good practices of other countries, the idea to tackle the question of concentrating jurisdiction of

⁹ OJ L 338, 23.12.2003, p. 1–29. The Brussels II *bis* Regulation has been revised - Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction OJ L 178, 2.7.2019, p. 1–115, and its amended version would oblige Slovenian authorities as of 1 August 2022.

¹⁰ Official Gazette of RS, No. 33/91-I, 42/97 – UZS68, 66/00 – UZ80, 24/03 – UZ3a, 47, 68, 69/04 – UZ14, 69/04 – UZ43, 69/04 – UZ50, 68/06 – UZ121,140,143, 47/13 – UZ148, 47/13 – UZ90,97,99 in 75/16 – UZ70a

¹¹ Official Gazette of RS, No. 3/07 – official consolidation text, 93/07, 37/08 – ZST-1, 45/08 – ZArbit, 28/09, 51/10, 26/11, 17/13 – dec. CC, 45/14 – dec. CC, 53/14, 58/14 – dec. CC, 54/15, 76/15 – dec. CC, 11/18 in 53/19 – dec. CC.

¹² Official Gazette of RS, No. 15/17, 21/18 – ZNOrg in 22/19.

¹³ Official Gazette of RS, No. 69/04 – official consolidated text, 101/07 – dec. CC, 122/07 – dec. CC 90/11 – dec. CC, 84/12 – dec. CC in 82/15 – dec. CC.

¹⁴ Official Gazette of RS, No. 73/07 – official consolidated text, 45/08 – ZArbit, 45/08, 111/08 – dec. CC 57/09 – dec. CC, 12/10 – dec. CC, 50/10 – dec. CC, 107/10 – dec. CC, 75/12 – dec. CC, 40/13 – dec. CC, 92/13 – dec. CC, 10/14 – dec. CC, 48/15 – dec. CC, 6/17 – dec. CC, 10/17, 16/19 – ZNP-1 in 70/19 – dec. CC.

¹⁵ District courts in Ljubljana, Maribor, Kranj, Celje, Murska Sobota.

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the courts was raised, especially when Brussels II *bis* Recast was emerging, however, in the end there was no decision taken on the lawmaker's part.

In Slovenia, there is no indicated law or provisions on the implementation of the Convention. It can be perceived as a *lacuna* that lawmakers failed to fill, so the courts relied on the Article 8 of the Constitution¹⁶ that allows direct use of international provisions once they are ratified and published in the Official Gazette. In the case of Child Abduction Convention, invoking of Article 8 of the Constitution was confirmed by the decision of Constitutional Court in 2001¹⁷. The Court further affirmed the special nature of proceedings, pointing out the need for speedy dealings and its provisional nature that allows the evidentiary standard to be lower as in the cases deciding on *meritum*.

No designated law on implementation therefore engages the general rules in national law. According to Slovenian national law (private international law act, Family Code and Courts Act) it is a district court that has jurisdiction to decide in cases involving family matters as the first instance court. There are also no provisions on concentrated jurisdiction of the courts. To determine which of the eleven district courts has jurisdiction, one must apply the general (national) rules laid down in civil procedure act. Since the national law is based on the principle of proximity, it is therefore the district court in whose area of jurisdiction the child resides that has a jurisdiction on deciding in cases of child abduction. The appellate court adjudicates in a chamber composed of three judges.

To decide on the type of procedure to be used, the Supreme court¹⁸ deliberated on the provisions demanding of contracting states to “use the most expeditious procedures available” and the provision establishing the nature of the decision as not being one on the substance of any custody issue. Taking these two arguments into account and combining them with the purpose of the Convention lead to decision that the most appropriate procedural rules are the ones of the Claim Enforcement and Security Act, specifically the provisions on interlocutory (provisional) order.

The interlocutory order, as a form of insurance, is determined by Article 240 of the Claim Enforcement and Security Act, while the Family Code¹⁹ defines it as one of the three measures for the protection of the benefits of the child. An interlocutory order as a means of protection is an exceptional measure that can only be issued by a court if court intervention is required before a final decision is issued. It should not, however, prejudice a decision on the merits. Due to the “urgency of the matter” the procedure is therefore “the most expeditious”. Consequently, the

¹⁶ Judgement of Constitutional Court affirming the decision the Article 8 of the Constitution can be relied on and further explaining the nature of procedure and decision issued under rules of the Convention.

¹⁷ The Constitutional Court Decision, Up-377/01 of 4 October 2001.

¹⁸ The Supreme Court Decision II Ips 457/2001 of 10 September 2001.

¹⁹ Article 159 of the Family Code.

evidentiary standard is lower (the standard of probability) since the narrow time frame does not allow for extensive inquiries. In order to further stress the urgency, the procedure does not require an oral hearing and equality of the arms is guaranteed through the “objection” procedure that is still occurring before the courts of first instance²⁰.

In 73% of the cases conducted before the Slovenian courts, the parent who had abducted the child was the mother.²¹ In one of the cases it was the grandparents who were considered as abductors, since their daughter (the mother of the child) had passed away; and in another interesting case the abductors were the parents, taking the child out of the institution²² he was entrusted to.

Several possible reasons for abduction may appear in each case. In some of the cases, the abducting mother indicated domestic violence performed by the other parent as a cause for abduction. However, in only one of these cases the violence was reported to the authorities in the country of habitual residence of the child. Proof of domestic violence is an additional challenge for the abducting mother. In the one case where the violence has been claimed, the court deciding upon return found that violence against the abducting parent was not proved²³.

Procedures upon return applications in Slovenia end with court ruling rejecting the return of a child in a bit less than half of the cases, namely 45%. The courts have based their decisions on refusing a return, in vast majority, on the grounds of the best interest of the child, in terms of better living conditions and attachment to the primary care provider. In a few cases the abductor invoked the domestic violence abuse argument, however, the courts are keen to refuse the objection of grave risk of harm raised by the mother if she has never initiated any procedure to assure measures for protection of the child.

1.3. Measures for the Protection of the Child in Return Proceedings

1.3.1. Provisional Measures

²⁰ The Constitutional Court Decision Up 419/10 of 2 December 2010.

²¹ The same as in global studies; Lowe and Stephens found that 73% of abducting parents in 2015 were mothers, even more than the 69% in 2008.

²² It was an institution in Germany that held the rights of custody of the child.

²³ In the mentioned case „the abductor” raised the argument of violence against her, and not the child. That was reported in the USA. It would be interesting to see how the Slovenian courts would find the problem raised, since in Slovenia it suffices to establish domestic violence also if the child is „only” a witness of such conduct. Therefore, if it had been considered as a case of domestic violence in the pre-existing case, the court would not have been able to ignore it.

The Brussels II *bis* Regulation in Article 20 (same as the Child Protection Convention in Article 11) allows for deviation from the rules of jurisdiction, prescribing that in urgent cases, the courts of a Member State may take provisional, including protective, measures in respect of persons or assets in that state even if the court of another Member State has jurisdiction as to the substance of the dispute.

Since the Brussels II *bis* Regulation is directly applicable, Slovenia did not enact any additional implementation measures. On the other hand, it was a case at Slovenian Court that helped further develop standards and limitations of the Article 20. This is the *Detiček*²⁴ case, in which case the *Višje sodišče* (High or Appellate Court) of Maribor posed the preliminary question on the scope of the Article. The Court of Justice of the EU (hereinafter: CJEU) then explained that provision of Article 20 must be interpreted as not allowing, in circumstances such as those of the main proceedings, a court of a Member State to take a provisional measure in matters of parental responsibility granting custody of a child who is in the territory of that Member State to one parent, where a court of another Member State, which has jurisdiction under that Regulation as to the substance of the dispute relating to custody of the child, has already delivered a judgment provisionally giving custody of the child to the other parent, and that judgment has been declared enforceable in the territory of the former Member State. Even though the father did not initiate the child abduction procedure, it was *de facto* the same situation. In case the CJEU took a stand that it would allow the provisional measure of the court without jurisdiction on the merits to overpower the already issued and declared enforceable measure of the court holding the jurisdiction, the CJEU would in fact “reward” the abductor. This would be contrary to the purpose of the Child Abduction Convention and Regulation, especially its preventive function.

In the same case the CJEU provided also the conditions that allow to issue provisional measures. These conditions are: (1) measures concerned must be urgent, (2) must be taken in respect of persons or assets in the Member State where those courts are situated, (3) and must be provisional; and furthermore, they need to exist cumulatively.

In order to issue a provisional measure in Slovenia, the court would follow the procedural provisions of Claim and Enforcement Act. The main characteristics are speedy proceedings with lower evidentiary standard. Research showed that a few provisional measures were issued. They were all under Slovenian law, without reference to the Brussels II *bis* Regulation and they were issued *ex officio*. The provisional measures were aimed at deterring the abductor from taking the child to another country. In one case it was used in order to prevent moving the child to Macedonia

²⁴ CJEU C-403/09 PPU *Detiček*, Judgement of 23 December 2009.

or Australia²⁵, as the mother threatened to do so. In all cases there was also a pecuniary clause issued, in case the abductor breaches the order.

The research showed that Slovenian courts generally tend to mix the provisions of the Child Abduction Convention as well as Regulation in different cases, the intra-EU cases and international cases. Also, the low number of issued provisional measures in the cases points to the conclusion that either the attorneys or the courts are not confident using this important and helpful instrument.

1.3.2. Measures Securing the Return of a Child

In intra-EU abductions, the special nature of Article 11(4) of Regulation serves as a prerequisite of refusing a return of a child. It determines that a court cannot refuse to return a child on the basis of Article 13((1)b) of the Child Abduction Convention if it is established that adequate arrangements have been made to secure the protection of the child after his or her return.

The application of the Article 11(4) of Regulation did not prove to be successful in the practice of Slovenian courts. There were no applications of this provision recorded in the research period. However, in a case at District Court of Maribor²⁶, where the proceedings between an Italian father and a Slovenian mother concerning their seven-year-old child were initiated, the court made an attempt to acquire the opinion of Social Welfare Centre in Italy but did not receive a reply.

1. 4. Lack of Protection of Abducting Mothers in Return Proceedings

1.4.1. Securing the Protection of Mother upon Return - Burden of Proof with Alleged Domestic Violence

Allegation of domestic violence is often raised in return proceedings. The Child Abduction Convention places a burden of proof on the person invoking it as one of the justified reasons for return refusal.²⁷ In Slovenian practice it is the abducting mother.

The case law provides two cases which include an allegation of domestic violence. They should serve as examples of the case scenarios in which the measures of the protection of the abducting mother should be considered by the authorities in return proceedings. However, being

²⁵ District Court of Ljubljana (Okrožno sodišče v Ljubljani), Pom-i 437/2017 of 18 January 2018. Another case was also District Court of Ljubljana, (Okrožno sodišče v Ljubljani), Pom-i 332/2015 of 9 September 2015.

²⁶ District Court of Maribor (Okrožno sodišče v Mariboru), R 270/2009 of 7 January 2010.

²⁷ Art. 13 para 1. E. Pérez-Vera, Explanatory Report on the 1980 Hague Child Abduction Convention (1982), para 114.

unable to provide sufficient proof of alleged domestic violence, securing protection of the mother upon return is hindered.

I. The first case concerned the procedure for the return of the retained child to the United States, initiated by the father before the Slovenian Court.²⁸ The mother came with the child to Slovenia in July 2015 for a vacation. A week later, the father and his child from a previous marriage, both United States citizens, joined the mother and the child. At the end of the vacation, the father and his child from a previous marriage left a week early, however, the mother and their child did not follow.

The father initiated a return procedure in January 2016. The mother refused to return the child voluntarily. The child's retention in Slovenia was held to breach the father's rights of parental responsibility, which he acquired through a provisional measure issued by the District Court of Iowa. And even if the court did not consider the provisional measure, the father's parental rights were breached based on Iowa Code, since he was married to the mother of their child. The court therefore found the retention to be unlawful and it proceeded to establish the existence of the grounds to refuse the return, considering that mother raised the argument of domestic violence. The court considered the available evidence (including Social Welfare Reports, minutes and opinions; e-mails of the applicant; and expert opinions of the clinical psychologist). Since the child was only four years old, the child's opinion was not acquired, but an expert was engaged to estimate the situation. The court noted that the mother initiated the divorce procedure and the procedure to obtain custody over the child in the United States, however, she afterwards withdrew them. She brought the allegations of mental and physical abuse by her husband during their life together in the United States. But the court held that she failed to substantiate them. Also, the allegations of violence against the child were not proved. Therefore, the first instance court ordered the return of the child.

The appellate court considered the appeal and held it was not founded. The court confirmed the ruling of the first instance court, even though the mother submitted additional evidence and argued that the court completely disregarded the domestic violence allegations. The court decided not to accept additional evidence as it would be a violation of civil procedure law to do so. Decision was enforced and the child was returned to the father.

II. In the second case, it was again a father from the United States that initiated the Child Abduction procedure.²⁹ The applicant asked the court to issue a decision on the return of his minor child after the mother, who was also his wife, informed him that she and the child would not be

²⁸ District Court of Ljubljana (Okrožno sodišče v Ljubljani), Pom-i 116/2016 of 18. May 2016, Appellate Court of Ljubljana (Višje sodišče v Ljubljani) IV Cp 2052/2016 of 3 August 2016.

²⁹ District Court of Kranj (Okrožno sodišče v Kranju), IV R 534/2014 of 29 September 2014.

returning to the United States. Originally it was agreed that they would just visit Slovenia, but in the end the mother decided to stay with the child in Slovenia. There was no court decision regulating the parental responsibility at the time of the abduction. According to The Code of Maryland, the parents have joint parental rights. The child's retention in Slovenia was held to breach the father's rights of parental responsibility. The Social Welfare Report in Slovenia entailed the mother's reasoning that she left the United States because of her husband's psychological abuse that she could no longer bear. She pointed out that he also had alcohol issues and that the disagreements escalated to the point where a police intervention was needed. There was no indication she initiated any procedure to protect the child or herself. The court held that there was a breach of father's rights and proceeded to investigate of how the two-year-old child was functioning in Slovenia. It established that the child got attached to her grandparents and is visiting kindergarten, conclusively she has her own social environment where she is being provided for. Considering these findings and provisions of CRC, the court decided to reject the request to return the child to the father based on the Article 13((1)b) of the Child Abduction Convention. The court did not hear the father or consider the mother's allegations.

Following the applicants appeal on non-return decision, the second instance court had altered the first instance decision. It ordered the return of the child to the United States.³⁰ The appellate court made a referral that the court of first instance wrongly held that it was the central authority that was a party to procedure and not the father; the Court also put excessive stress on how the two-year-old integrated into the family and environment, as not even a year had lapsed since the mother's and child's departure; the standard of establishing grave risk was not met, since the disagreements and abuse were directed toward the mother and not the child.

Consequently, the mother submitted the constitutional claim stating that the second instance court decision violates her fundamental freedoms and human rights guaranteed by the Constitution of the Republic of Slovenia. The Constitutional Court, however, did not take her claim into observation.

1.4.2. Intersection of Civil Child Abduction and Criminal Offence of Child Abduction

It is very common in the child abduction scenarios that there are more procedures between the same parties conducted before different courts, both in the country of abduction and in the country of origin. With the pending Hague return procedure initiated by the applicant, there is

³⁰ Appellate Court of Ljubljana (Višje sodišče v Ljubljani) IV Cp 1/2015 of 28 January 2015.

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often a parallel procedure on parental responsibility initiated by the abduction mother.³¹ In addition, criminal proceedings are often brought before a criminal court in the country of origin against the abducting mother for committing the crime of child abduction³².

The parental child abduction is a criminal offence in many countries³³. The general stance is how the provisions in domestic law criminalising the abduction or attempted abduction of a child from a jurisdiction may deter abduction.³⁴ Still, there are the divergent views on the criminalisation of international child abduction. It can be argued that the criminal proceedings against the abducting parent can be counter-productive and can hamper the return of the child in Hague proceedings.³⁵ An arrest warrant or criminal charge against the abducting mother in the country of origin would likely deter her from a voluntarily return the child. In cases where the return is ordered, enforcement of the return can be delayed because the abducting parent cannot re-enter the country of origin because of a criminal warrant.³⁶

The parental child abduction is also a criminal offence in Slovenia (Article 190 of the Criminal Code - The Child Abduction). The research at the courts did not give indication that such measures were issued by the Slovenian courts, nor that the parties submitted such claims. However, the Italian father initiated criminal proceedings in Italy against the Slovenian mother. There is no indication though, whether those charges were the reason the mother did not return to Italy.

³¹ Although Article 16 of the Hague Child abduction prevents any procedures on the merits before the courts of the state of the abduction, mothers usually initiate the claim. Sometimes Slovenian courts accept jurisdiction to deal with such cases (Pom-i 116/2016 of 18 May 2016; Pom-i 437/2017 of 18 January 2018).

³² The District Court of Maribor case (R 270/2010), where the father commenced the criminal case in Italy against the mother.

³³ In Slovenia as well, Article 190 of Criminal Code.

³⁴ HCCH, Guide to Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, Part III – Preventive Measures, available at: <https://www.hcch.net/en/publications-and-studies/details4/?pid=3639>, p. 13.

³⁵ Report of the Third Special Commission meeting to review the operation of the *Hague Convention on the Civil Aspects of International Child Abduction* (17 - 21 March 1997) drawn up by the Permanent Bureau, available at: <https://assets.hcch.net/upload/abduc97e.pdf>, para 4.

³⁶ HCCH, Guide to Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, Part IV – Enforcement, available at: <https://assets.hcch.net/docs/49dc30cf-79cb-42ae-af36-dd2fc20bb11e.pdf>, p. 21. See also the CJEU Case C-491/10 PPU Aguirre Zarraga, Judgement of 22 December 2010.

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2. Slovenian Legislative Framework for Domestic Violence

2.1. Protection Against Domestic Violence - Legislative Framework

In order to determine the legal framework for domestic violence within the Slovenian legal system, basic principles, institutes and fundamental human rights considerations have to be set. Slovenia has acceded to numerous international treaties aimed to prevent and combat domestic violence. These treaties set a standard of protection that has to be implemented at national level.

General framework of human rights protection is provided by the Convention on Protection of Human Rights and Fundamental Freedoms³⁷ of the Council of Europe of 1950 (ratified by Slovenia 1994) and in European regional context the Charter of Fundamental Rights of the European Union.³⁸

Treaties targeting domestic violence derive from the United Nations, and regional European Union and Council of Europe initiatives in particular.

- United Nations
 - Convention on the Elimination of all forms of discrimination against women, adopted by the UN General Assembly of 1979 (entry into force 1981, ratified by former Yugoslavia 1981, notification of Slovenian succession 1992)³⁹ with Optional Protocol of 1999 (ratified by Slovenia 2004);⁴⁰
 - United Nations Convention on the rights of persons with disabilities of 2006 with Optional Protocol (ratified by Slovenia 2008);⁴¹
 - General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19;⁴²
 - UN Declaration on the Elimination of violence against women of 1993;⁴³
 - Beijing Declaration and Platform for Action September 1995;⁴⁴

³⁷ European Treaty Series (ETS) - No. 5.

³⁸ OJ C 326, 26.10.2012, p. 391–407.

³⁹ Official gazette of SFRJ International Treaties No. 11/1981; notification of Slovenian succession Official Gazette - International Treaties No. 2/92.

⁴⁰ Along the obligation to provide a periodical report, additional mechanism of control was added with entry into force of the Optional Protocol. Role of the *Committee on the elimination of discrimination against women* has been altered to enable it to receive and consider complaints by individuals and groups regarding violations of the Convention in their respective States, after exhausting all legal protection before national institutions. The Committee has the power to initiate proceedings to examine cases where women's rights in individual States severely and systematically were violated. Official Gazette - International Treaties No. 15/04.

⁴¹ Act on Ratification of the Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention on the Rights of Persons with Disabilities, Official Gazette – International Treaties, No. 10/08.

⁴² CEDAW/C/GC/35, 14 July 2017.

⁴³ UN General Assembly resolution 48/104 of 20 December 1993.

⁴⁴ UN Fourth World Conference on Women, September 1995.

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- Human Rights Resolution 2005/41.⁴⁵

- Council of Europe
 - Convention on prevention and combat, against violence committed against women and domestic violence of 2011 (entry into force 2014, ratified by Slovenia 2015);⁴⁶
 - European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment⁴⁷;
 - Recommendation Rec (2002) 5 of the Committee of Ministers of the Council of Europe on protection against violence.⁴⁸

- European Union
 - Directive 2012/29/EU of the European Parliament and of the Council of 2012 establishing minimum standards for the rights, support and protection of victims of crime;⁴⁹
 - Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order;⁵⁰
 - Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters;⁵¹
 - Commission Implementing Regulation (EU) No 939/2014 of 2 September 2014 establishing the certificates referred to in Articles 5 and 14 of Regulation (EU) No 606/2013 of the European Parliament and of the Council on mutual recognition of protection measures in civil matters;⁵²
 - Council Framework Decision 2002/584/PUP of 13 June 2002 on a European arrest warrant and surrender procedures between Member States.⁵³

⁴⁵ UN Commission on Human Rights E/CN.4/RES/2005/41.

⁴⁶ Act Ratifying the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence Official Gazette International Treaties No. 1/15.

⁴⁷ Act on Ratifying the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Official Gazette International Treaties No. 1/94.

⁴⁸ Svet Evrope Priporočilo Rec(2002)5 Odbora ministrov državam članicam o zaščiti žensk pred nasiljem.

⁴⁹ OJ L 315, 14.11.2012, p. 57–73.

⁵⁰ OJ L 338, 21.12.2011, p. 2–18.

⁵¹ OJ L 181, 29.6.2013, p. 4–12.

⁵² OJ L 263, 3.9.2014, p. 10–20.

⁵³ OJ L 190, 18.7.2002, Ch. 19, Vol. 006, p. 34 – 51.

National legal framework relevant for domestic violence is contained in mosaic of legal sources:

- Constitution of Republic of Slovenia⁵⁴
- Act on Equal Opportunities for Women and Men,⁵⁵
- Protection Against Discrimination Act,⁵⁶
- Domestic Violence Prevention Act,⁵⁷
- Claim and Enforcement Act⁵⁸
- Criminal Code,⁵⁹
- Criminal Procedure Act,⁶⁰
- Cooperation in Criminal Matters with the Member States of the European Union Act,⁶¹
- Minor Offences Act,⁶²
- Police Tasks and Powers Act.⁶³

The Constitution defines the Republic of Slovenia as a democratic and social state, governed by the rule of law that guarantees the enjoyment and exercise of human rights and fundamental freedoms by all, regardless of nationality, race, gender, religion, political and other beliefs, material status, birth, education, social status, disability or any other personal circumstance (Article 14). According to the Constitution, everyone has the right to personal liberty (Article 19), human personality and dignity (Article 21), personal dignity and safety (Article 34), privacy and personality rights (Article 35). The state protects the family, motherhood, fatherhood, children and youth and

⁵⁴ Constitution of Republic of Slovenia, Official Gazette, No. 33/91-I, 42/97 – CL68, 66/00 – CL80, 24/03 – CL3a, 47, 68, 69/04 – CL14, 69/04 – CL43, 69/04 – CL50, 68/06 – CL121,140,143, 47/13 – CL148, 47/13 – CL90,97,99 and 75/16 – CL70a.

⁵⁵ Act on Equal Opportunities for Women and Men (Zakon o enakih možnostih žensk in moških), Official Gazette, No. 59/02, 61/07, 33/16- ZVarD.

⁵⁶ Protection Against Discrimination Act (Zakon o varstvu pred diskriminacijo), Official Gazette, No. 33/16, 21/18 – ZNOrg.

⁵⁷ Domestic Violence Prevention Act (Zakon o preprečevanju nasilja v družini), Official Gazette, No. 16/08, 68/16.

⁵⁸ Official Gazette of RS, No. 3/07 – official consolidated text, 93/07, 37/08 – ZST-1, 45/08 – ZArbit, 28/09, 51/10, 26/11, 17/13 – dec. CC, 45/14 – dec. CC, 53/14, 58/14 – dec. CC, 54/15, 76/15 – dec. CC, 11/18 in 53/19 – dec. CC.

⁵⁹ Criminal Code (Kazenski zakonik, KZ-1), Official Gazette No. 50/12 – official consolidated text, 6/16., 54/15, 38/16 and 27/17.

⁶⁰ Criminal Procedure Act (Zakon o kazenskem postopku), Official Gazette No. 152/2008, 76/2009, 80/2011, 91/2012, 143/2012, 56/2013, 145/2013, 152/2014, 70/2017.

⁶¹ Cooperation in Criminal Matters with the Member States of the European Union Act (Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije) Official Gazette No. 48/13, 37/15 and 22/18.

⁶² Minor Offences Act (Zakon prekrških), Official Gazette No. 29/11 – official consolidated text, 21/13, 111/13, 74/14 – dec. CC, 92/14 – dec. CC, 32/16, 15/17 – dec. CC and 73/19 – dec. CC.

⁶³ The Police Tasks and Powers Act (Zakon o nalogah in pooblastilih policije) Official Gazette No. 15/13, 23/15 – corr., 10/17, 46/19 – dec. CC and 47/19.

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creates the necessary conditions for this protection (Article 53, para.3). Marriage is based on the equality of spouses (Article 53, para. 1). According to the Constitution, children in the Republic of Slovenia enjoy special protection and care, and they enjoy and exercise human rights and fundamental freedoms in accordance with their age and maturity (Article 56).

Act on Equal Opportunities for Women and Men in 2002 establishes a general legal framework for the protection and promotion of gender equality in Slovenia. In its Article 5 it provides the definition of equal treatment of genders as the absence of direct and indirect forms of gender-based discrimination. Act on Equal Opportunities for Women and Men introduced an independent enforcement body, i.e. the Office for Equal Opportunities⁶⁴ that oversees the implementation of the Act.

This legislative framework was expanded with the adoption of the Protection Against Discrimination Act.⁶⁵ This Act determines the protection of every individual against discrimination irrespective of their gender, nationality, race or ethnic origin, language, religion or belief, disability, age, sexual orientation, gender identity and gender expression, social status, economic status, education or any other personal circumstance in various areas of social life, when enforcing human rights and fundamental freedoms, exercising rights and obligations, and in other legal relationships in political, economic, social, cultural, civil or other fields. In its Article 4 it provides for the general definition of discrimination and in Article 7 further defines other forms of discrimination: harassment and sexual harassment as well as any other less favourable treatment of a person based on a person's rejection or submission to such conduct; order, command or any other instruction to discriminate against a person on the grounds of their personal circumstance; incitement to discrimination; retaliatory measures (victimisation). The Protection Against Discrimination Act also establishes the Advocate of the Principle of Equality as an autonomous state authority in the field of protection against discrimination and determine its tasks and powers. Among other tasks it can initiate the cases also on its own (*ex officio*). The procedures before the advocate are free of charge for the parties.

Until Domestic Violence Prevention Act was adopted in 2008, Slovenian civil legislation addressed domestic violence partially. Marriage and Family Relations Act⁶⁶ (2004) provided protection to children and violence directed towards them, also by their parents, but did leave out

⁶⁴ The tasks of the body are laid down in Article 18.

⁶⁵ Protection Against Discrimination Act (Zakon o varstvu pred diskriminacijo), Official Gazette, No. 33/16, 21/18 – ZNOrg.

⁶⁶ Marriage and Family Relations Act (Zakon o zakonski zvezi in družinskih razmerjih) Official Gazette, No. 69/04 – official consolidated text, 101/07 – odl. US, 90/11 – odl. US, 84/12 – dec. CC, 82/15 – dec. CC, 15/17 – DZ and 30/18 – ZSVI.

protection of the adults⁶⁷. The concept has not changed when the Family Code⁶⁸ was adopted in 2017 (entered in force on 15 April 2019). The Family Code strengthens the protection of children, but it does not explicitly mention the violence against adults with exemption of regulating residential issues after divorce or partner's parting.

To overcome these dispersed protective measures, a comprehensive overarching law, Domestic Violence Prevention Act was adopted in 2008. Among other it meant that the victims did not need any more to bring allegations and/or claims in different institutions and procedures. The Act for the first time provided the definition of domestic violence, types of violence⁶⁹ and protective measures. It has defined all persons who constitute a family for the purpose of domestic violence offence and added special emphasis on the protection of minor members of the family and persons with disabilities. Domestic Violence Prevention Act determines the protective measures and entrusts jurisdiction to the district court to act using the non-contentious procedure. It also refers to the police's tasks in accordance with the regulations governing the tasks and powers of the police (Article 18). Free legal assistance for victims of violence was provided pursuant to the act governing free legal assistance, however, the conditions to obtain it are different. If the victim is assessed as being in danger, he or she is eligible for free legal assistance.

In 2016, the Domestic Violence Prevention Act was amended.⁷⁰ It sought to improve the work of state bodies responsible for combating domestic violence and to bring it into line with recent legal practice regarding the regulation of manifestations of domestic violence, as well as to raise awareness with the aim of zero tolerance of all kinds of violence. It included some provisions of international conventions and considered the European Committee of Social Rights at Council of Europe decision in the case against Slovenia⁷¹ where it found a breach of Article 17 that demands explicit prohibition of all types of physical punishment for children.

Domestic violence is also sanctioned in the criminal sphere. Criminal law of 1977⁷² already exceeded the classic definition of sexual violence when it specifically emphasized that sexual violence (rape and other sexual acts) is criminalized even if the act is committed against a person with whom the perpetrator lives in a married or extra-marital community. Until 1977, the legislation applicable in Slovenia contained a classic definition of rape: the perpetrator is a man and the victim is a woman who is not the perpetrator's wife. In Criminal Code of 2004⁷³, all forms of domestic

⁶⁷ The questions related to persons with disabilities are regulated by a separate law.

⁶⁸ Family Code (Družinski zakonik), Official Gazette No. 15/17, 21/18 – ZNOrg, 22/19 and 67/19 – ZMatR-C.

⁶⁹ Types: physical violence, sexual violence, psychological violence, economic violence, neglect.

⁷⁰ Act Amending the Domestic Violence Prevention Act (Zakon o dopolnitvah Zakona o preprečevanju nasilja v družini), Official Gazette No. 68/16.

⁷¹ Case APPROACH vs. Slovenia No. 95/2013.

⁷² Criminal law (Kazenski zakon SRS), Official Gazette of SFRJ, No. 12/77.

⁷³ Criminal Code (Kazenski zakonik) Official Gazette No. 95/2004.

violence were incriminated, though they were dispersed according to the object of protection. The criminal offence of violent behaviour in the family was introduced to Criminal Code in 2008⁷⁴.

Domestic violence has also been covered by the Minor Offenses against Public Order Act since 1974⁷⁵, although "hidden" in Article 11, paragraph 1, clause 4, since it represented only one of the possible enforcement forms of offense. This act was replaced by the Protection of Public Order Act in 2006⁷⁶ that paid attention to domestic violence by prescribing stricter penal framework if the offence occurred in a "closer" relationship. The said offense involves several enforcement actions, including the prohibition of approach.

Trans-border protection of a victim of domestic violence may be secured through EU legislation, namely the Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order.⁷⁷

It is well known that a Directive does not impose an obligation to introduce new protective measures besides those already existing in national systems of each Member State. European protection order may only be issued when a protection measure has been previously adopted in the issuing State, imposing on the person causing danger one or more of the following prohibitions or restrictions:

- (a) a prohibition from entering certain localities, places or defined areas where the protected person resides or visits;
- (b) a prohibition or regulation of contact, in any form, with the protected person, including by phone, electronic or ordinary mail, fax or any other means; or
- (c) a prohibition or regulation of approaching the protected person closer than a prescribed distance.

Directive 2011/99/EU has been transposed into Slovenian legal system by the Cooperation in Criminal Matters with the Member States of the European Union Act⁷⁸. The Act defined European protection order as a decision issued by a judicial or equivalent authority of a Member State with a view to enabling a judicial or competent authority of another Member State to order and enforce adequate measures for continued protection of the protected person in accordance with its national legislation. It also defined a protection measure as a decision in a criminal case

⁷⁴ Criminal Code (Kazenski zakonik - 1), Official Gazette No 55/08. It includes criminal offences such as "Alteration of Family status, Abduction of Minors, Family Violence, Neglect and Maltreatment of the child, Violation of Family Obligation, Non-payment of Maintenance."

⁷⁵ Minor Offenses against Public Order Act (Zakon o prekrških zoper javni red in mir) Official Gazette of RSS, No. 16/74. Afterwards amended in 2018.

⁷⁶ Protection of Public Order Act (Zakon o varstvu javnega reda in miru), Official Gazette No. 70/2006.

⁷⁷ OJ L 338, 21.12.2011.

⁷⁸ Cooperation in Criminal Matters with the Member States of the European Union Act (Zakon o sodelovanju v kazenskih zadevah z državami članicami EU) Official Gazette, No. 48/13.

issued in the issuing State in accordance with national law and procedures by which a person causing danger is issued with one or more prohibitions or restrictions to protect the protected persons against a criminal act that may endanger their life, physical or psychological integrity, dignity, personal freedom, or sexual inviolability.⁷⁹ The mentioned prohibitions or restrictions are set in Article 184.č (3):

- a) a prohibition from entering certain localities, places or defined areas where the protected person resides or which he or she frequents;
- b) a prohibition or regulation of contact with the protected person in any form, whether by phone, electronic or ordinary mail, or fax or otherwise; or
- c) a prohibition or regulation of approaching the protected person at a distance closer than prescribed.

Act also prescribes that the European protection order is issued by the district court in whose territory the protected person has permanent or temporary residence in the Republic of Slovenia.⁸⁰

Measures of the Cooperation in Criminal Matters with the Member States of the European Union Act that correspond to the Directive are measures issued by the competent authority, in accordance with the law governing the tasks and powers of the police or in accordance with the law governing criminal procedure.

European protection order is issued on a request of a protected person. According to the information gathered, there are three examples in Slovenian courts practice where the European protective order has been issued (one for Croatia and two for Austria). It was confirmed that the issue order for Croatia has been recognized and prolonged in accordance with further request. For the other two cases this information was not received.

The regulation on recognition of a European protection order and possible adjustment is stipulated in Article 184.k of the Act, where it also demands from national court to notify the person causing danger, the competent authority of the issuing State and the protected person of any decision adopted on the decisions taken.

2.2. Contemporary Regulation of Domestic Violence through the Domestic Violence Prevention Act

⁷⁹ Article 184.a.

⁸⁰ Article 184.c, para 1. However, if it cannot be determined which court has jurisdiction according to the preceding paragraph, the District Court of Ljubljana shall have jurisdiction (Article 184. c para 2).

If domestic violence is qualified as a civil matter, protective measures and other rights of victims are prescribed by the Domestic Violence Prevention Act⁸¹ as an overarching material legal basis setting-up connection with actions of the police. The police are acting on the basis of the Police Tasks and Power Act that entails some procedural rules. If not, the police are exercising their tasks according to the procedural rules of the Minor Offences Act. The role of the police will be presented in the “criminal law section” since the Directive implies that actions of police are to be considered in criminal law sphere. In addition to that, the protective measure laid down in the Police Tasks and Power Act has its specific procedural rules that include the investigative judge, which means another reference to “criminal procedural law”.

The Domestic Violence Prevention Act applies to spouse or cohabiting partner, direct blood relative, collateral relative up to four times removed, relative by affinity, collateral relative by affinity up to two times removed, adopter and adoptee, foster carers and children placed in foster care, guardians and their wards, persons having a child together, persons living in a common household, persons in a partnership, regardless of whether they live in a common household or not. A special category of persons constituting a family within the meaning of the Act is one relating to former spouses and partners (gender neutral) who lived together in a cohabitation, the children of each of them and their own children. A new spouse or new cohabiting partner, or partner in a registered or non-registered partnership of a family member, or child of any family member previously referred, shall also be considered family members.⁸²

The Domestic Violence Prevention Act is prescribing six types of domestic violence⁸³:

1. Physical violence denotes any use of physical force or threat to use physical force that coerces the victim to do something or to refrain from doing something, or makes the victim suffer or restricts the victim's movement or communication and causes the victim pain, fear or shame, regardless of whether injuries were inflicted;
2. Sexual violence involves actions of a sexual nature without the victim's consent, to which the victim is forced or does not understand their meaning owing to the victim's stage of development, threats to use sexual violence and publication of material of a sexual nature relating to the victim;
3. Psychological violence denotes such actions and dissemination of information through which the perpetrator of violence induces fear, shame, feelings of

⁸¹ Domestic Violence Prevention Act (Zakon o preprečevanju nasilja v družini), Official Gazette of the Republic of Slovenia, No. 16/08, 68/16 and 54/17 – ZSV-H.

⁸² Article 3 of Act Amending the Domestic Violence Prevention Act (Zakon o dopolnitvah Zakona o preprečevanju nasilja v družini), Official Gazette No. 68/16.

⁸³ Article 3 of the Domestic Violence Prevention Act.

inferiority, endangerment and other anguish in the victim, including where carried out by using information and communication technology;

4. Economic violence is the undue control or placing of restrictions on a victim concerning the disposal of one's income or managing the assets of which the victim independently disposes or manages, or the undue restricting of disposal or management of the common financial assets of family members, undue failure to fulfil financial or material obligations to a family member, or undue transfer of financial or material obligations to a family member;
5. Neglect is a form of violence in which a perpetrator of violence does not provide due care for a victim who needs it due to illness, disability, old age, developmental or any other personal circumstances;
6. Stalking is wilful, repeated and unwanted establishment of contact, following, physical intrusion, watching, loitering in places frequented by the victim, or other unwanted forms of intrusion in the victim's life;
7. Corporal punishment and other methods of degrading treatment against children (as an article of its own to stress the importance (Article 3.a)).

The proceedings are conducted before a district court applying the non-contentious procedure.⁸⁴ Proceedings pursuant to the Domestic Violence Prevention Act shall be initiated at the request of the victim. A social work centre may propose the initiation of proceedings with the consent of the victim. If the victim is a child, proceeding pursuant to this Act shall be initiated at the request of a child who is older than fifteen years, at the request of the parents or one of the parents provided their right to parental care has not been taken away, or at the request of a guardian or of a social work centre. The court shall immediately provide notification of the measures issued in accordance with this Act to the police, the social work centre and the care or educational institution the child attends.⁸⁵

If the measures issued by the court are breached, the pecuniary clause comes into force in accordance with Claim and Enforcement Act.⁸⁶

Safety measures (measures for providing safety to injured parties/victims) according to Domestic Violence Prevention Act that can be issued by a court are: prohibition of entering the accommodation premises where the injured party lives; prohibition of coming within a specified distance from the accommodation where the injured party lives; prohibition of loitering in and

⁸⁴ Article 22.a of the Domestic Violence Prevention Act.

⁸⁵ Article 22.h of the Domestic Violence Prevention Act.

⁸⁶ Article 22.č of the Domestic Violence Prevention Act.

approaching places which the injured party frequents regularly (workplace, school, preschool facility, etc.); prohibition of contacting the victim in any form, including means of telecommunication, and through third persons; prohibition of setting up any kind of meeting with the victim; prohibition of publishing the victim's personal information, documents from court or administrative files, and personal records referring to the victim. The court may decide to transfer accommodation in common use to the victim in accordance with Article 21 of this Act. The court which has imposed the mentioned measure may refer the offender to appropriate social security, educational, psychosocial and medical care programmes that are provided by authorities, organizations and non-governmental organizations.

On the other hand, the Domestic Violence Prevention Act confers to the police the task of protecting the lives and ensuring the personal safety of victims in accordance with the regulations governing the tasks and powers of the police.

2.3. Contemporary Regulation of Domestic Violence in Criminal Law

In Slovenian legal regulation of domestic violence, distinction has to be drawn between minor offenses on the one side, and criminal offenses on the other.

The criminal offense of domestic violence and accompanied safety measures are prescribed by the Criminal Code, whereas the specific measures are prescribed by the Criminal Procedure Act.⁸⁷

When the offense is prosecuted as a criminal offense, the proceedings are conducted before a local criminal court or a district court (if a sentence of imprisonment of more than 3 years is prescribed for the indictment charged).⁸⁸

Minor offences are adjudicated by minor offence authorities and courts.⁸⁹ Minor offence authorities are administrative and other state authorities and bearers of public authority, which supervise the implementation of Acts and decrees on minor offences, and self-governing local community bodies vested with authority to adjudicate on offences pursuant to special regulations. Courts are minor offence courts of the first and second instances. (para 2 and 3 of Article 45).

Chapter XXI of the Criminal Code is dedicated to the protection of the family through criminal law. The criminal offense of domestic violence is committed by whoever within a family unit treats another person badly, beats them, or in any other way treats them painfully or

⁸⁷ Chapter Seventeen of Criminal Procedure Act – “The measures to ensure the presence of the accused, to prevent re-offending and to ensure successful conduct of the criminal proceedings”.

⁸⁸ Article 25 of the Criminal Procedure Act.

⁸⁹ Article 45 of Minor Offences Act.

degradingly, threatens with direct attack on their life or body, threatens to oust them from the joint residence, or in any other way limits their freedom of movement, stalks them, forces them to work or give up their work, or in any other way puts them into a subordinate position by aggressively limiting their equal rights.

2.4. Safety and other Measures

A clear distinction must be made between different types of measures.

Criminal Procedure Act provides for specific measures to ensure the presence of the accused, to prevent re-offending and to ensure successful conduct of the criminal proceedings (Chapter XVII of Criminal Procedure Act). They can be imposed when the (preliminary) criminal proceedings are initiated and during the criminal proceedings.

Safety measures, on the other hand, are a type of sanction that may be imposed on the defendant that has been found guilty of criminal offence. (Chapter 6 of Criminal Code). The purpose of safety measures is to eliminate the conditions which enable or encourage the perpetration of another criminal offense.

Naturally, both types of measures cannot be issued at the same time.

2.4.1. Measures according to Police Tasks and Powers Act

Police Tasks and Powers Act provides for measures that correspond to the measures of Directive 2011/99EU and a Regulation 606/2013 (Article 2 para 1):

- 1) prohibition to visit a certain place or area,
- 2) prohibition to approach a certain person and ban to establish or maintain contact with a certain person.

Police Tasks and Powers Act in Article 60 (titled: Restraining order) provides for the measure of prohibiting to visit a certain place or area or to approach a certain person and ban to establish or maintain contact with certain person. It provides for material as well as procedural rules. This measure may be provisionally ordered by the police against a person suspected of committing an offense prescribed by law (either Police Tasks and Powers Act, Criminal Code or Domestic Violence Protection Act). Such an order may be valid up to 48 hours. When the police issue the order, they immediately send the order for review to the district court investigative judge. The district court either confirms, changes or denies the issue of the measure in 24 hours. If the

court confirms the issue of the measure, it can prolong it up to 15 days (calculated from the moment the police officer ordered it). If the conditions set down in law are met, the victim may prolong the validity of the measure up to 60 days (Article 61 of Police Tasks and Powers Act).

The measure that prohibits visiting certain places or areas demands from police to determine the location or area and the distance within which the defendant can't get close (the maximum is 200 m).

The measure prohibiting the person from approaching a particular person and prohibiting to establish a connection with a particular person determines the distance below which the defendant must not approach the particular person and the person prohibited from establishing or maintaining a direct or indirect contact.

The measures related to domestic violence are carried out by the police, as well as the supervision of whether these measures are implemented.

In a situation where the defendant would act contrary to a part or the entirety of the ordered measure, the police shall inform the court that could impose a fine to the defendant amounting from 300 to 800 EUR. If the violation of the ordered measure is repeated, the police detains the offender (Article 60, para 8 of Police Tasks and Powers Act).

Police or the judge informs the victim of the possibility of acquiring the European protection order in case of changing residence to another EU country (Article 60, para 7 of Police Tasks and Powers Act).

According to Minor Offences Act, an offender that was caught committing a minor offence may be brought to the court by the police even without a previously issued judicial order.⁹⁰

Police exercise supervision over the orders and measures issued in domestic violence cases. In case of breached measures issued according to Domestic Violence Prevention Act, the police inform the court that enforces pecuniary clause according to Claim and Enforcement Act. If the measure breached is issued according to Criminal Procedure Act or Criminal Code, the police inform the court that orders remand or accordingly prison. If the police order issued according to Police Tasks and Powers Act is breached, the fine is imposed and if the breach is repeated, the offender is taken into custody.

2.4.2. Specific Measures in Criminal Procedure Act

⁹⁰ Article 110 of Minor Offences Act.

The basic regulation of the institute of specific measures (Measures to ensure the presence of the accused, to prevent re-offending and to ensure successful conduct of the criminal proceedings) and the purpose of each measure is prescribed by the Criminal Procedure Act.

These measures are issued when there are legal grounds to order a remand, but the court assesses that the same purpose can be achieved by a lesser strict measure.

In this regard, a remand may be ordered if there is a reasonable suspicion that a person has committed a criminal offense and:

- if he is in hiding, if his identity cannot be established or if other circumstances exist which point to the danger of his attempting to flee;

- if there is reasonable ground for concern that he will destroy the traces of crime or if specific circumstances indicate that he will obstruct the progress of the criminal procedure by influencing witnesses, accomplices or concealers;

- if the seriousness of the offence, or the manner or circumstances in which the criminal offence was committed and his personal characteristics, history, the environment and conditions in which he lives or some other personal circumstances indicate a risk that he will repeat the criminal offence, complete an attempted criminal offence or commit a criminal offence which he has threatened.⁹¹

These measures may be ordered before indictment and during criminal proceedings. The investigating judge decides on measures when he is called to decide on remand. The investigating judge that has determined the measure is responsible for extending or terminating the measure. After the indictment has been filed and until the verdict becomes final or enforceable, the measure is determined, extended and revoked by the court of first instance.

These measures may last as long as necessary but no longer than until the judgement becomes final. In the event of non-compliance, these measures will be replaced by ordering a remand.

One of the measures to ensure the presence of the accused, to prevent re-offending and to ensure successful conduct of the criminal proceedings laid down by the Criminal Procedure Act relevant for this research is the restraining order prohibiting approach to a specific place or person, whereby the prohibition entails attempts of communication with the protected person in any form.⁹²

2.4.3. Safety Measures in Criminal Code

⁹¹ Article 201 of Criminal Procedure Act.

⁹² Other measures are compulsory appearance, prohibition on leaving the place of residence, obligation to report regularly to the police, bail, house arrest, remand.

The safety measures in criminal law cannot be pronounced on their own, but only together with other criminal sanctions. Furthermore, safety measures may not be pronounced prior to initiation of the criminal proceedings.

Criminal Code prescribes six (6) safety measures,⁹³ out of which only one corresponds to the Directive 2011/99EU and Regulation 606/2013. However, it is composed of variations of prohibitions: prohibition of approaching, harassment and stalking; prohibition to approach the place where the victim lives, works.

Safety measure of prohibition of approaching, harassment or stalking under Criminal Code will be imposed when there is a danger that the offender might again commit criminal offences against particular persons or at particular locations. The measure may not be imposed for a period of less than one month or more than three years. When a safety measure has been imposed with a suspended sentence and the district court in the process of verification finds that the convicted person acted contrary to the prohibition ordered by the measure, the court may revoke the suspended sentence and order the execution of the imposed sentence. The prohibition enters into force when the decision is final. If the convicted person served sentence in prison, this time is not calculated into the imposed prohibition.

In the end national measures compatible with the measures of the Directive 2011/99EU and Regulation 606/2013 can be highlighted. Protective measures regulated by the Directive 2011/99 EU and the Regulation on the Protection 606/2013 of substantially corresponding domestic measures in minor offences regulation, the Police Tasks and Powers Act, the Domestic Violence Protection Act and safety and other measures in the criminal regulation of the Republic of Slovenia are:

1. prohibiting the approaching, harassment or stalking of a victim (Domestic Violence Protection Act in connection with The Police Tasks and Powers Act, Criminal Procedure Act, Criminal Code),
2. prohibition of visiting a specific place or area (Domestic Violence Protection Act in connection with The Police Tasks and Powers Act, Criminal Procedure Act, Criminal Code),
3. removal from a shared/common household (Domestic Violence Protection Act).

⁹³ Mandatory psychiatric treatment at the facility; mandatory psychiatric treatment; prohibition of performing a specific duty or activity; prohibition of operating a motor vehicle, objects confiscation. (Article 69 of Criminal Code).

2.5. Way forward

Republic of Slovenia addresses the long-term battle against domestic violence with the national programme for preventing domestic violence for a period of six years. At the proposal of the Government, the National Assembly shall adopt a resolution on national programme every six years. On the basis of the national programme, the action plans are prepared as implementing acts of the national programme that define for a specific field the required activities over a period of two years. The Government shall report every two years to the National Assembly on the implementation of the national programme. In the report, it shall state the measures and activities that have been carried out in the previous two-year period.

In the case of criminal law, the Cooperation in Criminal Matters with the Member States of the European Union Act is announced to be amended by the government working programme. It gives the government an opportunity to include also provisions on measures issued according to Criminal Code to be included in the Article 184.č, as one of the measures to establish the grounds for issuing the European protection order. In this way, the European protection order will ensure the protection, guaranteed in the home Member State, also in other EU Member States, in civil as well as in criminal law.

In the case of civil law (family matters) it is presumed that the courts will be relying on the Family Code when issuing provisional protective measures and not anymore on the Claim and Enforcement Act. Family Code entered into force on 15 of April 2019, hence no case law confirmed the assumptions the courts will be issuing provisional protective measures under Family Code.

2.6. Slovenian Case Law in respect of Protective Measures for Domestic Violence

Methodology of desk research in respect of case law analysis was the following: requests for cooperation in respect of the POAM project topic were addressed to 44 local courts and 11 district courts judging in civil and criminal sphere. The researcher requested the courts to deliver/inform on cases. The few cases received are presented below.⁹⁴

Out of three cases received, two were cases at the civil district court of Maribor and one was at the criminal district court of Ptuj.

⁹⁴ Almost all the courts gave feedback to the research question and these three were all that was received. There was at least one also at the criminal district court in Maribor.

The two cases at the civil court both contain protective measures to prohibit the approaching, harassment or stalking of a victim and / or a protective measure of removal from a common home pronounced in accordance with the Domestic Violence Protection Act. The Regulation 606/2013 has thus been invoked twice.

I. The District Court of Maribor⁹⁵ deals with case of domestic violence against a minor daughter, a student in Austria who was physically and psychologically abused by her parents, at that time having their domicile in Slovenia. The court pronounced a protection order against the parents. The decision of Slovenian court was rendered according to Article 22.d of Domestic Violence Prevention Act that allows issuing a reasoned decision imposing a measure, without having sent a request to the offender to provide their reply.⁹⁶ It considered the reports of the police and social welfare centres, as well as the daughter's testimony and issued a protective measure to prohibit approaching the protected person at a certain distance (to less than 200 m); prohibit approaching the dorm, the school; prohibit contacting the protected person in any way whatsoever, including by means of telecommunication, and through third persons; prohibit setting up any kind of meeting with the protected person; prohibit publishing the protected person's personal information, documents from court or administrative files, and personal records referring to the protected person. The measures were put in place for 12 months (the court calculated also the time of measures issued by police), with the possibility of extension upon the protected person's proposal. A part of the court's decision was also a fine to be imposed in case of breaches of the set measures. The court considered also that the parents declared their domicile in Austria, allegedly to be closer to their daughter and to avoid the Slovenian social welfare centre's proceedings. Therefore, the court serviced the parents in Austria according to Service Regulation (1393/2007/ES). Upon a request of the protected person, a certificate was issued in German language based on Article 5 of Regulation 606/2013, on all three accounts of measures that are subject of the referred regulation's certificate.⁹⁷ The parents exercised their right and filed an objection, but it was dismissed.

Unfortunately, there was no information received on whether the protected person initiated the procedure for recognition and enforcement in Austria and what, if any, the adjustments were.

⁹⁵ District court of Maribor, No.: N 372/2018.

⁹⁶ The court held that regarding the proposal indicated, there was a high likelihood that the perpetrator of violence represents a threat to the life or a serious threat to the health of the victim.

⁹⁷ Certificate is prescribed by the Commission Implementing Regulation (EU) No 939/2014 of 2 September 2014 establishing the certificates referred to in Articles 5 and 14 of Regulation (EU) No 606/2013 of the European Parliament and of the Council on mutual recognition of protection measures in civil matters.

II. In the other civil case before the District court of Maribor⁹⁸, the protected person was asking for protection against her ex-partner. The court established that the pair were living together from March 2017, when the violence started. It continued also when they moved together to Austria to study and it culminated in June 2018. By that time, the partnership had ended, but harassment and threats continued. The decision of Slovenian court was rendered according to Article 22.d of Domestic Violence Prevention Act that allows issuing a reasoned decision imposing a measure, without having sent a request to the person causing the risk to provide their reply. The court considered the reports of the police and social welfare centres, as well as the criminal proceeding⁹⁹ being in progress against a person causing the risk, and issued protective measures to prohibit approaching the protected person at a certain distance (to less than 200 m); prohibit approaching the dorm, the school, fitness centre, library; prohibit contacting the protected person in any form, including by means of telecommunication, and through third persons; prohibit setting up any kind of meeting with the protected person. The protective measures were pronounced for 12 months, starting on 9. 8. 2018 at 1.40 am. In case of breach, a fine of 2.000 EUR was declared, allowing direct enforcement if not respected.

The protected person filed a request to issue a European protection order, to which the court's first reaction was to send the request to the criminal court and secondly, the civil court asked the protected person for a clarification whether this request is to be understood also as a request for the certificate under Article 5 of Regulation 606/2013. The protected person confirmed the court's presumption and the court issued the certificate on all three accounts of measures that are subject of the referred regulation's certificate.

The person causing the risk exercised his right to objection and the court (still of first instance) considered the argument that both parties were still attending the same University in Austria. The court finally issued a decision that adjusted the part about prohibiting approaching and entering the University, other measures stayed in place intact. Whether a new certificate was issued is not clear, neither was received any further information on actions of Austrian courts.

However, from the available casefile it was evident that the protected person submitted evidence of a University representative requiring information about the protective measures entering into force in Austria. However, there were no official reports of breaches listed and there was no indication of the fine being enforced.

⁹⁸ District court in Maribor, No. N 221/2018.

⁹⁹ During the research, the information of the case was received, however there was no further information about the case from the criminal court.

In the case at the criminal court of Ptuj¹⁰⁰, the decision was issued in proceeding under reasonable assumption that a criminal offense provided in Article 191 of Criminal Code has been committed. This assumption gave jurisdiction to the police to issue a protective measure (a restraining order). Under Directive 2011/99/ EU on the basis of Cooperation in Criminal Matters with the Member States of the European Union Act, a European protection order was issued and sent to the Croatian court. The Slovenian court's decision prohibited the offender, Slovenian national with declared domicile both in Republic of Slovenia and Republic of Croatia, to intentionally approach his wife, Slovenian citizen residing both in the Republic of Slovenia and the Republic of Croatia, at a distance of less than 200 meters for the period from 21st August 2017 from 4.40 pm to 5th September 2017 to 4:40 pm. Afterwards, a prolongation was sent as well.

The victim had been physically and psychologically abused for some time and during that time informed the police and filed a complaint. Even after announcing her husband to the police, the abuse continued until the police¹⁰¹ issued a protective measure prohibiting the offender to approach his wife and setting the distance of at least 200 meters and included a protective measure against the harassment of a person exposed to violence by the offender through all means of communication. The measure was consequently confirmed by the investigative judge at the District court of Ptuj. It also ordered that for breach of the protective measure, the offender would be fined 300,00 to 800,00 euros¹⁰² or a retention¹⁰³ will be determined. The same court (and judge) also issued a European protection order. The court in Ptuj sent the request for recognition of the order and based it on the Article 6 of Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the EU.¹⁰⁴ The request was sent to the County court in Varaždin.

Upon a submission for extension of the protective measure, the District court of Ptuj issued a new decision prolonging the measures in force for another 60 days until October 20, 2017 until 4:40 pm. Again, a European protection order was issued and sent to the County court in Varaždin.

3. Application of the Protective Measures Regime to International Child Abduction Cases – Slovenian Perspective. Conclusions and Recommendations

¹⁰⁰ District court of Ptuj, No. I Kpd 36362/2017.

¹⁰¹ Based on Article 60 of the Police Tasks and Powers Act.

¹⁰² Article 162 para 3 of the Police Tasks and Powers Act.

¹⁰³ Article 64 of the Police Tasks and Powers Act.

¹⁰⁴ Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union, OJ 197, 12. 7. 2000, pp. 0003 – 0023.

The results of the POAM research project in Slovenia are based on desk research. The purpose of the research was to establish whether and how the relevant provision of the Regulation and Directive are being applied at local and district courts, with special emphasis on the cases of international child abduction cases.

The European legal framework covering child abduction cases involving allegations of domestic violence is very complex. The subject matter is regulated by diverse legal sources, primary focus being here on placing European package of protection measures and child abduction (Regulation on protection measures, the Directive on the European protection order, Brussels II *bis* Regulation, Child Abduction Convention, Child Protection Convention) into national context of legal rules covering all relevant areas.

The mosaic of legal sources and remedies available before Slovenian authorities affects criminal courts, civil courts and public authorities according to Minor Offences Act.

In the Slovenian legislation dealing with domestic violence, it is necessary to distinguish minor offences from criminal acts:

- a) Domestic violence as a minor offense: protection, measures and other rights of victims are prescribed by the Police Tasks and Powers Act and (procedurally) Minor Offences Act;
- b) Domestic violence as a criminal offense: safety measures are prescribed by Criminal Code and specific measures that are prescribed by the Criminal Procedure Act.

The mosaic of legal sources and remedies in procedures before civil courts:

- protective measures that would correspond to EU protective measures package, related to domestic violence are issued by district courts, as well as other measures provided in Slovenian national regulation (prescribed in the Domestic Violence Prevention Act) ,
- international child abduction proceedings are exclusively dealt before civil court.

POAM project Report hence focuses separately on the functioning of the child abduction regime and functioning of the protection measures (in respect of a child and a mother) across the border. Those aspects are, however, merged and interconnected through available case law and doctrinal findings. The overall aim of this report is to place protection measures in the context of child abduction.

As far as the measures of civil law are concerned, the analyses of child abduction proceedings with domestic violence objection to return have been elaborated. The conclusion may be drawn that there was no significant percentage of denial of return due to allegations of domestic violence

in child return cases. However, in the majority of the cases, the reasoning entailed the issue of domestic violence in connection with primary carer that was in the vast majority of the cases the abductor.

If a court ensured the protection of the parent who returns with a child, it would be possible to increase the number of decisions ordering the return. The aim of the Hague Convention on Child Abduction is to return the child, and the exception of Article 13, paragraph 1, line b. should indeed only be used exceptionally. The court in the abduction proceedings does not conduct evidence about the allegation of domestic violence - all evidence should be presented by the parent who abducted a child and who opposes the return. Some judges are even of the opinion that a parallel procedure in case of domestic violence should be initiated and could consequently be merged with the abduction case. There was no such case reported up to the writing of this report.

The decision-making and decision ordering the return of a child would be facilitated, if the court had confirmation that the returning parent would be protected in the country of origin, i.e. to be sure that the parent has the measure of protection that follows him or her abroad.

Cases dealing with domestic violence, settled before Slovenian authorities, are in vast majority purely national, i.e., do not contain any cross-border elements. There were no international parental child abduction cases, where interventions of criminal courts were sought in terms of issuing measures. Examples of measures issued may be found in practice, but not in child abduction cases.

There is only one available example of applying the provisions of the Directive based on Cooperation in Criminal Matters between Member States of the EU Act, but not in a child abduction case. To the researcher's knowledge and availability, only two protective measures pursuant to the Regulation 606/2013 have been issued in Slovenia so far.

On the other hand, there was no report of recognition and enforcement of protection order, neither in criminal nor in civil court.

One of the findings of this research is also that there is a lack of more specific backlog keeping by the courts. In this respect, research would be made easier for academics, as well as for the judicial authorities. Based on these types of information they would be able to analyse the actual workload of the courts and judges in cases with cross-border elements. It would also give ground to consider putting in place a specific regulation relating to international abduction cases, specifically to set the relevant procedural frame.

At the same time, relevant data could also give rise to decide on looking into arrangements of concentrating jurisdiction to only a few courts or a group of judges in specific court.

A step forward was made with the new Non-contentious Procedural Law that with a provision enables civil courts to have a direct insight into proceedings in criminal courts based on personal data of the child.

Considering the amendments of Criminal Code that provide for a more comprehended protection, it would be necessary to add the reference to Criminal Code in the transposition law (specifically Article 184.č) as well, to make it fully operational.

Since there was no information that a case of international child abduction with the application of protective measures occurred, the researcher simulated a scenario of a case before Slovenian civil court, considering that a case of international child abduction can only be conducted in civil court.

The court receives an application and immediately proceeds with further inquiries to confirm that a child is indeed residing in its jurisdiction, and it informs the social welfare centre, as well as the alleged abductor.

As soon as the alleged abductor argues domestic violence, the court would first have to establish who is to be protected. Is it the child or just the alleged abductor, or both? The answer to this question will depend on the statements of the alleged abductor and the evidence provided.

a) If the court decided that there is insufficient evidence of domestic violence against the child, which, in Slovenian law, would mean that a child is not even a witness to domestic violence (according to Domestic Violence Protection Act the child is a victim also if he or she is “just” a witness), the court would proceed according to the procedure under the Child Abduction Convention (and Brussels II *bis* Regulation), i.e. a special speedy procedure, with lower evidentiary standard, as it is required for issuing a provisional measure. The alleged abductor would then have to establish a connection between the child and him/herself that is exceptionally strong, for the court to consider it a possible grave risk to the child’s welfare if the connection were to be broken/terminated. In this case, the court having the restrictive use of Article 13(1(b)) of the Child Abduction Convention in mind, could however, with limitation on time and resources and hence a lower evidentiary standard, anyway accept the objection based on Article 13 (1(b)), whereby the reasoning would be to pursue the best interest of the child. On the other hand, the court could also dismiss the argument of attachment to primary carer, according to the established caselaw that it would be contrary to *ratio* and purpose of the Child Abduction Convention as well as the Brussels II *bis* Regulation. Taking the attachment into account could also be awarding the abductor, since he or she succeeded in alienating the child from the left-behind parent.

b) If the court accepts the domestic violence argument as a claim, some judges argued that these accusations would have to be dealt with in a parallel procedure.

Firstly, the purpose of the Regulation and the goal that it pursues is different to that of the Convention or Brussels II *bis* Regulation. Secondly, the procedural rules applying in domestic violence cases are different. In the case of domestic violence, it is non-contentious procedural rules that apply, while in child abduction it is the Claim and Enforcement Act.

However, in both cases the district civil court has jurisdiction and also, both procedures must be conducted fast and for both it is stipulated that in case of urgency, the equality of rights is guaranteed with an objection procedure, therefore the offender is informed of the procedure when the decision is being served to him. The right to be heard is ensured by the objection procedure at the first instance. However, the filing of objection does not suspend the enforcement of the decision.

The proceedings under Domestic Violence Protection Act would then give grounds for issuing a certificate according to Regulation 606/2011 to acquire protection also cross-border. The Court would have to consider if the request was filed in six months at the latest from the day the victim last suffered bodily harm or the offender of violence harmed their health or in any other way encroached on their dignity or any other personal rights. The use of provisions of the Act would also mean that alternative dispute settlement should be prohibited.

A solution to parallel proceedings could be attaching proceedings to a proceeding that was already initiated. Court Rules¹⁰⁵ enable a variety of arrangements that can be proposed either by a judge or by a party in the proceedings. Considering that both, the substantial grounds and the procedural rules are different, even though in essence quite similar, it would be interesting to see what kind of solution the judges would opt for in their decision.

The overall conclusion of this Report, based on desk research, is that, in general, stakeholders are not familiar with the mechanisms of European Protection Measures package. There is also no application of this legal package in return child abduction involving allegations of domestic violence. The implementation of the Regulation is not fully achieved. Further steps should target stakeholders at every level, starting with appropriate legislative frame on the one hand following by the organisation of the court's system and adequate training on the other.

¹⁰⁵ Court Rules (Sodni red) Official Gazette No. 87/16.

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